

OPUNTIA

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Whole-numbered OPUNTIAs are sercon, x.1 issues are reviewzines, x.2 issues are indexes, x.3 issues are apazines, and x.5 issues are perzines.

LETTERS TO THE EDITOR

[Editor's remarks in square brackets]

FROM: Chester Cuthbert
Winnipeg, Manitoba

2005-06-13

I cannot understand why local collectors buy from the Internet when that entails postage costs rather than visit local shops where books are relatively cheap by comparison. I suppose a saving in time is possible.

[It is easier to locate rare titles on the Internet, few if any of which would ever be carried in a bookstore in Winnipeg or Calgary. Postage isn't that expensive as most on-line retailers have special book rates from Canada Post. Certainly for mass-market titles it is cheaper to buy locally, but impossible for specialized books.]

FROM: KRin Pender-Gunn
Box 567
Blackburn, Victoria 3130, Australia

2005-07-24

Re: "*inter-library loans were slow and expensive*". I am the Interlending and Document Delivery Officer for the Cancer Council Victoria library, and spend three days a week tracking

down medical journal articles for our scientists and researchers. Yes, an inter-library loan can be expensive. Here the basic rate is A\$14.50, which includes the copyright fee and costs of someone like me going to the shelf, copying it, and getting it to the requester. If an item is not available through the GratisNet system [Australian inter-library lending] and it has to go through the commercial service, and they have to go overseas, it can cost up to A\$60. I can get an article to me sometimes within an hour and not have to pay premium rates for it. I can also get it in PDF format.

[The last time I used inter-library lending was about ten years ago. The University of Calgary Library (whose computer terminals are open to the general public like me) now subscribes to vast databases of peer-reviewed journals available as PDF, and it is these sources that I quote in my articles. The big problem is finding the information, since the databases use keyword systems that sometimes are outright useless. Others, such as one legal database I used for my postcard libel article, provide lists of references with links that are not cached, so that when I click on one and then try to go back to search results, the list is gone and I have to re-start the search. I got around that by highlighting and copying each link and then using it in a fresh window.]

I HEARD FROM: Michelle Marie Gill, Jeanette Handling, Tiziana Baracchi, Jose Roberto Sechi, Brant Kresovich, Chuck

Stake, Joseph Major, John Held Jr,
Murray Moore, Ned Brooks, Ficus, Kris Mininger,
Terry Jeeves, Sheryl Birkhead, John Hertz

HELD OVER TO #60: I needed most of this issue for one article, so if your name is not listed above, I am probably holding over your letter until OPUNTIA #60.

POSTCARD LIBEL

by Dale Speirs

Introduction.

Austria issued the first postal card in 1869, although the idea was initially proposed in 1865 in the North German Confederation [1]. In 1870, Britain followed suit, Canada in 1871, the USA in 1873, New Zealand in 1876, and so forth [2]. The idea quickly spread around the world. Postal cards were an instant success and used in the millions from the get go. The initial impetus of postal cards was that they were cheaper than letter mail and one could quickly dash off a message and drop it into a letter box without the trouble of hunting for a stamp. They were the Papernet's anticipation of e-mail. Business people were quick to take advantage as postal cards were an easy way to advertise or send receipts.

A distinction must be made between postal cards and postcards. The former are government issued, with an imprint of a stamp to pay the postage. The latter are privately issued without stamp indicia and usually with a pictorial scene. Originally postal cards were cheaper than letters and postcards, but nowadays in most countries they pay the same postage. In this essay, I have tried to keep the distinction clear, but many reports in old newspapers used the terms interchangeably and it is not always possible to distinguish which form they were writing about. Ambiguous pre-1900 reports are probably postal cards, as the big boom in postcards did not get underway until the century turned.

Like any new technology, it didn't take long for the hackers to show up. Court cases soon erupted involving dunning postal cards or scurrilous messages that the recipient considered as libel. In Britain, only ten days after the postal card was introduced on 1870-10-01, the Lord Mayor of London, who also sat as a judge, was quoted about libellous and obscene postal cards [64]. Twelve days after postal cards were brought out there, George Street laid a complaint about a postal card that falsely accused his business firm of advertising fraud [66].

Publication And Privilege.

