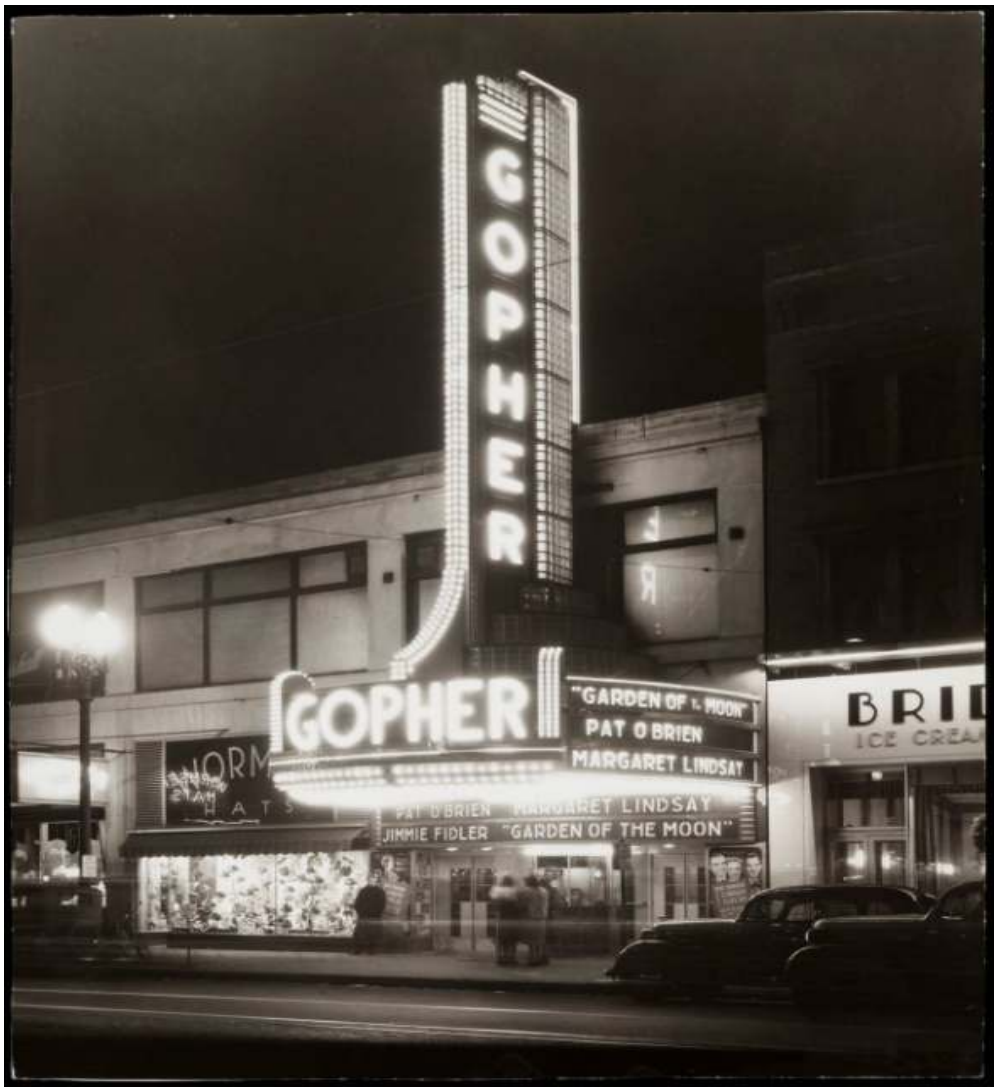

Gopher Theater, Minneapolis (c. 1938)

The Gopher, on Hennepin Avenue in downtown Minneapolis, was originally a Finkelstein and Ruben theater but in this era was owned by independent exhibitor Benjamin Berger. The Gopher was among a few large metropolitan independents that contended, often unsuccessfully, for major first-run feature films.

Blockbusters:

Minnesota's Movie Men Slug it out with Studio Moguls, 1938-1948

By

Thomas L. Olson

In the decade from 1938 to 1948 independent movie theater owners nationwide clashed with the major motion picture studios over "unfair" trade practices that profited them and their subsidiary theaters to, the independents charged, their manifest detriment. As the struggle shifted to the states, Minnesota took center stage in this battle between "little guy" theater owners and powerful studio corporations. Importantly, the courtroom arguments and judicial decisions in the disputes show clearly that the titanic legal and political issues over property rights that had gone on in Congress, state legislatures, and the courts since the founding of the republic, and remain unsettled, were mirrored in Minnesota's courts.

The Independents vs. Hollywood

Commercial exhibition of motion pictures began simply with films first purchased outright and then rented from exchanges.[1] But before long the business became far more complicated. Better and longer films demanded larger theaters and amenities. Weak competitors failed. Expenses mounted. Other hurdles arose. Early on, for example, Paramount Studios began renting its films exclusively through a wholly-owned distributor. By the late 1920's production and distribution were dominated by a "big eight" — Paramount, Warner Bros., Twentieth Century Fox, RKO, Metro-Goldwyn-Mayer, United Artists, Columbia, and Universal. Five of these major producer-distributors built and bought theaters in the nation's largest cities. [2] Additionally, by mutual agreement, they focused their theater acquisitions regionally to reduce competition between themselves. In Minnesota, the result of this regionalism was that all studio-theaters were owned by Paramount through its wholly-owned subsidiary, The Minnesota Amusement Company.

Despite theater acquisitions by major producer-distributors, the majority of movie houses continued to be owned by independent chains or by individuals operating one or two houses. In Minnesota, the best known of the early independent

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[1] Lucille M. Kane and John A. Dougherty, "Movie Debut: Films in the Twin Cities, 1894-1908," *Minnesota History* 54.8 (Winter, 1995), 342-358. See also David Q. Bowers, *Nickelodeon Theaters and Their Music* (Vestal, N.Y.: Vestal Press, Ltd., 1986), passim.

[2] Thomas Edison's Motion Picture Patents Company, which claimed exclusive rights to equipment and processes, demanded royalties from movie exhibitors; but with technology changing rapidly patents were difficult to enforce and the MPPC disintegrated. Tino Balio, "Struggles for Control: 1908-1930" and Jeanne Thomas Allen, "The Decay of the Motion Picture Patents Company," in Tino Balio, ed., *The American Film Industry* (Madison: University of Wisconsin Press, 1976), 103-109; 119-134.

chains was Finkelstein and Ruben, which owned as many as 140 Upper Midwest theaters in the 1920's, including the region's largest ever movie house, The Minnesota, a 4,000 seat Minneapolis behemoth. In the early sound era the Minnesota and other Finkelstein and Ruben theaters were purchased by Paramount's subsidiary, The Minnesota Amusement Company. By the late 1930's, of 450 movie theaters in the state, Minnesota Amusement owned 56 or 12%, including theaters in Rochester, Mankato, St. Cloud, Winona, Moorhead, Virginia, Hibbing, Austin, Fairmont, and St. Cloud. Those houses, however, accounted for 92% of the "first-run" theaters in Minneapolis, St. Paul, and Duluth and captured nearly 80% of the state's total film audience.[3]

Park Theater, St. Louis Park (c. 1940)

The Park was designed by Minnesota theater architect Perry Croiser in Streamline Moderne style. It opened in 1939 with 1200 seats and was among the first-ring suburban theaters that were part of a theater building "boomlet" between 1936 and 1940.

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[3] Fred H. Strom Affidavit, *Vitagraph, Inc. vs. James F. Lynch*, (August 4, 1941), Attorney General Papers, Minnesota Historical Society, Saint Paul, 101F52F, Box 72 (hereafter "MHS").

Of Minnesota's non-Paramount theaters, most were family owned but about 50 were owned by regional independent chains. Notable among them were Benjamin Berger's dozen theaters. [4] A second prominent independent chain was Eddie Ruben's Welworth Theaters which grew to approximately 40 houses in Minnesota, Wisconsin, and South Dakota.[5] Although the Great Depression killed many independent theaters,[6] the Berger and Ruben chains grew and there was a "boomlet" in theater remodeling and new construction between 1936 and 1940. Credit had contracted at a time when many older theaters needed updating for sound and color and to meet modern design and comfort sensibilities. Because of their experience, economies of scale and collateral, chains secured credit far more easily than individual theater owners.

All independent operators faced what they saw as unfair practices. Primary among them was compulsory block booking which required that theaters lease films in pre-determined units of from 15 to a producer's entire annual output of as many as 50 pictures. The practice forced independent exhibitors, if they wanted better pictures, to lease poor films that they weren't obliged to show but had to purchase unless their contract included partial cancellation privileges.[7] There were other objectionable practices as well. "Full line forcing" compelled theaters to lease newsreels and short subjects along with features. "Clearance" withheld films from independent theaters until time passed (typically 8-10 weeks) after a film ended its "first run" at a company-affiliated or large independent metropolitan theater. Finally, the producers sometimes included much-anticipated films as part of a block but later "busted" the block to tour that "blockbuster" film as a "road show" at high

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[4] Robert K. Krishef, *Thank You, America: The Biography of Benjamin N. Berger*, (Minneapolis, MN: Dillon Press, 1982), 70-74, 102. Also see Benjamin N. Berger Papers, MHS. Berger at one time owned as many as 19 theaters as well as the Minneapolis Lakers and Minneapolis' Sheik's Café.

[5] Edmund Ruben was the son of Isadore Ruben of the Finkelstein and Ruben Chain.

[6] Kathryn H. Fuller-Seeley, "Dish Night at the Movies: Exhibitor Promotions and Female Audiences during the Great Depression," in Jon Lewis and Eric Smoodin (eds.), *Looking Past the Screen: Case Studies in American Film History and Method*, (Durham, N.C., Duke University Press, 2007), 246-251.

[7] In some respects exhibitors liked block booking because films were generally lower priced than when sold individually. What exhibitors most wanted was the right to unlimited cancellations for credit. Independent film producers, who released about 25% of all pictures by the late 1930's, also objected to block booking because in practice it meant scant theater time for their films. See *Hollywood Renegades Archive: The SIMPP Research Database,* at http://www.-cobbles.com/simpp_archive.htm.

admission prices until, as anti-trust attorney Thurman Arnold wrote, ". . . the cream was all skimmed off."[8]

Although independent theater owners hoped for action,[9] FDR's New Deal demurred. Indeed, under the National Industrial Recovery Act, "unfair" practices were tacitly encouraged in an effort to forestall deflation by keeping price competition at bay. By the mid-1930's, as a result, the independents were convinced that they needed to act collectively. [10]

Preview of Coming Attractions - North Dakota in the Limelight

The independent's nationwide trade organization, which began in 1929, was the Allied States Association of Motion Picture Exhibitors. Its leader, who *Time* magazine called the "kingpin," was William "Al" Steffes, owner of the Minneapolis and St. Paul World Theaters. Steffes, heavyset with graying jet black hair, was 46 years old and had owned theaters for 22 years. According to Steffes, Allied States had failed to negotiate with the producer-distributors and was pushing instead for state legislation.[11] As a result of Allied States efforts, North Dakota passed a law divorcing theater ownership from production and distribution. [12]

Paramount promptly challenged the law's constitutionality in federal court.[13] The case was tried by a specially constituted three judge panel. The judges were

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[8] Thurman Arnold, *The Bottlenecks of Business* (New York: Reynal & Hitchcock, 1940), 168. Arnold's prime example of road shows was Columbia Pictures exploitation of Lost *Horizon* (1937). In Minnesota Benjamin Berger successfully sued Columbia when it withdrew that picture from a block Berger had purchased. Robert K. Krishef, *Thank You, America: The Biography of Benjamin N. Berger*, supra note 4, at 105.

[9] Mae D. Huettig, "Economic Control of the Motion Picture Industry," in Gregory A. Waller (ed.), *Moviegoing in America: A Sourcebook in the History of Film Exhibition* (Malden, Mass.: Blackwell Publishers, 2002), 214-218.

[10] Thomas Schatz, *Boom and Bust: American Cinema in the 1940's, History of American Cinema,* (first paperback edition, Berkeley: University of California Press, 1999), 15.

[11] "Business: Al & Allied," *Time* (June 7, 1937).

[12] It was titled *An Act to prohibit the operation of motion picture theaters which are owned, controlled, managed, or operated, in whole or in part, by producers or distributors of motion picture films, or in which such producers or distributors have an interest.* Chapter 165, Laws of North Dakota of 1937.

[13] *Paramount Pictures v. Langer*, 23 F. Supp. 890 (N. D. 1938). William Langer was then North Dakota governor. Later, as U.S. Senator, Langer continued to champion the cause of independent exhibitors. See Agnes Geelan, *The Dakota Maverick: The Political Life of William Langer, also known as "Wild Bill" Langer* (Fargo: Kaye's Printing Company, 1975).

Circuit Judge John B. Sanborn, a St. Paul College of Law graduate and appointee of Herbert Hoover, Circuit Judge Seth Thomas, a graduate of the University of Iowa law School, and District Judge George F. Sullivan, a graduate of the University of Minnesota Law School. Thomas and Sullivan were recent FDR appointees.[14]

In a classic defense of property rights, Paramount's attorneys argued that North Dakota's law violated the 14th Amendment because it deprived Paramount of property without due process. They also argued that the state could not show that its law corrected any demonstrated evils. The state's attorneys countered that North Dakota's independent exhibitors were entitled to *preventive* protection against unfair competition from "affiliated theatres grown so large as to constitute a menace to the general public welfare due to their superior buying and bargaining power, wealth and organization." [15]

Although the due process argument had doomed state regulation for years, the *Langer* panel disposed of it easily by citing and quoting *Nebbia v. New York* (1934). "The guarantee of due process," the U.S. Supreme Court had said on the cusp of liberalism, "demands only that the law shall not be unreasonable, arbitrary, or capricious, and that the means selected shall have a real and substantial relation to the object sought to be attained." [16] **The panel added that North Dakota's law bore a reasonable relationship "to the . . . maintenance in North Dakota of a free and open market for motion picture films." Then, in a cogent statement of "judicial restraint" as expounded by the Supreme Court when reviewing economic and social welfare legislation, the panel noted that when a legislature acts within the scope of its power "the Court is not required to determine what would be the "best, fairest, or wisest solution. . . [thus] the wisdom of the policy . . . is not for the Court to pass on."** [17] ***Paramount v. Langer* was appealed to the U. S. Supreme Court, but dismissed as moot in 1939, when the Roosevelt Administration changed course to pursue anti-monopoly cases vigorously.**[18]

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[14] Federal Judicial Center, "History of the Federal Judiciary: Biographical Directory of Federal Judges," http://www.uscourts.gov/JudgesandJudgeships.aspx
[15] *Paramount Pictures v. Langer*, supra note 13.
[16] *Nebbia v. New York*, 291 U.S. 502 (1934).
[17] *Paramount Pictures v. Langer*, supra note 13.
[18] *Paramount Pictures v. Langer,* 23 F.Supp. 890 (N. D. 1938), *dismissed as moot,* 306 U.S. 619 (1939).

Consent Decree of 1940

In 1938, under avid, anti-monopolist Thurman Arnold, the Justice Department's Anti-Trust Division attacked both theater ownership and unfair trade practices.[19] The trial began in June, 1940. By then, however, with war production gearing up, the New Deal backed off.[20] Consequently, the trial was adjourned and protracted negotiations led to a "consent decree," between the five theater-owning producer-distributors and the federal government.[21] Under the agreement, which was to run for a three-year trial period, the companies were permitted to own and operate their theaters without fear of prosecution. In exchange, block booking was permitted only in blocks of no more than five films and blind selling and forced newsreel, serial, re-issue, and western sales ended. "Clearance" and other disputes were to be submitted to arbitration.[22]

To most independent exhibitors, however, "blocks of five," without a guaranteed option to cancel some films, was no victory. Indeed, many claimed "blocks of five" forced them to buy four bad films for every good one. Two *Motion*

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[19] Thurman Arnold expressed his pro-exhibitor views in *The Bottlenecks of Business*, *supra* note 8, at 168-170.

[20] On the government's wartime cooperation with big business, see John Morton Blum, *V Was for Victory: Politics and American Culture during World War II,* (New York: Harcourt Brace & Company, 1976), 131-146. Although the government changed course, Thurman Arnold remained an anti-monopolist. As a result he was "kicked upstairs" in 1943 to be a federal appeals judge where he was bored. He resigned after two years and resumed private law practice in Washington, D. C. See his entertaining autobiography, *Fair Fights and Foul: A Dissenting Lawyer's Life* (New York, Harcourt, Brace & Co., 1965).

[21] The five producer-distributors were Paramount, MGM, Warner Bros., Twentieth Century Fox, and RKO Pictures. However, the decree also provided that If, within two years the Justice Department was unable to gain the agreement of United Artists, Universal, and Columbia Pictures to the stipulations on block booking, then those terms were no longer binding upon the original five parties. See *The Consent Decree: Entered in the District Court of the United States for the Southern District of New York, November 20, 1940. In the Matter of The United States of America vs. Paramount Pictures, Inc. et. al.* (New York: Arbitration Association Edition for the Motion Picture Arbitration System), n.d. [1940].

[22] Although independent exhibitors complained about arbitration, the producer-distributors welcomed it as a self-regulatory device to keep government and the exhibitors at bay. The actual number of cases arbitrated was small. See "Antitrust Scenario," *Business Week* (September 6, 1941), 32, 37.

