

LAW OFFICES
POWELL & HAMILTON
GREENVILLE, ALA.

D.M. POWELL.
C.E. HAMILTON.

November 24, 1917.

Mr. T. W. Richerson,
Bay Minette, Ala.
Dear Sir:-

IN RE: Town of Bay Minette v. O. M. Gordon.

Enclosed, I am handing you additional demurrers in the
above case and I will thank you to please file same.

Very truly yours,

CEH:F
Enclosure.

A handwritten signature in cursive script, appearing to read "C.E. Hamilton".

REGISTRY RETURN RECEIPT.

Form 1548.

Received from the postmaster registered article, the original number of which appears on the reverse side of this card.

Date of delivery JUN 8 1917
(to be filled in by person signing receipt.)

Filed
6/8/17
Postmaster
Receipt

When delivery is made to an agent of the addressee, both addressee's name and agent's signature must appear in this receipt.

Signature of addressee's agent
O. W. Gordon

Registered matter, the delivery of which has not been restricted by the sender or the addressee, is deliverable to any responsible person who customarily receives the ordinary mail of the addressee. (See sec. 363, P. L. and R.)
When the above receipt has been properly signed, it must be postmarked with the name of delivering office and actual date of delivery and mailed to its address, without envelope or postage.

Post Office Department
OFFICIAL BUSINESS

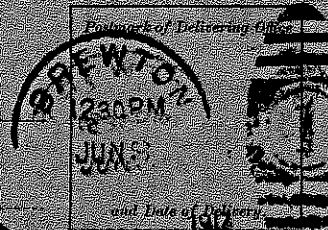
PENALTY FOR FAILURE TO AVOID
PAYMENT OF POSTAGE, \$500

Original Reg. No.

696

RETURN TO:

T. W. Richerson
(Name of sender.)



Street and Number, }
or Post Office Box, }

Post Office at

By Minute
Ala.

County

State

The postmaster who delivers the registered article must see that this card is properly signed, legibly postmarked, and mailed to the sender, without envelope or postage.

No. 20

THE STATE OF ALABAMA,

Baldwin County.

CIRCUIT COURT, IN EQUITY.

Town of Bay Minette

Complainant.....

vs.

A. M. Gordon

Defendant.....

ORIGINAL BILL.

Filed 5/4 1917

T. W. Richmond
Register.

W. S. Anderson
Solicitor.

count of its exposed and occupied condition to catch on fire and be burned and thus endanger the other buildings adjacent to it. Said building in its present condition is a menace to the other building near it on account of its liability to catch on fire.

5.

Orator further shows to your Honor, that the walls of said building are out of plumb, that it is unsafe, that parts of it are liable at any time fall on the sidewalk and it is dangerous to passers by on the ~~side~~ walks, and it is a public nuisance.

Prayer for relief.

Orator prays

The premises considered that your Honor will take jurisdiction of the case and on the coming in of the evidence will order and decree that said building is a public nuisance, that its use be prohibited, and it be abated; and for such other further or different relief be granted in the premises as to your Honor may seem meet and proper and according to equity and good conscience.

Prayer for process.

Your Orator further prays that the States writ of subpoena directed to the said O. ~~M.~~ Gordon be issued out of this Honorable Court, and that he be required to plead, answer or demur to this Bill of Complaint, within the time required by the rules of this Court.



Solicitor for Complainant-----

Note:

The defendant is required to answer each paragraph of said Bill from paragraph 1 to paragraph 5 both inclusive, but not under oath, his oath being hereby expressly waived.



Solicitor for Complainant. -----

To the Honorable Circuit Court of Baldwin County, Alabama.
Hon. A. E. Gamble, Judge of said Circuit Court:

The Bill of Complaint of The Town of Bay Minette, a municipal corporation created and existing under the laws of the State of Alabama, against O. M. Gordon, over the age of twenty-one years and residing at Brewton in the State of Alabama.

1.

Orator shows unto your Honor that the defendant is the owner of a certain lot within the corporate limits of the Town of Bay Minette, with the building thereon known as "The Inn".

That said building is on Lot Number 8 in Block Number 2 according to a map of said Town filed for Record in the office of the Judge of Probate of Baldwin County, Alabama, July 6, 1901, and recorded in Book of Deeds No 4 N.S. pages 158-162.

