

# Troubled Collaboration: Belasco, the Fiskes, and the Society Playwright, Mrs. Burton Harrison

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In 1901, David Belasco sued Harrison Grey Fiske and Minnie Maddern Fiske over the Manhattan Theatre's production of Mrs. Burton Harrison's play, *The Unwelcome Mrs. Hatch*. Harrison, an established novelist and essayist by 1901, had worked with Belasco in the 1880s on amateur and professional productions of her plays, and she consulted with him on this play as well. After publishing a successful short story by the same title, Harrison revised the script and shopped it around, quickly reaching an agreement with Belasco's rivals, the Fiskes, after months of dallying by Belasco. Shortly before the Fiskes' production was to open, Belasco sued, arguing that he was "the sole and exclusive owner and proprietor of the play."<sup>[1]</sup> The injunction to stop the production simultaneously seeks to disrupt the Fiskes' production and undermines Harrison's authorial power. Belasco claimed that the idea was his and the script was his property, even though Harrison wrote it, but instead of simply and easily disproving these claims, materials produced by the Fiskes, Harrison, and their lawyer speak at length and rather defensively about the nature of collaborative writing. These extant archival documents suggest that they feared Belasco might have a case for unremunerated collaboration, and they focus on what was then, and still sometimes is, a hazy area of copyright law. The dynamics in the case also speak to the nature of theatrical collaboration between playwrights and producers and competition between producers. Woven amid these legal and theatrical concerns is the familiar story of a woman's labor being co-opted by a man and a woman's capacity for professionalism being questioned by all around her. At base, Belasco claimed a woman's work as his own and appears so confident in his right to her labor that he sued. Profit distribution from a collaboration is a legal matter, but the erasure of women's voices from collaborations was and is so routine that this case was not immediately thrown out despite the glaring lack of a contract between the pair. Accordingly, this article analyzes the legal implications of this play's collaborative writing and revision process, while situating that process and the resulting lawsuit in the competitive world of early twentieth-century New York producers and exploring the impact of these production conditions on aspiring female playwrights.

## *The Unwelcome Mrs. Hatch's Ongoing Evolution through Collaboration*

The archival materials and press at the time often describe Harrison as an amateur playwright, but by the turn of the century, Constance Cary Harrison's writing career seemed decidedly no longer amateurish; writing under the name Mrs. Burton Harrison, she had established herself as a novelist and essayist, publishing novels, memoirs, advice books, short stories, and columns on contemporary society. Harrison had been publishing for over two decades and was working with the agent Alice Kauser when she began work on *The Unwelcome Mrs. Hatch* at the turn of the twentieth century. Harrison published three different versions of *The Unwelcome Mrs. Hatch*: as a short story in *Smart Set* magazine in March 1901, as a play which was first produced by the Fiskes in November 1901 and also published later that year, and as a short novella in the *Novelettes De Luxe* series in 1903; Daniel Frohman also later produced the story

as a silent film in 1914. Thus, while the papers may have credited Kauser, “the introducer of unknown playwrights,” as having launched Harrison’s career,<sup>[2]</sup> it is difficult to conceive of an author with more than 15 published novels or short story collections as an amateur. Certainly, she had not had many plays professionally produced, but the rhetorical use of “amateur” in this case seem designed to disempower her when used by Belasco, to play up her feminine naiveté for benefit when employed by the Harrisons and the Fiskes, and to gender and exploit the situation for good press by the newspapers.

Harrison had worked with David Belasco in the past, notably in the 1880s when she translated a number of plays, including short French comedies for amateur productions and an adaptation of a Scribe play that was produced by amateurs and professionals under the title *A Russian Honeymoon*. These plays were also produced under Belasco’s guidance; Harrison, notably, is the uncontested author. At the time, Belasco had recently arrived back to New York from California and was working as the stage manager at the Madison Square Theatre. Belasco assisted Harrison and the amateurs mounting these and numerous other plays at the Madison Square, which rented its facilities to amateur theatrical groups with some regularity. Belasco and Franklin Sargent also directed the professional debut of *A Russian Honeymoon* in April 1883, and Harrison speaks positively enough about their working relationship on this show in her 1911 memoir, *Recollections Grave and Gay*. She acknowledges that “largest portion of our success was owing to his training and extraordinary skill in devising pictures and effects from material that lent itself readily to lovely grouping and vivid color.”<sup>[3]</sup> Clearly, she also credits her own writing here as giving him a good foundation. The overall style of this sweeping memoir renders it difficult to tell whether there was lingering resentment ten years after the lawsuit or if she just chose to focus elsewhere; regardless, Minnie Maddern Fiske warrants a longer and much more obviously glowing recollection.<sup>[4]</sup>

After their successful collaborations in the 1880s, it is perhaps no surprise that in 1900, when Harrison began working on *The Unwelcome Mrs. Hatch*, she once again turned to Belasco as she and so many others had done, looking for his assistance with staging and plot development, as well as potential production opportunities. The ensuing work resulted in the lawsuit. Some elements are clear: the two did communicate and collaborate on the drafting of an early version of the play. Belasco did work with Harrison on the script in the spring of 1900, at the Harrison’s house on East 29<sup>th</sup> Street in New York, before the short story version was published in 1901. Harrison communicated with Belasco repeatedly, and yet she did not always incorporate his suggestions. Belasco seems to have been a much more reluctant communicator, particularly throughout 1901. Indeed, Belasco’s interactions with the script seem to have stopped in 1900, and there is little disagreement that the script, as it stood at that time, had some significant weaknesses. Letters submitted to the court from both Harrison and Belasco reveal that she attempted to contact Belasco repeatedly between the spring of 1900 and the fall of 1901 to make progress, set a contract, and get her draft manuscripts returned. Her husband, the lawyer Burton N. Harrison, also began contacting Belasco in summer 1901. Throughout, Belasco would occasionally reply directly or via his business manager, Benjamin Roeder, but significantly fewer responses from Belasco and Roeder were submitted into evidence. The extant evidence, while contradictory and at times subject to spin and to charges of being fabricated or heavily edited by Belasco, shows that the pair worked together on a script with the unwritten understanding that Belasco might produce it in the future. There was, however, no contractual agreement to do so.

As the months passed in 1900 and early 1901 with no contact from Belasco, Harrison seemed to realize that she needed to finish the play, fully sever ties with Belasco, and get him to return her manuscript. Indeed, the Harrisons sent a significant number of requests to Belasco and Roeder requesting the return of

various manuscripts that Harrison sent for his perusal, including but not limited to *The Unwelcome Mrs. Hatch*. In part, the success of the short story sparked her renewed attempts to contact Belasco, attempts which appear to increase with frequency in the spring and summer of 1901. His silence clearly aggravated her, and she seemed to be demurring by claiming that she wanted to work on it, even though she still had a copy.<sup>[5]</sup> Underneath her feigned desire to just finish the project, Harrison seems, at long last, to have realized the danger that Belasco presented to her intellectual property.

In May 1901, Harrison lacked any concrete commitment from Belasco. Her agent, Alice Kauser, sent the script to the Fiskes, who worked with Harrison to revise it and finally offered her a contract in October 1901. It appears that the review, acceptance, and offer process transpired quite quickly, despite the play needing and receiving revisions. Kauser confirmed receipt of the play from Harrison on the 15<sup>th</sup> of May and Harrison Grey Fiske replied to her on the 18<sup>th</sup> with his critique.<sup>[6]</sup> He asked to keep the manuscript to show it to Minnie Maddern Fiske, who then decided to work with Harrison throughout the summer on revising the piece before putting the script under contract, just as Belasco had done in early 1900, minus the contract.<sup>[7]</sup> The letter announcing the contract for the now revised play contract is dated 12 October 1901, two days before rehearsals began and approximately six weeks before the show opened.<sup>[8]</sup> In the intervening months between first reading and opening night, the Fiskes and Harrison continued working together on the script.

