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CARTOON AND COMIC ART STUDIES



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CARTOON AND COMIC ART STUDIES

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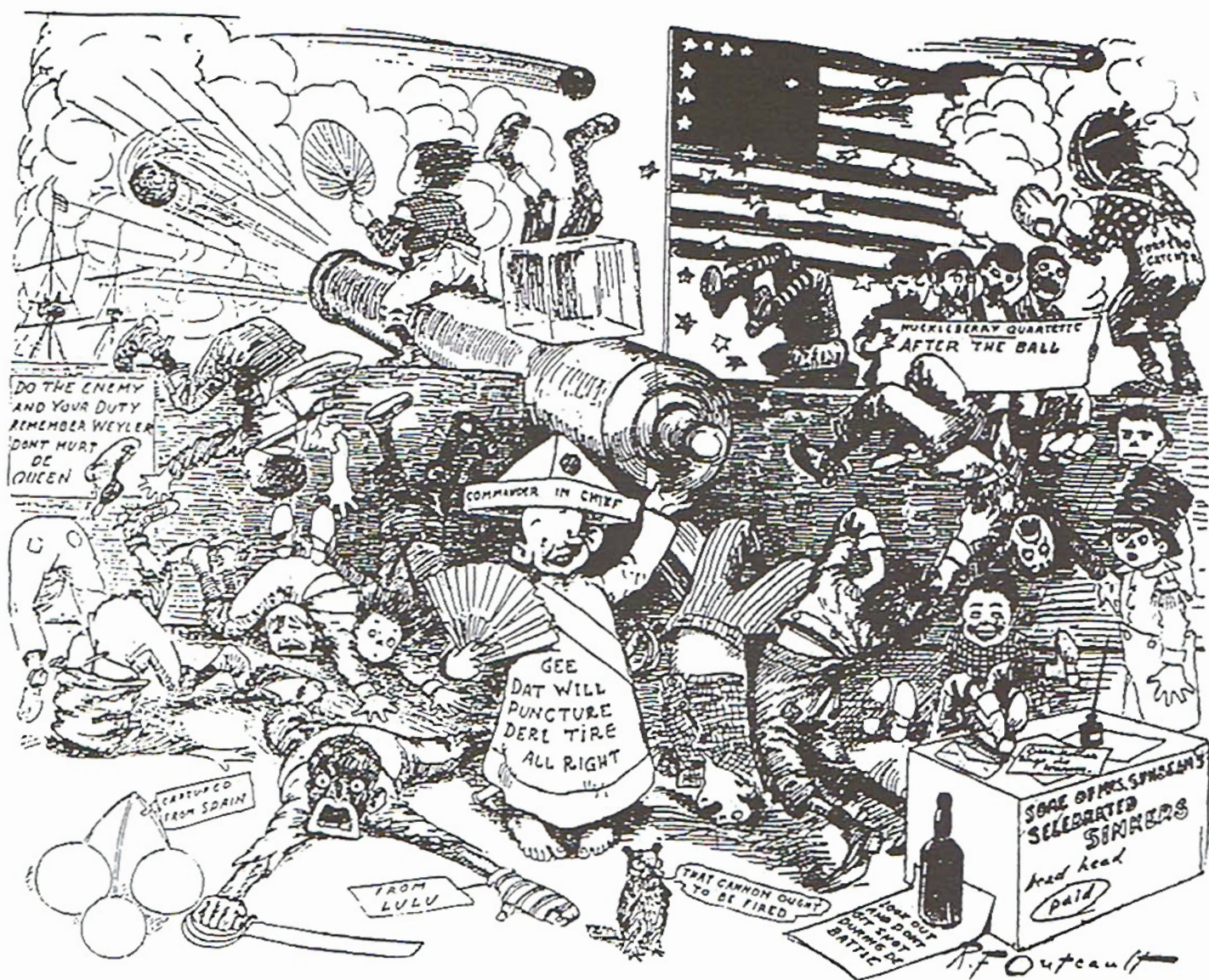
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Litigation and Early Comic Strips



The Lawsuits of Outcault, Dirks and Fisher

BY MARK D. WINCHESTER

The quarter century following the Yellow Kid's debut saw several significant lawsuits involving the prominent cartoonists R. F. Outcault, Rudolph Dirks, and Harry Conway (Bud) Fisher. These cases are traditionally depicted as the prototypic conflict between a rebellious cartoonist and a greedy newspaper in a bitter court battle. In the model case usually described, the cartoonist loses control of the title and the ongoing feature, but retains the use of the characters under a new title or in a new feature. This perception of litigation involving early comic strips is widespread, with the newspaper left with the empty shell of the feature without its creator, and the cartoonist winning the creative rights to the essence of the work.

In contrast to the mythology surrounding these cases as battles over ownership, they were actually argued and decided on issues of libel, trademark, unfair competition, and disputed contracts. Each case had its own merits and none follows the pattern reported in several comic strip histories.

The Yellow Kid made his first of six appearances in Richard Felton Outcault's *The Huckleberry Volunteers* on 16 April 1898 (page 12). This eleven-cartoon series in the *New York Journal* commented on the tense situation between Spain and the United States.

The opinions rendered in these lawsuits offer a wealth of information about issues relating to cartoon art, copyright and trademark that is frequently overlooked in many studies.

