November 3rd, 1909.

Henry W. Lanier, Esq.,
c/o Doubleday Page & Co.,
133 East 16th Street,
New York City.

Dear Mr. Lanier:-

Miss Tarbell was in town on Monday and I was able to see her and discuss the entire situation with her to see if there was any misapprehension on my part. I find no indication of any.

The situation is this: Miss Tarbell years ago entered into an agreement with McClure, Phillips & Co. for the publication of the "Life of Abraham Lincoln" by that firm and payment of royalties to her. One term of that contract was that the publisher was to publish that work in book form in two volumes and upon the American edition pay her ten per cent. and divide all foreign royalties with her equally. Further terms of that agreement were as follows:-

"It is furthermore understood and agreed that the "subscription (four volume) edition of this work is to be "exempt from royalty to the Author"

and again

"It is further agreed that this contract may be assigned "by either party, but only as a whole, and no part interest "therein shall be assigned by either party; provided, however, "that the publisher shall not assign the publishing rights "in book form in the said work to any other publisher without "first obtaining the consent and approval of the said Author"

and again

"It is furthermore understood and agreed that if a "new subscription edition of this work, to contain added new "material by the said Author, be published, that the said "new subscription edition is to be subject to new terms to "be mutually agreed upon between the said Author and the "said Publisher".

The provision that the four volume edition should be

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exempt from royalty is thus only a single term in a general publishing contract and limited at that. It is certainly questionable whether more than the original subscription edition could be put out under this contract by the publisher without royalty to Miss Tarbell. But, passing by that question we have this situation: that the provision for the subscription edition exempt from royalty is merely one term of a contract with Miss Tarbell's publisher. It is quite characteristic, I think, of the McClures to regard a contract as an instrument by which some one else is bound, but which they are at liberty to disregard so far as they find it inconvenient. It is an odd conception of a contract, but I prefer the view that they regard this as a nature of a contract to the view that they deliberately try to break their contracts appreciating that their conduct is wrongful. I do not see how the termination of Miss Tarbell's contract with the McClures can be regarded as leaving that one term surviving in favor of McClures when all the rest of the contract is abrogated.

Moreover, you will remember that at our first conversation on this subject I told you that the one thing that I was concerned in the matter about was that Miss Tarbell's title to her copyright should be made entirely perfect and the McClures and all claims under their contracts should be absolutely eliminated. I stated no other condition, but insisted on that one. There was some delay during the summer owing to the fact that your negotiations with Moffat, Yard & Co. did not mature until vacation time, when it was impossible for me to get in communication with Miss Tarbell. As soon as I could get the matter straightened out I prepared the little assignment, which I sent you to have signed. That paper deliberately and distinctly takes away all claim from the various McClure houses; that was its purpose and it was merely carrying out the condition

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which I originally stated must be imposed.

The McClure Companies now come back with this agreement obviously prepared with the purpose of evading that term and condition which I had insisted on. The matter that provoked my surprise was that such a paper should have been sent to Moffat, Yard & Co. and not to me. If it was desired to abrogate the fundamental condition proposed by Miss Tarbell, through me, the matter was certainly one which should have been called directly to Miss Tarbell's attention and ~~myself~~ ourn. Instead of that, this paper is sent to Moffat, Yard & Co. without any suggestion to me or to Miss Tarbell. I am frank to say that I do not like that kind of business and I think if you will consider the matter a moment you will see why. The S. S. McClure Co. and the D. A. McKinlay & Co. are not free to manufacture plates or print for any four volume subscription edition and if they should try it I would feel compelled to advise Miss Tarbell to prosecute them. The arrangement by which she bought the plates contemplated, irrespective of her prior rights, an absolute end of all claim to any share or interest in any of her books on the part of any of the McClure Companies. Under these circumstances, the postulate that Miss Tarbell must assignto the D. A. McKinlay & Co. and The S. S. McClure Co., the rights they now ask as a condition of receiving what belongs to her is one that cannot be considered for one moment, much less acceded to. Miss Tarbell absolutely declines to consent to any such arrangement.

I must ask that the transfer of the copyrights, in accordance with the plan outlined by me, be made immediately.

I am,

Yours respectfully,

Selden Bacon

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