The Legal News.

Vol. XI. FEBRUARY 25, 1888. No. 8.

The *Law Journal* (London), referring to the proposal to masquerade in prison dress, says:—"We fear that there are in these tyrannical days legal difficulties which will even prevent Mr. Graham from enjoying the innocent amusement of appearing before the world in prison dress, after which he is said to hanker. Unless the broad arrow or some other visible Crown mark conspicuously proclaims the point of Mr. Graham's toilet, the whole thing will fall flat. The use of these marks, however, by applying them without lawful authority to any article, constitutes, by section 4 of the Public Stores Act, 1875, a misdemeanour punishable with imprisonment with hard labour, so that Mr. Graham and his tailor might have to pay dearly for his masquerade. Mr. Graham's appearance would also be such as to make him reasonably suspected of having on his back Her Majesty's stores unlawfully obtained, so that he might be detained for an explanation. On the whole, there appears to be enough in the law to prevent this perversely ingenious kind of demonstration against the law."

In the case of *Commonwealth* v. *Weidner*, before the Pennsylvania Common Pleas, it was held that charging a fixed rate for admission to a camp meeting on Sunday is worldly employment, and not within the exception of works of necessity and charity. The Court said:—"All worldly employments are allowed which in their nature consist of necessity or charity. Therefore in the case of *Dale* v. *Knepp*, 98 Penn. St. 389; S. C., 42 Am. Rep. 624, the custom of soliciting contributions on Sunday from congregations assembled for religious worship, for religious and charitable purposes, and for church extension, was recognized as lawful; but no case that has been brought to our attention warrants the charge of a compulsory admission price as the 'usual' means of grace or act of necessity or charity. The grace is free and the subscription voluntary. When the wayward sinner is forbidden entrance to the church unless he hands over his nickel to the doorkeeper, the church so demanding and receiving on Sunday is in no better position, as far as 'worldly business' is concerned, than would be the circus man with his one price of admission to all the several and combined shows of his monster aggregation, or the peddler with his busy booth. In the present case the evidence on both sides conclusively proves that the defendant was the representative of a stock company, with the pastor as principal stockholder and sharer in the dividends. Fence with boards eight feet high and barbed wire inclosed the grounds within which services were held. It was not purely the case of a religious body inviting the sinners in from the broad highway to hear the gospel without money and without price. Its doors were closed in the face of the penitent seeker after truth unless he came with five cents as the open sesame in his hand. This fee was exacted, according to the statement of a witness, from man, woman and child alike. There was not the usual half price for children in arms. The pass system was abolished, and no return checks given to those who were luckless enough to leave before services and might wish to return."

THE REVISED STATUTES.

Acts of the Legislatures of the Provinces now comprised in the Dominion, and of Canada, which are of a public nature, and are not repealed by the Revised Statutes of Canada for the reasons set forth in Schedule B to the said Revised Statutes.

In the paper respecting the Revised Statutes of Canada, signed "W.," (p. 187 of our last volume,) after giving an account of the inception and completion of that work, and its contents, and of the schedules appended to it and their use in connection with it, we referred more especially to Schedule B, headed: "Acts and parts of "Acts, of a public general nature, which "affect Canada, and have relation to matters "not within the legislative authority of Par- "liament, or in respect to which the power

"of legislation is doubtful, or has been "doubted, and which, in consequence, have "not been consolidated; also Acts of a public "nature which, for other reasons, have not "been considered proper Acts to be consoli- "dated." The Commissioners were, by their commission, directed to "note the enact- ments of the old Provincial Statutes which have been repealed or altered; and also to classify all unrepealed enactments according to their subjects, care being taken to distin- guish those applying to one or more Provinces only;" and they did so, and ascertained what enactments in the said statutes were clearly in force and related to subjects now under the jurisdiction of the Dominion Parliament, or as to which the jurisdiction was doubtful; and we stated that when such Provincial enactments re- lated to matters forming the subject of a chapter of the Revised Statutes, they were printed with such chapter but were made separate sections, and the Province or Pro- vinces to which alone they apply were distinctly indicated; but if they related to matters with respect to which there was no chapter in the Revised Statutes, or the ques- tion of jurisdiction was doubtful, they were not printed in that work as then distributed, but only referred to in Schedule B, annexed to it, and left to be printed with the others referred to in the heading to that schedule, in a third and separate volume, which is now printed and distributed, and is that of which the title forms the heading of this article. It contains all the Provincial Acts or enactments on subjects within the juris- diction of the Dominion Parliament, or as to which its jurisdiction or that of a Provincial Legislature is doubtful, or has been ques- tioned, which are still in force in the Provinces by the Legislatures whereof they were respectively enacted (including those of the Civil Code of Lower Canada, now the Province of Quebec), except such as are in- corporated as above mentioned in the Revised Statutes vols. 1 and 2, in the chapters on the subjects to which they relate.

