

STATE OF ALABAMA

COMPLAINANT

VS

A. I. CORTE

RESPONDENT

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA,

IN EQUITY

NO. 2642

SECURITY FOR COST

We, A. I. Corte and E. M. Hall, acknowledge ourselves security for all the costs of the Appeal taken to the Supreme Court by the said A. I. Corte from the decree rendered in this cause on August 14, 1952.

A. I. Corte

E. M. Hall

Approved 8-30-52
Chief Clerk, Register

STATE OF ALABAMA

COMPLAINANT

VS

A. I. CORRE

RESPONDENT

SECURITY FOR OCSIS

FILED
AUG 1 1962
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NOTICE OF APPEAL TO COMPLAINANT

STATE OF ALABAMA

COMPLAINANT

VS

A. I. CORTE

RESPONDENT

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA,


IN EQUITY

NO. 2842

TO HONORABLE W. R. LAUREN, SOLICITOR OF THE SEVENTH JUDICIAL
CIRCUIT OF ALABAMA:

Notice is hereby given that the Respondent, A. I. Corte, has given notice of and taken an appeal to the Supreme Court of the State of Alabama from the decree rendered by the Circuit Court of Baldwin County, Alabama, in Equity on August 14, 1952, denying the Respondent's motion to dissolve a temporary injunction issued in the above styled cause.

Dated this the 30 day of August, 1952.


Solicitor for the Respondent

STATE OF ALABAMA

COMPLAINANT

VS

A. I. CORTE

RESPONDENT

NOTICE OF APPEAL TO COMPLAINANT

FILED

AUG 130 1952

ALICE J. DUCK, Register

Div. No. _____

CERTIFICATE OF APPEAL. (Equity Cases.)

No. 2842

STATE OF ALABAMA

Complainant.

VS.

A. I. CORTE

Respondent.

I, Alice J. Duck

Register of the Circuit Court In Equity,

Baldwin

County, Alabama, hereby certify that in the cause of

STATE OF ALABAMA

Complainant,

VS.

A. I. CORTE

Respondent,

which was tried and determined in this Court on the 14th day of August 1952, in which there was a decree in favor of the ~~Plaintiff~~ Complainant

On the 30th day of August 1952, the Respondent

took an appeal to the Supreme Court of Alabama, to be holden of and for said State.

I further certify that A. I. Corte filed security for cost of appeal, to the Supreme Court, on the 30th day of August 1952, and that A. I. Corte and H. M. Hall

are sureties on the appeal bond.

I further certify that notice of said appeal was on the 4th day of September, 1952, served on William R. Lauten as attorney of record for said appellee.

Witness my hand and the seal of this Court, this the 4th day of September, 1952

Register of the Circuit Court In Equity of

Baldwin

County, Alabama.

THE STATE OF ALABAMA---JUDICIAL DEPARTMENT

THE SUPREME COURT OF ALABAMA

October Term, 19⁵³⁻⁵⁴

To the Register of the Circuit Court, Baldwin County—Greeting:

Whereas, the Record and Proceedings of the Circuit Court In Equity of said county, in a certain cause lately pending in said Court between

A. I. Corte, Appellant,

and

THE STATE OF ALABAMA, Appellee,

wherein by said Court it was considered adversely to said appellant, were brought before our Supreme Court, by appeal taken, pursuant to law, on behalf of said appellant:

NOW, IT IS HEREBY CERTIFIED, That it was thereupon considered, ordered, adjudged, and decreed by our Supreme Court, on the 29th day of October, 1953, that said

Decree of said Circuit Court be in all things affirmed, and that it was further considered, ordered, adjudged, and decreed that the appellant,

~~and~~ A. I. Corte, and A. I. Corte and H. M. Hall, sureties on the appeal bond, pay - - - - -

the costs accruing on said appeal in this Court and in the Court below, for which costs let execution issue.

Witness, J. Render Thomas, Clerk of the Supreme Court of Alabama, at the Judicial Department Building, this the 29th day of

October 19⁵³ J. Render Thomas

Clerk of the Supreme Court of Alabama.

No. 2842

THE SUPREME COURT OF ALABAMA

October Term, 19 53-54

1st Div., No. 525

A. I. Corte

Appellant,

vs.

THE STATE OF ALABAMA

Appellee.

From Baldwin Circuit Court.
In Equity

CERTIFICATE OF AFFIRMANCE

The State of Alabama,

Baldwin County. } Filed

this 2nd day of Nov 1953

Benjamin

AMANDA EC CIVIL SERVICE DIV

RECORDED IN BOOK 1000 PAGE 1000
INDEXED IN BOOK 1000 PAGE 1000
CLERK OF THE SUPREME COURT OF ALABAMA

OCT 29 1953

THE STATE OF ALABAMA - - - - - JUDICIAL DEPARTMENT

THE SUPREME COURT OF ALABAMA

OCTOBER TERM, 1953-54

1 Div. 525

A. I. Corte

v.

State of Alabama

Appeal from Baldwin Circuit Court, in Equity

CLAYTON, JUSTICE.