When advance press for the production appeared in the papers in late October, Belasco contacted Harrison Grey Fiske, claimed ownership that he could not prove, and requested an injunction against the production, suing the Fiskes – but notably not Harrison. The Fiskes, in their amended answer to the injunction, also clearly saw that Belasco’s complaint – be it ownership, contractual, or collaborative – was with Harrison: “Constance C. Harrison is a necessary party defendant for the complete determination of the questions involved in this action.”<sup>[9]</sup> This curious decision is never addressed by Belasco in extant documents. By arguing that he owned the piece, Belasco logically would have sued the Fiskes for producing it without his approval. Given his ongoing producers’ battle with the Fiskes and others, one reasonable interpretation for why he was going after the Fiskes is that, financially, he could wound the Fiskes by interrupting rehearsals and obtain royalties from their production if it continued under an agreement. Indeed, Harrison Grey Fiske estimates the amounts the company spent preparing the production to be “about sixteen hundred dollars (\$1600) a week” in salaries for the 51 company members, \$8,000 in scenic and costume investiture, and “the gross expenses per week of the company and the Manhattan Theatre aggregated nearly \$5,000.”<sup>[10]</sup>

Yet, the omission of Harrison from the injunction also suggests that Belasco did not give credence to her work or input, a perception reinforced by his discussion of her throughout his affidavit as an employee in need of his supervision rather than as a creator or equal: “Mrs. Harrison immediately took a fancy to the story and told me that she would be able, under my supervision and in collaboration with me, to make a good play out of it.”<sup>[11]</sup> Indeed, his argument that the play was his own idea and property relies upon his presentation of Harrison as little more than someone who “molded these ideas of mine into shape and wrote out the dialogue under my supervision;”<sup>[12]</sup> the gendered bias towards and discounting of her skills is necessarily intertwined with his refusal to grant her ownership of her ideas, much less active participation in the creation of the script. Responses to the suit counter this perception thoroughly – with the Fiskes, Harrison, her husband, and Charles Lydecker, the Fiskes’ lawyer, giving Harrison credit for her work; yet, they, too, traffic in gendered perceptions of her naivete to make their case.

While Belasco ultimately withdrew the suit after the Fiskes' production had opened under a cloud of ironically profitable publicity, this overall timeline is vital for establishing that there were at least two collaborative writing relationships which produced this play, and that reality becomes a key point in the legal case. Harrison and the Fiskes worked on the piece for at least four months in 1901, through visits and letters, prior to contracting the piece for production in October. They also continued working on the piece during rehearsals. This method of writing paralleled how Harrison had been interacting with Belasco in the spring of 1900, including uncontracted jointly undertaken revision work, but the key difference is that Belasco never signed a contract with Harrison, despite communications between Roeder and the Harrisons about a potential contract.

### Manuscripts and Authorial Control

At the time of the Belasco suit, copyright and theatrical law in the United States was still governed by the Copyright Act of 1790 and being solidified through court cases, but the type of collaboration which produces theatrical scripts was not well addressed by this law; the US legal system is still grappling with theatrical collaboration in its various permutations. Indeed, in 2012, Ryan J. Richardson remarked that “[a] few notable scholars in the legal community, however, have alleged a more systemic problem—the inability of American copyright law to adequately reward and protect the uniquely collaborative expression that is live theatre.”<sup>[13]</sup> Richardson traces through how writing and production collaborations present conundrums which parallel some of those raised in this case. Throughout her affidavit,<sup>[14]</sup> Harrison argues for ideas that Douglas Nevin also notes are the cornerstones of contemporary and historical copyright law – originality and creativity,<sup>[15]</sup> treating collaboration as merely part of the single author's creative process. Belasco chose to focus on contracts and ownership – despite having no supporting material to suggest a claim to ownership nor any signed agreement with Harrison which permitted him to produce her play. Seemingly, the Fiskes and Harrisons feared there was sufficient grey area on the nature of collaboration and its impact on authorship – and by extension, on ownership – that they created a substantial counter-argument to this point.

Indeed, Harrison may have potentially created an ownership conundrum by providing Belasco with manuscript copies of her plays. The volume and intensity of documentation about the physical manuscript suggests a deep concern regarding physical control of the manuscript versions, for a variety of possible reasons. As Derek Miller discusses, in this period where nuances of copyright law were still being actively developed in the courts, “[m]anuscripts – or in later decades, scripts printed for private use – remained important for controlling uncertain rights, particularly for playwrights whose work was valuable on both sides of the Atlantic.”<sup>[16]</sup> Belasco's injunction notice was delivered to the Fiskes, informing them that “on the hearing of the motion for an injunction in this action, we will hand up to the court the original manuscript of ‘The Unwelcome Mrs. Hatch,’”<sup>[17]</sup> which certainly seems to validate the Harrisons' concerns. Further, the *Complaint* notes that the play has not yet been published or performed in public,<sup>[18]</sup> relying upon nineteenth-century notions that publication, performance, and copyright were means by which ownership could be established.<sup>[19]</sup> By submitting an original manuscript of the still unpublished text, he could argue ownership of the play. The copyright registration process at the time also complicated matters; as per typical process, Harrison sent in the title page on 8 October 1901 to copyright the title, but two copies of the script, published by the printer CG Burgoyne, were not submitted until 26 November 1901, which was the day after the show opened.<sup>[20]</sup> The title, thus, was the only part of the play that was under copyright when the injunction was issued, although Belasco seems unaware of this as the 8 November 1901 *Complaint* argues that “said play and title are original and [...] no other play has

been written or produced having said title”;[\[21\]](#) the play was still being revised. As will be discussed later, this timing may well have given Harrison and the Fiskes sufficient warning to alter any elements they may have attributed to Belasco.

The materials also include extensive discussion of the typist, which Belasco submitted as part of an argument that since he paid to have the piece typed, he owned it.[\[22\]](#) Harrison does not dispute the copy of Harrison’s letter that Belasco submitted into evidence detailing these arrangements, so it is clear that the script was typed and that Belasco paid for it. Harrison’s letter reveals that she asked the typist to charge Belasco for the “Hatch” script and charge Harrison for typing another of her scripts, “His Better Half;” she also asked the typist whether the original copies of the last acts had been sent to Belasco or not because they had not been returned to her.[\[23\]](#) Belasco argues that this payment clearly indicates his ownership of the manuscript. Meanwhile, Harrison claims that: “Belasco expressed an eager desire to have the work of typing this play, so as it had been then finished in a rough way, done in a hurry, so as to enable him to take it with him on the voyage to Europe, sailing at the end of March [1900] – and so he requested me to send it to his typewriters (as he called them) who, he said, were very familiar with that kind of work.” She also remarks that she usually uses the “typewriters down town employed by my husband” for her own work and that she had not sent the text to them because it was not yet ready.[\[24\]](#) The posturing by both here is clear: Harrison is laying the groundwork to argue that the script wasn’t finished, as she does throughout her affidavit, and that it was only typed because Belasco demanded it before leaving for Europe. Belasco, meanwhile, is claiming that the fact that he paid for the Hatch script and Harrison paid for the other script clearly indicates perceived ownership of the individual scripts on the part of both parties.

A third interpretation, however, is possible, when the typing note is read alongside another letter Harrison wrote to Belasco, submitted by Belasco as Exhibit 3: “Here is ‘Mrs. Hatch,’ and I send her to you with a goodspeed for her, and for you, upon your voyage!” She also included “His Better Half,” the other play that was typed. And, Harrison continues, “My husband thinks you had better send me a memorandum about the play to-morrow, so that we can look over it, before I sign anything.”[\[25\]](#) Harrison does not dispute this letter, either, but she also does not directly reference it in her affidavit. She does, however, acknowledge that she and her husband met with Roeder in April 1900 to discuss terms, but no contract was ever signed. Given that Harrison clearly assumed that Belasco would be producing her play at some point in the future, his decision to pay for the typing seems, perhaps, logical for a future producer who wished a copy of the play to continue their collaborative writing. The sheer number of times Harrison points out that this March 1900 encounter was the last active engagement between the two about the script suggests a strategy to establish a collaborative relationship that failed and was never solidified under contract.

