solely to the question whether it ought originally to have been held that the writer of letters has any property in them after their transmission. He had no doubts whatever, that such was the established law, and that he was bound to follow the decisions of his predecessors. He expressly says, that he would not attempt to unsettle doctrines which had prevailed in his court for more than forty years, and could not therefore, depart from the opinion which Lord Hardwicke and Lord Apsley had pronounced in cases (*Pope* v. *Curl*, *Thompson* v. *Stanhope*), which he was unable to distinguish from that which was before him. Subsequently, in support of his opinion that the plaintiff had a sufficient property in the original letters to authorize an injunction, he refers to the language of Lord Hardwicke (quoting the exact words in *Pope* v. *Curl*) as proving the doctrine that the receiver of letters, although he has a joint property with the writer, is not at liberty to publish them without the consent of the writer; which is equivalent to saying that the latter retains an exclusive right to control publication. He then adverts to the decision in *Thompson* v. *Stanhope* as following the same doctrine, and declares that he could not abandon a jurisdiction which his predecessors had exercised, by refusing to forbid a publication in a case to which the principle they had laid down, directly applied. He then says, 'such is my opinion; and it is not shaken by the case of *Lord and Lady Percival* v. *Phipps*;' and significantly adds, 'I think it will be extremely difficult to say where the distinction is to be found between private letters of one nature and private letters of another nature."

Such also was the view of Story; for he says (Secs. 947–948 Eq. Juris.), speaking of private letters on business, or on family concerns, or on matters of personal friendship, "It would be a sad reproach to English and American jurisprudence, if courts of equity could not interpose in such cases, and if the right of property of the writers should be deemed to exist only when the letters were literary compositions. If the mere sending of letters to third persons is not to be deemed, in cases of literary composition, a total abandonment of the right of property therein by the sender, *a fortiori* the act of sending them cannot be presumed to be an abandonment thereof, in cases where the very nature of the letters imports, as matter of business or friendship or advice, or family or personal confidence, the implied or necessary intention and duty of privacy and secrecy. Fortunately for public as well as for private peace and morals, the learned doubts on this subject have been overruled, and it is now held that there is no distinction between private letters of one nature and private letters of another;" citing *Gee* v. *Pritchard*.

In *Folsom* v. *Marsh*, *supra*—a case decided in the Circuit Court of the United States for the first circuit—Justice Story held that an author of letters or papers of whatever kind, whether they be letters of business or private letters, or literary compositions, has a property therein, unless he has unequivocally dedicated them to the public, or to some private person; and no person has any right to publish them without his consent, unless such publication be required to establish a personal right or claim, or to vindicate character. "The general property," he says, "and general rights incident to property, belong to the writer, whether the letters are literary compositions or familiar letters or details of facts, or letters of business. The general property in the correspondence remains in the writer and his representatives; * * * *a fortiori*, third persons, standing in no privity with either party, are not entitled to publish them, to subserve their own private purposes of interest, or curiosity or passion. If the case of *Percival* v. *Phipps*, 2 Ves. & Beam. 21–8, before the then Vice Chancellor, Sir Thomas Plumer, contains a different doctrine, all I can say is, that I do not accede to its authority; and I fall back upon the more intelligible and reasonable doctrine of Lord Hardwicke in *Pope* v. *Curl*, 2 Atk. Rep. 342, and Lord Apsley in the case of *Thompson* v. *Stanhope*, Amb. Rep. 737, and of Lord Keeper Henley in the case of *The Duke of Queensbury* v. *Shelburne*, 2 Eden Rep. 329, which Lord Eldon has not scrupled to hold to be binding authorities upon the point, in *Gee* v. *Pritchard*, 2 Swanst. Rep. 403."

If this be the law, where the right of publication is in question, assuredly, it is not less so, in a case where third persons having obtained possession of private letters, are seeking to make them the subject of sale and purchase, without the consent of the writers. Nor do I think the court should hesitate to apply the principle here, although the writers are not themselves interposing for equitable relief, since, if the property right is yet retained by the writers, no lawful sale of the letters can be made.

In *Eyre* v. *Higbee*, 22 How. Pr. Rep. 198—decided by Judges Gould, Mullin and Ingraham, all concurring—it was adjudged that letters in regard to matters of business, or friendship, although they pass to an executor or administrator, are not assets in their hands, and cannot be made the subject of sale or assignment by them. This judgment of the court was made expressly to rest upon the principle that "the property which the receiver of letters acquires in them is not such a property as the holder must have in order to make them assets."

Motion for a new trial overruled.