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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1934

No. 604

CHARLES H. BALDWIN, AS COMMISSIONER OF AGRICULTURE AND MARKETS OF THE STATE OF NEW YORK, ET AL., ETC.,
Appellants,

vs.

G. A. F. SEELIG, INC.

No. 605

G. A. F. SEELIG, INC.,
Appellant,

vs.

CHARLES H. BALDWIN, AS COMMISSIONER OF AGRICULTURE AND MARKETS OF THE STATE OF NEW YORK, ET AL., ETC.,

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APPEALS FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

JOINT STATEMENT AS TO JURISDICTION OF THE SUPREME COURT OF THE UNITED STATES UPON APPEAL, AS REQUIRED BY SUPREME COURT RULE 12.

The above-named defendants hereby file this statement showing the basis upon which they contend that the Supreme Court of the United States has jurisdiction upon ap-

peal to review the decree appealed from herein. The plaintiff likewise files the same statement showing the basis for its cross-appeal from part of the same decree.

A.

The statutory provisions believed to sustain appellate jurisdiction are Section 345 of Title 28 of the United States Code (Judicial Code, section 238, amended) and Section 380 of Title 28 of the United States Code (Judicial Code, section 266, amended).

B.

The statute of the State of New York the validity of which is involved in this cause is Chapter 126 of the Laws of 1934 of the State of New York (not yet officially compiled), which adds a new Article 21 and a new Article 21-A to the Agriculture and Markets Law of said State, being Chapter 69 of the Consolidated Laws of said State. The said statute provides for the regulation of the purchase, sale and distribution of milk in the State of New York, and requires the defendant Baldwin, as Commissioner of Agriculture and Markets, to fix the minimum prices at which milk may be purchased and sold in said State. The only part of said statute the validity of which is involved in this cause is sub-section 4 of Section 258-M of said Article 21-A, which reads as follows:

> "It is the intent of the legislature that the instant, whenever that may be, that the handling within the state by a milk dealer of milk produced outside of the state becomes a subject of regulation by the state, in the exercise of its police powers, the restrictions set forth in this article respecting such milk so produced shall apply and the powers conferred by this article shall attach. After any such milk so produced shall have come to rest within the state, any sale, within the

> state by a licensed milk dealer or a milk dealer required by this article to be licensed, of any such milk purchased from the producer at a price lower than that required to be paid for milk produced within the state purchased under similar conditions, shall be unlawful."

An identical provision in an earlier law (Ch. 158 of N. Y. Laws of 1933, section 312, g), and certain orders made under each statute, are indirectly involved.

C.

The final decree appealed from was made on November 16, 1934, and filed in the office of the Clerk of the District Court on November 21, 1934. The petition for the appeal, and likewise the petition for the cross-appeal, were presented to the District Court on December 13, 1934.

D.

This action was instituted to restrain the defendants, as State officers, from enforcing the section of the statute above quoted and the orders above referred to, on the ground that said statute and orders were arbitrary, unreasonable, oppressive and discriminatory, and had no relation to the protection of public health or public welfare, and were unconstitutional, illegal and void, and were in violation of Section 8 of Article I and of the Fourteenth Amendment to the Constitution of the United States, in that they deprived plaintiff of its property without due process of law and attempted to regulate and interfere with commerce between the States and caused an arbitrary interference with the freedom of contract; and further to enjoin the defendants from proceeding in any manner against the plaintiff or any other person, firm, corporation or association by reason of the fact of them or any of them dealing with the plaintiff. The bill of complaint herein prayed for both a preliminary and a permanent injunction.

Equitable jurisdiction was established by reason of the inability of the plaintiff to obtain the license which it was required by law to obtain, unless the plaintiff should first agree to comply with and obey the section of the statute complained of and the orders issued pursuant thereto. Continuation of plaintiff's business without first obtaining such license rendered the plaintiff and all milk dealers dealing with the plaintiff liable to the imposition of severe penalties and fines, and the officers, agents and employees of the plaintiff and of such milk dealers liable to imprisonment.