That said lot and building is near the center of said Town in the most populous portion thereof.

2.

Orator further shows to your Honor that said building is in a most delapidated condition; the galleries, both front and rear, are rotting and falling to pieces; the posts on the rear gallery are badly decayed and are liable to fall at any time; that said building is an eyesore and a reproach to the Town.

3.

Orator further shows to your Honor that said building is a frame structure, built of wood; that it is two stories high, that it was used for many years as a hotel, but owing to its delapidated condition it has not been used for such purpose for many years; the stairway going to the second story from the front of the building, has a door but without locks or other fastenings, the door was originally about one half filled with glass but the glass has long since been broken out, and the same is open at all times both night and day, and is accessible at any and all times by any one, who may care to go over the premises,

4.

Orator further shows to your Honor that said second story of said building is unused and unoccupied except by an occasional tenant for a short and uncertain period, and is liable on ac-

Letter Parcel No. 694
 Received for registration
 P. O., BAY MINETTE, ALA.
 191, from
 addressed to
 Receipt desired (See printed information on this receipt.)
 Delivery restricted To
 class postage prepaid.

icherson
 Circuit Court and
 Chancery

Bay Minette, Ala., June 6th 1917

O. M. Gordon,
 Brewton, Ala.,

Dear sir:

This is to notify you that in the case of Town of Bay Minette
 v. M. Gordon, now pending in the Circuit Court of Baldwin County,
 In Equity, the Complainant has filed an amendment to its Bill of
 Complaint, and I herewith enclose a copy of said amendment to you, as
 requested in that case.

Yours truly,
 J. W. [Signature] Register.

To obtain a receipt showing delivery, for the article, across its face, the check mark (✓) in the space after the word "A" in the receipt desired. The letter "A" in the space after the word "Delivery" or the letter "O" after the word "Delivery" restricted to addressee or other, in which a return receipt is desired, or that delivery is restricted as stated. The absence of a check mark on the letters "A" and "O" indicates that no return receipt is desired and that delivery is not restricted.

of Complainant unless the Complainant should amend Its Bill which
It may do within thirty days from this date in case It desires so to
do.

Done at Chambers this 6th day of December 1917.

W. E. Gandy
Judge.

Town of Bay Minette,
ms.

C. M. Gordon

Deer on Deer

Filed Dec 7th 1917
J. W. Richmond
Register

Town of Bay Minette,
vs.
O. M. Gordon.

In the Circuit Court of Baldwin County,
In Equity.

This cause is submitted for demurrer of Respondent to the Original Bill as amended.

In the case of Pearson vs. Birmingham 155 Ala, 631 it is held that a Court of Equity had jurisdiction to abate a nuisance on a Bill filed by a Municipality. The same jurisdiction was invoked in the case of Radney vs. Town of Ashland 75 So. 25. It follows that the demurrers which challenge the jurisdiction of the Court to entertain this Bill are not well taken.

In the case of Radney vs. Ashland supra it was held that a frame building is not a nuisance per se and the allegations in the 2nd paragraph of the Bill "That said building is an eyesore and a reproach to the Town" does not in my opinion constitute the same a nuisance and these grounds of demurrer to that portion of the Bill are well taken. However, the allegations contained in paragraph 5 of the Bill are sufficient to invoke the jurisdiction of the Court.

In the case of Radney, supra, the Court said that in testing the sufficiency of the allegations of a Bill to abate a nuisance it is immaterial as to whether it is a private or public nuisance that is sought to be abated and in the late case of Lamb, Receiver vs. Roberts 196 Ala. page 682 it was stated by the Court:-

"A different rule from that which governs notice to an erector of a nuisance prevails, however, as to a subsequent holder by purchase or descent, and where such party did not create an existing nuisance or the source thereof, but it was created prior to the time he acquired his title or interest, notice, or a request, or demand to reform, abate or remove it, must be given him, and it is a prerequisite or condition precedent to maintaining an action against him to abate or for damages".