This is an appeal from an interlocutory decree of the circuit court of Baldwin County, in equity, overruling a motion to dissolve and sustaining a temporary injunction. The appeal is authorized by Sect. 757, Tit. 7 of the Code of Alabama 1940. The bill of complaint alleges in substance that, at the time of filing and for a period of time imme-

2.

diately preceding the filing thereof, appellant, at Loxley, Alabama, was engaged in the business of producing, buying for resale, packing, selling, and shipping, and sold, and shipped from Loxley, Alabama, vegetables of the type and variety governed by the provisions of Act No. 977 of the Legislature of Alabama of 1951; that he did refuse to allow authorized agents or inspectors of the State Commissioner of Agriculture, entrance into the premises of his establishment for the purpose of inspecting and examining packages of vegetables to determine whether said packages of said produce were in compliance with the enforcement provisions of said Act No. 977. The bill further avers that it is necessary for said agents and inspectors to enter said establishment for the purpose of enforcing the provisions of said law, and that, without access to such premises, the Commissioner cannot effectively enforce the provisions of such law, or perform the duties placed upon him by these provisions thereof. The bill alleges further that the conduct of the respondent, in denying the agents or inspectors of the Commissioner access to the premises of appellant, has prevented the Commissioner from enforcing the provisions of said Act No. 977, and that it is necessary and vital to the enforcement of this law that said agents and inspectors enter said establishment, which establishment is used for receiving, buying, packing, selling, and shipping vegetables of the type and variety governed by the provisions of said law, and that complainant has no adequate remedy at law to compel appellant to allow agents or inspectors of the State Commissioner of Agriculture to enter his premises, although they have the legal right so to do.

Act No. 977 of the Legislature of 1951, is in the following language:

"AN ACT

To provide for the inspection and grading of fresh fruits and vegetables grown in Alabama; prescribing the standard grade or grades for such fruits and vegetables; providing for the administration of the Act by the Commissioner of Agriculture and Industries and the Department of Agriculture and Industries; and prescribing penalties for violations of the Act.

"Be It Enacted by the Legislature of Alabama:

"Section 1. DECLARATION OF PURPOSE.- The purpose of this Act is to improve the grade and quality of fresh fruits and vegetables produced in Alabama in order that they may sell in competition with those produced in other areas. The fruit and vegetable industry is of great economic importance not only to the farmers of Alabama but to the general economy of the State and it has been found that fruits and vegetables produced and packed in Alabama are generally of substandard quality. Several neighboring states have enacted laws providing for shipping point inspection and grading of fruits and vegetables which laws have resulted in improving the quality and grade of fresh fruits and vegetables produced, packed and shipped from these states which has been to the economic gain and benefit to producers. Therefore, it is deemed for the best interest of the agricultural economy of the State of Alabama to regulate the shipping and packing of fresh fruits and vegetables by requiring and providing shipping point inspection for such agricultural commodities.

"Section 2. DEFINITIONS.- For the purpose of this Act- (a) The term 'person' means any individual, firm, partnership, corporation or association. (b) The term 'grower' means a bona fide producer of fresh fruits and vegetables either by self, or by tenant, sharecropper or by hired person. (c) The term 'Closed package' means any basket, hamper, crate, carton, bag or other container used in the marketing of fresh fruits and vegetables if such container is closed with a lid of any description. (d) The term 'fresh fruits and vegetables' shall include green corn, tomatoes, irish potatoes, sweet potatoes, peaches, strawberries, cucumbers (sold for slicing purposes) and cabbages.

"Section 3. Official standards for fruits and vegetables grown in the State of Alabama, when packed in closed packages shall be the same as those issued by the United States Department of Agriculture and/or standards issued by the State Department of Agriculture and Industries.

"Section 4. Every closed package of fresh fruits or vegetables grown in the State of Alabama, before the same shall be offered for sale, shall be stamped, labeled or otherwise plainly marked (bags may be tagged) with:
(a) The name and address of the grower or packer or the

person by whose authority the fruit or vegetable was packed. (b) The grade of fresh fruit and vegetables contained in the package. (c) The markings as prescribed in this section shall be in letters or figures not less than one-half (1/2) inch in height, except in consumer packages which shall be marked with letters comparable to the size of the package.

"Section 5. When the State Board of Agriculture and Industries determines that it is for the best interest of producers of fruits and vegetables in a certain area of the State of Alabama and the Board of Agriculture and Industries determines that a better quality and grade of fruits and vegetables will be produced by requiring inspection and grading of such fruits and vegetables the State Board of Agriculture and Industries shall have authority to require that every closed package containing fresh fruits and vegetables shall be, before the same is transported into, within or out of the State of Alabama, subject to Federal and/or State inspection in accordance with the standard grades established in Section 3 of this Act; that is to say, the State Board of Agriculture and Industries shall have authority to require Federal and/or State inspection of fruits and vegetables and shall further have authority to designate the area in which such inspection requirements shall apply.