The most legendary of all cartoon art-related cases are the *Yellow Kid* lawsuits between the *New York World* and the *New York Journal*. A substantial body of writing supports the idea of *Yellow Kid* lawsuits, but significant evidence places this notion in question. Contrary to popularly held belief, these cases may be just legend, because the reports of their existence are not documented. Several writers argue that there was a landmark case involving R. F. Outcault's *Yellow Kid* and some expand the argument further to state that the case became a legal precedent for cartoon art ownership issues in later years.¹ Roy L. McCardell's 1905 "Opper, Outcault and Company" is the earliest source found that discusses the *Yellow Kid* lawsuits:

There were lawsuits for breaking of contracts and for infringement of copyright brought by both papers, and the comic artists profited. The suits were of importance chiefly to the two papers engaged; but the *Yellow Kid* gained a place in literary history, albeit himself most unliterary.²

McCardell's brief reference to legal action does not mention an opinion resulting from the lawsuits nor does he imply that these cases were heard through to the point of a decision. He simply notes that there "were lawsuits . . . brought."

If there were lawsuits for the breaking of contracts and infringement of copyright, then the *New York World* must have sued Outcault specifically at a time when entire staffs were purchased from one newspaper to work at another. If McCardell's story is accurate, then the *New York World* must also have sued the *New York Journal* for copyright infringement over the *Yellow Kid* property (with the *Journal* counter suing). However, at that time cartoon art was perceived as a static form (at best, illustrations linked by a common theme) rather than a dynamic serial feature where characters, relationships, and situations developed over time through a series of images.³

Edward Pinkowski's 1953 *Forgotten Fathers* elaborates on McCardell's story:

When required to boost the *Yellow Kid* three times each Sunday, he [Outcault] almost quit the Hearst paper. He didn't know from one week to the next what his next comic strip would involve. The kid of his exuberant fancy began to fade. Luckily for him the courts, after a bitter legal battle between Hearst and



Detail from "A Snowball in Hogan's Alley," 28 December 1896. Illustration courtesy of Richard D. Olson. George Luks's *Yellow Kid* appeared in the *New York World's* *McFadden's Row of Flats* immediately following Outcault's departure for the *New York Journal* in late 1896.

Pulitzer, ordered Hearst to transfer the *Yellow Kid* to the *New York World*. Taking it off his hands saved the artist from going entirely dry.⁴

Bill Blackbeard expands Pinkowski's version:

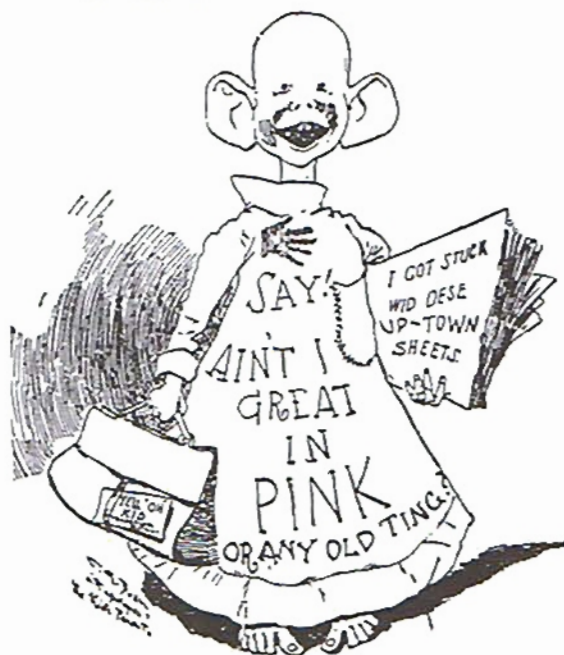
The furor kicked up by the widely publicized legal battle between the *World* and the *Journal* over the rights to the *Hogan's Alley* characters (which resulted in Outcault retaining the right to continue the characters and the *World* holding control of the *Hogan's Alley* name and figures as well) irked him [Outcault] also.⁵

The flaws in Pinkowski's version of the story can be documented as a distortion of fact. Both Coulton Waugh and Stephen Becker note that Pulitzer hired George Luks to continue the feature because he had a legal right to do so, and neither writer suggests any litigation connected with this decision.⁶ Furthermore, Pulitzer's *New York World* ended its regular use of the *Yellow Kid* prior to the cessation of the feature in the *New York Journal*. Another flaw in the concept of a "widely publicized



Detail from H. B. Eddy's "A Feast of Reason and a Flow of Sparkling Humor" (*New York Journal*, 30 October 1896, 2), an advertisement used to promote the *Journal's* Sunday comic supplement.

IS HE AN ORPHAN?—NIT!



Charles Greening Bush's "Is He an Orphan?—Nit!" (*New York Journal*, 6 November 1896, 2) was inspired by a report in the *New York Telegram* of a "young person . . . found wandering aimlessly about Herald Square late Tuesday night. He wore a coat made of Evening Telegrams, and said he had shaken the Popocratic party. So far very little has been learned concerning his antecedents." The *Journal* added this illustration and the comment that "upon being reprimanded the Kid said: 'Naw; I was lookin' for de Herald's New High Water Mark.'"

legal battle" is that Outcault abandoned the location "Hogan's Alley" (*New York World*) for the new location of "McFadden's Row of Flats" (*New York Journal*). It is, therefore, very unlikely that any of the parties involved contested the use of "Hogan's Alley" as a location or as the title of the feature as mentioned above. Blackbeard supports the idea that Outcault retained the right to his characters, when evidence suggests that this would not have granted Outcault any rights over, or protections from, other artists who chose to draw the characters. As interpreted at that time, copyright protected specific drawings, but did not protect an artist/creator from the use by someone else of established characters in their original drawings. At the turn of the century, a cartoonist was viewed as performing work for hire, selling services and a product to a larger corporate entity and being duly compensated by the corporation. Cartoon art was not distinguished from other forms of illustration and was subject to the protections offered for drawings and photographs that appeared in newspapers.