Under this authority I am of the opinion that the demurrers a, b, and c should be sustained, The Register will enroll the following decree:-

This cause is submitted for decree on the demurrers of Respondent to the Original Bill as amended and on consideration, it is ordered, adjudged and decreed that the demurrers to the Original Bill as amended be, and the same are hereby sustained.

It is further ordered, adjudged and decreed that the said Original Bill as amended by and the same is hereby dismissed at the cost

First.

That said paragraph fails to allege how and in what manner said building is unsafe.

Second.

That said paragraph fails to allege whether said building is unsafe to the tenants occupying the same or to the passers by on the sidewalk.

Third.

Because the allegations that building is unsafe is the conclusion of the pleader.

Respondent demurs to the sixth paragraph of the bill as amended, and for grounds of demurrer assigns the following:-

First.

Because the ordinance set forth therein does not make said building a nuisance.

Second.

Because it is not shown that said building was not erected subsequent to the passage of the said ordinance.

Third.

Because said ordinance has no legal effect upon the question as to whether said building is a nuisance or not.

HAMILTON & LEIGH,

Solicitors for Respondent.

Third.

That the fact that said building was "a reproach to the town" does not constitute it a nuisance.

Fourth.

That the facts set forth in the second paragraph of the bill do not constitute said building a nuisance.

Respondent demurs to the third paragraph of the original bill, and for grounds of demurrer assigns the following:-

First.

That the facts set forth in said paragraph do not constitute said building a nuisance.

Second.

The fact that said building is shown to be out of repair does not constitute the same a nuisance.

Third.

That the fact that said building is not wholly occupied at all times does not constitute said building a nuisance.

Fourth.

The fact that said building is without locks does not constitute the same a nuisance.

Respondent demurs to the fourth paragraph of the original bill, and assigns as grounds of demurrer the following:-

First.

The fact that said building is liable to catch fire does not constitute the same to be a nuisance.

Second.

The fact that said building is liable to catch fire and thus endanger other buildings adjacent thereto does not constitute the same a nuisance.

Respondent demurs to paragraph five of the original bill, and for grounds of demurrer assigns the following:-

Town of Bay Minette

vs
O. M. Gordon

Demurrer to
Answered Bill

Filed 12/17/17
W. H. Williams
Register

building, the subject matter of this suit, was erected.

Thirteenth.

For ought that it appears by said bill, said building when erected was not erected in violation of any ordinance of the Town of Bay Minette, and nothing in said bill appears which shows that any demand has ever been made upon respondent by complainant or its authorized officers ~~upon respondent~~ requesting that respondent do that which was necessary to abate said alleged nuisance.

Fourteenth.

That nothing in said bill shows that said building could not be put in such a condition as would be safe and not dangerous to passers by.

Fifteenth.

That said bill fails to show that any action was ever taken by complainant to declare the said building a nuisance and to abate the same.

Sixteenth.

That said bill fails to show that complainant has by any ordinance ever condemned said building declaring the same a nuisance and ordering the same ~~to be abated~~ to be abated as a nuisance.

Respondent demurs to that portion of the second paragraph of the original which is in words and figures as follows:- "That said building is an eyesore and reproach to the town", and for grounds of demurrer to the same assigns the following:-

First.

That the fact that said building was not beautiful does not constitute the same a nuisance.

Second.

That the fact that said building was an eyesore does not constitute it a nuisance.

Sixth.

Under and by the allegations of said bill it is shown that the Town Council of the Town of Bay Minette did pass an ordinance on January 19, 1911, prohibiting the repairing of wooded buildings within the fire limits of the Town of Bay Minette without first having obtained permission of the Town authorities to so repair, and said bill fails to allege that town authorities have refused to grant permission to repair said building to put it in a safe condition.

Seventh.

Under and by the allegations of the said bill it is shown that the Town Council of the Town of Bay Minette is endeavoring to confiscate the property of this respondent without paying or offering to pay compensation therefor.

Eighth.

That it is shown by the allegations of said bill that complainant is endeavoring to condemn the property of respondent without due compensation.

Ninth.

Because said bill fails to show that said building could not with proper repairs be put in a safe condition, and not dangerous to the public.

Tenth.

Because it is not shown by said bill that any demand has ever been made by the Town Council of anyone acting for it upon Plaintiff to place said building as would make it not dangerous to the public and a nuisance.