This third volume is, in some respects, the one which was most needed. Every lawyer, and indeed every man of business in the Dominion, requires occasionally to know not only the statute law in force in the whole of the Dominion, but that in force in some one or more Provinces. That applying to the whole Dominion was to be found in its statutes, of which most lawyers have a com- plete copy, while few have copies of the statutes of all the Provinces. Yet lawyers, bankers, merchants and men of business in any Province are constantly becoming interested in questions affected by the statute law of other Provinces, as, for in- stance, those relating to bills of exchange, carriage of goods on inland waters, and many other subjects. These Provincial enactments will now be found in one or other of the three volumes prepared by the Commis- sioners. And still more important will be the volume now before us to the legislator wishing to amend and consolidate the law on any subject, and make it uniform throughout the Dominion. The third volume contains also the Public General Acts of the Dominion Parliament in force at the time of the publication of the Revised Statutes, but which, as being of a temporary nature, or for other reasons, were not considered proper Acts for consolidation.

Some idea of the extent, value and effi- ciency of the work performed by the Com- missioners may be formed from the following brief summary of the contents of the volume now before us, viz.:—

Acts of the late Province of Canada (Upper and Lower Canada united) prior to the Consolidated Statutes of 1859—13 Acts, 87 pages.

Acts forming part of the Consolidated Statutes of the Province of Canada—8 Acts, 92 pages.

Acts forming part of the Consolidated Statutes for Upper Canada—13 Acts, 68 pages.

Acts forming part of the Consolidated Statutes for Lower Canada—9 Acts, 51 pages.

Acts of the late Province of Canada, after the Consolidated Statutes of 1859, including parts of the Civil Code of Lower Canada—25 Acts, 155 pages.

Acts of Nova Scotia, Revised Statutes, third series—15 Acts, 40 pages.

Act of Nova Scotia prior to the Revised Statutes, third series—1 Act, 5 pages.

Acts of Nova Scotia subsequent to the Revised Statutes—5 Acts, 7 pages.

Acts of New Brunswick, Revised Statutes—15 Acts, 34 pages.

Acts of New Brunswick prior to the Revised Statutes—3 Acts, 17 pages.

Acts of New Brunswick subsequent to the Revised Statutes—22 Acts, 37 pages.

Act of British Columbia, (Colony of Vancouver Island)—1 Act, 2 pages.

Acts of former separate colony of British Columbia—2 Acts, 4 pages.

Acts of British Columbia after the union of the two colonies—11 Acts, 33 pages.

Acts of Prince Edward Island, Revised Statutes (20 Geo. 3)—24 Acts, 77 pages.

Acts of Prince Edward Island after the Revised Statutes—6 Acts, 12 pages.

Acts of the Parliament of Canada—153 Acts, 450 pages.

In all, 328 Acts and 1,171 pages.

The Acts in this volume are printed as in the two preceding it, each Act separately and with the Royal arms and the imprint of the Queen's Printer, so that he can furnish copies of any required Acts, or number of Acts; or the Acts relating to any subject or class of subjects can be taken out of the volume and bound or stitched separately. A table of contents with the full titles of every Act is prefixed, and a copious index appended. The Acts of the Parliament of Canada inserted are, of course, to be found in the statutes at large, but they are there dispersed through twenty-one volumes instead of being included as now in part of one; a point of no small convenience. The Acts in this volume are all of great public importance, though not of the same general character and extent as those revised and consolidated in the two preceding volumes. Those of the late Province of Canada, of course, apply to Quebec and Ontario, which then formed that Province, unless expressly limited to only one of them. They include those articles of the Civil Code of Lower Canada (now Quebec) made statute law by the Act 29 V., c. 41, the subjects of which were mentioned in the paper in our volume of last year, and one more which the Commissioners found necessary to the understanding of one of those we mentioned. These articles are given in full, and will be found exceedingly interesting and important, for the reasons assigned in our last paper, to which we confidently refer. They are well and clearly drawn by a Commission comprising three of the ablest lawyers in Canada, and are unquestionable law in the Province of Quebec, and must often affect the rights and interests of merchants, bankers and others in other parts of the Dominion.

