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FEDERAL TRADE COMMISSION.

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LETTER OF SUBMITTAL.

THE FEDERAL TRADE COMMISSION,
Washington, November 16, 1920.

THE SPEAKER OF THE HOUSE OF REPRESENTATIVES:

SIR: There is submitted herewith in response to House resolution No. 150, October 1, 1919, a report on the supply and prices of sugar, 1919 and early 1920.

Sugar, one of the few foods over which the Government exercised substantial control during America's participation in the war and for many months thereafter, has been the subject since the armistice of singular developments.

Though a staple food and a household necessary, supplies were so deficient or so manipulated that in many parts of the country sugar was unprocurable even 18 months after the armistice. From a price in December, 1919, of \$5.50 per hundred in its raw state, f. o. b. Cuba, whence comes almost one-half of the American supply, sugar advanced by May, 1920, 300 per cent. On May 18, it sold at New York at the equivalent of \$22.12 f. o. b. Cuba for May shipment. During the same period its retail price rose from 11 cents per pound for old-crop sugar to about 27 cents for new crop, an increase of 150 per cent. After May, 1920, supplies became more abundant and in the following few weeks prices rapidly declined.

The peak of Government control over sugar was reached the month of the armistice, November, 1918. Since then there has been a gradual withdrawal of the Government, until by the summer of 1920 little remained of its former control beyond the endeavor to prevent profiteering in sugar as in other necessities.

At the close of 1918 a contract had been entered into whereby the United States Sugar Equalization Board was to secure the 1918-19 Cuban crop at a price equivalent to \$5.50 f. o. b. Cuba. After allowing for transportation costs, import duty, a profit of \$0.33 per hundred to the board, and a refiner's margin of \$1.54 agreed upon by the board and its refiners, a refiners' price to wholesalers of \$8.82 net, sea-board basis, was fixed, and a retail price of about 11 cents per pound was made possible.

During the war under the governmental price-fixing policy, control affecting supply and to some extent demand necessarily was maintained. Supplies from Cuba were insured by purchase of the 1918-19 crop as a whole, one-third of which, however, was to go to the Royal Commission on the Sugar Supply for the Allies. Domestic supplies were protected by the War Trade Board's embargo on the exportation of sugar. This action made an agreement with the producers of raw sugars in the insular possessions unnecessary, since their only market was the American refiners who were under agreement to secure their total 1919 requirements through the board. Importation was regulated through license.

Distribution of supply was controlled both by agreement and by license. Refiners and producers could under zoning measures provided for by agreement sell only within a prescribed territory, whose boundaries were changed from time to time with changing conditions of supply and demand. The sugar distributing committee appointed by and acting under the direction of the Food Administration, with headquarters at Chicago, supervised the distribution of beet sugar. A similar committee, the Louisiana sugar committee, supervised the distribution of the Louisiana cane sugar.

Under the food-control act importers, manufacturers, refiners, brokers, wholesalers, and retailers whose gross annual sales were \$100,000 or more were required to secure licenses. Operation by these factors without license was prohibited under severe penalty, and the condition for retaining a license was the observance of all regulations prescribed. Unlicensed retailers were regulated indirectly, as to both price and distribution, through refusal by licensed wholesalers to furnish supplies to an offending retailer on order of the Food Administration.

Distributors were prohibited by license regulations from making resales within the same trade, except for accommodation, in which case the total margin was required to be not greater than that prescribed for one. Speculation and sales to speculators or hoarders were forbidden. Secret rebates and combination sales were not permitted.

Under the certificate plan consumption of sugar by manufacturers was restricted. Manufacturers of the so-called essential products were generally allowed their full needs. Other manufacturers were allowed a certain percentage of their requirements for 1917, varying from time to time and according to the industry. Dealers selling direct to householders and public eating places were rationed according to the number of customers.

Following the armistice in November, 1918, relaxation of Government regulations with respect to the distribution of sugar was immediate, though control over refiners' and producers' prices was maintained through the various agreements already entered into until the close of the marketing of the 1918-19 sugar crops. By February, 1919, most of the regulations controlling distribution, including those on rationing under the certificate plan and zoning and those specifying distributors' margins, had been withdrawn. Members of the sugar industry, however, were still under license and subject to certain general license regulations, such as those respecting resales, speculation, and secret rebates, and were, of course, subject to the provisions of the food-control act forbidding unfair trade practices and profiteering.

It had been estimated by the Sugar Equalization Board in November, 1918, that two-thirds of the prospective Cuban crop, together with the domestic crops, would provide the United States with a consumption in 1919 of 81 pounds per capita. This was above the consumption of 1917 of 78.58 pounds and of 1918 of 73.36 pounds, but below the average of 82.14 of the seven prewar years 1910-1916. By "consumption" in this connection is meant the sugar actually going into the domestic market, which is calculated by adding the shipments of producers and refiners and the imports of refined and deducting the exports of refined. The highest per capita consump-

tion in these seven years was 85.4 pounds, in 1913. The Sugar Equalization Board, however, apparently forecasting an oversupply, adopted in January, 1919, a policy of encouraging exportation. In March and April, seeming further to necessitate exportation, there developed an accumulation of raw and refined stocks in the hands of refiners, which, however, appears to have been largely due to the failure of the royal commission to provide sufficient shipping for its sugar refined on toll by the United States refiners out of its one-third share of Cuban raws.

Exportation of refined sugar continued through the first half of 1919 unchecked. By July 1, 88,403 tons, exclusive of royal commission toll sugar, had been exported. More than this had in addition been contracted for export to be delivered by refiners the last half of the year. Exportation of Cuban raw sugar out of the share of the United States was also authorized by the Sugar Equalization Board in February, 1919.

During the first quarter of 1919, when the board's exportation policy was being formulated, sugar was being delivered to the trade in this country by refiners and sugar manufacturers at a rate equivalent to 81 pounds per capita per annum; during the second quarter the rate was 102 pounds.

Toward the close of the second quarter, on the appearance of a demand for sugar in excess of the refiners' ability to supply, precipitated possibly in part by the board's appeal to the trade on April 14 to lay in stocks against later needs, the board took steps to restrict further exportation by refiners. On July 14, refiners were directed to make no further sales for export. On July 29, the Sugar Equalization Board, on learning that sugar was being exported by others than refiners, appealed to the War Trade Board to embargo exportation. No action was taken by the latter board.

Altogether there were exported in 1919, 189,133 tons of refined sugar (exclusive of royal commission toll sugar) and 154,762 tons of raw sugar (refined basis) from Cuba to other countries out of the share of the United States, a grand total of 343,895 tons. This was about 8 per cent of the year's total available supply, or 7.34 pounds per capita. More than three-fourths of the raw sugar so exported was shipped after July 1.

From July on through the year 1919, it became increasingly difficult to supply the demand for sugar. This seems to have been due in part to a growing consumer's demand; in part to hoarding and speculation. A factor in the latter was the uncertainty in respect to the Government's policy in control of the new 1919-20 sugars. No decision was made on the Sugar Equalization Board's recommendation to the President that the offer made in July of the new Cuban sugar be accepted, which it seems could have been purchased for about \$6.50 per hundred, f. o. b. Cuba.

It was not known until the close of the year that no attempt would be made to secure by Government purchase any part of the Cuban crop. Whether the board would take a new step and buy, as was suggested, the new beet sugar coming on the market early in August and the new Louisiana cane sugar coming on the market about the 1st of November, equalizing prices by absorbing high costs, or would leave prices to regulation under the antiprofitteering provision of the

food control act, was not known until late in October or early in November. It was the position of the Sugar Equalization Board that it was not desirable for it to purchase new-crop sugars unless it was given extensive powers by Congress to control domestic distribution. Though Congress finally authorized such purchase of sugar and also certain partial control over distribution, the views of the board were not met in respect to control of distribution and the law was passed so late in the year that much of the Cuban crop was already sold. The Sugar Equalization Board, therefore, acting under the direction of the President, did not attempt to purchase it.

As control by the Government over the 1919-20 crop was in 1919 confined to regulation under the antiprofitteering provision of the food-control act, numerous price levels appeared which are only partly explained by varying costs. Before the close of the year producers' prices on new domestic sugars ranged from about \$9 to \$22.50 per hundred. The many price levels gave the speculator his chance. Low-cost sugars were purchased by him from refiner or producer at the Government-fixed price and sold to wholesaler, retailer, or manufacturer as high-cost sugars. Prices of producers varied, but by the time the sugar reached the consumer prices tended to level up.

This speculative activity not only increased prices, but also affected adversely the established mode of distribution. In midsummer, operators who had never handled sugar before were buying of the refiner in large quantities. These in turn often sold to other operators rather than to wholesale grocers or sugar-consuming manufacturers. This was the beginning of the disruption of customary trade activities. The route of sugar from producer to consumer—direct in war time—was becoming tortuous or entirely diverted. By the close of the year these operations were going on in a large way. The trade was bewildered. Numerous complaints are on file with the Federal Trade Commission from wholesale grocers and small sugar-consuming manufacturers that the refiners and producers on whom they had safely depended in the past for sugar were unable to supply them, and that they could secure supplies only by turning to speculative dealers in "secondhand" sugars and paying prices much higher than the nominal quotations of the refiners and presumably than the prices at which the speculators bought from the refiners. Brokers who ordinarily handled on a brokerage basis were lengthening the channel of trade by buying the sugar and taking a jobber's margin, though not physically handling the product.

Speculation tended also to direct much of the limited sugar supply to manufacturers, who, much less than wholesale grocers, felt the pressure for reduction in prices, both from the consuming public and the Government. Moreover, manufacturers were, under rulings of the Department of Justice, permitted to pay higher prices for the new beet sugar than were wholesale grocers. Thus, shortage for table consumption was accentuated.

The Sugar Equalization Board admitted the presence of speculation and asked for the exercise of the licensing power to meet it, although, as a matter of fact, refiners, producers, and dealers were then under license of the Food Administration, a cardinal rule of which was:

The licensee, in selling food commodities, shall keep such commodities moving to the consumer in as direct line as practicable and without unreasonable delay. Resales within the same trade without reasonable justification, especially if tending to result in a higher market price to the retailer or consumer, will be dealt with as an unfair practice.

The Food Administration's organization, however, through discontinuance of its appropriations after June 30, 1919, was no longer able to cope with the situation.

Purchase by the Sugar Equalization Board of the 1919-20 sugar crops, July, 1919, coupled with control over distribution would have gone far in preventing speculation by setting up basic prices to wholesalers and manufacturers on which prices to retailers and consumers would be based and by ending uncertainty in respect to future prices and supplies. As an effective ally to the above two measures, rationing would have insured a distribution more nearly in the public interest. The adoption of such measures would have been a departure, however, from the general policy of discontinuing war regulation and in face of a widespread demand that the Government remove its control from trade.

By the middle of the year 1919 the Sugar Equalization Board suggested the need of some rationing scheme whereby the supplies of manufacturers of nonessentials, who consume annually 500,000 tons and upward, would be restricted, but it held that it was without power in the premises. This power, however, was vested in the Government under the food-control act of August 10, 1917, and had the recommendations of the board been followed would have been exercised. Attempts made by the board in the fall of the year to ration through trade cooperation were only partially effectual.

The per capita importation and production of sugar for domestic consumption in 1919 exceeded the highest previous record, that of 1913, reaching the rate of 86.9 pounds based on a population of 105,000,000. This points to relatively large supplies. On the other hand, universal difficulty in securing sugar throughout much of the year indicates that at the restricted price the demand of either domestic consumers, manufacturers, or hoarders, or all combined, considerably exceeded the supply. Greater encouragement of importation and discouragement of exportation would have increased somewhat available supplies. Measures controlling distribution would have prevented hoarding, would have directed supplies to uses in the proportion of the importance of each, and would have given a more even distribution in point of both time and locality, thus minimizing any actual distress.

From the opening of 1920 on, the sugar market has been an open one, except for such pressure as the Department of Justice has brought to bear from time to time on prices, under the antiprofitteering provision of the food-control act and its exercise over distribution, in a very limited way, of some of the powers of the United States Food Administration, which were lodged in that department by the President late in 1919.

Two manifestations of the speculative spirit in the distribution of sugar appeared in the early months of 1920: First, the refining on toll of large quantities of sugar by refiners for the account of manufacturers and sugar jobbers; and, second, the increased handling of

large quantities of both beet and cane sugars by wholesale concerns who sell to other wholesalers rather than to retailers or manufacturers. Both lines of activity tended to disrupt established channels of trade and to increase prices.

Speculation, which had its beginning in the uncontrolled situation of the previous year, came to a climax in May, 1920. A reported world shortage and a greatly reduced estimate of the final output of the Cuban crop in April and early May excited the buying public into that frame of mind in which it felt impelled to buy with little regard to rising prices. Both dealer and consumer appear to have stocked heavily. But this frame of mind failed to take into account the unwillingness of other countries to import sugar at prices prevailing here. The price in the United States had advanced beyond what world supply and demand conditions appeared to warrant and sugars were received here from countries which do not usually supply this country, in the aggregate amounting to large quantities. A decline in price set in early in June, 1920, which not only stopped speculative buying but threw the stocks of many speculators on the market, further precipitating prices. A factor in this latter movement was no doubt the tightening of credit conditions.

The conclusion of the whole matter seems to be substantially as follows: The price of sugar was kept comparatively low during the war and throughout 1919 for the most of the 1918-19 crop. Before the close of 1919, control was almost wholly abandoned, in accordance with the general Government policy and popular opinion. An unforeseen consumption, however, developed in 1919 which resulted for the 1919-20 crop in an advance in prices. This price advance was greatly aggravated by speculation and hoarding. The administrative methods of control practiced during the war (including Government purchase of Cuban supplies) having been discarded, the attempt was made to secure reasonable prices through prosecutions based on the prohibitions against profiteering.

It seems that the chief difficulty in the sugar trade, with the Government no longer purchasing sugar and directing its distribution, lay in speculation and hoarding. The food-control act afforded means of punishing such speculators and hoarders, when discovered, but most of them operated secretly, and when the Food Administration became defunct there was no organization adequately equipped for such administrative work. While there is no doubt that expressions of public opinion were generally opposed to such a policy, the facts as since revealed present a strong argument that the continuation of Government control, at least until more stable trade conditions were reached, would have been helpful. The facts are also a strong argument for a greater amount of public information about current movements of production, stocks, costs, prices of producers, jobbers, and other traders, including the extent of resales between traders.

The current requirement of information of this character by a Government agency with power to verify the reports, and its publication to the trade and to consumers, would go far to prevent extreme price fluctuations of commodities.

Experience in several important industries indicates that certain of the provisions of war legislation in the food-control act (which included fuel) that have proved their value for preventing unhealthy conditions in the production and distribution of necessaries should be enacted into permanent law for the protection of business and of the public.

It is recommended that at least portions of the food-control act be enacted into permanent law for the purpose of preventing unreasonable storing, acquiring, accumulating, and hoarding of food, fuel, and other necessaries of life, and that the definition of necessaries be made to include clothing and building materials.

If adequate provision were made for such current reports and publicity as are suggested above these prohibitions could be made effective.

Respectfully,

VICTOR MURDOCK, *Chairman.*
HUSTON THOMPSON.
NELSON B. GASKILL.
JOHN GARLAND POLLARD.

