

IDENTICAL NAMES, WOUNDS, JOBS, CARS



Rudy M. Hernandez (left) and Eugene C. Hernandez are not relatives, but their war and post-war lives run a remarkable parallel. Both enlisted in Army from Texas, each lost a leg in ETO, both were hospitalized at Brigham City, Utah, both married Ogden girls while recuperating, both were discharged late last year, both work as forklift operators at Clearfield naval supply depot and both recently obtained identical new cars from the Veterans Administration-administered program.

holding generally firm. Livestock arrivals were light, and at some of the more northern points bad weather further reduced haulings. Egg prices at Raleigh declined one to four cents a dozen the first of the week with price undertone teading toward the week end. Live poultry trading remained quiet throughout the week, with only a light volume of chickens moving and heavy-weight fryers meeting price discounts selling at 30 to 33 cents. Fruit and vegetable shipments increased with the movement of winter small vegetables very active. Sweet potato movements also picked up.

Old Madam Morris
This is My First Visit Here. A Seventh Daughter Born with a Veil, not to be classed with Gypsies. Over 50 years experience. Advice on all affairs of life. Please don't contact of the ordinary fortune teller. The truth or nothing. Remember, a doubter finds me superior to all readers. Reads past, present and future. Office for white and colored. Hours 10 a. m. to 9 p. m. Open daily and Sunday. Permanently located in trailer studio on Wilson highway in front of Guy Best's store. Take Green Gables bus to my office. Look for Hand Sign, Goldsboro, N. C., (adv)

Essay Contest For Negro High Schools Announced
The nation-wide essay contest for Negro high school and college students, co-sponsored annually by the National Tuberculosis Association

is now being conducted for the 14th year. An aggregate of \$750 and nine gold, silver, and bronze medals are being offered as prizes. Awards are made for the best entries in three divisions essays written by high school classes, essays by individual high school students, and essays by individual college students. The deadline for essays to be in the State association office is April 8. Students desiring to enter the

contest should contact the head of their school or their tuberculosis association or committee.

ROD & GUN

By Tom Walker
Calling Contest . . . You'll have to decide who was the better man in this turkey-calling contest.
The story of the contest comes from Halifax County, where it was staged. The hunters had gone on a fox hunt. During the wanderings of their party, a gang of wild turkeys was flushed. Each made a mental note of the spot and each made plans. Next morning, each man, unbeknownst to the other, went back to the scene. One began yelping. The other answered. Repeat. Ditto. After a spell of this, one decided the answering yelps wasn't becoming any more distinct and decided

he'd move a little closer to the "turkey". Hunter No. 2, seeing a movement in the bushes as No. 1 got in motion, thought he had the turkey -- and let go with his gun. The result -- No. 1, caught some shot in the face which, fortunately, caused only slight injuries.

Southern Farm Market Summary

Southern farmers witnessed typical holiday market conditions during the short New Year's farm marketing week, with egg prices declining seasonally, hogs fluctuating daily, and other commodities

USE PINEE COUGH SYRUP
It's Different You'll Like It



FOR SALE
SASH - DOORS
SHEETROCK - PAINTS
DRAIN TILE
TERRA COTTA PIPE
GLASS - LIME
CEMENTY - BRICK
PLASTER
ASPHALT SHINGLES
AND ALL KINDS OF
ROLL ROOFING
Z. J. Carter & Son
Wallace, N. C.

ATTENTION
Are The Foundations Of Your Home CRUMBLING?
Contact Our Representative
Francis F. Oakley
Beulaville, N. C.
for a free, but thorough inspection of your damage and an estimate of the cost of guaranteed protection for your home.
CROSS PERMA-STOP CO.
- Bonded Termite Control -
P. O. BOX 221 - TEL. 4989
GREENVILLE, N. C.

NOTICE TO FARMERS! Of Duplin & Adjoining Counties

In view of the many inquiries received from the farmers of Duplin County about the outcome of my tobacco warehouse case I am printing the decision of the Supreme Court in order that you may read the full opinion. I would like to take this method of expressing my sincere appreciation to the farmers of Duplin County for their loyalty and support in my behalf and assure them that I will continue to fight to help

the farmers secure the highest possible prices for their crops. It is my intention to have The Center Brick Warehouse, Elizabeth Street, Clinton, N. C., ready for the 1947 Tobacco Selling Season, and invite all my farmer friends to bring me a load of tobacco, and help make Clinton one of the leading tobacco markets in the Eastern Belt.
GUY R. ROSS

Supreme Court Decision In Ross Warehouse Case.