Picture Daily headlines, "Independents Will Demand Cancellation," and "92.4% of Exhibitors Are Opposed to Blocks-of-Five," said it all. [23]

The Minnesota Battleground

Although independent theater owners nationwide scowled at the Consent Decree, discontent was especially strong in the Upper Midwest where the *Langer* decision bolstered existing faith that sympathetic state legislatures could provide greater assistance than Congress or the courts.[24] In Minnesota, the regional independent exhibitor association, the Allied Theater Owners of the Upper Midwest, was the most active of a score of organizations affiliated with the Allied States association.

The Minnesota independents had earlier tried to obtain a theater divorcement law similar to North Dakota's. But where Farmer-Labor governor Elmer Benson favored the measure, the new Republican governor, Harold Stassen, was non-committal.[25] As a result, the theater owners, in the wake of the consent decree, directed their attack at "blocks of five" and their "right" to cancel undesirable films. To gain support from churches, parent-teacher associations, and women's clubs, the independent exhibitors linked desirability to decency and held themselves out as moral sentries.[26] In reality, because Hollywood effectively self-censored content through its production code beginning in 1934, for most exhibitors desirability simply equated to good box office. Westerns and "fast action" films drew well in small towns but flopped in the cities while the reverse was true of "historical" and "sophisticated" pictures. Illustrative was the clash between Ben Ashe, owner of Fergus Falls' Lyric Theater and H.B. Johnson, Universal Pictures Minneapolis branch manager, over *Tower of London.* To Ashe, the film was "the most horribly brutal and revolting picture I have ever seen." Johnson replied that *Tower of London* was "an entertaining, truly historical document" and forced Ashe to lease it,

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[23] "Independents Will Demand Cancellation," *Motion Picture Daily* (August 29, 1940), 1; "92.4% of Exhibitors Are Opposed to Blocks of Five," *Motion Picture Daily* (October 1, 1940), 1.

[24] "Pact Opponents Represent 98% of Nation's Theaters," *Motion Picture Daily* (November 16, 1940), 1.

[25] "Minn.'s New Gov. Stassen Fails to Commit Himself on Divorcement," *Variety* (January 11, 1939), 6.

[26] See P.S. Harrison, "Give the Movie Exhibitor a Chance," in Gregory A. Waller, ed., *Moviegoing in America: A Sourcebook in the History of Film Exhibition*, supra note 9, at 211-212.

although Johnson never showed it, as a condition for booking *Destry Rides Again*, a "big" western Ashe wanted. [27]

Ritz Theater, Minneapolis (c. 1953)

The Ritz, built in the 1920's in Northeast Minneapolis, was typical of the independent neighborhood or "nabe" theaters that struggled financially and were heavily impacted by block booking and "clearance" practices.

When the 52nd Minnesota legislature convened in 1941, independent exhibitors enlisted supportive lawmakers who introduced a bill, written by the Allied Theater Owners of the Upper Midwest, that, astonishingly, required distributors to sell their entire season's output, about 50 features per major studio, in one block but allowed theater owners to reject up to twenty percent of the pictures. Violators, moreover, were subject to criminal penalties.[28] **Although the proposed law contradicted theater**

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[27] **Fred H. Strom Affidavit, *Vitagraph, Inc. vs. James F. Lynch et.al* (August 4, 1941) Attorney General Case Files, MHS, 101F52F Box 72. *Tower of London* was Universal's telling of the Richard III story of the princes in the tower.**

[28] **1941 Laws, Chapter 460, at 836-839 (effective April 26, 1941). It is posted in Appendix A below, at 25-27.**

owners' objections to block booking, proponents claimed that cancellation privileges trumped block booking evils.

To producer-distributors, on the other hand, the Minnesota legislation was a dangerous foreshadowing of 48 separate and conflicting state laws and a death blow to industry self-regulation.[29] Although Minneapolis attorney David Shearer, representing Paramount Pictures, lobbied against the measure, legislators, lest they be accused of favoring dirty movies and big business over small, piled on as co-sponsors. As a result, the bill whizzed through both chambers (104 to 3 in the House and 70 to 1 in the Senate) and Governor Stassen signed it on April 24.[30] A blow, it seemed, was struck for small business and morality.

Although the Consent Decree allowed producer-distributors to opt out of the agreement where it clashed with state law, the Big Five, preferring the Consent Decree, provoked a film shortage by claiming they could not serve conflicting legal masters—the Federal government and the State of Minnesota. They chose, not surprisingly, to honor the Consent Decree and refused to book new features with Minnesota independents. In an era when theaters offered 130 or more films per year, their decision left local independents with no new films from the five largest distributors. As a result, exhibitors scrambled to fill their 1941-42 schedules with pictures from Columbia and Universal, independent and "poverty row" producers, and foreign and previously-shown movies not subject to the new Minnesota law. [31]

Minnesota's Block Booking Law Goes to Court

While exhibitors fretted, the national trade press began paying attention to Minnesota goings on and particularly when the producer-distributors headed to Ramsey County District Court in search of a temporary injunction to keep

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[29] "Movie Dynamite?" *Business Week* (April 5, 1941), 30.

[30] Journal of the House of Representatives, (February 20, 1941), 378; (March 7, 1941), 633; (March 13, 1941), 714; Journal of the Senate (April 22, 1941) n.p.

[31] Also Joint Memorandum of Defendants James F. Lynch, Ed J. Goff and Thomas J. Gibbons in Opposition to Separate Motions of Plaintiffs for Temporary Injunction. *Paramount Pictures v. James F. Lynch et. al.* , State of Minnesota, Ramsey County District Court, Second Judicial District, Case No 241096, Attorney General Case Files, MHS, 101F52F Box 72, 27.

For the story of how this crisis affected one theater manager, John Wright, at Red Wing's Auditorium Theater, see Thomas L. Olson, *Sheldon's Gift: Music, Movies, and Melodrama in the Desirable City* (St. Cloud, MN: North Star Press of St. Cloud, 2009); 143-160.

Minnesota's law from being enforced.[32] The case was heard by Judge Hugo Otto Hanft in August, 1941. Hanft was then aged 69 and had been on the bench 31 years.[33] Paramount was represented by local attorneys David Shearer and Joseph Finley. Defendants were James Francis Lynch, Ramsey County Attorney,[34] Ed J. Goff, Hennepin County Attorney, and Ramsey County Sheriff Thomas J. Gibbons, the principals who would, in the absence of an injunction, be called upon to enforce state law in the two counties with the largest number of theaters. The briefs on both sides totaled 203 pages and cited 190 state and federal cases. Twenty cases were cited by both sides. A joint memorandum by the defendants ran to 49 pages and another on constitutionality, contributed by Attorney General Joseph A. A. Burnquist's office, added another dozen. Oral arguments consumed three lengthy sessions. Before Judge Hanft delivered his decision, companion cases were filed by other producer-distributors.[35]


Judge Hugo Hanft (c. 1928)

In briefs and at trial Paramount argued the Minnesota law's unconstitutionality based upon due process and equal protection, federal control of interstate commerce, and the "liberty" to contract eely—all longstanding arguments against business regulation.[36] In contrast, although they also

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[32] "Assault on Minn. 'Anti-Five' Law Next Week," *Greater Amusements* (June 27, 1941), 4.

[33] His biographical sketch in the 1943 Minnesota Legislative Manual, at 211, provided:

> Hugo O. Hanft, born Dec. 16, 1871, St. Peter, Minn. Master's degree in law, University of Minnesota, 1897. Spanish war veteran, Philippines. Assistant Ramsey County Attorney 1900-1906. Judge of municipal court by election 1906-1914. District court judge by election since 1915. Senior judge since 1930.

[34] James Francis Lynch was a well-known and respected member of the bar. The Saint Paul native graduated from St. Paul Law (now William Mitchell College of Law) in 1916 at age 23. During the 1930's he became known as a fearless county prosecutor of gangsters and corruption. A Democrat, he was elected Ramsey County Attorney in 1938.

[35] *Paramount Pictures Inc. vs. James F. Lynch et. al*, State of Minnesota, Ramsey County District Court, Second Judicial District, Case File 241096, October 3, 1941. Attorney General Case Files, MHS, Box 72, 101F52F (hereafter "Judge Hugo Hanft Decision, *Paramount Pictures v. Lynch*"). His ruling is posted in full in Appendix B below, at 27-56.

[36] The most controversial Supreme Court decision denying state regulation was *Lochner v. New York* 198 U. S. 45 (1905). During the mid-1930's the Supreme Court began to embrace

addressed its constitutionality, Lynch and Goff argued that the only question before the court was whether, without a temporary injunction, cancellation of up to 20% of pictures irreparably damaged the producer-distributors—a notion they found absurd. Minnesota, they said, accounted for just 3% of major producer business and cancelled films could readily, since there were only 4 to 10 prints of any one film circulating in Minnesota, be shown elsewhere. Where, they asked, was the damage? Minnesota law, they argued, "did not seek to take away or deprive the distributors or producers of their property. It merely regulates and this to a very limited degree—the performance of their contracts in this state." [37]

On October 3, 1941, Judge Hanft denied Paramount's request. "This court," Hanft wrote, "cannot vision such exceptional circumstance and great and immediate danger of irreparable loss to plaintiff as would justify the exercise in equity of the extraordinary power of restraining enforcement of the act at this time." That was all he needed to say. Yet Hanft also, in a twenty-six page memorandum, addressed the merits of the issues raised by Paramount.[38]

Echoing and citing the *Langer* decision, Judge Hanft concluded that Minnesota's law was reasonable and judicial restraint was called for. [39] Second, Paramount argued that the Minnesota and U.S. Constitutions prohibit laws impairing the obligations of contracts. Hanft agreed. He wrote, however, that producer-distributors had discriminated against independents for years and that previous attempts to right that wrong had "foundered on the rock of inviolability of the right to contract." Had Minnesota's law been enacted a decade earlier, in all likelihood it would have been found unconstitutional "as a temerarious interference with the rights of property and contract and the law of supply and demand." Fortunately, he wrote, progressive change had occurred and it was recognized that only government could address many problems. Citing Minnesota Supreme Court Justice Royal A. Stone's opinion in

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judicial restraint in economic and social welfare matters. See especially *Nebbia v. New York*, 291 U.S. 502 (1934), and *West Coast Hotel Co. v. Parrish*, 300 U.S. 379 (1937).

[37] Joint Memorandum of Defendants James F. Lynch, Ed J. Goff and Thomas J. Gibbons in Opposition to Separate Motions of Plaintiffs for Temporary Injunction in *Paramount Pictures v. Lynch,* Ramsey County District Court, Second Judicial District, Case No. 241096, n.d., Attorney General Case Files, MHS, 101F52F Box 72, 24.

[38] Judge Hugo Hanft Decision, *Paramount Pictures v. Lynch*, supra note 5. See Appendix B.

[39] *Ibid.* In his ruling, Judge Hanft cited both *Nebbia v. New* York, 291 U.S. 502 (1934), and *Paramount v. Langer* (1938).

McElhone vs. Geror (1940), Hanft concluded that the freedom to contract is not absolute and pointed to the need to protect the weak against the strong. [40]

In the wake of Judge Hanft's ruling, positions on both sides hardened. Warner Bros. refused sales to Minnesota independents until all legal issues were resolved. United Artists announced that it would close its Minneapolis branch and service its accounts from other exchanges. Others threatened to relocate to Hudson, Wisconsin.[41] On the exhibitor side, independent theaters became so desperate for films that a few closed or reduced operations. As hostilities intensified, Minnesota theater-goers, who were largely ignorant of the brouhaha, began to notice. By October 1941, a number of big new pictures, including *Dumbo, Sergeant York*, and *Citizen Kane*, which should have been showing on independent screens, were not and the public, in letters and phone calls, wondered why. But, as *Variety* reported, the public learned little because both sides decided to "keep quiet and hope for an early settlement." [42]

In November, at last, the distributors received a release from Consent Decree terms in Minnesota so that they could resume sales. That release could have been gotten months earlier but for the distributors' desire to pressure independents in a "fight to the finish." [43] Although the big distributors now sold in Minnesota, the crisis deepened when the distributors announced new terms and prices that independents described as "brutal" and "exorbitant." Where the major distributors, with some MGM exceptions, previously sold to Minnesota independents at "flat" rates, i.e., so many dollars for a film, most now declared that some pictures would be priced at a percentage of gross receipts and set whopping price increases for all

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[40] *McElhone v. Geror*, 207 Minn. 580 (1940). Justice Stone also wrote that "The independent merchant, small or large, is a legitimate object of legislative solicitude. It cannot be otherwise in view of his contribution to the building of, and his present place in, our economic structure."

[41] "All May Stop Biz in Minn.," *Variety* (October 15, 1941), 7.

[42] "Duluth Fans Now Getting Curious About Delay of Nat'l Advertized Pix," *Variety* (October 22, 1941), 22.

[43] "Movie Relief," *Business Week* (November 29, 1941), 44; also see "Minn. Anti-Consent Decree Mess May Force Distribs to Get Ruling from Judge Who Signed Law in N.Y.," *Variety* (October 15, 1941), 7.

films. Paramount's demand of two pictures at 50% of gross, four at 40%, two at 25%, and 50-100% increases on flat rate films, was typical. [44]

Madelia Theater (c. 1940)

The Madelia opened in 1934 and had 397 seats. It was typical of hundreds of small town independent movie houses. To succeed in business, many small theaters included small rental income shops to one or both sides of the box office.

Although many small town theaters accepted the new terms, metropolitan and suburban independents declared they would close before succumbing.[45] Worse, the stiff new terms capped a year characterized by a nationwide slump in movie going, most likely due, as *Time* reported, to a "paucity of good pictures." [46] In early December Northwest Allied appointed a twelve man committee to attend a "unity" conference in Chicago where they would "lay the [Minnesota] situation before the

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[44]"WB's and PAR's % and RKO's Upped Rentals Stalemate Minn. Buying," *Variety* (December 3, 1941), 7; "Minn. Indies Feeling Kickback Of Anti-Decree Law; 20th Proffers 'Unacceptable' Deal Like Metro's," *Variety* (January 14, 1942), 18.
[45]"WB's and PAR's % and RKO's Upped Rentals Stalemate Minn. Buying," *Variety* (December 3, 1941), 7.
[46] "Slump," *Time* (June 30, 1941), 65.

industry." [47] **There, the independent owners' rage was expressed forcefully by Benjamin "Bennie" Berger who charged that distributors were punishing independents for sponsoring the 1941 state law. "We do not propose," Berger said, "to permit the distributors to establish the principle and precedent [of percentage sales]. Once established, we know how it would be expanded and how every company would come along with similar demands."** [48] **Among the independents, however, there was grumbling and some, as *Variety* noted, "now declare the boys should have 'let well enough alone' and given the decree a trial, the same as exhibitors have done in other states." Sensing crumbling unity, the major distributors held to the belief that the boycotting theaters were "bluffing" and wouldn't "cut their noses to spite their faces."** [49] **And, as if to salt the independents' wounds, Paramount announced that its 1941 domestic net profit exceeded $8.5 million, its highest earnings in many years.**[50] **Thus, as 1941 ended, some sales had resumed but the constitutional issues were not resolved. Far from it.**

Meanwhile, although neither the Ramsey or Hennepin County attorney had acted to enforce the law prior to Judge Hanft's ruling, both were prepared to do so upon receiving a complaint. A test case arose when, by prior arrangement, Harold St. Martin of the White Bear Theatre Corporation accused several producer/distributors of willfully selling in blocks of five in violation of Minnesota law.[51] **Ramsey County Sheriff Thomas Gibbons then arrested local exchange heads Ben Blotcky (Paramount), C. Jay Dressell (RKO), and Joseph Podoloff (20th Century Fox).** [52] **At the same time the producer/distributors, fearing legislation against them in other states, filed civil suits asking that the Minnesota law be found unconstitutional.** [53]

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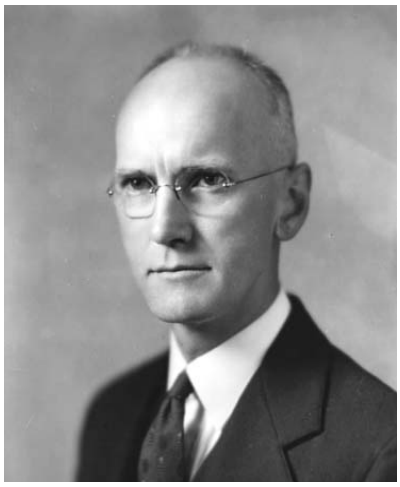
[47] **"Minn. Indies Will Take Beefs to Unity Confab," *Variety* (December 3, 1941), 6.**
[48] **"Mpls. Indies Await Talk with Agnew Before Asking State Action Against Majors; WB's % Terms Stymie Deal," *Variety* (January 21, 1942), 14.**
[49] **WB's and PAR's % and RKO's Upped Rentals Stalemate Minn. Buying," *Variety* (December 3, 1941), 7.**
[50] **"Par's 1941 Earnings Should Exceed $8,500,000 Sans $1,000,000 From Eng.," *Variety* (November 26, 1941), 5.**
[51] ***State of Minnesota v. R.K.O. Pictures* (October 20, 1941). Criminal Cases Nos. 16487 (R.K.O.), 16488 (20th Century Fox), and 16489 (Paramount Pictures). MHS, SAM 47, Criminal, Roll 36.**
[52] **"File Test Suit on Minn. Law," *Variety* (October 22, 1941), 7.**
[53] **"Movie Law Upheld," *Business Week* (October 11, 1941), 17.**



Judge Albin Pearson (c. 1940)

The criminal and civil cases in Ramsey County District Court were assigned to 48 year old Judge Albin S. Pearson, a 1939 appointee of newly elected Republican Governor Harold Stassen and a jurist of corporate temperament.[54] In an unusual procedure, Judge Pearson consolidated the criminal and civil cases for non-jury trial. Ramsey County Attorney James Lynch and Assistant County Attorney William Desmond prosecuted the criminal offense and defended state law. The motion picture companies were again represented by David Shearer and Joseph W. Finley as well as corporate attorneys. The companies also fattened their witness list. Ned Depinet was RKO's national sales manager; Neil Agnew, who grew up in Grand Rapids, Minnesota, held a similar position with Paramount; and Col. Jason S. Joy, the son of a Methodist minister, had headed the Association of Motion Picture Producers and Distributors of America's self-regulation production code office before becoming a senior 20th Century Fox executive.[55]

At the trials, the producers' witnesses illuminated the workings of the movie business and argued the reasonableness of their practices. Ned Depinet was homey and persuasive in making the case that RKO employed only evenhanded practices to bring the public the best pictures possible. [56] Before the consent decree and the Minnesota law, Depinet said, the company negotiated as to how many films, typically far fewer than all of its pictures, would be licensed and the fees to be charged. There were no set *prices.* It was a matter of equal parties, distributor and

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[54] Pearson grew up in Hudson, Wisconsin and graduated from the University of Minnesota Law School in 1916. He was elected to the Minnesota legislature in 1923 and 1925 and as an attorney specialized in estate law. He was appointed a probate judge in 1930 by Republican governor Theodore Christianson. The next Republican governor, Harold Stassen, elevated him to the Second Judicial District bench on October 4, 1939.