SUGAR SUPPLY AND PRICES.

CHAPTER I.

INTRODUCTION.

Section 1. Nature and scope of the inquiry.

During the early summer of 1919, that period of the year when the consumer's demand for sugar has not yet ordinarily reached its highest point, complaints were frequently made that the supply was inadequate to the demand and that the dealer had often to ration his customers or refuse them altogether. (See Exhibit I.) Though refiners and producers were held by agreement to a uniform price on old-crop sugar, the price to the consumer was reported through the summer months to be frequently at a point which suggested an increasing spread between the producers' price and the price to the consumer.

House resolution No. 150, in response to which this report is made, was agreed to on October 1, 1919. This resolution reads as follows:

That the Federal Trade Commission is hereby directed to make an immediate investigation and report to the House of Representatives its findings on the subject of sugar used for domestic and manufacturing purposes, both as to its market price, wholesale and retail, and whether these prices are reasonable; and the amount of sugar now in the United States, both raw and refined, in the possession of sugar refiners, wholesale dealers, or in storage; said investigation to involve a report of supplies in the possessions of the United States, raw and refined, and the causes of the present sugar scarcity.

The purpose of the proposed inquiry, as suggested both by the resolution and by its discussion in committee and before the House, was to ascertain conditions in the production and distribution of sugar, primarily as they existed during the summer of 1919. Later, conditions of supply and prices, however, became so acute and so charged with the public interest that the inquiry was extended to cover conditions down to and well into the year 1920.

The resolution directed inquiry into prices and their reasonableness. Refiners' and producers' prices were, in 1919, on a uniform price basis for all sugars of the 1918-19 crop. These included the larger part of the sugars consumed in the United States during the year. These prices were arrived at by agreement between the Government, as represented in the United States Food Administration or the United States Sugar Equalization Board, on the one hand, and producers and refiners on the other. The beet sugars coming into market during the late summer, and the Louisiana cane in the fall of 1919, were on a higher price level. No agreement on prices was in effect on these sugars. Under the food-control act forbidding unreasonable profits, producers' prices of these sugars were under the surveillance of the Department of Justice, as were the prices of other food commodities.

Wholesale grocers' margins on old-crop sugars appear to have been maintained on a fairly uniform basis throughout the year as set by

the regulations of the Food Administration, which were repealed early in the year, and as later adopted by the Department of Justice and fair-price committees as fair margins. Margins on new-crop sugars and on any sugars purchased at a price higher than the producers' or refiners' price of old-crop sugars were generally higher than those on old-crop sugars.

Evidence on the reasonableness of sugar prices, in so far as costs, investments, and profits are determining factors, is not presented in this report, because sufficient information on these matters has not been obtained by the Commission. From cost data previously obtained by other branches of the Government it was apparent that the reasons for the rapidly advancing prices of sugar were primarily due to demand conditions on the one hand, and supply conditions, other than cost of production, on the other hand. Furthermore, for imported cane sugar the question of cost was principally the price of Cuban raws, refining costs being comparatively small, while for beet sugar the cost of the new crop (1919-20) was the chief point of interest, and that could not be ascertained satisfactorily until a recent date, and not in time for the present report. Various other considerations, however, bearing on the reasonableness of price are involved and are herein set forth.

A second set of conditions covered by the resolution concerns supplies. It was directed that report should be made on the supplies in the United States of both raw and refined sugar, in both refiners' and distributors' hands, with the object in view of determining the adequacy of supply; and if this supply was found inadequate, to discover the causes of the shortage.

The adequacy of supply to the consumer is in part a matter of distribution. The same agreements which fixed the producers' and refiners' prices on 1918-19 crop sugars gave to the Government control over the primary distribution of these sugars—that is, distribution from refiners and producers. For refiners' sugar this control was vested in the United States Sugar Equalization Board and for Louisiana cane and beet sugars in the Food Administration. Since there were no agreements entered into with refiners and producers on the 1919-20 crop sugars, no control over distribution by agreement could, of course, be exercised. The powers, however, of the Food Administration derived under the food-control act of August 10, 1917, still rested in the President, though the Food Administration as an organization was practically defunct after June 30, 1919. These powers are adequate to control both the primary and the secondary distribution of sugar. On November 21, 1919, they were delegated by the President to the Department of Justice.

Considerations of price and of supply and demand are inevitably interlocked and can not be treated wholly apart. Nevertheless, attempt is made to present these phases of the production and distribution of sugar more or less independently one of the other, with such cross references and subordinate discussions as are necessary for clearness.

The inquiry into the sugar trade did not continue beyond May, 1920, and this report, therefore, does not cover the break in prices which occurred in the summer of 1920 and the rapid decline in prices which followed.

Section 2. Definitions.

As is true of all industries, that of producing and distributing sugar has certain terms and peculiarities which, in so far as appearing in any discussion of the subject, should, in the interest of clear exposition, be defined or described at the outset.

Sugar may be derived from many sources. The sugar of commerce is principally from the sugar cane, the sugar beet, and the maple tree, but most largely from the first two. When free from all impurities, the sugars from these sources are identical chemically and can not be distinguished one from another. Such sugar is called "refined."

"Raw sugar" is that containing substances other than sucrose, and is designated by the percentage of sucrose content, as, for example, 96° sugar, which contains 96 per cent sucrose as determined by the polariscope. Centrifugal sugar is a high-grade raw sugar, taking its name from the machine used in separating the molasses from sugar. Imported raw sugars are generally from 95° to 97° sucrose, and quotations in raw sugar are based on 96° centrifugal.

The cane sugar consumed in the United States is principally from its insular possessions—Porto Rico, St. Croix, Hawaii, and the Philippines—and from Cuba, all tropical regions. With the exception of a small quantity of refined from Hawaii, this sugar is imported as raw and is refined in American refineries. A relatively small proportion of the cane sugar consumed in the United States is produced from cane raised in Louisiana and Texas. A part of this sugar goes from the plantation factory to the refinery as "raws" of about the same purity as the imported. A part is manufactured into a high grade of raw sugar known as "Louisiana yellows" or "yellow clarified," and because directly consumed without going through any further refining processes is known as "direct consumption sugar." A small quantity of "direct consumption sugar" is imported.

Beet sugar as manufactured in America is carried through to the refined stage in the one factory. In Europe most of the beet-sugar factories produce only raw sugar, which is sent to the refinery or exported.

Almost all of the raw cane sugar imported into and much produced in the United States is refined in what are known as refineries, although the 1919-20 Louisiana crop was largely manufactured into a "direct consumption sugar," owing to the unusual supply conditions prevailing.

Sugars imported from the insular possessions of the United States are free of any impost duties. Ninety-six degree centrifugal raw sugars from foreign countries pay a duty of 1.256 cents per pound. Similar Cuban sugars pay a "preferential duty" of 1.0048 cents per pound, a duty of 20 per cent less than the "full duty," the duty on such sugar from foreign countries. The duty on refined-sugar imports is 1.36 cents per pound from full-duty paying countries and 1.088 cents from Cuba.

On all refined sugar manufactured from an imported dutiable raw sugar, and reexported, the United States Government pays a refund known as a "drawback," amounting to 99 per cent of the duty collected on the raw sugar.

American refineries, 22 in number, owned by 15 companies, are located at Atlantic, Pacific, and Gulf ports, where imported raw sugars, upon which they are almost wholly dependent, are easily accessible. These refineries have a refining capacity from 50 to 75 per cent¹ in excess of the quantity consumed in the United States, which, of course, includes beet and other sugar not passing through the refinery.

What is known as the "refiner's margin" is the difference between the quoted duty-paid New York price of imported 96° raw sugar and the quoted refiner's New York wholesale price of refined. This margin is nominal. The purchase of raws and the sale of refined are often contracted for months ahead. The actual margin of a refiner is the difference between the weighted average price of raws paid by him and the weighted average price received by him for the refined manufactured from the raws.²

Raw sugar is sometimes bought by foreign buyers or Americans other than refiners and "refined on toll"; that is, refined for a stated charge or toll. This charge includes both refining expenses and profits, but expenses are less than they are when refining is done on the refiner's own account, since there is less working capital invested in refining on toll and no loss from refining. At the same time the risk which profits are in part assumed to cover is ordinarily less.

Sugar beets are grown in the United States principally in Colorado, California, Michigan, Utah, Idaho, and Ohio. In these and in other States beet-sugar factories are found to the number of approximately 90, owned by about one-half that number of companies.³

Great care is necessary in compiling and using statistics on sugar. Refined sugar is equivalent in weight to approximately 93⁴ per cent of 96° raw sugar. This is true because in the process of refining the impurities, representing 4 per cent of the raw sugar, are eliminated, and sucrose to the amount of 3 per cent, more or less, is not recoverable in the form of sugar.

In stating quantities of sugar, it should be made clear whether the sugar is raw or refined, and when the quantity consists of both raw and refined, what the proportion is of each. Since most raw sugar is consumed as refined it is preferable when consumption statistics are desired to reduce all raw sugars other than direct consumption sugar to the refined equivalent, sometimes called "refined basis." This is particularly true when a part of the sugar that is consumed, as for example, the beet in American consumption, has not been quantitatively measured in terms of raw. Much confusion has resulted in consumption statistics of sugar because it is not made clear whether the tonnage or poundage figure is on a refined basis. The refined basis when the purpose is to show consumption is used throughout this report.

¹ The United States Sugar Manufacturers' Association reports in 1917 the total yearly refining capacity of the 22 seaboard refineries, allowing for a 30-day clean-up, as 6 996,811 short tons, 68 per cent in excess of the 1916 consumption.

² The refiner's margin should not be confused with the refiner's profits. The margin covers not only the profits but all expenses, including the loss of 7 per cent of the weight of raws, a part of which only is recovered in the form of by-products.

³ Ninety factories were in operation for the drop year, 1919-20, owned by 42 operating companies, some of which are subsidiary to other companies in the number.

⁴ European raw beet sugar does not have the purity that the American raw cane has, and the refined is equivalent to about 90 per cent of the raw.

The sugar ton is of different sizes as employed by the trade in different portions of the world, or as applied to different sugars. The short ton, of 2,000 pounds, is commonly used in the measure of American beet sugar and the Louisiana and Hawaiian cane sugars. The long ton, of 2,240 pounds, is applied to imported raw cane sugar and that refined from it. The metric ton, of 2,204.6 pounds, is the usual ton in European sugar statistics. The Weekly Statistical Sugar Trade Journal, published by Willett & Gray, employs the ton of 2,240 pounds. This is the ton used in this report except where otherwise specified.

Production and consumption statistics on sugar are not uniform as to the character of the year employed. The calendar year, the fiscal year ending June 30, and the crop year which is indefinite as to actual period, are used in various connections.

The consumption statistics of this report are by calendar years unless specifically otherwise indicated. The sugar consumption statistics of the statistical abstract of the United States are by fiscal years. The crop year is used in this report only as designating of what planting the sugar is.

The term consumption, as used in this report and in practically all statistics of sugar, refers to the initial movement of sugar from the refiner of cane, the producer of beet and direct consumption sugars and the importers of refined and direct consumption sugars, to the domestic distributor or manufacturer using sugar, allowing for imports and exports of refined sugar. This is substantially identical with ultimate consumption provided no hoarding or irregular fluctuation of stocks occurs after this initial movement; and provided also the sugar as a constituent in exported manufactures substantially balances that in imported manufactures. When the possibility of hoarding is present the entire movement should be under observation. Such a survey except over a part of the movement, and for a limited period, has never been made in the United States either for sugar or for any other food.

Sugar goes into ultimate consumption either as sugar for the household, hotel, and restaurant, or as a constituent of manufactured products consumed in the household or elsewhere. In the first instance its most direct route is from refiner or producer through wholesaler and/or retailer to consumer. In the second instance, much of the sugar used by large manufacturers is purchased directly from refiner or producer while much used by small manufacturers passes through wholesalers' hands. In either case the broker, whose function is not one of merchandising, may find an economic place in direct distribution as agent of either buyer or seller. Under war-time regulations attempt was made with considerable degree of success to maintain this direct movement of sugar. Without regulation this movement may be through many hands, and especially when, as in recent months, future supplies and prices are very uncertain.

No complete statistical information is available showing the percentage of total consumption of sugar which is used in manufactured products. In 1901 the United States Bureau of Labor, after an investigation, estimated that 50.56 pounds per capita were consumed that year by the household. The total per capita consumption in 1901, according to Willett & Gray, was 69.7 pounds. On the basis

of these two figures, therefore, 27.5 per cent of the total consumption of sugar was used in 1901 in manufactured products.⁵

In 1917 the Food Administration stated:

Of the total sugar consumption of the United States, according to the best estimates, about one-third goes into the manufacture of various foodstuffs.⁶

In the hearings on the shortage of sugar before a Senate committee in December, 1917, and January, 1918, the testimony of experts placed the proportion of sugar consumed by manufacturers at from one-third to two-thirds of the total consumed.⁷

In 1918 the Food Administration presented figures showing that the consumption of sugar by manufacturers in 1917 was 972,125 short tons,⁸ 24 per cent of the year's total consumption. Herbert Hoover, in testifying in regard to war expenditures before a subcommittee of the House of Representatives, October 29, 1919, stated that the annual consumption in the confectionery and soft-drinks trades was 1,071,000 long tons.⁹ The Food Administration estimated that these two trades consumed in 1917 one-half of the sugar used by manufacturers.¹⁰ The War Trade Board, in its report on Government Control Over Prices, 1920, states that "figures taken from the Sugar Market Review show that at least one-fourth of the sugar consumed in the United States goes to the manufacturer of confectionery and other sweet stuff."¹¹

Whatever the percentage of sugar consumed by manufacturers is, it has probably considerably increased in the last two decades, since the Bureau of Labor's estimate, and particularly in the last two years.

Section. 3. Sources of sugar entering world trade and United States consumption.

During the four-year period just prior to the World War approximately 45 per cent of the world's sugar came from the sugar beet, a product of the temperate zone, and 55 per cent from sugar cane, a tropical product.

⁵ Eighteenth Annual Report of the Commissioner of Labor, 1903, p. 82 United States Food Administration Bulletin No. 649.

⁶ U. S. Food Administration Bulletin No. 334, Oct. 25, 1917.

⁷ Hearings before the subcommittee of the Committee on Manufactures, United States Senate, Shortage of Sugar, Mr. Babst, president of the American Sugar Refining Co. placed the proportion at one third (p. 313). Mr. Rolph, manager of the California & Hawaiian Sugar Refining Co., and head of the Sugar Division of the Food Administration, made the proportion two-thirds (p. 400). Mr. Hoover, United States Food Administrator, testified: "Our rough estimates show, as I have said, from 50 to 54 pounds household consumption, and the balance up to 80, let me say, for manufacturing consumption. * * * I may say that we had a study made of this, and the figures by different persons vary all the way from 20 per cent for manufacturing purposes to 60" (pp. 577, 578). W. W. Gardiner, editor Willett & Gray's Weekly Statistical Sugar Trade Journal, testified: "I have tried to get it from the refiners and from the people in the trade, and have tried to find out how much sugar is used in home consumption—that is, on the table—and how much for manufacturing purposes, and the best opinion that I could obtain from them, either public or otherwise—and it has been testified to in various ways, in hearings in Congress, such as the Hardwick hearing—three-eighths of the consumption of sugar is used in the home and the balance of it for manufacturing purposes. There are no actual statistics. * * * It is only a conclusion from data obtained from various refiners, which they testified to before various congressional committees, and also it is in testimony in the dissolution case of the American Sugar Refining Co. There was a good deal of expert testimony given there, and it seems to me that is the best basis of information that we have" (pp. 895-896).

