

852

E. J. ROBERTS, DOING BUSINESS
UNDER THE NAME OF E. J. ROBERTS
AMUSEMENT COMPANY,

Complainant,

Vs.

W. R. STUART, AS SHERIFF OF
BALDWIN COUNTY, ALABAMA,

Respondent.

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA.

IN EQUITY.

TO ANY SHERIFF OF SAID STATE - GREETINGS:-

We command you that without delay you execute this Writ and due return thereof to make to us instanter at a term of our Circuit Court in Equity to be held at Bay Minette, Alabama, on the 28th day of September, 1942.

TO W. R. STUART AS SHERIFF OF BALDWIN COUNTY,
ALABAMA-GREETINGS:-

WHEREAS E. J. Roberts doing business under the name of E. J. Roberts Amusement Company has exhibited his Bill of Complaint in the Circuit Court of Baldwin County, Alabama, in Equity, and has obtained from the Honorable F. W. Hare, Judge of said Court, an Order for the issuance of an Injunction to restrain and enjoin you as hereinafter mentioned;

AND WHEREAS E. J. Roberts in accordance with said Order entered into Bond with sureties in the sum of Two Hundred Fifty Dollars (\$250.00) payable to and approved by the Register of said Court and conditioned according to law.

NOW THEREFORE, you, the said W. R. Stuart, as Sheriff of Baldwin County, Alabama, are hereby commanded and strictly enjoined from interfering with or seizing or interfering with the operation of the machines or devices referred to and described in said Bill of Complaint until further orders of this Court.

WITNESS the hand of the Register and the seal of said Circuit Court in Equity this 14th day of August, 1942.

R. Duck
Register.

SUMMONS AND COMPLAINT

THE STATE OF ALABAMA,
BALDWIN COUNTY

No. 852

CIRCUIT COURT BALDWIN COUNTY

September TERM, 1942.

TO ANY SHERIFF OF THE STATE OF ALABAMA:

You are hereby commanded to summon W. R. Stuart as Sheriff of Baldwin

County, Alabama,

to appear and plead, answer or demur, within thirty days from the service hereof, to the Complaint filed in the Circuit Court of Baldwin County, State of Alabama, at Bay Minette, against

W. R. Stuart as Sheriff of Baldwin County, Alabama,
Defendant

by

E. J. Roberts, doing business under the name Plaintiff
of E. J. Roberts Amusement Company,

Witness my hand this 14th day of August, 1942.

RS Duck

Clerk.

E. J. ROBERTS, Doing Business under
the name of E. J. ROBERTS AMUSEMENT
COMPANY,

Complainant,

VS.

W. R. STUART, AS SHERIFF OF BALDWIN
COUNTY, ALABAMA.

Respondent.

IN THE
CIRCUIT COURT OF BALDWIN
COUNTY, ALABAMA.
IN EQUITY

P

TO HON. F. W. HARE, JUDGE OF THE TWENTY FIRST JUDICIAL CIRCUIT OF
ALABAMA. SITTING IN EQUITY:

Your Orator, E. J. Roberts, doing business under the name
of E. J. Roberts Amusement Company, humbly complaining of the Res-
pondent, W. R. Stuart, as Sheriff of Baldwin County, Alabama, in
a matter as will hereinafter appear, shows unto your Honor as follows:

F I R S T:

That both he and the Respondent are resident citizens of
Baldwin County, Alabama, and are over the age of twenty-one years;
that the Respondent, W. R. Stuart was duly elected to, and holds
the office of Sheriff of Baldwin County, Alabama.

S E C O N D:

Your Orator further shows unto your Honor that he is
engaged in business under the name of E. J. Roberts Amusement
Company in the business of vending amusement to the public in
Baldwin County, Alabama, and in pursuance of that business he has
acquired and owns a large number of amusement devices for the pur-
pose of vending amusement to the public, the means by which your
Orator makes his livelihood.

T H I R D:

Your Orator further shows unto your Honor that said devices
for vending amusement to the public for a consideration are located
in various drug stores, resturants, stores, hotels and other public
places in the County of Baldwin. Your Orator has a large amount
of money invested in said devices and has been operating the same in
said places for a long time prior to the filing of this bill of
complaint, and has built up a substantial business and good will

PRAYER FOR RELIEF:

Your Orator further prays unto the Court that upon a final hearing of this cause this Court will be pleased to decree that the aforesaid devices are legitimate and legal amusement devices and are not prohibited from use in Alabama by any law thereof, and that your Honor will decree that said temporary injunction be made perpetual and that Respondent, W. R. Stuart, as Sheriff of Baldwin County, Alabama, be perpetually enjoined from seizing the same or in anyway interfering with the free and public display and use of said devices or machines heretofore mentioned.

Your Orator prays for all such other, further, different and general relief as in equity may seem just and meet.

Dyesterson
Solicitor for Complainant

TO The Register:

That temporary injunction as prayed for issue on Complainant entering into bond in the sum of \$ 25000, conditioned as provided for by law.

August 12, 1942 -

J. W. Hare
JUDGE

THE STATE OF ALABAMA,)
COUNTY OF BALDWIN)

Before me, John Gason, a Notary Public in and for
said County, in said State, personally appeared E. J. Roberts, known
to me, who, being by me first duly sworn, deposes and says:

That the allegations contained in the foregoing bill of
complaint are true and correct.

E. J. Roberts

Sworn to and subscribed before me this the 12 day of
August, 1942.

John Gason
Notary Public, Baldwin County, Ala.

E.J. ROBERTS, Doing business under
the name of E.J. ROBERTS AMUSEMENT
COMPANY,

Complainant.

Vs.

W.R. STUART, AS SHERIFF OF BALDWIN
COUNTY, ALABAMA.

Respondent.

IN THE CIRCUIT
COURT OF BALDWIN COUNTY
ALABAMA.

IN EQUITY.

MOTION TO DISSOLVE TEMPORARY INJUNCTION.

TO THE HON. F.W. HARE, JUDGE OF SAID COURT:

Now comes the respondent and moves the Court to dissolve the temporary or preliminary writ of injunction issued in this cause against the respondent, on the following grounds:

1. The Bill of Complaint in this cause has been held by the Court to be without equity.
2. Said bill of complaint has been determined by the Court to be without equity, in the decree on respondent's demurrer to said bill of complaint.
3. For that there is no equity in the bill.
4. For that the bill of complaint shows on its face that the manifest purpose thereof is to restrain and enjoin the respondent, who is a law enforcement officer, from performing his duties in enforcing the law.
5. Equity will not enjoin a law enforcement officer from enforcing criminal statutes, the constitutional integrity of which has been sustained by the Supreme Court of Alabama.
6. Said bill of complaint is but an effort to hamper the law enforcement officers of Baldwin County, Alabama, in enforcing the law.
7. For that said temporary injunction restrains respondent from performing his duties, imposed upon him by law.
8. For that the bill of complaint and the temporary writ of injunction do not sufficiently describe the machines or devices they seek to enjoin respondent from seizing.

9. For that from aught appearing in the bill of complaint, said devices or machines mentioned therein can be operated as a game of chance, and as such the law requires respondent to seize them.

