Walter George Smith and General Grant’s Memoirs

In 1886 Walter George Smith, a rising young Philadelphia lawyer, had the good fortune to become involved in a law case that greatly enhanced his legal career. The litigation pertained to the sale of the memoirs of General Ulysses S. Grant.

Smith, born in Ohio in 1854, was the son of General Thomas Kilby Smith who moved his family to Philadelphia in 1866, where the future lawyer attended Episcopal Academy. He earned his Bachelor of Arts and legal degrees at the University of Pennsylvania and was admitted to the bar in 1877. Associated in practice with Francis Rawle until 1889, and subsequently with William Rudolph Smith until 1922, Smith was very active in Pennsylvania legal affairs. He was president of the Law Academy of Philadelphia in 1880 and a charter member of the Pennsylvania Bar Association. He also maintained an active interest in the American Bar Association and was elected its president in 1917. The degree of Doctor of Laws was conferred on him by the Catholic University of America in 1915 and by Grinnell College of Iowa in 1920. During the period 1919–1924 Smith represented the interests of the Armenians and was present on their behalf at the Paris Peace Conference. In 1921 President Warren G. Harding appointed him to a special committee to assist the American delegation at the Washington Naval Conference; in 1923 the President selected him to serve on the Board of Indian Commissioners. The author of numerous articles on law, education, religion, history and foreign affairs, he also wrote The Life and Letters of Thomas Kilby Smith (New York, 1898), and, with his sister Grace, co-authored Father Fidelis of the Cross: James Kent Stone (New York, 1926). In 1890 Smith married Elizabeth Langstreth Drexel. She died later that year and he did not remarry. His life was devoted to philanthropic works, the Roman Catholic
Church, of which he was a devout member throughout his life, and his law practice, which had begun to prosper with the Grant case.

In the Grant memoir suit, Smith, in company with his partner Francis Rawle, represented Charles L. Webster and Samuel L. Clemens (Mark Twain), the owners of the copyright on General Grant’s memoirs, in an effort to restrain John Wanamaker, the Philadelphia merchant prince, from selling the work. Smith and his partner claimed that it was a subscription book and that Wanamaker did not have the right nor the title to sell it. While the story behind the writing of Grant’s memoirs has been told by numerous historians, nothing has been said of this lawsuit.

In briefly recapitulating the account of the writing of General Grant’s book, suffice it to say that, failing to win a third nomination for the presidency in 1880 and having a great admiration for businessmen, the former President decided to enter the world of finance. One of his sons had formed a partnership with Ferdinand Ward, a Wall Street broker and financier, and in 1880 Grant invested all of his liquid assets in Grant and Ward. Unknown to General Grant, the unscrupulous Ward made use of the General’s good name to induce others to invest in the company. In 1884 Grant and Ward was in financial difficulty and Ward persuaded the General to come to

---

1 Francis Rawle, 1846–1930, graduated from Harvard in 1869 and received his legal degree there in 1871. Admitted to the bar in 1872, he soon became a very successful lawyer. Smith called Rawle “a good business getter,” because “being a graduate of Harvard, he had classmates in New York and elsewhere which resulted in business from cities other than Philadelphia.” Smith claimed that his association with Rawle, whom he served “with sacrificing fidelity,” involved him in a wide practice and enabled him to participate in a division of the fees on the basis of two-thirds to Rawle, the senior partner, and one-third to Smith, the junior partner in the firm. The younger attorney helped Rawle make his 1883 revision of Bouvier’s Law Dictionary. Rawle, none too popular with the Philadelphia bar, severed his relationship with Smith in 1889 under rather disagreeable circumstances. Nevertheless, taking an active role in the affairs of the American Bar Association from its inception, he served as treasurer of that body from 1878 to 1902 and as president in 1902. See the unpublished “Autobiography of Walter George Smith,” 48, 62, 72, Walter George Smith Manuscript Collection, American Catholic Historical Society, St. Charles Borromeo Seminary, Philadelphia. Hereinafter cited as “Autobiography.”


