

Memorandum of Agreement

DATED December 26th, 19 05

B E T W E E N

Clarence S. Darrow

AND

FOX, DUFFIELD & CO.

FOR THE PUBLICATION OF

"AN EYE FOR AN EYE"

Memorandum of Agreement, made this 26th Day of December 1905

between Clarence S. Darrow
of Chicago, Illinois
and FOX, DUFFIELD & CO., Publishers, of New York, their successors and assigns.

Said Clarence S. Darrow being the author
and proprietor of a work entitled:

"AN EYE FOR AN EYE"

in consideration of the covenants and stipulations hereinafter contained, agreed to be performed by FOX, DUFFIELD & Co., grants and guarantees to FOX, DUFFIELD & Co., and their successors the exclusive right to copyright and publish said work during the terms of copyright and renewals thereof, hereby covenanting with said FOX, DUFFIELD & Co., that he is the sole author and proprietor of said work.

Said Clarence S. Darrow further guarantees to said FOX, DUFFIELD & Co., that the said work is in no way whatever a violation of any copyright belonging to any other party, and that it contains nothing of a scandalous or libelous character; and that he and his legal representatives shall and will hold harmless the said FOX, DUFFIELD & Co. from all suits, and all manner of claims and proceedings which may be taken on the ground that said work is such violation or contains anything scandalous or libelous; and he further hereby authorizes said FOX, DUFFIELD & Co., to defend at law any and all suits and proceedings which may be taken or had against FOX, DUFFIELD & Co., for infringement of any other copyright or for libel, scandal, or any other injurious or hurtful matter or thing contained in or alleged or claimed to be contained in or caused by said work, and pay to said FOX, DUFFIELD & Co., such reasonable costs, disbursements, expenses, and counsel fees as they may incur in such defense.

Said Clarence S. Darrow further agrees to divide equally with said FOX, DUFFIELD & Co. the expense of any suit that said FOX, DUFFIELD & Co. may bring against outside parties for infringement of the copyright of the work in question, and in consideration of this guaranty, said C. S. Darrow shall receive one-half of any sum that may be recovered for damages in any such suit; but such legal proceedings shall be undertaken by said FOX, DUFFIELD & Co., for the joint account of themselves and said Clarence S. Darrow only with the consent of said Clarence S. Darrow.

Said Clarence S. Darrow agrees that he will not, during the term of this agreement, without the consent of FOX, DUFFIELD & Co., publish any book that will conflict with the sale of the book above specified; and that in case said FOX, DUFFIELD & Co., may object to any future work of his as so conflicting, the question of conflict and of damages shall be referred to arbitration as hereinafter provided.

Said FOX, DUFFIELD & Co., in consideration of the right herein granted and of the guarantees aforesaid, agree to publish said work at their own expense, in such style and manner as they shall deem most expedient, and to pay said Clarence S. Darrow or his legal representatives, 10 per cent. on their Trade List (retail) price, for all copies of said work sold by them in the United States after the sale of 2500 copies, 15% thereafter; ~~100 copies~~ ¹⁰⁰ copies; and one-half of the net profit on all copies in editions sold in foreign countries by the said FOX, DUFFIELD & Co. Provided, nevertheless, that no percentage whatever shall be paid on any copies destroyed by fire or water, or sold at or below cost, or damaged in any way to render them unsalable, or given away for the purpose of aiding the sale of said work.

Expenses incurred for alterations in type or plates, exceeding ten per cent. of cost of composition and stereotyping said work, are to be charged to the author's account.

It is agreed that FOX, DUFFIELD & Co. shall furnish to the author free of charge ~~six~~ ¹⁰⁰ copies of the work as published, and should the author desire any more copies for his personal use, they shall be supplied at 40% discount from the catalogue price, except in the case of an edition published at net price, when copies shall be supplied at 25% discount.

Statements shall be rendered semi-annually, in the months of February and August, provided four months have elapsed since the day of publication; settlements to be made in cash, thirty days after date of statement.

If, on the expiration of five years from the date of publication, or any time thereafter, the demand for said work should not, in the opinion of said FOX, DUFFIELD & Co., be sufficient to render its publication profitable, then, upon written notice by FOX, DUFFIELD & Co. to said Clarence S. Darrow this contract shall cease and determine; and thereupon said Clarence S. Darrow shall have the right, at his option, to take from said FOX, DUFFIELD & Co., at cost, the stereotype plates and engravings (if any) of said work, and whatever copies they may then have on hand; or failing to take said plates and copies at cost, then said FOX, DUFFIELD & Co. shall have the right to dispose of the copies on hand as they may see fit, free of any percentage or royalty, to melt up the plates, and to cancel this contract.

Provided, also, that if, at any time during the continuance of this agreement, said work shall become unsalable in the ordinary channels of trade, said FOX, DUFFIELD & Co. shall have the right to dispose of any copies on hand, paying to said Clarence S. Darrow 10 per cent. of the net amount received therefor, in lieu of the percentage hereinbefore prescribed.

Said Clarence S. Darrow further agrees to pay to FOX, DUFFIELD & COMPANY in cash a sum equal to ^{one half} the difference, if any such deficit exists twelve months [^] from the publication of the book, between the cost of composition and manufacture of the book and the net profits resulting from the sale of the book within said time.

This contract may be assigned by either party, but only as a whole, and no part of their respective interests shall be assigned by either party. No assignment of the author shall be valid, as against FOX, DUFFIELD & Co., unless and until they shall have received due evidence thereof in writing.

In case on any one of the provisions of this agreement, there may arise a difference of opinion between said Clarence S. Darrow and said FOX, DUFFIELD & Co., the question shall be referred to arbitrators for a decision, one such arbitrator to be chosen by each party to the agreement, and the two arbitrators, in case of a disagreement, to select a third arbitrator. The decision of the two or of the three shall be final, and shall be binding upon both parties to this agreement.

IN CONSIDERATION OF the mutuality of this contract, the aforesaid parties agree to all its provisions, and in testimony thereof affix their signatures and seals.



Witness to signature of

W. Bailey

Witness to signature of

FOX, DUFFIELD & COMPANY.

Pitts Duffield Co.