Eleventh.

Because it is not shown by said bill that any demand has ever been made by complainant upon respondent that he remove said building.

Twelfth.

That it is not shown by said bill that the ordinance set out in the sixth paragraph of the bill as amended was passed before the

TOWN OF BAY MINETTE,
A MUNICIPAL CORPORATION,

Vs.

O. M. GORDON

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

Now comes the respondent, O. M. Gordon, and for answer to the original bill filed in the foregoing stated cause doth demur there- to and for grounds of such demurrer assigns the following:-
To the whole bill,

First.

That apparent upon the face of the bill the same is without equity.

Second.

That under and by the allegations of the bill the facts al- leged therein do not make the building sought to be removed a nuisance per se.

Third.

That under and by the allegations of the bill the building which is sought to be condemned as a nuisance and abated could if such building was a nuisance in fact be abated by the town Council of the Town of Bay Minette by a proper ordinance.

Fourth.

By the allegations of said bill it is shown that the Town of Bay Minette is clothed with authority "to condemn buildings, parts of buildings, or structures dangerous to the public and prohibit the use thereof and abate the same as a nuisance" by adopting an ordinance to that effect, and the complaintant is therefore without authority to invoke the process of this Court to abate said building as a nuisance.

Fifth.

Under and by the allegations of said bill it is shown that the Town Council of the Town of Bay Minette sought to declare the building, the subject matter of this suit, a legal nuisance and this Court is without authority to enforce said ordinance unless such building is a nuisance per se.

Sec.4. Be it further ordained, that the builder's permit shall on demand, be shown to the Marshal, or any member of the police, by any person or persons engaged in building new, or extending or repairing old buildings or structures as defined by the previous section of this chapter, and in the absence of such permit it shall be their duty to report the case to the Mayor, who shall cause the work to cease and summon the persons concerned for violation of this article before the Mayor.

Sec. 5. Be it further ordained, that it shall be the special duty of the chief of the Fire Department to see that the provisions of any permit issued under this ordinance are complied with, and to report any violation of the provisions of said permit to the Mayor, who shall see that any person so violating the provisions of this ordinance is duly tried, and shall remove at the cost of the owner, structures violating such permit."

Orator further shows to your Honor, that the lot and building complained of are situated within the fire limits of the Town of Bay Minette, as defined and set out in the first section of said Ordinance.

Complainant also amends the foot note to the Original Bill, by adding to the same, the following; Defendant is also required to answer this amendment to the Bill as paragraph 6, but not under oath oath being expressly waived.

Wm. S. Anderson

Solicitor for Complainant.

to file three affidavits in support of the same. The first affidavit was filed on June 1st, 1917, and the second and third affidavits were filed on June 2nd, 1917.

The first affidavit was sworn to by the plaintiff and the second and third affidavits were sworn to by the defendant. The first affidavit was sworn to by the plaintiff and the second and third affidavits were sworn to by the defendant.

The first affidavit was sworn to by the plaintiff and the second and third affidavits were sworn to by the defendant. The first affidavit was sworn to by the plaintiff and the second and third affidavits were sworn to by the defendant.

The first affidavit was sworn to by the plaintiff and the second and third affidavits were sworn to by the defendant. The first affidavit was sworn to by the plaintiff and the second and third affidavits were sworn to by the defendant.

Handwritten signature or initials

Town of Bay Minette

vs.

O. M. Gordon

Amendment to Bill of Complaint

Filed, June 6th 1917.

T. W. Pickens
Register

TOWN OF BAY MINETTE,)

v.)

O. M. GORDON.)

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA.

Now comes the respondent, O. M. Gordon, and files as an additional demurrer to the original bill as amended the following:

To the whole bill;

(a) Said bill fails to allege that the respondent, O. M. Gordon, was ever notified by the complainant, or its proper authorities, that the building, which is sought to be declared a nuisance, was in fact a nuisance and the defendant had failed or neglected to remove said building after such notice.

(b) That said bill fails to allege that respondent was ever denied the privilege of improving the building which is sought to be declared a nuisance by the complainant, as provided by the laws of the Town of Bay Minette.

