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DICTATED.

Mayville, N.Y.
Sept. 11th 1890.

Gentlemen:

Your letter of the 9th inst to Mrs Tourgee has been received. You say,

(1)--"Your failure to deliver the manuscript at the time agreed on in the contract has been very damaging to us."

(2)--"The non-delivery of the manuscript on time, for the reasons you give, of course, vitiates the contract."

The reasons given for the delay was (1) Judge Tourgee's ill-health, (2) The difficulty he had in satisfying himself as to the harmonious adjustment of the double motif he had adopted. Of these you say:

(3) "We did not object to the slight delay caused by Judge Tourgee's ill-health, but the very great delay caused by Judge Tourgee's literary difficulties, as stated by you, of course vitiates the contract."

I hope it has ^{not} come to be a question of legal rights between the contracting parties; but it may be well to consider whether you are legally entitled to ^{assume} the position you take in this letter

These are the antecedent facts:

(1)--The contract was for delivery of the manuscript on April 1st.

(2)--Early in March, you were informed that I would be unable to complete the work in time to meet the terms of the contract, because of ill-health. That he hoped to be able to do so by the first of June.

(3) You replied: "The delay is not serious, and we hope he will not worry about it."

4- I did not worry after receiving this kindly intimation from you that the delay was "not serious", though working every moment on the story that I was able to do so.

(5) (#)--On the eighth of July you write asking when you may expect the manuscript. *Still no hint of damage.*

(6)--Mrs Toungee replied that I had sought a cool retreat for the express purpose of writing on the story and hoped to have it all complete by Sept 1st. ~~at the latest.~~

that date
(6)- Previous to ~~September first~~, the first four instalments ^{were} are forwarded to you, and acknowledged without objection on Aug. 27th

(7)--A week later, three more instalments are sent and received by you Sept. 1st.

These seven instalments received and acknowledged by you contain 39,000 words, almost half the ^{minimum} stipulated amount, which was to be "not less than 80,000 words"; and you were informed you could begin printing at once as the remainder ^{in instalments} would follow weekly.

These are the facts of which both parties to the contract have a common knowledge. The legal question arising upon them is a simple one: "Can a party assent to another's failure to deliver a specific amount of work at a specified date thus inducing the party to continue at the work afterwards, ^{and} ^{when} the work is practically complete, refuse to receive it and assign the ^{original} breach to avoid liability?"

It does not require much legal knowledge to answer it.

But the facts of which you are not so fully informed are such as make it quite impossible for any one justly disposed, to take the view you have expressed. To state them briefly, they are:

(1)--The delay has been caused entirely and solely by my continued ill-health. It is true the difficulty of harmoniously adjusting the double motif I had chosen, was referred to in connection with it, but that itself was a result of the illness which was greatly aggravated by hot weather, as is evident from the fact that with improved health and a lower temperature, the difficulty disappeared.

(2)--An ~~accident~~ ^{an accident} received in January last, ^{and} revived the effects of a wound of the spine received in battle, ^{and} made it almost impossible for me to do any considerable amount of ^{daily} literary work, ^{and} because exhaustion soon set in. Until within a fortnight, I have not been able to walk more than a few steps at a time since then; none at all without crutch and cane. That I kept at work during this time against the protests of friends and physicians, is due solely to the feeling that you were relying upon me for the story.

(3)--As you were kind enough not to insist upon the stipulation in regard to time, I dropped all other engagements, except one day of each week and have given my entire time to this, when able to work at all. It has engrossed all my time, thought, attention. If you had insisted upon delivery at the time specified in the contract, I should not only have done some less exhaustive work, but would probably have recovered much sooner.

(4)--That work done under such circumstances should be unsatisfactory to one so hypercritical of his ^{own} performance as I am, is very natural. You may recall that the "double motif", which seems to have awakened your suspicion, was referred to in our correspondence on which the contract was based. I desired to put side by side in the

same story, a horse-romance and a human-romance, that is, to create an interest in certain equine characters as well as in the human characters of the tale. It is a task which I have never had any doubt about accomplishing, but which was terribly severe and depressing to one whose eyes and nerves were on a strike, and to whom the pen, the sunshine, often even the sound of a reader's voice, were torture. Frequently I could write but a few minutes a day, but every one of these minutes were given to this work. As I grew better, the difficulties vanished. What I had done previously, then, seemed heavy dull, lacking in variety, intensity, vividness. I could not patch or piece the work, but went back to the very beginning and recast it on improved lines. I thought, as you had not hinted at any serious inconvenience, you preferred my best work, rather than that which might be done the quickest. If you had intimated that there was any special need for it at any particular time, I think I should have let it stand according to my original plan. It would not have been as effective as now, but it would have passed for ~~assurances~~ compliance with the contract and I do not suppose you would have felt like finding any fault with it.

But if you were damaged by delay, why did you not begin to print the instalments sent you, as promised by the 1st of September? You were authorized to do so, and it would have been an accommodation to me if you had. It has always been my habit to begin printing when I began to write. Of the seventeen volumes I have written, only the first one has been anything like complete when the printer began on it, and that is generally accounted the poorest of my works. In most cases the first chapter has been in the printer's

hands before the second was written. Never but once has there been any failure of manuscript when the foreman asked for it and that was caused by delay of the mail.

Of the "Son of Old Harry," nine instalments, containing 50,000 words are now ready for the printer, and might be put in hand tomorrow. You have, therefore, more than two month's supply of matter ready for use.

If my present state of health continues, I can furnish two instalments a week from now on. I shall probably do more but would not like to promise it. I expect to have it finished in a fortnight or ~~two~~ ^{three} weeks.

I know you prefer to see the end of a story before beginning to print, but in this case there can be no question of morals, politics, or anything ^{of that sort. There is} only the method by which a climax shall be reached--a story told--and what shall be the concomitant equine incidents and characters. I would work easier and better if I knew that what I did today would be irrevocably cast and fixed tomorrow.

So complete has been my ~~unwavering~~ devotion to this work that I have put off everything, even to the publication of a work which had already appeared serially, because I could not spare the time ^{from it,} ~~when I could work~~ to have the proofs read to me.

This is a plain statement of the facts so far as I am concerned. If as much has not been said of my illness as you would have expected, it is probably because a man accustomed to do a tremendous amount of work dislikes to admit that even the mishaps of war might interfere with his capacity to labor. I have never done much

thinking of any sort and desiring to begin now.

It seems to me that under these circumstances, you have no legal right to take the course you indicate, and if you had it would be so flagrantly unjust to the author that no honorable man would think of adopting it. As to the story, I desired to make it as unique in form as it is in theme, and thus I struck a better conception than the original one, which I adapted by way of the sacred labor.

I am sorry to have taxed you with so long a letter, but it seemed to me that there was no reasonable ground for controversy, if the facts were clearly understood, and it was difficult to make them plain without a good many words.

Very truly yours,