

**RAPP et al.**

**v.**

**HAROLD LLOYD CORPORATION et al.**

**District Court, S. D. New York.**

April 2, 1940.

Philip Wittenberg, of New York City, for plaintiffs.

Phillips & Nizer, of New York City, for defendants.

GODDARD, District Judge.

This is a suit by the plaintiffs for the alleged infringement of the plaintiffs' motion picture play "The Arms of Venus" (formerly named "Greek To You") by the defendants' motion picture play "Professor, Beware".

Plaintiffs' play was not copyrighted. They claim a violation of their common-law rights. Jurisdiction is based upon diversity of citizenship and the fact that more than \$3,000 is involved.

In the latter part of August, 1934, while the defendant, Harold Lloyd, was temporarily in New York City, the plaintiffs called upon Lloyd and told him they would like to write a motion picture play for him. Lloyd informed them that he thought he was best adapted to playing the part of a professor or a similar character, and that his greatest success had been in such parts. They had three conferences and on November 30 a contract was executed in which it was agreed that Lloyd should pay the plaintiffs \$1,500 and that plaintiffs, Rapp and Brentano, would write a play which Lloyd had the option of buying for an additional \$8,500 and royalties, if he found it satisfactory. Lloyd paid them the \$1,500 and Rapp and Brentano went to work on their play.

On January 25, 1935, Rapp and Brentano finished their play "The Arms of Venus" (originally named "Greek To You") and mailed it to the defendants. On February 13, 1935, the defendants returned plaintiffs' play to them and informed them that it was not satisfactory; that they could not use it and would not exercise their option to buy it. According to the testimony of the defendants the plaintiffs' script had not been shown to outsiders and no copies had been made of it. In July, 1938, defendants released and produced the motion picture play "Professor, Beware", which plaintiffs claim infringes their play "The Arms of Venus".

Following are synopses of the two plays:

"The Arms of Venus" is the story of Algernon Dunwoodie, a professor of Greek at Utopia College, a co-educational institution located somewhere in the United States, and Judith Oglethorpe, a student, the beautiful but spoiled daughter of the chief benefactor of the college. Dunwoodie is about to have his sabbatical year and is planning to visit Greece to study antiquities. Judith fails to pass her examination in Greek; this enrages her father who causes Dunwoodie to be dismissed. Judith's father, J. Hamilton Oglethorpe, accompanied by his daughter, sails for Europe on the S. S. Mauretania for the purpose of buying Monte Carlo as a money making proposition. Dunwoodie, in spite of the fact that he has no money, decides that he must satisfy the ambition of his life and visit Greece; he goes to New York City and on the dock gets into a fight with a steward on the S. S. Mauretania, beats him up and signs as steward in the injured man's place, using the name of Jenkins in the hope of disguising himself. During the voyage Dunwoodie, due to his understanding of the Greek language, discovers that some Greek gangsters on board are planning to kidnap Judith for a ransom. At night the gangsters seize Judith, bind her and put her into an airplane which they have stowed on deck. The plane takes off. Dunwoodie, realizing what is happening, clings to one of the wings of the airplane in spite of the efforts of the gangsters to get rid of him. He secretes himself in the plane and manages to rescue Judith. She recognizes him as the professor and believes that he is responsible for all her trouble. They land on a small island near the African coast. He saves her from a band of pirates, showing great heroism and winning her admiration and love. With the aid of a small boat they reach the shore and Dunwoodie finds that they are in Greece. Representatives of Judith's father, who has offered a million dollars reward for Dunwoodie's arrest, discover him. He is charged with having abducted Judith and is lodged in jail. He escapes and takes refuge in a hut of some mountaineers and there finds the lost arms of the statue Venus de Milo. In the meanwhile Oglethorpe has learned from his daughter that not only had Dunwoodie not abducted her, but at the risk of his own life on several occasions had saved her from the gangsters, bandits, etc. The father then realizes that Dunwoodie is a hero and that his daughter is in love with him and makes every effort to find Dunwoodie, and after he is found Dunwoodie and Judith are married in Athens and the Greeks declare a holiday in honor of Dunwoodie, who has restored the lost arms of Venus.