One of the more recent assertions about the significance of the alleged *Yellow Kid* case was made by Richard Marschall:

Luks's valiant attempt at imitation notwithstanding, Joseph Pulitzer sued to stop Outcault from drawing the *Yellow Kid* for Hearst's *Journal*. The result of the notorious court case was that Outcault could draw his character for whom-ever he wished, while publisher Pulitzer could continue the *feature* with whatever artist he chose to employ. So New York had two *Yellow Kids*—one in *Hogan's Alley* in the *World* and one in the *Yellow Kid* in the *Journal*. (Since the legal issues revolved around likenesses and distinguishing characteristics, Luks's character for a few weeks wore bloomers instead of the gown and was once even green instead of yellow!)"

Marschall, like many of his predecessors, makes assumptions based on previous assertions without providing further documentation.

Specific events in Outcault's career and the appearance of the *Yellow Kid* suggest that the existence of such a case is plausible, but the preponderance of evidence does not support it. Prior to moving from the *New York World* to the *New York Journal* Outcault initiated copyright applications for designs of the *Yellow Kid* with the first of his three requests dated 7 September 1896.⁸ Although he demonstrated concern regarding ownership of the character before the move,

afterwards there were several cartoonists drawing *Yellow Kids*: Luks' version of the feature ran in the *New York World*, Outcault's *Yellow Kid* feature appeared in the *New York Journal*, other *Journal* staff cartoonists exploited the character for a variety of other uses in that newspaper, and an unknown number of artists were contributing artwork for the non-newspaper related enterprises. The *New York Journal*, for example, published *Yellow Kid* drawings credited to J. Campbell Cory,⁹ Archie Gunn,¹⁰ H.B. Eddy,¹¹ and C.G. Bush,¹² in addition to numerous uncredited *Yellow Kid* drawings for advertisements and illustrations. Similarly, the *Yellow Kid* was used as a spokesperson in marketing many products, with Outcault and non-Outcault *Yellow Kids* sanctioned "by permission of *N.Y. Journal*."

Outcault's claims (if they were made) would have been weakened by this permitted use of the character by other artists, since he and the *New York Journal* allowed other artists to use the character without reprisal or threat of legal action. If the *New York World* felt that Outcault's later work was an infringement of their property, then they would have been compelled to sue the multitude of companies employing the *Yellow Kid* to promote their products, a small complement of artists who executed the artwork, and the *New York Journal* for sanctioning this use.

Despite extensive use of the character, Outcault felt that his claims on the *Yellow Kid* rights were secure enough to be a definable property for trade or sale to others. On 4 February 1898, Outcault and

An uncredited drawing of the *Yellow Kid* from the *New York Journal* (24 October 1896, 11) used to promote the want ad section.



Connor assigned the copyright for *McFadden's Flats* and the *Yellow Kid* to the McLaughlin Brothers,¹³ just two days prior to Outcault's last regular *Yellow Kid* feature in the *New York Journal* on 6 February 1898.¹⁴ Outcault's lax observance of copyright assignment presents another significant discrepancy because he did not stop using the *Yellow Kid* character later in drawings published in both the *New York Journal* and the *New York World*. Two months after assigning his copyright of the *Yellow Kid*, Outcault included the character in his series *The Huckleberry Volunteers* in the *New York Journal*,¹⁵ and in the following month the character made one-time appearances in Outcault's *The Casey Corner Kids' Dime Museum* and *The Bud and Blossom of the Yellow Kid* in the *New York World*.¹⁶

To the litigious contemporary American society, it seems unthinkable that either the *New York World* or the *New York Journal* would let the other newspaper freely use the character of the *Yellow Kid* without the threat of legal action, but an extensive search for *Yellow Kid* lawsuits has not uncovered any cases related to that character.¹⁷ There may have been a controversy with both newspapers agitated by the appearance of the character in the other newspaper, but its continued use by both newspapers demonstrates that neither party was successful in establishing that the other was using Outcault's creation unlawfully. Likewise, there is no evidence that a case was pursued to an eventual decision in a higher court; but it is possible that proceedings were initiated and an out of court settlement was reached prior to a decision. A case could have been heard in a lower court where the rendered opinions were not published. In any event, a *Yellow Kid* case did not establish a precedent for other cartoon art-related court cases. That honor was accorded to the *Buster Brown* decision of 1906, cited in several subsequent cases involving cartoon art, copyright, trademark, and ownership issues.