"Section 6. It shall be unlawful for any person to sell, offer for sale, expose for sale or transport for sale any fresh fruits and vegetables in any closed package which fails to bear the statements as required in Section 4 of this Act, or if the contents of the package fail to comply with the markings thereon, provided, that none of the provisions of Sections 3, 4 or 5 shall apply to any fruit or vegetable for canning, freezing, preserving or other method of processing provided, however, that the State Board of Agriculture and Industries shall have authority when it finds that it is for the best interests of producers of fruits and vegetables in any area of the State of Alabama to require that fruits and vegetables grown in such area for canning, freezing, preserving and all other methods of processing shall be subject to the provisions of Sections 3, 4 and 5 of this Act.

"Section 7. The Commissioner of Agriculture, through any designated division of the Department of Agriculture and Industries shall be charged with the enforcement of the provisions of this Act and for that purpose shall have the power and authority to: (a) enter and inspect personally, or through any authorized agent or inspector, every place within the State of Alabama where fresh fruits or vegetables are produced, packed, stored for sale, shipped, offered for sale or sold, and to inspect such places, and all fresh fruits and vegetables, containers, records and equipment found in any such places. (b) certify to growers, shippers and other financially interested parties the grade, quality and condition

5.

of fresh fruits or vegetables as provided in this Act; and to charge reasonable fees designed to cover the cost of these services, which fees, together with all money collected in the enforcement of this Act must be deposited in the Agricultural Fund (Shipping Point Inspection account) and shall be re-expended by him in carrying out the provisions of this Act. (c) promulgate rules and regulations not inconsistent with the provisions of this Act which rules and regulations shall have the full force and effect of law.

"Section 8. Every person, who by themselves, their agents, or employees, violates any of the provisions of this Act shall be deemed guilty of a misdemeanor, and shall upon conviction thereof be punished as prescribed by law.

"Section 9. The provisions of this Act are hereby declared to be severable. If any of its sections, provisions, exceptions, clauses, phrases or parts be held unconstitutional or void, the remainder of this Act shall continue in full force and effect, it being the legislative intent now hereby declared, that this Act would have been adopted even if such unconstitutional or void matter had not been included therein.

"Section 10. This Act, upon passage shall take effect on and after January 1, 1952.

"Approved September 12, 1951.

"Time: 6:56 P.M."

The motion to dissolve the temporary injunction challenges the equity of the bill, stated in various ways, and seriously argues for reversal on two grounds. First, that the Commissioner of Agriculture had not taken formal action under the provisions of Sect. 5 of the Act to require the grading of fruits and vegetables in the area in which appellant's fruits and vegetables were grown. The second point argued by appellant for a reversal of the case, is that the injunction was issued to prevent the commission of an alleged criminal offense, and that the penal provisions of the Act provide an adequate remedy at law.

It is conceded that the motion to dissolve the temporary injunction tests the equity of the bill. Tit. 7, Sect. 1052,

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Code of Alabama, 1940; Woodward v. State, 173 Ala. 7, 55 So. 506; Fugua v. Spry Burial Ins. Co., 254 Ala. 189, 47 So. 2d 817.

No question is raised in the pleadings as to the constitutionality of the Act being considered.

As to the first proposition argued by appellant, pertinent provisions of the Act are:

Section 4 of the Act requires that every package of fresh fruits or vegetables grown in Alabama, before same shall be offered for sale, shall be stamped, labeled, or plainly marked with the name and address of the grower, and the grade of fresh fruit and vegetables in the package, . . . in letters not less than 1/2 inch in height

Section 6, provides that it shall be unlawful for any person to sell, offer for sale, expose for sale, or transport for sale any fresh fruits and vegetables in any closed package which fails to bear the statement as required in Section 4 of this Act.

Section 7, provides that the Commissioner of Agriculture, through any designated division of the Department of Agriculture and Industries shall be charged with the enforcement of the provisions of this Act and for that purpose shall have power and authority to: (a) Enter and inspect personally, or through any authorized agent or inspector, every place within the State of Alabama where fresh fruits or vegetables are produced, packed, stored for sale, shipped, offered for sale or sold, and all fresh fruits and vegetables, containers, records and equipment found in any such places

Section 8, provides that "every person who by themselves, their agents or employees, violates any of the provisions of this Act shall be guilty of a misdemeanor, and shall upon conviction thereof be punished as prescribed by law." Following

7.

the rule that where the language of a statute is plain and unambiguous, it should be given the meaning therein plainly expressed, we are led to the conclusion that the right of the Commissioner of Agriculture to inspect for compliance with the stamping and labeling provisions of Sections 4, 6 and 7 of the Act, became effective upon the passage of the Act by the Legislature and its signing by the Governor, without the necessity of any action by the State Board of Agriculture and Industries or the Commissioner of Agriculture. State v. Praetorians, 226 Ala. 259, 146 So. 411, Abranson v. Hard, 229 Ala. 2, 155 So. 590; State v. Tuscaloosa Building & Loan Ass'n, 230 Ala. 476, 161 So. 530, 99 A.L.R. 1019.