⁸ U. S. Food Administration Bulletin No. 1030, May 2, 1918.

⁹ "The consumption of the confectionery trade—including sweet drinks—alone, according to Mr. Zabriskie's [president of the U. S. Sugar Equalization Board] estimate, is 2,400,000,000 pounds a year." Mr. Hoover's testimony in hearings before subcommittee No. 3, of the Select Committee on Expenditures in the War Department, House of Representatives, p. 1231.

¹⁰ U. S. Food Administration Bulletin No. 1030, May 2, 1918.

¹¹ Government Control Over Prices, published by the War Trade Board, 1920, p. 85.

The chief sources and destinations of the world's sugar entering into international trade during the period preceding the war, 1909-1914, are shown in the following two tables,¹² figures in terms of short tons and on raw basis:

TABLE 1.—*Net deficit of sugar in the chief importing countries.*

[Average 1909-1914. Approximate figures]

	Consumption (short tons).	Production (short tons).	Net deficit (short tons).	Main sources of imports (per cent of total in 1913)
United States, continental. . .	3,950,000	920,000	3,030,000	Foreign, 67; insular possessions, 33. Germany, 50; Austria, 20; Holland, 10; Cuba, 15
United Kingdom.	2,060,000	(¹)	2,060,000	
British India.	3,270,000	2,620,000	650,000	Java, 67; Mauritius, 20. Java
China.	450,000	120,000	330,000	
Japan and Formosa.	330,000	270,000	60,000	Do
Canada.	290,000	15,000	275,000	British West Indies, Java
Switzerland.	125,000	5,000	120,000	Germany, 60; Austria-Hungary, 25.
Norway.	105,000	(¹)	105,000	Germany, 40.

¹ Negligible.TABLE 2.—*Net surplus of sugar available for export by the chief sugar-exporting countries.*

[Average 1909-1914. Approximate figures]

	Consumption (short tons).	Production (short tons).	Net surplus (short tons).	Destination of exports (per cent of total in 1913).
Cane sugar sources:				
Cuba.	115,000	2,290,000	2,175,000	United States, 95 India, 35; Port Said, 25, Hongkong, 15
Java.	25,000	1,475,000	1,450,000	
United States possessions.	150,000	1,200,000	1,050,000	Hawaii and Porto Rico to United States, 95, Philippines to United States, 60
British insular possessions (and Guiana).	40,000	540,000	500,000	United Kingdom, 25.
Beet sugar sources:				
Germany.	1,300,000	2,500,000	1,200,000	United Kingdom, 75.
Austria-Hungary.	675,000	1,650,000	975,000	United Kingdom, 50, Turkey, 15.
Russia.	1,360,000	1,680,000	300,000	Persia, 60, Finland, 30.
Belgium.	125,000	275,000	150,000	United Kingdom, 55, Holland, 25.
Netherlands.	125,000	250,000	125,000	United Kingdom, 95

Besides making clear the lines of world trade in sugar, it is shown in the above tables that 70 per cent of the sugar supply of the United Kingdom was from Germany and Austria. France and Italy, the other two of the three principal allied countries of Europe, had before the war (1909-1914) no considerable surplusses or deficits, as shown below:¹³

	Consumption (short tons).	Production (short tons).	Net deficit (short tons).	Net surplus (short tons).	Channels of trade (per cent of total in 1913).
France.	705,000	740,000	.....	35,000	Imported from colonies, 67; exported to North Africa, 50.
Italy.	220,000	210,000	10,000	.....	Imported from Austria, 75; exported to United Kingdom, 50.

¹² From Prices of Sugar and Related Products, published by the War Industries Board, 1919, p. 4.¹³ From Prices of Sugar and Related Products, published by the War Industries Board, 1919, p. 4. Quantities are on raw basis. The per cent for imports in the last column is the per cent of the yearly average imports for the period to the total imports for 1913; similarly, the per cent for exports.

About two-thirds of the sugar produced by France is from the northern part occupied during the war by Germany. The chief sources of supply, therefore, of both France and the United Kingdom were cut off by the hostilities of the war. In the beginning of the war the United Kingdom increased her imports from distant sources, as Java and the Philippines, while at the same time reducing her per capita consumption, which had for the five years just preceding the war averaged 90.8 pounds per annum: but the shortage of shipping soon compelled her to turn to near supplies, and both France and the United Kingdom became increasingly dependent on the Western Hemisphere—largely on Cuba. Cuba, fortunately, has been almost continuously increasing her output during the last eight years, until in 1918-19 her exportable crop of about 3,800,000 long tons was almost double that of 1911-12.

What the sources of supply¹⁴ for the United States were during the five years prior to the World War and the average quantity annually received from each source are shown in Table 3, below:¹⁵

TABLE 3.—Sources of the sugar supply of the United States, 1910-1914

(Ton of 2,000 pounds, on raw basis except as otherwise noted)

Source	Amount (short tons)	Per cent of total supply	Producing season
Foreign sources			
Cuba, "preferential-duty" sugar.....	1,930,000	48	December-June
All other (Java about one-half, Germany one-fourth), "full-duty" sugar ..	150,000	4	May - November (Java)
Territories of the United States:			
Hawaii.....	550,000	14	November-July
Porto Rico.....	335,000	8	January-June
Philippines.....	115,000	3	November-June
Continental United States			
Domestic beet (refined).....	610,000	15	July-January
Domestic cane (raw and refined).....	310,000	8	October-January
Total.....	4,000,000	100	
Exports.....	50,000	..	
Net available for consumption.....	3,950,000	..	

Almost one-half of the sugar supply of the United States came during this five-year period from Cuba, and relatively little from other foreign sources. Only 15 per cent was beet sugar. Seventy-seven per cent was imported from tropical regions as raw cane sugar.

Taking the sugars as a whole, the producing season covers the whole year. The marketing of any one crop extends over a period several months after the close of the producing season, so that the supply from Cuba, for example, is entering the United States markets throughout almost the whole year. Nevertheless, imports are more largely concentrated in the first six months of the year, and refiners' and wholesalers' stocks are usually lowest during the winter months.

Section 4. War-time control over sugar.

The situation in the United States in 1919 was, of course, directly and intimately affected by the methods used by the Government in

¹⁴ For sources of supply for the United States for more recent years, see Exhibit II.

¹⁵ From *Prices of Sugar and Related Products*, published by the War Industries Board, 1919, p. 6.

handling the sugar problem during the period when the United States was a participant in the World War. A brief review here of these methods will aid in the understanding of what follows.

During January, 1917, the price of duty-paid raw sugar in New York City averaged \$5.24 per hundred. By August 7, it had reached \$7.52. Some measures were deemed necessary to stabilize prices and to prevent undue rises.

Under the food-control act, approved by the President August 10, 1917, Herbert Hoover, Food Administrator, organized a sugar division, and on August 15 placed at its head George M. Rolph, an experienced refiner.

On September 5, the cane-sugar refiners agreed to import all foreign raw sugars through a committee to be named by the Food Administration, and to refine at a stipulated margin. On October 1 this margin was set at \$1.30 per hundred pounds, and the international sugar committee was designated as the committee through which purchases of sugar should be made by refiners. On September 7 importers, refiners, and producers were made subject to licenses to be secured from the Food Administration not later than October 1. On August 27 the beet-sugar producers entered into a voluntary agreement with the Food Administration to sell sugar produced by them at \$7.25 per hundred pounds, f. o. b., seaboard basis.

Cane sugar refined on the Pacific coast and beet sugar were restricted by the Food Administration to the territory west of Chicago and St. Louis, and sold at \$7.25 per hundred, plus freight from nearest seaboard refining point; while cane sugars refined on the Atlantic and Gulf coasts were restricted to eastern territory and were sold at \$8.35 to \$8.50 per hundred, seaboard basis, the price of raw sugar having dropped about 50 cents a hundred at New York City since August 7.

On September 20, 1917, the appointment of three committees was announced by the Food Administration: The international sugar committee, referred to above, which represented both America and the Allies; the American refiners' committee, which allotted raw cane sugar to American refiners; and the sugar distributing committee, with headquarters at Chicago, controlling the distribution of beet sugar only. A committee was later appointed, which had the supervision of the distribution of Louisiana cane sugar.

Late in December, after some weeks' negotiation between the international sugar committee and the Cuban commission appointed by President Menocal of Cuba, the purchase of the 1917-18 Cuban crop by America and the Allies was announced, two-thirds for America and one-third for the Allies. The price was \$4.55 to \$4.60 per hundred, f. o. b. Cuban ports, or approximately \$6, duty paid, New York City.

In the summer of 1918 it became necessary for the Government to plan for the control of the 1918-19 crop. Cuban sugar could be purchased, refined, and marketed for considerably less than the American beet and Louisiana cane could be produced and sold for with fair profits to all. If the price for Cuban raw sugar should be based on that which afforded fair profits to the American producers, it would give unduly large profits to the Cuban growers. Some agency was needed to eliminate from prices these differences of costs.

For this, and for other reasons, the United States Sugar Equalization Board (Inc.) was created under the President's war-emergency powers and a charter issued to it on July 11, 1918, under the laws of the State of Delaware. It was capitalized at \$5,000,000 out of the President's war-emergency fund.

The following paragraph from the announcement of the Food Administration, July 11, 1918, explains more fully its purposes:

The purposes of the board are to equalize the cost of various sugars and secure the better distribution. The arrangements will facilitate joint dealing with the Allies in foreign sugars and the adjustments of differentials in overseas freight rates. Under certain circumstances it may be advisable to acquire the production of some beet-sugar factories that can not under the present price of beets be sold to the public at a reasonable price. The board will take charge of the distribution plan initiated on July 1, and will conduct this plan at the expense of the board. The board will be incorporated to the extent of \$5,000,000 of capital, which will be supplied by the President from his special funds, in order to enable it to deal with facility in foreign sugars and otherwise, and the whole stock will be held by the President for the United States Government. The object is to absorb the high peaks of cost in sugar production and to make a small margin on the low cost of certain foreign sugars which may be purchased, and thus secure an equalization of the price to the public on a lower level than will otherwise be possible. The arrangements will further secure an even distribution of the sugar throughout the United States. It is expected that any profit will be equalized to the consumer over the year's operations.

Following investigations made by the Food Administration covering the costs of production by the Louisiana cane and western beet sugar producers prices of these sugars from the new 1918-19 crop were raised, on September 9, 1918, to \$8.82 per hundred, seaboard basis, and agreements were entered into with these producers that distribution would be made under the direction of the Food Administration. (See Exhibits III, IV, and V.) The remainder of the old-crop sugar refined from imported raw cane sugar was at the same time advanced to the same price. The price of raw sugar to the refiner was raised to \$7.28 per hundred, the board absorbing the difference between this price and the old price of \$6. Refined sugars in the hands of refiners and producers were raised from \$7.30 per hundred, the old price, to \$8.82, the board absorbing the increase. The refining margin, which from August 1 to September 9 was \$1.45 per hundred, was raised to \$1.54, effective September 9, 1918.

On October 24 the 1918-19 Cuban crop was purchased by the United States Sugar Equalization Board. (See Exhibit VI for agreement.) The price paid was \$5.50 per hundred f. o. b. Cuban ports. A contract was entered into by the board with the refiners, as of the same date, whereby they agreed to purchase all raw sugars from the board at \$7.28 per hundred and refine on a margin of \$1.54 per hundred. Allowing for transportation costs and duty, there was a profit to the board on the Cuban sugars of about \$0.38 per hundred.

No contracts were made by the board or Food Administration with sugar producers of the insular possessions of the United States to purchase their raw sugars. Substantially all of these sugars of the 1918-19 crop, however, were purchased by the board at \$7.28, f. o. b. refining points, and sold at that price to the refiners.

Refiners' and producers' prices fixed, competitive distribution was largely eliminated.

* * * refiners divided the available raw sugar between them in proportion to their respective refining capacities, and the Food Administration determined where the refined sugar should go, traffic permitting. This it did (a) by giving priority to the Army and Navy and assisting organizations in all orders to refiners; (b) by fixing for each refiner a territory outside which he was not permitted to sell; (c) by further limiting the sales of refiners in given States or districts within their respective territories; (d) by requiring from wholesalers, large retailers, and large bakers monthly reports showing the amounts sold or used by the licensee and his stock on hand; (e) by requiring reports from "member" eating houses, rationed according to number of meals furnished; (f) by controlling the consumption of manufacturers, bottlers, and drink dispensers through the issuance of certificates which were required for purchasing; and (g) by requesting voluntary limitation of home use to amounts varying from 2 to 4 pounds per person per month.¹⁴

Division of the country into zones of distribution, referred to under (b) above, was made possible by the agreements entered into between the Food Administration and the Louisiana cane and beet sugar producers and between the United States Sugar Equalization Board and the refiners. These agreements provided for central distributing committees under the supervision of the Food Administration and the board, which directed the movement of sugar so that each locality was furnished with sugar from points of nearest available supplies. Generally speaking, Gulf coast refiners and beet-sugar producers supplied the South; Atlantic coast refiners the East; beet-sugar producers the Middle West; and Pacific coast refiners and beet-sugar producers the West. The boundaries of these zones were changed from time to time as the supplies on which the zones depended became relatively scarce or abundant.

The most important of the license regulations which at one time or another restricted distribution of sugar were as follows: Unreasonable profits and resales within the same trade were prohibited; speculation or sales to speculators were forbidden; secret rebates were prohibited; combination sales of sugar and other commodities, except corn meal at the rate of 1 pound of sugar to 2 or more of corn meal, were not permitted. Wholesale dealers were prohibited from selling sugar at an advance over the refiner's list price greater than the normal margin or that established by the Food Administration, which was 35 cents per hundred pounds as a maximum (fixed at the prewar normal margin prior to June 6, 1918, or about 25 cents); when two or more wholesale dealers handled the same sugar the total margin was required to be not greater than that prescribed for one.

Restrictions on consumption were inaugurated by the Food Administration, May, 1918. Manufacturers using sugar in nonessential products, except ice cream, were restricted to 80 per cent of the preceding year's requirements. The Federal food administrator of each State was authorized to issue certificates to manufacturers of the State upon receipt of sworn statements as to requirements, and such certificates, covering a certain quantity of sugar, were required to be delivered by the manufacturer to the distributor of sugar.

On July 1, 1918, sugar-consuming manufacturers and retailers were divided into five classes: Class A, comprising all manufacturers of nonessentials, were restricted to 50 per cent of their requirements for the corresponding months of 1917; class B, comprising manufac-

¹⁴ Quoted from *Prices of Sugar and Related Products*, published by the War Industries Board, 1919, pp. 14, 15.

turers of essentials, were allowed their full needs: class C, consisting of hotels, restaurants, and other public eating places serving regularly 25 persons or more, were allowed 3 pounds of sugar for every 90 meals served the third quarter of 1917; class D, manufacturers of bakery goods, were permitted to receive 70 per cent of the sugar used in corresponding months in 1917; class E, comprising retailers and other dealers selling direct to the domestic user, were allowed 3 pounds per customer per month. The food administrator for the State issued certificates to the above manufacturers and dealers on the basis of their allotments, the certificates passing back through distributors and refiners or producers to the food administrator issuing them. Household customers were expected to limit their purchases in accordance with the regulations governing retailers.