The volume before us has added to the obligations under which the Dominion lies to the Commissioners for the manner in which their important, laborious and difficult work has been done.

SUMMARY.

The Public General Acts of the Parliament of the Dominion of Canada requiring consolidation have been consolidated, and will be found in vols. 1 and 2; and those which for reasons before mentioned did not require consolidation will be found in vol. 3, pages 722 to 1,171.

The Acts and enactments of Provincial Legislatures, in force in the Provinces by the Legislatures of which they were passed, and relating to matters forming the subjects of chapters in vols. 1 and 2, will be found in such chapters respectively (but clearly distinguished as applying to such Provinces only), except those from the Civil Code of Lower Canada (now Quebec), which are in vol. 3, pages 393 to 440.

Those which are not so inserted in vols. 1 and 2, and those from the said Code, will be found in vol. 3, pages 1 to 721.

Every Act in the three volumes is printed separately, and with the imprint of the Queen's Printer, and any such Act or any number of them can be had from him at fair and moderate prices.

The Acts and enactments in vol. 3, from the Consolidated Statutes for Upper Canada, and those from the Statutes of the Maritime Provinces and British Columbia, are translated and published for the first time in French.

W.

SUPERIOR COURT—MONTREAL.*

Responsabilité—Force majeure—Incendie—Présomption—Faute.

Jugé, Que celui qui plaide la force majeure ne peut être exempt de toute responsabilité, qu'en autant que l'accident n'a pas été précédé ni accompagné ou suivi d'une faute qui lui soit imputable ;

2. Que dans le cas actuel l'incendie a été la cause première de l'accident; que les prémisses incendiées étaient non seulement la propriété du défendeur Nordheimer, mais elles étaient occupées par lui au moment de l'incendie, et qu'il lui incombait de prouver que cet incendie n'a pas été occasionné par son fait ni le fait d'aucune personne sous son contrôle ou à son emploi ;

3. Qu'en l'absence de toute preuve quant à l'état des prémisses au moment où l'incendie s'est déclaré et d'explications sur l'origine de l'incendie, il y a présomption d'incurie et manque de soin de la part du dit Nordheimer, comme dans le cas du locataire; et il est non recevable à invoquer la force majeure résultant d'un incendie dont la cause peut lui être attribuable ;

4. Qu'au reste malgré qu'il soit prouvé que la violence du vent a déterminé la chute du mur du défendeur ce n'est pas sous les circonstances un cas de force majeure, vu la rigueur de la saison où l'on doit s'attendre à des changements de température subits et fréquents, et vu en outre, le fait que le défendeur n'a pris aucune précaution pour prévenir l'accident après l'incendie.—*Alexander* v. *Hutchinson*, et *Nordheimer*, Loranger, J., 31 oct. 1887.

Cession de biens—Tutrice—Mineurs—Liquidation.

Jugé, Que la cession de biens mentionnée à l'article 763 et suivants du C. P. C. et au statut de Québec, 48 Vict., ch. 22, ne s'applique pas à la liquidation des biens d'une succession appartenant à des mineurs; que, par suite, une cession de biens ainsi faite par une tutrice ès-qualité pour ses enfants mineurs insolvables, à la demande d'un créancier, est illégale et doit être mise de côté. — *Tourville* v. *Dufresne*, et *Palardy*, intvt., Mathieu, J., 29 mars 1887.

* To appear in Montreal Law Reports, 3 S. C.

Société commerciale—Actif de la société—Partage—Effet rétroactif—Cité de Montréal—Qualification des échevins.

Jugé, 1. Qu'une société commerciale est un être moral distinct des associés, et que l'actif de la société est un patrimoine distinct de l'avoir des associés individuellement.