10. Complainant has an adequate remedy at law for the matters alleged in the bill of complaint.

11. The law provides complainant with an adequate remedy for the protection of his alleged property and rights, by providing for notice and a hearing before any condemnation or destruction of any such devices or machines seized by respondent.

12. The bill of complaint shows no irreparable injury to complainant growing out of the matters alleged.

13. Equity will not enjoin the respondent on a mere apprehension that his property or rights will be violated.

14. The bill of complaint does not show any equitable right for an injunction.

15. For that the Supreme Court of Alabama has determined that a bill of complaint such as in this case, has no equity.

16. For aught appearing in the bill of complaint, said devices, if legal themselves, may be operated as gambling devices and contrary to law, in which event it would be the duty of respondent to seize them.

17. The issuance of said injunction is against public policy in that its purpose is to hinder law enforcement officers in enforcing the laws of Alabama.

18. For that the allegations in the bill of complaint that the devices or machines mentioned therein are not gambling devices are but conclusions of the pleaders.

Ralph L. Jones

Solicitor of the 21st Judicial Circuit.
Solicitor for ~~Complainant~~ Respondent.

STATE OF ALABAMA.

BALDWIN COUNTY.

KNOW ALL MEN BY THESE PRESENTS:- That we, E. J. Roberts as principal and the undersigned as sureties, are held and firmly bound unto the Register of the Circuit Court of Baldwin County, Alabama, in Equity, in the sum of Two Hundred Fifty Dollars (\$250.00) for the payment of which well and truly to be made we bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly by these presents.

Sealed with our seals and dated this 14th day of August, 1942.

WHEREAS the said E. J. Roberts has filed his Bill of Complaint in the Circuit Court of Baldwin County, Alabama, in Equity, and has obtained thereon an Order for the issuance of an Injunction from the Honorable F. W. Hare, Judge thereof, to restrain and enjoin W. R. Stuart as Sheriff of Baldwin County, Alabama, from interfering with or seizing the machines or devices described in the Bill of Complaint.

NOW THEREFORE, THE CONDITION OF THE ABOVE OBLIGATION IS SUCH: That if the said E. J. Roberts, his heirs, executors or administrators shall pay or cause to be paid all damages which any person may sustain by the issuing out of said Injunction if the same is dissolved by said Court on the Bill filed by the said E. J. Roberts aforesaid, then the above obligation to be void, otherwise to remain in full force and effect.

WITNESS our hands and seals on the day and year first above written.

E. J. Roberts SEAL.
J. P. Guggs SEAL.
B. O. M. Blank SEAL.

Taken and approved this
14th day of August, 1942.

R. S. Duck
Register.

E.J. ROBERTS, Doing business under
the name of E.J. ROBERTS AMUSEMENT
COMPANY,

Complainant,

Vs.

W.R. STUART, AS SHERIFF OF BALDWIN
COUNTY, ALABAMA.

Respondent.

IN THE CIRCUIT
COURT OF BALDWIN COUNTY,
ALABAMA.
IN EQUITY.

TO MESSRS. HYBART & CHASON, ATTORNEYS-at-LAW, SOLICITORS OF
RECORD FOR COMPLAINANT IN THE ABOVE STYLED CAUSE:

Notice is hereby given to you that the Respondent in
the above styled cause of action, will move, before the Hon.
F.W. Hare, Judge of the Circuit Court of Baldwin County, Alabama,
at the County Courthouse, at Bay Minette, Alabama, on Monday,
the 28th day of September, 1942, at the regular call of the
equity docket of said Court,

to dissolve the temporary injunction issued in said cause by
said Judge; and at the same time and place will move, before
said Judge to discharge said temporary injunction issued in
said cause. A copy of the motion to dissolve said temporary
injunction, as filed in this cause, is hereto attached and
marked Exhibit "A". A copy of the motion to discharge said
temporary injunction is hereto attached and marked Exhibit "B".

You are further notified that at the same time and
place, the Respondent has set down for hearing before said Judge,
a Demurrer to the Bill of Complaint filed in said cause, which
has been filed by the Respondent, a copy of which Demurrer is
hereto attached and marked Exhibit "C".

Said Exhibits are made a part of this notice.

Ralph L. Jones.
Solicitor of the Twenty-first
Judicial Circuit of Alabama.
Solicitor for ~~Complainant~~ Respondent.

9. For that from aught appearing in the bill of complaint, said devices or machines mentioned therein can be operated as a game of chance, and as such the law requires respondent to seize them.

10. Complainant has an adequate remedy at law for the matters alleged in the bill of complaint.

11. The law provides complainant with an adequate remedy for the protection of his alleged property and rights, by providing for notice and a hearing before any condemnation or destruction of any such devices or machines seized by respondent.

12. The bill of complaint shows no irreparable injury to complainant growing out of the matters alleged.

13. Equity will not enjoin the respondent on a mere apprehension that his property or rights will be violated.

14. The bill of complaint does not show any equitable right for an injunction.

15. For that the Supreme Court of Alabama has determined that a bill of complaint such as in this case, has no equity.

16. For aught appearing in the bill of complaint, said devices, if legal themselves, may be operated as gambling devices and contrary to law, in which event it would be the duty of respondent to seize them.

17. The issuance of said injunction is against public policy in that its purpose is to hinder law enforcement officers in enforcing the laws of Alabama.

18. For that the allegations in the bill of complaint that the devices or machines mentioned therein are not gambling devices are but conclusions of the pleaders.

Ralph L. Jones

Solicitor of the First Judicial Circuit.

Attorney for Respondent

E. J. ROBERTS, Doing business under
the name of E. J. ROBERTS AMUSEMENT
COMPANY,

Complainant.

Vs.

W. R. STUART, AS SHERIFF OF BALDWIN
COUNTY, ALABAMA.

Respondent.))

IN THE CIRCUIT

COURT OF BALDWIN COUNTY

ALABAMA.

IN EQUITY.

Exhibit "B"

MOTION TO DISCHARGE TEMPORARY INJUNCTION.

TO THE HON. F. W. HARE, JUDGE OF SAID COURT:

Now comes the respondent and moves the Court to discharge the temporary or preliminary writ of injunction issued to him in this cause, on the following grounds:

1. The bill of complaint on which said injunction issued has been held, in this cause, to be without equity.
2. Said bill of complaint has been determined by the Court to be without equity, in the decree on respondent's demurrer to said bill complaint.
3. For that there is no equity in the bill.
4. For that the bill of complaint shows on its face that the manifest purpose thereof is to restrain and enjoin the respondent, who is a law enforcement officer, from performing the duties imposed upon him by law.
5. Equity will not enjoin a law enforcement officer from enforcing criminal statutes, the constitutional integrity of which has been sustained by the Supreme Court of Alabama.
6. Said bill of complaint is but an effort to hamper the law enforcement officers of Baldwin County, Alabama, in enforcing the law.
7. For that said temporary injunction restrains respondent from performing duties imposed upon him by law.
8. For that the bill of complaint and the temporary writ of injunction do not sufficiently describe the machines or devices they seek to enjoin respondent from seizing, so as to enable him to know what he is enjoined from seizing.