CHAPTER II.

SUPPLY AND DEMAND.

Section 1. Conditions in the early months of 1919.

GOVERNMENT POLICY BASED ON SUPPLY OUTLOOK.—In November, 1918, following the armistice, the sugar supply situation for the coming year appeared to the Food Administration most encouraging. The Cuban crop had already been purchased by the United States Sugar Equalization Board. At that time it seemed there would be available from Cuba, from domestic sources (including insular possessions), and from miscellaneous foreign sources the supplies appearing in the table below, which also shows prewar consumption,¹ "record" consumption, and surplus consumption for 1919 above prewar normal usage.

TABLE 4.—*Available sugar supplies for 1919.*

[From page 77 of *Government Control of Sugar*, by Joshua Bernhardt, statistician of the United States Sugar Equalization Board. Publication authorized by the directors of the United States Sugar Equalization Board. The Macmillan Co., 1920 (used by permission of the publisher)]

Source.	Short tons, raw or refined	Short tons, refined
From Cuba a	2,460,000	2,290,000
From Hawaii	554,000	516,000
From Porto Rico	404,000	376,000
From Philippines	81,720	76,000
From miscellaneous foreign sources	24,250	23,200
From domestic cane (mostly direct consumption)	245,000	245,000
From domestic beet	737,000	737,000
Total, all sources	4,506,670	4,263,000
Prewar consumption . . . . .	. . . . .	3,920,000
Record consumption . . . . .	. . . . .	4,140,000
Surplus consumption [available] for 1919 above prewar normal usage . . . . .	. . . . .	343,000

a Amount available for the United States after deducting portion of crop to be shipped to Europe and Canada

b [So in original.]

The estimate of supplies available for 1919, as appearing above, was made just following the armistice, November 11, 1918. While no announcement had yet been made of the sale by the Sugar Equalization Board to the royal commission of one-third of the Cuban crop, as permitted by the contract with the Cubans, such sale was antici-

¹ These quantities, it should be noted, are for calendar years, and are in terms of refined, as are the quantities throughout this report, when made the basis of a per capita consumption figure. The quantities of the table for prewar and record consumption are approximately those of the United States Sugar Manufacturers' Association (see Exhibit II), which bases its figures on the statistics of Willett & Gray. The higher per capita consumption figures of the United States Statistical Abstract are based on a total consumption in terms mainly of raw sugar and are for fiscal years. The higher per capita figures of the abstract are accounted for by the fact that raw sugar when reduced to refined loses in weight about 7 per cent. "Consumption" figures as used by the trade, as used in all Government statistics on sugar and throughout this report, are based on the sales of sugar made by refiners and producers. No statistics of ultimate consumption are available. See p. 23 for discussion.

pated, inasmuch as the Allies had secured that proportion of the 1917-18 Cuban crop. The quantity as estimated in the table above allows for such sale. Willett & Gray's estimate of the 1918-19 sugar crops of the world, made November 14, 1918, is given in Exhibit VII.

So abundant did the supplies for the future appear to some in the industry that fears were entertained by them early in November, 1918, that there might be a surplus of sugar before the year 1919 was over. These fears were somewhat allayed by the official announcement, December 6, that the Sugar Equalization Board had sold to the Royal Commission on the Sugar Supply for the use of the Allies one-third of the Cuban crop.

This confidence in the plentifulness of future supplies was, with the signing of the armistice and the movement of the new beet and Louisiana cane sugars, further reflected in the immediate relaxation of Government regulations with respect to the distribution of sugar. Prior to the armistice more severe restrictions had been planned for November, but on November 13, 1918, an additional allotment of 50 per cent was given to nonessential manufacturing industries and to the baking industry. Rationing of retailers and hotels was raised from a basis of 3 pounds per capita per month to a basis of 4 pounds, while the regulations governing soft drinks were rescinded. Early in December the certificate plan was dropped and all other restrictions on consumption were removed. On January 20, 1919, the zone system of distribution was abandoned by the Food Administration. Effective January 26, special license regulations of the Food Administration, covering manufacturers and refiners of sugar, were repealed. Finally, on February 1, the Food Administration's regulations fixing the maximum margins of wholesale dealers in sugar were repealed.² However, licensees were still subject to all general regulations not repealed, and the provisions of the food-control act, aimed against unfair trade practices and profiteering, were still in force.

While a fixed price at which all refiners or producers of sugar should sell was maintained through⁴ voluntary agreements, the distribution of sugar was thus made practically free of restrictions, creating a situation apparently not without a considerable element of risk. The estimate of supplies available to the United States for 1919 was placed conservatively low. Error in judgment, however, appears to have been made in underestimating the demand at the restricted price and in allowing distribution to proceed without check or guidance.

The desire of the Sugar Equalization Board to return to the free market conditions of prewar days was expressed in a resolution adopted by it on January 22, 1919,³ which reads:

In view of the fact that the regulatory conditions now in effect were entered into with the expectation of the continuance of war conditions and were not expected to be maintained through a long period of peace conditions, and in view of the change in conditions since the armistice, a return of free market conditions in sugar would be welcome to the board.

Moreover, a policy of encouraging the exportation of sugar was embarked upon. On January 11, 1919, the Sugar Equalization

² Government Control Over Prices, published by War Trade Board, 1920, pp 605, 606.

³ Address of George A. Zabriskie, president of the United States Sugar Equalization Board, made at the convention of the New York Wholesale Grocers' Association, Feb. 25, 1920.

Board announced that, beginning February 1, refined sugar might be released for export at 7.82 cents per pound, equivalent to the refiners' domestic price to wholesalers of 9 cents, less 2 per cent discount for cash, and less the tariff drawback of 1 cent per pound. On January 20, in a letter to the American refiners' committee, the president of the board authorized the refiners to accept business from countries other than the Allies, up to 25,000 tons a month, for February, March, and April.

On January 18 the War Trade Board, which had prohibited the exportation of sugar, along with other commodities, announced that applications would be considered for licenses to export sugars to all destinations except the United Kingdom, France, and Italy. Purchases of sugar for these countries were to be continued by the Allied Provisions Export Commission in behalf of the British, French, and Italian Governments.

Early in February authorization of sales of Cuban raw sugar out of the two-thirds of the crop belonging to the United States was granted by the board. The shipment of this sugar was to be made direct from Cuba. No definite quantity was stipulated, but trade information placed the minimum that might be so disposed of at 75,000 tons and the maximum at 200,000 tons. The announcement covering the authorization was made by the board February 6, 1919, and was as follows:

At the earnest request of the Cuban Government the equalization board has appointed a committee, to be known as the Cuban export committee, consisting of Mr. Robert B. Hawley, Mr. Manuel Rionda, members of the Cuban commission, and Mr. Edwin P. Shattuck, to act in behalf of the equalization board in the matter of shipments of raw sugar direct from Cuba to nations other than the United States and those represented by the Royal Commission on the Sugar Supply.

As this business will be purely local to Cuba and will be conducted in close conjunction with the Cuban Government, the office of the committee will be located on the sixth floor of the Hollins Building, corner of Habana and Obispo Streets, Habana, Cuba.

Exports by the committee will be regulated from time to time by the United States Sugar Equalization Board (Inc.) and will be dependent upon the national requirements of the United States, due regard being given to the necessities of other nations.

These arrangements are made at the earnest request of the Cuban Government in order that it may continue its reciprocal trade relations with countries that have in the past carried on commercial intercourse with the Republic of Cuba.

Thus a policy was undertaken, commendable from an international point of view, but apparently not practicable, if prices were to be kept reasonable in the United States should a shortage develop, without a strict control of distribution.

While the supplies probably available for the United States for 1919 appeared ample in November, 1918, it was estimated even at that time that there would be a decline in the world production of 295,000 tons from that of the preceding year (see Exhibit VII), though the world's effective demand for 1919 was more largely an unknown factor.

In the matter of probable production for the crop year of 1918-19 little change had taken place by February, 1919. The estimates of Willett & Gray, made on February 6,⁴ for the crops of Louisiana,

⁴ Willett & Gray's Weekly Statistical Sugar Trade Journal, Feb. 6, 1919.

Porto Rico, West Indies, and Cuba remained the same as those made November 14, 1918 (see Exhibit VII). The Hawaiian estimate was reduced by 20,000 tons and that of the Philippines increased by 6,000 tons. The estimate on the United States beet-sugar crop was increased by 30,000 tons. Increases in various South American countries gave a net increase of the estimated total of the Western Hemisphere cane-sugar crop on February 6, over the November 14 estimate, of 91,000 tons. The estimated total sugar crop of the world was placed on February 6, 1919, at 56,000 tons less than on November 14, 1918. By the close of the quarter⁵ no change in the estimates from the early February estimates on the Louisiana, Porto Rico, Cuba, Hawaii, and Philippine crops of 1918-19 had been made. Reduction in the estimates for the French West Indies and certain South American countries caused the estimate of the total cane-sugar crop of the Western Hemisphere to decline by 83,000 tons. The estimate on the 1918-19 beet-sugar crop of the United States had been increased 9,000 tons over the estimate of February 6. In the two months between February 6 and April 10, 1919, the estimated 1918-19 total beet and cane sugar crops of the world had fallen 675,000 tons, and the decline in the estimated world production for 1918-19 from that of the preceding year was placed on April 10 at over 1,000,000 tons.

An effective foreign demand for any available surplus of sugar which the United States might have before the close of 1919 was by February already in evidence. Java's carry-over, the only accumulation of any consequence during the war period, was rapidly disappearing. In less than three months following the armistice this accumulation, amounting to 1,000,000 tons, had been taken, and, in addition 40 per cent of Java's new crop of from one million and a quarter to one million and a half long tons had been contracted for. The significant feature of this movement was that it was due but little to European sales, but mainly to sales to far eastern markets. Japan, China, and other oriental countries were in this market as new buyers of sugar. Out of the 230,000 tons estimated as the exportable surplus of the coming Philippine crop, only 70,000 tons could be safely relied upon as coming to the United States, Asiatic buyers being in the market for this sugar.

Under these circumstances of probable production and demand any fear of an unmarketable surplus in America would seem to have been groundless.

"CONSUMPTION" AND SUPPLIES IN THE FIRST QUARTER OF 1919.—The consumption of the first quarter of the year and the stocks at the close of the quarter were as indicated in the table below.

⁵ Willett & Gray's Weekly Statistical Sugar Trade Journal, Apr. 10, date of estimate nearest close of first quarter, 1919.

TABLE 5.—*Sugar supply and consumption in the United States, first quarter, 1919.*

[Basic figures furnished by the United States Sugar Equalization Board.]

	Tons of 2,240 pounds.
STOCKS, JAN. 1.	
Refiners' raws (refined basis).....	18,522
Refiners' refined.....	47,737
Beet sugar.....	464,000
Louisiana direct consumption sugar.....	85,000
Total stocks, Jan. 1.....	615,259
RECEIPTS AND PRODUCTION, JAN. 1 TO APR. 1.	
Refiners' receipts (refined basis).....	927,349
Beet-sugar production.....	19,805
Louisiana direct consumption sugar production.....	6,000
Receipts foreign raw and washed sugars to direct consumption.....	6,788
Receipts Hawaiian refined sugar.....	3,805
Total supplies for quarter.....	1,579,106
STOCKS, APR. 1.	
Refiners' raws (refined basis).....	99,407
Refiners' refined.....	156,088
Beet sugar.....	272,468
Louisiana direct consumption sugar.....	6,000
Total stocks, Apr. 1.....	533,943
CONSUMPTION, JAN. 1 TO APR. 1.	
Refiners' sales.....	738,133
Beet-sugar sales.....	211,437
Louisiana direct consumption sugar sales.....	85,000
Sales foreign raw and washed sugars to direct consumption.....	6,788
Sales Hawaiian refined.....	3,805
Total sales.....	1,045,163
Less refined exports through refiners ¹	97,101
Total consumption for quarter.....	948,062
Pounds per capita consumption, based on a population of 105,000,000 for July 1, 1919².....	20.2

¹ As reported by the refiners to the Sugar Equalization Board.² Of this total 29,238 tons went to neutrals; the remainder was sugar belonging to the royal commission, which was being refined in the United States on toll. This remainder consisted of 37,696 tons of the 1917-18 crop sugar and 30,167 tons of the 1918-19 crop.³ Based on the preliminary figure of 105,683,108 for Jan. 1, 1920, announced by the Bureau of the Census, Oct. 7, 1920.

The table above shows that the consumption (for definition of consumption, see p. 23) for the quarter amounted to 20.2 pounds per capita, based on a population of 105,000,000, or at the rate of 81 pounds per capita per annum. This consumption was running just equal to the estimate of available supply made in November, 1918. (See Table 4.)

EXPORTATION AND SHORTAGE CONDITIONS.—Of the 97,101 tons of refined sugar shown in the table above as exported by refiners, 29,238 tons went to neutral countries, as authorized by the board early in February. The remainder represented sugar belonging to the royal commission, which had been refined by American refiners on toll,³ 37,696 tons being 1917-18 crop sugar and 30,167 tons 1918-19 crop.

³ Sugar refined on toll does not belong to the refiner but is refined for the owner at a stated charge called a toll.

The exports by others than refiners, which are not shown in this table, were probably so small in this quarter as to be negligible.⁷

There was an increase in refiner's stocks of refined sugar and raw sugar over the beginning of the quarter, amounting to 108,331 tons in the case of refined and 80,885 tons in the case of raws, but this increase was due in part to the fact that the royal commission had not moved its commitments of new-crop sugar manufactured or to be manufactured under its toll agreement (see Exhibits VIII, IX, and X for agreements) as rapidly as had been expected. During the first quarter of the year it was scheduled (see Table 14) to ship from American refiners 111,000 tons of this new crop. Its actual shipments during this period, in addition to old-crop sugar, were 30,167 tons. It was 80,833 tons behind its schedule. In reality, stocks of refined rightly accounted as belonging to this country were much lower than the figures on their face indicated.

Stocks of sugar of a group of wholesale grocers reporting to the Bureau of Markets⁸ for both January 1, 1919, and January 1, 1918, were on the former date 119.6 per cent of what they were on the latter date. Stocks of a group of wholesale grocers reporting to the Bureau of Markets⁹ for both January 1, 1918, and January 1, 1917, were on the former date 60.6 per cent of what they were on the latter date. These two groups are not precisely the same in number and identity. Nevertheless, there was presumably no process of selection of the two groups which would operate to vitiate a comparison drawn between 1919 and 1917. If this is true, the stocks of wholesale grocers on January 1, 1919, were considerably below what they were on January 1, 1917, when no restrictions of the Government were in force.

Stocks of a group of sugar-consuming manufacturers (confectioners, bakers, and milk condenseries) reporting to the Bureau of Markets¹⁰ for both January 1, 1919, and January 1, 1918, were on the former date 83 per cent of what they were on January 1, 1918. Stocks of a similar group (the same classes of manufacturers though not precisely the same in number and identity) reporting to the Bureau of Markets¹¹ for both January 1, 1918, and January 1, 1917, were on the former date 117 per cent of what they were on the latter. From this comparison it would appear that the stocks of these manufacturers were very little less on January 1, 1919, than on January 1, 1917.