(c) Said bill fails to allege that respondent failed or refused to remedy the alleged defects in the building which is sought to be declared a nuisance, after having been notified to correct such defects.

HAMILTON & LEIGH.

Solicitors for Respondent.

O. M. Gordon.

Filed 11/26/917
T. W. Keenan
Regist.

The Town of Bay Minette

Circuit Court, In Equity

vs

Baldwin County, Ala.

O. M. Gordon

The defendant in above stated case having obtained a copy of the Bill and before he has filed an answer to the same, comes the Complainant and files the following amendment to its Bill of Complaint:

6

Orator further shows unto your Honor, that it was Organized under the general Municipal Laws of Alabama, as appears by an Ordinance adopted on January 30th 1908 by the Town Council of the Town of Bay Minette. That acting under the powers conferred by on Municipal Corporations by the laws of Alabama, to wit: by Section 1264 of the Code of Alabama of 1907, which provides, "That the council shall have authority to prescribe fire limits in any City or Town, and buildings of wood or other inflammable material shall not be erected therein; they may do all things necessary to prevent conflagration and give security to the inhabitants of the city or town from fires."

the Town Council of the Town of Bay Minette, did on January 19th.1911 adopt the following ordinance,

An Ordinance, to fix the fire limits of the Town of Bay Minette.

Sec.1. Be it ordained by the Town Council of the Town of Bay Minette, Alabama, that the fire limits of the Town of Bay Minette shall be as follows, Bounded on the North by Fourth Street, on the West by McMillen Avenue and Oak Street, on the South by Louisville & Nashville Railroad right of way and East by Blackburn Avenue; also on the North by Louisville and Nashville Railroad Co's right of way, on the West by the West boundary line of Lots 39 & 44, on the South by Orange Avenue, on the East by a line perpendicular to a line projected E 500 feet from the NE corner of Lot 71.

Sec.2. Be it further ordained, that within the aforesaid limits no buildings shall be extended, erected or constructed of wood, nor shall the cornices of such buildings be of wood; Provided, that this shall not prevent the construction of wooden fences or floors. Frame buildings may be erected within these limits only by express sanction of the Town Council granted in each case. Any person who shall erect, extend or repair a building contrary to the provisions of this article, whether the owner, contractor or laborer, shall be fined not less than \$1.00 or more than \$15.00 for each day of such unlawful operation, and the building shall be removed at the expense of the owner by the Mayor.

Sec.3. Be it further ordained, that no person shall erect, extend or repair at any place within the limits defined in section One of this Ordinance, a building or structure of any kind or description without first making application in writing, stating the location, use and material of which the proposed building, extension or repair is to be constructed, to the Mayor, who shall thereupon issue a permit, if the proposed structure be in accordance with the provisions of this chapter, and said application and permit shall be a matter of record. Any one violating the provisions of this section shall be subject to a fine of not less than \$1.00 nor more than \$50.00.

of the building in question was the original wrong doer as on January 19, 1911, it is alleged by the bill that the ordinance to fix the fire limitation of the Town of Bay Minette was adopted. It could certainly be presumed from the allegations that the building in question was built long prior to this in view of the fact that no allegations are contained in the bill that it was built since and in view of the fact that the bill alleges that the building was used for many years as a hotel.

We most respectfully insist that the facts that the building is an eye sore and a reproach to the Town of Bay Minette constitutes a nuisance. It may be that the citizens of Bay Minette are rather fastidious in their tastes as to architecture, and that they would prefer the buildings of the town to be more beautiful, but no law requires a man to build a building which is good to look upon, and it would not be right to say that the Town Council should have the right to come in and condemn a man's property because it appeared to them ~~xx~~ as unsightly. If this were the rule, I ~~xxx~~ fear that Bay Minette might have to be a tented city.

Respectfully submitted.

H A M I L T O N & L E I G H.

Solicitors for Respondent.

O. M. Gordon.

Princeton Water Supply Co. City, N.J.

2050 742 See Spat 935

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The contention of the respondent is that the Town of Bay Minette was clothed with full authority to condemn the building in question and abate the same as a nuisance, provided it was a nuisance, the Legislature granting to a municipal corporation such an authority, and they are without right to call upon the assistance of this Court to declare the same a nuisance.