[55] Joy's background, including his degree from Connecticut's Wesleyan College, stood him in good stead as a moral spokesperson for the industry. Joy, who entered the U.S. Army a private and left a Colonel at the end of World War I, continued to use the honorific "Colonel" title.

[56] "Exhibs Testifying against Majors at Minn. Anti-Decree Law Hearings," *Variety* (January 14, 1942), 20.

exhibitor, negotiating fair and legal contracts. What's more, there were plenty of pictures to choose from.[57]

The producer-distributors also cast independents as uninformed and naïve, unaware that film production cost between $75,000 (low budget westerns) to over $2 million (*Gunga Din*).[58] In his testimony, Jason Joy added that the rights to successful stage plays such as *Lady in the Dark* cost as much as $285,000 while popular novels such as Ernest Hemingway's *For Whom the Bell Tolls* fetched not only lofty prices but carried fat royalties as well. Because of such high overheads and risk, there were inevitable box office disappointments. As a result, it was necessary that theaters present a wide variety of pictures so that successful movies offset financial flops. [59] Adding to the producers' problems, Ned Depinet testified that independent theaters booked the best and most expensive films, such as his company's *Mary Queen of Scots* and *Abe Lincoln of Illinois*, significantly less than run-of-the-mill comedies. On one hand independents complained about a shortage of high quality films but also took advantage of cancelation clauses to scrap important pictures. If the Minnesota law aimed to improve movie quality, Depinet concluded that it actually encouraged the opposite result. [60]

Attorneys Lynch and Desmond engaged the witnesses in tough and spirited cross-examination. The constitutional questions, a rehash relying heavily on the briefs and memoranda laid before Judge Hanft, were argued vigorously on both sides.[61] Throughout, the distributors' witnesses came across as levelheaded and persuasive while the independent's witnesses seemed to have lost heart for Minnesota's law.

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[57] Ned E. Depinet Testimony, January 7, 1942, (transcript), *Paramount Pictures Inc. v. James F. Lynch, et al.,* State of Minnesota, Ramsey County, District Court, Second Judicial District, Attorney General Files, MHS, Box 72.

[58] *Ibid.*

[59] Jason S. Joy Testimony, December 16, 1941, (transcript), *Paramount Pictures Inc. v. James F. Lynch*, supra note 57.

[60] Ned E. Depinet Testimony, January 7, 1942 (transcript), *Paramount Pictures Inc. v. Lynch*, supra note 57. In regard to cancellations, the distributors pointed out that the law didn't allow for individual sales of cancelled films since they were less than a season's entire output.

[61] David Shearer and Joseph W. Finley, "Reply Memorandum on Behalf of Defendants in the Criminal Cases and the Plaintiffs in the Civil Cases," *State of Minnesota v. Twentieth Century Fox et al., and Paramount Pictures, Inc. v. Lynch*, supra note 57.

On April 14, 1942, Judge Pearson's ruled the Minnesota law unconstitutional and acquitted the company executives of criminal charges. Judge Pearson demonstrated that he held a far different judicial philosophy than Judge Hanft. Where Judge Hanft applauded the judicial interpretations brought about by the New Deal, Judge Pearson did not.[62] Given the lengthy pleadings, memoranda, and Judge Hanft's ruling, which Judge Pearson neither acknowledged nor cited, it wasn't surprising that his decision spanned twenty-three pages and detailed eighteen legal findings. Key among them were his conclusions that contracts were inviolable agreements between two equal parties, that corporations were legal persons entitled to 14th Amendment protection, and that Minnesota's law deprived the producer-distributors of property rights. He found also that the law was harsh, arbitrary and without bearing on the public health, safety, or morals; that it was special or class legislation repugnant to the Minnesota constitution, that it violated copyright laws, and that it attempted to regulate interstate commerce in defiance of the U.S. Constitution.[63] When the counties' attorneys asked for a new civil trial Judge Pearson denied their motion and issued a writ of permanent injunction.

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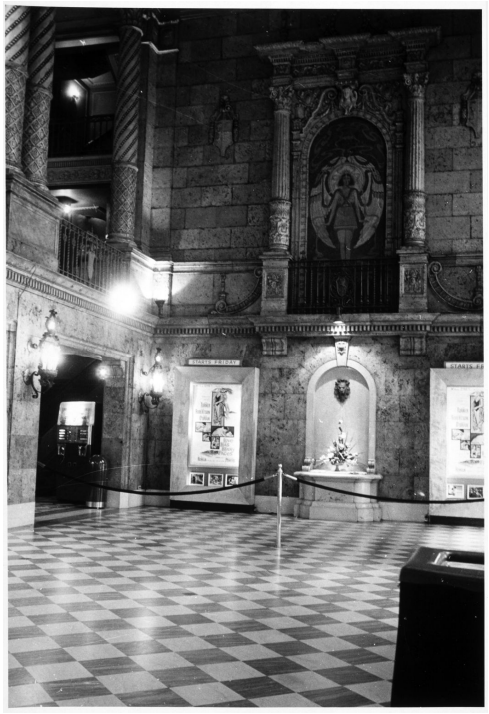
[62] **"Anti-Consent Law Kayoed in Minn.,"** ***Variety*** **(April 15, 1942), 18; "Appeal From Booking Law Decision Seen,"** ***Minneapolis Star Journal*** **(April 15, 1942), 28.**

[63] **Judge Albin Pearson, "Findings of Fact and Conclusions of Law,"** ***Vitagraph, Inc. v. James F. Lynch,*** **File 241098, State of Minnesota, County of Ramsey, District Court, Second Judicial District, (April 14, 1942); Minnesota Constitution Article IV, Sec. 33. The Minnesota constitution read "The legislature shall pass no law . . . granting to any corporation, association or individual any special or exclusive privilege, immunity, or franchise whatever. Provided, however, that shall not be construed to prevent the passage of general laws on any of the subjects enumerated." Expanded but nearly identical language is today found in the Minnesota Constitution Article XII, Sec. 1.**

Pearson's ruling is posted in full in Appendix C below, at 57-84.



Paramount, St. Paul (c. 1965)

The Spanish Baroque Paramount on 7th Street was originally Finkelstein and Ruben's Capitol Theater. In opened in 1920 with 3000 seats and was typical of the expansive, ornate movie houses purchased or built by Paramount and its predecessor, Publix, between 1927 and 1932.

Aftermath: United States v. Paramount

Judge Pearson's decision did not mean, however, that it was "blocks of five" after all.[64] The 1940 consent decree provided that if the Justice Department could not come to terms with Columbia, United Artists, and Universal by June 1, 1942 that

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[64] The court's Judgment, posted in Appendix C below, at 83-84, was not appealed; the state, counties, and independent exhibitors had had enough.

"blocks of five" would expire for all.[65] When negotiations failed, "blocks of five" ended and the distributors were freed to sell as they chose.

When the Consent Decree expired entirely in November 1943 the government's wartime aversion to trust busting was unchanged.[66] But when the producer-distributors and the Justice Department, prodded by independent exhibitors and the Society of Independent Motion Picture Producers (SIMPP), failed to reach agreement, President Truman's new Attorney General, Tom Clark, restarted the government's anti-trust campaign. In that case (1946) the court rejected theater ownership divestiture but banned block booking. Most importantly, and controversially, the court mandated theater-by-theater and film-by-film sales and auction film bidding in competitive markets. [67]

At the same time independent exhibitors also filed several suits against the major producers with mixed results and numerous appeals. Those cases were consolidated and a unanimous Supreme Court decision in *United States v. Paramount Pictures Inc.* was issued in May, 1948. The lengthy opinion, written by Minnesota-born Associate Justice William O. Douglas, compelled the divesture of the major studio-distributors from their theaters. Although some producers resisted the decision, Paramount, which owned Minnesota's major studio theaters, capitulated on December 31, 1949 when Paramount Pictures Incorporated was replaced by Paramount Pictures Corporation and United Paramount Theaters—a chain of over 1,000 theaters.[68]

Minnesota and the End of the Studio System

Although Minnesota independents welcomed the death of "blocks of five", there was scant else to cheer. Already in 1942 the distributors had gotten percentage bookings. What is more, the industry was ending the "studio system." Film stars,

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[65] "Film Decree a Fliv So Far," *Variety* (November 26, 1941), 5.

[66] See John Morton Blum, *V Was For Victory: Politics and American Culture during World War II* (San Diego, Harcourt Brace & Co., 1976), 131-140.

[67] The case was a second phase of *United States v. Paramount,* and was called "The New York Equity Suit." For a comprehensive discussion and documentation, see *Hollywood Renegades Archive: The SIMPP Research Database,* at http://www.cobbles.com/-simpp_archive/1film_antitrust.htm.

[68] *United States v. Paramount Pictures Inc.* 334 U.S. 131 (1948); discussed in Thomas Schatz, *Boom and Bust: American Cinema in the 1940's, History of American Cinema 6* (first paperback edition, Berkeley: University of California Press, 1999), 326-328.

for artistic and tax reasons, demanded release from contracts committing them to a single studio and to films they didn't want to make.[69] At the same time, the major studios reconsidered their commitments to 50 releases per year and to hundreds of regular employees. As output and employees were reduced, they released fewer films which they offered at higher prices.[70]

Neither the death of block booking nor the 1948 *Paramount* decision benefited Minnesota's independent exhibitors. Instead, the greatest benefit fell to the growing number of independent producers for whom the breakup of the producer-owned theaters meant improved access to the nation's best movie houses. For most of Minnesota's independent theater owners, films purchased individually on percentage of gross were more expensive than flat rate movies bought in blocks. In competitive markets independents now found themselves forced to bid against rivals for desirable films. As a result, costs increased, sometimes dramatically. And "clearance," the time between the first and subsequent "runs" of a feature, remained an issue. A 1947 plan by Benjamin Berger, who was recognized in the trade as the most aggressive regional leader, to form a buyer's combine came to nothing.[71] At the same time, small town independents griped because diminished output created a shortage of the "B" grade features their audiences welcomed. Indeed, the shortage of such features helped drive their audiences to television. As Benjamin Berger remarked in 1962, much of television was a "B" movie.[72]

Minnesota's theaters also faced a raft of new problems. Although movie attendance set new records in 1947, just a year later audiences began declining in a falloff that saw attendance drop by about 10% per year for the next dozen years. Because good films continued to draw well, the decline may have begun in part by

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[69] Olivia DeHavilland's case was the most well-known. *De Havilland v. Warner Bros. Pictures*, 67 Cal. App. 2d 225 (1944).

[70] "20th Set to Cut 'B' Output," *Variety* (August 12, 1942), 5.

[71] "Paramount Attack Holds NCA Meet Spotlight," *Greater Amusements* (March 26, 1948), 3; "NCA Aims at Power through Buying Combines," *Greater Amusements* (April 25, 1947), 8. Berger's aggressiveness was said to have been responsible for a North Central Association membership decline.

[72] Benjamin Berger Testimony, Partial Transcript of Proceedings, II, *John Wright and Associates Inc., plaintiff, v. Harold R. Ullrich et. al., Defendants.* Civ. No. 3-59-169 United States District Court for the District of Minnesota Third Division, 203 F. Supp. 744, 416-439 (1962).

audience displeasure with film content.[73] But there were larger forces at work. The postwar focus on rebuilding family lives and the onset of the baby boom, the population shift to cities and especially suburbia,[74] and by 1950-51, television, were all responsible. Nationally, exhibitor profits fell from $325 million in 1946 to just $111 million in 1950.[75]

As audiences were drawn to drive-in and postwar suburban theaters, some single screen urban and neighborhood houses converted to art and foreign formats, an option that small town theaters didn't have. Closings accelerated as hostilities between distributors and exhibitors continued. In 1955 Twentieth Century Fox President Spyros Skouras addressed surly theater owners at the Allied States Association national convention. Yet Benjamin Berger, who abhorred industry practices, caustically admired Skouras. "You don't see any other blood suckers here," Berger said. [76] Four years later, John Wright, owner of Red Wing's Chief and New Prague's Granada theaters said that competitive bidding was "unfair, inequitable, and unreasonable." "The film companies," Wright added, "stand there and sandbag each exhibitor for everything they can get. They break them both financially." [77]

Over the next decade television, shifting populations, and continuing business strife shuttered hundreds of single screen movie houses. The advent of multiplexes and home video entertainment did in more. Yet in Minnesota's towns and urban neighborhoods a surprising number of the old structures survive. Many are abandoned, decrepit, and bear weathered "for sale" signs. Others, long since converted to other commercial purposes, can be difficult to spot. Astonishingly, a few of the old theaters survive as movie houses. In small towns, frequently on week-

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[73] Lary May, *The Big Tomorrow: Hollywood and the Politics of the American Way* (Chicago: University of Chicago Press, 2000), 224.

[74] In one Minnesota county, Goodhue, population was static for the twenty-five years from 1940-1965. Considering birth and death rates this can only be accounted for by outmigration of people of prime movie-going age. See Lowry Nelson and George Donohue, *Social Change in Goodhue County, 1940-1965*, Bulletin 482 (Minneapolis: University of Minnesota, Agricultural Experiment Station, 1966), 7, 17-18.

[75] Thomas Schatz, *Boom and Bust: American Cinema in the 1940's, History of American Cinema, supra* note 68, at 6.

[76] Robert K. Krishef, *Thank You America: The Biography of Benjamin N. Berger*, supra note 4, at 65.

[77] John Wright Deposition, October 19, 1959, *John Wright & Associates, Plaintiff, vs. Harold R. Ullrich, et. al, Defendants, supra* note 72, at 26.

ends only, they present new features with broad general audience appeal. In a few instances, developers have re-created the illusion of the old single screens in new, modest-sized multiplexes located at the center of small cities or urban neighborhoods. Whatever the circumstance, these survivors and their imitators encourage nearby eating and drinking establishments that keep night time alive. And, by bringing people together for shared communication, even though one-way and often of pure fluff, they encourage the survival of community. Jeff Frank, owner of the sleek, single screen art deco Drexel in Bexley, Ohio, has said that these single screen theaters are places where "for a short time, you take people someplace they've never been before." [78]

Author

Thomas L. Olson was born and grew up in Red Wing, Minnesota. He earned a bachelor's degree from Wisconsin State University at River Falls and a Ph.D. in American History from the University of Minnesota. He taught at Mankato State University and the University of Minnesota and then enjoyed a career in university administration and in philanthropic development for educational, arts, and health care organizations. He is retired and lives in Las Cruces, New Mexico.

His book, *Sheldon's Gift: Music, Movies and Melodrama in the Desirable City* (North Star Press of St. Cloud, 2009, 260pp.) recounts the stormy history of show business in Red Wing, especially its iconic Sheldon Theater. More than local history, the book addresses the unique predicaments of entertainment enterprises, highbrow and low, in small cities. The book also has a good deal of courtroom drama in relating the story of movie-related lawsuits in the 1930's and again in the 1950's that challenged municipal theater ownership. The book is available from the publisher, Amazon.com. or, alternatively, viewers of the Minnesota Legal History Project may buy an autographed copy directly from the author, who may be contacted at tlolson4377@comcast.net.

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[78] **Dan Barry, "This Land: Bringing Hollywood Boulevard to Main Street," *The New York Times*, September 23, 2007.**

Acknowledgment

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APPENDIX

APPENDIX A

1941 Laws, Chapter 460.

An act relating to the distribution of motion picture films, providing terms and conditions of licensing the same, and providing penalties for violation of this act.