Reports from wholesale grocers and sugar-consuming manufacturers to the Federal Trade Commission (see Table 21) on their stocks for January 1, 1919, and January 1, 1918, show as between these two dates much the same comparison as do the reports to the Bureau of Markets given above. The manufacturing group, however, includes a larger number of classes than does the group reporting to the Bureau of Markets. Wholesale grocers reporting to the Commission for both these dates show stocks on January 1, 1919, to be 104 per

⁷ Exports of refined sugar for January, February, and March, 1919, as reported by the Department of Commerce, were 99,804 tons. Just what part of this was exported by the refiners, however, is not certain since total exports as compiled for a given period by the Department of Commerce do not include wholly the same exports of refiners as reported by refiners for that period to the Sugar Equalization Board.

⁸ Food Surveys, Vol II, No. 21. The number of these firms and their size and location, in both this and succeeding surveys of stocks, are deemed to be such as to make them representative in character.

⁹ *Ibid.*, Vol. I, No. 6.

¹⁰ *Ibid.*, Vol. II, No. 21.

¹¹ *Ibid.*, Vol. I, No. 6.

cent of what they were on January 1, 1918, and manufacturers 87 per cent. The Commission received no reports on stocks for 1917.

Data necessary to show relative changes in stocks by the close of the first quarter are not complete, since stocks on April 1, 1917, are not available and no reports from manufacturers were received by the Bureau of Markets for April 1, 1918 and 1919. Wholesale grocers reporting to the Bureau of Markets²² for both April 1, 1919, and April 1, 1918, show that stocks on the former date were 100.3 per cent of what they were on the latter date. Wholesale grocers reporting to the Commission (see Table 21) for both April 1, 1919, and April 1, 1918, show stocks of 95.9 per cent on the former date as compared with the latter, and sugar-consuming manufacturers 80 per cent. The stocks of manufacturers of essentials (bakery goods, canned and preserved goods, condensed milk, medicines and drugs, soap, and table sirups) were on April 1, 1919, 74 per cent of what they were on April 1, 1918, and of nonessentials (candy, ice cream, soft drinks, soda fountain supplies, and tobacco products), 88 per cent.

In normal years many wholesale grocers and sugar-consuming manufacturers increase their stocks during the first half of the year and the average of all these stocks increases. Just what the normal increase is for each group for the first quarter is not known. Wholesale grocers reporting to the Commission (see Table 21) for both January 1 and April 1, 1919, show an increase in stocks on the latter date over those of the former date, when stocks appear to be much below normal, of 44 per cent—61,447,601 pounds being reported by these firms for the former date as against 88,572,741 pounds for the latter date. Manufacturers reporting to the Commission for both these dates show an increase by April 1 over January 1, 1919, when stocks were apparently about normal, of 17 per cent—from 84,924,138 pounds to 99,030,786 pounds. All stocks were probably below normal April 1, 1919, and wholesale grocers' stocks, judging by their condition a month later as compared with the corresponding date in 1917 (see pp. 41-42), very much below normal.

Section 2. A developing stringency in the spring of 1919.

PREVIOUS CONSUMPTION RATE AND DEMAND.—It will be noted, as pointed out above (see p. 23), that "consumption" during the first quarter was running at a per capita per annum rate which would, if continued throughout the year, entirely consume the supplies estimated as available for the year 1919. This would allow for no increase in the consumption should there develop at the restricted price an unusual demand.

REFINERS' STOCKS.—Nevertheless, beginning in March and extending well into May, the refiners complained of the backing up of their refined sugar. At the close of March, as shown in Table 5 above, refiners' stocks of raw and refined were 255,475 tons. But it should be recalled that the refiners were doing a large "toll" business for the royal commission. They were under a contract to refine during the year, for this commission, 500,000 tons²³ (refined basis), 314,000

²² Food Surveys, Vol. II, No. 25.

²³ Three hundred thousand long tons (refined basis) as per agreement with the royal commission, dated Nov. 22, 1918, and 200,000 long tons (refined basis) as per agreement dated Apr. 30, 1919.

tons of which were scheduled to be shipped before July 1, during the season when demand in this country was expected to be lightest. By the last of March, when a total of 111,000 tons were scheduled to have been shipped, shipments of only 30,167 tons had been made. Shipments were in arrears 80,833 tons. (See Table 14.)

Under these conditions of large stocks in the refiners' hands, which should have gone to the royal commission, and low supplies in the hands of the trade, refiners' stocks were not a reliable index of demand. Had sufficient shipping tonnage and foreign storage been available to the royal commission, no oversupply would have been apparent. Sugar which should have been in store for later use by American consumers would less probably have been exported.

On account of this apparent plethora of sugar, beginning in March, the board took steps to encourage refiners in the exportation of refined. It called on the Departments of Commerce and State and on the War Trade Board to inform it through their respective foreign representatives of foreign markets for raws and refined. It took steps to sell, out of the two-thirds share of the Cuban crop belonging to the United States, a portion of the Cuban raws, f. o. b. Cuba. These sales made to foreign buyers, together with those made by Cuba under the arrangement referred to above, amounted, before the close of the year, to 182,815 tons.¹⁴ Finally, the board, through the office of the Food Administration, issued in April this notice:

ANNOUNCEMENT OF THE UNITED STATES FOOD ADMINISTRATION.

115 BROADWAY,
New York, April 14, 1919.

The Food Administration urges upon dealers in refined sugar the desirability of their replenishing their stocks now, to insure against the possibility of local shortages, particularly in the eastern part of the country later on, when the demand comes for canning. This demand may be further accentuated by the expected increase in consumption of sugar and its products in candy and sweet drinks as a result of prohibition.

The Food Administration is particularly eager that a full supply of sugar should become available to home canners for preserving this summer's fruits. Last season, on account of restrictions and difficulties in transportation, there was an unequal distribution of sugar which led to local shortages. This season the Food Administration fears that dealers may bring about the same undesirable situation unless they replenish their stocks now.

The foreign demand for sugar this year is estimated at 650,000 tons, as compared with 150,000 last year and a normal of 50,000 tons. Of this year's European requirements, 550,000 tons have already been contracted for. This sugar will go forward in the first 9 or 10 months of the year instead of being spread over 12. Ships have already been allocated for 60 per cent of the amount. The foreign buyers are already taking steps to insure their getting their sugar, and if the American local buyers do not exercise similar precautions and continue to refrain from buying they will find themselves unable to secure the sugar they will require later on, during the large consuming months from June 1 to October 1, since the refiners' ability to deliver is limited by their daily refining capacity, which will be taken to meet their foreign contracts.

There is not, in the opinion of the Sugar Equalization Board officials, any actual shortage of sugar now and no prospect of one, at least before next fall, but, on the other hand, there is no prospect of any material change in price that

¹⁴ This 182,815 tons (raw basis) was made up of 133,603 tons, sales made by the board to foreign buyers, and 49,212 tons, sales made by Cuba. One-third of the latter was charged to the royal commission's quota, leaving 32,808 tons to be deducted from the portion belonging to the United States. The sum of the board's and Cuba's sales of raws to other countries, chargeable to the United States, reduced to a refined basis, equals 154,762 tons.

would justify merchants in delaying their buying orders. The price of sugar to-day in the United States is lower than that in any European country (except Denmark, where there is a special situation). Against our 10 cents per pound, prices in Europe vary from 12 cents to 45 cents.

It is evidently true, as the above announcement intimates, that dealers' stocks were below normal for this time of the year. Assuming that sugar was available to the dealer and that transportation difficulties were not interfering with the free flow of sugar from refiner to dealer, there was no great incentive to lay in stocks so long as there was no prospect of a rise in price or of a shortage in supply. Increase in stocks would have insured a more even distribution in later months, would have shifted a part of the carrying burden from refiner to dealer, and would, since the notice appears to have been directed to dealers, have given the dealer as against the manufacturer buying sugar directly from the refiner, a larger supply in the event of a shortage.

On the other hand, for the dealer to have taken on larger stocks in this quarter would not have resulted in larger supplies available to the year's total consumption, unless that in some way would have stopped exportation of refined or increased importation of raws. Even though the importation of raws was being held back somewhat through lack of storage for refined, these raws had been contracted for and could be held in considerable quantities for a time at points of production until demand caught up with supply. Since refiners' total annual refining capacity (see p. 22) is some 68 per cent greater than the total annual consumption, their ability to deliver is much in excess of the highest quarterly consumption and exportation the country is likely to have.

The above notice plainly intimated the possibility, if not the danger, of later shortages, which was immediately reflected in increased calls for sugar and may have caused hoarding for speculative purposes. It anticipated an increased demand for sugar from refiners and producers, though the movement at this time was already high (see p. 65).

By the last of April refiners' stocks amounted to 295,722 tons (see Table 15), as against 255,475 tons at the end of March, and by the last of May to 297,725 tons, as against 196,796 tons the last of May, 1918. Yet on May 31, 1919, when refiners' stocks were heaviest, only 168,061 tons had been shipped to the royal commission instead of the scheduled quantity of 259,000 tons (see Table 14). Shipments were therefore at this date 90,939 tons in arrears. Had these shipments been made, refiners' stocks would have been only 10,000 tons higher than they were on the corresponding date of the preceding year.

GROWING STRINGENCY.—Late in April the demand on the market began to be felt more insistently. Reports on market conditions from the large centers showed a more lively interest in buying sugar ahead of current needs, and authorities in the sugar trade were calling attention to the apparent close balance between probable demand and estimated supply. Through the remainder of the second quarter the call for sugar grew in intensity, and at its close refiners were generally oversold, several being practically withdrawn from the market.

CROP OUTLOOK.—On June 5¹⁶ Willett & Gray revised their estimate on Cuba's 1918-19 crop from 3,600,000 tons, at which it had stood since November, 1918 (see Exhibit VII) to 4,000,000 tons, at which the estimate stood at the close of the second quarter.¹⁵ The estimate on Porto Rico's crop at the close of the second quarter was 395,000 tons, having been reduced 15,000 tons since the close of the previous quarter. The estimate for Hawaii remained the same. The estimate on the Philippine crop had been cut down and the estimated exportable surplus had been reduced by 70,000 tons. The estimate on the Louisiana crop was 250,802 tons, about 6,000 tons increase over the April estimate. No change had taken place in the estimate on the 1918-19 beet-sugar crop of the United States. The estimate on the total crop of the Western Hemisphere was about 368,000 tons higher than at the close of the first quarter, and on the total of the world crop about 261,000 tons higher. Except for portions of the West where drought had occurred the prospects for the 1919-20 beet-sugar crop in the United States were good. The outlook for the new Louisiana cane-sugar crop, on the other hand, was not favorable.

SUPPLIES AND CONSUMPTION.—The table given below summarizes the situation with respect to supplies and consumption of sugar for the second quarter and for the first half of 1919.

TABLE 6.—*Sugar supply and consumption in the United States, second quarter and first half year, 1919.*

[Basic figures furnished by the United States Sugar Equalization Board.]

	Tons of 2,240 pounds.	
	Apr. 1 to July 1.	Jan. 1 to July 1.
STOCKS, OPENING OF PERIOD.		
Refiners' raws (refined basis).....	99,407	18,522
Refiners' refined.....	156,068	47,737
Beet sugar.....	272,468	464,000
Louisiana direct consumption sugar.....	6,000	85,000
Total stocks, opening of period.....	533,943	615,259
RECEIPTS AND PRODUCTION FOR PERIOD.		
Refiners' receipts (refined basis).....	1,204,037	2,131,386
Beet-sugar production.....		19,905
Louisiana direct consumption sugar production.....		6,000
Receipts foreign raw and washed sugars to direct consumption.....	4,000	10,788
Receipts Hawaiian refined sugar.....	5,625	9,430
Total supplies for period.....	1,747,605	2,792,768
STOCKS, CLOSE OF PERIOD.		
Refiners' raws (refined basis).....	141,074	141,074
Refiners' refined.....	59,983	59,983
Beet sugar.....	75,162	75,162
Louisiana direct consumption sugar.....		
Total stocks, close of period.....	276,219	276,219

¹⁵ Willett & Gray's Weekly Statistical Sugar Trade Journal, June 5, 1919.

¹⁶ Willett & Gray's Weekly Statistical Sugar Trade Journal, July 3, 1919.

TABLE No. 6.—*Sugar supply and consumption in the United States, second quarter and first half year, 1919—Continued.*

	Tons of 2,240 pounds.	
	Apr 1 to July 1.	Jan. 1 to July 1.
CONSUMPTION FOR PERIOD.		
Refiners' sales.....	1,258,455	1,996,588
Beet-sugar sales.....	197,306	408,743
Louisiana direct consumption sugar sales.....	6,000	91,000
Sales foreign raw and washed sugars to direct consumption.....	4,000	10,788
Sales Hawaiian refined.....	5,625	9,430
Total sales.....	1,471,386	2,516,549
Less refined exports through refiners ¹	² 277,040	³ 374,141
Total actual consumption for period.....	1,194,346	2,142,408
Pounds per capita consumption, based on a population of 105,000,000 for July 1, 1919 ⁴	25.5	45.7

¹ As reported by the refiners to the Sugar Equalization Board.

² Of this total 59,165 tons went to neutrals; the remainder was sugar belonging to the royal commission, which was being refined in the United States on toll. This remainder consisted of 5,031 tons of old-crop sugar and 212,843 tons of new crop.

³ Of this total 88,403 tons went to neutrals; the remainder, belonging to the royal commission, consisted of 42,727 tons of the 1917-18 crop sugar and 243,011 tons of the 1918-19 crop.

⁴ See note 3, Table 5.

The table shows that consumption for the first half of the year amounted to 45.7 pounds per capita, equivalent to a yearly per capita rate of 91 pounds. However, taking the quarter by itself, the consumption was 25.5 pounds per capita, or at a yearly rate of 102 pounds, a rate much too fast for the supplies apparently available for the balance of the year, should demand fail to recede.

Refiners' stocks of raw and refined, which were 255,475 tons at the beginning of the quarter, had much diminished, standing at its close at 201,057 tons, though shipments of new-crop sugars to the royal commission were still much behind schedule (see Table 14), the back shipments amounting to 71,000 tons on July 1, considerably in excess of refiners' stocks of refined, amounting to 59,983 tons.

The table shows that 374,141 tons had been exported by refiners during the first half of the year. Of this, 277,040 tons were exported during the quarter. Of that exported during the half year, 88,403 tons went to neutral countries under authorization of the board, the remainder, consisting of both old and new crop sugars belonging to the royal commission, having been refined by the refiners on toll. Of that exported during the quarter, 59,165 tons went to neutrals, the remainder to the royal commission. Figures are not available to show the quantity that had been exported by others than refiners, since the total exports, including those of refiners, as compiled for a given period by the Department of Commerce,¹⁷ do not include wholly the same exports of refiners as reported by refiners for that period to the Sugar Equalization Board.

Wholesale grocers reporting to the Bureau of Markets¹⁸ for both May 1, 1919, and May 1, 1918, show stocks on the former date of 65.1

¹⁷ Exports of 255,429 tons are reported by the Department of Commerce for the months of April, May, and June.