3 See W. B. Hesseltine, _U. S. Grant, Politician_ (New York, 1935); Hamlin Garland, _Ulysses S. Grant; His Life and Character_ (New York, 1920); Louis Arthur Coolidge, _Ulysses S. Grant_ (Boston, 1917); William Conant Church, _Ulysses S. Grant and the Period of National Preservation and Reconstruction_ (New York, 1926); and Ishbel Ross, _The General’s Wife: The Life of Mrs. Ulysses S. Grant_ (New York, 1954).
their assistance. Grant borrowed $150,000 from W. K. Vanderbilt to tide the partnership over what appeared to be only a temporary crisis. But the company went into bankruptcy later that year. Ward was found guilty of peculation, was tried and sentenced to ten years in prison. Grant was financially ruined. His two presidential administrations having been associated with corruption, Grant, who was himself personally honest, was grieved to find that his personal reputation was tainted by the failure and scandal connected with the demise of the unfortunate firm. Compelled to sell much of his and his wife's property to repay Vanderbilt, Grant was in straitened circumstances.

To recoup his fortunes, Grant, like other war heroes, turned to the pen. Following the writing of two successful articles for *Century Magazine*, Grant was induced to write his memoirs. Assisted by Adam Badeau, a former aide-de-camp, but plagued with cancer of the throat, the General, in what amounted to an heroic task, turned out his book within the short space of eleven months. The manuscript was accepted for publication by Charles L. Webster and Company and was to be sold by subscription. By May, 1885, 60,000 sets of the two-volume work had been ordered through agents. It earned $450,000 in royalties during the first two years and was regarded as a best seller. Grant died on July 23, 1885, knowing his family was provided for by virtue of his success as an author. The General could hardly have foreseen that three lawsuits would result from his book.6

Walter George Smith was interested only in the first of these cases related to the study by Grant, who was well known to Smith and his family. Following service with Grant during the siege of Vicksburg, the elder Smith was promoted to Brigadier General on the

4 Adam Badeau, *Grant in Peace* (Hartford, 1887).
5 Badeau was involved in a suit with Mrs. U. S. Grant in the second of three suits stemming from the memoir. Badeau claimed to be the author of Grant's book and demanded more money than the sum previously agreed on. Represented by Roscoe Conkling, Mrs. Grant went to court. The case hinged on a letter from Badeau to Grant saying that he had no desire to claim authorship for the book. Badeau received his due, $11,254, for rendering assistance. Ross, *The General's Wife*, 317. The third case concerned Webster and Co.'s suit with Joseph J. Little and Co. The latter sued and collected $2,382.10 from Webster, because it appears that Webster had contracted with Little to print Grant's memoirs and then took away a portion of the printing. New York *Times*, June 5, 1887, 9, and May 20, 1888, 10.
basis of Grant's recommendation. After the war, General Smith, a Democrat friendly to President Andrew Johnson's administration, and sympathetic with his lenient policy of reconstruction in the South, was appointed United States Consul at Panama. But in 1869, being at odds with the politics of the newly elected Grant, he was removed from his post by his old comrade in arms. Of his father's political misfortune, Smith wrote, Grant probably knew nothing as his removal from office was probably the work of the Secretary of State. After Grant's death, General Smith served on the committee to raise money for the building of Grant's tomb. Walter George, as he was known to many of his friends, had met Grant at a formal White House reception in the winter of 1874. It was a penurious, poorly attired, squeemish young man of twenty years who was introduced to the Chief Executive of the United States on that very cold winter day. Confronted with a President whose political convictions he did not share, Smith's predicament must have been awkward indeed. Concerning this occasion he wrote:

