



Merrill Rodgers Bill of Complaint

August 17, 1917

Masses Publishing Co. v. Patten

4. lation of from twenty to twenty-five thousand copies and circulates extensively through the City and State of New York, as well as other States, and that for a number of years last past the said magazine has so circulated and has been received freely at the Post Office of the City of New York and elsewhere and transmitted through the same and circulated therefrom upon the payment to the postal authorities of the amount required upon second class mail matter. It is absolutely necessary to the maintenance of said magazine and to its continued publication and circulation that the said magazine should be freely received at and delivered
5. and circulated from the said Post Office in the City of New York and not be held up or discriminated against or the delivery thereof delayed by the said defendant or other person exercising control over the delivery of mail from said Post Office. The retail price of said magazine is fifteen (\$.15) cents a copy and the subscription price One and 50/00 (\$1.50) Dollars a year. For more particular description of said magazine, complainant begs leave to attach a copy of the September 1917 number or issue of said magazine, more particularly hereafter referred to, and
6. alleges that all other September 1917 numbers of said magazine are identical with the copy hereto attached and marked "Exhibit A."

Fourth: According to the usual course of business of said complainant in publishing its said magazine, called "The Masses", the said issues of the magazine designed for circulation through the mails and particularly those intended

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for circulation in different portions of the United States are delivered properly wrapped and postage paid at the Post Office at the City of New York from the 1st to the 10th of each month. Pursuant to this course of business, the complainant caused to be delivered many copies of said magazine of the September 1917 number, identical with Exhibit A herein, to the defendant as Postmaster of said City of New York, on and between the 1st and 5th days of August, 1917, for the purpose of having the same transmitted through the mails to their destination, and that said magazines were properly wrapped and addressed in the usual way, and the postage thereon duly paid to the proper Post Office

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Official in said Post Office, agent of said defendant, as required by law, which said money was duly received and has ever since been retained by said defendant in his said official capacity. Shortly after said magazines were received at said post office for mailing and the postage paid thereon as above stated, the plaintiff herein was informed by the defendant herein, his servants, agents or employees that the privileges of second class mail would not be given to said magazines until the defendant had received instructions from Washington. Since said time, the said

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September issue of said magazine has not been transmitted through the mail nor has the defendant or the Post Office Department accorded the privilege of second class mail to the said September 1917 issue of said magazine or to the copies of said magazine deposited in said Post Office. Although complainant has repeatedly applied to the defendant, his agents and

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and representatives to ascertain definitely the grounds for the exclusion of said magazine from the mails, complainant has been able to obtain no further information on said subject, and that said magazines are still held at said Post Office by order of the said defendant as Postmaster and he refuses to permit the same to be delivered or transmitted therefrom.

11.

Fifth: Complainant further shows that said magazines so held by said defendant and refused access to the mails, as above stated, are, as complainant is informed and verily believes, in every respect mailable under the Act of June 15, 1917, and under any and all other laws of the United States, and that complainant has, in all respects, duly complied with all provisions of the law to entitle complainant to have said numbers of said magazine duly mailed and transmitted through the Post Office as ordinary second class matter, and that the act and conduct of said defendant in refusing so to mail said magazines and holding the same to be nonmailable is wrongful and unlawful and not authorized by law. Complainant further alleges that it was not and never has been accorded any

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opportunity to be heard in the matter of determining said magazines to be nonmailable either by said defendant or any other post office official. The action of said defendant in treating said magazines as nonmailable matter and refusing to mail the same, if continued, will work irreparable injury to the complainant, will completely ruin the business thereof and damage said complainant in the sum of many thousands of dollars and that said loss, damage and injury will amount to a sum far in excess of \$10,000.

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and that complainant is wholly without any remedy at law, in consideration whereof, complainant is remediless in the premises by the rules of the Common Law and is relievable only in a Court of Equity in this suit,

WHEREFORE complainant prays that this Honorable Court will grant unto him due process of subpoena directed to said defendant commanding said defendant to appear herein and to answer but not under oath, answer under oath being hereby expressly waived, and to abide and perform such directions and decrees as may be made in the premises;

14.

That an injunction forthwith issue enjoining and restraining the defendant, his agents, servants and employees and all persons whomsoever from treating the September 1917 issue of said magazine, known as "The Masses" as nonmailable under the Act of June 15, 1917, or any other Act or law whatsoever and that said defendant, his agent, servants and employees be forthwith commanded to transmit said magazines through the mail in the usual way and accord to complainant thereon the rights and privileges of second class mail matter whereon the lawful postage has been duly paid and received by the proper post office officials;

15.

That it be adjudged and determined by this Honorable Court that said magazines, particularly the September 1917 issue thereof, is mailable under the Act of June 15, 1917. That an order to show cause forthwith issue requiring said defendant, at the time and place therein specified to show cause why an injunction should not issue pendente lite, enjoining and restraining the defendant, his agents, servants and employees and all other persons whomsoever from treating the September 1917 issue of said magazine, known

16. as "The Masses" or any numbers thereof, as nonmailable, under the Act of June 15, 1917, or any other Act or law whatsoever, and that said defendant, his agent, servants and employees be forthwith commanded to transmit said magazines through the mail in the usual way and accord to the complainant thereon the rights and privileges of second class mail matter whereon the lawful postage has been duly paid and received by the proper post office officials. That it be adjudged and decreed that the said defendant was wholly without authority or jurisdiction to determine that said magazines were nonmailable and that the order and action of said defendant in the premises is wholly void. That complainant recover its costs and disbursements in this action and have such other further order, judgment or relief in the premises as may be just and proper.
- 17.

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