9. For that from aught appearing in the bill of complaint, said devices or machines mentioned therein can be operated as a game of chance, and as such the law requires respondent to seize them.

10. Complainant has an adequate remedy at law for the matters alleged in the bill of complaint.

11. The law provides complainant with an adequate remedy for the protection of his alleged property and rights, by provide for notice and a hearing before any condemnation or destruction of any such device or machine seized by respondent.

12. The bill of complaint shows no irreparable injury to complainant which would grow out of the matters alleged.

13. Equity will not enjoin on a mere apprehension of complainant that his property or rights will be violated, and that is the most alleged in the bill of complaint.

14. The bill of complaint does not show any equitable right for an injunction.

15. For that the Supreme Court of Alabama has determined that a bill of complaint such as the one filed in this cause, has no equity.

16. For aught appearing in the bill of complaint, the devices set out therein, if legal in themselves, may be operated as gambling devices, in which event it would be the legal duty of respondent to seize them.

17. The issuance of said injunction is against public policy in that its purpose is to hinder law enforcement officers in enforcing the laws of Alabama.

18. For that the allegations in the bill of complaint that the devices or machines mentioned therein are not gambling devices are but the conclusions of the pleaders, and no description thereof is given sufficient to bring them within the provisions of Section 289 of Title 14 of the Code of Alabama, which described machines or devices not regarded as unlawful.

Ralph T. Jones

Solicitor of the 21st Judicial Circuit of Ala.
Solicitor for Respondent.

E.J. ROBERTS, DOING BUSINESS UNDER
THE NAME OF E.J. ROBERTS AMUSEMENT
COMPANY,

COMPLAINANT.

VS.

W.B. STUART, AS SHERIFF OF BALDWIN
COUNTY, ALABAMA.

RESPONDENT.

IN THE CIRCUIT

COURT OF BALDWIN COUNTY,
ALABAMA.

IN EQUITY.

Exhibit "C"

DEMURRERS TO

BILL OF COMPLAINT.

Now comes the respondent in said styled cause of action and demurs to the Bill of complaint filed by the Complainant therein, and assigns the following grounds of demurrer:

1. There is no equity in the bill of complaint.
2. The bill shows on its face that the manifest purpose of the bill is to restrain and enjoin the respondent, who is a law enforcement officer, from performing his duties in enforcing the law.
3. The bill seeks to enjoin a law enforcement officer from enforcing criminal statutes, the constitutional integrity of which has been sustained by the Supreme Court of Alabama.
4. The manifest purpose of the bill of complaint is to enjoin the respondent, as Sheriff of Baldwin County, Alabama, from performing the duties imposed upon him by Section 222 266 of Title 14, of the Code of Alabama.
5. The bill of complaint does not sufficiently describe the devices or machines it seeks to enjoin the respondent from seizing.
6. The allegations in the bill that the machines or device s described therein are not gambling devices are but conclusions of the pleader.
7. If, for aught appearing in the bill, should the devices or machines described in the bill be legal in themselves, they might be operated as gambling devices and contrary to law, in which event it would be the legal duty of respondent to seize them.

8. For aught appearing in said bill, the devices or machines mentioned therein can be operated as a game of chance, and as such are subject to seizure by respondent in the performance of duties imposed upon him by law.

9. It affirmatively appears that complainant has an adequate remedy at law for the matters alleged in the bill of complaint.

10. The law provides adequate remedy to complainant for the protection of his alleged property rights, by providing for seizure, notice and hearing, before the condemnation or destruction of any such devices or machines as may be seized by respondent.

11. The complainant has a full and complete remedy at law for the recovery of any damages he might sustain from the matters alleged in the bill of complaint.

12. The bill of complaint shows no irreparable injury to complainant growing out of the matters alleged.

13. The allegations of the bill of complaint show at most an apprehension of complainant that some violation of his rights will occur, and equity will not enjoin merely upon such an apprehension.

14. The fact, if it be a fact, that said devices or machines are licensed by the State of Alabama, does not render their operation legal.

15. The fact, if it be a fact, that the State of Alabama is collecting a sales tax on the proceeds from said devices, does not render their operation legal.

16. The law affords complainant a full and complete remedy, - due process of law - for protection of his alleged property rights.

17. There are not sufficient allegations in the bill of complaint to show that the machines or devices mentioned come within the provisions of Section 369 of Title No. 14, of the Code of Alabama, which describes machines or devices not regarded as unlawful.

18. Equity should not and will not hamper the State's peace officers by injunction as they undertake to enforce the law.

19. For that, as determined by the Supreme Court of Alabama, this bill of complaint has no equity and cannot be amended to catch equity.

20. The bill of complaint does not in any respect show an equitable right.

Ralph L. Jones

Solicitor of the Twenty-first
Judicial Circuit of Alabama.
Solicitor for Respondent.

E. J. ROBERTS, Doing business under
the name of E. J. ROBERTS AMUSEMENT
COMPANY,

Complainant.

Vs.

W. R. STUART, AS SHERIFF OF BALDWIN
COUNTY, ALABAMA.

Respondent.))

IN THE CIRCUIT
COURT OF BALDWIN COUNTY
ALABAMA.

IN EQUITY.

MOTION TO DISCHARGE TEMPORARY INJUNCTION.

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TO THE HON. F. W. HARE, JUDGE OF SAID COURT:

Now comes the respondent and moves the Court to discharge the temporary or preliminary writ of injunction issued to him in this cause, on the following grounds:

1. The bill of complaint on which said injunction issued has been held, in this cause, to be without equity.
2. Said bill of complaint has been determined by the Court to be without equity, in the decree on respondent's demurrer to said bill complaint.
3. For that there is no equity in the bill.
4. For that the bill of complaint shows on its face that the manifest purpose thereof is to restrain and enjoin the respondent, who is a law enforcement officer, from performing the duties imposed upon him by law.
5. Equity will not enjoin a law enforcement officer from enforcing criminal statutes, the constitutional integrity of which has been sustained by the Supreme Court of Alabama.
6. Said bill of complaint is but an effort to hamper the law enforcement officers of Baldwin County, Alabama, in enforcing the law.
7. For that said temporary injunction restrains respondent from performing duties imposed upon him by law.
8. For that the bill of complaint and the temporary writ of injunction do not sufficiently describe the machines or devices they seek to enjoin respondent from seizing, so as to enable him to know what he is enjoined from seizing.

9. For that from aught appearing in the bill of complaint, said devices or machines mentioned therein can be operated as a game of chance, and as such the law requires respondent to seize them.

10. Complainant has an adequate remedy at law for the matters alleged in the bill of complaint.

11. The law provides complainant with an adequate remedy for the protection of his alleged property and rights, by provide for notice and a hearing before any condemnation or destruction of any such device or machine seized by respondent.

12. The bill of complaint shows no irreparable injury to complainant which would grow out of the matters alleged.

13. Equity will not enjoin on a mere apprehension of complainant that his property or rights will be violated, and that is the most alleged in the bill of complaint.