WHEREAS, the motion picture industry is made up of three branches, namely, production, distribution and exhibition; and

WHEREAS, the production and distribution branches are dominated and controlled by eight major companies with great economic power and exhibition is accomplished through two classes of theatre owners, namely, those wholly owned or affiliated with the producer-distributors and the independent exhibitors; and

WHEREAS, the major producer-distributors license, lease and distribute substantially all of the feature motion pictures exhibited in the state of Minnesota and the other states of the Union; and the needs of the independent exhibitor requires that he license or lease feature motion pictures from substantially all the major producer-distributors; and

WHEREAS, by reason of arbitrary terms and conditions imposed by the producer-distributors, the independent exhibitor has been:

(a) compelled as a condition precedent to licensing feature motion pictures, to also license short subjects, newsreels, trailers, serials, re-issues, foreign and western pictures far in excess of his needs or requirements;

(b) unable to cancel feature motion pictures injurious and damaging to his business, and therefore compelled to play pictures offensive, on moral, religious or racial grounds, and undesirable and harmful to the public; and

WHEREAS, the long-established trade practice of licensing feature motion pictures for a full season (one year) is essential to the best interests of the producer-distributors, exhibitors, and the public; but the above conditions imposed by the producer-distributors have subjected the independent exhibitors to unfair disadvantages, preventing him from responding to the community and local public influence and preferences with respect to selection of desirable feature motion picture films and are inimicable to public welfare and against public policy; now, therefore,

Be it enacted by the Legislature of the State of Minnesota:

Section 1. Definitions.—For the purpose of this act, unless the context otherwise provides:

(a) the term "person" includes an individual, partner-ship, association, joint stock

company, trust or corporation;

(b) the term "distributor" includes any person who engages or contracts to engage in the distribution of motion picture films and is a resident of or legally authorized to do business in this state;

(c) the term "exhibitor" includes any person who engages or contracts to engage in the exhibition of motion picture films and is a resident of or legally authorized to do business in this state;

(d) the term "license" includes the offering, intending or making of a license agreement, contract, or any type of agreement whereby a film, the distribution of which is controlled by one of the parties is to be supplied to and exhibited in a theatre owned, controlled or operated by the other party;

(e) the term "feature motion picture film" means all motion pictures, whether copyrighted or uncopyrighted, including positive and negative prints and copies or reproductions of such prints, which films contain photoplays or other subjects and are produced for public exhibition. The term shall not include films commonly known as short subjects, newsreels, trailers, serials, re-issues, foreign and western pictures, and road shows;

(f) the term "exhibition season" shall mean a period of twelve months as may be selected by the producer-distributor, provided, however, that there shall be no lapse of time between the termination of one season and the beginning of the next.

Sec. 2. Contents of licenses.—No distributor shall here-after license feature motion picture films to an exhibitor to be exhibited, shown or performed in this state unless the license provides:

(a) that all the feature motion picture films, which such distributor will license during the exhibition season, or the unexpired portion thereof, shall be included. The term "all the feature motion picture films" shall apply to each producer for whom the distributor is acting.

(b) that the exhibitor shall have the right to cancel a minimum of 20 per cent of the total number of feature motion pictures included in such license where the exhibitor deems the same injurious and damaging to his business or offensive on moral, religious or racial grounds. Such cancellation shall be made proportionately among the several price brackets, if there be such price brackets in the license agreement. Any number of cancellation to which an exhibitor is entitled, may be made the lowest price bracket at the exhibitor's option.

The right to cancellation shall not be effective, unless the exhibitor exercises such right by giving notice thereof, to the distributor, by registered mail, within 15 days after being notified of the availability of a feature motion picture.

In determining the number of feature motion pictures that may be cancelled, fractions of one-half or more shall be counted as one and fractions of less than one-half shall not be counted.

Sec. 3. May not contain certain restrictions.—No distributor shall license feature motion picture films to an exhibitor to be exhibited, shown or performed in this state, upon the condition that the exhibitor must also license short subjects, newsreels, trailers, serials, re-issue, foreign and western motion picture films. .

Sec. 4. Licenses to be void.—Any provision of any license hereafter made and entered into which is contrary to any provisions of this act, is hereby declared to be against public policy and void.

Sec. 5. Penalties.—Every person violating any provisions of this act, or assisting in such violation, shall, upon conviction thereof, be punished by a fine not exceeding $1,000, or, in default of the payment of such fine, by imprisonment in the county jail for not more than one year. In the case of a corporation, the violation of this act shall be deemed to be also that of the individual directors, officers or agents of such corporation who have assisted in such violation, or who have authorized, ordered or done the acts or omissions constituting, in whole or in part, such violation, and upon conviction thereof, any such directors, officers or agents shall be punished by fine or imprisonment, as in this section provided.

Sec. 6. Provisions severable.—If any provision of this act is declared unconstitutional or the applicability thereof to any person or circumstance is held invalid, the validity of the remainder of the act and the applicability of such provision to other persons and circumstances shall not be affected thereby.

Sec. 7. Application of act.—The provisions of this act shall not apply to the licensing of motion picture films to any school, college, university, church, or any educational, fraternal, or religious organizations in this state.

Approved April 26, 1941.

APPENDIX B

Judge Hugo Hanft denied the film companies' motion for an injunction barring enforcement of the Minnesota law on October 3, 1941. His order was accompanied by a 26 page memorandum explaining his reasoning. They follow.

STATE OF MINNESOTA DISTRICT COURT

COUNTY OF RAMSEY SECOND JUDICIAL DISTRICT

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Paramount Pictures Inc., a corporation, Plaintiff,

vs 241096

James F. Lynch, individually and as County Attorney of the County of Ramsey, State of Minnesota, Ed J. Goff, individually and as County Attorney of the County of Hennepin, State of Minnesota, and Thomas J. Gibbons, individually and as Sheriff of the County of Ramsey, State of Minnesota, Defendants.

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The above entitled matter came duly on to be heard in chambers, August 8, 1941, David Shearer, Esq., of Shearer, Byard and Trogner, and Joseph W. Finley, Esq., of Bundlie, Kelley and Finley, appearing at the hearing herein as attorneys (of counsel for plaintiff announced at the hearing, Shearer, Byard and Trogner and Bundlie, Kelley and Finley). Attorneys of record in behalf of defendant Lynch, individually and as County Attorney of Ramsey County, Minnesota, of Thomas J. Gibbons, individually and as Sheriff of said Ramsey County, are James F. Lynch, Esq., and William F. Desmond, Esq., and on behalf of defendant Ed J. Goff, individually and as County Attorney of Hennepin County, Minnesota, are Ed J. Goff, Esq., and Per M. Larson, Esq.

Said matter came on to be heard upon motion of plaintiff "for a temporary injunction to remain in force pending and until the final determination of this action, restraining and enjoin-

ing the defendants, and each of them, individually and as county officers, and all persons acting under, or claiming to act under, their authority or direction or control, from enforcing or executing that certain Act enacted by the Fifty-second Session of the Legislature of the State of Minnesota, and known as Chapter 460 of the Session Laws of 1941 of said State, against the plaintiff and its directors, officers, and agents, and from threatening to enforce, or representing that said defendants, or any of them, will enforce, said Act, and from publishing or declaring that said Act is valid, constitutional, or enforcible or will be enforced," all "upon the grounds that:-

"(1) Grave questions of the constitutionality of said Act exists;

(2) Substantial and irreparable injury, for which it has and will have no adequate remedy at law will result to plaintiff from enforcement and execution of the said Act;

(3) No injury will result to defendants by reason of the granting of this motion."

Upon the files herein, the extended oral arguments and the extensive and outstanding briefs of counsel both for plaintiff and defendants furnished the Court, respectively, at the hearing, August 25th, and September 15th,1941, meticulously marshalling and discussing a host of Federal and State decisions bearing directly and, in quite a few instances, not so very directly, upon the views of the litigants, pro and con, primarily on the constitutionality of the Act, but covering all points raised,

It is ORDERED

That the motion for a temporary injunction pending and until final determination of this action be, and the same hereby is, in all things denied. A stay of twenty days after service upon counsel for plaintiff of this order is hereby granted, within which plaintiff may take such steps as to plaintiff seem advisable.

Dated October 24 1941.

Judge of the District Court

MEMORANDUM

This is one of six similar companion cases. The instant action is a suit in equity in which "is sought a decree adjudging the Act as unconstitutional and void, and in addition (each) plaintiff seeks a declaratory judgment adjudging said Act to be unconstitutional and prays that the defendants be permanently enjoined from enforcing any of the provisions thereof". It is the position of plaintiff that "the sole issue * * * before the Court on this motion is whether temporary injunctions should issue to prevent irreparable injury to plaintiffs which would inevitably be suffered by * * * (plaintiff) prior to the time when the validity or invalidity of the statute may be determined on the merits." (p.3, Plff's initial brief.)

While this decision is primarily based by the Court upon the law controlling injunctions against public prosecuting and law enforcement officials, by far the greater portion of arguments and

briefs was directed by counsel for plaintiff in attempting to establish unconstitutionality of the Act, and by counsel for defendants in attempting to convince this Court the Act is valid and constitutional. That argument more appropriately goes to the merits of the controversy, depending upon facts as deduced from the evidence produced on the trial on the merits.

If the Act is ultimately held constitutional by the Supreme Court, plaintiff's claim to a permanent injunction against defendants automatically falls. Counsel for plaintiff correctly asserts, as established by many decisions, among them Mathwig vs Olson, 190 Minn. 262, if it appears from the verified pleadings presented to the Court at the time the temporary injunction is asked for that there is a bona fide controversy between the parties which may probably result in the relief sought by plaintiffs, the trial court, in its discretion may grant the temporary injunction. But it by no means follows that even in such case the Court must grant the temporary injunction prayed for against the specific defendants herein.

While counsel for plaintiff correctly insist that in this proceeding, it not being a trial on the merits, this Court may not specifically declare the Act constitutional, upon the bare study of the Act as it reads, yet they ask the Court to declare it unconstitutional without hearing any testimony. That this Court can no more do than the other, without a trial on the merits. The Court has studied closely the arguments and citation of cases cited by them as bearing on the constitutionality and contra of the Act and in justice to counsel and clients will express its opinion on that phase of the controversy. This Court cannot see eye to eye

with counsel for plaintiff in their claim that the summary of facts as described in the complaint are admitted or stand substantially uncontroverted by the answers. Vital matter as to alleged discriminatory dealings in the past by producers and distributors claimed highly injurious, if not ruinous to independent exhibitors, is decisively in dispute.

Counsel for plaintiff claims the Act is unconstitutional for the reason that it violates, contravenes, and is repugnant to §6 (no application unless a complaint has been filed charging a criminal offense) and §7, Art. I of the Constitution of Minnesota reading, so far as here applicable:-

> "No person shall be held to answer for a criminal offence without due process of law,"

and that clause of §1 Art. XIV of the Constitution of the United States which reads:-

> "No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

Also that the Act violates §11, Art. I of the Constitution of the State of Minnesota reading:-

> "No * * * law impairing the obligation of contracts shall ever be passed,"

and of §10, Art. I of the Constitution of the United States which reads:-

> "No state shall * * * pass any * * law impairing the obligation of contracts".

(Admittedly the contract season in the moving picture licensing field starts Sept. 1st for the following year, and the Act was approved April 26th, 1941.) Also that the Act does not bear any real or substantial relation to the public health, safety or morals, or to any other phase of general welfare and imposes unreasonable and arbitrary restriction upon the lawful licensing business of plaintiff and none upon distributors not residents of, or legally authorized to do business in, Minnesota, and is special or class legislation prohibited by §33 of Art. IV of the Constitution of Minnesota. (Non-residents not licensed to do business in Minnesota have no legal standing in the courts if they do business in the State without complying with the laws of the State). Also that the Act attempts to deprive plaintiff of the right guaranteed to it under §8, Art. I, of the Constitution of the United States and the statutes enacted pursuant thereto securing to plaintiff certain rights in its copyrighted motion picture films. Also that the Act is an interference with, and imposes an undue burden upon, commerce between the several states in violation of the third paragraph of §8 of Art. 1 of the Constitution of the United States, which gives Congress the "power to regulate commerce * * * among the several states." And lastly that the Act attempts to delegate to persons designated therein as exhibitors the powers vested solely in the legislature of the State of Minnesota. (All in Art. XVII of the complaint. The Court is unable to construe the cited case of Williams vs Evans, 139 Minn. 32, as sustaining plaintiff on this last contention. That case expressly holds the

legislature may delegate the power to do something which it might properly, but cannot advantageously do, that it may vest in a commission authority or discretion to be exercised in the execution of the law and is authority for a finding that the instant Act is a complete law.

> "The true distinction * * * is between the delegation of power to make the law, and conferring authority or discretion as to its execution, to be exercised under and in pursuance of the law. The first cannot be done; to the latter no valid objection can be made."

The fact that the authority is given to a person rather than to a board or commission cannot affect the lawfulness of the power. State vs McMasters (2/10/39) 204 Minn. 438. The Williams case also contains other statements of law adverse to plaintiff on some of its contentions:-

> "The state legislature possesses all legislative power not withheld or forbidden by the terms of the State or Federal Constitution. (Incidentally Congress has not passed a law generally regulating the moving picture industry). * * * The power of a state legislature to restrict liberty of contract is coincident with what is familiarly known as police power. The police powers of the state * * are nothing more or less than the powers of government inherent in every sovereignty to the extent of its dominions, - the power to prescribe regulations to promote the health, peace, morals, education and good order of the people, and to legislate so as to increase the industries of the state, develop its resources, and add to its wealth and prosperity. It may be said in a general way that the police power extends to all great public needs. It may be put forth in aid of what is sanctioned by usage or held by the prevailing morality or strong and preponderant opinion to be greatly and immediately necessary to the public welfare."

Under the pleadings plaintiff is a foreign corporation authorized to do business in the State of Minnesota and is a

distributor of copyrighted motion picture films throughout the United States of America and elsewhere and in the State of Minnesota, which films are licensed for exhibition within the State of Minnesota (p.3 Plffs. brief). Plaintiff (with exception of United Artists) is also a producer of motion pictures or controlled by, or affiliated with, producers of motion pictures (p.8). Defendants Lynch and Goff are county attorneys, respectively, of Ramsey and Hennepin County, Minnesota, and defendant Gibbons is the sheriff of Ramsey County, all three public officials, whose duty it is to enforce obedience to the laws of the State of Minnesota, designating violation of certain statutes as criminal offenses; that not in their individual, but solely in their official capacities, defendants have notified plaintiff that they will perform their duty, if violation of the terms of the Act by plaintiff comes to their attention.

The Act is the first of its kind in the particular field. It prescribes with precision the terms under which producer-distributors may license motion picture films to an exhibitor in Minnesota. There is no question in the mind of the Court but that the Act was caused to be drafted by the independent exhibitors through their trade association, who, through counsel and otherwise sponsored it before the Minnesota legislature, similarly to the procedure which resulted in the North Dakota statute, out of which arose the Langer case, infra, which upheld the validity of that statute against the vital and controlling claim the Act was

violative of the due process clause of the Fourteenth Amendment. And that decision was on the merits.

In the opinion of this Court the North Dakota Act is far more drastic than the Minnesota Act. The former strikes at the alleged evils of ownership of producers and distributors in theaters they would naturally favor as against independent exhibitors, and prohibits, after the expiration of twelve months after passage of the Act, said ownership or interest in such theaters, "direct or indirect, legal or equitable, through stock ownership or otherwise," and provides the drastic penalty upon violation of the terms of the Act of a fine not exceeding $10,000 or, in the alternative, of imprisonment not to exceed one year, or both. Incidentally, in the Consent Decree hereinafter referred to §5, Art. XI, appears the following:-

> "For a period of three years following the entry of this decree, no consenting defendant shall enter upon the general program of expanding its theater holdings."

Concerning controlled theaters the Court says in the Langer case:-

> "The operation of the theatres has been, and, if permitted to continue, will be profitable to the plaintiffs. Large sums of money have been invested by them in these theatres. The buildings in which the theatres are located are specially adapted for use as theatres. If plaintiffs are prevented from operating their theatres, they will suffer a substantial loss. Were it not for the Act complained of, the operation of these theatres in North Dakota would be legal."

The Minnesota Act merely seeks to regulate the terms of the licensing contract between producers, distributors and exhibitors

in an endeavor to eradicate "the arbitrary terms and conditions imposed by the producer-distributors" enumerated in the "Whereas" clauses. The Act did not originate from conditions peculiar to Minnesota but grew out of a nationwide controversy of long standing between independent motion picture exhibitors and producer-distributors, and more particularly producer-distributors who had entered the exhibition field through acquiring theaters or interests in theaters.

The briefs submitted by counsel aggregated 203 pages, citing 109 Federal and State decisions, 20 of them by both counsel for plaintiff and defendants, with arguments pro and con on these 20 in particular as to their applicability to the instant case. An attempt on the part of the Court to enter into an analysis of all of the 109 cases cited would unduly extend this memorandum and serve no useful purpose. From a reading of those arising out of the attempt of various state legislatures to regulate the moving picture industry it appears that some thirty years ago many small producers and distributors entered the field. True to form in this nation, when competition became keen and ruthless, amalgamation rapidly took place, until by 1938 there were "eight of these major producers in the United States" some of whom invaded the "exhibition field. In 1930 it (Paramount's predecessor) had some 836 affiliated theatres in the United States. It now has about 1300 Theatres. The total number of affiliated theatres in the United States is at present approximately 2500, out of a total of about 16,000 theatres. Five major producers have theatres or interests in theatres. These theatres constitute many, if not

a majority of the best theatres in the larger cities of the United States."