2. Que dans l'espèce il n'y a pas lieu à l'application des arts. 746, 1898 C.C., attendu qu'il s'agit d'une société commerciale et que le partage des biens de la dite société ne réagit que jusqu'au jour de sa dissolution; que comme matière de fait la société plaidée par le défendeur n'etait pas dissoute lors du partage.

3. Que par suite des principes ci-dessus un échevin de la Cité de Montréal ne peut se qualifier comme tel sur les biens d'une société commerciale existant entre lui et une autre personne, durant l'existence de cette société.—*Girard* v. *Rousseau*, Loranger, J., 30 juin 1887.

Election municipale—Echevin de la Cité de Montréal—Jurisdiction—Appel à la Cour de Révision.

Jugé, Qu'il n'y a pas d'appel à la Cour de Révision d'un jugement de la Cour Supérieure annulant sur requête une élection d'un échevin de la Cité de Montreal.—*Girard* v. *Rousseau*, en révision, Johnson, Taschereau, Gill, JJ., 22 septembre 1887.

U. S. CIRCUIT COURT, E. D. OF WISCONSIN.

RICE v. WILLIAMS.

Property in Private Letters—Not subject of sale by receiver.

HELD: — 1. *Letters of a private or business nature, cannot be lawfully made the subject of sale by the receiver to a third person, without the consent of the writer. The writer of letters, though the communications have no value as literary compositions, has such a property right in them, that they cannot, without his consent, be made the subject of traffic, as articles of merchandise by the receiver.*

2. *That the transaction in this case was contra bonos mores, and that the court would*

neither aid one party in enforcing the contract, nor the other in recovering damages for the breach of it.

DYER, J.—At the conclusion of the plaintiff's testimony on the trial of this case, the court directed a verdict, which, in effect, was a dismissal of the suit. The plaintiff has moved for a new trial. The facts developed by the testimony were, in brief, these: The plaintiff testified that he was an "advertising solicitor," and that among other advertisements solicited by him, were such as specialists furnished for the cure of so-called "private diseases."

In 1885, he opened correspondence with the defendant, who was a "specialist," practising his calling at Milwaukee, for the sale to him for a pecuniary consideration, of sixty thousand letters which were in the possession of the Voltaic Belt Company of Marshall, Michigan. That company was engaged in furnishing electric belts, suspensories, and other electric appliances for the cure of various ailments and disorders. The letters in question were such as it had received from persons residing in different parts of the country, in response to advertisements of the curative qualities of the instruments and articles in which that company dealt. After considerable correspondence on the subject, the plaintiff agreed to furnish to the defendant the letters in question, and the defendant agreed to pay therefor, or for the use thereof in connection with his business, the sum of $1,200. The letters were shipped to the defendant, and received by him, and he paid to the plaintiff $500 on the purchase. The plaintiff testified that he paid the Voltaic Belt Company $500 for the letters, and, as part of the transaction, was to furnish to that company other letters procured from "specialists."

The defendant's purpose in procuring the letters in question, was to obtain the names and postoffice addresses of the writers, so that he might send to them circulars advertising *his* remedies for the various diseases which he professed to cure. It was claimed in argument that it was not and could not have been one of the objects of the parties engaged in this business, to enable the defendant to learn from the letters the nature of the maladies with which the writers were afflicted, because a perusal of the contents of the letters would be in the last degree dishonorable, and of course, the parties contemplated only an honorable transaction! The court is, however, of opinion that parties who would engage in such a traffic as this, would hardly refrain, on a point of honor, from a perusal of the letters, not only to obtain the names and postoffice addresses of the writers, but also all the disclosures which the writers might make concerning the physical infirmities from which they were suffering. The court has no doubt that this was one of the objects sought in the sale and purchase of the use of these letters, because obviously, it was quite as important to the defendant to know whether the writers of the letters stood in need of such restoratives to health as he could supply, as to know their names and post-office addresses.

The defendant refused to pay the balance of $700 yet due to the plaintiff on the sale, and this suit was brought to recover from the defendant that sum. The defendant resisted payment on the ground that the plaintiff represented to him in making the sale, that the letters had never before been used; or, in the technical language of the profession, "circularized;" that this representation was false, and that the letters were valueless. Enough was disclosed in the testimony, to show that the sale of the use of letters in the manner described is a branch of "industry" extensively pursued by certain "specialists" throughout the country. But it would seem that in cases where the writers are made the repeated victims of advertising circulars, their better sense at last gets the advantage of their credulity, and they refuse longer to be baited by the remedies which might otherwise tempt them, and so their letters become valueless as articles of merchandise, or for further use. Thus it was, according to the theory of the defence, in the case at bar. The trial, however, did not proceed far enough to fully develop the facts in this regard.