Although libel occurs at the moment that a scurrilous message is sent, in actual practice it is not actionable unless it can be shown

that others saw it besides the sender and recipient. If a third party sees it, then it is grounds for a libel case. The defence against a libel charge is that it is the truth and/or that it is a privileged publication that the sender had a right to publish. Court decisions over the centuries have established that a sealed letter is a privileged publication if it is not opened by a third party such as a post office sorter, an office secretary who handles the business correspondence, a household servant who could see it on a desk while dusting, and so forth.

An 1880 legal reference [72] summed up the basic law: "*To send a libel on a post card, inasmuch as the writing on this species of missive is to open to the inspection of other persons besides the individual to whom it is addressed, will of course render the writer liable either to an indictment or an action.*" It is not required for the plaintiff to prove that a third party actually read it, only that it could have happened. In theory, a defendant could be acquitted if he could prove that every postie and servant along the chain of transmission did not read the libellous postcard, but this would require a ridiculous amount of work to locate all such people and get depositions from them.

Shortly after the introduction of postal cards, libel cases about messages on them began appearing in the courts around the world.

The courts quickly agreed that a postal card was a publication but was not privileged because its message could be read by a third party in transit or in the recipient's home or office. They added that a special circumstance was that the sender could just as easily have sent the message by a sealed letter.

The postal card was considered to be the same in law as a telegram, for which there was abundant previous case law on libellous telegrams [50, 71]. It was well established by 1890 and earlier that a privileged publication must be made by a reasonable mode of communication. The courts soon stipulated that it is not reasonable to send privileged messages by postal card instead of a sealed letter [77]. An 1871 comment was that: "*If a man wishes to abuse you, and is not anxious that others should see it, it is surely not too much to require him to pay a penny for a stamp and put the abuse under cover.*" It is nowadays presumed in the courts that the act of sending a scurrilous message on a postcard is malice in itself [4].

There was some initial inconsistency, and at least one early judge in England held in 1871 that a postal card was a privileged publication [5]. This was in a case of a tradesman applying for a summons against someone who sent a postal card challenging his honesty. The judge would not issue a summons, saying that a postal card was not a publication. This was an aberration and was not followed elsewhere.

The claim that postcards were privileged was tried at least once in modern times, in a 1967 case in Puerto Rico [6]. The sender admitted the postcards were libellous but asserted that the U.S. Post Office had no right to intercept them because they were privileged. The U.S. District Court disagreed.

By the 1890s a scurrilous postcard was presumed to have been read by a third party simply because it went through the postal system [7]. Human nature being what it is, this presumption was widespread. In 1877, one American post office sorter had his salary reduced because he kept reading messages on postal cards [9]. French posties instituted a work-to-rule campaign during labour troubles in 1924, including weighing every letter, verifying every letter had correct postage, and reading postcards for scurrilous messages [11]. In 1935, during the run-up to American elections, the Postmaster-General James Farley issued a special order to posties prohibiting them from reading postal cards that were issued as straw ballots by newspapers or magazines [10].

The same thing happened in the home and office. In 1873 a business magazine grumbled: "*Hotel owners, and others keeping several servants, complain that their employees lose much time in reading the messages on the cards.*" [8]. An 1890 comment [73] was that: "*Servants are curious as a rule concerning their master's affairs, and it is expecting too much of human nature, particularly when not accompanied by education, to expect that*

they will not profit by these postcards and extract from them what information they can.”.

If a scurrilous postcard message is not readable by the average postie, or by office staff or family members at a recipient's address, then it is not actionable as libel. It may be actionable on other grounds such as violation of postal laws or uttering a threat. If the postcard message is written in a secret code, in a foreign language not spoken in the area, or is unlikely to be understood by a third party from its context, then it is not referable to the courts [12]. To sue for a message in a foreign language, it is necessary to show that the sender knew or should have known that a third party could read the language. In Canada, it is automatically the law that all such postcard messages in English or French are actionable [13]. The USA is officially anglophone, but with its high percentage of Hispanics, it would not be surprising to learn that in a southwestern state a scurrilous message in Spanish is actionable.