We consider now the proposition that the injunction was issued to prevent the commission of an alleged criminal offense, and that the complainant (appellee) has an adequate remedy at law by criminal prosecution against appellant. This is the truly serious question raised on this appeal. Section 8 of the Act does provide that a violation of any of the provisions of the Act constitutes a misdemeanor, so the first pertinent question which confronts us is whether or not the commission of an alleged criminal act may properly be enjoined. The principle upon which numerous exceptions have since been applied, contained in the early New York case of Attorney General v. Utica Insurance Co., 2d Johnson Chancery Reports 371, was expressed by Chancellor Kent as follows:

"If a charge be of a criminal nature, or an offence against the public, and does not touch the enjoyment of property, it ought not to be brought within the direct jurisdiction of this court, which was intended to deal only in matters of civil right, resting in equity, or where the remedy at law was not sufficiently adequate. * * *"

8.

Our recent cases have restated the general principle as follows: "Ordinarily courts of equity will not enjoin the commission of a crime." Knighton v. Knighton, 252 Ala. 520, 41 So. 2d 172; Try-Me Bottling Co. v. State, 235 Ala. 207, 178 So. 231; Farrell v. City of Mobile, 229 Ala. 294, 156 So. 635; Pike County Dispensary v. Mayor, etc., Brundidge, 130 Ala. 193, 39 So. 451.

The same principle was stated in the Try-Me Bottling Co. v. State case, supra, as follows:

"Our decisions recognize the general rule that courts of equity have no jurisdiction to enjoin the commission of offenses against the criminal laws of the State. * * *.

However, this court has held in the case of Henley v. Rockett, 243 Ala. 172, 8 So. 2d 852, Mr. Justice Souldin writing for the court:

"It is now well settled here and elsewhere that injunctive relief is not limited to the protection of property rights, but extends to the protection of personal rights in many fields where no adequate remedy at law is available. Indeed it may be truly said the protection of property rights derives from the value of property to the owner, supplying the means, the comforts, and many of the incidents of a fuller life."

citing: Try-Me Bottling Co. v. State, supra, and State v. Ellis, 201 Ala. 295, 78 So. 71.

Both the above cases of Knighton v. Knighton, and Henley v. Rockett, involved efforts of a wife to obtain injunctive relief against alienation of affections of the husband by another woman. While the issues were different from those in the case now before us, they serve to illustrate the principle that each case for injunctive relief must be considered in the light of the rule that an injunction, whether permanent or temporary, cannot, as a general rule, be sought as a matter of right, but the power to grant or refuse it rests in the

9.

sound discretion of the court, under the circumstances and facts of the particular case. 43 C.J.S. 420; Shelton v. Shelton, 238 Ala. 489, 192 So. 55; Dean v. Coosa County Lumber Co., 232 Ala. 177, 167 So. 566; Boatright v. Town of Leighton, 231 Ala. 607, 166 So. 418; City of Mobile v. Farrell, 229 Ala. 582, 158 So. 539, 542.

In Alabama, the early case of State v. Mayor and Aldermen of Mobile, 5 Porter 279, made an exception to the general principle of the case of Attorney General v. Utica Ins. Co., supra, basing its opinion upon the theory that equity might assume jurisdiction in certain cases involving maintenance of a nuisance, quoted in part as follows:

"The jurisdiction of Courts of Equity, in affording preventive relief, in cases of public nuisances, we understand to be clearly defensible, both upon authority and principle, where the fact of nuisance is placed beyond doubt; if this fact be questionable, the aid of that Court is usually withheld; but even then it has sometimes been given by way of injunction, (to continue until a trial at law,) where its denial would be productive of great public inconvenience.

"The principle upon which Equity entertains an information to restrain the exercise of a public nuisance, (as the employment of an offensive manufacturing establishment,) or to abate it, has been already stated to be, in the first case, to prevent irreparable injury, before a Court of law could act definitively,--and in the second, to prevent a protracted and expensive litigation, which must generally be the case where there are many persons to defend."

More recently the further exception to the general rule that injunctions may not be decreed to prevent a criminal act has been asserted as "injunction will issue to protect public rights, property or welfare notwithstanding the acts enjoined may also constitute crimes." 43 C.J.S. 764, citing Farrell v. City of Mobile, 229 Ala. 294, 156 So. 635.

"Acts which are a menace to the public health or safety, or as sometimes stated in greater detail, acts which are dangerous to human life, detrimental to public health and the occasion of great public inconvenience and damage may be enjoined." 43 C.J.S. 671.

"Usually the purpose of granting an injunction is to protect the public health or welfare." 43 C.J.S. 674, citing these cases: Funk Jewelry Co. v. LaPrado, 50 P. 2d 945, 46 Ariz. 348; State ex rel La Prade v. Smith, 29 P. 2d 718, 43 Ariz. 131, 92 A.L.R., 168, reheard 31 P. 2d 102, 43 Ariz. 343, 92 A.L.R. 168; Commonwealth ex rel Attorney General v. Pollitt, 30 S.W. 2d 543, 258 Ky. 489; Kentucky State Board of Dental Examiners v. Payne, 281 S.W. 138, 213 Ky. 382. The authorities are divided on this question. Comprehensive collations may be found in 40 A.L.R. 1145, et seq., and 91 A.L.R. 316, et seq. Under the exceptions to the general rule that injunction will issue to protect civil or property rights notwithstanding the acts enjoined may also constitute crimes, injunctions have issued to prevent acts in furtherance of a strike which caused great private injury, to prevent the giving or receiving of rebates, to prevent interferences with church property, to prevent maintenance of a bawdy house adjoining complainant's premises and interfering with the use and enjoyment of the latter, to prevent the maintenance of a conspiracy to commit fraudulent acts which will result in the perversion of an election, to prevent the running of a corner on the board of trade by which an exorbitant and fictitious price is fixed on grain, which acts will result in depriving another of his property, to prevent the serving of liquor by a lodge to its members in violation of an ordinance,