14. The bill of complaint does not show any equitable right for an injunction.

15. For that the Supreme Court of Alabama has determined that a bill of complaint such as the one filed in this cause, has no equity.

16. For aught appearing in the bill of complaint, the devices set out therein, if legal in themselves, may be operated as gambling devices, in which event it would be the legal duty of respondent to seize them.

17. The issuance of said injunction is against public policy in that its purpose is to hinder law enforcement officers in enforcing the laws of Alabama.

18. For that the allegations in the bill of complaint that the devices or machines mentioned therein are not gambling devices are but the conclusions of the pleaders, and no description thereof is given sufficient to bring them within the provisions of Section 289 of Title 14 of the Code of Alabama, which described machines or devices not regarded as unlawful.

Ralph L. Jones

Solicitor of the 21st Judicial Circuit of Ala.
Solicitor for Respondent.

E. J. ROBERTS, DOING BUSINESS UNDER)
THE NAME OF E. J. ROBERTS AMUSEMENT)
COMPANY,)

COMPLAINANT.

VS.

W. R. STUART, AS SHERIFF OF BALDWIN)
COUNTY, ALABAMA.)

RESPONDENT.

IN THE CIRCUIT
COURT OF BALDWIN COUNTY,
ALABAMA.

IN EQUITY.

DEMURRERS TO
BILL OF COMPLAINT.

Now comes the respondent in said styled cause of action and demurs to the Bill of complaint filed by the Complainant therein, and assigns the following grounds of demurrer:

1. There is no equity in the bill of complaint.
2. The bill shows on its face that the manifest purpose of the bill is to restrain and enjoin the respondent, who is a law enforcement officer, from performing his duties in enforcing the law.
3. The bill seeks to enjoin a law enforcement officer from enforcing criminal statutes, the constitutional integrity of which has been sustained by the Supreme Court of Alabama.
4. The manifest purpose of the bill of complaint is to enjoin the respondent, as Sheriff of Baldwin County, Alabama, from performing the duties imposed upon him by Section ~~225~~ 286 of Title 14, of the Code of Alabama.
5. The bill of complaint does not sufficiently describe the devices or machines it seeks to enjoin the respondent from seizing.
6. The allegations in the bill that the machines or devices described therein are not gambling devices are but conclusions of the pleader.
7. ~~It~~ For aught appearing in the bill, should the devices or machines described in the bill be legal in themselves, they might be operated as gambling devices and contrary to law, in which event it would be the legal duty of respondent to seize them.

2. 8. For aught appearing in said bill, the devices or machines mentioned therein can be operated as a game of chance, and as such are subject to seizure by respondent in the performance of duties imposed upon him by law.

9. It affirmatively appears that complainant has an adequate remedy at law for the matters alleged in the bill of complaint.

10. The law provides adequate remedy to complainant for the protection of his alleged property rights, by providing for seizure, notice and hearing, before the condemnation or destruction of any such devices or machines as may be seized by respondent.

11. The complainant has a full and complete remedy at law for the recovery of any damages he might sustain from the matters alleged in the bill of complaint.

12. The bill of complaint shows no irreparable injury to complainant growing out of the matters alleged.

13. The allegations of the bill of complaint show at most an apprehension of complainant that some violation of his rights will occur, and equity will not enjoin merely upon such an apprehension.

14. The fact, if it be a fact, that said devices or machines are licensed by the State of Alabama, does not render their operation legal.

15. The fact, if it be a fact, that the State of Alabama is collecting a sales tax on the proceeds from said devices, does not render their operation legal.

16. The law affords complainant a full and complete remedy, - due process of law - for protection of his alleged property rights.

17. There are not sufficient allegations in the bill of complaint to show that the machines or devices mentioned come within the provisions of Section 289 of Title No. 14, of the Code of Alabama, which describes machines or devices not regarded as unlawful.

18. Equity should not and will not hamper the State's peace officers by injunction as they undertake to enforce the law.

19. For that, as determined by the Supreme Court of Alabama, this bill of complaint has no equity and cannot be amended to contain equity.

20. The bill of complaint does not in any respect show an equitable right.

Ralph L. Jones

Solicitor of the Twenty-First
Judicial Circuit of Alabama.
Solicitor for Respondent.

~~E. J. Roberts~~, Doing business
under the name of E. J. Roberts
Assessment Company,
Complainant

vs.

W.R. Stewart, as Sheriff
of Baldwin County, Alabama
Respondent

Motion & Discharge
Temporary Injunction.

RECORDED

Filed Sept 1, 1912
C. R. Ditch,
Clerk

RECORDED

E. J. Roberts, Doing
business under the name #1 of
E. J. Roberts Amusement
Company, Complainant

VS.

W.R. Stuart, as Sheriff
of Baldwin County, Ala.
Respondent.

RECORDED

Damascus.

Filed Sept 12th 1942
D. Reed
Clerk

E. J. ROBERTS, Doing Business
under the Name of E. J. ROBERTS
AMUSEMENT COMPANY,

Complainant,

VS.

W. R. STUART, As Sheriff of Baldwin
County, Alabama,

Respondent

IN THE CIRCUIT COURT OF BALDWIN COUNTY, ALABAMA
IN EQUITY.

BRIEF AND ARGUMENT OF COMPLAINANT

BY:

C. L. HYBART
Monroeville, Alabama.

It appears to be the contention of the Respondent that under no circumstances will the equity Court enjoin or restrain a criminal proceeding, and in support thereof, he cites the cases of Caudle vs. Cotton, Sheriff, 173 So. 847, 234 Ala. 126; Hidgon vs. McDuff, Sheriff, 233 Ala. ⁴⁹⁷ 636; Kennedy vs. Shamblin, Sheriff, 174 So. 773; Ex Parte State, 200 Ala. 15. We respectfully contend that this rule, as practically every other rule that we have knowledge of, has its exceptions.

"A theory on which Courts of Equity have frequently proceeded in modern times in taking cognizance of criminal matters, has been that rights of property are involved. In line with the recognized principle that the jurisdiction of such a court is to protect property, there is much authority for the doctrine that it will interfere by injunction to stay any proceedings, whether connected with crime or not, which injuriously affect property."

14 R. C. L. 131.

The bill of complaint in this cause shows that the complainant is operating certain amusement devices and which are not gambling devices, and that he has built up an extensive business, which has been quite remunerative, and if it is shown that said devices are not gambling devices and

in the face of this the Respondent would seize said devices, shut down his business and thereby destroy the same, even for the time being, causing loss of profits and compensation for his services, it certainly would be an invasion of his property rights, which a Court of Equity will protect, by staying any proceeding, whether connected with crime or not, for it necessarily follows that his property rights are injuriously affected.

We base our conclusion upon the following cases:

Bryan vs. Meher, et al
154 Ala. 450.

"The jurisdiction of equity is purely and exclusively civil, and such Courts are not without power to enjoin or restrain threatened crimes or threatened prosecutions, and this rule applies to prosecutions under municipal ordinances as well as statute laws. Applying this rule, the Court should not lose sight of the fact that a Court of equity can and should interfere by injunctions to restrain any act or proceeding, whether connected with crime or not, which tends to the destruction or impairment of property or property rights."