The context also matters. A message that might be libellous to the recipient, who knows the background of the story, can appear perfectly innocent to a third party. In a 1903 case in Ontario, Canada, a tax collector sent a postal card to a third party saying that another individual was an “S.B.” and should pay the delinquent bill [14]. The taxman was sued because the plaintiff interpreted this as “son of a bitch”, which is usually abbreviated

“s.o.b.”. The court held that a reasonable person would think of “S.B.” as personal name initials, and that the message was innocent to third parties.

Dealing With Postcard Libel.

Locating the source of anonymous postcard libels is usually not that difficult. It is mostly a matter of finding out who the recipient has been on bad relations with, whether a business deal gone wrong, a fired employee, or a divorce. Postmarks and handwriting are the standard methods of tracing the origin of such postcards. A 1906 case in Edinburgh, Scotland, involved the break-up of a social club [75]. A woman formerly of that club was on the losing side of a power struggle, and was expelled. She sent to the new club leader a postcard with a defamatory message written in disguised handwriting. However, the message referred to internal affairs of the club that she would have known but not any outsider, and thus her identity was established.

Interception of abusive postcards has been done by the USPS since 1881 on written request by the recipient [51]. In that year, the Postmaster General advised the public that persons receiving abusive postcards from a known person or place can send a written request to either the originating or receiving post office to destroy the postcards without delivering them.

Libel is usually prosecuted under either criminal law or civil torts, but some countries have additional postal laws addressing the matter. In the USA, a law was passed by Congress in 1873, amended 1876, prohibiting indecent or scurrilous language on postal cards [50]. In the USA, an 1881 postal card case arose when a man sent a message asking for information: "*Please send me your speech on that ----- dog Mahone.*" (dashes from original newspaper report) [42].

A century later, a man was prosecuted in 1973 for sending scurrilous postcards, not under libel law but a postal law prohibiting such messages and authorizing the USPS to intercept them [15]. This law was overturned by the appeal court on the grounds that it was vague and overly broad, and was eventually repealed in 1990.

Criminal Libel.

There is inconsistency in the historical record as to whether a given case of postcard libel was prosecuted as a criminal matter or a civil tort. It appears to be an arbitrary decision. A civil case might assess higher damages but not leave the defendant with a criminal record. Some libellous postcards resulted in prosecution under postal or obscenity laws. In such cases, it may have been a matter that the recipient knew he could not prove injury or had a similar intemperate background himself. In such circumstances,

someone wishing to hit back without the expense of hiring a barrister could instead complain to the public prosecutor on the basis of non-libel laws and let him carry the expense. -6-

A criminal libel case arising from intemperate postal cards was an English case in 1873 where an uncle sent a postcard to a niece at her place of work, falsely accusing her of immoral behaviour [45]. He did not approve of women working outside the home. She lost her job. The jury found him guilty, and because he had a prior criminal record (for poisoning racehorses!) he was sentenced to two years and fined £50.

In New York City in 1874, Moses Chamberlain was arrested by police for sending libellous postal cards to two men, accusing them of being swindlers and thieves [52 to 54]. The police took the case to a grand jury and got an indictment. Chamberlain later forfeited \$15,000 bail for non-appearance, but was eventually tried and convicted by jury.

The adage "Neither a borrower or lender be" was demonstrated in England in an 1877 case where an elderly widow had loaned her niece's husband some money. He got into debt anyway, and pawned his wife's jewellery for further cash. The widow redeemed the jewellery from the pawnbroker, and with her niece's agreement kept it herself where the husband couldn't get at it. His response was to send libellous postal cards to the widow's brother,

accusing her of theft. The trial was for criminal libel, not a civil tort, and he was sentenced to one year of imprisonment [43 and 44].

In 1900, a Toronto man prominent among local dog fanciers was arrested for sending postcards to owners of lost dogs telling them they could find their dog at a certain pet store [56]. The implication was that the store owner was getting his stock by snatching pets off the street. A year later, also in Toronto, a lumber dealer who sent a postal card to an Orillia, Ontario, lumber dealer, was charged with sending an obscene message [57]. He had used the words "damn lie" in the message and the recipient filed a complaint with police under the obscenity law instead of claiming libel.

The Ku Klux Klan revived in the USA during the early 1950s. Prosecutors, among other things, used criminal libel laws to get at some of the Klansmen. In 1951, Thomas L. Hamilton of Leesville, South Carolina, was indicted for mailing libellous postcards to a state legislator which defamed a newspaper publisher [58]. The following year a Florida Klansman named Bill Hendrix was indicted for sending scurrilous postcards to various people in Florida and Washington, D.C. which abused certain Florida politicians and the newspaper columnist Drew Pearson [59 and 60]. The grand jury that indicted Hendrix said the postcards were too libellous to be part of public court records.

