

vidual buyer of lottery tickets. The statute was aimed at dealers; for it is incredible that if congress had intended to forbid the use of the mails to persons ordering lottery tickets from lottery dealers, it would not have done so in plain and express words. The indictment must be quashed. The circuit judge concurs with me (though not sitting in this case) in the opinion that this statute does not apply to persons ordering lottery tickets from lottery dealers through the mails.

UNITED STATES *v.* CLARK.

(Circuit Court, E. D. Virginia. January, 1885.)

USE OF MAILS FOR TRANSMITTING LOTTERY TICKETS AND CIRCULARS—INFORMATION—REVISED STATUTES, § 3894, CONSTRUED.

A lottery ticket is not a *letter*, in the meaning of the statute which forbids the mailing of "any letter or circular concerning lotteries," etc. A schedule setting out the prizes offered in a lottery, printed on the back of all lottery tickets sent out for a particular drawing, is a *circular*, within the meaning of that statute.

Information.

Edmund Waddill, U. S. Atty., for the United States.

Geo. W. Brent, for defendant.

After the evidence was concluded, the court was asked to explain the law of the case to the jury, and the court said:

HUGHES, J. Section 3894 forbids any one from knowingly depositing in the mail any letter or circular concerning a lottery, gift concert, etc. The information in this case charges the defendant with being a lottery dealer, and as such depositing in the mail, to be conveyed, etc., in violation of the statute, a letter and circular concerning the Little Havana Lottery, describing the two things inclosed. The evidence tends to show that the defendant was a lottery dealer, and deposited in the mail at Alexandria, Virginia, on the twentieth of February last, a sealed envelope, having on it a two-cent postage stamp, addressed to the witness, A. G. Simmell, at Washington City. This envelope, when opened by Simmell, on being received through the mail, is stated by him to have contained a blank piece of white paper with nothing on it, either in writing or print; but that, enfolded in this piece of paper were two lottery tickets in the Little Havana Lottery, certifying on their face that the respective holders would be entitled to half the prizes, respectively, drawn by them. These tickets are shown in evidence, and prove to be printed, and to have no manuscript writing on them. As to the matter on their face they are impressions from an engraved plate, and they would fall within the meaning of the term circular, if each one was not individualized by having stamped upon it the particular number which

was intended to distinguish it from all the other tickets in the same lottery relating to a particular drawing. One of them is stamped with the number 2,560; the other, with the number 10,293. As no other ticket sent out contains either of these numbers, and these tickets are individualized by the respective numbers, the tickets on their face are not *circulars*. The following is what is printed on the face of one of the tickets:

SUPPLEMENT TO THE HAVANA LOTTERY.

Class 1150.
37

This ticket entitles the holder to one-half of such prize as may be drawn to its number as per schedule indorsed hereon, to be decided by the drawing of the Havana Lottery.

Feb. 21, 1384.

A

GOULD & Co.,
Propts.

2560.

2560

Nor are these tickets *letters*. They are not in writing. They are not addressed to the person whose address is on the envelope which inclosed them. They are mere printed certificates, of much the same form and character as bank-notes. They are not letters any more than bank-notes are letters; and therefore, if this information charged no more than the mailing of a letter, I would say in this case, as I said yesterday in a case against the same defendant, where all the evidence was identical and the indictment charged only the mailing of a letter, that the defendant must be acquitted.

But the information also charges that the envelope given in evidence contained a circular concerning the Little Havana Lottery; and on the back of these tickets is a printed schedule of prizes, which is a circular. It is in these words:

ORIGINAL LITTLE HAVANA,
OR
SUPPLEMENT TO THE ROYAL HAVANA.

Schedule.

1 Capital prize,	-	-	-	-	-	-	-	-	\$ 8,000
1 " "	-	-	-	-	-	-	-	-	1,500
1 " "	-	-	-	-	-	-	-	-	1,000
2 Prizes of \$300 each,	-	-	-	-	-	-	-	-	600
6 " 100 "	-	-	-	-	-	-	-	-	600
100 " 50 "	-	-	-	-	-	-	-	-	5,000
420 " 10 "	-	-	-	-	-	-	-	-	4,200
2 Approximations of \$100 each to the \$8,000,	-	-	-	-	-	-	-	-	200
2 Approximations of \$50 each to the \$1,500,	-	-	-	-	-	-	-	-	100
210 Prizes of \$5 each to the 210 tickets having as ending numbers the two terminal units of the number drawing the capital prize of \$8,000,	-	-	-	-	-	-	-	-	1,050
<hr/>									
745 Prizes, amounting to	-	-	-	-	-	-	-	-	\$22,250

The same numbers entitled to the capital prizes in the regular Havana Drawing are entitled to the capitals in the Original "Little Havana." So

with all other prizes in the schedule. The 210 prizes of each are in addition to the full scheme of the Royal Havana.

Tickets, \$2; halves, \$1.

Prizes paid in full in U. S. currency on presentation of ticket. Above schedule subject to such change as may be necessary to conform to plan of Royal Havana Lottery. G. W. M.

This schedule or circular is the same, identically, on each ticket. It is indorsed in print on all the tickets sent out, in relation to the Little Havana Lottery. It is not in any manner individualized or modified on any ticket that is sent out. It is issued in identically the same set form of words on every ticket, and is emphatically a *circular*.

If, therefore, you believe from the evidence that the defendant knowingly deposited the tickets containing this circular in a post-office, to be conveyed by mail, as charged in the information, you must find him guilty; for he is liable to the penalty imposed by law for such an offense.

WASHBURN & MOEN MANUF'G Co. and another v. H. B. SCUTT
& Co., Limited.

(Circuit Court, W. D. Pennsylvania. December 31, 1884.)

1. PLEA OF PENDING SUIT—ACTION TO ENFORCE CONTRACT—ACTION TO RESCIND.

A pending suit for the rescission of a contract cannot be pleaded in abatement, or bar of a subsequent suit in another court in enforcement thereof. The complainant in the second suit is not bound to file a cross-bill in the first suit, although he might thereby obtain the desired relief.

2. SAME—SUIT PENDING IN STATE COURT AS BAR TO ACTION IN FEDERAL COURT.

The pendency of a prior suit in a state court is not a bar to a subsequent suit in a circuit court of the United States, although between the same parties and for the same cause of action.

3. PATENTS FOR INVENTIONS—LICENSE—FRAUDULENT PRACTICES OF LICENSOR—PAYMENT OF ROYALTIES—INJUNCTION.

Where an application for a preliminary injunction, by a licensor against a licensee, in alleged default in payment of patent royalties, is met by affidavits charging the complainants with secret and extensive sales of the patented article below agreed rates for the government of both parties, in fraud of and to the prejudice of the licensee, and counter-affidavits charge similar misconduct upon the defendant, alleging that any under sales by the complainants were purely in self-defense; and which party commenced cutting schedule rates, is fairly disputable under the conflicting affidavits; and it appears that the complainants have already, to a large extent, lost control of the market by reason of unrestrained sales by infringers; *held*, that a preliminary injunction should be denied, but upon terms as to security, etc.

In Equity. *Sur* plea and motion for preliminary injunction.

Wm. C. Goudy, L. L. Coburn, and D. F. Patterson, for complainants.

Bakewell & Kerr and D. T. Watson, for defendant.

ACHESON, J. 1. The jurisdiction of the court of common pleas is contested on the ground that in the suit therein service was made on