After all, by mid-May 1901, the Fiskes had a version of *The Unwelcome Mrs. Hatch*, and Harrison may have been feeling pressure to get revisions fully underway to ready the script for possible production by them and to be clearly and fully in control of her work, physically and intellectually. Throughout the court documents, reference is made to how much work the May script needed, which may again have been a legal maneuver as well as a statement of fact. Harrison admits, for instance, in a 23 May 1901 letter that the play “is deficient in the elements of success in its present form,”[\[26\]](#) and her husband notes on 4 October 1901 that “the play was left unfinished a year ago last spring.”[\[27\]](#) The latter, presumably, is an attempt to discredit any claim Belasco may have made by establishing the length of time that had passed since his active participation in the collaboration.

This 23 May letter, however, is peculiarly timed and indicative of some of the documentation challenges in this case. The Fiskes expressed interest in the script a week prior to when Harrison pleaded “I can’t bear to lose that I have already done, and I therefore appeal to your kindness to send me back your copy of the play, also my two other plays “Bitter Sweet” and “His Better Half,” which I asked you to read.”<sup>[28]</sup> On the surface, she writes in a manner which exploits numerous gendered tropes, undermining her own “deficient” work and fawning over Belasco who has his “hands full of important and successful ventures.” Given that the Fiskes are now working with her on the script and considering a production of it, however, it seems clear that Harrison’s desire to “make it better for my own satisfaction, if with no other result” is overt gendered cover for her real intent: to have the script produced by the Fiskes with no intervention by Belasco and to get the manuscript returned. Harrison claims in her affidavit that this letter was written in 1900, which does not make sense since it clearly mentions that she has “now waited for a whole year with patience and courtesy,” which correctly dates the letter as 1901. She also accuses him of changing her words in a letter submitted into evidence to be “projected collaboration” instead of “proposed collaboration,” but does not take issue with the rest of the language in the letter, leading readers to assume her date of 1900 is perhaps a typo or perhaps an attempt to obfuscate the timing of her relationship with the Fiskes.<sup>[29]</sup>

### Devaluing Women’s Labor

Belasco’s reputation for suing competitors and being generally obstreperous was well known publicly and professionally at this point. This characterization seems to have to been accepted by all involved in this case from the very start, except for Mrs. Harrison, who appears naïve throughout the extant documents, though she is presumably playing at that gendered obliviousness by the time of the 23 May 1901 letter discussed just above. Jeannette Gilder, co-editor of *The Critic* and publisher of Harrison’s work, told her that she was “having the same experience with Mr. Belasco that many others have had.”<sup>[30]</sup> Her husband reports that he “was apprehensive” about Harrison’s initial contact with Belasco, “warning her of his reputation of unscrupulous dealing and for general inveracity.” Yet, Harrison reportedly “replied by reminding [him] that she had seen much of him long ago, had put him under obligations in her dealings then with him, had received repeated expressions of his gratitude, adding that she did not think he would act towards her otherwise than uprightly and with consideration.” As he notes, “[t]his sequel tells its own story.”<sup>[31]</sup> Throughout the legal materials, the Fiskes and Burton N. Harrison appear to be carefully, though not overtly, pointing towards Constance Harrison’s naiveté in dealing with Belasco. The narrative suggests that Harrison still chose to view him as the younger man who had been so helpful early on in her career; she is depicted as a trusting and ultimately exploited amateur female playwright.

Clearly, other producers were willing to work with her, but it is unclear whether she *was* meek and trusting, or whether the legal documents wished to depict her as meek and trusting in order to play upon the judge’s sympathies. After all, it seems entirely reasonable that Harrison went to Belasco in hopes of getting her play produced by him because of their past connection; he was now in a position to make her a successful playwright. During the whole *Mrs. Hatch* episode, she sent him two other plays and also some sketches, about which she asked: “Can you suggest to me how I can get them produced in vaudeville or otherwise without my name? I should be so glad of an opportunity to see them played.”<sup>[32]</sup> Such decisions may reflect a calculated agency and desire to expand her writing career into the professional theatre, but they also can play into the narrative the Harrisons and the Fiskes created.

This manipulation of her gendered position of power, or lack thereof, also extends into some of Belasco's more problematic claims and her defense against them. He argued that one of the reasons why he supposedly worked with Harrison was her class and gender: "Being a society woman, familiar with the ways of society, that fact was one of the considerations that influenced me to give her the work."<sup>[33]</sup> In doing so, Belasco could have capitalized on contemporary trends to appeal to audiences by employing society women, a strategy successfully deployed by his competitor Augustin Daly.

### **Author's Rights, Contracts, and Co-Authorship**

Belasco's ownership concerns form the starting point for Charles Lydecker's arguments in his "Memo in Opposition to Motion for Injunction," which include four main points about authors' rights and co-authorship, which he details in varying degrees and supports with citations to case law and practice. First, he notes that authors should be able to benefit from their work; he also points out that Belasco admitted that Harrison contacted him to ask for advice, implying that she was the author. For Lydecker, "[t]he turning point in all cases rests upon the rights of the author. If Mrs. Harrison is the author of the play, the right on injunction rests with her."<sup>[34]</sup> The issue, then, becomes one of authorship and authors' rights. The parties do not appear to be at odds on this particular point.

Lydecker expands upon the issues of manuscript possession and authorship in a structured counterargument which begins with an acknowledgement that rights can be assigned by the author to another party, as in the case of Harrison granting production rights to the Fiskes. Here, Belasco is called out for clearly understanding that this is how rights work and for having no contracts to support his claims. Indeed, Lydecker notes that Belasco's professed desire "to make arrangements to bring out the play in 1902 is a subterfuge and shows abandonment;"<sup>[35]</sup> by claiming that future plans should prohibit the Fiskes from producing the play immediately, Belasco reveals an acceptance that Harrison is the author, a desire to relate to the play as a producer in the future, and a general goal to prevent the Fiskes from profiting off of the piece. Nothing would prevent Belasco from obtaining the rights to produce the show later; indeed, he did so in 1903, where Alice Kauser reported that it "played the first week to very large business. They are going to continue it for this week (the second week) and may be for a third week if the popularity of the play continues on."<sup>[36]</sup> Lydecker and Fiske both argue that Belasco's failure to obtain any kind of contract with Harrison at any point during 1900 or 1901 as a key element of his lack of standing in the case.

Belasco's arguments conveniently skate past any acknowledgement that there is no signed paperwork, but they do provide another fascinating window into the complex performance of gender which floats just beneath the surface of the case. Ironically, Belasco appears to grant Harrison more agency to enter into a contract than anyone on her side of the courtroom, even though he is simultaneously trying to claim that she couldn't possibly have written the piece herself. In some documents, Belasco claims that the Harrisons were stalling on writing an agreement,<sup>[37]</sup> but he also attests that Constance Harrison, Belasco and Benjamin Roeder, his business manager, came to terms on a contract on their own, in the Harrison's house, while Burton Harrison was in another room.<sup>[38]</sup> The Harrisons staunchly deny his claim that they were to draw up the contract and even more vociferously contest that Constance had negotiated a contract without her husband's input.<sup>[39]</sup> Extant letters from Harrison's agent about her publishing support the Harrisons' claim that Burton handled her contractual matters. For instance, all correspondence about the production contract was between Burton, the Fiskes, and her agent Kauser, even though later letters about the weekly grosses are addressed to Constance. This arrangement enables

the defense to present an image of Mrs. Harrison as a woman unschooled in business matters, but it also undercuts the logic of Belasco's claims. Societal expectations may well have provided a convenient defense, no matter any degree of guilt, and the Fiskes and the Harrisons appear to have exploited these social constructs when convenient.

