

My dear Skinner:

You will gather the purpose of this contract from its terms. I had just been bowled over; was lying on my back in Brooklyn directing the fight for the business I had started everything on. Blair had a lien on part of the stock of the Continent. The others named were creditors of the Continent except Ford, Howard & Hulbert, who acted merely as my friends and publishers. I had offers for ^{on a part of it} the property which would clear everything off if I could get rid of these liens. Two days afterwards they had to send me home to save me and I was left with my leg for my pains. You know what

condition I was in. On the 2d of August, after thirty days after, Blair sued me on his note.

There are three points to which I invite your attention

- 1- The paragraph marked "A" is a mistake. Mrs. Touge did not sign a note to Blair. She guaranteed an antecedent arrangement, to wit, that I should give him an option on certain stock, &c, and my own note and that of the Company. This contract was fulfilled but even if it had not been made in the state of Pennsylvania where, at that time, a wife's contract to pay the debt or liability of her husband was absolutely void. This guaranty was of the antecedent contract, not of the note given in pursuance of it. The mistake is not to be seen to my mental confusion at the time, which prevented my from specifying the instrument.
- 2 - The paragraph marked B shows that indulgence was the cornerstone of the agreement. Of course, the release of the Contract was an object with me, but

It was no surrender of anything of value by them. The attachments already levied would swamp it at forced sale. They would all have to look to me ultimately for the payment of their debts. The course amounting to a pledge of future work was an indulgence to enable me to work them off. I went to work at once, half-crazed and unable to sit up more than an hour or so at a time, on "The Appeal to Caesar" which was in press when Blair sued me thirty days after signing this contract. This was, of course, a clear breach which invalidated the contract so far as he ~~was~~ ^{is} concerned.

3. The paragraph marked "C" defines Mrs. Tounge's relation to this famous contract. She is to have a contingent interest in the books published in this manner "on condition of signing and assenting to," the contract.

Suppose she had not signed: she would then have been unaffected by these conditions and would have had no interest in the books referred to. This merely gives her the residue as unclaimed part of the proceeds.

Blain's idea of course is, that she thereby became bound by my contract (see D) not to write or publish books.

I will consider that a moment.

The agreement is, "that he will not write or publish any books, except under the terms of this agreement unless by the consent of the beneficiaries therein."

This has two parts —

1. That I will not write any more books, except —

This is clearly and ungratiously ambiguous, so there is no

need to speak of it further.

2 - Not to publish. Leaving out of consideration the fact that this contract has been invalidated by Blain's action, ~~it~~ it still does not apply. She did not contract that she would not publish. Now, Mrs J. is my largest creditor besides being my wife. She hires me to write, to lecture, to invent, ~~and conduct~~ ^{in order to get} ~~me~~ with her money. She has a right to make the material - the labor - the product she hires me to make valuable to herself - not to me, remember. I do not publish nor receive the proceeds of publication. I have a right to write - for newspapers - magazines - books, if I choose. The manuscript I have a right to sell or give away. The party taking this intangible and inappreciable thing may copyright, publish and sell no matter who he may be. How much more when

a creditor on one whose own labor enters into the preparation of the manuscript; for you will observe that Mrs. Tourge is not my amanuensis. I write very badly — so badly that no publisher would think of printing from my words. She copies, corrects, modifies and writes — and then sells. She does this at her own expense and gets pay for her labor by completing work I leave unfinished. This work she copyrights as ^{the} owner and no one can pretend to question her right to do so under the law and decisions of this state.

Miller and Felim, and Fords, Howard and Hulbert became parties to the agreement. The others named did not. Miller & Felim and Fords - Howard and Hulbert, assent ^{in writing} to the publication by Roberts in

Besides all this, Mr. Blain's claim is one impossible of definition or ascertainment. Look at the Contract and you will see that he is entitled thereby - not to one-half the proceeds on copyrights royalties on a work of mine, but to one-half the proceeds of publication after expenses of publication, advertising, paper, and transport sent to publisher are out taken out. He cannot substitute new parties nor make over the contract to suit himself.

The simple fact is that Blair has just two remedies under that contract, if he has any, and no more.

- 1 - If he has any claim as against Mrs. Tougee that would have enabled him to interfere, ~~he~~ with the publication, it could only be asserted by action to enjoin ~~the~~ its publication and sale, in order that it might be subjected to his demand by being published under the agreement. This he did not attempt and does not attempt.
- 2 - His other remedy is against me, either ^{to enjoin me from writing} for ~~infringement~~, or damages for breach of contract. If either were available his own breach is an insurmountable obstacle in the way of his success.

I have stated this fully in order
that you may see how infinitesimal
are his chances to do anything.

under the ~~terms~~ ^{of} contract a copy
of which is herewith enclosed.

Yours

I did not think of ~~it~~ this at the
time and would have faithfully
carried it out whether bound
or not but for Blair's course
and afterwards. When we come
to define its legal force, however,
~~that~~ ^{this} is just the fact — it has
no validity. The law does
not countenance such ~~contracts~~ ^{contracts} &
~~its~~ contracts for exclusive
service, and it has been ex-
pressly held a dozen times
that a contract not to compete
is against public policy.