In the day-to-day process of publishing Outcault's work, the *New York World* registered his cartoons for copyright as a part of the newspaper and subsequently held proprietary rights to those specific cartoons and those specific titles. Anything that Outcault drew for another newspaper from that point on could not duplicate the *New York World's* published copyrighted drawings nor re-use their copyrighted titles. Any use of "Hogan's Alley" in the title or specific character names from the feature (if they appeared in the feature) could have been

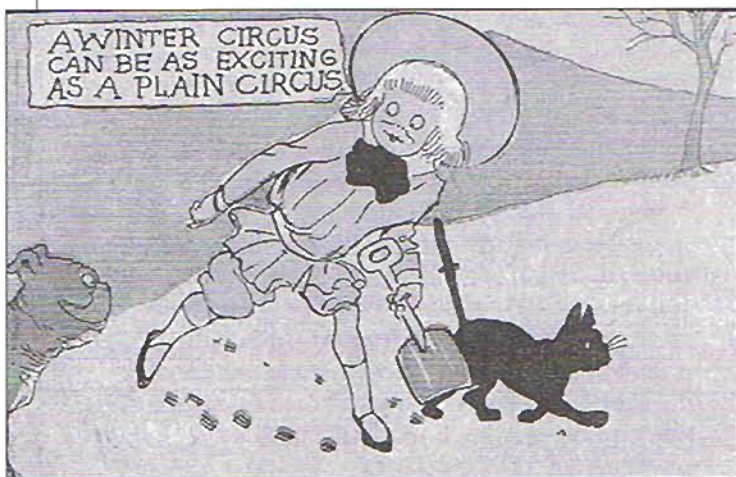


Detail from *Buster Brown* by Richard Felton Outcault as published in the *New York Herald* 27 August 1905 (page 1).

construed as copyright infringement. The likenesses of the characters were, however, not strictly protected by copyright and could be re-used by any cartoonist or illustrator for any purpose as long as they were not an exact copy of a previously copyrighted drawing. Similarly a photograph could be registered for copyright, although the subject of a specific photograph could not.

This resulted in occasions where two (or more) similar comic strips were published in different newspapers with different titles and subtle nuances, but nearly identical premises, situations, and characters. In such a case, the owner of each title (for example *Hogan's Alley* and *McFadden's Row of Flats*) had the legal right to license subsidiary rights to those titles and characters for the purposes of commercial exploitation. When Outcault moved to the *Journal*, although he changed the location from "Hogan's Alley" to "McFadden's Flats," he retained the use of the likenesses of the characters, including Mickey Dugan, the *Yellow Kid*.

R. F. Outcault created *Buster Brown* to follow the success of his *Yellow Kid*, *L'il Mose* and *Kelly's Kindergarten* features. The *Buster Brown* feature first appeared in the *New York Herald* on 4 May 1902. Outcault was persuaded to rejoin Hearst's *New York Journal*, ended the feature in the *Herald* on 31 December 1905 and restarted it two weeks later in the *Journal*. After Outcault left, the *New York Herald* published old *Buster Brown* installments, then continued *Buster Brown* with artists other than Outcault.¹⁸ As a result Outcault sued the *New York Herald* to stop them from producing a



Detail from *Buster and Tige* by an unknown cartoonist as published in the *New York Herald* 7 January 1906 (page 4).

feature even similar to *Buster Brown*. The New York Herald Company, in turn, sued the Star Company (the parent publishing company of the *New York Journal*) for the trademark of the *Buster Brown* title and the right to continue the feature employing any artist of their choice.

In 1906 both cases were tried in the same court by the same judge, with the New York Herald Company's case being heard first. The *Buster Brown* case, *New York Herald Company v. Star Company*, was decided on the basis of trademark and trade-name issues (as opposed to copyright), as was *Outcalt [sic] v. New York Herald*. In the first case the court held that the New York Herald Company had the right to continue the use of the title *Buster Brown*, as it had become an exclusive trademark of the newspaper through its published use over a three and a half year period. The court noted that

whether or not the original draughtsman of the so-called "Buster Brown" pictures was in the employ of the Herald is immaterial: concededly it bought them from him, paid for them, published them (whether with or without retouching, coloring, etc., is immaterial) and headed the page on which they were published with the words "Buster Brown."¹⁹

In favor of the *New York Herald*, the court issued a restraining order against the *New York Journal's* use of the title *Buster Brown*, noting that this restriction included Outcalt as well. The court concluded its remarks by noting that the Star Company could

continue the feature as long as they did not use the title nor infringe on the previously published and copyrighted drawings:

Mr. Outcalt [sic] or any one else whom the defendant may choose to employ, is entirely free to design, draw, color, and publish comic pictures of the same kind as those to which plaintiff has prefixed that title, provided only that they do not so closely imitate pictures already published and copyrighted as to be an infringement thereof.²⁰

In the view of the court, the title (*Buster Brown*) and the individual published drawings were subject to copyright, but the characters in general (including elements of likeness, costume, and demeanor) were not tangible enough to merit copyright nor trademark. Outcalt and the Star Company were free to use the character of Buster Brown, but not the name nor the title.

In *Outcalt [sic] v. New York Herald*, Outcalt argued that he had the right to exclude the *New York Herald* from use of the characters and the title, despite the fact that he sold his artwork to the newspaper and they held the copyright to his comic strips published in the *New York Herald*. The court noted Outcalt's contention that the *New York Herald's* use of *Buster Brown* was

unfair competition in trade for any one else to draw and offer for sale any other pictures in which, although the scenes and incidents are different, some of the characters are imitations of those which appeared in the earlier pictures which complainant sold to defendant.²¹

Although Outcalt had sold his pictures to the *New York Herald* and they "colored, copyrighted and published" his work, he held that he maintained the creative rights to his characters.