Ultimately, Lydecker argues for the same interpretation of the relationship between contract and copyright law as the Second Circuit eventually does in 1991 in *Childress v. Taylor*, 945 F.2d 500, 502 (2d. Cir. 1991), which notes that "In the absence of a contract, the copyright remains with the one or more persons who created copyrightable material."<sup>[40]</sup> Lydecker notes early in the memo that "[n]o facts alleged sustain the claim that the plaintiff is an assignee of the author's property"<sup>[41]</sup> and then returns to this point later while remarking that the contemporary case law supports the notion "that copyright vests in the employer only by agreement."<sup>[42]</sup> Recall that at the time of the suit, Harrison had filed the title with the copyright office on 8 October 1901,<sup>[43]</sup> but the script was not submitted until after the injunction was filed and the show opened. Thus, Harrison was left to prove that she was the sole author of the piece.

The legal precedents regarding joint authorship, working relationships, and collaboration are the areas which may have provided the most potential for Belasco to have a winnable argument, even if his affidavit does not make these points particularly clearly or effectively. While it should be noted that Belasco claimed full ownership rather than joint authorship, a detail which perhaps speaks more to his intention to shut down the production and a general megalomania, the case still raises numerous issues with regards to how authorship and collaboration are defined, and thus rewarded, through copyright protections and ensuing potential profitability. Lydecker establishes that if the piece were "the joint product of the minds of the plaintiff and Mrs. Harrison," then "under a proper agreement," the two would be legally bound to provide rights to both authors.<sup>[44]</sup> Belasco, again, has no such proof of such an agreement, but their collaboration certainly was treated as a potential problem due to this concept of "joint product." This notion of co-authorship gets expanded further in Lydecker's final point, which quite extensively cites case law for the various nuances of his arguments about authorship, ownership, and injunctions. After acknowledging that there was a collaboration, he argues based on contemporary understanding of copyright that "[t]o constitute joint ownership there must be a common design."<sup>[45]</sup> Joint authorship requiring intent to create a joint work remains a hallmark of US copyright law through much of the twentieth century, though it gradually becomes complicated by questions about the degree of contribution, "work for hire" rights, and related concerns,<sup>[46]</sup> many of which are visible in this case as well.

Lydecker continues by expanding on the notion of "common design," citing a case between Levi and Rutley, wherein a playwright hired to write a play retained authorship rights.<sup>[47]</sup> This explication quite clearly responds to Belasco's claim that Harrison worked for him.<sup>[48]</sup> Harrison's presumption that she could receive feedback from Belasco without incorporating all of it casts further doubt on Belasco's claims that she was working for him, rather than he providing advice to her; he did not control the content. Belasco's own claims that he hired Harrison to write *for* him also undermine any potential argument about joint authorship, based on the case law Lydecker raises as well as simple logic. Harrison quite clearly believed their collaboration to be one where Belasco was to help her with *her* writing, presuming that Belasco would then produce the play; the Amended Answer from the Fiskes notes that Harrison was willing to pay Belasco for any consulting expenses incurred.<sup>[49]</sup> A contract to that effect might well have helped Belasco, insofar as it would have proved that Harrison had agreed to write jointly with him or for him, while also clarifying whether he had the rights to produce the play.

## The Confusion of Collaborative Writing Processes

In addition to the confusion about establishing theatrical rights at a time when the legal systems are still responding to production developments,<sup>[50]</sup> the theatrical scripts under consideration did not come into existence in a clean process, a reality which underpins much of the legal consternation and debate around collaboration in this case. *The Unwelcome Mrs. Hatch* followed standard procedures then as now as ever in a collaborative art: Harrison brainstormed, wrote, and revised over the course of many months with input from a wide variety of parties including potential producers, and by the time the Fiskes offered her a contract in October 1901, none of these collaborators made any claims for co-authorship. As was normal for their publishing relationship, Harrison received input from her agent, Alice Kauser, throughout the process. She also consulted her lawyer husband, Burton N. Harrison, for advice on the legal aspects of the play. Furthermore, as Fiske and Harrison both note in their affidavits, a stage manager would often provide advice to a playwright in advance of staging a play; indeed, that is how Belasco and Harrison had worked in the 1880s on plays that were considered her works, despite his input and assistance.

Harrison's correspondence archive at the NYPL does contain numerous exchanges with producers about a wide variety of her works, including *The Unwelcome Mrs. Hatch*.<sup>[51]</sup> Kauser notes that when she sent the play to her agent in London – after the Fiskes' production was already running – the response was positive but included a request for a happy ending and a different title.<sup>[52]</sup> And, given the collaborative work that occurred with the Fiskes both before and after their contract had been signed, it appears that preemptive work on a rough script was the norm. For instance, Fiske's first reply about the play expressed some interest but noted specific revisions that would need to be made, namely that “the predominating motive of the play as found in its leading character would require, it seems to me, some relief in the amplification of the subordinate interests as they are at present. The element of maternal love is dwelt upon so continuously now that it may be monotonous.”<sup>[53]</sup> Likewise, a 1902 letter from William H. Kendal, wherein he declines to produce the play in London, also offers feedback to Harrison, suggesting that she “[reconstruct] the play giving equal prominence & interest to the man” and noting that he would look at it again if those changes were made. This letter, notably, was written after the play had already been successfully produced in New York; such notes speak both to the collaborative nature of the profession and the assumption that texts can always be updated as needed for successful production.<sup>[54]</sup>

Harrison's engagement in a collaborative writing process is not cast as any critique on her skills; indeed, the normalcy of such an approach appears to be a given. Yet, much of the discussion of the process and her naivete enables the defense to cast Belasco as a bully and her as the innocent victim. Harrison Grey Fiske, in particular, points towards Harrison's unimpeachable moral character and naivete as a woman while taking numerous opportunities to insult Belasco as he explains the collaborative writing process. The amended answer to the injunction moves quickly from a statement of facts into a barbed gauntlet “deny[ing] on information and belief that the plaintiff [Belasco] is an author and writer of plays,” though Fiske does “admit that plaintiff has been manager of various dramatic enterprises.”<sup>[55]</sup> The slights appear throughout the affidavit, too, where Harrison Grey Fiske depicts Belasco as an unskilled man who takes credit for others' work: “I know Mr. Belasco's capabilities and limitations with respect to play writing, and that I know how he engages people to write plays for him and then presents them to the public as his own.”<sup>[56]</sup> This line of defense calls into question Belasco's veracity, but it also enables Fiske to imply, throughout, that Belasco assumed he could manipulate Harrison in this fashion as well. Fiske demotes Belasco, claiming he only “rendered her certain aid and assistance as a dramatic manager and as a stage manager.” Further, he argued that Harrison was “a woman of social position and high personal character”

whereas “Belasco’s claims to authorship [have] frequently been questioned in the press and through legal proceedings.”<sup>[57]</sup> Harrison’s accomplished writing career is overshadowed by her class and gender here, rhetorically, to simultaneously attack Belasco and gain the sympathies of the court.

