

(Dictated.)

Mayville N.Y.

Apr 7th 1887.

Dear Mr. Howard:

Yours of the 5th rec'd last night.

The Judge is of the opinion that you will not in any manner imperil your interests by publishing "Black Ice" for Mr. Cummings, for the following reasons.

1--There was no consideration--that is, no sort of motive or inducement <sup>^</sup> for you to agree not to publish books ~~for~~ his except for the syndicate. <sup>He is</sup> ~~I am~~ inclined to think that one of you made such objection when the matter was under consideration. At least, there is no reason <sup>to be found</sup> in the contract or in the circumstances surrounding its execution why you should have contracted not to publish books of his for another, or even for him upon other terms and not for the benefit of <sup>other parties.</sup> ~~the syndicate.~~  
*Mr. Blair cannot allege that you were paid anything or were to be benefited in any way by contracting not to publish for the Judge's benefit for others.*  
2--Not only was there no consideration for you to do so, but it will be seen that you did not do anything of the kind. The express covenant of F.H. & H., is:

"that they will publish the three books contemplated and such other works as they may believe to be of a salable and profitable character, that may be written by said Albion W. Tourgee or the manuscript thereof placed in their hands by him for the purpose of carrying out the provisions of this agreement."

You see at once that there is no express negative agreement on your part here and there is no hint of it elsewhere.

But what is it you <sup>do</sup> agree to do? Just analyze the sentence.

They (F.H. & H.), will publish:

1--The three books contemplated."

2--Other works, that may be written by said A.W.T. or the manuscript of which may be placed in their hands by him for the purpose of carrying out this agreement."

"May be written by said Albion W. Tourgee, (or manuscript placed in their hands by him) for the purpose of carrying out this agreement." *There you have it. Written + + for the purpose + +*

*Placed in hands — for the purpose + +.*

You will remember that the express ~~purpose~~ <sup>intention</sup> of the phrase in brackets was to cover anonymous works, *I might desire to write.*

No doubt, if ~~he~~ <sup>the Judge</sup> should put a work in your hands to be published for his <sup>own</sup> benefit, the law would--if the contract had not been ~~previously~~ <sup>previously</sup> violated by the claimant--compel ~~its appropriation~~ <sup>the application of the proceeds</sup> in the manner therein contemplated, not because you had so contracted, but because he had bound himself

In this matter he has no interest ~~whatever~~. The copyright was assigned to Cummings before the work was written. He will re-copyright it to cover the revision. So far as we are aware, he knows nothing about this syndicate agreement. He is a bona fide creditor and takes it in payment pro tanto of his debt.

Now a court would construe the instrument liberally and <sup>a</sup> favorably to you because you derive ~~no~~ advantage from it. You were already his publishers on a basis more favorable than this and naturally would not bind yourselves for nothing, to refuse to publish works made especially valuable to you <sup>by</sup> your previous handling of the author's wares.

It is very probable that Mr. Blair may try to raise a row. What can he do?

1--It is not at all likely that he will attempt to prevent your publishing it. That would be too thin.

2--He may possibly set up a claim to the proceeds. What would be the result? You will disclaim all responsibility, disclose the name of the owner and avow the terms on which it is published. When that is done, one of two things must occur: (1) Either he will seek to hold you alone as bound by this agreement or (2) he will have to join me and Cummings in his action.

The first would be useless: no court would ever hold with him on the contract and you would only have to demur to leave him perfectly flat.

In the second case he would have to enjoin you from paying to Cummings, which would not hurt you at all. Cummings, living in another state, would remove it to the United States court where New York fooling with judges is unknown and let him proceed. The result would be a big bill of costs on him with no expense to you. In the mean time the book would get some valuable advertising.