[Outcalt,] although he never copyrighted them and did not acquire any right to the title in connection with newspaper publication, has, nevertheless, some common-law title to individual figures therein displayed, which he can maintain to the exclusion of others, who depict them in other scenes and situations.²²

The court was not sympathetic to Outcalt's claim, noting that "it is sufficient to say that no authority is cited supporting this proposition, which seems entirely novel and does not commend itself as sound."²³ His motion was denied.

The existence of these cases further decreases the likelihood of the *Yellow Kid* case. Because Outcalt was the creator of both the *Yellow Kid* and

Buster Brown, it seems inconceivable that any legal action initiated on behalf of the former would not have been applied in the latter case. There were no references to a prior case involving the *Yellow Kid* and Outcault did not claim rights awarded in an earlier case. Therefore it seems extremely unlikely that there was a *Yellow Kid* case.²⁴

In the *Buster Brown* cases the court only recognized the composition and execution of a drawing, refusing to entertain the idea of character (including likeness and temperament) as a significant element of cartoon art. Outcault's suit is notable as one of the first efforts for what is now termed "creator's rights." Outcault's failed bid was an unfortunate precedent for other cartoonists who sought similar protection for their characters and artwork.

Two other cases directly involve *Buster Brown*, the 1907 *Outcault v. New York Herald Company* and the 1908-1909 *New York Herald Company v. Ottawa Citizen Company*. In the 1907 case, Outcault sued the New York Herald Company for \$50,000 in damages on the grounds of libel. Immediately after Outcault left the newspaper to work at the *New York Journal*, the *New York Herald* republished an early *Buster Brown* comic strip. A few days after reprinting "The Buster and His Bath," the European edition of the newspaper published a letter critical of Outcault and the feature. The newspaper then reprinted the letter in the New York edition with editorial commentary.

Hotel Lord Byron
No. 16 Rue Lord Byron
Paris, Jan. 10, 1906.

To the Editor of the *Herald*:

What is the matter with Buster and Tige, children? I will tell you. Mr. Outcault has evidently run out of ideas and no wonder! But, unlike Mr. Gibson, he is not willing to attempt something new. "The Buster and his Bath" that you saw in the *Herald* last Sunday was one of the first of the *Buster Brown* series and appeared in the *New York Herald* several years ago when Buster was still somewhat raw and crude. This accounts for the difference that puzzled you.

"GRANNY."²⁵

Instead of explaining that Outcault had left the *New York Herald* and that the newspaper was reprinting early installments of the comic strip, the newspaper announced that the feature was past its prime and used this as an opportunity to promote their other cartoon art features:

Grumblers do not appear to realize that the sere and yellow leaf period must arrive for Buster as well as for all things. The power of the European edition has provided its readers with a new and exceedingly amusing pet, "Little Nemo," whose popularity here with young and old alike is boundless.

Indeed, his adventures in Slumberland, the latest cataclysm provoked by Sammy Sneeze, and the agitated existence of those quaint little creatures, the Tiny Teds, form an amazingly popular feature of the weekly comic section of the European edition that more than compensates for the waning interest of Buster's pranks.²⁶

Although the *New York Herald* had been uncharitable, the court found that Outcault failed to state a cause of action; the words that were considered actionable were sufficiently vague and did not constitute libel.

In the 1908-1909 case, the New York Herald Company, still holding the trademark for *Buster Brown*, sued the Ottawa Citizen Company for the illegal use of the terms "Buster Brown" or "Buster Brown and Tige" as the title to a comic section of a newspaper. The Canadian court acknowledged that the *Buster Brown* trademark was upheld in the United States with *New York Herald Company v. Star Company*. The court found that Canadian law did not protect the title or characters under trademark laws, since the feature was not used to promote a specific product but was an element of the product being sold. It was suggested that the New York Herald Company investigate copyrighting the character and seek protections on that basis.²⁷

In contrast to the legal proceedings between Outcault and the *New York Herald*, the Outcault Advertising Company was successful in prosecuting cases involving companies' infringements on Outcault's copyrighted artwork. More than thirty lawsuits involved Outcault's firm and a conglomeration of other companies, including *Outcault Advertising Company v. American Furniture Company*,²⁸ *Outcault Advertising Company v. Harry Joseph Clothing Company*,²⁹ and *Outcault Advertising Company v. Young Hardware Company*.³⁰ Outcault also entered into legal battles over the theatrical rights to *Buster Brown* in the 1907 *Outcault v. Bonheur*³¹ and the 1909 *Outcault v. Lamar*.³² The use of the *Buster Brown* character was one of the most frequently contested issues in the early history of cartoon art.

The suit involving Rudolph Dirks had little to do with the ownership of *The Katzenjammer Kids*

but was concerned with the contract between Dirks and the Star Company. In the 1914 *Star Company v. Press Publishing Company*, the Star Company (as publisher of the *New York Journal*) sued the Press Publishing Company (as publisher of the *New York World*) and cartoonist Rudolph Dirks, creator of the *Katzenjammer Kids*. The dispute centered on the exclusivity clause in Dirks' contract with the Star Company. After Dirks had a disagreement with the *New York Journal*, he went to work for the *New York World* while theoretically still under contract with the Star Company. The Star Company sued to restrain Dirks from working for their competition, although they were no longer interested in publishing his work nor were they paying him in the interim. The court found Dirks' contract flawed in that the Star Company expected that it could keep the cartoonist off of their payroll as well as prevent his working for any other employer for the duration of the contract, thereby creating a master and servant relationship. The court found that the clause in question was "unenforceable by injunction" and that Dirks was free to work for whom he pleased.³³