We next call the Court's attention to the case of Harris vs. Barrett, 206 Ala. 265.

"In this jurisdiction we have adhered to the rule that equity will not interfere with the enforcement of criminal law or check the activities of prosecuting officials when the injury inflicted or threatened is merely the vexation of arrest and punishment of complainant - leaving such complainant free to litigate the question of unconstitutionality of the statute or ordinance, construction or application thereof, in the defense at the trial for its violation. Burnett v. Craig, 30 Ala. 135, 68 Am. Dec. 115; Ex Parte, State exrel Martin, supra, See, also, Brown vs. Birmingham, 140 Ala. 590

37 South 173; Old Dom. Tel Co. vs. Powers,
140 Ala. 220, 37 South. 195; 1 Ann Cas. 119;
Pike Co. Dispensary v. Brundidge, 130 Ala. 193;
30 So. 451; Postal Tel-Cable Co. vs. Montgomery,
193 Ala. 234, 69 South, 428, Ann Cas. 1918B, 554.

However, in a proper case and where required to prevent irreparable injury, property right may be asserted and protected within the exception of the rule recognized in *Mobile v. Orr*, 181 Ala. 308, 61 South 920, 45 L. R. A. (N.S.) 575, and authorities there collected."

We next call the Court's attention to Giglio vs. Barrett, 207 Ala. 281, in which it is stated:

"In this jurisdiction we have adhered to the rule that equity will not interfere with the enforcement of criminal laws under statute or ordinance or check the activities of prosecuting officials when the injury inflicted or threatened is merely the vexation of arrest and punishment of complainant, who is left free to litigate the question of unconstitutionality of such statute or ordinance or its construction or application in defense at the trial or prosecution for its violation. In a proper case, and where required to prevent irreparable injury, property right may be asserted and protected. *Harris v. Barrett*, supra; *Mobile vs. Orr*, 181 Ala. 308, 61 South 920, 45 L.R.A. (N.S.) 575."

We call the Court's attention to the case of Davidson vs. Phelps, 214 Ala. 237-238:

"Equity will not exert its powers merely to enjoin criminal or quasi criminal prosecution, 'though the consequences to the complainant of allowing the prosecutions to proceed may be ever so grievous and irreparable.' *Brown v. Birmingham*, 140 Ala. 600, 37 So. 174.---"

This is the well-recognized general rule, to which, however, there is the equally well-recognized exception that equity will interfere by injunctive relief "where such prosecution will destroy or impair property rights." *Board of Com'rs Mobile v. Orr*, 181 Ala. 308, 61 So. 920, 45 L.R.A.(N.S) 575;

Giglio v. Barrett, 207 Ala. 278; 92 So. 668.

"The right of property in an article involves the power to sell and dispose of such article, as well as to use and enjoy it." Mangan vs. State, 76 Ala. 60."

We call the Court's attention to the case of Franklin Social Club v. Town of Phil Campbell, 204 Alabama, 260:

"It is now thoroughly well settled by the decisions of that Court that municipal by-laws and ordinances undertaking to regulate useful business enterprises are subject to investigation in the courts with a view to determining whether the law or ordinance is a lawful exercise of the police power, or whether, under the guise of enforcing police regulations there has been an unwarranted and arbitrary interference with the constitutional rights to carry on a lawful business to make contracts, or to use and enjoy the property. "The English and American Courts have, we believe, without exception, held that the right to conduct one's business, without the wrongful and injurious interference of others, is a valuable property right which will be protected, if necessary by the injunctive processes of equity."

We call the Court's attention to the case of Walker vs. City of Birmingham, 216 Alabama, 208, in which it is stated:

"The Court of equity will not undertake to administer the merely criminal features of a municipal ordinance; but, where property rights are involved, and the unlawful enforcement of an ordinance will involve irreparable loss, equity will interfere to preserve property rights. No criminal prosecution is alleged; but appellant has been refused a license, and his averment is that thereby his large investment in the necessary equipment of his dairy business and the good will of that business, built up by years of successful management, and at great expense, will be destroyed - an averment of irreparable damage. The further averment, as we have already noted, is that, in refusing him a license, the board of health and its health officer and dairy inspector have acted arbitrarily, unreasonably, and without warrant. These averments in our judgment make a case for the interference of the Court of equity. Franklin Social Club v. Phil Campbell, 204 Ala. 259, 85 So. 527. The right to conduct one's law-

ful business, without the wrongful and injurious interference of others, or, to accommodate the principle involved to the facts averred, without the arbitrary, unreasonable, and unwarranted denial of the necessary license is a valuable right, which will be protected, if necessary, by the injunctive process of equity. *Hardie-Tynes Mfg. Co. v. Cruise*, 189 Ala. 66; 66 So. 657.

The foregoing conclusions are sustained by *Franklin Social Club v. Phil Campbell*, supra; *Bryan vs. Birmingham*, 154 Ala. 447; 45 So. 922, 129 A. St. Rep. 63; *Commissioners v. Orr*, 181 Ala. 308; 61 So. 920, 45 L.R.A. (N.S.) 575, and other cases there referred to. Some of these cases involved the attempted enforcement of void ordinances to the injury of property rights, but the effort to enforce a valid ordinance arbitrarily, unreasonably and without warrant of law or facts is in no better case, and may be enjoined."

On an examination of the allegations contained in the bill of complaint, as well as the prayer for temporary and permanent writ of injunction, it will clearly appear that the complainant has not asked an injunction against the respondent enjoining him from interfering with any gambling devices or machines that he may have in his possession or that he may be operating. And certainly said injunction does not restrain the Respondent from seizing any gambling machines or any machines or devices that may be used for gambling, which is in the possession or under the control of the complainant, and if the Respondent seized any gambling machines or devices that could be used for gambling which is in the possession or under the control of the complainant under the orders of this court, he would not and is not restrained from doing so. So, consequently, in no wise can this proceeding interfere with the Respondent

in enforcing the law relative to the process of operation of gambling devices set forth and mentioned in Article 4, of Title 14 of the 1940 Code of Alabama, and, consequently, the cases set forth in the brief of the respondent are not applicable. All that the complainant is asking at the hands of this Court is the protection of his property, which are not gambling devices, or such devices that can be used for gambling purposes, and these devices are the only devices that the respondent is restrained from interfering with.

The respondent complains that the complainant is acting a little hasty in securing injunction on the fact that the respondent was only threatening to seize his property. In other words, the complainant should have waited until the mischief was done and his business destroyed.

In Tidwell vs. H. H. Hitt Lumber Company, 198 Alabama, 243, the Court stated, through Judge Sayre:

"Contrary to the principle held by Chancellor Kent - that the common law theory of not interfering with persons until they have actually committed a wrong is fundamentally erroneous and that a remedy which prevents a threatened wrong is, in itself, essential nature better than a remedy which permits the wrong to be done and then attempts to pay for it by the pecuniary damages which a jury may assess. The ideal remedy in any perfect system of administering justice would be that which absolutely precludes the commission of a wrong, not that which awards punishment or satisfaction for a wrong after it is committed."