The cause was heard on June 8, 1934, before Honorable Learned Hand, Circuit Judge; Honorable William Bondy and Honorable Robert P. Patterson, District Judges, sitting as a Statutory Court convened pursuant to the provisions of Section 380 of Title 28 of the United States Code (Judicial Code, section 266, amended). The plaintiff offered as its proof, in addition to the bill of complaint, an affidavit by J. Daniel Dougherty and an affidavit by Walter J. Seelig, each verified May 28, 1934. Defendants offered as their proof an affidavit by Kenneth F. Fee, verified June 7, 1934. That hearing resulted in the rendering of an opinion (*G. A. F. Seelig, Inc.,* v. *Baldwin,* 7 F. Supp. 776, Aug. 2, 1934), and a decree which the Supreme Court has held to be an interlocutory decree, involving no error of discretion, and hence affirmed without consideration of the merits. (*Baldwin* v. *G. A. F. Seelig, Inc.,* 293 U. S. —, No. 398, October Term, 1934, decided Oct. 15, 1934.) Subsequently there has been presented before the same Statutory Court, upon the same papers and in addition upon an agreed statement of facts, the plaintiff's application for final injunction, opposed by the defendants, and the defendants' motion to dismiss, opposed by the plaintiff. The latter motion has been denied and the former motion granted in part and denied in part. In connection with that final decree, from which the appeal and cross-appeal now presented are prosecuted,

the District Court adopted findings of fact fulfilling the requirements of Equity Rule 70½, and referred to its opinion of August 2, 1934, for conclusions of law.

E.

A case believed to sustain appellate jurisdiction herein, being a similar appeal from a final decree of a Statutory Court under a law substantially identical, is *Hegeman Farms Corp.* v. *Baldwin,* 293 U. S. —, No. 27, October Term, 1934, decided Nov. 5, 1934.

Respectfully submitted.

JOHN J. O'CONNOR,
Solicitor for Plaintiff.
HENRY S. MANLEY,
Solicitor for Defendants.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1934

No. 604

CHARLES H. BALDWIN, AS COMMISSIONER OF AGRICULTURE AND MARKETS OF THE STATE OF NEW YORK, AND OTHERS,

Appellants,

against

G. A. F. SEELIG, INC.,

Appellee.

No. 605

G. A. F. SEELIG, INC.,

Cross-appellant,

against

CHARLES H. BALDWIN, AS COMMISSIONER, ETC., AND OTHERS,

Cross-appellees.

CONCESSION AS TO JURISDICTION.

JOINT MOTION TO ADVANCE.

The appellants and appellee, and the cross-appellant and the cross-appellees, by their respective solicitors, do hereby acknowledge as to the appeal and cross-appeal due and sufficient service of the petitions for an order allowing the

appeal and cross-appeal, together with the assignments of error and the jurisdictional statement required by paragraph 1 of Rule 12 of the Revised Rules of this Court. They also acknowledge that their attention has been directed by appropriate statement to the provisions of paragraph 3 of such Rule, and none of them will file a statement disclosing any matter or ground making against the jurisdiciton asserted either for the appeal or the cross-appeal. No motion to dismiss or affirm will be filed under provisions of paragraph 4 of Rule 7 of such rules.

It is desirable that the constitutional questions presented be determined by this Court as promptly as is consistent with thorough presentation and deliberation. The appeals should be argued together upon one record, and are entitled to preferred and speedy determination under Section 380 of Title 28 of the United States Code (Judicial Code, § 266). The District Court has found to be unconstitutional a provision of the New York State milk control law which now affects the price paid for 30 per cent of the milk and cream consumed in the New York City market. It is important that it be finally determined as soon as possible whether the State of New York cannot protect its farmers, who produce the other 70 per cent, from lower price competition for their markets within the State. If the State is powerless to afford that protection it must be obtained under authority of the United States, or by interstate or industry compacts, or the farmers of New York State should suffer the ills of completely unregulated markets rather than the greater ills of partially regulated markets. The present milk control law in New York State is to expire March 31, 1935, and before that time the Legislature will take some action upon the situation, for which action a final decision in this case is needed guidance.

At present about fourteen States of the United States have similar milk control laws, with others in prospect, and

the problem of interstate milk is important to all or nearly all of them.

It is respectfully prayed that probable jurisdiction be found and the appeal and cross-appeal advanced and set down for argument at some specified early session of the Court.

Dated December 14, 1934.

JOHN J. BENNETT, JR.,
HENRY EPSTEIN,
HENRY S. MANLEY,
Solicitors for the Defendants,
now Appellants and Cross-Appellees.
JOHN J. O'CONNOR,
Solicitor for Plaintiff,
now Cross-appellant and Appellee.