The most elaborate of the cases began in 1915, and concerned the ownership issues of Bud Fisher's *Mutt and Jeff*. Initially the Star Company (*New York Journal*) sued the Wheeler Syndicate to restrain them from using the title *Mutt and Jeff* in connection with the comic strip, maintaining their rights to the trademark of *Mutt and Jeff*, and citing the *Buster Brown* case as a basis for this claim. The court found that

the right of the Star Company to a trademark in the words "Mutt and Jeff," as applied to a comic section or strip, is so doubtful and the danger of deceiving the public is so great, that no preliminary injunction should issue.³⁴

In August 1916 the Star Company continued to argue that it held a valid right to the trademark of the *Mutt and Jeff* title, although the courts could find no merit in their claims. In December 1916, the United States Patent and Trademarks Office rejected a claim of the Star Company to cancel Fisher's registration of the words "Mutt and Jeff."³⁵ Four separate suits and counter-suits³⁶ were eventually argued through the court system until they reached the United States Supreme Court in 1921. Ultimately, Fisher's rights to the trademark and trade-name of *Mutt and Jeff* were affirmed, despite the extensive arguments and protestations of the Star Company.³⁷

Throughout the cases described above involving comic strips, one major challenge to obtaining

an impartial hearing was the courts' perception of cartoonists and their work. The opinions rendered regarded the cartoonists as "draughtsmen"³⁸ or similarly skilled laborers with little creative input or control. Throughout the early lawsuits, cartoonists were perceived as newspaper staff illustrators, who engaged in non-specific and non-creative work. Above all, their work in newspapers was not highly regarded and many people were hard-pressed to describe the features as any form of "art." References to comic strips in legal opinions demonstrate this bias with great regularity. In one of the later *Buster Brown* cases, comic strips were described generally as

the nonsense that is produced by the brain of the man writing for the diversion of the idle that in truth is sold.³⁹

The *Katzenjammer Kids* fared little better in the definition offered by the courts:

a series of horrible but apparently popular drawings representing the suppositious [sic] experiences in varying surroundings of certain nondescripts known as the Katzenjammer Kids.⁴⁰

Mutt and Jeff was probably described in the most practical of terms, but the issues of the lawsuit were more serious than *Buster Brown* and the *Katzenjammer Kids*:

a series of five or six pictures arranged in a strip so as to cover the width of a newspaper page, and depicting the progressive development of a situation in which the oversized "Mutt" and the undersized "Jeff" are usually the only participants and in which the latter is usually the subject of maltreatment by the former.⁴¹

Each of the parties in the above decisions sought certain rights of ownership, but in several instances the courts were hesitant to affirm perpetual rights to characters in comic strips. In *New York Herald Company v. Ottawa Citizen Company*, the majority opinion of the court noted that comic strips "may be that kind of brain product that the copyright might amongst other things be extended to or that copyright might cover," however the court was "quite sure it never was intended those sections should apply to such a thing."⁴²

These lawsuits have been recalled and discussed by writers of comic strip history, but none appear to have been cited or quoted in those studies. The opinions rendered in these cases provide insight into the development of copyright

and trademark issues in cartoon art. They also offer a unique view of the early years of commercially successful comic strips from the perspective of their creators and the challenges these cartoonists faced. ●

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NOTES

1. References to these cases proliferate in cartoon art histories written to from the 1940s to the present day, although none of the literature cites a specific case or information from periodicals contemporary to the controversy. Writers who claim this to be so include Roy L. McCardell, "Opper, Outcalt and Company: The Comic Supplement and the Men who Make It," *Everybody's Magazine* 12:6 (June 1905), 764; William Murrell, *A History of American Graphic Humor, 1865-1938* (New York: Macmillan, 1938), 138; Edward Pinkowski, *Forgotten Fathers*

(Philadelphia: Sunshine Press, 1953), 161-162; Bill Blackbeard, "The Yellow Kid," *The World Encyclopedia of Comics*, ed. Maurice Horn (New York: Chelsea House, 1976), 712; Richard Marschall, *America's Great Comic-Strip Artists* (New York: Abbeville, 1989), 25; and Judith O'Sullivan, *The Great American Comic Strip: One Hundred Years of Cartoon Art* (Boston: Bulfinch Press, 1990), plate facing 148.

2. McCardell, "Opper, Outcalt and Company," 764.

3. Cartoons were granted copyright protection for specific drawings (including the elements of style, form and composition), but did not equally protect the more abstract concept of character. A character could be depicted by any artist without fear of reprisal or legal action, as long as the use of the character fell within the definition of "fair use." For further discussion of these issues, see Bruce P. Keller and David H. Bernstein, "As Satiric As They Wanna Be: Parody Lawsuits Under Trademark and Copyright Laws," *ALI-ABA Course of Study: Trademarks, Unfair Competition, and Copyrights*, November 4-5, 1994, Washington, D.C. (Philadelphia: American Law Institute, 1994), 151-178.

4. Pinkowski, *Forgotten Fathers*, 161-162.

5. Blackbeard, "The Yellow Kid," 712.

6. Coulton Waugh, *The Comics* (1947. Rpt. Jackson: University of Mississippi Press, 1991); Stephen Becker, *Comic Art in America* (New York: Simon and Schuster, 1959).