We respectfully contend that the allegations of the bill of complaint clearly show that unless the Court had restrained the respondent that he would have seized our property, interfered with our business and property rights and the orderly conduction of the same, and caused the complainant to have lost the benefits of his business, which even though the profits which would have flown to him during the time that the matters were being handled in the proceeding against the devices that he is operating would have been lost to him for the reason that such matters are speculative and speculative damages can not be recovered.

Respectfully submitted,


Solicitors for Complainant

We hereby certify that we have this day handed to Hon. R. L. Jones, Solicitor of the Twenty-First Judicial Circuit of Alabama, and Solicitor for Respondent, a copy of the above and foregoing brief and argument.

December 5, 1942.


Solicitors for Complainant

E.J. ROBERTS, DOING BUSINESS UNDER THE NAME
OF E.J. ROBERTS AMUSEMENT COMPANY,
COMPLAINANT.

VS.

W.R. STUART, AS SHERIFF OF BALDWIN COUNTY,
ALABAMA.
RESPONDENT.

IN THE CIRCUIT COURT OF BALDWIN COUNTY, ALA.

Reply brief for Respondent, submitted by
R.L. Jones, Solicitor of the 21st Judicial Circuit of Alabama.

Complainant, in his brief filed in this cause, cites and quotes from the following Alabama cases, in order:

1. Bryan Vs. Mayor, et al, 154 Ala. 450.
2. Harris Vs. Barrett, 206 Ala. 265.
3. Giglio Vs. Barrett, 207 Ala. 281.
4. Davidson Vs. Phelps, 214 Ala. 237.
5. Franklin Social Club Vs. Town of Phil Campbell, 204 Ala, 260.
6. Walker Vs. City of Birmingham, 216 Ala. 208.

It is interesting to note that in the later case of Caudle Vs. Cotton. Sheriff, et al, 173 So. 847. 234 Ala. 126. which we believe is the controlling authority in this case, every one of the above cases, without a single exception, is cited by complainant in that cause as authority for the issuance of the injunction in that case. That case is exactly in point in our case, each seeking to enjoin the enforcement of the laws pertaining to the suppression of gambling devices, which is now found in Article 4 of Title 14, Sections 283-292 of the Code of Alabama, 1940.

I quote from the Caudle case, supra:

"The bill seeks to enjoin the enforcement of the Act of July 25, 1931 (Gen. Acts 1931, p.806), alleging that its enforcement would interfere with the conduct of the business of complainant, and that the machines are in no way gambling devices, not in violation of the act, but are used for the mechanical sale of merchandise of the retail value of the coin inserted. Its equity is sought to be predicated upon the principle declared in City of Birmingham V. Seltzer, Inc., 239 Ala. 675, 159 So. 203; Franklin Social Club V. Town of Phil Campbell, 204 Ala. 259, 85 So. 527; Walker V. City of Birmingham, 216 Ala. 206, 112 So. 823; City Council of Montgomery V. Louisville &

Nashville R. Co., 84 Ala. 137, 4 So. 626; Port of Mobile V. Louisville & Nashville R. Co., 84 Ala. 115, 4 So. 106; Board of Commissioners of Mobile Vs. Orr, 181 Ala. 308, 61 So. 920.

But every such case is controlled by its circumstances, especially since the relief sought appeals to the equitable power of the Court to issue an injunction, and is dependent upon such injunctive right to sustain its equity. It is said to be a proper case for equitable injunction, although the law or ordinance is lawful, if its enforcement is unlawful and tends to break up an established business with a large investment and good will, and with no adequate means of measuring the loss, so that the damage will be irreparable. Such is the case of Walker Vs. City of Birmingham, supra. (Ordinance giving board of health right to refuse permits to sell milk). It is not every property right which equity will protect by injunction against an invalid ordinance or its unlawful enforcement. But the situation shown in each case must be controlling".

Further on in this case, answering Complainant's contention that "there was error in dismissing the bill for want of equity without extending complainant an opportunity to amend so as to give it equity" the Court sums up the whole matter in these unmistakable words:

"But if a bill does not in any respect show an equitable right, it is not error to dismiss it ex mero motu, without provision for amendment. In this case there was no equitable right right asserted in any form. Ex parte State, supra."

In other words, this bill of complaint, almost identical in allegations and prayer with the the complaint in our cause, asserted no equitable right, was properly dismissed without extending even an opportunity to amend it, and the Court affirmed the case and dissolved the injunction.

We, again, respectfully call the Court's attention to the recent cases of Higdon Vs. McDuff, Sheriff, 233 Ala. 636; Ex Parte State, 200 Ala. 15; Kennedy Vs. Shamblin, Sheriff,

174 So.773; Casmus Vs. Lee, Comptroller, 236 Ala. 397; and State Vs. One 5 ¢ Fifth Inning Baseball Game, 3 So.2d, 27; a careful reading of which, we believe, will prove without any doubt that the injunction issued in this case should be dissolved.

Lastly, we call the Court's attention to the Mobile case of Eastburn, et al. V. Holcombe, Sheriff, 10 So.2d, 457, just released in the advance sheet out to day. This case reaffirms all that is said in the case of Caudle V. Cotton, Sheriff, Supra, and contains the following important statements:

"The act of 1931 is now found in Title 14, Article 4, Code of Alabama, 1940. In this article are to be found ample provisions for a full and complete hearing by the owners in a court of equity before any final condemnation of their property, with the right of appeal from an adverse decree.

It is a sound principle of law, well recognized in our decisions, that a court of equity will not intervene to restrain officers from the enforcement of criminal statutes, the constitutional integrity of which have been sustained, especially where, as here, the statute itself affords a full hearing in the courts. Higdon V. McDuff, 233 Ala.497, 172 So. 636; Fisher V. McDuff, 233 Ala.499, 172 So.637; Ex Parte State, 200 Ala. 15, 75 So.327."

"The State's peace officers should not be hampered by injunction as they undertake to enforce such a statute, where full protection and due process are accorded in such way that no irreparable loss will follow from a failure to enjoin."

"Here defendant as sheriff is but discharging his official duty, as he sees it, in the enforcement of a criminal statute, and the principal of non interference by injunction in the discharge of such duties, as disclosed by the authorities herein cited, is applicable. So considered, the conclusion is that the bill is without equity, and the decree sustaining the demurrer is due to be affirmed."

In studying the brief filed by able counsel for complainant, please remember that every case cited by him

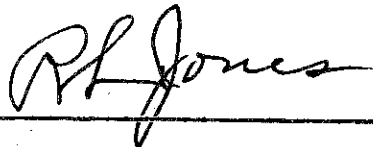
was also cited to the Court in the controlling case of Caudle Vs. Cotton, Sheriff, supra, and in that case, the questions of irreparable injury, the breaking ~~up~~ up of an established business with a large business, investment, and good will, with no adequate means of measuring the loss, as well as the allegation that the machines were in no ways gambling devices and were not in violation of the act, were presented to and argued before the Court, and the Court considered same in handing down that clear decision that an injunction will not lie in such cases.