To fitly characterize the contract in suit, is to unreservedly condemn it as utterly unworthy of judicial countenance. It was *contra bonos mores*, and it would seem that

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."

Thompson v. *Stanhope*, was the case of the celebrated Chesterfield letters, in which Lord Bathurst continued an injunction which had been previously granted, restraining the publication of the letters, on a bill filed by the executors of Lord Chesterfield to enjoin the publication.

In *Lord and Lady Percival* v. *Phipps*, a bill was filed praying an injunction to restrain the publication of certain private letters which had been sent by Lady Percival to the defendant, Phipps. Lord Eldon granted an injunction but the Vice Chancellor, Sir Thomas Plumer, dissolved it, and laid down the doctrine that it is only when letters "are stamped with the character of literary compositions," that their publication can be enjoined. And he sought to bring the decisions in *Pope* v. *Curl* and *Thompson* v. *Stanhope* within the scope of that doctrine, thereby making them inapplicable to the case before him.

Then came *Gee* v. *Pritchard*, which was a case presented to Lord Eldon, on a motion to dissolve an injunction which he had previously granted, forbidding the publication by the defendant of a number of private and confidential letters which had been written to him by the plaintiff in the course of a long and friendly correspondence. The motion to dissolve the injunction was denied.

Following the authority of *Percival* v. *Phipps*, maintaining that the cases of *Pope* v. *Curl*, *Thompson* v. *Stanhope*, and *Gee* v. *Pritchard*, involved only the principle of literary property, Vice Chancellor McCoun in *Wetmore* v. *Scovell*, 3 Edw. Chy. Rep. 543, held that the publication of private letters would not be restrained except on the ground of copyright, or that they possessed the attributes of literary composition, or on the ground of a property in the paper on which they were written. This view of the question received the sanction of Chancellor Walworth in *Hoyt* v. *Mackenzie*, 3 Barb. Chy. Rep., 320; but these two cases stand in antagonism to the views expressed by Story in his work on Equity Jurisprudence (Vol. 2, Secs. 944, 945, 946, 947, 948), and to the judgment of the same learned jurist in *Folsom* v. *Marsh*, *supra*. The opinion of Judge Duer in *Woolsey* v. *Judd*, *supra*, is an exhaustive and able review of the subject and analysis of the cases; and he very satisfactorily shows, that the decisions in *Pope* v. *Curl*, *Thompson* v. *Stanhope*, and *Gee* v. *Pritchard*, proceeded upon the principle of a right of property retained by the writer in the letters written and sent by him to his correspondent, without regard to literary attributes or character. The case was one involving the right of the receiver of a private letter to publish it; and it is there clearly shown that the proposition settled as law by Lord Eldon in *Gee* v. *Pritchard*, was, that "the writer of letters, though written without any purpose of publication or profit, or any idea of literary property, possessed such a right of property in them that they can never be published without his consent, unless the purposes of justice, civil or criminal, require the publication." Commenting on *Pope* v. *Curl*, the learned judge made the very just observation, that not only was there no intimation in the judgment of Lord Hardwicke "that there is any distinction between different kinds or classes of letters limiting the protection of the court to a particular class, but the distinctions that were attempted to be made, and which seem to be all the subject admits, were expressly rejected as groundless." Again, in discussing the effect of the decision in *Gee* v. *Pritchard*, Judge Duer observed: "Two questions were raised and fully argued by the most eminent counsel then at the chancery bar. First, whether the plaintiff had such a property in the letters as entitled her to forbid their publication—it being fully admitted that they had no value whatever as literary compositions, and that she never meant to publish them; and second, whether her conduct toward the defendant had been such as had given him a right to publish the letters in his own justification or defence. These questions were properly argued as entirely distinct, and each was explicitly determined by the Lord Chancellor in favor of the plaintiff. The motion to dissolve the injunction was accordingly denied with costs. It has been said that it was through considerable doubts that Lord Eldon struggled to this decision; but the doubts which he expressed related

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.