

DISTRICT COURT OF THE UNITED STATES FOR THE MIDDLE
DISTRICT OF ALABAMA NOTHERN DIVISION

Civil Action, File Number _____

RALPH D. ABERNATHY, FRED L.
SHUTTLESWORTH, S. S. SEAY,
SR., and J. E. LOWERY

PLAINTIFFS)

VS.

L. B. SULLIVAN, EARL JAMES,
MAC SIM BULTER, Sheriff,
Montgomery County, RAY D.
BRIDGES, Sheriff, Mobile
County, HOLT A. MCDOWELL,
Sheriff, Jefferson County

DEFENDANTS)

COMPLAINT

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JURISDICTION

Jurisdiction of this Court is invoked under Title 28 United States Code, Sec. 1331. This action arises under the Fourteenth Amendment to the Constitution of the United States, and under the act of Congress, Revised Statutes, Sec. 1977, derived from the Act of May 31, 1870, Chapter 17, Sec. 16, 16 Stat. 144, (Title 42 United States Code, Sec. 1981), as hereinafter more fully appears.

Jurisdiction of this Court is also invoked under Title 28 United States Code, Sec. 1343 (3). This action is authorized by the Act of Congress, Revised Statutes, Sec. 1979, derived from the act of April 20, 1871, Chapter 22, Sec. 1, 17 Stat. 13, (Title 42, United States Code, Sec. 1938) to be commenced by any citizen of the United States or other person within the jurisdiction thereof to redress the deprivation under color of State law of rights, privileges, and immunities guaranteed by the Constitution and Laws of the United States of America.

TYPE OF PROCEEDING

This is a proceeding under Title 28, United States Code, Sec. 2201 for a judgment declaratory of the rights and other legal relationships of the plaintiffs and for an injunction implementing the rights declared, to-wit;

(a) Whether Code of Alabama, Title 7, Sec. 793 as interpreted and applied to plaintiffs in requiring them to post supersedeas bond in double the amount of the judgment in order to stay execution of judgments entered against them in cases numbered 27416 and 27417 in the Circuit Court of Montgomery County, Alabama, under circumstances hereinafter set forth is a denial to plaintiffs of due process of law and the equal protection of the laws as guaranteed to them by the Fourteenth Amendment to the Constitution of the United States of America and is therefore unconstitutional?

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PARTIES

(a)

Plaintiff, Ralph D. Abernathy, is over the age of twenty-one years; a citizen of the United States; and resides in the City of Montgomery, Alabama. Plaintiff is president of the Montgomery Improvement Association, a pro-intergrationist organization, located in Montgomery, Alabama.

Plaintiff, J. E. Lowery, is over the age of twenty-one years; a citizen of the United States; and resides in the City of Mobile, Alabama. Plaintiff, J. E. Lowery is president of the Alabama Civic Affairs Association, a pro-intergrationist organization, located in Mobile, Alabama.

Plaintiff, S. S. Seay, Sr., is over the age of twenty-one years; a citizen of the United States; and resides in the City of Montgomery, Alabama. Plaintiff, S. S. Seay, Sr. is the executive secretary of the Montgomery Improvement Association, a pro-intergrationist organization, located in Montgomery, Alabama.

Plaintiff, Fred L. Shuttlesworth, is over the age of twenty-one years, a citizen of the United States; and resides in the City of Birmingham, Alabama. Plaintiff, Fred L. Shuttlesworth is founder and president of the Alabama Christian Movement for Human Rights, a pro-intergrationist organization, located in Birmingham, Alabama.

Each of the plaintiffs herein belong to that class of persons commonly referred to and designated as Negroes.

(b)

Defendants L. B. Sullivan and Earl D. James, are city officials and members of the Board of Commissioners of the City of Montgomery, Alabama. Each filed in Circuit Court of Montgomery County a Civil Action for damages against the plaintiffs herein and the New York Times Company, Inc., in the amount of five-hundred thousand dollars.

Defendants Mac Sim Butler, Ray D. Bridges, and Holt A. McDowell are sheriffs of Montgomery County, Mobile County, and Jefferson County respectively. As such it is their duty to execute and return the process and orders of the Courts of record of the State of Alabama. They are being sued in their official capacities.

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STATEMENT OF FACTS

On, to-wit: April 19, 1960, defendant, L. B. Sullivan and Earl D. James separately filed civil actions against the plaintiffs herein and the New York Times Company, a corporation, in the Circuit Court of Montgomery County, Alabama, seeking damages as a result of an alleged libelous publication appearing in the March 29, 1960 issue of the New York Times.

On, to-wit; the 2nd.day of November, 1960, a jury selected and empaneled to try said cause returned a verdict in favor of the defendant L. B. Sullivan against all of the defendants in the amount of five-hundred thousand dollars (\$500,000). Subsequently, on, to-wit; the 2nd. day of February, 1961, a jury returned a verdict in favor of Earl D. James against all defendants in the amount of five-hundred thousand dollars (\$500,000).

Code of Alabama, Title 7, Section 793 provides: "When the judgment or decree is for the payment of money only, the appeal does not operate as a supersedeas, or to stay or suspend the execution of such judgment or decree (except in such cases as are otherwise provided), unless bond be given by the appellant, or some other person, in double the amount of the judgment or decree, including costs, payable to the appellee, with sufficient sureties, and with condition to prosecute the appeal to effect, or, if he fails therein, to satisfy such judgment as the appellate court may render in the premises."

