

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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GEORGE SASSOWER,

Plaintiff,

-against-

ERNEST L. SIGNORELLI, ANTHONY MASTROIANNI,
VINCENT G. BERGER, JR., JOHN P. FINNERTY,
ALLEN KROOS, ANTHONY WISNOSKI, and
LEONARD J. PUGATCH,

Defendants.
-----x

File No.
77 C 1947.

COPY OF THE WITHIN PART
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DEPARTMENT OF LAW
SEP 1 - 1977
NEW YORK CITY OFFICE
ATTORNEY GENERAL

STATE OF NEW YORK)
CITY OF NEW YORK) ss.:
COUNTY OF NEW YORK)

GEORGE SASSOWER, Esq., first being duly sworn,
deposes, and says:

This affidavit is in reply to the affidavit of
defendant VINCENT G. BERGER, JR., sworn to on the 25th day
of August, 1977.

1. The factual statement set forth by VINCENT G.
BERGER, JR., is completely irrelevant to the determination
of this motion.

The guilt of the accused is assumed when the court
rules that he go free because in the words of Mr. Justice
Cardozo the "policeman has blundered".

The guilt of the accused is assumed when the court
rules that he go free because the "prosecutor has discriminated".

2. The affidavit of VINCENT G. BERGER, JR. patently
reveals the merit of plaintiff's suit herein and of this motion.

His affidavit reveals that the defendants are employing the "criminal" process to attain a "civil" end.

In the affidavit of VINCENT G. BERGER, JR., he states:

"Plaintiff could render most of these proceedings instantly academic by merely turning over the books ..." (p.5).

"The contempt proceeding pending ... is brought solely as a means of enforcing the order of that court and obtaining compliance by the plaintiff with those provisions of the order which direct plaintiff to turn over the books ..." (p.6).

That the above constitutes, at best, civil contempt is Hornbook Law, of which the defendants are aware, as revealed by the following.

In the decision of Mr. Justice GEORGE F.X. McINERNEY, dated July 28, 1977, the Court stated (p.3):

" The differences between a punitive and remedial contempt are described in Samuel Gompers, et al. v. Buck's Stove & Range Co., 221 U.S. 418, 31 S. Ct. 492."

The following is a portion of the colloquy of July 13, 1977 between the defendant, LEONARD J. PUGATCH, Esq. and Hon. GEORGE F.X. McINERNEY (S.M. 17):

"THE COURT: When I order somebody to pay a bill and he doesn't do it, he is not in criminal contempt.

MR. PUGATCH: If he wilfully disobeys a mandate of the Court --

THE COURT: He is in civil contempt."

Obviously, the defendants do not desire to commence civil contempt proceedings because they desire to avoid any inquiry into the chicanery involved herein.

The defendants believe that their mischief is not the subject of inquiry in a criminal contempt proceeding and that is one of their avowed purpose in so proceeding.

In such criminal prosecution, the defendant is not acting only as a "private attorney" but also as a "public prosecutor.

As the evidence will also reveal, in this scheme the defendant ERNEST L. SIGNORELLI is not acting in a judicial capacity

3. Unlike Hamlet "I have not lost my mirth", as my witness my reaction when I read that portion of the affidavit of VINCENT G. BERGER, JR., wherein he stated:

"I know of no instance in which the plaintiff was deprived of any of his legal or constitutional rights..." (p.5).

a. The decision of Mr. GEORGE F.X. McINERNEY, dated July 28, 1977 is to the contrary.

b. Depriving the plaintiff of his right to obtain a Writ of Habeas Corpus is clearly a defilement of the constitution.

c. A criminal trial of the plaintiff, adjudication, and sentence, all in the absence of the accused is certainly a procedure unknown in the Anglo-American legal system since the Court of the Star Chamber.

d. Despite the aforesaid decision of Mr. Justice

GEORGE F.X. McINERNEY, and the numerous constitutional decisions that it is improper to take testimony without the presence of the accused the affidavit of VICTOR G. BERGER, JR., states that on August 16, 1977

"testimony was taken of the Public Administrator who substantially indicated that ..." (p. 4).

The defendants not only have violated the constitutional and legal rights of the plaintiff but that the defendants are bent on continuing to do so, despite decisions of the court that they are transgressors.

The defendants continue to prosecute the plaintiff, not because they believe a conviction will result, but in order to harass me.

WHEREFORE, deponent respectfully prays that plaintiff's motion be granted.

GEORGE SASSOWER

Sworn to before me this
1st day of September, 1977.