Dunning Postal Cards.

When postal cards were introduced, the merchants and tradesmen quickly adapted it to business for advertisements and fill-in-the-blank receipts [65]. It didn't take creditors long to realize that dunning postal cards could be used to put the heat on recalcitrant debtors. Creditors were not only well aware that third parties could read dunning postal cards but relied on it as a means of embarrassing debtors into paying up. There is an April 1871 report from England [69] of an Oxford undergraduate who received a sealed letter from a tradesman which concluded "*Unless you pay the amount in the course of a week, I shall adopt the postal card service.*" Thus, only six months after Britain introduced the postal card, they were being used in ways never anticipated by the Post Office. In one English case, which resulted in a libel suit in late 1871, the creditor sent twenty dunning postal cards over time. The debtor finally replied intemperately by postal card, to which the creditor returned the compliment. They ended up suing each other for postcard libel [78].

By 1871, there were public complaints about dunning postal cards, and by 1872 libel suits were arising out of them [22 and 23].

A correspondence in THE TIMES of London in early 1871 brought complaints that the only thing worse than being dunned by postal cards was being dunned by mistake [67 to 69]. Examples given were a man threatened with a summons for unpaid bills despite never having done business with the tradesman, and a clergyman who got a postal card asking for “balance of account” from someone he never heard of. In the letters column of the NEW YORK TIMES during July 1872, authors remarked that the use of postcards for dunning was spreading rapidly through the USA and ought to be discouraged since creditors had other means for collecting debts [24]. The rebuttal from another letter to the editor was that there was no American law against it as long as the postcards only stated the amount due [25].

Case law established that if a dunning postal card stated the basic fact of an amount now due, it was legal. Libel existed only if the creditor impugned the character of the debtor or made threats about collection agencies [26]. However, this only existed for libel law, and some prosecutions were made under postal laws. In the USA, an 1888 postal law prohibited injurious markings on the outside of letters or on postal cards. An 1889 case saw a Buffalo, New York, tradesman convicted for dunning postal cards under this law [27]. At about the same time a Cincinnati business that had done the same thing escaped because it had sent the postal cards before the law had been officially proclaimed [28].

For most creditors who ended up in courts over dunning postal cards, it was the libel law that did them in. The messages were often such that the tradesman shouldn't have needed a lawyer to advise him on libel, and one can only presume that they were written and sent while still in a rage (much like e-mails today). A few samples follow.

Sent in 1877 by a San Francisco collection agency: *“Honest men pay their tailor bills. Messers. Bine & George’s bill, \$65 (nearly one and a half years old) is in my hands for collection. Forward me immediate payment and no promises, no calls at office, no blowers, but coin.”* [29]

Sent in 1878 to a New York City resident who had moved house: *“You still owe me \$20 on a piano you stole away from here, and should turn over a new leaf and pay me the balance. For your example to your children, be honest and send it.”* The jury awarded \$300 for libel [30].

In 1890 in Montréal: *“Received the amount all right. Nicely caught in your own trap. Honesty is the best policy. Your confidence games will work no more. You do not need a diploma, rest on your laurels. Deeds go further than words, though your words of Saturday and Monday were strong enough. Au revoir.”* [31].

Circa 1890 in England: *“Your pleas of illness for not paying this trifle is mere moonshine. We will place the matter in our solicitor’s hands, if we have not the stamps by return, if it cost us ten times the amount.”* This must have been a trifle indeed if the tradesman would accept stamps in payment, but it cost him more than a trifle in the ensuing libel case [77].

Not all cases involving tradesmen were a matter of saying things better left unsaid. It is also libel to send dunning postal cards for personal debts in care of an employer. An 1878 case in Rochester, New York, involved a bill collector who did that to a man subsequently discharged by his employer. The jury awarded \$450 in damages [32].