Respectfully submitted,



Solicitor of the Twenty-first Judicial
Circuit of Alabama, Solicitor for Respondent.

I hereby certify that I have this day handed a copy of the above and foregoing brief and argument to Hon. C.L. Hybart, attorney of record for Complainant. This the 31st day of December, 1942.



E.J. ROBERTS, DOING BUSINESS UNDER
THE NAME OF E.J. ROBERTS AMUSEMENT
COMPANY, Complainant.

Vs.

W.R. STUART, AS SHERIFF OF BALDWIN
COUNTY, ALABAMA, Respondent.

IN THE CIRCUIT COURT
OF BALDWIN COUNTY, ALA.
IN EQUITY.

BRIEF OF RESPONDENT ON DEMURRER TO BILL OF
COMPLAINT, MOTION TO DISSOLVE TEMPORARY
INJUNCTION, AND MOTION TO DISCHARGE TEMPORARY
INJUNCTION.

Ralph L. Jones, Solicitor of the Twenty-first
Judicial Circuit of Alabama.
Solicitor for Respondent.

Point 1.

THERE IS NO EQUITY IN THE BILL.

The Supreme Court of Alabama has repeatedly held, by unanimous decisions, that there is no equity in Bills of Complaint, such as the one in this case, seeking to enjoin and restrain sheriffs from seizing various kinds of devices, under the claim that they are not gambling devices, but are amusement devices or vending machines. We will refer to only a few of the most recent cases, directly in point.

Higdon Vs. McDuff, Sheriff, 172 Southern 636, 233 Ala 636, is a 1937 case, in which the bill averred that complainant owned a large number of mint vending machines which were mechanical devices for the sale of merchandise; that said machines are in no ways a gambling device or a game of chance and that the operation of said machines are not a violation of the laws of the State of Alabama, that the defendant sheriff is threatening to interfere with petitioner's property and is proposing to arrest petitioner, and otherwise disrupt his said business, which petitioner alleges will cause him irreparable ~~loss~~ injury in his said business and cause him to lose large profits therefrom. In an unanimous opinion, the Supreme Court said:

"In view of the well settled principle that courts of equity will not intervene to restrain law enforcement officers from the enforcement of criminal statutes, the constitutional integrity of which has been sustained, and especially where the statute itself provides for a full and complete remedy—due process of law— for the protection of alleged property rights, by providing for seizure, notice, and hearing, before condemnation, taking the averments of the bill as true, and treating amendable defects appearing on the face of the bill pro hac vice as amended, our judgment is that the bill is without equity."

The above case came up on appeal from a decree of the Circuit Court sustaining defendant's demurrers to the bill and motion to dissolve the temporary injunction issued on the filing of the bill. It appears to be exactly in point with our case.

Sheriff, 847.
The later case of Caudle Vs. Cotton, / 173 So. 214

234 Ala.126, seeks an injunction against the sheriff, and alleges that the machines are in no way gambling devices, not in violation of the act, but are used for the mechanical sale of merchandise of the retail value of the coin inserted. Its equity is sought to be predicated upon the principle that the seizure of the machines was unlawful and would tend to break up an established business with a large investment and good will, with no adequate means of measuring the loss, so that the damage will be irreparable.

After a full discussion of the law, the court, in an unanimous decision says, "It is not every property right which equity will protect by injunction against an invalid ordinance or its unlawful enforcement." The case further holds that complainant had an adequate remedy at law, and makes this clear statement, "The State's peace officers should not be hampered by injunction as they undertake to enforce such a statute." The case came up on appeal from a decree sustaining defendant's demurrer to the bill and dismissing it. The vital part of the decision is as follows:

"We will, of course treat as amended, for this purpose, all formal defects. But if a bill does not in any respect show an equitable right, it is not error to dismiss it ex mero motu, without provision for amendment. In this case there was no equitable right asserted in any form".

Another case of Kennedy V. Shamblin, Sheriff, 174 So.773, seeks to enjoin the sheriff from seizing mint-vending machines which are alleged not to be gambling machines but may be played for amusement. The Court, in an unanimous decision, says that it is common knowledge that such devices tend to encourage and cultivate the gambling spirit, and not only this but such devices tend to encourage and foster racketeering, bribery, subornation and perjury. It further says that the only property rights involved, as shown by the bill, are such as complainant has in said machines, in which he has invested his money and the profits which said machines are taking.

We quote from the decision as follows:

"Courts of equity do not extend their aid to the protection of such property rights, unless authorized by statute,

but leave such matters to the court of original jurisdiction. Moreover, the statute, the enforcement of which complainant seeks to enjoin, provides a remedy for the protection of complainant's property rights and an adjudication in respect thereto.

The bill is without equity, the injunction was erroneously reinstated, and the decree sustaining the demurrer, dissolving the injunction, and dismissing the bill, is free from error."

All of the above cases cite and approve the earlier case of *Ex Parte State*, 200 Ala. 15, 75 Sou. 337, which goes further into the reason why there is no equity in the bill. This case seeks an injunction against the seizure of a certain beverage, alleged to be a lawful beverage, by the Sheriff of Jefferson County. It seeks to enjoin action under a prohibition act which has the same provisions for seizure, hearing and adjudication before condemnation, as the gambling device act. The important parts of the decision are as follows:

"The inquiry is one involving judicial power, and not one of efficient pleading of a litigable right. The fact, if so, that complainant has brought into the State or has in his possession a beverage that, though in fact ~~is~~ not prohibited, will subject or has subjected him to arrest and his beverage to seizure, cannot avail to invest the court of equity with jurisdiction in the premises".

"They are without power to interpose injunctive interference with the agents and instrumentalities of the State or of a municipality in prosecutions for penal offenses, or in their efforts to enforce the criminal laws".

"The State has a manifest interest in and concern for the observance and enforcement of its criminal laws, and in the freedom of its officers to perform their duty in the detection of offenses and offenders against its laws. To restrain the sheriff and his deputies in that regard impinges upon, brings into question, the powers of the State itself."

"To the end that effect may be given to the conclusion of this court that the injunctive process ordered issued and issued was and is wholly void, the cause created by the original bill will be stricken from the docket of the City Court of Jefferson County, the order made by the judges of the city court on July 14th, 1916 is hereby annulled, the writ of injunction issued in consequence of such order is hereby vacated."

POINT 2.

EQUITY WILL NOT ENJOIN LAW ENFORCEMENT OFFICERS FROM PERFORMING DUTIES IMPOSED UPON THEM BY ACT TO SUPPRESS EVILS OF GAMBLING DEVICES.

On this point, we cite what has been said above, and in addition thereto briefly the following statements:

"The manifest purpose of the bill is to restrain and enjoin the sheriff from performing the duty imposed upon him by Section 5 of the act entitled 'An Act to Suppress the Evils of Gambling Devices' approved July 25th, 1931, the constitutionality of which has been sustained".

Higdon vs. McDuff, Sheriff, supra.