11.

and to prevent the use of force and violence to prevent complainant from working land where the result would be that if the land was not planted at that time, no crop could be raised thereon during the season. 43 C.J.S. 766, 767.

The Nebraska cases of State v. Heldt, 213 N.W. 576, and State v. Knudtsen, 236 N.W. 696, are closely analogous to the case before us. Each of those cases was an action brought by the State on the relation of the Attorney General to restrain and enjoin the defendants from interfering and preventing agents of the Department of Agriculture from entering upon defendant's premises and examining and testing his cattle for bovine tuberculosis. While the pleadings in those cases were somewhat different from the case being considered, the correctness of injunctive relief was sustained in both of them. Mr. Justice Day, speaking for the court, in the Heldt case, *supra*, said in part as follows:

"It is first urged by defendant that injunction is not an available remedy to the plaintiff because the state has a plain and adequate remedy at law. It is pointed out that the act of 1925, under which the plaintiff was attempting to act makes it a criminal offense, punishable by fine, for any person to interfere with or prevent the officers of the state from administering the act. It is a general rule that, where acts complained of are in violation of the criminal law, courts of equity will not, on that ground alone, interfere by injunction to prevent their commission, as they will not exercise their power for the purpose of enforcing criminal laws, but there is a well-recognized exception to the general rule, namely, that where the acts complained of constitute a nuisance and endanger the public health and welfare, and where a more complete remedy is afforded by injunction than by criminal prosecution, a court of equity may, at the instance of properly constituted authorities, afford relief by injunction.

* * * *

"Under the facts disclosed by the record, we are of the view that a criminal prosecution would not afford the public as complete and adequate relief as injunction, and that the plaintiff was well within its rights in applying to equity for relief.

12.

The public health and safety were proper elements to be considered as to whether equity would take cognizance of the case. In 32 C.J. 279, § 442, the rule is stated:

"Where an injunction is necessary for the protection of public rights, property, or welfare, the criminality of the acts complained of does not bar the remedy by injunction."

"Cases are cited in support of this view. A similar rule is laid down in 14 R.C.L. 367, § 68, and cases cited."

We apply the broad rule expressed in 43 C.J.S. 764-5

and supported by Farrell v. City of Mobile, supra, as follows:

"Where an injunction is necessary for the protection for public rights, property or welfare, the criminality of the acts complained of does not bar the remedy by injunction, and the court will consider the criminality of the act only to determine whether, under the particular circumstances, equitable intervention is necessary."

Other points mentioned in appellant's brief are not considered to be significant. The decree of the lower court is affirmed.

Affirmed.

Livingston, C. J., Simpson and Goodwyn, JJ., concur.

THE STATE OF ALABAMA---JUDICIAL DEPARTMENT

THE SUPREME COURT OF ALABAMA

1st Div., No. 525

A. I. Corte

, Appellant,

vs.

State of Alabama

, Appellee,

From Baldwin
in Equity

Circuit Court.

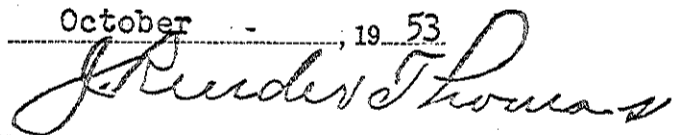
The State of Alabama, }
City and County of Montgomery, }

I, J. Render Thomas, Clerk of the Supreme Court of Alabama, do hereby certify that the foregoing pages, numbered from one to 12 inclusive, contain a full, true and correct copy of the opinion of said Supreme Court in the above stated cause, as the same appears and remains of record and on file in this office.

Witness, J. Render Thomas, Clerk of the Supreme
Court of Alabama, this the 29th day of

October

, 19 53



Clerk of the Supreme Court of Alabama.

2642

THE SUPREME COURT OF ALABAMA

October Term, 1953-54

1st Div., No. 525

A. I. Corte
Appellant,

vs.

State of Alabama

Appellee.

From Baldwin Circuit Court,
in Equity

COPY OF OPINION

MOORE PRINTING CO., MONTGOMERY 1951

STATE OF ALABAMA

COMPLAINANT

VS

A. I. CORTE

RESPONDENT

IN THE CIRCUIT COURT OF

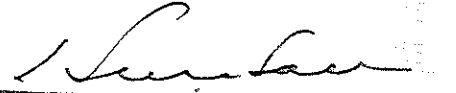
BALDWIN COUNTY, ALABAMA,

IN EQUITY

NO. 2342

NOTICE OF APPEAL

Now comes the Respondent, A. I. Corte, and gives notice of appeal from the judgment and decree of the Circuit Court of Baldwin County, Alabama, in Equity, rendered on the 14th day of August, 1952, in the above styled cause, denying the Respondent's motion to dissolve a temporary injunction, to the Supreme Court of the State of Alabama.