Paramount Pictures vs Langer (July 14, 1938)23 Fed.Supp.890.

In a position to dominate the industry by virtue of their individual powerful organizations and vast holdings, it would tax the credulity of this Court to the breaking point to assume that these eight, of whom six are plaintiffs in these actions, would not use it to their aggrandizement, but lay aside profit consideration and produce and distribute their wares solely in the interest of the public and impartially as between independent exhibitors and those owned or controlled by the producer-distributors. On the other hand, the mainspring motivating the independent exhibitor is also the profit angle of the business, but he is a pigmy compared with the aforesaid eight producers.

It is a matter of common knowledge, reflected in numerous court proceedings, that for years producers and distributors discriminated in many ways against the independent exhibitor. Chief cause of complaint was the method of block booking pursued, compelling the exhibitor to take what the producer saw fit to offer him, or fail to get the desirable best paying features, later with some ostensible concession of cancellation offered in the contract, of doubtful effectiveness, and alleged rank discrimination in favor of theaters wholly owned or in some cases controlled by producer or distributor as to feature pictures, first runs, and cancellations. Efforts of state legislatures to relieve the situation of independent exhibitors foundered on the rock of "inviolability of the right to contract", "the constitutional right

of the citizen to pursue his calling and exercise his own judgment as to the manner of conducting it". Had the instant statute been enacted a decade or two ago, under decisions recognizing the inviolability of the right to contract doctrine, it would very likely, in the opinion of this Court, have been held to be unconstitutional, as a temerarious interference with the rights of property and contract and the law of supply and demand.

But the world moves - this country progressively. Within the last decade vast social and economic changes have taken place with astonishing rapidity. Government found it necessary to take a decisive hand to meet new conditions. Modern problems had to be met by legislative, executive, and the judicial departments of government. Laws originally sustained under police power as to safety and morals are now sustained upon the additional ground of health and welfare of the people, and the term welfare has in the last two or three years been vastly expanded to meet existing social and economic conditions. A remarkable example of how the courts will adjust themselves to meet existing conditions is found in the cases of Adkins vs Children's Hospital of the District Court of Columbia, (4/9/23) 261 U.S. 525; 43 S. Ct. Rep.394, and West Coast Hotel Co. vs Parrish (3/29/37) 300 U.S. 379; 57 S.Ct. Rep. 578, in the former of which a statute authorizing fixing of a minimum wage for women was held arbitrary and void and the statute unconstitutional upon the ground that the right to contract is part of the liberty protected by the Constitution and the statute in question is violative of that liberty. In the Parrish case

the majority of the Supreme Court, speaking through Chief Justice Hughes, declared, among other things, in the light of "the economic conditions which have supervened and in the light of which the reasonableness of the exercise of the protective power of the state must be considered, (it is) not only appropriate, but we think imperative that in deciding the present case the subject should receive fresh consideration." * * * "The principle which must control our decision is not in doubt." The decision overruled the decision in the Adkins case.

In the opinion of this Court, the vital and controlling questions in the instant case, so far as constitutionality of the Act is concerned, are whether or not the Act is violative of the right to contract as part of the liberty protected by the Constitution or of the due process clause of the Fourteenth Amendment, or of both.

As far back as 1911, in Chicago, Burlington & Quincy R.R. Co. vs McGuire, 219 U.S. 549, the Supreme Court of the United States put an end to the fictitional concept of "liberty of contract" when it declared:-

> "But it was recognized * * * that freedom of contract is a qualified and not an absolute right. There is no absolute freedom to do as one wills or to contract as one chooses. The guaranty of liberty does not withdraw from legislative supervision that wide department of activity which consists of the making of contracts, or to deny to government the power of the government to provide restrictive safeguards. Liberty implies the absence of arbitrary restraint, not immunity from reasonable regulations and prohibitions imposed in the interests of the community. * * * The first ground of attack is that the statute violates the 14th Amendment by reason of the restraint it lays upon the liberty of contract. * * *

"The principle involved * * * is that where the legislative action is arbitrary and has no reasonable relation to a purpose which it is competent for a government to effect, the legislature transcends the limit of its power in interfering with liberty of contract; but when there is a reasonable relation to an object within governmental authority, the exercise of the legislative discretion is not subject to judicial review. The scope of judicial inquiry in deciding the question of power is not to be confused with the legislative considerations in dealing with the matter of policy. Whether the enactment is wise or unwise, whether it is based on sound economic theory, whether it is the best means to achieve the desired result, whether, in short, the legislative discretion within its prescribed limits should be exercised in a particular manner are matters for the judgment of the legislature and the earnest conflict of serious opinion does not suffice to bring them within the range of judicial cognizance."

March 15, 1934, the Supreme Court of the United States handed down an epoch making decision in the case of Nebbia vs New York, 291 U.S. 502; 54 S. Ct. Rep. 505, holding a statute establishing a board with power to fix minimum and maximum milk prices to be charged by stores to consumers for consumption off the premises, constitutional. The board fixed maximum and minimum at 9 cents a quart. Nebbia sold two quarts and a 5 cent loaf of bread for 18 cents and was convicted for violating the board's order. At his trial and appeals he asserted both statute and order contravened the equal protection and the due process clause of the XIV Amendment. The conviction was sustained. The great importance of this decision is obvious. The Court in this case meticulously disposes of every possible bearing the amendment might have on the statute and gives a new meaning to the phrase "affected with a public interest" or rather concluded that this formula is without value

in determining the power of a state to regulate a business. The decision definitely removes the taboo against price fixing (Minnesota agreed) and establishes the principle that the private character of a business does not prevent the State from regulating prices therein. It is the forerunner of later decisions covering statutes regulating business other than in price fixing. The key principles therein are strongly applicable in the instant case. In its examination of recent cases cited to this Court, it found the Nebbia case cited more often than any other case, in the Langer case eleven times, covering nearly every phase of the constitutional questions therein raised, and that was a case involving the North Dakota Act, which attempted to regulate drastically one phase of the controversy among moving picture producer-distributors and independent exhibitors which resulted in the passage of the instant Act.

Citing the Nebbia case and adopting the law therein enunciated appears McElhone vs Geror (5/24/40), 207 Minn. 580. It would need but very little paraphrasing to make the language of Justice Stone squarely applicable to the instant controversy.

> "Neither under the due process guaranty nor otherwise is the right to freedom of contract absolute. As with most other individual rights, it is qualified and limited by similar rights of others and those of government. Individual liberty must yield to the conflicting interest of society, acting through sovereign government. Individual will must give way to that of government when the latter is expressed in declared policy, enforced by constitutional means.
>
> "This law purposes protection of retail trade against defined and detrimental practices. * * * Long has it been thought that a chief interest of government is freedom of trade. So government has long protected it, not only from the restraint of monopoly, but also the lesser hindrance

of contracts in restraint of trade. In such policy is reflected centuries of experience, resulting in the conclusion that in the interests of society competition should be unrestrained.

"All laws of a democracy are but expressions of a policy drawn, correctly or otherwise, from human experience. It is therefore to be expected that the policy they express will change as new experience teaches that old policy is mistaken either in factual basis or functioning.

"It is apparent that the legislature has determined that unrestricted competition has resulted in damage to the public interest. Hence the restrictions, imposed because in the judgment of the lawmakers they would protect public welfare.

"The measure is definitely designed to protect the weak against the strong. The strong have no unlimited constitutional power so to use their strength as to crush the weak. Therefore, in the field of trade, why is it not competent for a law bearing on all alike to bar an artificial and wholly harmful practice tending to eliminate the weak and leave the whole field to the strong? We see therein no violation of the constitutional guaranties of due process. The independent merchant, small or large, is a legitimate object of legislative solicitude. It cannot be otherwise in view of his contribution to the building of, and his present place in, our economic structure.

"If the legislature may protect the public from harmful results of restraint of trade, we see no reason to deny a similar power to shield from the damaging effects of unrestricted competition. That attempt is but another evidence, either that experience is changing or that a conclusion drawn from experience is modified to fit new conditions. Implicit therein is the legislative conclusion that the absence of such restraints as are now imposed is, of itself, resulting in undesirable and preventable restraint.

"So far as the requirement of due process is concerned, and in the absence of other constitutional restriction, a state is free to adopt whatever economic policy may reasonably be deemed to promote public welfare, and to enforce that policy by legislation adapted to its purpose.

"Until recently it was thought, incorrectly, that outside the field of businesses conducted under a franchise and enterprises which, historically, were considered subject to price regulation, the fixing of prices was permissible only where the business was 'affected with a public interest.' That doctrine, which put price control in a different category from other forms of state regulation, has been disapproved.

"The legislature is attempting to protect retailers and the public from unfair trade practices. It is not for us to deny its conclusion of fact that sales below cost are harmful and constitute a trade practice so unfair and injurious as to require legislative attention. The act declares and implements valid policy. We cannot say that the implementation bears no relation to the purpose. So, whatever its interference with plaintiff's freedom of contract, the statute transgresses no constitutional guaranty, unless in other respects it is arbitrary or unreasonable. The police power, which is about all the power that sovereign government has, aside from its powers of eminent domain and taxation, is not limited to protection of public health, morals, and safety. It extends also to 'economic needs'."

Paramount Pictures vs Langer (7/14/38) is so closely analogous to the instant case, so completely meets adversely every contention of plaintiff here as to its contention that the instant Act is violative of constitutional contract rights and the due process clause of the Fourteenth Amendment that liberal quotations therefrom are in order.

"The Act, by its terms, relates only to the operation of motion picture theatres within the confines of the State. It does not purport to relate, and could not be construed as relating, to the distribution or licensing of films. It seems clear to us that any remote effect that the Act might have upon the distribution of films in interstate commerce or upon the rights of producers or distributors under the Copyright Law could not sustain a conclusion that the Legislature of North Dakota had invaded a field exclusively reserved to the Congress of the United States.

"We see no merit in the contention that the Act can be justified as a measure intended to safeguard the public

health, safety or morals, because (1) there is no basis for believing that the operation of affiliated theatres in the State has, or will have, any reasonable relation thereto, and (2) any indirect effect which the presence of these 10 affiliated theatres in the State might possibly be conceived to have on the health, safety and morals of their patrons would not warrant excluding them from the State.

"So far as the equal protection clause of the Fourteenth Amendment, U.S.C.A. Const.Amend 14, is concerned, it is readily apparent that there are distinctions between the two sorts of exhibitors - affiliated and independent - which might well justify a different treatment, if the Legislature had the power to enact this legislation.

"The vital and controlling question in these cases, as we see it, is whether the Act is violative of the due process clause of the Fourteenth Amendment in that it has no reasonable relation to the prevention of monopoly, restraints of trade, unfair competition, unfair trade practices, or the maintenance in North Dakota of a free and open market for motion picture films, in which market all exhibitors may compete on a substantially equal basis.

"The general rules which are to be applied in determining whether a challenged state statute offends against the due process clause of the Constitution of the United States are more easily stated than applied.

"'The guaranty of due process * * * demands only that the law shall not be unreasonable, arbitrary or capricious, and that the means selected shall have a real and substantial relation to the object sought to be attained.'

"Upon proper occasion, and by appropriate measures, the state may regulate a business in any of its aspects.

"'So far as the requirement of due process is concerned, and in the absence of other constitutional restriction, a state is free to adopt whatever economic policy may reasonably be deemed to promote public welfare, and to enforce that policy by legislation adapted to its purpose. The courts are without authority either to declare such policy, or, when it is declared by the legislature, to override it. If the laws passed are seen to have a reasonable relation to a proper legislative purpose, and are neither arbitrary nor discriminatory, the requirements of due process are

satisfied, and judicial determination to that effect renders a court functus officio. 'Whether the free operation of the normal laws of competition is a wise and wholesome rule for trade and commerce is an economic question which this court need not consider or determine.' And it is equally clear that if the legislative policy be to curb unrestrained and harmful competition by measures which are not arbitrary or discriminatory it does not lie with the courts to determine that the rule is unwise. With the wisdom of the policy adopted, with the adequacy or practicability of the law enacted to forward it, the courts are both incompetent and unauthorized to deal.'

"The legislature is primarily the judge of the necessity of the law. Every possible presumption is in favor of its validity, and, though the court may regard it as unwise, it may not be annulled unless palpably in excess of legislative power.

"'The Constitution does not secure to any one liberty to conduct his business in such fashion as to inflict injury upon the public at large, or upon any substantial group of people.'

"There is no closed class of businesses affected with a public interest, and the function of the courts, in the application of the Fourteenth Amendment, is to determine in each case whether circumstances justify the challenged regulation as a reasonable exertion of governmental authority or condemn it as arbitrary or discriminatory.

"Any industry, for an adequate reason, may be subjected to control for the public good. Certain kinds of businesses may be prohibited, and the right to conduct a business may be conditioned.

"'When the action of a legislature is within the scope of its power, fairly debatable questions as to its reasonableness, wisdom, and propriety are not for the determination of courts, but for the legislative body, on which rests the duty and responsibility for decision.'

"If, in the public interest, a legislature deems it necessary to mitigate the evils of competition between small chains and large chains, or to discourage the activities within the state by chains grown so large as to menace the public welfare, it may adopt measures to accomplish those ends.

"It is not a denial of due process to adjust legislation to meet a local evil resulting from business practices and superior economic power, even though the advantages and power are largely due to the fact that the persons affected do business in other states.

"The use of property and the making of contracts are normally matters of private, and not of public, concern. 'The general rule is that both shall be free of governmental interference. But neither property rights nor contract rights are absolute; for government cannot exist if the citizen may at will use his property to the detriment of his fellows, or exercise his freedom of contract to work them harm.'

"A reading of the cases * * * makes it very apparent that the difficulties which the courts have had in dealing with state statutes of the character here involved arise out of a desire to accord to the states the greatest possible latitude in the exercise of their police power, without, at the same time, nullifying rights guaranteed by the due process and equal protection clauses of the Fourteenth Amendment.

"The two questions which we are called upon to answer are:

1. Does the policy declared by the Act bear a reasonable relation to a proper public purpose, or is it palpably in excess of legislative power?

2. Are the means provided for the enforcement of the policy declared by the Act arbitrary and unreasonable?

"A producer having affiliated theatres has the power to grant to its theatres the right to exhibit first run all pictures produced by it. It has the power to grant to its theatres greater clearance than to their competitors. Its bargaining power for the pictures of other producers which have affiliated theatres is greater than that of a competing independent exhibitor, because producers operating theatres must purchase pictures from each other, and each of such producers owns many theatres. A producer which owns theatres has the power to make it impossible for the independent exhibitor to procure films from it, and difficult to procure them from other major producers in case the producer-exhibitor desires those films for itself. There is evidence tending to show that producers with affiliated theatres have exercised powers possessed by them for their own advantage and to the detriment of their independent competitors.

"The Court is not required to determine what would be the best, fairest and wisest solution of the problems and controversies which have come about through the acquisition of theatres by those engaged in the production and distribution of pictures. The wisdom of the policy adopted by the State of North Dakota declaring that affiliated theatres shall not be operated is not for the Courts to pass upon.

"* * *A finding that the plaintiffs had a monopoly in North Dakota or were threatening to obtain one, or had been guilty of any serious abuses with respect to competitors or to the public in North Dakota, would not be justified.

"It is our opinion that the existence of unusual power to deal with competitors unfairly, when coupled with the opportunity and the temptation to use that power, is probably a sufficient basis for legislative action to prevent the possibility of its exercise. This must certainly be so where there is, in addition, evidence of past aggressions. * * *

"The fact that the Act here in question was passed primarily in the interests of a class would not render it invalid. There can be no doubt of the right of a state, within constitutional limits, to protect and foster any industry within its borders and to pass reasonable legislation in the interests of its citizens who are engaged in that industry. Moreover, in the Nebbia Case the Supreme Court pointed out that 'no exercise of the private right can be imagined which will not in some respect, however slight, affect the public; no exercise of the legislative prerogative to regulate the conduct of the citizen which will not to some extent abridge his liberty or affect his property.'

"That we might be of the opinion that the Legislature of North Dakota could have dealt adequately with the problem sought to be solved by this challenged legislation in some different or more moderate way, would not justify us in striking down this Act as being harsh and unreasonable. If the subject matter of the legislation was within the legislative authority, the policy declared and the means of its enforcement were, within very broad limits, for the Legislature to decide.

"Our conclusion is that the policy declared by the Act in suit has a reasonable relation to a proper legislative purpose."

The Langer case did not involve the two contentions of plaintiff that the Minnesota Act directly interferes with and unduly burdens interstate commerce and deprives plaintiff of the benefit of its copyright rights. Does it? Whatever the situation in times gone by, in this day and age myriad variations in the methods and incidents of commercial intercourse, affected by rapidly changing social and economic conditions, call for legislation by states in the exercise of police power to regulate business to prevent abuses. Every such state police statute necessarily will affect interstate commerce in some degree, but such a statute does not run counter to the grant of Congressional power merely because it incidentally or indirectly involves or burdens interstate commerce. Until Congress acts, and it has neither fully nor at all done so as to regulating the moving picture industry, Minnesota has a wide range of power to do so although interstate commerce may be affected. The Act does not unduly burden interstate commerce.