We also insist that no right is shown to exist in complainant in this case to file the bill inasmuch as no notice has ever been served upon the defendant to remove the building as a nuisance, and no opportunity has ever been given respondent to correct the alleged defects in the building. The amendment as set forth in the original bill filed on June 6, 1917, was that with certain limitations wooden buildings could be repaired, but the bill failed to allege that any request has ever been made and refused by the Town Council. Our Supreme Court has held that a wooden building, even old and dilapidated, is not a nuisance per se, as was said by Somerville, J., in the case of Radney v. Town of Ashland, 75/112, 25, ^{Sou.} "a vast majority of the houses in this section of the country are built of pine, and a large percentage of them are old and more or less dilapidated; reason and sound policy concur with judicial opinion in denying that such buildings, even in towns and cities, are per se nuisances". This decision bears directly upon the question at issue here as to whether the building which increased the hazard of the adjoining building is a nuisance, and we respectfully call the attention of the Court to this opinion.

The 29th Cyc. lays down the proposition on page 1216 that "Where a nuisance can only be abated by going on the land of another person, from which the nuisance proceeds, the person desiring to abate must give previous notice to the owner of the land to remove or abate the nuisance, unless it appear that the owner of the land was the original wrong doer by placing the nuisance there". It certainly could not be said that the builder

TOWN OF BAY MINETTE,)	IN THE CIRCUIT COURT OF
V.)	
O. M. GORDON.)	BALDWIN COUNTY, ALABAMA.

S T A T E M E N T.

This is a bill of complaint filed by the Town of Bay Minette, a municipal corporation, against O. M. Gordon, a citizen of Escambia County, to abate what is alleged in the bill as a nuisance, the nuisance consisting of a wooden building in the Town of Bay Minette. The bill does not allege that any action has ever been taken by the Town Council to declare the building a nuisance, neither does the bill allege that notice has ever been given respondent, Gordon, to remove the nuisance.

A R G U M E N T.

We are not unmindful of the fact that the bill in this case was filed under authority of *Pearson v. Mayor and Aldermen of the City of Birmingham*, as reported in 155 Ala., page 631. The decision, however, in that case is from a decree founded upon the facts and the propositions raised in this case were not raised either in the pleading or the facts in that case. We desire to call attention of the Court to Section 1264 of the Code of Alabama of 1907, which provides, among other things, "To condemn buildings, parts of buildings or structures dangerous to public and prohibit the use thereof and abate the same as a nuisance". Also Section 1278 of the Code which provides: "To prevent injury or annoyance from anything dangerous or offensive or unwholesome, and to cause all nuisances to be abated and assess the costs of abating the same against the person creating or maintaining the same."

The *Pearson* case above cited was filed and decided in the lower Court before the adoption of the Code of 1907, and the proposition we desire to insist on here was not involved in that case.

THE STATE OF ALABAMA, }
 Baldwin County. }
 Baldwin County. }
 Baldwin COUNTY,
 IN EQUITY.

To any Sheriff of the State of Alabama—GREETING:

WE COMMAND YOU, That you summon O.M. Gordon

of Escambia County, to be and appear before the Judge of the Circuit Court
 of Baldwin County, exercising Chancery jurisdiction, within thirty days after
 the service of Summons, and there to answer, plead or demur, without oath, to a Bill of Complaint lately exhibited
 by The Town of Bay Minette,

against said O.M. Gordon,

and further to do and perform what said Judge shall order and direct in that behalf. And this the said Defendant shall in no wise omit, under penalty, etc. And we further command that you return this writ with your endorsement thereon, to our said Court immediately upon the execution thereof.

WITNESS, T.W. Richerson, Register of said Circuit Court, this

22nd, day of May 1917.

T. W. Richerson

Register.

N.B. Any party defendant is entitled to a copy of the bill upon application To the Register

Serve on O.M. Gordon

CIRCUIT COURT OF

Baldwin COUNTY,

IN EQUITY.

No. 20

SUMMONS.

Town Of Bay Minette.

vs.

O.M. Gordon.

W.S. Anderson.

Solicitor for Complainant.

Recorded in Vol. _____ Page _____

THE STATE OF ALABAMA,

Baldwin County.