¹⁸ Food Surveys, Vol. II, No. 26.

per cent of those on the latter date. Stocks of a group of wholesale grocers reporting to the bureau¹⁹ for both May 1, 1918, and May 1, 1917,²⁰ were on the former date 93.7 per cent of what they were on the latter. Similar reports from wholesale grocers to the Bureau of Markets for June 1 show that their stocks on June 1, 1919, were 69.4 per cent of the stocks held June 1, 1918,²¹ and on the latter date 87.7 per cent of the stocks held June 1, 1917.²² From these reports it would appear that stocks of wholesale grocers continued below those held in 1917 up to June 1. The Bureau of Markets has no reports on stocks of sugar-consuming manufacturers for the above dates or any other than January 1 and July 1, nor reports on the stocks of any firms for 1919 later than June 1.

Stocks of wholesale grocers reporting to the Commission (see Table 21) were on July 1, 92,000,000 pounds, as compared with 88,500,000 pounds April 1, and 61,500,000 pounds January 1, or 4 per cent larger than April 1, and 50 per cent larger than they were January 1, when they were apparently much below the stocks of January 1, 1917. As compared with July 1, 1918, the stocks of this group on July 1, 1919, were 17 per cent smaller. The stocks of a group of wholesale grocers reporting to the Bureau of Markets²³ for both July 1, 1918, and July 1, 1917, were on the former date 75.7 per cent of what they were on the latter date.

Stocks of sugar-consuming manufacturers reporting to the Commission (see Table 21) were on July 1, 120,000,000 pounds, as compared with 99,000,000 pounds April 1, and 85,000,000 pounds January 1, or 21 per cent larger than on April 1 and 41 per cent larger than on January 1. They were 18 per cent smaller than they were on the corresponding date in 1918. It should be noted, however, that the stocks of manufacturers of nonessentials were on July 1, 1919, practically no smaller than on July 1, 1918. The stocks of a group of manufacturers (confectioners, brewers, bakers, canners, milk condenseries, and preservers) reporting to the Bureau of Markets²⁴ for both July 1, 1918, and July 1, 1917, were on the former date 93 per cent of what they were on the latter date.

Section 3. Demand rapidly outrunning supplies, summer, 1919.

EVIDENCES OF INCREASED SHORTAGE.—Complaints made to the Sugar Equalization Board and recorded in the trade papers were general throughout this quarter that sugar was not available in quantities sufficient to supply the trade. Following the sugar-trade papers through this period, this note of complaint is found in ever-growing volume. Refiners were reported as badly oversold and accepting few new orders. Before the close of the quarter wholesale grocers in many localities were doling out sugar in 100-pound lots and retailers limiting sales to 2 pounds to a customer, and in some instances to 1 pound.

¹⁹ Food Surveys, Vol. I, No. 3.

²⁰ Stocks of wholesale grocers on May 1, 1917, regarded by the Food Administration as normal. See Bulletin No. 1294.

²¹ Food Surveys, Vol. II, No. 27.

²² *Ibid.*, Vol. I, No. 8.

²³ *Ibid.*, Vol. II, No. 7.

Prices on old-crop sugars, after leaving refiners' and producers' hands, came to be less stable, particularly as the first new beet sugar in July came on the market at slightly higher prices. There was a growing tendency on the part of some dealers to get away from the customary price, due no doubt to the pressure of demand by the manufacturing consumer and the householder and the opportunity it afforded to get higher prices.

On August 25 the California & Hawaiian Sugar Refining Co., San Francisco, issued the following announcement to the trade:

Owing to the extremely heavy demands made upon this company for sugar during the recent shortage throughout the country, we have, in order to tide over the situation until new-crop beet sugars become available, refined and sold the sugars allotted to us this year by the United States Equalization Board (Inc.) very much faster than anticipated.

We regret to announce that our present outstanding obligations absorb virtually the entire amount of sugar we have on hand and to arrive, and that in consequence it will be necessary for us to withdraw from the market at once.

We will fill all orders in hand on this date, and any sugar left after they shall have been completed will be prorated among the trade.

Our earnest effort to furnish the trade with its full requirements during the fruit-preserving season has forced this course upon us.

We will reenter the market immediately on arrival of new-crop sugar in January.

The Western Sugar Refinery at the same time withdrew from the market, but advised manufacturers, as reported in the trade papers, that their requirements would be taken care of, and later that it would probably have sugar for the jobbing trade.

The table below shows what the supplies and consumption were during the third quarter of the year:

TABLE 7.—*Sugar supply and consumption in the United States, third quarter and first three quarters, year 1919.*

[Basic figures, except those for 1919-20 beet sugars, which were reported to the Commission, are furnished by the United States Sugar Equalization Board.]

	Tons of 2,240 pounds.	
	July 1 to Oct. 1.	Jan 1 to Oct. 1.
STOCKS, OPENING OF PERIOD.		
Refiners' raws (refined basis).....	141,074	18,522
Refiners' refined.....	59,983	47,737
Beet sugar.....	75,162	464,000
Louisiana direct consumption sugar.....		85,000
Total stocks, opening of period.....	276,219	615,259
RECEIPTS AND PRODUCTION FOR PERIOD.		
Refiner's receipts (refined basis).....	997,940	3,129,326
Beet-sugar production.....	52,176	72,081
Louisiana direct consumption sugar production.....		6,000
Receipts foreign raw and washed sugars to direct consumption.....	18,266	29,054
Receipts Hawaiian refined sugar.....		9,430
Total supplies for period.....	1,344,601	3,861,150
STOCKS, CLOSE OF PERIOD.		
Refiners' raws (refined basis).....	51,749	51,749
Refiners' refined.....	39,040	39,040
Beet sugar.....	13,929	13,929
Louisiana direct consumption sugar.....		
Total stocks, close of period.....	104,718	104,718

TABLE 7.—*Sugar supply and consumption in the United States, third quarter and first three quarters, year 1919—Continued.*

	Tons of 2,240 pounds.	
	July 1 to Oct. 1.	Jan 1 to Oct. 1
CONSUMPTION FOR PERIOD.		
Refiners' sales.....	1,108,208	3,104,796
Beet-sugar sales.....	113,409	522,152
Louisiana direct consumption sugar sales.....		91,000
Sales foreign raw and washed sugars to direct consumption.....	18,266	29,064
Sales Hawaiian refined.....		9,430
Total sales.....	1,239,883	3,756,432
Less refined exports through refiners ¹	4120,770	4494,911
Total consumption for period.....	1,119,113	3,261,521
Pounds per capita consumption, based on a population of 105,000,000 for July 1, 1919 ⁴	23.9	69.6

¹ As reported by the refiners to the Sugar Equalization Board.

² Of this total 65,670 tons went to neutrals, the remainder was sugar belonging to the royal commission which was being refined in the United States on toll.

³ Of this total 154,073 tons went to neutrals, the remainder, belonging to the royal commission, consisted of 42,727 tons of the 1917-18 crop sugar and 298,111 tons of the 1918-19 crop

⁴ See note 3, Table 5.

Consumption shows a rate of 23.9 pounds per capita per quarter, or 96 pounds per annum, a rate too high, considering the limited supplies available for the remainder of the year. For the first three quarters of the year the consumption had been 69.6 pounds per capita, equivalent to a rate of 93 pounds per capita per annum.

Exportation, notwithstanding the board's endeavor to check refiners' exports (see p. 47), totaled for refiners 120,770 tons. Of this total 55,100 tons belonged to the royal commission, having been refined by American refiners on toll. The remainder were refiners' exports fulfilling commitments made by them under the permission granted them by the board January 11, 1919 (see pp. 32-33). Refiners' exports for the first three quarters of the year amounted to 494,911 tons, of which 340,838 tons belonged to the royal commission. The remainder, 154,073 tons, were refiners' exports for the year to October 1, authorized by the board. Figures are not available showing exports by others than refiners.²⁴

Beet-sugar sales, as shown by the table, reached a total of 113,409 tons for the quarter. These figures include sales of both old and new crop, the latter being based upon reports made direct to the Commission. (See Table 23.)

On July 25, in a statement issued by Mr. Zabriskie, president of the United States Sugar Equalization Board, "an apparent shortage" was recognized, but only in refined. This apparent shortage was laid at the door of canners and confectioners, who, it was said, failed to anticipate their normal needs early in the season and in July were making unusual demands. Nonessentials, including confectioners, it is true (see Table 21), had laid in relatively heavy stocks since April 1; but the stocks of essentials, including canners, were relatively light from April 1 to nearly the close of the

²⁴ Exports of 148,861 tons are reported by the Department of Commerce for the months of July, August, and September. (See footnote 7, p. 36.)

third quarter. About the end of March, on account, apparently, of accumulating refiners' stocks, the board, as already noted, encouraged the exportation of sugar and recommended to the trade to increase their apparently insufficient stocks (see p. 38), and as a result there was a more rapid depletion of supplies than was probably anticipated. When the July statement was made no shortage in raws was anticipated by Mr. Zabriskie. At the time the statement was issued, however, consumption in the previous quarter had been at the rate of more than 100 pounds per capita per annum, a rate which available raws could not nearly sustain for any great length of time.

Mr. Zabriskie's statement follows:

The chief factor in this apparent shortage, which is temporary, has been the belated orders of big fruit canneries and confectionery factories, which failed to anticipate their normal demands and held off ordering their sugar, in the expectation that prices would be lower. They knew the refiners could not sell above the fixed price of 9 cents. Another element that as yet has not affected the situation is the marine workers' strike, which, we hope, will be settled before the entire fleet of sugar ships is tied up in Atlantic and Gulf ports. Meanwhile we are reaching by radio at sea all the vessels possible and diverting them to Cuba to bring back raw sugar.

The cannery and confectionery trade has not realized the limitations of the sugar industry. The flour mills of the United States, for instance, have a capacity of 600,000,000 barrels per annum, less than one-third of which is consumed in the country. That is, their capacity is three times the national requirement. The rest is exported. With sugar it is different. The capacity of the 22 refineries is approximately 4,800,000 tons while the consumption is 4,250,000 tons.²² The margin between supply and demand is narrower and the refineries have to keep going when the demand in March and April is not great, building up reserves for the four months, June, July, August, and September, when the demand is at its height.

There is, however, at present no shortage of raw sugar. The difficulty now is the capacity of the refineries. Of the 2,630,000 tons the United States Sugar Equalization Board contracted to purchase from Cuba we had still to receive on July 1 no less than 1,100,000 tons. In addition to this we have access to 1,970,000 more tons, including the beet sugar, which will begin to come in about October 1, and the big cane crops of Louisiana and insular possessions of the United States, such as the Virgin Islands, Porto Rico, Hawaii, and the Philippines.²³

The situation is entirely satisfactory so far as the raw material is concerned, and I know the refiners are doing their part, for their plants have been operated night and day, and some on Sundays, for months past. In those parts of the country where local shortages exist, it is true, there is an inclination to profiteer, but it is easy to fix the blame for that. The refiner can not sell sugar for more than 9 cents a pound. The wholesaler is obligated to a maximum profit of 35 cents, so that the retailer does not pay more than \$9.35 a hundred. Everybody, therefore, should be able to buy sugar at a maximum of 11 cents a pound, and I know of chain stores selling it to-day for less than 10 cents.

CAUSES OF GROWING SHORTAGE.—The fundamental explanation of the growing shortage of sugar lay, of course, as is evident from a study of the consumption table, in a demand that, repressed during the war, was expanding with a rapidity not foreseen in time to conserve the available supply. It will be noted that the per capita consumption for the third quarter was only slightly lighter than for the second. Nevertheless, it was probably about as heavy as it

²² According to the United States Sugar Manufacturers' Association the total yearly refining capacity of the 22 seaboard refineries, allowing for a 30-day clean-up, is 6,896,813 short tons, 68 per cent in excess of the 1916 consumption.

²³ These figures seem to be too large if they were meant to indicate what appeared July 25, 1919, to be supplies available for 1919 consumption.

had been for the same quarter in prewar years. This would indicate that the difficulty did not lie for this quarter primarily in any absolute falling off of the supply available for total consumption as compared to previous years. Shortage, which is wholly a relative term, denoting, as used in this connection, a quantity smaller than would be, if available, purchased at a given price, was due to a demand unforeseen and unprovided for. An analysis of this demand will be undertaken presently. (See p. 61.)

This much, however, may here be stated. The new demand appeared to be coming more from consuming manufacturers than from householders. That the householder was getting more sugar in manufactured products did not seem to lessen the quantity of sugar which he wanted for table use; moreover, the large manufacturer appears to have possessed competitive advantages in securing the sugar, thus causing the shortage to be felt more keenly among wholesale grocers than among manufacturers. The householder was firmly set against paying a single cent more for the sugar he bought from his grocer, though willingly paying several cents more for the sugar he bought from his confectioner. This attitude of the public was reflected in the rulings of the Department of Justice in August, which declared that sugar should retail for not more than 11 cents a pound. (See p. 95.) Consequently, when the new beet sugar came on in California the latter part of August the jobber was not in position to pay more than the 9-cent seaboard basis price, and, indeed, some of the beet-sugar producers seemed chary of offering to sell to the jobber at a higher price. While the early sales of beet sugar in California were made at about \$9 per hundred, some of it going to jobbers, the first sugar in this earlier period, selling at a higher price, went to manufacturers. At least two California companies sold in September to manufacturers at \$11.50 seaboard basis, selling comparatively little to jobbers, and this little at \$9 seaboard basis.

There is little evidence of hoarding at this time among wholesale grocers or householders. There is some evidence that the producers of new beet sugars, whose prices were not controlled by voluntary agreement, as were the prices of old-crop sugars, were holding back for higher prices, which they hoped would be allowed by liberal rulings of the Department of Justice. Approximately 8,000 tons, or one-half of the beet sugar produced up to September 1, remained unsold; and of the total produced to October 1, one-fourth, or 14,000 tons, was unsold. (See Table 23.) On the latter date two companies had combined holdings of 8,000 tons.

In consequence of this competitive advantage in securing supplies which the manufacturing consumer of sugar appeared to have over the wholesale grocer, considerable quantities of sugar were probably diverted from the householder's table.

The bureau of foods and markets of Chicago made the following statement of supplies in the hands of Chicago wholesalers and manufacturers, after a thorough study of the local situation, in September, 1919:

A survey made by investigators of the bureau prior to September 25, 1919, showed a visible sugar supply on hand of about 12,000,000 pounds, not including the limited stock in possession of the retail grocers and consumers. It also showed that 90 per cent of the 12,000,000 pounds referred to was in the hands

of manufacturers, while 10 per cent was in the hands of wholesalers and jobbers for use in retail trade, and that 85 to 90 per cent of the retail grocers at that time had no sugar on hand and were unable to secure sugar to supply their family trade.

Reports to the Commission (see Table 21) show that the stocks of wholesale grocers were at the close of this quarter less than one-third of what they were either on July 1, 1919, or a year earlier, October 1, 1918, when the restrictions of the Food Administration were in force. On the other hand, the stocks of manufacturers of nonessentials containing sugar were almost equal to what they were on July 1, 1919, and 60 per cent greater than they were October 1, 1918. A group of wholesale grocers reporting to the Bureau of Markets²⁷ for both October 1, 1918, and October 1, 1917, show stocks on the former date 117.5 per cent of those held on the latter date. No report was made to the Bureau of Markets for these dates by manufacturers.