North Carolina Supreme Court
Town of Clinton
vs.
Guy R. Ross
BARNHILL, J. That defendant's warehouse is so built that by the erection of partitions it can be used for wholesale business establishments may be a fact. Even so, there is nothing in the record to sustain the finding that he erected the building for a dual purpose. When he obtained a permit to erect a warehouse the designation of Clinton as a tobacco sales market was uppermost in the minds of its people. They, at that time, had cause to feel assured their efforts would be successful. To say that defendant did not have in mind a warehouse to be used for the sale of leaf tobacco would seem to beg the question. G. S. 160-179 is not a statute of general application. It is a part of our Zoning Act, G. S. Chap. 160, Art. 14, and authorizes a suit in equity to restrain the erection, maintenance, or repair of any building, structure, or land used "in violation of this article or of any ordinance or other regulation made under authority conferred thereby." It has no application here. Plaintiff does not plead the zoning ordinance of the town adopted in April 1946. It pleads the 1945 ordinance, as amended, and both its claim to injunctive relief in its complaint and in its evidence squarely on the contention that defendant's intended violation of that ordinance constitutes a threat to the welfare, peace, and safety of the citizens of the town. In any event, on the facts here presented, the zoning ordinance forms no basis for equitable relief. Defendant's warehouse is in an industrial district as defined by it. Tobacco warehouses are not excepted, unless by the reference in Sec. 19 thereof which provides: "This ordinance shall not be construed as amending or repealing in any respect the tobacco warehouse ordinance enacted by the Board of Commissioners on the 5th day of June 1945, as amended." If we concede that this provision is sufficient to add tobacco warehouses to the list of businesses

which may not be conducted in said district "until and unless the location of such use shall have been approved by the Board of Commissioners," a provision of doubtful validity, Sec. 7, then we are met by Sec. 8 of that ordinance which relates to nonconforming uses and provides that: "The lawful use of a building or premises existing at the time of the adoption of this ordinance may be continued although such use does not conform with the provisions of this ordinance. . . . The charter of plaintiff municipality, Chap. 115, P. L. Ex. Sess. 1913, does not confer upon it the power to prohibit the maintenance of warehouses of the type here involved. Section 43(24) of said Act confers authority "To establish markets and market places, and provide for the government and regulation thereof." However, the power to regulate thus conferred relates to markets, such as the vegetable and fruit market, established and maintained by the town. The Act likewise confers authority to abate nuisances and to regulate certain specified businesses and trades; to control the sale of named commodities; and to direct the location of slaughter houses and certain other buildings. Neither tobacco sales warehouses nor the sale of leaf tobacco is included. Defendant's warehouse is not located in the fire district of the town. Hence whatever power it may have to regulate or prohibit any building within that area or to enjoin the continued use thereof does not pertain to the business, the operation of which it now seeks to enjoin. So then, there is no special authority conferred upon the plaintiff by its charter which may be constituted to vest power in it to resort to equity for aid in enforcing its ordinances. Its anomalous position in seeking the aid of equity in the enforcement of its own ordinance can be maintained only as an individual with no distinction drawn in its favor. The inquiry is, as it is in cases of an individual seeking the aid of "the strong arm of equity," whether the facts presented show the need

tained, if at all, only under recognized general principles controlling the exercise of equity jurisdiction. On this question the plaintiff comes of the interference of equity for the protection of rights cognizable by equity. The general welfare is the prime objective of government and the right of the people to the protection of the public health, morals, and safety is the supreme law of the land, to which the right of private ownership of property must yield. However, in the enforcement of this right, equity acts within the bounds of, and in accord with, generally recognized principles. The object of equity is to supply the deficiencies of the law, and so it is axiomatic that equity will not intervene so long as there is an adequate remedy at law. Likewise, it will not exercise its preventive powers for the purpose of enforcing the criminal law by restraining criminal acts. The fact that the criminal statute is not properly enforced, or that it may be difficult to obtain a conviction, or the punishment prescribed is inadequate, does not furnish a sufficient reason for assuming jurisdiction to enjoin criminal acts. Inadequacy of remedy by prosecution at law is grounds for enjoining criminal acts only when such acts threaten irreparable injury to property or to the rights of the public. When an offense is created by statute, not existing at common law, and the penalty for its violation is prescribed by the same statute, the particular remedy thus prescribed must alone be pursued, for the mention of the particular remedy makes the latter exclusive. Conversely equity will exercise its preventive powers by restraining: (1) The irremediable injury or threatened injury to or destruction of property rights. (2) The maintenance of a public or private nuisance where the public welfare or property rights are injuriously affected. (3) The maintenance of a business or enterprise, even though lawful, when there is something inher-