Kelly vs State of Wash. (1937), 302 U.S.1; 58 S.Ct.Rep.87;
Townsend vs Yoemans (1937), 301 U.S.346; 59 S.Ct.Rep.528;
South Carolina State Highway Dept.vs Barnwell Bros. (1938),
303 U.S.177; 58 S.Ct.Rep.510;
Milk Control Board vs Eisenberg Farm Products (1939),
306 U.S.346; 59 S.Ct.Rep.528;
Eichholz vs Public Service Commission of State of Missouri,
306 U.S.268; 59 S.Ct.Rep.532;
People vs Thompson (1941), 61 S.Ct.Rep.930.

Applications for rehearing were denied in the Eisenberg and Eichholz cases, in which latter case interstate commerce was directly affected.

Under the broad copyright privileges given by Sec. 1, Title 17, U.S.C.A., The American Society of Composers, Authors, and Publishers, known as ASCAP, conceived the idea of entering into a combination by which they could control prices absolutely, if not in contravention of existing law. The legislature of Florida passed a law which, if upheld, decidedly interfed with ASCAP's method of operation in that respect. In sustaining the second law passed by the legislature, the Supreme Court of the United States in Watson vs Buck (5/26/41), 61 S.Ct.Rep.962, said:

> "We find nothing in the copyright laws which purports to grant to copyright owners the privilege of combining in violation of otherwise valid state or federal laws. We have in fact determined to the contrary with relation to other copyright privileges."

The Court further said:-

> "The ultimate determinative question, therefore, is whether Florida has the power it exercised to outlaw activities within the state of price fixing combinations composed of copyright owners. * * * These questions were for the legislature of Florida and it has decided them. And, unless constitutionally valid federal legislation has granted to individual copyright owners the right to combine, the state's power validly to prohibit the proscribed combinations cannot be held non-existant merely because such individuals can preserve their property rights better in combination than they can as individuals. * * * It is enough for us to say in this case that the phase of Florida's law prohibiting the activities of those unlawful combinations described in Section 1 of the 1937 act does not contravene the copyright laws of the federal Constitution."

That decision definitely puts an end to the fictitional concept of absolute rights under copyright statutes as did the Maguire case to the fictitional concept of "liberty of contract". There is nothing before the Court that would justify a conclusion that the six plain-

tiffs in the instant cases have combined to use their copyrights to fix prices or otherwise. But the fact remains that plaintiff through its copyrights is in a position, and has the power to use its copyrights, to force independent exhibitors into discriminative and onerous contracts. The language of Justice Stone in the McElhone case is persuasively applicable:-

> "The measure is definitely designed to protect the weak against the strong. The strong have no unlimited constitutional power so to use their strength as to crush the weak."

See also the Langer case.

The Act does not unduly restrict plaintiff's exercise of its copyright privileges.

As before noted, numerous past efforts on the part of state legislatures and national governmental agencies to end the long struggle between independent exhibitors and producer-distributors came to naught on the rock of the fictitional concept of "liberty of contract". The bitter controversy resulted in proceedings instituted July 20, 1938, by the United States against a large number of moving picture producers and distributors, including plaintiff herein. At the request of this Court it was furnished with the original complaint in that proceeding and the amended and supplemental complaint of November 14, 1940, the latter made to fit the contemplated consent decree filed 11/20/40. In the original petition are recited all the alleged booking evils of the moving picture industry. The amended petition tones these down somewhat. At any rate, they are not evidence. But consent decrees are compromises and a tacit admission of wrong-doing by the accused as to at least some of the

charges advanced against such. The fact is that in that decree five of the accused agreed to abstain from some of the practices previously indulged in by producer-distributors in forcing contracts upon independent exhibitors which the latter insisted were discriminatory and unjust to them, and which had long been the subject of dispute. The decree calls for termination of the sales practice known as "blind selling" and drastic modification of the socalled "block booking" methods of the defendant companies. It still permits block booking of not "more than five features in a single group." It does contain this significant concession:-

> "No distributor defendant shall require an exhibitor to license short subjects, news reels, trailers or serials (hereinafter collectively referred to as shorts) as a condition of licensing features. No distributor defendant shall require an exhibitor to license reissues, westerns, or foreigns as a condition of licensing other features."

The decree, of course, is binding only on the five who agreed to it. The Minnesota Act is intended, among other things, to give the protection quoted to exhibitors as against all producer-distributors and distributors. This consent decree in the Federal District Court of the United States for the Southern District of New York has no bearing upon Minnesota's power to pass the Act here under attack. Note 6, p.968, Watson vs Buck. Plaintiff seems disturbed that the Minnesota Act, differing in many matters from the terms of the consent decree, will subject them to contempt proceedings in New York if it abides by the Act in its Minnesota dealings. There is no merit in that contention. There

exists the strong presumption that the Act is constitutional and valid, and that stands unless and until it is declared unconstitutional by the proper court. Section XXIII of the consent decree specifically protects plaintiff on that score:-

> "Whenever obligations or prohibitions are imposed upon the defendants by the laws of any State or by rules or regulations made pursuant thereto, with which the defendants by law must comply, the Court, upon application of defendants, or any of them, shall from time to time enter orders relieving defendants from compliance with any requirements of this decree in conflict with such laws, rules or regulations, and the right of defendants to make such applications and to obtain such relief is expressly granted."

Johnson vs Ervin (5/6/39), 205 Minn. 84, does contain statements as to controlling law with which this Court is in absolute accord, to-wit:- "The right to follow any of the common applications is an inalienable right. * * * When the power is exerted to regulate the conduct of a useful business or occupation, the legislature is not the sole judge of what is a reasonable and just restraint upon the constitutional right of the citizen to pursue his calling and exercise his own judgment as to the manner of conducting, but the measures to protect the public health and secure the public safety and welfare must have some relation to these ends." The Court held the last sentence of the Act in question (3 Mason's Minn. St. 1938 Supp. 5846-4), which reads:-

> "However, the provisions of this section shall not be construed to authorize any of the persons exempted to shave or trim the beard of any person for cosmetic purposes",

unconstitutional and void upon the ground that on its face it was arbitrary and unreasonable insofar only as it applied to licensed

beauty culturists, as it deprives them of the right to pursue their calling in respect to trimming and dressing women's hair. That matter came on for hearing upon demurrer, which admits all material facts well pleaded, all inferences of fact which may fairly be made therefrom and all necessary legal inferences which arise from the facts pleaded. Harriet State Bank vs Samels, 164 Minn. 265. That represents anything but the situation here. The case does not sustain plaintiff's contention that the instant Act on its face is patently unconstitutional and the temporary injunction must be granted upon that ground. Nor is there any grave doubt in the opinion of this Court as to the constitutionality of the Act, - in fact, it is of the opinion that the Act is neither unreasonable arbitrary, nor capricious, and is of the opinion that the means selected by the Legislature have a real and substantial relation to the object sought to be obtained.

There is no allegation that defendants or any of them have instituted criminal proceedings against plaintiff in the interval between the passage of the Act and the institution of these proceedings nor that any of them have threatened to prosecute plaintiff in connection with any specific clause of the several provisions of the Act. The most that appears is that defendants stand ready to perform the duties under their oath of office should they acquire knowledge of violations. Restraining such officials from performance of their duties is a serious matter. Injunctions are not to be granted as a matter of course, even if statutes prescribing penalties are unconstitutional. No person is immune from

prosecution in good faith, for his alleged criminal acts.

> "The imminence of such a prosecution even though alleged to be unauthorized and hence unlawful is not alone ground for relief in equity which exerts its extraordinary powers only to prevent irreparable injury to the plaintiff who seeks its aid. A general statement that an officer stands ready to perform his duty falls far short of such a threat as would warrant the intervention of equity. And this is especially true when there is a complete absence of any showing of a definite and expressed intent to enforce particular clauses of a broad, comprehensive and multi-provisioned statute. For such a general statement is not the equivalent of a threat that prosecutions are to be begun so immediately, in such numbers, and in such manner as to indicate the virtual certainty of that extraordinary injury which alone justifies equitable suspension of proceedings in criminal courts. The imminence and immediacy of proposed enforcement, the nature of the threats actually made and the exceptional and irreparable injury which complainants would sustain if those threats were carried out are among the vital allegations which must be shown to exist before restraint of criminal proceedings is justified."

> "The general rule is that equity will not interfere to prevent the enforcement of a criminal statute even though unconstitutional. * * * To justify such interference there must be exceptional circumstances and a clear showing that an injunction is necessary to afford adequate protection of constitutional rights. * * * We have said that it must appear that 'the danger of irreparable loss is both great and imminent.'"

Watson vs Buck (5/26/41), 61 S.Ct.Rep.962;
Spielman Motor Sales Co.vs Dodge, 295 U.S.89; 55 S.Ct.Rep.678;
Northport Power & Light Co.vs Hartley, 283 U.S.568;51 S.Ct.R.581;
Milton Dairy Co. vs G.N.Ry.Co., 124 Minn. 239;
Cobb vs French, 111 Minn. 429.

In the matter before it, this Court cannot vision such exceptional circumstances and great and immediate danger of irreparable loss to plaintiff as would justify the exercise in equity of the extraordinary power of restraining enforcement of the Act at this

time. Concededly, defendants as such would not be injured by the granting of the injunction prayed for, but the class of exhibitors the Act intends to protect against alleged unfair and discriminatory dealing by producers and distributors certainly would suffer irreparable injury if the Act is constitutional and its enforcement held up during the time it takes to get the ultimate decision on the Act from the court of last resort.

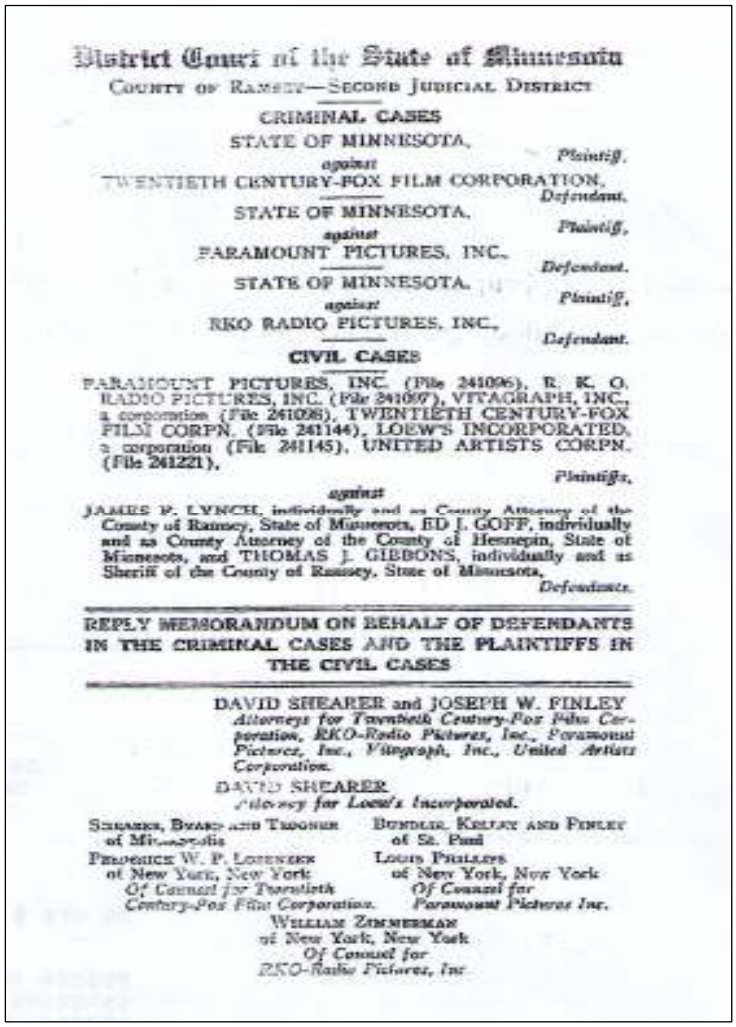
Under the foregoing, the application of plaintiff for a temporary injunction should be denied.

Kanty J

APPENDIX C

In *Vitagraph, Inc. v. James Lynch, et al*, Judge Pearson declared the Minnesota law unconstitutional on several grounds. The *Vitagraph* case (Court File No. 241098) was one of five civil cases consolidated before Judge Pearson. His ruling, identical in all respects except for the opening paragraph describing the plaintiff corporation, was issued in each case on April 14, 1942; the others were brought by Twentieth Century–Fox Film Corp. (File No. 241144), RKO Radio Pictures, Inc. (File No. 241097); Paramount Pictures, Inc. (File No. 241096); and Lowe's Inc. (File No. 241145). A copy of the Judgment in the *Paramount* case follows the court's ruling.

As noted in the text, in an unusual procedure, the criminal cases against three of the film companies—Twentieth Century Fox, Paramount and RKO—were consolidated with the five civil cases before trial by Judge Pearson. This is the caption of a joint memorandum of law submitted by the lawyers for the film companies in the combined cases:



District Court of the State of Minnesota

COUNTY OF RAMSEY—SECOND JUDICIAL DISTRICT

CRIMINAL CASES

STATE OF MINNESOTA, *Plaintiff,*
against
TWENTIETH CENTURY-FOX FILM CORPORATION, *Defendant.*

STATE OF MINNESOTA, *Plaintiff,*
against
PARAMOUNT PICTURES, INC., *Defendant.*

STATE OF MINNESOTA, *Plaintiff,*
against
RKO RADIO PICTURES, INC., *Defendant.*

CIVIL CASES

PARAMOUNT PICTURES, INC. (File 241096), R. K. O. RADIO PICTURES, INC. (File 241097), VITAGRAPH, INC., a corporation (File 241098), TWENTIETH CENTURY-FOX FILM CORPN. (File 241144), LOEW'S INCORPORATED, a corporation (File 241145), UNITED ARTISTS CORPN. (File 241221), *Plaintiffs,*
against
JAMES P. LYNCH, individually and as County Attorney of the County of Ramsey, State of Minnesota, ED J. GOFF, individually and as County Attorney of the County of Hennepin, State of Minnesota, and THOMAS J. GIBBONS, individually and as Sheriff of the County of Ramsey, State of Minnesota, *Defendants.*

REPLY MEMORANDUM ON BEHALF OF DEFENDANTS IN THE CRIMINAL CASES AND THE PLAINTIFFS IN THE CIVIL CASES

DAVID SHEARER and JOSEPH W. FINLEY
Attorneys for Twentieth Century-Fox Film Corporation, RKO-Radio Pictures, Inc., Paramount Pictures, Inc., Vitagraph, Inc., United Artists Corporation.

DAVID SHEARER
Attorney for Loew's Incorporated.

SHEARER, BYARD AND TRIGGER of Minneapolis — BUNDLIE, KELLEY AND FINLEY of St. Paul

FREDERICK W. P. LORENTZ of New York, New York
Of Counsel for Twentieth Century-Fox Film Corporation.

LOUIS PHILLIPS of New York, New York
Of Counsel for Paramount Pictures Inc.

WILLIAM ZIMMERMAN of New York, New York
Of Counsel for RKO-Radio Pictures, Inc.

STATE OF MINNESOTA

COUNTY OF RAMSEY

DISTRICT COURT

SECOND JUDICIAL DISTRICT

- - - - - - - - - - - - - - - - - - -

Vitagraph, Inc.,
a corporation,

Plaintiff

-vs-

James F. Lynch, individually and as County Attorney of the County of Ramsey, State of Minnesota, Ed J. Goff, individually and as County Attorney of the County of Hennepin, State of Minnesota, and Thomas J. Gibbons, individually and as Sheriff of the County of Ramsey, State of Minnesota,

Defendants

- - - - - - - - - - - - - - - - - - -

File
241098

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The above entitled action, one of six civil actions all involving the constitutionality of Chapter 460, of the Session Laws of the State of Minnesota for the year 1941, and being Section 3976-102, Mason's Minnesota Statutes, 1941 Supplement, which were tried together pursuant to order of the Court dated Jan 27, 1942 came duly on for trial before the undersigned, the Honorable Albin S. Pearson, a Judge of said Court, sitting without a jury, on January 27, 1942, at Two O'clock P. M., David Shearer, Esquire, (Shearer, Byard and Trogner, of counsel) of Minneapolis, Minnesota, Joseph W. Finley, Esquire, (Bundlie, Kelley and Finley, of counsel) of Saint Paul, Minnesota, and Harold Berkowitz, Esquire, of New York, New York, appeared as attorneys for the plaintiff. The Honorable James F. Lynch and William F. Desmond, Esquire, of Saint Paul, Minnesota, appeared as attorneys for defendants James F. Lynch, Thomas J. Gibbons, and Ed J. Goff. The Honorable J. A. A. Burnquist, Attorney General, and the Honorable George B. Sjoselius, Assistant Attorney General, appeared on behalf of the State of Minnesota. Said case having been duly tried,

NOW THEREFORE, upon the evidence adduced at said trial and upon all the files and proceedings herein, and upon the briefs

and arguments of counsel, and the Court being duly advised, makes the following:

FINDINGS OF FACT

1. The plaintiff, Vitagraph, Inc., is, and at all times material in this controversy was, a corporation organized and existing under the laws of the State of New York, and a citizen of said State, and has its principal place of business at 321 West 44th Street, New York, New York, and is admitted, and legally and duly authorized, as a foreign corporation, to do business in the State of Minnesota.