Plaintiffs allege and aver that the judgments rendered against them and the assessment of damages pursuant thereto was completely unsupported by even a scintilla of evidence, and were so excessive and punitive that they clearly show said verdicts were the result of bias, passion, prejudice, and or other improper motives on the part of the jury; that said actions were contrived and manufactured by defendants L. B. Sullivan and Earl D. James to enrich themselves by taking advantage of sentiment against the plaintiffs resulting from their well-known past and present views on segregation and civil rights.

Plaintiffs further allege and aver that the verdicts rendered against them are an unconstitutional use of the judicial machinery of the State of Alabama in that the institution of said libel actions for alleged defamation of defendants, governmental officials, infringe upon plaintiffs right of freedom of speech and freedom of association in contravention of the First and Fourteenth Amendment to the Constitution of the United States and that said verdict has the practical effect of

On, to-wit: the Friday of November, 1925, a jury returned

and proceeded to try said cause returned a verdict in favor of

the defendant, E. B. Sullivan against all of the defendants in

the amount of five hundred thousand dollars (\$500,000).

Subsequently, on, to-wit: the 2nd day of February, 1926, a

jury returned a verdict in favor of Earl D. James against all

defendants in the amount of five hundred thousand dollars

(\$500,000).

Court of Alabama, Title V, Section 133 provides: When the

judgment or decree is for the payment of money only, the appeal

does not operate as a supersedeas, or to stay or suspend the

execution of such judgment or decree (except in such cases as

are otherwise provided), unless bond be given by the appellant,

or some other person, in double the amount of the judgment or

decree, including costs, payable to the appellee, with

sufficient sureties, and with condition to prosecute the appeal

to effect, or, if he fails therein, to satisfy such judgment as

the appellate court may render in the premises.

Plaintiff's briefs and aver that the judgments rendered

against them and the assessments of damages rendered thereto was

completely unsupported by even a scintilla of evidence, and were

so excessive and punitive that they clearly show said verdicts

were the result of bias, passion, prejudice, and on other

improper motives on the part of the jury, that said verdicts

were contrived and manufactured by defendant, E. B. Sullivan

and Earl D. James to enrich themselves by taking advantage of

sentiment against the plaintiff resulting from their well-

known past and present views on negroes and civil rights.

Plaintiff further alleges and avers that the verdicts

rendered against them are an unconstitutional use of the

judicial machinery of the State of Alabama in that the institution

of said false actions for alleged defamation of defendant,

governmental officials, interferes with plaintiff's right of

freedom of speech and freedom of association in contravention of

the First and Fourteenth Amendments to the Constitution of the

United States, and that said verdicts have the practical effect of

detering and or discouraging plaintiffs' exercise of their constitutionally protected political rights of speech, press, and association. That to require plaintiffs to post \$1,000,000 bond, double the amount of such grossly excessive verdicts is prohibitive and abridges plaintiffs freedom of speech, press, and association as guaranteed to them by the First and Fourteenth Amendments to the Constitution of the United States.

Plaintiffs are unable financially to post bonds each in the amount of two-million dollars in order to stay execution pending appeal. As proximate consequence and result thereof, plaintiff Ralph D. Abernathy has suffered his equity in an automobile to be attached, the same being held by the Sheriff of Montgomery County pending sale; Plaintiffs J. E. Lowery and Fred L. Shuttlesworth have suffered attachment of their automobiles, the same being held by the Sheriffs of Mobile and Jefferson Counties, respectively pending sale; Plaintiff S. S. Seay, Sr. has suffered garnishment of his salary and an attachment of his interest in a lot or parcel of land located in Montgomery County, proceeds from the sales of which are to be applied in satisfaction of the judgment entered in the case of L. B. Sullivan v. New York Times Company, et al.

Plaintiffs verily believe that the verdicts and judgments entered in the aforesaid causes will be reversed on appeal as to each of them and unless defendants are enjoined from execution, garnishment and sale of plaintiffs' property pending outcome of said appeals, they, and each of them, will suffer immediate irreparable injury and harm. Plaintiffs have no plain, adequate, and complete remedy at law.

Wherefore plaintiffs respectfully pray:

1. That this Learned Court enter and ~~order~~ and decree declaring that Code of Alabama, Title 7, Section 793 as interpreted and applied to plaintiffs in cases numbered 27416 and 27417 pending before the Circuit Court of Montgomery, Alabama, in requiring and compelling said plaintiffs to post bonds in the amount of one-million dollars (\$1,000,000) in

order to stay execution pending appeal, deprives plaintiffs of their property without due process of law and denies to plaintiffs the equal protection of the laws guaranteed to them by the Fourteenth Amendment to the Constitution of the United States, and is therefore unconstitutional.

2. That this Learned Court enter an order and decree enjoining defendants, and each of them, their agents, servants, employees, attorneys, and all persons working in concert with them from seizing, attaching, garnishing, selling or otherwise encumbering or disposing of property of the plaintiffs in satisfaction of judgments entered in cases numbered 27416 and 27417 which are pending before the Circuit Court of Montgomery County, Alabama, pending disposition of said causes on appeal.

Respectfully submitted:

Charles S. Conley
530 South Union Street, Suite A
Montgomery 4, Alabama

Vernon Z. Crawford
570 Davis Avenue
Mobile, Alabama

Solomon S. Seay, Jr.
29 North McDonough Street
Montgomery, Alabama

Attorneys for Defendants

By _____

STATE OF ALABAMA)
)
MONTGOMERY COUNTY)

Ralph D. Abernathy, S. S. Seay, Sr., Fred L. Shuttlesworth, and J. E. Lowery, being duly sworn, depose and say:

That we are the plaintiffs herein, and that we have read the foregoing and know the contents thereof, and that the same is true to our own knowledge and belief.

Sworn to before me this
____th day of February, 1961.

NOTARY PUBLIC