### Collaboration and U.S Law

While plays are often the result of this type of collaborative process, collaboration resides, then and now, in a vague legal territory, particularly as pertains to this case. Indeed, the state of current case law and legislation underscores how dependent the parties in *Belasco v. Fiske* were on their own argumentation and evidence. Nevin, in his argument that current copyright law should be expanded to better accommodate theatrical production processes, notes that “copyright law lacks a proper mechanism to acknowledge the single most defining characteristic of the form—collaboration.”<sup>[58]</sup> Richardson concurs, describing “a more systemic problem--the inability of American copyright law to adequately reward and protect the uniquely collaborative expression that is live theatre.”<sup>[59]</sup> He notes, however, that proposed current solutions in legal discussions insufficiently address the concerns of theatrical collaboration because of their attempts at universality and that they may indeed hinder creativity.<sup>[60]</sup> Protections afforded through joint authorship were added to the 1976 Copyright act as a result of “a series of notable cases<sup>n156</sup> following the enactment of the Copyright Act of 1909, which conspicuously contained no express provisions governing joint authorship.”<sup>[61]</sup> In their defense documents, thus, Harrison and the Fiskes addressed legal debates which the courts still have yet to fully resolve.

Additionally, Anne Ruggles Gere’s assessment of collaborative writing in women’s groups at the end of the nineteenth century provides another potential, and gendered, avenue for considering Harrison’s approaches to collaboration and concerns about the intersection between collaboration and authorship. As copyright law was being solidified, women’s groups, Gere argues, were working in various ways which “resisted dominant concepts of intellectual property and authorship. Collaboration played a major role in writing.”<sup>[62]</sup> The processes of sharing, receiving feedback, adapting texts from other sources, and generally collaborating on writing products parallels the processes used in theatrical script development. Harrison’s prior theatrical experiences included developing scripts with a group of amateur performers and, notably, Belasco; those productions appear to followed some of the models of collaborative development that Gere discusses. Many of her scripts, including *The Unwelcome Mrs. Hatch*, draw on or overtly adapt other texts in a manner which, while legal at the time, reveals a more fluid approach to writing, authorship, and ownership than the law would eventually settle upon. Gere argues that the clubwomen were subverting norms through a variety of literacy activities including collaborative writing and adaptation,<sup>[63]</sup> and while Harrison is not obviously working with a club, Gere’s presentation of alternate views of authorship and the impact of collaboration thereon provide another potential avenue for understanding Harrison’s focus on collaboration in her affidavit. These practices question the fixed nature of authorship and textual development that copyright law relies upon for clarity.<sup>[64]</sup>

Little in Lydecker’s memo directly cites case law specifically about collaboration, but the avenue that he took – the need to establish authorship and the nature of the rights granted to authors – may well have inspired Harrison to expend a great deal of time in her affidavit discussing their collaboration and possibly make some late changes to the text. Taken as a whole, the defense materials reveal concerns that Belasco would and could argue collaboration and thus, perhaps, joint authorship as a means of arguing co-ownership. Interestingly, Belasco only raises collaboration twice – once while describing the initial idea for the project and later while discussing the work that they did on the piece.

Harrison, conversely, discusses the nature of collaboration endlessly in her affidavit, directly countering the belittling presumptions in Belasco's affidavit by keeping the focus on her authorial power, positioning Belasco as her assistant at times and as a potential producer at others. She explains "I said to him that I had sent for him because I thought he could, and perhaps would, assist me by collaborating and staging and bringing out the play I might write."<sup>[65]</sup> Throughout, the dispute again comes down to contracts and input on the script. Harrison points out that "[i]t is not true that, at that interview or at any time, an arrangement for collaboration with him was suggested, except as I have here above stated – collaboration with him having been suggested only as part of a suggested entire arrangement which included staging and production by him."<sup>[66]</sup>

### Collaborative Writing Processes

Harrison's assessment of Belasco's contributions to the piece as a means of collaboration form the bulk of her counter-argument and shed further light on the collaborative writing process. Belasco claims in his affidavit that "I would sometimes remain at her house from six to seven hours collaborating with her."<sup>[67]</sup> In addition to denying the length and number of times they met, Harrison pointed out the many months between his departure for Europe in March 1900 and the suit in October 1901, "during all of which time he had utterly failed and neglected to do anything whatever in the way of collaborating."<sup>[68]</sup> She defines collaborating as having a "share or participation in the creation of the story or in the design or plot or general structure or construction of the play," and goes on to classify Belasco's involvement with the script as akin to that of a stage manager.<sup>[69]</sup> While demoting Belasco here, she also neglects to mention in this section that the input he seems to have given her was quite similar in type and perhaps scope as the input given by the Fiskes. She further remarks that he had "the opportunity" to collaborate on the script since he had requested the typed version in March 1900, but that he had chosen not to do so.<sup>[70]</sup>

Indeed, their descriptions of the collaborative process they used provide a fascinating look into how they both viewed each other and the work. Belasco, throughout his affidavit, discusses how he "gave her the story and the plot" and similarly dictated other elements.<sup>[71]</sup> The notes on the script which he submitted are, indeed, quite dictatorial in their presentation: the pages are merely new pieces of text with no context or elaboration. Minnie Maddern Fiske, by contrast, explained and contextualized her suggestions and requests in the extant notes. Both Belasco and Harrison acknowledge sessions where lines were read. Belasco claimed he would read the lines and Harrison would take notes. Harrison, however, describes these meetings in a way that can best be described as a thinly veiled excoriation of his talents:

though it is true that, whilst I wrote he sometimes walked about the room and pulled his hair in apparent excitement, sometimes with his hands before him and trembling, as he said, in a low and agitated voice, in real or assumed emotion over what I had read him. "Ther-rills (thrills) – ther-rills, I can see the audience in their ther-rills" – and though it is true that I remember, he once sat at my desk and did the dumbshow of the "business" he said would be appropriate for the detective [...] As to Mr. Belasco's speaking a "dialogue," he always was difficult and slow of utterance – appeared to be unable to articulate except with effort and very tediously, and in mere explosives.<sup>[72]</sup>

Where neither side disputes that work was completed on the play with both parties in attendance at Mrs.

Harrison's house, the challenge then becomes establishing degree of collaboration, which even the courts still struggle to determine.

Curiously, Harrison appears to have been proactively asking about collaboration – seemingly before the lawsuit even occurred. The archive includes a tantalizingly incomplete letter to Harrison which was clearly written in response to Harrison reaching out to ask if the illegibly named correspondent remembered exchanging letters about the play and about collaboration. The letter's author replies to her inquiry: "So – my recollection of that correspondence upon matters dramatic is extremely vague. However, your statement of it seems entirely accurate. I think you wanted to know out my experience what the relations and TERMS were between collaborating dramatists, and I was obliged to confess that what should have been my experience was lodged in the bosom of THE CENTURY COMPANY who had made all the arrangements." The letter writer continues: "I do not remember that you mentioned the name of the play, for, it seemed quite fresh to my recollection when I saw the story in the 'The Smart Set;'"[73] the short story version of *The Unwelcome Mrs. Hatch* appeared in March 1901. While the letter writer claims to be unsure of many details, if we trust that that the conversation occurred, as implied, *before* the publication of the short story, then Harrison was asking about how collaborations worked in the spring of 1901 or in 1900 – long before the lawsuit and before the Fiskes became involved. Whatever sparked the original conversation, the inquiry which prompted this particular reply seemingly was meant to establish a defense – Harrison wanted to know if her correspondent had kept any of their initial set of letters, presumably to use them at trial.

### Tests of Originality and Plot Machinations

In this particular case, the multiple collaborations may have enabled Harrison to better prepare to counter Belasco's claims of originality, which may well have been problematic and hard to disprove legally. Originality is a key component of United States copyright law since the Copyright Act of 1790, which drew on similar ideas in English law. Belasco's main points of contention in his often-rambling affidavit are that the plot and the storyline were his original idea and that he hired Harrison to write that particular story with significant oversight and supervision by him. Harrison claims that the story is her version of a Sardou play, *Seraphine*, where a father is reunited with his daughter.[74] While establishing provenance is impossible, it should be noted that some in the press claimed a third source, as they saw the story as a loose adaptation of the hit *East Lynne*. [75] The storyline draws on popular narratives of the time, no matter the initial inspiration.

