

DAY.
vs.
THE STATE OF MARYLAND ON
THE SUGGESTION OF THE COM-
MISSIONERS OF LOTTERIES.

IN THE COURT OF APPEALS, W. S.
DECEMBER TERM, 1848.

APPELLEE'S STATEMENT AND POINTS.

The bill below was filed by the State under the act of 1847, chapter 284, section 2, to enforce a discovery from the appellant, against whom the State had instituted several actions of debt for the recovery of the fines inflicted by the 3rd section of the act of 1846, chapter 109, upon insuring lottery tickets.

It sets forth, that the appellant, who is largely engaged in this illegal business, conducts it, exclusively, with persons of color; and that the actions of debt were brought for insurances made with such persons; and that they received, at the time the insurance were effected, certain written memorandums, which they cannot explain, because of their incompetency as witnesses; and prays a discovery of the meaning and circumstances under which said memorandums were given, in aid of the actions at law.

The memorandums are given on folio 2 of the record.

To this bill the appellant demurred, (folio 3,) because:—

1st. It does not state a case which entitles him to the discovery prayed.

2nd. The actions, to which the bill is auxiliary, are for penalties, and therefore no discovery can be asked.

On the 22nd May 1848, the court below overruled the demurrer and ordered the party to answer; from which order, (folio 4,) the appeal is prayed.

The appellant appealed from this decree, and in support of the decree the appellee will contend:—

1. That the bill is authorized by the act of 1847, chapter 284, section 2.

2. That the act of 1847, chapter 284, is warranted by the 20th section of the bill of rights.

J. M. CAMPBELL, Sol'r for Appellee.

Day

vs

The State of Maryland
on the suggestion of
the commissioners of
Lotteries

Appelles Stat & Points

280
15
25

320

ALFRED Y. DAY,
vs.
STATE ON THE SUGGESTION
OF THE LOTTERY COMMIS-
SIONERS.

IN THE COURT OF APPEALS, W. S.
DECEMBER TERM, 1848.

APPELLANT'S STATEMENT

The bill was filed in this cause on the equity side of Baltimore county court, by the State, on the suggestion of the lottery commissioners, for a discovery from the appellant, (the defendant below.) The bill states, that six separate actions had been instituted before a justice of the peace of the city of Baltimore, against the appellant, to recover the fines imposed for violations of the third section of the act of 1846, ch. 109, which were then pending. That said appellant had been engaged in selling to persons of color, memorandums or tickets insuring certain numbers of lottery tickets, contrary to the provisions of said act, and that it was material to the proper decisions of said actions, that the appellant should discover, on oath, when, and for what consideration, and to whom, the said memorandums were given, and what is their meaning.

On this bill, the court passed an order on 10th April 1848, commanding the said appellant to answer the same on oath, on or before 17th April, or shew cause to the contrary, &c.

The appellant filed a general demurrer, which was, on 22nd May 1848, overruled by the court, who decreed to the complainant the costs of said cause, and that appellant should answer said bill on or before the 11th day of June 1848; from which decree the appellant appealed.

In the argument of this cause, the counsel for the appellant will contend :—

- 1st. That it was a principle of the common law, that no man could be compelled in a criminal proceeding to give evidence against himself; to which principle the inhabitants of this State became entitled by virtue of the 3rd section of the bill of rights.
- 2nd. That by the 19th section of the bill of rights, no man can be convicted, except there be a witness or witnesses against him, or upon voluntary confession.
- 3rd. That the 20th section of the bill of rights, applies only to civil cases, and did not authorise the passage of the act of 1847, ch. 284 :— and
- 4th. That the act of 1847 ch. 284, is a violation of a fundamental principle of right and justice, inherent in the nature and spirit of our social compact; and that the legislature in its passage, exceeded its rightful authority.

That therefore the said act is unconstitutional and void.

WILLIAM F. GILES, for Appellant.

A. J. Day
vs

State on the
Suggestion of the
Lobby commissioners

Appellant's State

268

3744

380
1-20
25

5.25

Alfred G. Day.