Received in office this _____

day of _____ 19__

Sheriff.

Executed this 23 day of

May 1917

by leaving a copy of the within Summons

with O.M. Gordon

Defendant.

J.H. Kelly

Sheriff.

By _____
Deputy Sheriff.

CIRCUIT COURT,
Baldwin County, Alabama.
In Equity.

Town of Bay Minette,

vs.

O. M. Gordon

Brief for Complainant on
Demurrers by Defendant.

W. S. Anderson,
For Complainant.

It may be that the Town Council has authority to condemn the building as a nuisance, and abate the same; but we are not concerned with that question, at this time. The question in this case is, has the Circuit Court, sitting as a court of equity, such power and jurisdiction.

The case of Pearson vs. The City of Birmingham, 47 So.80, 155 Ala. 631, decides the question for us. The Brief for defendant concedes that the Bill in this case is filed under the authority of that case. But he seeks to avoid the effect of that decision by the suggestion, that that decision was made before the adoption of the Code of 1907, which contains Section 1264, which it is alleged gives the Town Council authority to condemn nuisances and abate the same.

An examination of that section shows that it did not take from Courts of Equity their jurisdiction to abate nuisances on the public streets on a bill filed by the municipality.

It is also suggested in defendant's Brief, that these questions were not raised in the case of Pearson vs. Birmingham, cited above.

Whether these questions were raised or not, it is apparent from the language used in that case that they would not have affected the decision of the Court. The Court says in Pearson v. Birmingham, "

"That the allegations of the bill that the building in question is unsafe, the walls out of plumb, that it is liable to fall at any time and it is dangerous to passers by ~~via~~ on the sidewalk, etc. The prayer of the bill is that said property be declared a public nuisance, and its use be prohibited, and it be abated."

"These allegations show a nuisance of a public nature, which is a menace to the safety of the citizens."

In the same case the Court uses this language in the opinion,

"It is settled by the decisions of our court that the courts of equity have jurisdiction to abate nuisances on the public streets on bill filed by the municipality." citing.

City of Demopolis vs. Webb, 87 Ala. 659, 666, 667, 6 So. 408;
Reed v. Birmingham, 92 Ala. 339, 344, 9 So. 161;
Webb v. City of Demopolis, 96 Ala. 116, 137, 13 So. 289.

I would call the Court's attention to the similarity between the allegations and prayer of the Bill in the case at bar, and the allegations and prayer in the case of Pearson v. Birmingham 155 Ala. 631.

Respectfully submitted,



Solicitor for Complainant.

The Town of Bay Minette) Circuit Court, Baldwin County, Ala. In Equity
 vs.) Bill filed by the Municipality to have
 O. M. Gordon) a certain building in the Town declared to be
 a public nuisance.

Brief for Complainants on submission of the cause on Demurrers filed by Defendant.

In the Brief furnished Complainant on the submission of the cause Counsel for defendant, calls attention to but two objections to the Bill, viz:

"The Bill does not allege that any action has ever been taken by the Town Council to declare the building a nuisance; neither does the bill allege that notice has ever been given respondent, Gordon, to remove the nuisance."

We assume therefore that the two objections alleged in their statement of the case are the only ones on which they rely to have their Demurrers sustained, and will answer these two objections.

It would seem that a sufficient answer to both propositions may be found in the Bill itself. The Bill alleges, "that the walls of said building are out of plumb, that it is unsafe, that parts of it are liable at any time to fall on the side-walk, and it is dangerous to passers by on the side walk, and it is a public nuisance."

The Bill also alleges, that the building is within the corporate limits of the Town, and within the fire limits of said Town, that it is situated near the center of the Town and in the most populous part thereof. The Prayer of the Bill is "that your Honor will take jurisdiction of the case and on the coming in of the evidence, will order and decree, that said building is a public nuisance, that its use be prohibited, and it be abated.&c."

The Bill does not allege that said building has already been declared a nuisance, but that the Court will allow evidence to be taken, showing that the facts are true as alleged in the Bill, and after such facts are ascertained and established, then that this Court will declare said building a nuisance. How can defendant require any more notice than he has by the service of the subpoena issued from the Court to appear and plead, answer or demur within thirty days to the allegations of the Bill.