In "Professor, Beware" Deane Lambert, a professor of Archeology in a Southwestern University, deciphers some Egyptian tablets in a local museum. These tablets purport to relate to a legend of Nefarus and Anebi; that Nefarus was buried alive 3,000 years ago because he fell in love with the Egyptian maiden Anebi. Lambert believes he is the incarnation of Nefarus and that Jane Goodwin, who has taken the part of Anebi in a play based upon the legend and with whom he is in love, is Anebi reincarnated. Fearing that if he marries Anebi that he will meet the fate of Nefarus, he makes every possible effort to avoid seeing her.

One evening while he is driving along the highway a girl, who proves to be Jane, approaches him and says that she is in trouble and asks for his assistance, and tells him that in her car is her employer's brother who had arranged an appointment with a motion

picture producer and who is about to engage her as a star in a motion picture; that her companion is intoxicated and she is afraid that without him she would lose her opportunity. Lambert goes to her car and finds that the man in it had taken off his clothes which have fallen into the river and been carried away. Lambert loans the man his clothes and succeeds in sobering him up sufficiently enough for the man to accompany the girl on their errand. Lambert parks the car and waits for the man to return with his clothes. While waiting a policeman comes along and seeing Lambert undressed, arrests him; he is taken before a magistrate in this partly dressed condition and someone photographs him; he is released on bail. As a result of this apparent scandal, Lambert is dismissed by the University. While packing up his possessions he receives a message offering him the opportunity to go on an archeological expedition to Egypt which is to leave to New York in nine days. As his trial will not come on before that he decides to skip his bail and join the expedition. He packs up some clothes and a small pick and shovel and then jumps into a passing trailer, unknown to a bride and groom, who are driving the car attached to the trailer. In the meanwhile Jane, having heard of Lambert's attempt to run away and feeling that she is the cause of all his trouble, tries to overtake him in her car. He hitch hikes to the east and several times she meets him, but each time he escapes. After various experiences they meet again and are married in spite of his fear that he will suffer the fate of Nefarus. Finally they reach Jersey City and it turns out that Jane is the daughter of a wealthy father. The father is incensed that a hitch hiking tramp should have married his daughter, but after Lambert has performed several heroic feats and the father learns that Lambert is a professor, the father becomes reconciled. In the last scene Lambert and Jane are shown in their old age and they learn that one of the tablets had turned out to be fictitious and that the real tablet had been discovered which indicated that Nefarus, instead of suffering his supposed fate, enjoyed a long and happy life.

Running through both stories there are a number of more or less humorous incidents appropriate to the particular surroundings and circumstances, but about the only similarity is the fact that both stories revolve around a naive simple-minded professor and a girl who is an heiress. Not a new theme.

I have read the script of "The Arms of Venus" ("Greek To You") and the script of "Professor, Beware"; I have also seen the defendants' motion picture "Professor, Beware", and I think it is plain that defendants have not copied plaintiffs' work. The plots, scenes and the incidents differ substantially; plaintiffs do not claim that their dialogue has been copied. *Nichols v. Universal Pictures Corporation*, 2 Cir., 45 F.2d 119; *Bein v. Warner Bros. Pictures, Inc.*, 2 Cir., 105 F.2d 969.

The plaintiffs, apparently realizing that comparison of the two scripts fails to show similarity, say that in conversations with Lloyd they suggested to him certain additional ideas which defendants later used. But the plaintiffs' description of the ideas which are said to have been suggested by them to Lloyd are too vague to add support to the charge of the plaintiffs; moreover, their last conversation with Lloyd took place on September 22, 1934,

and their play was not finished and sent to Lloyd until January 25, 1935, so it is probable that it then represented their full story.

The evidence, together with the testimony of Mr. and Mrs. Francis Cockrell, is convincing that the motion picture "Professor, Beware" released by defendants in July, 1938, is an adaptation of the play "The Road to Jericho" written by them and for which the defendants paid them a substantial sum.

I find that the defendants have not copied the plaintiffs' story or any part of it.

Accordingly, the complaint is dismissed.