The plot, in brief, concerns a young married woman who learns that her husband is having an affair; she leaves him and has a short dalliance with a male friend in retribution, is sued for divorce and loses; she moves to California, leaving behind her young daughter, and sets up shop making lampshades as Mrs. Marian Hatch. Just as her new love interest proposes, Mrs. Marian Hatch learns of her daughter's upcoming marriage, and so she sells everything, spurns her suitor, and moves back to NY to see her daughter, pretending to be a stitcher working on her daughter's wedding dress to gain access. She continues to nobly suffer in silence, and after the daughter returns from her honeymoon, she learns the true identity of the stitcher, just in time for her long-lost mother to die of a weak heart.

The short story was published during Harrison's period of work with Belasco, providing Belasco with the plot and dialogue to compare to the draft manuscript which he had in his possession. What should have helped him potentially prove part of his case, however, also gave Harrison and the Fiskes a clear roadmap

of what they might want to change. And changes, they made. While early drafts of the play have not been located, the major differences between the play and the short story appear to have been written in collaboration with the Fiskes rather than with Belasco. And, the substantive nature of those alterations between short story and play may well have undercut any claim of joint authorship of the play that Belasco might have made. Numerous major and minor changes were made during the process of adaptation from short story to play, and little of Belasco's input seems to have survived the revision process, which may well have continued after the injunction was filed.

Extant correspondence about the revisions is generally brief and undated, limiting our ability to parse which changes might have been happening when. Additionally, numerous short undated letters from the Fiskes request her presence at the theatre and notify her of their visits to her house, some specifically mentioning the play and others simply confirming times and dates.<sup>[76]</sup> Quite a few letters between Harrison and the Fiskes discuss the play and its development, in particular the last act, which is significantly changed from the short story version, as well as the Paul & Lina scene, the Paul & Marian scene, and Mrs. Hatch's character. Paul Trevor, Mrs. Hatch's love interest, is an entirely new character for the play, and the plot alterations necessary to accommodate him were quite substantial; this love interest permits Mrs. Hatch to be more sympathetic, perhaps accounting for the character imperfections which Burton Harrison recommended so that the judge's decision is believable. Belasco and Harrison had considered making Mrs. Hatch purely innocent, but Burton Harrison objected because a judge would never have taken away an innocent society woman's child. Harrison followed this advice, telling Belasco: "my husband says our latest scheme to make Marion innocent, except of rash impulse, has simply robbed the play of all of its strength, and made it a tissue of improbabilities. He says no judge or referee in New York would ever have condemned a woman upon such a letter [...] the matter of innocence simply takes the backbone out of the play, and makes it invertebrate."<sup>[77]</sup>

Yet, given that the Fiskes and Harrisons had nearly a month between the notice of the lawsuit and opening night, it is possible that some of the minor details that survived the short story-to-play revision process were cut, just in case. Indeed, Belasco's complaint gave them a map of potential changes to make by submitting a typed copy of feedback on the first three acts with his affidavit as Exhibit 13; the press also ran the contents of the suit in great detail, with at least one paper reprinting the letters entered in as exhibits.<sup>[78]</sup> Remarkably few of those suggestions were in the final version of the play, perhaps because of artistic differences, but perhaps to assist with the defense. Numerous minor differences exist between the play and Belasco's notes – instead of Adrian's parents visiting, it's his sister; when the lawyer enters, Mrs. Hatch says "I haven't forgotten you" rather than Belasco's suggested "Yes... I remembered you;" a boy is replaced by a telephone; etc.

In one noticeably awkward substitution, a young boy at a May festival who had a balloon in the short story was instead given a toy boat in the play and told, "Hold fast Johnny boy. If Bobby gets it away from you, you're gone." The short story version was "Take care Johnny boy. [...] Hold very fast to your string. If it gets away from you, you're gone." Belasco wrote a whole bit about balloons going up, one child losing one and crying, and Mrs. Hatch talking to the child, saying, "You can get another! My balloon went up, long ago; and I couldn't!" None of that remains – balloons aren't mentioned at all.<sup>[79]</sup> Johnny's illogical need to hang onto his boat rather than his balloon seems to suggest the Fiskes and Harrison either were not quite so innocently being attacked by Belasco or were unsure of their legal standing and decided to make sure that play was sufficiently different to withstand scrutiny.

One tantalizingly unclear letter from Minnie Maddern Fiske to Harrison suggests that they might have been editing out parts which might give Belasco grounds to argue for collaboration, unless, of course, they were worried about the critics. Fiske writes, “Do you not think it would be well to cut, in Gladys’ 2<sup>nd</sup> Act scene – all reference to her mother so that the nasty and unfriendly ones won’t have a chance to say that we are forcing a situation!”<sup>[80]</sup> In the published version of the script, Gladys remarks periodically about her mother (Mrs. Hatch) in Act 2, but there’s only a brief reference to the off-stage Mrs. Lorimer, who is introduced as far more of the stereotypical social-climbing wicked stepmother in the short story pages which parallel Act 2. Belasco’s script notes, meanwhile, advise that an abbreviated version of the short story’s stern conversation between Mrs. Lorimer and Gladys remain, complete with the carriage arriving upstage.<sup>[81]</sup>

Whether or not the Fiskes and Harrison are guiltless in this endeavor or simply covering their bases is unclear, muddied by the paper trail and the long-standing animosity between the producers. The Fiskes do seem to have been playing a little fast and loose with the truth at times, for Harrison Grey Fiske’s affidavit implies a distant, past, notion that “a collaboration with Mr. Belasco and a production of the play by him was once contemplated”<sup>[82]</sup> and he tells the press “I knew that in some sort of a way Mr. Belasco had known of the writing of the play.”<sup>[83]</sup> Yet, Minnie Maddern Fiske’s correspondence suggests that she knows the backstory and its implications. She tells Harrison in an 8<sup>th</sup> September 1901 letter “Do not let Mr. Belasco know that I wish to present the play. The little man would hold to it with his last gasp if he thought that. I shall be so glad when it shall be finally in our hands.”<sup>[84]</sup> Whether Fiske expects a competitive battle from Belasco or whether she understands that Harrison had been working with him and was attempting to extricate herself from that relationship is unclear.

Belasco was at a serious disadvantage while building his lawsuit because he did not have access to this latest version of the script, nor did he appear to know that Harrison had been working with the Fiskes since May. He reportedly told her – in July 1901 -- that he wouldn’t be able to produce the show in the 1901-1902 season;<sup>[85]</sup> this document’s authenticity is questioned by Harrison, who denies ever receiving it.<sup>[86]</sup> Regardless, it still does not constitute a contractual agreement to produce the play, and in reality, by July she was already substantially revising the play based upon suggestions from the Fiskes; accordingly a whole section of Belasco’s argument falls apart.<sup>[87]</sup> His silence and failure to obtain a written contract enabled her to go elsewhere with the script, be it due to busyness or a devaluation of Harrison’s work until it was deemed stage-worthy by a competitor. He was fond of suing his competition, so it simply may be that he had no legal case and was on a deadline; he had less than a month to shut down the production, so ownership was the only logical power play that might result in a production delay and payout. Whether Harrison and the Fiskes would have been able to make a case about theatre’s collaborative writing history not constituting ownership, authorship, or joint authorship remains unknowable.