7. Marschall, *America's Great Comic-Strip Artists*, 25.

8. Richard Felton Outcalt, "The Yellow Dugan Kid," design, 1896 copyright registration (50565), Copyright Division, Library of Congress, rpt. O'Sullivan, *The Great American Comic Strip*, plate facing 148. Registered later that year were "Yellow Kid," design, 1896 copyright registration (66463) and "Design of the Yellow Kid," design, 1896 copyright registration (68735).

9. J. Campbell Cory, "Four Days More and the Political Campaign of '96 Will be Over," cartoon, *New York Journal* 30 October 1896, 5; Cory, "De're off in a bunch," cartoon, *New York Journal* 2 November 1896, 3.

10. Archie Gunn, "George Boniface as a Chinese Yellow Kid," Yellow Kid caricature, *New York Journal* 5 November 1896, 6.

11. H.B. Eddy, "A Feast of Reason and a Flow of Sparkling Humor," advertisement illustration, *New York Journal* 30 October 1896, 2; Eddy, "Out on Sunday," advertisement illustration, *New York Journal* 6 November 1896, 5.

12. C[harles] G[reening] Bush, "Is He an Orphan?—Nit!" Yellow Kid caricature, *New York Journal* 6 November 1896, 2.

13. Outcalt and Connor, NY, copyright assignment of *McFadden's Flats* and *Yellow Kid* to McLaughlin Brothers (4 February 1898), copyright assignments (Vol. 19, p. 131), Copyright Division, Library of Congress. The nature of Connor's relationship to Outcalt is unclear, but he appears to have been a business associate of some stature. Unfortunately, Connor's first name was not recorded in any of the documents discovered to date, but his last name appears in at least two copyright notices attached to Outcalt's work. (See R.F. Outcalt, *Johnny Jones' School Days*, cartoon, *Cleveland Plain Dealer* 20 February 1898, 27; Outcalt, *Johnny Jones' School Days*, cartoon, *Philadelphia Inquirer* 20 February 1898, 40.) *Johnny Jones' School Days* was a precursor to Outcalt's *Kelly's Kindergarten* (later *Kelly's Kids*) that appeared in Pulitzer's *New York World* (and syndicated in Pulitzer's *St. Louis Post-Dispatch*) from 16 October 1898 ("Opening of Kelly's Kindergarten for the Kids

in Kelly's Roost—"The New Teacher Makes Her Bow," *St. Louis Post-Dispatch*, comic supplement, 4) through 6 August 1899 ("A Mad Dog Disturbs the Summer Repose of Kelly's Alley," *St. Louis Post-Dispatch*, comic supplement, 4). Outcault's freelance work in this period (for the *New York World*, the *New York Journal*, and miscellaneous newspapers) has been described by Richard Olson as Outcault's "lost period" (letter to the author, 8 November 1994). The examples that appear in the *New York World* show Outcault working with several established techniques of cartoon art: the panoramic single panel, focussed single panel and multiple frames. A variety of subjects (including social classes, ethnic groups, generational groups, and animals), with several locations (including street scenes, exteriors, interiors, and country/pastoral scenes) are shown. The story or "joke" of the piece is related in numerous ways, such as the two-line joke at the bottom of the drawing, the "foolish questions" later used by Rube Goldberg and Al Jaffee, pandemonium panels, physical comedy, reversal of expectation, and juxtaposition. This part of Outcault's work also includes a significant precursor to *Buster Brown*, "Bobby Jones's Painful Impressions of his Day on Grandfather's Farm" (cartoon, *St. Louis Post-Dispatch* 20 August 1899, comic supplement, 4), which is one of the earliest examples of an Outcault child getting into seven kinds of trouble, then atoning for his sins with a posted resolution at the end of the feature.

14. R.F. Outcault, "Yellow Kids of All Nations," cartoon, *New York Journal* 6 February 1898, comic supplement.

15. *The Huckleberry Volunteers* began in the *New York Journal* as a commentary on the sinking of the *Maine* and the impending crisis with Spain. The feature ran in the daily newspaper from 8 April to 22 April 1898. The Yellow Kid made his first appearance in this series in "An Old Acquaintance Meets Them in Cuba and Assumes Charge" on 16 April and made a total of six appearances in this series of eleven cartoons.

16. R.F. Outcault, "The Casey Corner Kids' Dime Museum," cartoon, *New York World* 1 May 1898, comic supplement, 4; Outcault, "The Bud and Blossom of the Yellow Kid," cartoon, *New York World* 1 May 1898, comic supplement, 7.

17. This writer searched indices for plaintiffs or defendants in cases possibly involving Outcault, Hearst, Pulitzer, McLaughlin and Connor (as personal and corporate names); *New York Journal* (including *N.Y. Journal* and *Journal*), *New York World* (including *N.Y. World* and *World*); *Press Publishing Company* (parent publishing company of the *New York World*); and *Evening Journal Association*, *Morning Journal Association* and *Star Company* (parent publishing companies of the *New York Journal*). Indices searched include the Lexis and Westlaw databases and the American Digest System's 1906 Decennial Edition of the *American Digest: A Complete Table of American Cases from 1658 to 1906* (St. Paul: West Publishing Company, 1911). While the publishing companies were named in a small number of cases as both plaintiffs and defendants and suits existed between the two, a *Yellow Kid* case is not among them. See *Press Publishing Company v. Falk*, 59 F. 324 (N.Y. App. Div. 1894); *Press Publishing Company v. Morning Journal Association*, 33 App. Div. 242, 53 N.Y.S. 371 (1898); and *Press Publishing Company v. Morning Journal Association*, 41 App. Div. 493, 58 N.Y.S. 708 (1899).

