

ADELBERT MOOT.
HENRY W. SPRAGUE.
GEORGE F. BROWNELL.
WILLIAM L. MARCY.

WILLIAM M. WHEELER.
S. FAY CARR.
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JOHN H. O'DAY.
LEWIS R. GULICK.
D. S. HELLINGS.

LAW OFFICES OF
MOOT, SPRAGUE, BROWNELL & MARCY.
45 ERIE COUNTY SAVINGS BANK BUILDING.

Buffalo, N.Y. July 19th, 1910.

My dear Mrs. Tourgee:-

The difference between your beautifully copy-righted postal card in colors, whereon Button's Inn is the center of attraction, and the evident cheap, substantial re-production of it in black and white, is most apparent. Because of that difference, there would not be the slightest danger of any one mistaking the black and white for your beautifully colored postal-card.

There are also some apparent differences that are important from a legal standpoint. For instance, in the black and white there appears to be a pole, probably a trolley or a telegraph pole, standing in front, so that it outlines itself between the two trees. Furthermore, the upper part of the large tree in front is practically barren of leaves in the black and white, while it has about the same relative amount of foliage in all parts in your picture. Then, again, the black and white has a pretence of a brown frame about it, while your postal has nothing of that kind. All these differences go to show that our defective copy-right law has not been violated in the black and white picture.

From the presence of the pole, I judge they could easily show the black and white picture is the result of an actual photograph made after the pole was set, and I assume you could show that your colored postal was made from an actual photograph made before the pole was set. The difference in the amount of leaves in the top part of the large tree would go to show the same thing.

The question, then, gets down to this: If one person makes a colored picture from a photograph, and another person makes a black and white picture by photographic process at some other time, can the person first making and publishing the colored picture under the Copyright Law prevent the person later making the black and white picture from publishing that? The answer is, that any number of people may make photographic or other pictures of the same mountain, hill, building, stream, wood, or other object, and each may publish and sell as many re-productions of his picture as he can get the public to buy. The Copyright Law does prevent one person from making and selling a substantially exact re-production of the picture of another person, but does not prevent that person from making his own picture of the same object and selling that, where the difference between the pictures is quite apparent, and, therefore, the buyer is not misled, but can choose between the pictures in making a purchase. The fact that one picture is cheaper than another, and, therefore, will sell better, in law, unfortunately, will not help us out.

I am sorry to write you this, but I cannot make the law different than it is, whether it is right or wrong. If some friend of yours could only induce the Westfield firm to put on their picture, in the same type as the words "Button's Inn", "Read Judge Tourgee's beautiful story about it," it would help instead of hurting you, if, as I think

is the case, you now own the copyright to "Button's Inn".

I have not yet received anything favorable from your MS., I am sorry to say. I trust, however, you will indulge the spirit from time to time and will write out some of the very interesting things with which your memory is stored and which I have enjoyed hearing you tell. For instance, the actual story of the ride that saved the Judge's life, if I remember right, does not differ so much, after all, from the story of that ride as given in the Fool's Errand, and it would be very interesting to have you give us that story.

Again, the story of the feelings of your colored servants, and their manifestations of their feelings in speech and action when you invited the colored Bishop to dinner, would be both interesting and enjoyable to readers who do not understand how largely all people are dominated by mere traditional, inherited feelings, which result from their environment.

In putting down these stories, it will hurt nothing to let a little of your own feeling and thought and personality get into them, for the human element is the element that has made the interesting books of all time. It was precisely because Boswell's Johnson revealed a human being, with the imperfections of a human being, that it became such a great biography, of such lasting interest to all readers. The same thing may be said of Pepys' Diary, and many other works. The biography of Alice Freeman Palmer by her husband, Professor Palmer, is one of the most readable of recent biographies, in part because it is the biography of an unusual woman, and in part because it is so human, and Professor Palmer appears so very delicately between the lines of his distinguished biography of his wife. If you have not read Mrs. Palmer's biography by her husband, I advise you to read it, because you will then understand however much you may owe to the companionship of the Judge, that in turn the Judge owed an equal amount to your companionship.

If you do not work too hard in writing out your recollections, but take it easy and spend the rest of the time reading interesting books, like the life of Alice Freeman Palmer, I am very sure this beautiful weather will do its full part as an unequalled health restorer, you will enjoy the Summer, and the MS. you produce, whoever shall publish it, will prove a most human and interesting document. What makes what you write so interesting, is that you are not afraid to put in the characteristic human things, even imperfections, and to let humor play its part in revealing human character.

I hope to reach Marblehead the last of this week and stay there until September. Please remember me to your sister and your dear friend Mrs. Warner, and believe me,

Your friend,

To

Mrs. Albion W. Tourgee,
Mayville, N. Y.