### **The Predatory Producer and the Female Playwright**

The difficulties of establishing the extent of a collaboration, and thus of being able to make a case for joint authorship, rest in part on intent, as Lydecker discusses, and in part on contributions to outcome, which has become a foundation for modern legal interpretations. While the law was not settled then (or now),<sup>[88]</sup> all sides spent a significant amount of time presenting the case for their contributions to the piece in a messy and protracted collaborative process – Belasco claiming ideas and inspiration, Harrison denying his input was used in the piece, and Fiske and the Harrisons both, seemingly, working to remove

any remnants of Belasco's imprint on the piece. Layered atop this was Belasco's bravado and the willingness of the entire defense team to cast Constance Harrison as a somewhat gullible woman for their benefit. In the end, the suit was dropped, without clear explanation, but the extensive legal archive and press coverage certainly suggest that all parties were concerned that Belasco might well have had a case despite not having a written contract with Harrison and that the rhetorical positioning of Harrison as a naïve and manipulated woman might not have been sufficient as a defense. The complexities and legal uncertainty surrounding extent of and intent to collaborate continue to appear in contemporary case law. The playwriting process of the early nineteenth century, particularly when a predatory producer encounters a female "amateur" playwright with enough skill to write a hit and a willingness to trust him despite others' concerns, was a messy enough collaboration that the law may have granted Belasco some compensation for his input, if the script sufficiently resembled the earlier version. One wonders if Belasco's obviously thin evidence was taken seriously simply because Harrison was a woman and "amateur" playwright and Belasco was granted immediate authority and credence as a professional man.

While the case is rooted in the competitive turn-of-the-twentieth century world of producers who were fighting to establish themselves and resist the Syndicate, the implications of this case and the historical outcomes for women and their labor remain all too familiar. The legal system still grapples with defining collaboration, but women's contributions to work products are ignored or undermined with the same unquestioned ease seen in Belasco's affidavit. Harrison, doubly challenged as a woman and a wrongly perceived amateur author, spends years trying to work collaboratively with Belasco in a playwright-producer relationship. Belasco, who cannot be bothered to reply to her letters despite their working relationship, appears in his affidavit to be incapable of imagining that a woman would collaborate *with* him rather than work *for* him. Harrison's capacity to function in a professional realm without male input is quite obvious in her archive – Harrison, Minnie Maddern Fiske, and Kauser are the three women who make this production happen through negotiation and collaboration. And yet, throughout the legal and press archives, Harrison's skills and professional capacity are constantly questioned. A century later, women's voices in collaborative work are still continually ignored, discredited, and questioned. Actual amateurs are systematically exploited for their labor through an industry that relies on underpaid positions, while experienced women are presumed amateurish, their work products and ideas claimed and turned into profit opportunities by men. That the law struggles to define collaboration reflects the messiness of creative processes; that teams still erase women's contributions to collaborations is symptomatic of a pernicious societal ill that led Belasco and Harrison to court.

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- [1] Abram J. Dittenhoefer, et. al., *Complaint Belasco v. Fiske*. Para 4. Lydecker Family Papers 1860-1983, SC 19048. Box 155 Case Files Belasco V. Fiske 1901-1903, Folder 9. Courtesy of the New York State Library, Manuscripts and Special Collections.
- [2] Mary A. Worley, "Alice Kauser, Playwright, A Woman of Ideas," *Los Angeles Herald*, 8 Feb 1903, 7. See also "Interview with Alice Kauser, 1904" excerpted from "Alice Kauser: A Chat with the Woman who Presides over the Largest Play Business in the World," *New York Dramatic Mirror*, 31 December 1904, in *Theatre in the United States: A Documentary History. Volume 1: 1750-1915 Theatre in the Colonies and the United States*, ed. Barry B. Witham (New York: Cambridge University Press, 1996), 188.
- [3] Mrs. Burton Harrison, *Recollections Grave and Gay*, (New York: Charles Scribner's Sons, 1911), 333.
- [4] Harrison, *Recollections*, 325-327.
- [5] "Exhibit 11." Copy of Letter from Constance Cary Harrison to David Belasco, 23 May 1901. In *Affidavit of David Belasco*. Lydecker Family Papers 1860-1983, SC 19048. Box 155 Case Files Belasco V. Fiske 1901-1903, Folder 9. Courtesy of the New York State Library, Manuscripts and Special Collections.
- [6] See, Letter from Alice Kauser to Mrs. Burton Harrison, 15 May 1901; Alice Kauser to Mrs. Burton Harrison, 17 May 1901; Letter from Harrison Grey Fiske to Alice Kauser, 18 May 1901; among others, in: Mrs. Burton Harrison, Correspondence re Unwelcome Mrs. Hatch, 8-MWEZ x n.c. 19,567 [Cage], Billy Rose Theatre Collection, New York Public Library.
- [7] See, among others, Letter from Minnie Maddern Fiske to Constance Cary Harrison, 8 September 1901. Harrison Correspondence, BRTC.
- [8] Letter from Alice Kauser to Mr. Burton Harrison, 12 October 1901. Harrison Correspondence, BRTC.
- [9] *Amended Answer*, 2/3 Dec. 1901, Para. 11. Lydecker Family Papers 1860-1983, SC 19048. Box 155 Case Files Belasco V. Fiske 1901-1903, Folder 7. Courtesy of the New York State Library, Manuscripts and Special Collections.
- [10] *Affidavit of Harrison Grey Fiske*, 15 Dec. 1901. Para. 26. Lydecker Family Papers 1860-1983, SC 19048. Box 155 Case Files Belasco V. Fiske 1901-1903, Folder 7. Courtesy of the New York State Library, Manuscripts and Special Collections.
- [11] *Affidavit of David Belasco*, 8 Nov. 1901. Para. 4. Lydecker Family Papers 1860-1983, SC 19048. Box 155 Case Files Belasco V. Fiske 1901-1903, Folder 9. Courtesy of the New York State Library, Manuscripts and Special Collections.
- [12] *Affidavit of David Belasco*, Para. 8.
- [13] Ryan J. Richardson, "The Art of Making Art: A Narrative of Collaboration in American Theatre and

a Response to Calls for Change to the Copyright Act of 1976,” *Cumberland Law Review*, 2011/2012. 42 Cumb. L. Rev. 489. Lexis-Nexis Academic. 492.

[14] It also should be reiterated that her husband was an experienced lawyer by the time of the suit.

[15] Douglas M. Nevin, “No Business like Show Business: Copyright Law, the Theatre Industry, and the Dilemma of Rewarding Collaboration,” *Emory Law Journal*, Summer 2004: 53.3, 1537.

[16] Derek Miller, *Copyright and the Value of Performance, 1790-1911*. (Cambridge University Press: New York, 2018), 195.

[17] *Injunction*. 6 November 1901. Box 155 Case Files Belasco V. Fiske 1901-1903, Folder 6. Courtesy of the New York State Library, Manuscripts and Special Collections.

[18] Dittenhoefer, et. al., *Complaint Belasco v. Fiske*, Para 10.

[19] See Miller, *Copyright and the Value of Performance*, 195-235, for an in-depth discussion of the intellectual traditions surrounding manuscripts, copyright performances, and related ways of establishing ownership in the nineteenth century.

[20] Library of Congress, United States Copyright Office. *Dramatic Compositions Copyrighted in the United States, 1870-1916*. Vol. 2. (Washington: Government Printing Office, 1918), 2448. Copyright number 48453. Issued October 8 1901, 2c Nov 26 1901. D: 935.

[21] Dittenhoefer, et. al., *Complaint Belasco v. Fiske*, Para 10.

[22] Whether or not he did submit the manuscript to the court is unclear. The draft script is in neither Lydecker’s nor Harrison’s files on the case.

[23] “Exhibit 4.” Copy of Letter from Mrs. B. Harrison to Mr. Nash, 2 April. *Affidavit of David Belasco*.

[24] *Affidavit of Constance Cary Harrison*, Para. 38. 13 November 1901. Lydecker Family Papers 1860-1983, SC 19048. Box 155 Case Files Belasco V. Fiske 1901-1903, Folder 8. Courtesy of the New York State Library, Manuscripts and Special Collections.

[25] “Exhibit 3.” Copy of Letter from Constance Cary Harrison to David Belasco, Sunday. *Affidavit of David Belasco*.

[26] “Exhibit 11.” *Affidavit of David Belasco*.