A 1953 case in Kentucky involved a store’s advertising campaign gone awry [33]. The store sent postal cards in a feminine handwriting with a message to call Carolyn at the store. The recipient’s wife left him and he sued the store. Court held that the message was not salacious and a reasonable person would not automatically infer the message was clandestine. In this case, it seems likely that the marriage was in trouble before the postal card and the wife was just looking for an excuse.

Personal Attacks.

The most vicious postcard libels as a group are those arising from

personal disputes or divorces. Tradesmen sending dunning postal cards kept the subject focussed on the debt, but individuals who felt themselves wronged had no such restraints. Personal attacks by postal card began as soon as they were introduced, and by 1872 such cases were wending their way through British courts [41]. An Englishman, commenting on postal cards two weeks after they began to flow through the postal system, remarked *“It is hardly probable that anything of a libellous or improper nature could be circulated on a large scale by means of postcards written by hand.”* [63]. This was a major misunderstanding of the nature of libel. It is not necessary that libel be broadcast far and wide. Postcard libellers aim for a specific target audience, not the mass media. Libellous postal cards are sent to the recipient, his family, his employer, and close friends. That is where the maximum damage will be done, not by circulating on a large scale. Strangers do not care that a man is seeing a mistress, and would be baffled as to why they got a postcard telling them that, but his wife would be devastated and the marriage shaken.

One unusual postcard libel case took place in 1882 in Atheney, Ireland [48]. A woman had written libellous postal cards which caused the recipient some financial distress. She later married, and shortly after was sued. The new husband was held liable for damages even though he had nothing to do with the matter and did not know of it. The court held that marriage vows

“for better or

for worse” were a binding contract (not like today obviously), and the husband was liable for his wife’s debts.

One postal card that almost resulted in a divorce was in New York City in 1881. A news reporter was researching an article on a local divorce case and asked a lawyer for advice. The lawyer sent this reply by postal card: “*You could not get a divorce on the grounds you mention in New York; you might in Connecticut or Maine.*” The journalist’s wife read the postal card and thought he was trying to divorce her, but he finally managed to calm her [50]. One hopes he made a complaint to the Bar Association, since any reasonable person reading that message would presume it the same way the wife did, and a lawyer, of all people, should have known that.

Postcard libel still goes on in our times. In rural Saskatchewan in 1988, a woman who didn’t like the local school principal and one of the teachers, began a defamatory campaign to drive them out of their jobs, including handmade postcards with libellous messages and drawings [47]. She succeeded to some extent in that the principal asked for and received a transfer to a school in the next town. However, she ended up being assessed \$75,000 in damages. In a 1989 divorce case in Vancouver, British Columbia, a judge issued an injunction against the ex-wife for sending abusive postcards to her former husband at his new residence and place of work [49].

A 2003 case in Louisiana involved a man sending postcards libelling two sisters, one of whom lost her job [46]. His tactics included handwritten postcards supposedly from one of the women, purporting to notify neighbours that she was required by a court sentence to let them know she had been convicted of child molesting. The sister who lost her job got \$11,433 for lost wages and \$8,500 in damages, and the other sister got \$3,500. The emotional trauma was undoubtedly beyond measure.

It’s Hard To Get Good Help.

Many postcard libels are committed by servants or employees dismissed for cause. In 1886, a French governess dismissed by an English lady began sending libellous postal cards to her and her brother-in-law [70]. One sample postal card read aloud in court was this piece of verse:

*“Look at your faded face, and think
As broken glass no cement can redress
So beauty, blemished once, forever’s lost
In spite of physic, painting, pain, and cost.”*

Not bad for a francophone. The governess plea-bargained a deal to leave for her native country and never darken English doorsteps again.

A discharged coachman in New York City was arrested in 1881 for sending libellous postal cards to his ex-employer, family members, and the office [55]. He was traced by handwriting analysis and hauled into court.

Public Figures And Postcards.

In most countries, public figures are expected to take more abuse than private individuals before being able to sue for libel. If you want the glory and fame, then you must also take the criticism and ad hominem attacks. There is extensive case law over the question of when someone becomes a public figure, but it is agreed that politicians are definitely so. Consequently, it is more difficult for an elected official to prove libel, and that applies to postcards as well. Postcards are a favourite type of campaign literature, not only for supporters but also for detractors.