Solicitor for the Respondent

7

STATE OF ALABAMA

COMPLAINANT

VS

A. I. CORRIE

RESPONDENT

HONORABLE COURT OF APPEALS

FILED

AUG 130 1952

ALICE J. DUCK, Register

The State of Alabama }
Baldwin County }
IN THE CHANCERY COURT OF BALDWIN COUNTY

To William F. Lauten

Or To _____, Solicitors of record.

Whereas, on the 30th day of August, 1952,

A. I. Corte

took an appeal from the decree rendered on the 14th day of August

1952, by the Circuit Court of said county, in the cause of

State of Alabama

versus _____ A. I. Corte

Now, therefore, you are cited to appear as required by law, before the Supreme Court of

Alabama, to defend on said appeal, if you think proper so to do.

Witness my hand this 30th day of August 1952

W. J. ...
Register in Chancery.

I hereby accept service this
14th day of September 1952.

William F. Lauten

7

STATE OF ALABAMA Complainant

vs.

A. I. CORTE Respondent

CITATION OF APPEAL

IN EQUITY

Issued _____ day of _____ 193_____

Moore Ptg. Co., Bay Minette

STATE OF ALABAMA,
Complainant
VERSUS
A. I. CORTE,
Respondent.

§
§
§
§
§

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA
IN EQUITY
No. 2842

ORDER DENYING MOTION TO DISSOLVE TEMPORARY INJUNCTION

This cause coming on to be heard on the 14th day of August, 1952, the day heretofore appointed for the hearing of the same, on the motion heretofore filed by the Respondent to dissolve the temporary injunction heretofore issued in the above styled cause, and the same having been heard by the Court, together with the arguments of counsel representing both parties, the Court is of the opinion that the said motion should be denied and that the said temporary injunction should remain in effect; it is, therefore,

ORDERED, ADJUDGED AND DECREED that the motion to dissolve the temporary injunction heretofore issued ~~is~~^{be} and the same is hereby denied. It is further

ORDERED ADJUDGED AND DECREED that the temporary injunction heretofore issued ~~by~~ and the same is hereby continued in full force and effect.

DONE AND ORDERED this 14th day of August, 1952.

J. J. Madison, Jr.
Circuit Judge

RECORDED

STATE OF ALABAMA

VERSUS

A. I. CORTE

IN EQUITY

No. 2842

ORDER DENYING MOTION TO
DISSOLVE TEMPORARY IN-
JUNCTION.

FILED

AUG 22 1952

ALICE J. DUCK, ~~CLERK~~ *Register*

STATE OF ALABAMA

COMPLAINANT

VS

A. I. CORTE

RESPONDENT

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA,


IN EQUITY

NO. 2842

TO HONORABLE W. R. LAUTEN, CIRCUIT SOLICITOR OF BALDWIN COUNTY, ALABAMA:

Notice is hereby given you that the Respondent in the above stated cause will make a motion, a copy of which is hereto attached, before the Honorable, The Circuit Judge of Baldwin County, Alabama, in Equity on the 14th day of August, 1952, at 10 A.M. to dissolve the injunction issued in this cause on the grounds set forth in the motion this day filed with the Register of the Circuit Court of Baldwin County, Alabama.

Dated this 31st day of July, 1952.


Solicitor for the Respondent

I accept advice of this notice and the
Attached motion on this August 1, 1952


Solicitor

STATE OF ALABAMA

COMPLAINANT

VS

A. I. CORTE

RESPONDENT

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA,

IN EQUITY

NO. 2842

Now comes the Respondent, A. I. Corte, acting by and through his Solicitor of record and moves the court to dissolve the injunction heretofore on July 17, 1952 issued in the above stated cause and for grounds thereof says:

1.

That the Complaint is without equity.

2.

That the Complaint sets out no right vested in the Complainant for the injunction.

3.

That said complaint sets out no grounds authorizing the issuance of an injunction.

4.

That said injunction was improvidently issued.

5.

That the bill of complaint affirmatively shows that the operation conducted by the Respondent was a private operation over which the Complainant had no control.

6.

That the Bill of complaint fails to allege that there was a compulsory inspection required of the operation carried on by the Respondent.

7.

That the bill of complaint does not allege that the Complainant will suffer irreparable loss upon the failure of the issuance of the injunction.

8.

That the said bill of complaint does not allege that the injunction is asked to prevent a multiplicity of suits.

9.

That the bill of complaint affirmatively shows that the injunction was issued to prevent the Commission of alleged criminal offense.

10.


The Bill of complaint affirmatively shows that the Complainant has an adequate remedy at law.

11.

That said bill of complaint alleges no facts showing that it is necessary for the (agents or inspectors of Commission of Agriculture Department to enter the private property of the Respondent.

12.