In the Court of Appeals
December Term 1848

State on the suggestion
of the Lottery Commissioners,

Appellant's statement -

The bill was filed in this cause on the Equity side of Baltimore County Court, by the State, on the suggestion of the Lottery Commissioners, for a discovery from the appellant, (the defendant below) The bill states, that six separate actions had been instituted before a Justice of the Peace of the City of Baltimore, against the appellant, to recover the fines imposed for violations of the third section of the act of 1846, ch. 109, which were then pending: That said appellant had been seized for selling to persons of colour, memorandums or tickets, assuming certain numbers of lottery tickets, contrary to the provisions of said act, and that it was material to the proper decision of said actions, that the appellant should discover, on oath, when, and for what consideration, and to whom, the said memorandums were given, and what is their meaning: on this bill, the Court passed an order on 10th April 1848, commanding the said Appellant to answer the same on oath, or before 17th April, or show cause to the contrary, &c. - The appellant filed a general demurrer, which was, on 22nd May,

1848, overruled by the Court, who decreed to the Complainant the costs of said Cause, and that appellants should answer said bill as before.

In the argument of this Cause, the Counsel for the appellants will contend

1st That it was a ~~maximally~~ principle of the Common Law, that no man could be compelled in a criminal proceeding to give evidence against him; to which ^{principle} the inhabitants of this State became entitled by virtue of the 3rd section of the bill of rights -

2nd That by the 19th section of the bill of rights, no man can be convicted, except there be a witness or witnesses against him, or upon voluntary confession -

3rd That the 20th section of the bill of rights applies only to civil cases, and did not authorize the passage of the act of 1847, ch 284; -

and 4th That the act of 1847 ch. 284, is a violation of a fundamental principle of right and justice, inherent in the nature and spirit of our social compact; and that the Legislature in its passage, exceeded its rightful authority. -

That therefore the said act is unconstitutional and void -

William F. Giles
for appellants

the 11th day of June 1848; for which decree the appellant appealed;

Alfred R Day

17

The state at the Sugg^m
of John O'Wentons &
Samuel Dickerson
Lottery Commissioners
appellants vs
State

7.92
6.67
14.59

Day
is
The State of Maryland
on the suggestion of the
Commissioners of Lotteries

Court of Appeals W. S.
Dec. Term A.D. 1848

Appellee's Statement of Points.

The Bill below was filed by the State under the act of 1847, chapter 284, Section 2, to enforce a discovery from the appellant, against whom the State had instituted ^{several} ~~an~~ actions of debt for the recovery of the ~~penalties~~ ^{finer} inflicted by the 3^d section of the act of 1846, chapter 109, upon insuring Lottery Tickets.

It sets forth, that the appellant, who is largely engaged in this illegal business, conducts it, exclusively, with persons of color; and that the actions of debt were brought for insurances made with such persons; and that they ~~were~~ ~~not~~ ~~received~~ ~~at~~ ~~the~~ ~~time~~ ~~the~~ ~~insurances~~ ~~were~~ ~~effected~~, certain written memorandums, which they cannot explain, because of their incompetency as witnesses; and prays a discovery of the meaning & circumstances, under which said memorandums were given, in aid of the actions at law.

The memorandums are given on folio 2 of the Record

To this Bill the appellant demurred, (folio 3.) because:— 1st, ~~It~~ ~~does~~ ~~not~~ ~~state~~ ~~a~~ ~~case~~ ~~which~~ ~~entitles~~ ~~him~~ ~~to~~ ~~the~~ ~~discovery~~ ~~prayed~~

2nd, The actions, to which this Bill is ancillary, are for penalties, & therefore no discovery can be asked.

On the 22nd May 1848, the Court Below overruled the demurrer & ordered the party to answer; from which order, (folio 4) the appeal is prayed.

The appellant appealed from this Decree, in support of the Decree the appellee with content:—

1. That the Bill is ~~strictly~~ ~~in~~ authorized by the ~~Decees~~ act of 1847, chapter 284, Section 2,

2. That the act of 1847, chapter 284, is

warranted by the 20th Section of the Bill of Rights
J. M. Campbell
for the appellee

Ray

vs

The State of Texas?
Enforcement of
Comm. of Colours

Abraham Rutenau
Petitioner

3348
2672
272
25
1.25
50
472