In 1999, a New Jersey state senator sued for libel because his opponents had circulated a postcard alleging he had ties to the Mafia and calling him “Boss of Bosses”. The court said that the postcard was “*best viewed as irresponsible political rhetoric, rather than actionable defamation*” and denied his claim [17]. In Colorado, a plaintiff running for the state legislature as a Republican sued Democrats who mailed out 9,000 postcards addressed to “Fellow Republicans” and accusing him of

corruption and bullying [18]. The court held that while the postcards were defamatory per se, in political context they were constitutionally protected.

An interesting case was one where a judge himself was found guilty of postcard libel in 1975 in Kansas [19]. In the USA, many judges are elected, not appointed, and run for office in the same mud-slinging manner as other politicians. Robert M. Baker was running for District Judge against an older incumbent in his 60s. Baker mailed out postcards saying that his opponent was too ill to be re-elected and if a loser in the election, would get a pension to help him in his declining years. Both remarks were false. Baker won the election, but was censured by the Supreme Court of Kansas and assessed court costs.

American politicians and other public figures in that country suing for libel have to contend with the First Amendment, which guarantees their opponents freedom of speech. In 1974, a retired Supreme Court judge sued a man who sent postcards to certain third parties calling the judge a criminal. The Maryland court held that the First Amendment took precedent over criminal libel law [20]. A similar case appeared in Wisconsin in 2003 where an opponent distributed a postcard linking a candidate to a known corrupt Senator [21]. She sued for libel and he claimed

the First Amendment. He probably would have won but the case was muddled by his other actions not of good character.

In England in April 1906, a bestselling author named Marie Corelli sued the postcard publishers A. and E. Wall [74]. She and her novels are forgotten today but back then she was definitely a public figure. The Walls were, without her permission, selling a series of picture postcards depicting her. The postcards showed her in fictitious home scenes around her garden and in her daily life. She sued for libel, but the case was dismissed. The judge, besides ruling the pictures weren't libel, also pointed out the obvious, that while she could claim for damages under some other law, it was incorrect to sue under this one. Use without permission may be illegal but is not libel.

During the American Prohibition era, when Canada was still wet, postcards circulated depicting Windsor, Ontario, as the barroom of the USA [76]. The mayor of Windsor objected strenuously, but the city could not sue the postcard publisher for what was fair political comment.

Never Libel A Foreign Country While You're Still In It.

The fact that postal sorters read postcards was definitely proven in Bangkok when a Turkish citizen sent home a postal card to his wife, written in German and translated as follows [34].

"Bangkok, December 7, 1888. Here everything is wild and uncivilized. The women go about half-naked. All vices flourish here; a paradise for problematic existences. What a contrast to the highly civilized natives of China and Japan, where I have lately been! Siam is a genuine Wallachian country. It is the wildest country I have ever seen in my travels."

The author of this postal card was arrested on December 16, 1888, for libelling the Siamese government. He was released July 16 of the following year, and, needless to say, made a hasty exit from the country.

In October 1961, the newly-formed Peace Corps of the USA got off to a rough start when a young female volunteer libelled Nigeria in a postcard [35 to 40]. Margery Micheltmore, 23 years old, lost a postcard on the campus of Ibadan University while en route to mail it. Unfortunately for her, a Nigerian student found it. The message read in part: *"Everyone except us lives in streets, cooks in streets, and even goes to bathrooms in streets."* The Students Union passed a resolution that she be deported, and the Prime Minister of Nigeria said she must be unequivocally condemned. American ex-President Dwight Eisenhower got into the act, calling the Peace Corps a juvenile experiment.

However, other Nigerian politicians were more forgiving of the Peace Corps, if not Michalmore. The Minister of Information appealed for calm and asked Nigerians not to judge Americans by the actions of one individual. The Premier of Western Nigeria, on a visit to New York City later that month, said he would be sending home many postcards praising the USA. Miss Michalmore was quickly hustled out of the country by the Peace Corps. A news report from Nigeria two years later showed the whole thing had blown over and been forgotten.

Oddball Postcard Libels.

In 1883, Oxford University was the subject of a complaint by students for sending out postal card notices that they had flunked their exams [61]. A more serious incident occurred in 1905 in Cincinnati, Ohio, when the Union Savings Bank and Trust suffered a bank run because someone had mailed out postcards advising withdrawal [62]. One woman was trampled in the bank run as depositors rushed to get their money out.

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