That the said bill of complaint does not set out ~~a~~ right vested in the Complainant to enforce the provisions of the Act of the Legislature set out in the bill of complaint.


Solicitor for the Respondent

STATE OF ALABAMA,

Complainant,

VS.

A. I. CORTE,

Respondent.

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA.

IN EQUITY.

BILL OF COMPLAINT

TO THE HONORABLE TELFAIR J. MASHBURN, JR., JUDGE OF THE CIRCUIT COURT OF BALDWIN COUNTY, ALABAMA, IN EQUITY SITTING:

Comes the State of Alabama, hereinafter referred to as Complainant, and respectfully represents and shows unto the Court the following facts as a basis for the relief hereinafter prayed:

1. That Frank M. Stewart, hereinafter referred to as Commissioner, is the duly elected and qualified Commissioner of Agriculture and Industries of the State of Alabama, and as such officer is charged with the administration and enforcement of various regulatory laws governing the production, processing, packing, storing, shipment and sale of various agricultural commodities produced in the State of Alabama.
2. That A. I. Corte, the Respondent herein, resides in Baldwin County, Alabama, and is over the age of 21 years.
3. That Act No. 977 of the Legislature of Alabama of 1951, provides for the inspection and grading of fresh fruits and vegetables grown in the State of Alabama, and said Act further provides for the labeling and marking of closed packages of certain fruits and vegetables enumerated in said Act; that said Act No. 977 of the Legislature of 1951 expressly and specifically charges the Commissioner with the duty of enforcing the provisions and requirements of said Act; that said Act No. 977 expressly provides that Commissioner, or his authorized agents or inspectors, shall have the right to enter and inspect every place within the State of Alabama where fruits or vegetables are produced, packed, stored for sale, shipped, offered for sale or sold and to inspect

records and equipment of such places, all to the end that the provisions of said Act may be enforced by the Commissioner.

4. Your Complainant avers that the Respondent, A. I. Corte, is a member of a partnership doing business under the name and style of A. A. Corte and Sons, with its principal place of business located at Loxley, Baldwin County, Alabama, and Complainant further avers that said partnership doing business as A. A. Corte and Sons, is, among other things, engaged in the business of producing, buying for re-sale, packing, selling and shipping vegetables of the type and variety governed by the provisions of Act No. 977 of the Legislature of 1951.

5. Your Complainant avers that on the date of the filing of this Bill of Complaint, and for a period of time immediately preceding the filing of this Bill of Complaint, during which green corn was packed, sold and shipped from the establishment of A. A. Corte and Sons, at Loxley, Alabama, the Respondent, A. I. Corte, was in charge of the management and directed the operation of said establishment which is used for receiving, buying, packing, selling and shipping vegetables of the type and variety governed by the provisions of Act No. 977.

6. Your Complainant avers that on June 21, 1952, A. I. Corte, the Respondent herein, did refuse to allow authorized agents or inspectors of the Commissioner entrance to the establishment of A. A. Corte and Sons, located at Loxley, Alabama, and entrance and access to the premises of this establishment was desired by agents and inspectors of the Commissioner for the purpose of inspecting and examining packages of vegetables to determine whether said packages of vegetables were in compliance with the enforcement provisions of Act No. 977 of the Legislature of 1951. Your Complainant further avers that it is necessary for the agents and inspectors of Commissioner to enter the establishment

of A. A. Corte and Sons for the purpose of enforcing the provisions of the aforesaid law and that without access to such premises the Commissioner cannot effectively enforce the provisions of such law or perform the duties placed upon him by the provisions thereof. Your Complainant further avers that the conduct of the Respondent in denying the agents or inspectors of Commissioner access to the premises of A. A. Corte and Sons has prevented Commissioner from enforcing the provisions of Act No. 977 of the Legislature of 1951, and it is necessary and vital to the enforcement of this law that agents and inspectors of the Commissioner enter the establishment of A. A. Corte and Sons, Loxley, Alabama, which establishment is used for receiving, buying, packing, selling and shipping vegetables of the type and variety governed by the provisions of said law.

7. Your Complainant avers that although the Commissioner, his agents and inspectors have the legal right and authority to enter the premises of A. A. Corte and Sons, Complainant has no adequate remedy at law to compel or require the Respondent, A. I. Corte, to allow Commissioner, his agents and inspectors to enter and have access to said premises.

8. WHEREFORE, PREMISES CONSIDERED, Complainant respectfully prays:

(a) That this Honorable Court will take jurisdiction of this Bill of Complaint and will cause lawful process to issue to the said A. I. Corte, naming him as party respondent hereto and commanding him to plead, answer, or demur to this Bill of Complaint within the time prescribed by law, or failing therein, that a decree pro confesso as in all things confessed be entered against him;

(b) That this Honorable Court will issue a Writ of Injunction directed to the said A. I. Corte, commanding him, his agents, servants or employees to desist from performing any acts which will prevent, hinder or obstruct the Commissioner, his agents or inspectors from entering or preventing them from having access to the establishment

of A. A. Corte and Sons, located at Loxley, Alabama.