"The State's peace officers should not be hampered by injunction as they undertake to enforce such a statute, where full protection and due process are accorded in such a way that no irreparable loss will follow from failure to enjoin".
Caudle Vs. Cotton, supra.

"They (meaning the courts of equity) are without power to interpose injunctive interference with the agents of the State or of a municipality in prosecutions for penal offenses or in their efforts to enforce the criminal laws."
Ex Parte State. Supra.

POINT 3.

COMPLAINANT HAS A FULL AND ADEQUATE REMEDY AT LAW.

Under this point, we again cite what was said under point 1, and specifically call the Court's attention to the following statements of the law:

"The owner had an adequate remedy provided by the prohibition law, in that the officers seizing it must at once have a hearing in court as to its liability to seizure, A similar provision exists in the Act of 1931, Sec. 6. The prohibition act was to promote temperance and suppress the evils of intemperance, whereas the other is to suppress the evils of gambling devices".

Ex Parte State, supra.

Also quoted in Caudle Vs. Cotton, Sheriff, supra.

"The statute itself provides for a full and complete remedy-due process of law- for the protection of alleged property rights, by providing for seizure, notice and hearing, before condemnation".

Higdon Vs. McDuff, Sheriff, supra.

"Moreover, the statute, the enforcement of which the complaint seeks to enjoin, provides a remedy for the protection of complainant's property rights and an ~~xxxxxxx~~ adjudication in respect thereto.

Kennedy Vs. Shamblin, Sheriff, supra.

Point 4.

THE LICENSING OF SAID MACHINES AND PAYING TAXES THEREON, DOES NOT HAVE THE EFFECT OF LEGALIZING THE MACHINES.

Title 51, Section 591, of the Code of Alabama, 1940, sets the license on "Slot Machines, for Amusement, etc. After giving the license schedule, it contains this provision:

"Provided that none of the provisions herein shall be taken or construed as legalizing the operation of such machines, devices or tables."

The Supreme Court of Alabama, in the case of Casmus Vs. Lee, Comptroller, 236 Ala. 397, 183 So. 397, decided an identical provision in the section providing the license schedule for punchboards:

"The petitioner dealt at arms length with the State, and with notice that he must pay the tax so long as he conducted

the business, an occupational tax and not a license in the popular sense of the word, though he gained no protection by its payment.

Point 5.

FOR AUGHT APPEARING IN THE BILL OF COMPLAINT, SAID DEVICES MAY BE USED FOR GAMBLING OR AS A GAME OF CHANCE.

The bill avers, as a conclusion of the pleader that the devices are not gambling devices. It does not, ~~xxxx~~ however aver that they can not be used or operated as a game of ^{Sub-}chance. Section d, of Title 14, Section 283, of the Code, in defining gambling devices, lists "any machine, mechanical device, contrivance, appliance or invention, whatever its name or character, which is operated or can be operated as a game of chance."

In the recent case of State Vs. One 5¢ Fifth Inning ^{Game} Baseball ~~xxxxxx~~, 3 So. 2d, 27, the Supreme Court says as follows:

"We think it clear enough, from the language of the Act, especially definition (d), that the law making body deemed it necessary to prohibit all such machines and devices which could be operated as games of chance, regardless as to whether there was a "pay off" or not, in order to suppress the gambling evil. ---It is, in our opinion, a machine which can be used as a game of chance. The act did not contemplate that it must be a machine which gives a reward, or in the operation of which the proprietor offers an inducement. It is open to use as a game of chance for two or more customers, or members of the public who operate the machine and who are tempted to gamble on the result of the game. This was clearly one of the evils at which the act was aimed."

If one of the devices described in the bill, in itself, ^{was} ~~xxxx~~ not a gambling device, ~~xxxxxx~~, but was operated, or could be operated as a game of chance, under the law and the above decision, it would be the duty of the sheriff to seize same, which he is enjoined in this case from doing. This clearly is not an equitable right.

Point 6.

THE INTERFERENCE COMPLAINED OF IN THIS COMPLAINT IS ONLY THREATENED.

We call the Court's attention to the two following statements of law on this point:

"An injunction should not be issued upon the mere apprehension of the complainant that some illegal act will be done". O'Rear Vs. Sartain et al, 193 Ala. 275, 69 So.554.

"The warrant being illegal, it is presumed, in the absence of allegations to the contrary, that the treasurer, whose duty it is to pay only legal warrants, will not pay it. An injunction should not be issued upon the mere apprehension of complainant that some illegal act will be done.

Alston Vs. Dunn et al. 58 So.300,176 Ala.421.
Same in Goodson Vs. Dean, 55 So.1010, 173 Ala.301.

In this case there is only alleged that complaint apprehends the sheriff will seize certain ~~illegal~~ devices. It being the duty of the sheriff to seize only illegal machines, it is presumed that the sheriff will do his duty and not interfere with any except illegal machines.

Point 7.

THE DESCRIPTION OF THE DEVICES, IN THE BILL AND IN THE WRIT, ARE TOO VAGUE, INDEFINITE AND UNCERTAIN.

In the Bill of Complaint, the devices for which injunctive protection is sought are described only as "amusement devices for the purpose of vending amusement to the public", and as "devices for vending amusement". Thereupon, in the temporary writ of injunction, respondent is strictly enjoined from interfering with or seizing or interfering with the operation of "th machines or devices referred to and described in said Bill of Complaint".

We respectfully submit that this description is entirely too vague, indefinite and uncertain to inform the Sheriff what devices he is restrained from seizing. If complainant operates slot machines or pin ball devices, he should say so, thus giving the Court information on which to act intelligently. If he has some new machine which has not been passed upon by the Supreme Court, he should name it, describe it, tell how it operates and let the Court have a chance fairly to pass upon it. The writ does not inform the sheriff sufficiently as to what devices he is restrained from interfering with.

We respectfully submit that there is no equity in the Bill of Complaint, that respondents demurrer should be sustained, and the temporary injunction dissolved. Also, that the bill of complaint should be dismissed, as it can not be amended to contain an equitable right.

Submitted,



Solicitor for the Twenty-first Judicial
Circuit of Alabama.

Solicitor for Respondent.

E. J. ROBERTS, DOING BUSINESS
UNDER THE NAME OF E. J. ROBERTS
AMUSEMENT COMPANY,
COMPLAINANT

VS.

W. R. STUART, AS SHERIFF OF
BALDWIN COUNTY, ALABAMA,
RESPONDENT

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA
IN EQUITY.

This cause coming on to be heard is submitted for decree on demurrer to the original bill of complaint, and on motion to dissolve the temporary injunction; and upon consideration thereof, I am of the opinion that the said demurrers are well taken, and that the motion to dissolve said temporary injunction should be granted.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED BY THE Court that said demurrer be, and the same hereby is, sustained; and the motion to dissolve said injunction is granted, and said injunction is hereby dissolved.

It appearing that the bill of complaint is incapable of amendment so as to confer equity, it is ORDERED, ADJUDGED, AND DECREED by the Court that said bill of complaint be, and the same hereby is, dismissed.

This, the 1st day of February, 1943.

F. W. Hare
Judge.