[27] “Exhibit X.” Copy of Letter from Burton N. Harrison to David Belasco, 4 October 1901. In *Affidavit of Burton N. Harrison*. 13 November 1901. Lydecker Family Papers 1860-1983, SC 19048. Box 155 Case Files Belasco V. Fiske 1901-1903, Folder 6. Courtesy of the New York State Library, Manuscripts and Special Collections.

[28] “Exhibit 11.” *Affidavit of David Belasco*.

[29] *Affidavit of Constance Cary Harrison*, Para. 44.

[30] Letter from Jeannette L. Gilder to Mrs. Burton Harrison, 10 October 1901. Harrison Correspondence, BRTC.

[31] *Affidavit of Burton N. Harrison*, 13 November 1901, Para 5.

[32] “Exhibit 1,” Copy of letter from Constance Cary Harrison to David Belasco, Wednesday. *Affidavit of David Belasco*.

[33] *Affidavit of David Belasco*, Para. 8.

[34] Charles Lydecker, *Memo. in Opposition to Motion for Injunction*, 15 Nov. 1901, Part 1. Lydecker Family Papers 1860-1983, SC 19048. Box 155 Case Files Belasco V. Fiske 1901-1903, Folder 7. Courtesy of the New York State Library, Manuscripts and Special Collections.

[35] Lydecker, *Memo.*, Part 2.

[36] Letter from Alice Kauser to Constance Cary Harrison, 14 September 1903. Harrison Correspondence, BRTC.

[37] *Affidavit of David Belasco*, Paras. 12-21.

[38] *Affidavit of David Belasco*, Paras. 13-14.

[39] *Affidavit of Burton N. Harrison*, Paras. 6-10; *Affidavit of Constance Cary Harrison*, Paras. 47-53.

[40] Qtd. In Richardson, “The Art of Making Art,” 517.

[41] Lydecker, *Memo.*, Part 2.

[42] Lydecker, *Memo.*, Part 4.

[43] United States Copyright Office, *Catalogue of Title Entries of Books and Other Articles*, Fourth Quarter 1901, Volume 29 (Washington DC: Government Printing Office, 1901), 1470.

[44] Lydecker, *Memo.*, Part 3.

[45] Lydecker, *Memo.*, Part 4.

[46] For a general assessment of the complications and history of notions of joint authorship in US Copyright law, see Edward Valachovic, “The Contribution Requirement to a Joint Work under the Copyright Act,” *Loyola of Los Angeles Entertainment Law Review*, 12.1 (1992): 199-219.

[47] Lydecker, *Memo.*, Part 4. He cites *Levi v. Rutley*, Law Reports 6 C.P., 523, Smith J. Later cases and updates to the copyright law on joint authorship move towards a clearer definition of “work for hire”

rights residing with the employer.

[48] Again, these are issues with which contemporary copyright cases still grapple, though Richardson notes that work-for-hire has generally been settled as inapplicable now for contemporary production conditions: "Courts, more or less, have embraced this narrow definition of authorship, holding that because playwrights and composers initiate (and occasionally complete) the vast majority of their work before a producer is solicited to fund a production, they are considered "independent contractors" and are not subject to the work-for-hire doctrine." Richardson, "The Art of Making Art," 510.

[49] While this claim is made in the *Amended Answer*, Para. 10, Harrison herself avoids explicitly mentioning remuneration in her affidavit.

[50] See Miller throughout.

[51] See Harrison Correspondence, BRTC.

[52] Letter from Alice Kauser to Constance Cary Harrison, 10 December 1901. Harrison Correspondence, BRTC.

[53] Letter from Harrison Grey Fiske to Alice Kauser, 18 May 1901. Harrison Correspondence, BRTC.

[54] Letter from William H. Kendal to Mr. Day, 1 July 1902. Harrison Correspondence, BRTC.

[55] *Amended Answer*, Para 2.

[56] *Affidavit of Harrison Grey Fiske*, Para 20.

[57] *Amended Answer*, Para 4.

[58] Nevin, "No Business like Show Business," 1534.

[59] Richardson, "The Art of Making Art," 492.

[60] Richardson, "The Art of Making Art," 493

[61] Richardson, "The Art of Making Art," 508.

[62] Anne Ruggles Gere, "Common Properties of Pleasure: Texts in Nineteenth Century Women's Clubs," in *The Construction of Authorship: Textual Appropriation in Law and Literature*, eds. Martha Woodmansee and Peter Jaszi (Durham: Duke University Press, 1994), 391.

[63] Gere, "Common Properties of Pleasure," 397-399.

[64] For a general assessment of the historical development and complications of collaborative work, see Peter Jaszi, "On the Author Effect: Contemporary Copyright and Collective Creativity," in *The Construction of Authorship: Textual Appropriation in Law and Literature*, eds. Martha Woodmansee and

Peter Jaszi (Durham: Duke University Press, 1994), 29-56.

[65] *Affidavit of Constance Cary Harrison*, Para. 10.

[66] *Affidavit of Constance Cary Harrison*, Para. 16. The lack of an agreement on collaboration also appears in Para. 45, where she also accuses him of changing her words in a letter submitted into evidence to be “projected collaboration” instead of “proposed collaboration.”

[67] *Affidavit of David Belasco*, Para. 8.

[68] *Affidavit of Constance Cary Harrison*, Para. 20.

[69] *Affidavit of Constance Cary Harrison*, Para. 28.

[70] *Affidavit of Constance Cary Harrison*, Para. 41.

[71] *Affidavit of David Belasco*, Para. 7.

[72] *Affidavit of Constance Cary Harrison*, Paras. 29-31.

[73] Letter from Unknown Author to Constance Cary Harrison, [1901]. Harrison Correspondence, BRTC.

[74] *Affidavit of Constance Cary Harrison*, Para. 7.

[75] See, for example, J. Ranken Towse, “The Drama,” *The Critic* 40 no. 1 (January 1902): 39-40; “The Stage,” *Town Talk* 11 no. 575, (5 September 1903): 21.

[76] See Harrison Correspondence, BRTC.

[77] “Exhibit 2.” Copy of letter from Constance Cary Harrison to David Belasco, Thursday Evening, *Affidavit of David Belasco*.

[78] Clipping. Robinson Locke Scrapbook. Volume 203 Reel 18, page 61. Robinson Locke collection, NAFR+. Billy Rose Theatre Division, The New York Public Library for the Performing Arts.

[79] Mrs. Burton Harrison, *The Unwelcome Mrs. Hatch* (New York: C.G. Burgoyne, 1901): 22; Mrs. Burton Harrison, “The Unwelcome Mrs. Hatch,” *The Smart Set* (March 1901): 14; “Exhibit 13.” Note 2, *Affidavit of David Belasco*.

[80] Letter from Minnie Maddern Fiske to Constance Cary Harrison, undated. Harrison Correspondence, BRTC.

[81] Harrison, *Unwelcome*, 32-33; Harrison, “Unwelcome,” 25-37. “Exhibit 13.” Note 7, *Affidavit of David Belasco*.

[82] *Affidavit of Harrison Grey Fiske*, Para. 11.

[83] Clipping. Robinson Locke Scrapbook. Volume 203 Reel 18, page 61. BRTC.

[84] Letter from Minnie Maddern Fiske to Constance Cary Harrison, 8 September 1901. Harrison Correspondence, BRTC.

[85] "Exhibit 12." Copy of letter from David Belasco to Constance Cary Harrison, 15 July 1901. *Affidavit of David Belasco*.

[86] *Affidavit of Constance Cary Harrison*. Para. 56

[87] *Affidavit of David Belasco*, Paras. 29-31. See also Abram J. Dittenhoefer, *Complaint Belasco v. Fiske*, Para. 9.

[88] The current standard is that "the independent contributions of each putative joint author must be independently copyrightable; it is not enough that only the finished product be copyrightable." Richardson, "The Art of Making Art," 516.

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