



Frederick Mulker Affidavit

August 22, 1917

Masses Publishing Co. v. Patten

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
MASSES PUBLISHING COMPANY :
Complainant :
against : In Equity
: No. 14-248
T. G. PATTEN, Postmaster of the :
City of New York :
Defendant :
-----X

STATE OF NEW YORK)
COUNTY OF NEW YORK) ss.
SOUTHERN DISTRICT OF NEW YORK)

FREDERICK G. MULKER, being duly sworn, deposes and
says that he is Superintendent of Second Class Matter in the
Post Office at New York, N. Y.

That on the 3rd day of August, 1917, two copies of
the September issue of "The Masses" were left with the Post-
master by Merrill Rogers, with the request that they be for-
warded to Washington to ascertain if there would be any dif-
ficulty with their passing through the mails.

On the same day, said two copies were forwarded to
the Solicitor of the Post Office Department, with the request
that the Postmaster of New York be advised whether the issue
could be dispatched through the mails.

On August 7, 1917, a letter was received from the
Solicitor of the Post Office Department, as follows:

"August 6, 1917.

Postmaster,
New York, New York.

Referring to your letter, relative
to the September number of "The Masses",
you are directed to hold such copies of
same as may be presented for mailing
until further advised.

(Signed) W. H. Lamar
Solicitor."

On August 6, 1917, 13 copies of the September issue of "The Masses" were offered for mailing by the publisher and postage thereon, at the rate of one cent a pound (which is the rate for second class matter, when mailed by the publisher), amounting to 3 cents, was tendered and is now held by the Postmaster at New York.

On August 7, 1917, Mr. Rogers telephoned to deponent and asked what information had been received from the Solicitor on the question of mailing the September issue, and deponent told him that the Postmaster had been instructed to hold the copies until further notice, and that no further notice has been received as yet.

Thereafter, and on the 16th of August, the Postmaster at New York received a letter, signed by W. H. Lamar, Solicitor, as follows:

"August 15, 1917.

Postmaster,
New York, New York.

Referring to yours of the 3d instant, inclosing two copies of the September issue of "The Masses," and stating that similar copies would be presented for mailing on the following day, you are advised that the Postmaster General has this day signed an order, issued through the Office of the Third Assistant Postmaster General to you, withdrawing the second class privilege from this publication.

(Signed) W. H. Lamar
Solicitor."

On the same day, the Postmaster received, from Hon. A. S. Burleson, Postmaster General, a notice of which the following is a copy:

"OFFICE OF THE POSTMASTER GENERAL
Washington, D. C.

August 15, 1917.

Postmaster,
New York, New York.

Upon the issuance of a citation to the publisher of "The Masses" to show cause why the authorization of admission of that publication to the second class of mail matter should not be revoked, and upon receipt and consideration of

the written response thereto, and after a hearing accorded the publisher's attorney on August 14, 1917, the Department, upon consideration of all the facts before it, hereby determines, and you will so inform the publisher, that "The Masses" is not entitled to transmission in the mails at the second-class rates of postage, because it appears from the evidence in possession of the Department that the publication is not a "newspaper or other periodical publication" within the meaning of the law governing mailable matter of the second class, and, furthermore, is not regularly issued at stated intervals as a newspaper or other periodical publication within the meaning of the law, it being in conflict with the provisions of the law embodied in section 481 $\frac{1}{2}$, Postal Laws and Regulations.

" Therefore, the authorization heretofore issued for the acceptance of "The Masses" for mailing at the second-class rates of postage is hereby revoked, and you are requested to enter that fact upon the records of your post office.

(Signed) A. S. Burleson
Postmaster General."

On the same day, a letter was written by the Postmaster to the publishers of "The Masses", of which the following is a copy:

"August 16, 1917.
Publishers of "The Masses",
34 Union Square,
New York, New York.