ent in the manner of its operation which constitutes a threat to the general welfare, health, morals, or safety of the community. But the nature of the business or manner of operation must bear some definite and substantial relation to public health, morals, safety, or welfare—and oftentimes this is to be determined in the light of the location and surroundings. That which is harmless in an industrial area may be unsafe or injurious in a thickly-settled residential district. The right to restrain does not exist unless the business is inherently injurious to the public health, safety, or morals, or has a tendency in that direction. There must be something in the methods employed which renders it injurious to the public. It is not enough that it seriously interferes with the business of others. Municipalities cannot interfere with the lawful use of property for a lawful purpose. "To justify an interference with an enjoyment of private property, two facts must be established: first, that the property, either in itself or in the manner of using it, is a nuisance; and second, that the interference does not extend beyond what is necessary to correct the evil." Applying these general principles controlling equity jurisdiction to the facts appearing on this record, we are constrained to hold that plaintiff has failed to make out a case for injunctive relief. A tobacco sales warehouse is a lawful enterprise and the medium through which the farmers of the State market one of its largest income-producing crops. It appears throughout the tobacco belts of this and other States. In no sense is it a public or private nuisance. The court below found that the warehouse of defendant is operated in the same manner as are other warehouses of like kind throughout the tobacco belt. When so conducted there is nothing inherent in the manner of operation which constitutes a menace to the general welfare, health, morals, or safety of the community. It is located in an industrial district of a community.

Hence its location and surroundings do not render the manner of operation, otherwise lawful, a threat to the general welfare. There is no allegation, proof or finding that defendant has committed a purpresture or that he owns or operates any vehicles on the public streets of the town or otherwise contributes to the congestion of traffic about which it complains. Plaintiff bottoms its case upon the contention that defendant's customers are so numerous that while traveling on the public streets, where they have a right to be, in going to and from his place of business, they congest, and at times completely block, the streets adjacent to the warehouse. In making this contention it seems to overlook the fact that this is only one of the contributing factors added to the tremendous traffic produced by customers of businesses it conducts and the travel of the general public which produces the undesirable result. Be that as it may, the complaint is not directed to any condition inherent in the operation of the warehouse or to any conduct on the part of the defendant. It relates to the conduct of those who compose a part of the traveling public. The municipality has full power and authority to regulate and control the traffic on its streets. Its inability or unwillingness to do so should not be charged to a private owner merely because a great proportion of those using the streets are going to or from his place of business. Certainly a condition thus produced by the traveling public, and not by the defendant, forms no basis for the intervention of a court of equity. Plaintiff alleges further that the continued existence of defendant's warehouse as such depreciates the value and restricts the proposed sale of its adjoining property and the court below found that "its value will likely be depreciated as well as the value of other property in close proximity thereto should the defendant operate his tobacco warehouse on the adjoining property." What we have already said answers this contention. If plaintiff further seeks to establish that

We may not always choose our neighbors and so, in the give and take of life, our neighbor is one of the things we must "take." So long as he conducts a lawful business in a lawful manner, and there is nothing inherent in the manner of operation which, under the surrounding circumstances, is obnoxious or which wrongfully invades the property rights of others his undesirability is *damnum absque injuria*. Plaintiff cites and relies on a line of cases represented by *Fayetteville vs Distributing Co.*, supra. In the *Fayetteville* case the defendant was preparing to store on its premises, located in the fire district of plaintiff municipality, a large quantity of a highly combustible substance. It was its action, and not the action of its customers, which created the hazard to the public safety. In *Turner vs New Bern*, 187 NC 541, 122 SE 468, the plaintiff was seeking to restrain the enforcement of an ordinance which prohibited the maintenance of lumber yards and loading wharves or docks in a thickly-settled residential section. There the location and surrounding conditions rendered objectionable that which was otherwise lawful. Other citations are similarly distinguishable. Defendant strenuously contends that the 1945 ordinance, as amended, is arbitrary, unreasonable, and ultra vires. Ordinarily that is a question for the criminal courts to decide. A court of equity will entertain it only when necessary to prevent irreparable loss to property or property rights. Since in no event is plaintiff entitled to equitable relief, we pass the question without decision. For the reasons stated the judgment below is