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Samuel Q. Edelstein et al., Plaintiffs, v. George H. Bell, Defendant

[NO NUMBER IN ORIGINAL]

Supreme Court of New York, Special Term, New York County

91 Misc. 620; 155 N.Y.S. 590; 1915 N.Y. Misc. LEXIS 1183

September, 1915

PRIOR HISTORY: **[**1]** Application for an injunction *pendente lite*.

DISPOSITION: Motion denied.

CASE SUMMARY:

PROCEDURAL POSTURE: Plaintiff producers brought an application *pendente lite* to obtain an order restraining defendant commissioner of licenses of New York City from interfering in any manner with the exhibition of a certain motion picture.

OVERVIEW: The producers completed and prepared to show a motion picture called "The Frank Case," which purported to portray the principal events of the life of a man, including his trial on the charge of murder in Georgia. The national board of censorship unanimously refused to approve it for showing, and the commissioner of licenses of New York City denied its showing in city theaters. The producers sought injunctive relief to prevent the commissioner from interfering with exhibition of the picture, which was ready for showing while the appeal of Frank's conviction was pending in the United States Supreme Court. The court found that the legislature had vested in the commissioner discretionary power over theaters and exhibitions therein. The city's charter directed inspectors of the department of licenses to investigate the character of motion pictures and report to the commissioner any offense against morality, decency, or public welfare. The court would not interfere with the exercise of discretion vested by law in the commissioner where he had not abused his discretion by acting in an arbitrary, unreasonable, or tyrannical manner.

OUTCOME: The court denied the producers' application in which they sought an injunction.

CORE TERMS: license, film, exhibition, picture, theaters, vested, discretionary power, injunction, *pendente lite*, charge of murder, moving picture, interfering, imagination, unanimously, ordinances, restrain, portray, approve, purports, scenes, theatres

LexisNexis(R) Headnotes

Governments > Local Governments > Duties & Powers

Governments > Local Governments > Employees & Officials

Governments > State & Territorial Governments > Licenses

[HN1] Under 1914 N.Y. Laws ch. 475, the legislature has vested in the commissioner of licenses of New York City discretionary power over theaters and the exhibitions therein.

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Governments > Local Governments > Employees & Officials
Governments > Local Governments > Licenses

[HN2] See Greater New York City, N.Y., Charter § 641, 1914 N.Y. Laws ch. 475.

Governments > Local Governments > Employees & Officials
Governments > Local Governments > Licenses

[HN3] See New York, N.Y., Code Ordinances ch. 3, art. 2, § 41.

Administrative Law > Judicial Review > Standards of Review > Arbitrary & Capricious Review
Criminal Law & Procedure > Appeals > Standards of Review > Abuse of Discretion > General Overview
Governments > Local Governments > Employees & Officials

[HN4] Courts will not interfere with the exercise of discretion vested by law in a commissioner or departmental official unless the commissioner or the official has abused his discretion by acting in an arbitrary, unreasonable, or tyrannical manner.

HEADNOTES

Injunctions -- motion for, pendente lite when denied -- commissioner of licenses of city of New York -- Laws of 1914, chap. 475.

The legislature by chapter 475 of the Laws of 1914 having vested in the commissioner of licenses of the city of New York discretionary power over theatres and exhibitions therein, a motion for an injunction *pendente lite* to restrain him from interfering in any manner with the exhibition of a motion picture film, a creation of the imagination called "The Frank Case" purporting to portray the principal events in the life of **Leo M. Frank**, including his trial on the charge of murder in the state of Georgia, will be denied on the ground that the commissioner of licenses had acted reasonably and properly and within his power in denying a license for the production of said film in moving picture theatres in the city of New York, the national board of censors having unanimously refused to approve said film.

COUNSEL: Goldman, Heide & Unger, for plaintiff.

Frank L. Polk, corporation counsel, for defendant.

JUDGES: Cohalan, J.

OPINION BY: COHALAN

OPINION

[*621] Application *pendente* [*2] *lite*, to restrain the defendant commissioner of licenses of the city of New York from interfering in any manner with the exhibition of a motion picture, entitled "The Frank Case," in the city of New York or any other city or place. The plaintiffs herein are producers of a motion picture film which they have called "The Frank Case." This film purports to portray the principal events of the life of one **Leo M. Frank**, including his trial on the charge of murder in the state of Georgia. It was completed and ready for exhibition while the case on appeal of Frank was pending in the Supreme Court of the United States. Under the circumstances, the national board of censorship, to whom the film had been submitted, unanimously refused to approve it, and the commissioner of licenses of the city of New York, for the same reason, denied its production in the moving picture theaters in the city of New York. [HN1] Under chapter 475 of the Laws of 1914, the legislature has vested in the commissioner of licenses discretionary power over theaters and the exhibitions therein. This section reads as follows: [HN2] "The commissioner of licenses shall have cognizance and control of the granting, issuing, transferring, [*3] renewing, revoking, suspending and canceling (1) Of all licenses and permits now issued by the mayor pursuant to the code of ordinances [*622] of the city. (2) Of all licenses and permits now issued by the bureau of licenses attached to the mayor's office." Greater N. Y. Charter, § 641. Under section 41, article 2, chapter 3, of the Code of Ordinances, under the title of

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"Amusements and Exhibitions," there is this provision: [HN3] "The inspectors of the department of licenses shall investigate the character of exhibitions in motion picture theaters and open air motion picture theaters, and shall report to the commissioner any offense against morality, decency or public welfare committed in such exhibitions." It was a salutary provision of the legislature that this power was vested in the commissioner of licenses, in view of the fact that the moving picture business has grown so rapidly within recent years, and the additional fact that it is an instrumentality capable of doing immense good or of causing irreparable harm. The film in question is a stage production. The scenes are not actual reproductions of the events at the time and place depicted. It is not contended that the [**4] authors of the scenario upon which the film is founded have witnessed any of the scenes shown, nor have staged it on any information received from any persons who did actually witness the murder trial. In brief, the film is a creation of the imagination, although it purports to show actual historical events. It is not material to this application whether or not the film shows that Frank was innocent or guilty. The only question for discussion and decision is whether or not proper discretionary power was exercised by the commissioner of licenses. The rule of law in this state is that the [HN4] courts will not interfere with the exercise of discretion vested by law in a commissioner or departmental official unless such commissioner or such official has abused his discretion by acting in an arbitrary, unreasonable or tyrannical manner. *People ex [*623] rel. Rota v. Baker*, 136 App. Div. 7. In directing that the exhibition of such a film should be suppressed, it is my view that no useful purpose would be served by the production of this film, and that the commissioner of licenses acted reasonably and properly and within his powers. Motion for injunction denied.

[**5] Motion denied.