Gentlemen:

In accordance with instructions from the Postmaster General, you are informed that upon the issuance of a citation to the publisher of "The Masses" to show cause why the authorization of admission of that publication to the second class of mail matter should not be revoked, and upon receipt and consideration of the written response thereto, and after a hearing accorded the publisher's attorney on August 14, 1917, the Department, upon consideration of all the facts before it, determined that "The Masses" is not entitled to transmission in the mails at the second-class rates of postage, because it appears from the evidence in possession of the Department that the

publication is not a "newspaper or other periodical publication" within the meaning of the law governing mailable matter of the second class, and, furthermore, is not regularly issued at stated intervals as a newspaper or other periodical publication within the meaning of the law, it being in conflict with the provisions of the law embodied in section 481½, Postal Laws and Regulations.

"Therefore, the authorization heretofore issued for the acceptance of "The Masses" for mailing at the second-class rates of postage has been revoked.

Very respectfully,

(Signed) T. G. Patten
Postmaster.

Per (Signed) Thomas F. Murphy
Assistant Postmaster."

The following are the addressees of the 13 copies of the September, 1917, issue of "The Masses" which are held by the Postmaster, and which are all that have been offered for mailing by the publishers at the post office in New York:

Mr. Max Eastman,	Croton on Hudson, N. Y.
Mr. Chas. M. Rogers,	73 Frost Street, Cambridge, Mass.
Horace Traubel,	1631 Chestnut St., Philadelphia, Pa.
Mr. Robert E. Rogers,	23 Pickney Street, Boston, Mass.
Miss Joy Young,	% General Delivery, Rochester, N.H.
Mr. Robert Nathan,	Hartsdale, N. Y.
Paul Fournier,	% Elliott Studio, South High St., Columbus, Ohio
Mr. Lewis S. Gannett,	American Friends R Construction Unit, Haverford, Pa.
Professor Wm. H. Goodyear,	% Mr. August Lewis, Buck Hill Falls, Pa.
Alice O'Neill,	Champaign Club, Albany Cottage, Plattsburgh, N. Y.
John Reed,	Croton-on-Hudson, N. Y.
Mr. Isaac McBride,	Senate Hotel, Washington, D. C.
Donn Byrne,	Port Jefferson, Long Island, N. Y.

No word has as yet been received by the Postmaster in New York from the Postmaster General or the Solicitor, for the Post Office Department as to whether or not the September, 1917 issue of "The Masses" has been declared "non-mailable".

Upon the question as to the irreparable damage claimed by the complainant by reason of the failure of the

Postmaster to forward the 13 copies of the September issue of "The Masses", deponent refers to an interview in the New York Tribune of August 18, 1917, with Mr. Rogers, stated to have taken place on August 17, 1917, the date upon which the bill in this action was filed:

"The case of "The Masses" is radically different, according to its business manager, who asserted that the September number had not yet been declared unmailable, although the post-office authorities have held it up for two weeks.

'Postmaster Patten would not permit us to send the August number through the mails,' Mr. Rogers declared, 'and now he has penalized us for not sending it through. He has used Judge Hough's stay of Judge Hand's injunction to stop him from denying us the privilege of the mails as a basis for his technical trick to ruin us. Judge Hough's decision pre-supposed that it would only affect the August issue.

Will Be On News Stands

'The tactics of the postoffice tickle one's sense of ironic humor. Personally, I am glad they have revoked the privileges because it gives us a further opportunity to fight and show the people just what sort of bureaucratic tyranny we have in this country. We shall, however, continue to publish "The Masses" regularly and sell it on the newsstands all over the country.

'In Washington our sales have doubled many times since the war began, and "The Masses" is said to be the favorite magazine of Congressmen. Moreover, since the September number of the magazine has not been deemed unmailable, we still have the privilege to mail copies to our subscribers at the first class postage rate."

Sworn to before me this

22 day of August, 1917. }

Frederick G. Mulker

Carl Brecher

NOTARY PUBLIC BRONX CO. NO. 72
CERTIFICATE FILED IN N. Y. CO. NO. 477
REGISTERS NO. BRONX CO. NO. 969
REGISTERS NO. N. Y. CO. NO. 9041
MY COMMISSION EXPIRES MAR. 30, 1919