I was very poor and very shabby in wardrobe. . . . The whole country was excited over the attempt of the Republican majority to entrench the "carpetbag" governments in the Southern states. All my sympathies were strongly against Gen. Grant. . . . When I reported to my father, who had rooms on F. Street, he took me to a tailor, who allowed me the use of a handsome overcoat and then sought us gloves, when I found the only pair of kid gloves that would fit were of a brilliant red orange color. However, I took them and then made a better appearance. My hosts took me to a Presidential reception and we joined the line to shake hands with the President. I had never seen him before and was surprised at his seemingly diminutive stature. He shook hands mechanically and I passed on, but in my ignorance did not continue in the line to pay my respects to Mrs. Grant, and the other ladies, as I had not previously been introduced to them. As I looked across the receiving line I saw my father looming above the crowd very handsome and distinguished looking. I made my way over to him. He asked whether I had paid my respects to the President and Mrs. Grant and I told him how and why I had dropped out of the line. "Oh," he said, "that will not do. Come with me." Then he led me back to the President in much mortification. I assumed, of course, the President had noticed my gaucherie and that I should apologize. This I did somewhat ceremoniously; but from his heavy, wooden manner I infer that he did

---

6 Smith, Life and Letters of Thomas Kilby Smith, 69, 80.
not hear what I said, or if he did it conveyed no meaning to him. However, I was then presented in due form to Mrs. Grant and to her charming daughter. . . .

On the occasion of his visit to Washington, Smith saw Grant a second time at a dance given by Postmaster General Marshall Jewell for his daughter. In a passage that indicates his bitter feeling at that time toward Grant, he wrote:

President Grant entered alone, and stood for a few minutes. I concentrated my gaze on him saying to myself, “here is the greatest figure or one of the greatest now on the world’s stage.” Truth to tell he was not impressive. He was under the middle height and had no apparent magnetism. I hesitated too long before going up to him and saw him no more beyond a fleeting glimpse in a carriage at the funeral of Gen’l Meade. At the time I was a bitter partisan young Democrat, and felt that he had been false to Andrew Johnson, and unkind to his old companions in arms, especially my father. Time and circumstances have effaced these impressions. It would have been better for his fame had he resisted the office of the Presidency, for he had no experience in politics and was deceived by men who used his fame for their own purposes. In this connection I am reminded of an incident told me by Father Tom Sherman. He and his father the General [William Tecumseh Sherman] went one evening to the White House and found Grant much perturbed by reason of the attacks being made upon him by the newspapers. The Shermans sat on a sofa while the President paced the room expressing his vexation. Whereupon Gen’l. Sherman said in his blunt way, “You have yourself to thank for it. I warned you not to become President, and you were a damn fool not to heed my advice,” or words to that effect.

It was during the summer of 1886 that Smith found himself working on the case of Charles L. Webster and Company vs. John Wanamaker. He recorded that the firm of Alexander and Green of New York sent Daniel Whitford down to Philadelphia “to consult and aid us in restraining John Wanamaker from selling the memoirs of General Grant at a cut price.” No longer shy and awkward, but on the threshold of a brilliant legal career, it was a more poised, self-confident Smith who took the initiative and commenced work on the case. He noted that it was “in the dead of summer and Rawle

---

8 Ibid., 37, 38.
9 Ibid., 38-39.
10 Ibid., 66.
was away on vacation, and I went to the Law Library, then in the Athenaeum Building on 6th below Walnut Street, and tackled the problem. It proved a nice question." Smith discovered that Wanamaker had acquired some five hundred copies of Grant's memoirs. To ensure quick sale, the merchant advertised in his daily column in the Philadelphia Public Ledger: 

The publishers meant to keep these books . . . out of the bookstores. They intended you should open your door to whatever book-pedler happened to pull your bell or go without the Personal Memoirs of U. S. Grant. . . . The price of General Grant's Memoirs is unreasonably high because of the unfortunate method of publication. Nobody grudges the family's share. It's the way the book is sold that makes it cost so much. We have put the price as low as we can, waiving a part of the intended agent's profit.  

Herbert Adams Gibbons, the merchant's biographer, claims that "throughout his life Wanamaker fought to keep book prices down" because "he felt that books were a reflection of as well as an influence upon the civilization of the country. . . ."  