Moreover, speculation was becoming evident. Dealers who had never handled sugar before were buying it. Many of them never saw the sugar, but bought it and had it invoiced to some dealer or manufacturer, taking the regular jobber's margin, often much more than this margin, although not physically handling it. They took practically no risk, but secured such margin as the market would bear. (See pp. 52, 87 for further discussion of this subject.)

As contributing to uneven distribution, both as between periods and localities, and thus causing temporary or local shortages, was the marine strike on the Atlantic coast in July, slowing down shipments of raws. Car shortages causing slow deliveries in some localities was a further factor.

STEPS TO ALLEVIATE SHORTAGE CONDITIONS—EMBARGO ON REFINERS' EXPORTS.—So acute had the shortage become with the opening of the third quarter that the board, on July 1, requested (see Exhibit XI) the refiners to discontinue for two weeks all exports of sugar. It was announced that this embargo should include shipments to the royal commission as well as to neutrals. On July 14 the refiners were requested by the board (see Exhibit XII) to make no further sales for export until further notice. The board, however, had no control over exports other than those of the refiner, which were, by contract with the refiners, under the supervision of the board. License restrictions on the exportation of sugar had not since April 29 been imposed by the section of the State Department having the powers and performing the functions of the War Trade Board. On July 29 a request was made of the State Department by the Sugar Equalization Board that an embargo be placed on such exportation. No action on this request was taken.

Sugar continued to be exported in considerable quantities throughout the third quarter, although, so far as the refiners were concerned, these exports represented sales contracted largely, if not wholly, before the board's order was made early in July. Nevertheless 65,670 tons were exported to neutrals alone during this quarter.

BOARD'S REQUEST FOR POWERS OF CONTROL.—So great was the need, in the judgment of the board, of a vigorous control of the situation

that it had asked in July for authority not only to impose an embargo on exports but to establish licensing and rationing systems. These powers were lodged in the President, under the food-control act. This request was not granted. Such powers would probably not have been requested by the board were not exports being made unwarranted, in its judgment, by the situation, and had not speculation been prevalent and distribution as between manufacturers and distributors relatively unequal.

DISTRIBUTION OF ARMY SUGAR.—A third step taken by the Sugar Equalization Board for the immediate relief of the supply situation was its arranging, in the second week of July, for the immediate distribution of several thousand tons of surplus stocks of sugar held by the War Department. The first stocks distributed consisted of 17,325,000 pounds of Louisiana plantation granulated stored at New Orleans, and 7,700,000 pounds of refined in storage at San Francisco. The Louisiana sugar was placed in the hands of the Louisiana sugar committee. Applications for this sugar came from practically every Southern State, and even from New York City and Chicago. In less than two days it was all taken, each sale being limited to a carload of 50,000 pounds. The sugar was sold at \$8.82 per hundred, buyer agreeing to make no resales at a profit higher than that allowed by the Food Administration and to export none of it. The stocks of refined at San Francisco were distributed through the California & Hawaiian Sugar Refining Co., at the request of the board, and were allotted to buyers east of the Missouri River, where the stringency was most severe. Other Army stocks were released later. Altogether these surplus Army sugars distributed in regions of scarcity totaled 20,640 long tons, the distribution and transportation expenses being borne by the Sugar Equalization Board. In the allotting of some of these stocks preference was given to the urgent needs of commercial canners.

Stocks located in New York, Baltimore, and Atlanta were distributed by the American refiners' committee at New York; sugar in Chicago, St. Louis, Omaha, and San Francisco, by the sugar distributing committee of the Food Administration, located at Chicago; and sugar in San Antonio, by the chamber of commerce, San Antonio.

BEET SUGAR PURCHASED BY THE BOARD.—A further step taken by the board to alleviate local shortage conditions was the purchase during the second week of August of 10,000 short tons of new crop California beet sugar. This sugar was bought at \$8.82 per hundred net, and distributed by the sugar distributing committee of Chicago, in the Central States. Early in September purchase of new crop, California beet sugar, amounting to 5,000 short tons, was made by the board at \$9.50 per hundred and sold at \$9, the difference being absorbed by the board. This sugar, too, went to the Central States.

The effect of these buying operations of the board, which were continued in the last quarter of the year, was to hasten new beet sugars into the channels of distribution and to direct them to points of greatest need. A restraining influence on producers' prices, too, no doubt was exerted by the first purchase. The board had no control over these prices except voluntary agreement should be entered into, and the purchase price of the second lot was a concession to the

producers' pressure for higher returns. The policy of absorbing the difference between purchase and sale prices of beet sugar tended to equalize prices of the new-crop beet sugar purchased by the board and old-crop sugar, but made a price different from that of other new-crop beet sugar sold, perhaps, in the same locality.

RELIEF THROUGH TRADE MEASURES.—The refiners are reported to have attempted to relieve the ill effects of the shortage as much as possible by more even distribution. By limiting orders, and by eliminating duplication of orders among refiners, it was hoped to prevent in some measure hoarding and speculation and to secure a better distribution.

Section 4. Depleted stocks and supplies and lowered consumption, closing months, 1919.

SUPPLIES AND CONSUMPTION.—The stringency of the supply situation became marked in the early autumn of the year. The last of September saw the situation rapidly passing out of hand. Reports from almost every section of the country were to the effect that sugar could be had only in "drips." Many localities were under famine conditions. In Chicago 80 per cent of the wholesale grocers and manufacturers were reported by trade papers to be out of sugar the first week in October. (See Exhibit I for more detailed description of country-wide conditions.)

At the end of the last quarter of the year statistics showed supplies and consumption for the quarter and year as follows:

TABLE 8.—Sugar supply and consumption in the United States, fourth quarter and year, 1919.

(Basic figures, except those for 1919-20 beet and Louisiana cane sugars, which were reported to the Commission, are furnished by the United States Sugar Equalization Board.)

	Tons of 2,240 pounds.	
	Oct. 1, 1919, to Jan. 1, 1920.	Year 1919.
STOCKS, OPENING OF PERIOD.		
Refiners' raws (refined basis).....	51,749	18,522
Refiners' refined.....	39,040	47,737
Beet sugar.....	13,929	464,000
Louisiana direct consumption sugar.....		85,000
Total stocks, opening of period.....	104,718	615,259
RECEIPTS AND PRODUCTION FOR PERIOD.		
Refiners' receipts (refined basis).....	496,804	3,626,130
Beet-sugar production.....	552,091	624,172
Louisiana direct consumption sugar production.....	101,413	107,413
Receipts foreign raw and washed sugars to direct consumption.....	18,859	47,913
Receipts Hawaiian refined sugar.....	1,216	10,676
Total supplies for period.....	1,275,131	5,031,563
STOCKS, CLOSE OF PERIOD.		
Refiners' raws (refined basis).....	13,566	13,566
Refiners' refined.....	38,680	38,680
Beet sugar.....	224,325	224,325
Louisiana direct consumption sugar.....	4,115	4,115
Total stocks, close of period.....	280,686	280,686

TABLE 8.—*Sugar supply and consumption in the United States, fourth quarter and year, 1919—Continued.*

	Tons of 2,240 pounds.	
	Oct. 1, 1919, to Jan. 1, 1920.	Year 1919.
CONSUMPTION FOR PERIOD.		
Refiners' sales.....	535,347	3,640,143
Beet-sugar sales.....	341,695	893,947
Louisiana direct consumption sugar sales.....	97,298	188,298
Sales foreign raw and washed sugars to direct consumption.....	18,859	47,913
Sales Hawaiian refined.....	1,246	10,676
Total sales.....	994,445	4,750,877
Less refined exports through refiners ¹	² 184,609	³ 679,520
Total consumption for period.....	809,836	4,071,357
Pounds per capita consumption, based on a population of 105,000,000 for July 1, 1919 ⁴	17.3	86.9

¹ As reported by the refiners to the Sugar Equalization Board.

² Of this total 35,060 tons went to neutrals; the remainder was sugar belonging to the royal commission, which was being refined in the United States on toll.

³ Of this total 189,133 tons went to neutrals, the remainder, belonging to the royal commission, consisted of 42,727 tons of the 1917-18 crop sugar and 447,660 tons of the 1918-19 crop.

⁴ See note 3, Table 5.

Consumption, it will be noted, dropped to 17.3 pounds per capita for the quarter—a rate of 69.2 pounds per capita per annum; but this decline was not wholly due to any weakening in the strength of demand, but rather in part to the fact that consumption in many localities had gone to the limits of the available supply. The year's consumption was 86.9 pounds per capita.

Exportation of refined during the quarter amounted to a total of 184,609 tons, of which 149,549 tons had, as Cuban raws, been purchased from the board by the royal commission, and were refined for this commission by American refiners, on toll. The remaining exports of 35,060 tons were largely contracted for before July 15, 1919.

Beet-sugar sales, according to the figures of the table, based upon reports made by producers to the Commission, aggregated a total of 341,695 tons for the quarter. The total sales out of the 1919-20 crop up to the close of the year amounted to 379,942 tons. This was 59 per cent of the total 1919-20 crop. (See Table 23.) As compared to other years the crop as a whole moved rapidly, in spite of transportation difficulties. The average sales for the five years just preceding were 35 per cent of the total crop by the close of the calendar year. This rapid movement of the crop as a whole, however, does not tend to invalidate the evidence that certain companies for longer or shorter periods unduly delayed the marketing of the crop, since production was relatively much more rapid than marketing. At the close of the year 37 per cent of the outturn to date remained in the hands of the producers.

Louisiana cane-sugar sales, as indicated by the above table, amounted to 97,298 tons during the quarter. The final returns to the United States Department of Agriculture show that the total production for the season was 108,036 tons. The sales at the close of the year, therefore, amounted to 90 per cent of the total crop.

The marketing was somewhat more rapid than that of the average year, a short crop, a brisk demand and prices both relatively good and stabilized, accounting for a comparatively rapid movement. (See Table 22.)

FACTORS ACCENTUATING SHORTAGE.—On the demand side of the equation there appeared to be during this quarter no slackening. Even with the canning and preserving season over, the pressure on producer and refiner for sugar remained strong. Manufacturers were particularly urgent in their requests, though relatively better stocked and receiving more than were jobbers.

Supplies that had been counted upon to partially relieve the situation failed to appear. The Louisiana cane-sugar crop was a disappointment, making an outturn of less than 50 per cent normal. Several thousand tons of Hawaiian sugars that were expected on the west coast for eastern shipment failed to arrive until the close of the year. (See p. 56.) The beet-sugar crop fell below its earlier estimates, the final outturn of 648,617 tons amounting to only 81 per cent of the July estimate, although its movement into consumption, taking the country and season as a whole, was relatively rapid. (See p. 74.)

Strikes among New York dock laborers and in refineries and transportation difficulties rendered deliveries uncertain and distribution uneven, both as to locality and as to time, without, of course, any lessening of total supplies for the season. They were, however, contributing causes of local and temporary shortages.

Wholesale grocers experienced growing difficulty in getting supplies, because, as in the previous quarter, they were restricted in the price which they could pay for new beet sugar purchased from the producer. On the other hand, the beet-sugar producer was permitted to sell at a higher price to the manufacturer than to the wholesale grocer. (See p. 107 for further discussion.)

Stocks of wholesale grocers declined from July 1 on to November 1, 1919 (see Table 21) and were on the latter date only one-third of what they were on the former. The stocks of manufacturers of nonessentials containing sugar, on the other hand, while slightly lower September 1 and October 1, were higher November 1 than on July 1.

On November 1 wholesale grocers' stocks were less than one-third of what they were on the same date in 1918, the year restrictions were on. Manufacturers of nonessentials, on the other hand, had on November 1, 1919, stocks more than twice what they had a year earlier.

Wholesale grocers reporting to the Bureau of Markets²⁸ for both November 1, 1918, and November 1, 1917, show stocks on the former date 178.4 per cent of those which they held on the latter date. Assuming that reports from wholesale grocers to the Commission for November 1, 1919 and 1918, and to the Bureau of Markets for November 1, 1918 and 1917, were equally representative of stocks in all wholesale grocers' hands, stocks on November 1, 1919, were but 57 per cent of stocks held on November 1, 1917. No report was made by manufacturers to the Bureau of Markets for November 1, 1918 and 1917.

²⁸ Food Surveys, Vol. II, No. 14.

While it is not possible to state whether or not stocks of manufacturers of nonessentials were relatively lower November 1, 1918, than were those of wholesale grocers, it is clear that during the year following, when shortage conditions due to growing demand were more acute than in 1918, the stocks of the former had doubled, while those of the latter had dwindled to one-third.

The delay in the Government's decision with respect to future control and the consequent uncertainty in the trade was an invitation to the speculator. Vast quantities of sugars were bought by the "secondhand" dealer, who sold either to the regular wholesale grocer, to the manufacturer, or to another secondhand dealer. The wholesale grocer found that he was unable to buy through the customary channels and must either go without or buy the high-priced sugar from the speculator.

Both speculating and hoarding on the part of consumers and dealers and the undue consumption and stocks of manufacturers, referred to above, were admitted by the board during the latter half of the year as probable conditions accentuating the shortage.

In his communication to James H. Post, under date of September 25, George A. Zabriskie, president of the board, said (see p. 53) :

Our observation has been that candy manufacturers have not only had their normal supply of sugar, but in many cases have anticipated their wants and been able to acquire sugar ahead at the expense of more essential industries.

In the board's announcement of its plans looking to the resumption of regulations on distribution, it was said (see p. 54) :

One angle of this [increased consumption of sugar] is shown in the heavy increased sale of candy, soft drinks, ice cream, etc., which in some sections for the next three months must now be curtailed.

In the letter of Mr. Zabriskie to the Attorney General, written October 27, 1919, these statements appeared (see p. 137) :

There is undoubtedly a large amount of speculation and even hoarding in process in the matter of sugar, all in anticipation of further rises in sugar prices * * *. If some department of the Government could be given the power to absolutely ration the candy and sweet-drink manufacturers so as to reduce American consumption of these trades, it would afford protection to the householder * * *. The local sugar shortages in various parts of the country during the past month have been due not so much to the shortage of essential supplies as to a considerable amount of hoarding, largely among the consumers, and a certain amount of speculation on the part of dealers.

The Commission's information with respect to the speculating and trading of unnecessary middlemen, which is given in greater detail in its treatment of the 1920 situation (see p. 87), confirms the board's statements. During the five months of 1919, June to October, inclusive, before speculation was yet at its height, one refining company alone sold 15,607,200 pounds to one sugar jobber, the one whose speculative operations are described on pages 92, 93. This refining company is one of the smaller of the 15 refining companies, having but 4 per cent of the total refining capacity of the country. Considerable quantities of the sugar handled by the sugar jobber, as shown in the discussion of the 1920 situation, are sold to other wholesale dealers, at the usual wholesaler's margin.