2. Defendant James F. Lynch is the duly elected, qualified and acting County Attorney of the County of Ramsey, State of Minnesota; defendant Ed J. Goff is the duly elected, qualified and acting County Attorney of the County of Hennepin, State of Minnesota; defendant Thomas J. Gibbons is the duly elected, qualified and acting Sheriff of the County of Ramsey, State of Minnesota. Each of said defendants in his official capacity is charged with the duty of enforcing the laws of the State of Minnesota, including the provisions of Chapter 460 of the Session Laws of 1941, which chapter will hereafter in these findings be referred to as "said Act."

3. The terms "eight major companies", "major producer-distributors", and "producer-distributors" are not defined in said Act, nor are the "eight major companies", or "major producer-distributors" or "producer-distributors" identified in said Act. As used in these findings, the term "producer-distributors" refers to the companies with whom the record shows that the exhibitors in Minnesota principally do business, including United Artists Corporation, which is not itself actually engaged in production but which distributes for certain well-known producers. The plaintiff is a producer-distributor.

4. The motion picture industry consists of three branches, namely, production, distribution, and exhibition. Plaintiff, at all times material in this controversy, has produced motion pictures outside of the State of Minnesota and, as a distributor, has engaged in the distribution of positive prints of motion pictures to exhibitors throughout the United States, including the State of Minnesota, for purposes of exhibition in motion picture theatres. The plaintiff distributes, among other things, feature motion pictures (that is, motion pictures which tell a continuous story and are generally in excess of 6,000 feet in length) produced by it and from time to time distributes some feature motion pictures produced by others, sometimes referred to in the industry for this purpose as "outside producers". As used in these findings the words "feature motion picture" or "feature picture" do not include Western pictures or foreign-made pictures which are excluded from the operation of said Act. Feature motion pictures are produced by photographing scenes upon negative celluloid film. The negative film is edited, cut, and revised at plaintiff's studios, recorded dialogue and sound effects are added thereto by way of a sound track, and ultimately, from a completed negative, the positives used for exhibition are manufactured.

5. Each of the feature motion pictures distributed by the plaintiff is copyrighted under the copyright law of the United States, and the plaintiff owns the copyright with respect to each such feature motion picture or has the exclusive rights thereunder. None of the feature motion picture films or copies thereof distributed by the plaintiff may be lawfully exhibited publicly by any exhibitor or operator of a motion picture theatre in any state of the United States except under license from the plaintiff.

6. Prior to the effective date of said Act, plaintiff carried on the distribution of feature motion pictures in the regular course of its business, within the State of Minnesota and elsewhere, substantially as follows:

60

A. Through its sales representatives the plaintiff solicited exhibitors, usually at the latters' place of business, to enter into license agreements covering feature motion pictures to be exhibited in the exhibitors' theatres.

B. The solicitations, when successful, resulted in applications for licenses which, if approved as hereinafter set out, became licenses under copyright to exhibit varying numbers of pictures, depending upon the particular agreement made by the plaintiff and any exhibitor. In certain instances the plaintiff licensed to an exhibitor all of the feature motion pictures to be released by plaintiff during an exhibition season, which was a releasing period of approximately twelve months, commencing in August or September of any given calendar year. Such a license, covering all such feature motion pictures, did not include Special feature motion pictures which were licensed separately and at irregular intervals during a given exhibition season. Special feature motion pictures are feature motion pictures made at a high cost to the producer. They are pictures with unusual possibilities and produce substantial revenue for the distributor as well as the exhibitor. Often they are pictures made by a producer who makes only an occasional picture and has no regular outlet for distribution. Special feature motion pictures were licensed frequently only after each had been completed and its value demonstrated.

C. A very substantial percentage of license agreements made between the plaintiff and the exhibitors in Minnesota and elsewhere did not cover all of the feature pictures to be released by the plaintiff during any

season, but included only a portion thereof. Such licenses are known as licenses for "short deals" and were made for a definite number of pictures less than all. A definite license fee was allocated to each picture so licensed as part of a short deal. The licenses under a short deal license covered a part of all of the plaintiff's feature motion pictures, irrespective of the release date thereof. Examples of such short deal licenses are set out in Exhibits 79 through 79M, both inclusive, which are made a part hereof by reference. Such short deal licenses were entered into before, during, and after an exhibition season and produced substantial revenue for the plaintiff.

D. In the course of its business, the plaintiff, both inside and outside the State of Minnesota, also entered into license agreements known as "Split Deals", whereby one exhibitor in a competitive situation obtained a license for the exhibition of a part of the feature motion pictures to be released during any season, and a competing exhibitor obtained a license to exhibit on the same run those pictures which were not covered by the license to the first exhibitor; under such an arrangement only a part of the pictures which the plaintiff intended to license during any season were licensed to each exhibitor.

E. The plaintiff also licensed its feature motion pictures under a type of license known as "spot booking", which was the license for exhibition of a specific picture on a specific date. Such spot booking was a substantial part of plaintiff's business and produced substantial revenue for it. Spot booking licenses were made by the plaintiff with exhibitors who had seasonal license

62

agreements with the plaintiff and also with exhibitors who had no such agreements; in the latter case the spot booking license arrangement for the exhibition of a specific picture was the only license arrangement existing between the plaintiff and the exhibitor. Spot booking licenses were made with respect to feature motion pictures which an exhibitor had never had under license before; spot booking licenses were also made with respect to pictures which an exhibitor had under license and as to which he wished to make a repeat showing or which he wished to hold over for exhibition days in excess of the days covered by the original license which he may have had for the exhibition of a particular feature motion picture. A substantial number of spot bookings were made by plaintiff in the State of Minnesota and elsewhere preceding the effective date of said Act.

F. The plaintiff also made spot booking license agreements with exhibitors to cover certain pictures which one competing exhibitor had under license but had eliminated from such license pursuant to the provisions thereof or had cancelled irrespective of the license provisions. The eliminated and cancelled pictures were thus spot booked to the competitor who had no seasonal license agreement with plaintiff.

G. The plaintiff also made spot booking license agreements with exhibitors to cover certain feature pictures which were substituted for pictures eliminated or cancelled from license agreements; the substituted feature pictures were frequently those not theretofore licensed under any license agreement with the exhibitor involved.

H. The agreements between the plaintiff and exhibitors covering all feature motion pictures in an entire season's release of feature motion pictures generally contained provisions permitting the exhibiter to eliminate, without cost to him, certain pictures which the exhibitor did not wish to exhibit. The elimination privilege granted was usually not in excess of 10% of the pictures licensed, and the provisions of the license were generally such that at the time the privilege of elimination was exercised, the exhibitor must have paid for the other nine pictures in the particular price group from which the elimination was being made.

I. In addition to the elimination provision, the unaffiliated or independent exhibitors on occasion cancelled certain feature motion pictures in violation of the terms of their licenses with the plaintiff by refusing to exhibit and pay for such pictures. Occasionally such cancellation was achieved through a practice known as a "washout", whereby the plaintiff, as consideration for the execution of a new license agreement covering a new season's feature motion pictures, permitted the exhibitor to cancel out unshown pictures from the previous season.

J. It was a usual practice among unaffiliated or independent exhibitors to eliminate or to cancel feature pictures and thereafter reacquire the right to exhibit such pictures by the payment of rental less than that stipulated in the original license covering such pictures. This practice is known in the industry as a "buy-back". The same result was also often achieved by a threat of cancellation or elimination, as a result of which rentals were reduced.

64

4. When a license was entered into covering all feature pictures to be released during an exhibition season, such license stated the estimated number of pictures and set forth the number of pictures which were to be allocated to each of the various price classes in the contract. When a feature motion picture was released for exhibition, it was allocated by the plaintiff to one of the price classes, according to the provisions of the license agreement.

7. Prior to the effective date of said Act, the business of all motion picture distributors (including all those referred to as producer-distributors) within the State of Minnesota and elsewhere was conducted in broad outline in the same manner as above found with respect to plaintiff, except that one distributor, United Artists Corporation, which acts solely as a distributor for various producers of one or more feature motion pictures, licensed under separate license agreement the picture or pictures of each of its several producers, stipulated in each license agreement that each feature motion picture licensed thereby should be considered licensed under a separate agreement, and did not provide in its license agreements for the elimination by the exhibitor of any picture or pictures.

8. Prior to the effective date of said Act, a substantial part of the plaintiff's business consisted of licensing split deals as above defined, and such split deals were made by plaintiff in the State of Minnesota. There was nothing peculiar in the State of Minnesota which, prior to the enactment of said Act, prevented the plaintiff from entering into split deal licenses with exhibitors, and plaintiff, except for said Act, intended to continue making such split deals therein. It was the general practice in the motion picture industry to make split deal licenses, and one other distributor made such license arrangements within the State of Minnesota prior to the effective date of said Act.

9. The number of positive prints of feature motion pictures available for exhibition in theatres is necessarily limited so that each print must serve between 30 and 40 theatres. In arranging the sequence for the utilization of the limited number of prints by the large number of theatres, the motion picture industry employs a system of runs and clearance. The time when a particular licensed exhibitor in a community is permitted to show a picture is called the "run", and the interval of time during which the distributor agrees that the picture shall not again be exhibited in the community is called the "clearance". The theatre or theatres having a picture under license for its first showing in a given community have the "first run" of that picture. Those having the next right thereto under license, usually after a period of clearance, have the "second run" of that picture, and in large communities there will follow other "subsequent runs". An exhibitor and a distributor, in negotiating for the license of feature motion pictures, negotiate for a run and a clearance of a specified number of days over the exhibitor or exhibitors who may obtain by license the next run, and an agreement covering run and clearance is incorporated in the license agreement. This practice is one of long standing and has proved beneficial to the public, the exhibitor, and the distributor. There are many situations in the State of Minnesota in which exhibitors, so located that they believe themselves in competition with each other, will refuse to show pictures which one or the other of them has already shown. In such a situation, for example, if the plaintiff should license all of its feature motion pictures to be released during a season to Exhibitor "A" on a first run, Exhibitor "B", who believes himself competing with "A", would refuse to license any of the plaintiff's feature motion pictures for that season on a second or subsequent run—that is to say, Exhibitor "B" would refuse to show any of plaintiff's pictures after Exhibitor "A". Prior to the effective date

of said Act, feature pictures eliminated or cancelled by Exhibitor "A" could be, and in fact were, licensed by way of spot bookings to Exhibitor "B".

10. All feature motion pictures which are distributed in Minnesota and elsewhere by the producer-distributors, including the plaintiff, are produced with the most meticulous care and with proper regard to good taste, morals, and propriety. Each of such feature motion pictures costs the producer a substantial sum varying from about $200,000 to several million dollars. None of the feature motion pictures distributed by plaintiff and the producer-distributors is released to exhibitors for exhibition until after consultation with associations consisting of persons interested in the general public welfare and until after approval by the "Production Code Administration". This Administration is sponsored by an association of motion picture producers and distributors, and its approval is not given to any feature motion picture unless it complies with the Production Code, which is Exhibit 7 in this case, and is made a part of these findings by reference. At all times herein material, the service of the Production Code Administration has been rendered to all producers, whether members thereof or not, and the sole object of that Administration has been to safeguard the good tastes, morals, and propriety of motion picture entertainment.

11. Neither the plaintiff nor any other producer-distributor of motion pictures has licensed for exhibition in the State of Minnesota feature motion pictures which have been offensive on moral, religious, or racial grounds, or undesirable and harmful to the public.

12. The "independent" exhibitors within the State of Minnesota, who are defined by the Act as theatre owners not affiliated with producer-distributors, have never been unable to cancel feature motion pictures offensive on moral, religious, or racial grounds, and undesirable and harmful to the public.

13. No independent exhibitor or other exhibitor within the State of Minnesota has sought but been unable to cancel a feature motion picture which he deemed offensive on moral, religious, or racial grounds, and undesirable and harmful to the public.

14. Neither the plaintiff nor any other producer-distributor imposed arbitrary terms and conditions upon independent exhibitors in the State of Minnesota, nor did the plaintiff or any other producer-distributor impose upon such exhibitors conditions which were unfair or disadvantageous to such exhibitors or prevented the exhibitors from responding to community and local public influences and preferences with respect to the selection of desirable feature motion pictures.

15. Neither the plaintiff nor any of the producer-distributors, within the State of Minnesota, by way of license agreements or in actual practice, discriminated in any way against independent exhibitors in favor of affiliated exhibitors in connection with the licensing of feature motion pictures, the selection of feature motion pictures, the elimination of feature motion pictures from licenses, or the cancellation of feature motion pictures. In actual practice, the independent exhibitors obtained proportionately more eliminations and cancellations free of charge than did the affiliated exhibitors.

16. As to motion pictures released since August 31, 1941, the plaintiff and four other producer-distributors, who were parties to a Decree made and entered on the 20th day of November, 1940, in the District Court of the United States for the Southern District of New York (which Decree is Exhibit 17 in this case and is made a part of these findings by reference) in an action brought by the United States of America against said distributors and others, have conducted their business of distributing feature motion pictures in all parts of the United States except the State of Minnesota, pursuant to the provisions of said Decree; that is to say, they have trade-shown to the trade each feature motion picture distributed

68

by them prior to the time of its offer to the exhibitors for licensing. Furthermore, the plaintiff and said other distributors have not licensed pictures in blocks of more than five pictures under each license and have not conditioned the licensing of one block of feature pictures on the licensing of another block or blocks. The plaintiff and said other distributors have, from time to time, licensed less than five feature motion pictures in one block, and they have continued to license pictures under said Decree singly by way of spot bookings and by way of licensing specials.

17. There has not been in the motion picture industry a long-established trade practice of licensing feature motion pictures exclusively in one block covering, in one license, every picture which a distributor will distribute or license during an entire exhibition season.

18. The licensing of feature motion pictures exclusively in one block covering, in one license, every picture which a distributor will distribute or license during an entire exhibition season, has not been, and is not now, essential to the best interests of the producer-distributors, exhibitors, and the public.

19. There has been, and is, active and vigorous competition between all and each of the producer-distributors in all phases of the business of producting and distributing motion pictures carried on by each such producer and distributor in the State of Minnesota and elsewhere. Plaintiff has conducted its business of producing motion pictures, and of licensing and distributing motion pictures in the State of Minnesota, on its own account, through its own business organization, and separately from, and independently of, all other producer-distributors of motion pictures.

20. None of the producer-distributors owns a theatre or owns an interest in a corporation or business which owns, controls or operates a theatre within the State of Minnesota except that Paramount Pictures Inc. owns a controlling stock interest in Minnesota Amusement Company which owns or operates approximately 55

theatres out of a total of 500 open theatres in the State of Minnesota, and that RKO Radio Pictures, Inc., has an interest in two of said 55 theatres.

21. There are within the State of Minnesota many unaffiliated or independent circuits of theatres, each of which circuit embraces a number of theatres under common ownership and control, but wholly unaffiliated with any producer-distributor.

22. The exhibition of motion pictures within the State of Minnesota is not monopolized in any way by theatres directly or indirectly affiliated with producer-distributors.

23. Feature motion pictures are distributed in the State of Minnesota by at least eleven distributors. Each of the producer-distributors distributes between approximately 40 and 50 feature motion pictures during each exhibition season, except United Artists Corporation which distributes between approximately 15 and 24 such pictures during each exhibition season. No selection of any eight such producer-distributors distributes substantially all of the feature motion pictures exhibited in the State of Minnesota.

24. The independent exhibitor is not required, in the ordinary conduct of his business, to license feature motion pictures from substantially all the producer-distributors. The number of feature motion pictures required by any exhibitor depends upon the number of changes of program which it is his policy to make each week at his theatre. Within the State of Minnesota it is very generally the exhibitor's policy to make no more than three changes of program per week. There are released for distribution in the United States between 500 and 600 feature motion pictures annually which number far exceeds the requirement of any one theatre in Minnesota.

25. Said Act, in so far as it is attacked in this proceeding, does not, and is not, designed to legislate for, and bears no reasonable relation to, the public health, safety, morals, or general welfare, and does not, and is not, designed to regulate or forbid monopoly in the motion picture industry within the State of Minnesota in production, distribution, and exhibition.

70

26. The terms and provisions of said Act here attacked, and the necessary operation thereof, the manner in which the business of distributing motion pictures has been heretofore carried on, and other pertinent facts disclosed by this record conclusively establish that no public purpose is served by said Act, but that said Act is based on the theory of conferring upon the exhibitors as a class private benefits at the expense of the distributors and ultimately the public.

27. Said Act was drafted at the instance of an association of exhibitors and sponsored by that association in the Legislature of the State of Minnesota. The same association, in an effort to persuade the producer-distributors to place themselves in a position to do business in Minnesota under said Act, passed a resolution which is Exhibit 184 in this case and is made a part hereof by reference.

28. The necessary operation and effect of said Act, in so far as it is here attacked, is to confer upon the exhibitors the right to obtain the property of the distributors upon terms and conditions advantageous to the exhibitors and disadvantageous to the distributors. This is accomplished by said Act, among other ways, by giving to the exhibitor the right to exhibit all feature motion pictures of any distributor who wishes to license any picture to the exhibitor; by conferring upon the exhibitor the right to cancel the license with respect to 20% of the pictures so contracted for pursuant to the terms of said Act without compensating the distributor therefor; by preventing the distributor from relicensing in a competitive situation feature motion pictures so cancelled by any exhibitor; by enabling the exhibitor, under the threat of cancellation, to reduce the license contract price of feature motion pictures because of the distributor's inability to relicense such pictures to a competitor; by enabling the exhibitor to obtain from the distributor feature motion pictures

heretofore designated as "specials" at an inadequate price before the worth of such specials has been actually demonstrated; by preventing the distributor from licensing part of its season's product of feature motion pictures to one exhibitor and part to another in the form of a split deal; and by prohibiting the distributor from licensing pictures singly by way of spot bookings or otherwise.