A few days after Wanamaker's advertisement appeared in the newspaper, the merchant received an interesting letter which he had printed:

In the Times of this morning I see an advertisement signed "Hubbard Brothers," which plainly says in regard to Grant's Memoirs, "Dealers can obtain this book only by bribing and corrupting the employees of the publishers, or by buying stolen goods." You are kind enough to take the public into your confidence in many matters; wont you explain away the slander this party puts on your good name?  

Wanamaker replied to this foolish charge with tongue in cheek: "We haven't bribed anybody. We don't believe in bribing. We

11 Ibid.
12 Philadelphia Public Ledger, May 15, 1886, 2.
13 Herbert Adams Gibbons, John Wanamaker (New York, 1926), 204. It is worth noting that in the period 1919-1924, Walter George Smith and Gibbons were among those many Americans working to secure the goals of the Armenians. Gibbons, a history professor at Princeton University, was as adept with the pen as Smith, and, like Smith, wrote numerous articles in The New Armenia and other journals on behalf of the "starving Armenians." He also authored The Blackest Page of Modern History: Armenian Events of 1915 (New York, 1916), a book which told the story of the Turkish massacres of the Armenians during World War I.
14 The Philadelphia Inquirer, May 21, 1886, 8.
haven't corrupted anybody. We don't believe in corrupting.” In a more serious vein, he wrote:

The facts about the Grant Memoirs, so far as we know, are these. The book is a rare one in the loftiest sense of the word. The manner of publication tends to make it rare in the other sense. And we regard it as a public calamity. We didn’t do anything. It wasn’t our turn. By and by a bookseller came and offered the book. We bought it and paid for it. Then we told the papers. And who it really is that is making all this row about it is more than we know. We presume there was a sort of syndicate formed, as they say down town, to corner the Grant Memoirs. Among businessmen it goes without saying, a syndicate binds the signers and nobody else. We didn’t sign. We’re on the other side of the market.15

On July 22, 1886, Smith and Rawle made application to Judge William Butler in the United States Circuit Court in Philadelphia, on behalf of Webster and Clemens, for a preliminary injunction for the purpose of restraining John Wanamaker from selling the book. As Smith put it, “Wanamaker succeeded in finding a vulnerable agent, who let him have enough copies to enable him to offer them at a price below the publisher’s. The consequence of this act was to puncture the boom in which the work was selling in great quantities at the subscription price.”16 The attorneys argued that Wanamaker’s sales were not only injuring the publisher’s business, but were also substantially reducing Mrs. Grant’s share of the profits.17 Further, they based their application on a decision given by the United State Circuit Court in Columbus, Ohio, on July 3, 1886, in the case of Henry Bill Publishing Co. v. Smythe.18 In this instance the plaintiff, the owner of the copyright of James G. Blaine’s Twenty Years of Congress, asserted the defendant had sold five copies of the book in violation of the terms of the contract between the publisher and the agent from whom Smythe, the defendant, had procured copies. The case hinged on the defendant’s prior knowledge of the terms of the contract between the publisher and its authorized agents. The court held that the defendant did have knowledge of the terms of

15 Ibid., May 21, 1886, 8.
17 The Philadelphia Inquirer, July 22, 1886, 8.
18 27 Federal Reporter, 914.
the contract and should be prohibited from selling the books remaining in his possession. Herbert Bill's request for an injunction was granted. In addition to this precedent and other arguments, counsel for Webster claimed that Wanamaker's continued sale of the book would constitute an infringement of the copyright.

Judge Butler replied that if the facts of the case in question were essentially similar to the decision of Henry Bill Publishing Co. v. Smythe, he would follow that precedent. The equity suit of Webster v. Wanamaker was argued in the U. S. Circuit Court, August 3, with Judge Butler presiding. Smith and Rawle represented the plaintiff, while P. F. Rothermel, Jr., argued for the defendant.

The facts of the case indicate that J. M. Stoddart and Company was the general agent for the sale of the book for the territory covered by Maryland, Virginia, West Virginia, the District of Columbia and North and South Carolina. Stoddart and Company agreed to accept 11,000 copies of the Grant book, whereupon a number of the books were sold to subagent Hill and Harvey of Baltimore who in turn sold a consignment to Joshua Barney. It was from Barney that John Wanamaker procured his five hundred copies.