(c) That this Court will set this Bill of Complaint down for hearing within the time prescribed by law and that notice, as prescribed by law of such hearing, be issued and directed to the said A. I. Corte;

(d) That pending a hearing of the petition for this injunction, the Respondent, A. I. Corte, his agents, servants, or employees, be restrained and enjoined from performing or doing any acts which will prevent the Commissioner, his agents or inspectors from entering the premises of A. A. Corte and Sons for the purpose of enforcing the provisions of Act No. 977 of the Legislature of 1951.

(e) That if your Complainant be mistaken in the relief herein prayed for, it hereby prays for such other injunctive proceedings, orders or decrees or such other or more different relief as to this Honorable Court may, in equity, and good conscience seem meet, just and proper, the premises considered.

Respectfully submitted,

Si Garrett
SI GARRETT, ATTORNEY GENERAL

George O. Miller
GEORGE O. MILLER, ASSISTANT ATTORNEY GENERAL

William R. Lauen
WILLIAM R. LAUEN, CIRCUIT SOLICITOR

SOLICITORS FOR COMPLAINANT

STATE OF ALABAMA

BALDWIN COUNTY

Before me, the undersigned authority, personally appeared George O. Miller, who being by me first duly sworn, deposes and says that he is an Assistant Attorney General of the State of Alabama, and is one of the Attorneys for the Complainant in this cause;

that he has read the above and foregoing Bill of Complaint and that the allegations and averments therein contained are true and correct to the best of his knowledge, information and belief.

George O. Miller

Sworn to and subscribed before me on this the 17th day of July, 1952.

Alvin J. Smith
Clerk, Circuit Court.

Temporary injunction granted in accordance with Paragraph 8 (A) of the Bill of Complaint.

Julius J. Madbury, Jr.
Judge.

SUMMONS AND COMPLAINT

Moore Printing Co.

THE STATE OF ALABAMA,
BALDWIN COUNTY

CIRCUIT COURT, BALDWIN COUNTY

No. 2842

TERM, 19

TO ANY SHERIFF OF THE STATE OF ALABAMA:

You Are Hereby Commanded to Summon A. I. Corte

to appear and plead, answer or demur, within thirty days from the service hereof, to the complaint filed in

the Circuit Court of Baldwin County, State of Alabama, at Bay Minette, against

A. I. Corte

, Defendant

by State of Alabama

, Plaintiff

Witness my hand this 17th day of July 1952

Archie W. ..., Clerk

RECORDED

No. 2842 Page

THE STATE OF ALABAMA
BALDWIN COUNTY

CIRCUIT COURT

State of Alabama
Plaintiffs

vs.

A. I. Corte

Defendants

SUMMONS and COMPLAINT

Filed July 17, 1952

Alice J. Duck, Clerk

Plaintiff's Attorney

Defendant's Attorney

Defendant lives at

RECEIVED IN OFFICE

July 17, 1952
Taylor W. Selph, Sheriff

I have executed this summons

this July 21, 1952
by leaving a copy with

A. I. Corte

Taylor W. Selph, Sheriff

W. F. Hall, Dep

THE STATE OF ALABAMA, Baldwin County. CIRCUIT COURT, IN EQUITY.

To any Sheriff of the State of Alabama—GREETING:

We command you that without delay you execute this Writ, and due return thereof how you have executed the same make to us immediately.

To A. I. Corte

WHEREAS, The State of Alabama

has this day filed a Bill of Complaint in said Court against A. I. Corte

praying, among other things, that you, your agents, servants and employees desist from performing any acts which will prevent the Commissioner of Agriculture and Industries, his agents or inspectors from entering the establishment of A. A. Corte & Sons, Loxley, Alabama, for the purpose of enforcing the provisions of Act #977 of the Legislature of 1951.

And whereas, on said Bill of Complaint being exhibited to the Hon. Telfair J. Mashburn, Jr., Judge of the Circuit Court of Baldwin County, of the State of Alabama, on the 17th day of July 1952, he did order that, upon complaint entering into bonds with sureties, in the sum of Dollars, payable to the Defendant and approved by the Clerk of this Court, and returned according to law, a Writ of Injunction issue out of said Court, according to the prayer of said Bill, and whereas, said order has been given as required by said order:

These, therefore, are to command and strictly enjoin you, your agents, servants or employees from performing or doing any acts which will prevent the Commissioner of Agriculture and Industries his Agents or Inspectors from entering the establishment of A. A. Corte & Sons, Loxley, Ala. for the purpose of enforcing the provisions of Act No. 977 of the Legislature of 1951,

And this you will in no wise omit, under penalty.

WITNESS, Alice J. Duck, as Clerk of said Court, at office, in Bay Minette, Alabama, this 17th day of July 1952.

Clerk.

Alice J. Duck

No 2842

Circuit Court, In Equity

STATE OF ALABAMA

Vs.

A. I. CORTE

Executed by serving a copy of the within

Writ of Injunction upon

A. I. Corte

Received in office on this, the

day of 193

Sheriff.

MOORE PRINTING CO., BAY MINETTE, ALA.

on this the 21 day of

July 1935
Jay W. Welby
W. F. Hall
Sheriff.

D. 5-