29. The necessary operation and effect of the provisions of said Act here attacked is to take from the plaintiff and the other distributors of feature motion pictures valuable interests and property rights and confer them upon the exhibitors.

30. The necessary operation and effect of the provisions of said Act here attacked is detrimental to the public in that either a decrease in the quality of feature motion pictures offered for exhibition or an increase in the price thereof, will result therefrom.

31. The necessary operation and effect of the provisions of said Act here attacked is also detrimental to the public in that by reason of the prohibition of spot bookings, split deals, short deals, and the separate licensing of specials, the public is, and will be, deprived of the opportunity to see feature motion pictures otherwise available to it.

32. The necessary operation and effect of the provisions of said Act here attacked is further detrimental to the public interest in that monopoly by a stronger exhibitor in any competitive situation is fostered by the legislation in so far as it confers upon such exhibitor the privilege of cancelling 20% of all pictures licensed free of charge and prevents the relicensing of such pictures so cancelled to a competitor.

33. Said Act and the necessary operation and effect of its provisions is to deprive the plaintiff and the distributors of property, capriciously and arbitrarily, for the private benefit of

the exhibitors.

34. The exhibitor, in selecting the feature motion pictures which will be exhibited in his theatre, does not put aside pecuniary considerations in the interests of the public welfare and morals. Said Act establishes no standards of taste or morals to guide the exhibitor in the exercise of the right granted to him by said Act to cancel 20% of the pictures licensed to him, and, accordingly, said Act establishes no standards of taste or morals to guide the exhibitor in the selection of feature motion pictures to be exhibited in his theatre. Said Act does not prevent the exhibitor from cancelling feature motion pictures socially desirable and proper, and said Act does not prohibit the exhibitor from exhibiting feature motion picture films which may be considered as socially undesirable.

35. The provisions of said Act here attacked, conferring upon the exhibitors the power to determine which feature motion pictures shall, and which shall not, be exhibited within the State of Minnesota, are contrary to the public interest.

36. The plaintiff and each of the producer-distributors is a foreign corporation organized in a state outside the State of Minnesota. Each has its principal business office outside the State of Minnesota. The production departments of each of the producer-distributors is centered in the State of California, although much production is carried on outside of that State. Feature motion pictures are not made within the State of Minnesota. The positive prints of feature motion pictures which are distributed in Minnesota are made in laboratories outside of the State of Minnesota, located either in the vicinity of New York, New York, or Los Angeles, California.

37. The plaintiff and each producer-distributor maintains its own exchange or office for the distribution of motion picture prints in the City of Minneapolis, and these exchanges

serve roughly an area composed of territory in Minnesota, North Dakota, northwestern Wisconsin, and, with the exception of one company, the State of South Dakota. This area is referred to as the "Minneapolis exchange territory". Certain isolated towns in Wyoming and Montana are likewise served from certain of the Minneapolis exchanges.

38. The plaintiff's salesmen and the salesmen of each of the other producer-distributors travel throughout the Minneapolis exchange territory, irrespective of state lines. Such salesmen solicit exhibitors to make applications for license agreements, but no such license agreement is ever consummated until approval thereof has been made in the Home Office of the plaintiff, outside the State of Minnesota, and in the case of the other distributors, in their respective Home Offices outside the State of Minnesota.

39. All prints for the exhibition of motion pictures within the State of Minnesota are sent into the State from the laboratories of each respective distributor, and such positive prints, when they have served their purpose, are returned for salvaging to such laboratories. Each of the prints is routed for exhibition to theatres throughout the Minneapolis exchange territory and moves continuously between theatres in the States of Minnesota, North Dakota, South Dakota, and Wisconsin. Frequently prints assigned to the Minneapolis exchange are loaned to other exchanges in other parts of the Country, and prints are borrowed from such other exchanges by the Minneapolis exchange for use in Minnesota and elsewhere in the exchange territory. The number of prints shipped and transported across state lines from and to the plaintiff's Minneapolis exchange is determined largely by the number of license agreements entered into with the exhibitors in the territory served by that exchange.

40. Each producer-distributor maintains its own exchange

74

has its own managers, its own salesmen and other personnel, wholly separate and apart from any other distributor.

41. Each of the producer-distributors distributes pictures upon a national basis, and each has exchanges throughout the United States.

42. The business of distributing motion pictures is one which is carried on upon a national basis and is national in scope and operation.

43. The plaintiff intends, and will be required, as soon as the legislation here attacked is finally declared invalid, to conduct its business of licensing feature motion pictures within the State of Minnesota in compliance with the terms and provisions of the Consent Decree made and entered in the United States District Court for the Southern District of New York (Exhibit 17 herein). Plaintiff intends, as soon as the present legislation is finally declared invalid, to continue to license feature motion pictures to exhibitors within the State of Minnesota by negotiating with each of its prospective licensees with respect to the number of motion pictures to be licensed, the number, if any, which may be eliminated or not selected under the license agreement, and to license to others motion pictures which have been so eliminated or not selected or cancelled. Plaintiff also intends, as soon as the legislation here attacked is finally declared invalid, to license specials, to make spot booking license agreements, and, if deemed desirable, to make split deals with exhibitors in the State of Minnesota.

44. Prior to the commencement of this action, the plaintiff had carried on its business of licensing feature motion pictures in the State of Minnesota in violation of the legislation here attacked, and the plaintiff was notified by the defendants that they were in possession of information that plaintiff had violated, and was violating, the provisions of the legislation here

attacked. The defendants have threatened, and are threatening, the plaintiff with immediate prosecution for past, present, and future violations of said legislation, and have notified plaintiff that they will promptly seek indictments or take other steps to prosecute the plaintiff, its directors, officers, agents, or employes, under the provisions of the legislation here attacked. The defendant Gibbons has notified the plaintiff that he has threatened, and is threatening, to enforce the provisions of said Act here attacked against the plaintiff and that he will at once make arrests of all persons who have violated, are violating, or will violate the provisions of said Act, including the plaintiff, its directors, officers, agents, and employes, and that he will do all other acts necessary to the enforcement of said Act required of, or permitted to, him as Sheriff of Ramsey County.

45. Since the commencement of this action and during the month of October, 1941, three separate complaints were filed by Harold P. St. Martin, a deputy of the defendant Gibbons, in the Municipal Court of the City of Saint Paul, County of Ramsey, State of Minnesota, and three separate informations were filed by the defendant James F. Lynch in this Court, both charging that each of Paramount Pictures Inc., Twentieth Century Fox Film Corporation, and RKO Radio Pictures, Inc., all of whom are producer-distributors of motion pictures and each of whom is a plaintiff in one of the six civil actions hereinabove referred to, on specified dates during the month of October, 1941, within the limits of the County of Ramsey, State of Minnesota, did wrongfully, unlawfully, and willfully license to exhibitors named in said complaints and informations a block of five motion pictures in that each of them offered a license agreement or contract for said block of five pictures in violation of Section 3976-102, Mason's Minnesota Statutes, 1941 Supplement, (said Act), in that each of them did not include all the feature motion picture films which it will license during the exhibition

76

season of 1941-42 and did not include the cancellation agreement provided for in said Section 3976-102, paragraph (b), providing for a minimum cancellation of 20% of the total number of pictures offered, all of which it is charged in said complaints and informations is contrary to the statutes in such cases made and provided. In said complaints the complainant prayed that said producer-distributors be arrested and dealt with according to law. Pursuant to such prayers for relief, said producer-distributors were bound over to the District Court of the State of Minnesota. Upon said informations said producer-distributors were arraigned in said District Court and upon their pleas of "not guilty" have been duly tried before a Judge thereof, and each of them, simultaneously with the decision herein, was discharged and found not guilty by reason of the invalidity of said Act.

46. Since the commencement of this action, plaintiff has applied to the District Court of the United States for the Southern District of New York for an order in accordance with the provisions of Paragraph XXIII of said Consent Decree (Exhibit 17 herein). Upon a hearing duly had upon plaintiff's application, in the form of Exhibit 187 herein, which is hereby made a part hereof by reference, an order was duly made and entered by the said United States District Court on the 14th day of November, 1941, granting certain limited relief in the manner shown in an order which is Exhibit 84 in this action, and which is made a part hereof by reference.

47. The penalties provided by said Act for violation of its provisions are so severe and costly as to render it impractical, improvident, and dangerous to the property and rights of plaintiff to have ordinary recourse to the courts to test the validity of said legislation in a multiplicity of criminal or civil proceedings. The provisions of said Act applying the criminal penalties thereof to plaintiff's directors, officers, and employes create an immediate danger to such persons in carrying on the business of

plaintiff in violation of the provisions of said Act until its unconstitutionality has been adjudicated. By reason of such threats to such persons, plaintiff's business will be disrupted and plaintiff will be, and is being, deprived of its business.

48. There is in this case an actual controversy between the plaintiff and the defendants involving civil and property rights with respect to the validity and constitutionality of portions of Chapter 460 of the Session Laws of 1941 of the State of Minnesota.

49. Plaintiff is a party having an interest in a declaration of the invalidity and unconstitutionality of the said Act.

50. The Honorable J. A. A. Burnquist, Attorney General of the State of Minnesota, has had due notice of all proceedings in this matter, has been served with a copy of all proceedings pursuant to Section 9455-11, Mason's Minnesota Statutes for 1927, 1940 Supplement, has appeared herein, and has been heard.

51. By reason of the matters hereinabove set out, plaintiff has suffered, and is now suffering, irreparable injury. Unless relieved by permanent injunction restraining the enforcement of said Act against the plaintiff, the business and property rights of plaintiff in the licensing and distributing of feature motion pictures in the State of Minnesota will continue to be irreparably injured.

52. Plaintiff has no adequate remedy at law.

CONCLUSIONS OF LAW

1. This Court has jurisdiction of the parties to, and the subject matter of, this action and is empowered to grant injunctive relief herein and also relief under the Uniform Declaratory Judgments Act.

2. This case involves an actual controversy between the plaintiff and defendants, and this Court has jurisdiction thereof under Sections 9455-1 to 9455-16, inclusive, of Mason's Minnesota Statutes, 1927, 1940 Supplement.

3. Section 2, and Sections 1, 4, 5, and 7, in so far as they have any bearing upon, or relation to, Section 2 of Chapter 460 of the Session Laws of 1941 of the State of Minnesota, are, and hereby are declared to be, invalid, void, and repugnant to the provisions of the Constitution of the State of Minnesota, and of no force or effect.

4. Said portions of said Act have had, and will have, the effect of depriving plaintiff of its business, property, and of valuable contract and property rights, and of its right to contract freely, all without due process of law, in violation of Section 7, Article I of the Constitution of the State of Minnesota.

5. Said portions of said Act do not bear any real or substantial relation to public health, safety, or morals, or to any other phase of the general public welfare, do not accomplish, or aid in the accomplishment of, any purpose within the police power of the State, and are beyond the powers of the State Legislature to enact.

6. Said portions of said Act are harsh and arbitrary, have no reasonable basis, and impose arbitrary, unreasonable, unnecessary, and capricious restrictions upon the plaintiff and upon the conduct of its business.

7. Said portions of said Act constitute special and class legislation repugnant to Section 33 of Article IV of the Constitution of the State of Minnesota.

8. Said portions of said Act deny to the plaintiff the equal protection of the laws and are accordingly repugnant to Section 2 of Article I of the Constitution of the State of Minnesota.

9. Said portions of said Act, in that they contain vague and indefinite language and do not define specifically or competently the criminal offenses purported to be created by said Act, deprive the plaintiff of rights guaranteed to it under Section 7 of Article I of the Constitution of the State of Minnesota, which provides that no person shall be held to answer for a criminal offense without due process of law, and that no person shall be deprived of life, liberty, or property without due process of law, and of the rights guaranteed to him under Section 6 of Article I of the Constitution of the State of Minnesota, which provides that in all criminal prosecutions the accused shall have the right to be informed of the nature and cause of the accusation against him.

10. Said portions of said Act purport to delegate to private persons designated therein as exhibitors the exercise of powers vested solely in the Legislature of the State of Minnesota under its constitution.

11. Said portions of said Act are, and hereby are declared to be, invalid, void, and repugnant to the provisions of the Constitution of the United States, and of no force or effect.

12. Said portions of said Act have had, and will have, the effect of depriving plaintiff of its business, property, and of valuable contract and property rights, and of its right to contract freely, all without due process of law, in violation of that clause of Section 1 of Article XIV of the Amendments to the Constitution of the United States which provides that no state shall deprive any person of property without due process of law.

80

13. Said portions of said Act deny to the plaintiff the equal protection of the laws and are accordingly repugnant to Section 1 of Article XIV of the Amendments to the Constitution of the United States.

14. Said portions of said Act, in that they contain vague and indefinite language and do not define specifically or properly the criminal offenses purported to be created by said Act, deprive the plaintiff of rights guaranteed to it under Section 1 of Article XIV of the Amendments to the Constitution of the United States, which provides that no State shall deprive any person of life, liberty, or property without due process of law.

15. Said portions of said Act deprive the plaintiff of the rights guaranteed to it under Section 8, Article I of the Constitution of the United States and the Statutes of the United States enacted pursuant thereto securing to the plaintiff the rights thereby provided in copyrighted motion picture films.

16. Said portions of said Act purport to regulate, and said Act interferes with and imposes an undue burden upon, commerce among the several states, in violation of the provisions of Section 8 of Article I of the Constitution of the United States.

17. Said portions of the said Act, in that they attempt to regulate the business of distributing motion pictures in interstate commerce in a manner which is in conflict with, and repugnant to, the provisions of Section I of the Act of July 2, 1890, commonly known as the Sherman Anti-Trust Act (15 USCA Section I) which was enacted by the Congress of the United States under its constitutional power to regulate commerce among the several states of the United States, are invalid, void, and of no force and effect.

18. Plaintiff has suffered, is suffering, and will continue to suffer, irreparable injury for which it has no remedy at law, and is entitled to permanent injunction as prayed in its complaint enjoining and restraining the defendants, and each of them, and their successors in office, from enforcing said portions of said Act.

LET JUDGMENT BE ENTERED ACCORDINGLY.

BY THE COURT

Stay 10 days
a. s. p.

Dated April 4 1942.

Edwin S. Thomas
JUDGE

STATE OF MINNESOTA DISTRICT COURT

COUNTY OF RAMSEY SECOND JUDICIAL DISTRICT

Twentieth Century Fox Film Corporation, a corporation,
Plaintiff,

-vs-

James F. Lynch, individually and as County Attorney of the County of Ramsey, State of Minnesota, Ed J. Goff, individually and as County Attorney of the County of Hennepin, State of Minnesota, and Thomas J. Gibbons, individually and as Sheriff of the County of Ramsey, State of Minnesota,
Defendants.

JUDGMENT

This cause having been regularly upon the general term calendar of this Court, came on for trial before the Court, without a jury, on the 27th day of January, 1942; and the Court, having heard the evidence, and the arguments of counsel, and being fully advised in the premises, on the 14th day of April, 1942, made and filed its Findings of Fact, Conclusions of Law, and Order for Judgment herein.

NOW THEREFORE, pursuant to said order, and on motion of David Shearer and Joseph W. Finley, attorneys for plaintiff, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED:

I.

That under the Uniform Declaratory Judgments Act of the State of Minnesota, Sections 9455-1 to 9455-16 of Mason's Minnesota Statutes for the year 1927 (1940 Supplement), Section 2 and Sections 1, 4, 5, and 7, in so far as they have any bearing upon, or relation to, Section 2, of Chapter 460 of the Session Laws of 1941 of the State of Minnesota, entitled, "A Bill for an Act Relating to the Distribution of Motion Picture Films, Providing Terms and Conditions of Licensing the Same, and Providing

Penalties for Violation of this Act", are invalid, void, and repugnant to the provisions of the Constitution of the State of Minnesota and of the Constitution of the United States and are of no force or effect.

II.

That said portions of said Chapter 460 of the Session Laws of 1941 of the State of Minnesota are invalid, void, and repugnant to the provisions of the Constitution of the State of Minnesota, and of the Constitution of the United States, and are of no force or effect.

III.

That a writ of injunction issue forthwith commanding that defendants, and each of them, and their successors in office, and all persons acting, or claiming to act, under their authority, direction, or control, perpetually refrain from enforcing or executing against plaintiff and its directors, officers, and agents, Section 2, and Sections 1, 4, 5 and 7, in so far as they have any bearing upon, or relation to, Section 2 of said Chapter 460 of the Session Laws of 1941 of the State of Minnesota, and from threatening to enforce, and from representing that said defendants, or any of them, or their successors in office, or any persons acting or claiming to act under their direction or control, will enforce said portions of said Act, and from publishing or declaring that said portions of said Act are valid, constitutional, enforceable, or that they will be enforced.

Dated:

BY THE COURT

J. J. FITZGERALD
Clerk of District Court

APPROVED:
Albin S. Pearson
Judge of District Court
Dated July 10, 1942.

COPY

Posted MLHP: January 1, 2014;

expanded January 13, 2014.