

on grounds of public policy, the court might well refuse either to aid the plaintiff in enforcing it, or the defendant in recovering damages for the breach of it. Thus to traffic in the letters of third parties, without their knowledge or consent, and to make them articles of merchandise in the manner attempted here, was, to mildly characterize it, grossly disreputable business. It was said on the argument that the letters were not in evidence, and that the court could assume nothing with reference to their contents. But enough was indicated in the correspondence of the parties which preceded the making of the contract, which correspondence was in evidence, to point to the conclusion that the letters which were the subject of bargain and sale were written by persons who sought medical aid for disorders with which they were afflicted. Counsel for defendant had in court a large number of the letters, and his statements were not controverted, that they related to infirmities and maladies of which the writers sought to be cured. The very nature of the contract in suit presupposes such to have been the fact. Ought courts of justice to lend their sanction to such a traffic? Suppose a physician—trusted and confided in as such in the community—were so far to forget or abuse the obligations of his profession, as to make the confidential communications of his patients the subject of bargain and sale; would any court listen for a moment to his complaint of non-performance of the contract, and aid him to recover the purchase price? Presumptively the letters here in question were confidential; at least they were personal as between the writers and the receiver; and though it be true, as was said in argument, that authority is wanting directly applicable to the question here presented, I would not hesitate on grounds of morality, and upon considerations of common justice, to make an example of this case, by putting upon it the stamp of judicial reprobation.

But there is another ground upon which, applying to the case a principle sanctioned by high authority, the court may, it seems to me, well refuse to lend its aid to give legal effect to this transaction. The writers

of these letters retained such a proprietary interest in them, that they could not properly be made the subject of sale without their consent. The receiver of the letters had only a qualified property in them, and legal authority to sell them for a pecuniary consideration, could only be maintained upon the theory of an absolute property right. Such a right did not exist.

At an early day in the history of equity jurisprudence, the question arose as to the right of the receiver of letters to cause them to be published without the consent of the writer, and as to the power of a court of equity to restrain such publication. It would be ill-timed and superfluous to review in detail all the cases on the subject, since they have been so thoroughly reviewed and discussed by Justice Story in the case of *Folsom v. Marsh*, 2 Story Rep. 100, and by Judge Duer in the case of *Woolsey v. Judd*, 4 Duer, 379.

The leading cases in England on the subject are *Pope v. Curl*, 2 Atk. 342; *Thompson v. Stanhope*, Ambler, 737; *Lord and Lady Percival v. Phipps*, 2 Ves. & Beames, 19, and *Gee v. Pritchard*, 2 Swanston, 402.

In the first mentioned case, Pope had obtained an injunction, restraining the defendant, a London bookseller, from vending a book entitled "Letters from Swift, Pope and others," and a motion was made to dissolve it. Some unknown person had possessed himself of a large number of private and familiar letters which had passed between Pope and his friends Swift, Gay and others, and they had been secretly printed in the form of a book which the defendant had advertised for sale. The case was argued before Lord Hardwicke, and he continued the injunction as to the letters written by Pope. It was objected that the sending of letters is in the nature of a gift to the receiver, and therefore that the writer retains no property in them. But Lord Hardwicke said: "I am of opinion that it is only a special property in the receiver. Possibly the property in the paper may belong to him, but this does not give license to any person whatsoever to publish them (the letters) to the world; for at most, the receiver has only a joint property with the writer."