18. Although some comic strip histories and published legal opinions refer to other cartoonists drawing *Buster Brown*, none are credited with assuming responsibility for the comic strip. Richard Olson notes that the later non-Outcault *Buster Brown* installments in the *New York Herald* were unsigned and "clearly inferior" (telephone interview, 20 December 1994).

19. *New York Herald Company v. Star Company*, 146 F. 204 (N.Y. App. Div. 1906).

20. *New York Herald Company v. Star Company*.

21. *Outcault [sic] v. New York Herald*, 146 F. 205 (N.Y. App. Div. 1906).

22. *Outcault [sic] v. New York Herald*.

23. *Outcault [sic] v. New York Herald*.

24. It is, of course, possible that a *Yellow Kid* case was heard in court, but did not have an impact on later lawsuits specifically involving Outcault. Recent reports have circulated about court documents relating to the *Yellow Kid*, but specific information about their contents has not been published. Anyone with information regarding a *Yellow Kid* case should contact the author care of this journal.

25. *Outcault v. New York Herald Company*, 117 App. Div. 534, 102 N.Y.S. 685 (1907).

26. *Outcault v. New York Herald Company*.

27. *New York Herald Company v. Ottawa Citizen Company*, 41 Can. S. Ct. 229 (1909).

28. 10 Ga. App. 211, 73 S.E. 20 (1911).

29. 51 Ind. App. 55, 98 N.E. 1005 (1912).

30. 110 Ark. 123, 161 S.W. 142 (Sup. Ct. 1913).

31. *Outcault v. Bonheur*, 120 App. Div. 168, 104 N.Y.S. 1099 (1907).

32. *Outcault v. Lamar*, 135 App. Div. 110, 119 N.Y.S. 930 (1909).

33. *Star Company v. Press Publishing Company*, 162 App. Div. 486, 147 N.Y.S. 579 (1914).

34. *Star Company v. Wheeler Syndicate, Inc.*, 91 Misc. Rep. 640, 155 N.Y.S. 782 (App. Div. 1915).

35. "Decisions of the Commissioner of Patents and of United States Courts in Patent Cases, Decision of the Examiner of Interferences: *Star Company v. Fisher* (Decided December 22, 1916)," *Official Gazette of the United States Patent Office*, 236.1 (6 March 1917), 283-285.

36. *Star Company v. Wheeler Syndicate, Inc.*, 91 Misc. Rep. 640, 155 N.Y.S. 782 (App. Div. 1915), 160 N.Y.S. 689 (App. Div. 1916), *aff'd* 188 App. Div. 964, 176 N.Y.S. 923 (1919), *aff'd* 231 N.Y. 606, 132 N.E. 907 (1921), *cert. denied* 257 U.S. 654, 42 S. Ct. 94, 66 L. Ed. 419 (1921); *Fisher v. Star Company*, 160 N.Y.S. 693 (App. Div. 1916), *aff'd* 188 App. Div. 964, 176 N.Y.S. 964 (1919), *aff'd* 231 N.Y. 414, 132 N.E. 133, 19 A.L.R. 937 (1921), *cert. denied* 257 U.S. 654, 42 S. Ct. 94, 66 L. Ed. 419 (1921); and *Wheeler Syndicate, Inc. v. Star Company*, 160 N.Y.S. 693 (App. Div. 1916), *aff'd* 188 App. Div. 964, 176 N.Y.S. 925 (1919), 132 N.E. 907 (N.Y. 1921).

37. For further information about the circumstances and relationship between Fisher and the Star Company, see Robert C. Harvey, "Bud Fisher and the Daily Comic Strip," *Inks: Cartoon and Comic Art Studies* 1 (February 1994), 14-25.

38. *New York Herald Company v. Star Company*.

39. *New York Herald Company v. Ottawa Citizen Company*.

40. *Star Company v. Press Publishing Company*.

41. *Star Company v. Wheeler Syndicate, Inc.*, 91 Misc. Rep. 640, 155 N.Y.S. 782 (App. Div. 1915).

42. *New York Herald Company v. Ottawa Citizen Company*.

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Basic endnote style is as follows:

1. Rebecca Zurier, *Art for the Masses* (Philadelphia: Temple University Press, 1988), 89. [Note that no abbreviation precedes the page numbers.]

2. Alice Sheppard, "There Were Ladies Present: American Women Cartoonists and Comic Artists in the Early Twentieth Century," *Journal of American Culture* 7(Fall 1984): 38-48.

3. Bill Blackbeard and Martin Williams, eds. *The Smithsonian Collection of Newspaper Comics* (Washington: Smithsonian Institution Press, 1977), 12.

4. George Newton Gordon, "Can

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Children Corrupt Our Comics?" in *The Funnies: An American Idiom* (New York: Free Press of Glencoe, 1963), 158-166.

5. Edwin McDowell, "America Is Taking Comic Books Seriously," *New York Times*, 31 July 1988, E8.

Style for second references:

1. Zurier, *Art for the Masses*, 66.
2. Sheppard, "There Were Ladies Present," 44.
3. Gordon, "Can Children Corrupt Our Comics?" 164.

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