The public's interest in the case ran high and it was argued before a crowded courtroom. Among those present were many lawyers and bookdealers interested in the case, and the illustrious Mark Twain, then at the peak of his popularity. Smith later recalled:

This case made me acquainted with the three members of the firm of Webster and Company. The junior partner's name I have forgotten, though I remember him very distinctly, as well as Webster and Clemens. One evening the junior partner and Whitford and Clemens and I dined together at the Lafayette Hotel on Broad Street. Mark Twain was of course interesting. He selected pie for his dinner, alleging as a reason that he had begun the meal at Jersey City but the train was called just as he reached the dessert, and therefore he thought he would finish the meal in Philadelphia. He and the junior partner and I sat afterwards in the moonlight and talked of Sir Walter Scott and other romance writers. He ex-

20 P. F. Rothermel, 1850–1929, was engaged in law practice in Philadelphia for many years. Smith was most active in supporting his candidacy for District Attorney of Philadelphia in 1898.
21 The Philadelphia Inquirer, Aug. 4, 1886, 3.
pressed very emphatically his dislike to the entire school, developing very much the same line of thought as in that horrid book "A Yankee at The Court of King Arthur." ²²

Smith in his argument before the Court claimed that Grant's memoirs were delivered to "the subscribers . . . through a system of agents and subagents with a provision in the contracts that they should have no title to the book, that remaining in Webster and Company until it passed into the hands of the purchasers." ²³ Basing his argument on the Ohio decision mentioned above, Smith further contended that under the copyright law, not only was Webster's possession of the title valid until delivery, but that Wanamaker's sales constituted a definite infringement on the copyright. He stated the merchant's sales had been detrimental to Webster's business. ²⁴

Before completing his argument, Smith was interrupted by the Judge who asked "Rothermel to develop his theory." Counsel for the defense then refuted Smith's assumption that the title to the books remained in the hands of the publisher until delivered to the subscriber, arguing that Wanamaker had a clear title to the books he had purchased. In substantiating his case, Rothermel pointed out that agents for Webster were required to canvass their district thoroughly and to take not less than 11,000 copies of the work. The contract, Rothermel argued, made the business transaction between publisher and agent a sale and not just a mere agreement to act as agent. Counsel for the defense maintained further that if the agent could obtain only 10,000 subscribers, surely the residual 1,000 copies were his to dispose of as he saw fit. He claimed that Wanamaker was convinced that he was legally in the clear to sell the books ²⁵ and that while Webster and Company could act against Stoddart and Company for violation of the contract they could not be supported in legal action against Wanamaker, who was unaware of the terms of the contract between Webster and Stoddart. ²⁶

²⁴ The Philadelphia Inquirer, Aug. 4, 1886, 3.
²⁵ Ibid.
²⁶ Philadelphia Public Ledger, Aug. 4, 1886, 1.
Smith recorded that "when Rothermel had finished I rose to proceed when Judge Butler in a bland manner observed that he would hear but one counsel on either side. Of course I could but turn to Rawle and take my seat. Rawle made the argument."27 Apparently the senior partner was neither very effective nor prepared to make his case, for his argument was largely redundant and repetitious. He merely enlarged upon the injury to Webster and Company at which point Judge Butler interrupted with the remark that he was clearly aware of these facts and that the only point under contention was whether the contract came under the copyright law or not. Rawle proceeded, and when he concluded the court took the briefs and allied papers and reserved its decision.28 Smith, who later became an outstanding courtroom lawyer, observed that Rawle "exhibited no magnetism, none indeed of the qualities of the forensic lawyer."29

It appears that the only question which the court wanted clarified was whether Stoddart and Company obtained sufficient title to the books thereby destroying Webster and Company's monopoly to the title. Upon this point and the question of Wanamaker's prior knowledge of the terms of the contract between publisher and agent would the case depend.30 At length, Judge Butler, referring to the case involving Blaine's book, rendered his decision on August 9 as follows:

If this case was substantially identical with the Publishing Company v. Smythe, recently decided by the Circuit Court for Ohio, we would esteem it our duty to follow the ruling in that case and grant the writ. It is not, however. In some material respects the cases are clearly distinguishable. The one before us seems to resemble Clemens against Estes, 22 Fed. Rep., 899, in which the writ was refused. As the question must be further considered on final hearing, when the facts may be more fully developed, it would be unwise to discuss it at this time. After full consideration, the complainant's rights, as disclosed by the affidavits and accompanying papers, are not deemed sufficiently clear to warrant the preliminary writ asked for.31

28 The Philadelphia Inquirer, Aug. 4, 1886, 3.
31 New York Times, Aug. 10, 1886, 1. In the case of Clemens v. Estes, the defendants, Estes & Lauriat, a firm of booksellers, advertised Mark Twain's Huckleberry Finn, a book
In commenting on the final outcome of the case, Smith wrote: "We lost the application for a preliminary injunction, which meant in effect the loss of the case. We recovered $10,000 from one of the peccant agents." Smith did not disclose the identity of the "peccant agent" in question, but on the basis of the Clemens v. Estes decision and the statement made by Rothermel, it can be readily concluded that it was one of the agents who, having made a bona fide contract with Charles L. Webster and Company to sell the books only to subscribers, then violated the contract by making some available to booksellers. Smith seems to have been disappointed in the outcome. Not only was Wanamaker free to dispose of the two hundred books remaining in his possession, but, as Smith wrote, "Wanamaker having done the mischief went scot-free of liability. It was a foolish and destructive act on his part." George W. Childs, the owner and publisher of the Philadelphia Public Ledger, disclosed to Smith that he "had pleaded with him [Wanamaker] not to renew the sale of the book but to no purpose." Concerning Wanamaker's conduct, Smith left this estimate:

The character of this merchant prince has been the subject of much praise and animadversion. In recent years I have seen him often in action. There is predominating his subconsciousness the natural result of the years he to be sold by subscription only, at a price well below that of the regular subscription price. Estes and Lauriat contracted with "several persons" to accept one hundred or more copies of the book. But the defendant "had no knowledge of the terms of the contract between the plaintiff, or his publishers, and their canvassing agents." In this case, the Judge held that in order "to entitle the plaintiff to any relief of the character asked for, he must first show that the defendants had notice of the terms of the contract between himself and his agents. . . . In the absence of any notice of the contract, the defendants had a right to buy, or contract to buy, books from agents who lawfully obtained them by purchase from the plaintiff or his publishers, and had a right to advertise for sale and to sell such books at any price they saw fit. The plaintiff may have a right of action against his agents for the violation of their contract, and, from all that appears, they might be enjoined from doing what they had covenanted not to do . . . but it is not claimed that the defendants were in any way parties to that agreement, or interested in it." 22 Federal Reporter, 899.

32 "Autobiography," 67. The winner, Wanamaker, was free to sell the 200 copies of the book remaining in his possession.


34 George W. Childs, 1829-1894, was the publisher of the Public Ledger. An admirer of Grant, Childs wrote Recollections of General Grant (Philadelphia, 1889), and presented a portrait of him to West Point.
has spent in commercializing every emotion and every event or desire by publicity, a feeling hard to describe. He is very kindly, he is not ungenerous, but one always doubts the sincerity of him "who doth protest too much." He is now a very old man and his constructive work is done. I think the verdict will be that he has never successfully entered other fields than those connected with his great business.\textsuperscript{35}

Although he lost the Grant case, Smith's legal career was nevertheless enhanced by it, for, as a result of the partial success gained in this instance, he was later recommended to represent Jefferson Davis in a suit of a similar nature.

\textit{West Georgia College} \hspace{2cm} \textbf{THOMAS A. BRYSON}

\textsuperscript{35} "Autobiography," 68.