RELIEF MEASURES.—The rapidity of movement of refined sugars during September, and the threatened depletion of available sup-

plies of raws before the end of the year, suggested to the board the need of a check on and a guidance of consumption. It was found at the close of the third quarter that the quantities of raw sugar estimated to arrive before the close of the year were less than had actually arrived in the same period in 1918.²⁰

On October 2 the board issued the following announcement:

Under date of September 25, Mr. George A. Zabriskie, president of the United States Sugar Equalization Board, addressed the following communication to Mr. James H. Post:

"In view of the present abnormal demand for sugar and the inability to keep pace with it, also considering the limited supply, it is the opinion of the board that a committee on distribution should be organized by you, not only to stop duplication of orders, but to give such preferences as were suggested by the Food Administration somewhat on the order of the A, B, C, D, E class arrangement.

"Confectioners and candy manufacturers, for instance, ought to be cut down to 50 per cent of their last year's requirements, bakers to 70 per cent, and other less essentials regulated accordingly, while preference should be given to manufacturers of medicines, fruit preservers, condensed-milk companies, etc. Our observation has been that candy manufacturers have not only had their normal supply of sugar, but in many cases have anticipated their wants and been able to acquire sugar ahead at the expense of more essential industries.

"Will you kindly take this matter up with your committee, and greatly oblige."

Pressing this further, Mr. Zabriskie appeared before the American refiners committee, at their meeting on Tuesday, September 30, and asked that a committee be appointed to supervise the distribution of cane sugar by the Atlantic coast and Gulf refiners for the balance of the year. For this purpose the following committee was appointed by Mr. Post: Mr. J. A. McCarthy, Mr. Edward Wemple, Mr. Charles Bruyn, Mr. Edward Y. Crossmore, Mr. Frank C. Lowry (chairman).

In order to carry out the Food Administration's instructions plans are being formulated by this committee, and a definite announcement will be made as soon as possible.

Roughly, it appears that for the balance of the year there is sufficient cane sugar available to allow for its distribution in the States covered by the cane refiners last fall and winter in about the same amount as was distributed in September and October, 1918. Buyers in the cane-sugar territory can, therefore, use the amounts received during these months as an index of their probable supply during the remaining three months of this year.

At the meeting of the American refiners' committee September 30, referred to in the above announcement, it was pointed out by the refiners that their supplies were inadequate to care for the needs of the eastern portion of the country without restriction, and suggestion was made that the country be zoned. Plans along this line were laid and were carried out at a later date.

In further pursuance of the board's plans for controlling distribution, George A. Zabriskie, president of the board, addressed the following letter to H. H. Rolapp, chairman of the Food Administration sugar distributing committee:

We have arranged with the refiners' distribution committee here to look after the equitable distribution of cane sugar in the East, and as beet sugar will be available to care for the requirements west of Chicago after October 15, will you be so good as to advise the beet-sugar manufacturers that they are expected to supply the needs of that territory after that date? Then, as the Michigan and Ohio beets will be available on November 1, we will ask the eastern refiners to take care of all of that territory east of the Buffalo-Pittsburgh line, leaving all of the territory west of that line to be taken care of by the beet-sugar people.

This is along about the same lines as the sugar trade operated last year, and

²⁰ Statistics furnished by the United States Sugar Equalization Board.

we believe that it will go a long way toward solving the problem of equitable distribution of sugar in the United States during the balance of the year.

On October 10 the board outlined the sugar situation and its plans for control as follows:

Figures just compiled show that during the first nine months of the current year approximately 500,000 tons more sugar was delivered to the domestic trade than was delivered during the corresponding period in 1918. Notwithstanding this 18 per cent increase in distribution, as compared with a normal average increase in consumption of about 4 per cent, the talk of "shortage" persists. These figures, however, are a clear indication of the extraordinary consumption of sugar that has taken place, and the fact must be recognized that directly or indirectly the American people have greatly increased their use of sugar. One angle of this is shown in the heavy increased sale of candy, soft drinks, ice cream, etc., which in some sections for the next three months must now be curtailed.

The West should secure immediate relief from the harvesting of an average domestic beet crop which within a week will be in full swing. Additional supplies will be forthcoming from Louisiana after November 1, and while this crop is disappointing, amounting to only 100,000 tons, it will serve to supply the southern territory until the new crop of West Indian sugar is available next January. The eastern territory for the balance of the year is dependent upon the remaining old crop Cuban supplies; therefore conservation will have to be practiced, and to meet this condition a distributing committee, with Frank C. Lowry as chairman, has been appointed at the request of George A. Zabriskie, president of the United States Sugar Equalization Board, to supervise and direct the distribution of all refined sugar by the eastern refiners.

In 1917 and 1918 the eastern cane refiners withdrew from the territory west of Pittsburgh and Buffalo on October 1, and the Middle West was supplied entirely by beet sugar. This year the eastern refiners will take the same step on October 15, and after that date and until the new year, west of Pittsburgh and Buffalo and north of the Ohio River must be supplied entirely by the domestic beet-sugar producers. After November 1 the Louisiana interests will be able to take care of the territory south of and including North Carolina, a part of Kentucky, and the southern part of Arkansas, just as they did a year ago after October 24.

While the committee in charge of distributing the remaining eastern cane has not yet had time to complete its plans, roughly the situation appears to be that for the remainder of this year about the same quantity of cane sugar will be available for October, November, and December distribution to the trade in the territory to be covered as was distributed in August, September, and October, 1918. In other words, buyers in these markets will probably receive about the same amount of sugar each month for the balance of this year as was delivered to them, say, in October, 1918.

In the West and South freer distribution is possible, as the beet-sugar interests should be able to distribute by January 1, 400,000 tons of sugar. In the fall of 1917 they sold 350,000 tons of new crop sugar before January 1, 1918. With a larger crop and without the interference that was experienced in the winter, a better record should now be made. In 1918 only 200,000 tons were distributed before January 1; therefore it will be seen that if the 1917 plan is followed out, considerably more beet sugar can be marketed this year than was sold a year ago. A fairly free and equitable distribution can be secured if each beet factory will duplicate its sales of 1917, and those buyers who secured sugar in that period from a particular factory should now be able to look to that same source of supply for a like amount. This will give substantially the same result as though the beet-sugar distributing committee in Chicago was still functioning, as the 1917 distribution was conducted under the committee's direction, and the orders were turned over to the factory in the best position to furnish the sugar.

On the same date the Food Administration announced to the public its order to eastern and Gulf refiners, as follows:

In view of the limited supply of cane sugar available for the balance of the year the United States Food Administration, acting at the request of the United States Sugar Equalization Board, has issued the following order to all eastern and Gulf refiners:

"Effective October 15, and until further notice, you are directed not to ship or deliver any sugar to any point west of Pittsburgh and Buffalo and north and west of the Ohio River."

Supervision of the distribution of sugar in the territory east of the line stated has been undertaken at the request of the United States Sugar Equalization Board by a subcommittee of the American refiners' committee consisting of Messrs. Frank C. Lowry (chairman), Charles Bruyn, Edward Y. Crossmore, J. McCarthy, and Edward Wemple.

The beet-sugar factories of the Western States are commencing to turn out sugar, and the supply from these factories, together with the Louisiana production, should take care of the area west of the territory referred to. As the production of beet and Louisiana cane increases, the area supplied from these sources will gradually be extended eastward.

There seemed to be some question in the minds of beet-sugar manufacturers as to whether the zoning order applied to their output. In response to a resolution adopted September 26 by the United States Sugar Manufacturers' Association, at a meeting in Chicago, which called for a continuance of control by the board over sugar for the coming year (see p. 116), the board, on October 1, made public the following:

We have arranged with the refiners' distribution committee to look after an equitable distribution of sugar in the East; and as beet sugars will be available to care for the requirements west of Chicago after October 15, the beet sugar manufacturers (western) are expected to supply the needs of that territory after that time. Then as the Michigan and Ohio beets will be available on November 1, we are asking eastern refiners to take care of all that territory east of the Buffalo-Pittsburgh line, leaving all of the territory west of that line to be taken care of by the beet-sugar people. This is about along the same lines as the sugar trade operated last year, and we believe it will go a long way toward solving the problem of equitable distribution of sugar in the United States during the balance of the year.

It would appear from the board's reply to this resolution that no attempt was to be made by either the board or the Food Administration to exercise control over beet-sugar distribution, except by suggestion, since the board had no jurisdiction, by agreement or otherwise, over new-crop sugars, and the Food Administration was not exercising its power of control in this direction. As a matter of fact, considerable quantities of Louisiana sugar came north and east in November and December, and it was necessary for the Government itself to transport beet sugar from the beet-sugar producing regions to the Atlantic coast before the close of the year.

Nevertheless, the weekly announcement of Edgar's Sugar House, sugar jobber, for October 10 contains this paragraph, which seems to indicate that the board at first contemplated control over new beet sugar:

We have been requested by the equalization board to hold our locally-produced sugars for the territory between Chicago on the West and Buffalo and Pittsburgh on the East. Our offerings will be also restricted to territory north of the Ohio River, with the exception of a few cities in northern Kentucky and western Virginia and West Virginia. Western refiners have been requested by the equalization board to take care of the territory from Chicago westward.

-Under date of November 7, the board corrected the impression that it had restricted the area of beet-sugar distribution:

NOVEMBER 7, 1919.

To the trade:

It appears that an impression prevails that the equalization board has confined the sale of beet sugar to certain prescribed territory. This is not a fact. The equalization board has no control over the present beet crop and is willing it would be sold anywhere in the United States.

The only control over present distribution that the equalization board is exercising is on the balance of the 1919 Cuban crop. The shipment of these cane sugars west of Pittsburgh and Buffalo was prohibited because the figures clearly show that until January 1 the available supply is not more than sufficient to take care of the eastern markets even on the restricted basis of consumption in effect under the certificate plan in November, 1918.

Because of the rapid disappearance of the raw sugars available to the refiners, Frank C. Lowry, chairman of the distributing committee of the American refiners' committee, announced early in November a readjustment of its plans, whereby allotments from November 15 to December 1, a two-week period, were reduced to one-fourth of what they were from October 15 to November 15, a full month. This amounted to a 50 per cent reduction. Since allotments to manufacturers of nonessentials had for the month already been cut to 50 per cent of their normal requirements as determined by 1917 orders, this reduction for the latter half of November put them nominally on a 25 per cent basis. As to December, Mr. Lowry said:

The December distribution will have to be determined on later. This will probably be equally divided between the remaining eastern cane sugar and the domestic beet sugar that is being bought by the equalization board to be shipped east of Pittsburgh and Buffalo. Combined, this will give the trade in round figures approximately 50 per cent of the amount that they received from refiners in November, 1918. This reduction in supplies is a keen disappointment, but there is no way of overcoming it. Further embarrassment has been caused by the failure of the Hawaiian sugar contracted for to be shipped east as promptly as expected, and the result is some 10,000 tons of this sugar, which should have been here by the first part of December, will not arrive until the last of December. The committee was also disappointed in the amount of beet sugar that they were able to secure. These two facts, combined with the reduced supply available from Porto Rico and Cuba, accounts for the difference between the plan of distribution for the period October 15 to January 1, and what can actually be accomplished.

On the Pacific coast, action similar to that taken on the Atlantic and Gulf coasts was adopted with respect to allotting the refined cane sugar of the California & Hawaiian Sugar Refining Co. and the Western Sugar Refinery. The sugar of these two companies, being old-crop sugar, was, by the purchase agreement of the raws, under the control of the board. A committee called the Pacific coast sugar equalization committee was appointed, consisting of the following members: Ralph Merritt (chairman), George M. Rolph, P. C. Drescher, W. H. Hannam. Since there were also beet-sugar factories in this locality, 4 out of a total of the 10 in California volunteered to have such part of their output as went to buyers of that region distributed under the supervision of this committee. There were 37,000 short tons of the beet sugar thus distributed, which was sold at not more than 12.5 cents a pound, seaboard basis. With the California & Hawaiian Sugar Refining Co. withdrawn from the market at this time, and the Western Sugar Refinery greatly restricting its allotments, and with the two different kinds of sugar sold in this locality at different prices, the situation could have been handled much more easily had all the beet factories cooperated with this committee, all placing their coast distribution at the disposal of the committee.

Supplementary to the control over the distribution of the refined cane sugar by the zoning plan and as a measure of relief to the east-

ern portion of the United States, whose supplies of sugar were nearly exhausted, the board purchased from various sections of the beet-sugar producing country and transported eastward some 30,000 short tons of beet sugar during this quarter. The distribution committee of the American refiners' committee directed its distribution.

Two restrictive measures were included in the above plan—confining the sales of the refined cane sugar to the Atlantic, Gulf, and Pacific coast zones, and rationing buyers of the refined cane.

Attempt was made by the distributing committee of the American refiners' committee, supervising the distribution of cane sugar in the Atlantic and Gulf zones, to get the situation in hand. With a view of pooling the refiners' orders, a survey of the quantities of sugar delivered to buyers in this territory from January 1 to October 15, 1919, together with the refiners' orders, was made. On a basis of this survey a revision of orders was made restricting or entirely withholding supplies to those whose deliveries appeared to be excessive and increasing the allotments of those whose deliveries appeared to have been much below their normal requirements. The survey disclosed that the filling of the orders from manufacturers then on the refiners' books would have absorbed their entire output for the remainder of the year.

The pooling of all refiners' contracts, referred to above, is outlined in the following statement issued by the board:

To the trade, November 7, 1919:

The United States Sugar Equalization Board, a United States Government agency, being charged with the responsibility of seeing that there is an equitable distribution of sugar, found it necessary early in October to assume supervision over the distribution of sugar by refiners, who previously in 1919 had been under no restraint in making sales.

To insure an equitable distribution and to conserve the supplies remaining available for distribution before January 1, 1920, it became necessary to allot sugar to buyers on the basis of the November, 1918, distribution to said buyers, and such allotments were made to the different refineries in the best position to take care of the business, without reference to any contracts booked previously, and remained undelivered either in whole or in part on October 15, 1919.

It must therefore be understood that any deliveries under this allotment system made in the period between October 15 and December 31, 1919, apply against any contracts that any buyer may have with any refiner, regardless of whether said deliveries of sugar are made by the refiner with whom buyer originally had contract obligation, and buyers' acceptance of any delivery so made will be construed as his consent to this arrangement.

This was supplemented on December 9 by the following:

Supplementing our announcement of November 7, it must also be understood that any deliveries of beet sugar under the present allotment system must also apply against any contracts that any buyer may have with any refiner, and buyer's acceptance of deliveries so made will be construed as his consent to this arrangement.

Undoubtedly the inequitable distribution of the past as to time, locality, and classes was partially rectified and of the future to some extent prevented by the above restrictive measures, but this rationing evidently came too late and lacked thoroughness. It would seem also that the consumption of manufacturers should have been strictly limited to such proportion of the total available sugar as to have given the householder a fair ration for table use; that the speculator and dealer in "secondhand" sugar should have been completely elimi-

nated; that a survey of stocks in manufacturers' and dealers' hands should have been made from time to time; and that the relatively excessive stocks of manufacturers should have been prevented and, where already acquired, should have been pared down under the anti-hoarding provision of the food-control act.

It would appear further, that rationing should have been extended to the new beet and new Louisiana cane sugars, although there were no agreements between the Government and the producers of these new sugars as to price or distribution. While the board acknowledged responsibility for the distribution of the old crop sugars (see statement of Nov. 7, 1919, p. 57), it denied having any rationing power over either new or old sugars.⁸⁰ This power, however, was, under the food-control act, lodged in the Government, and, in the latter part of the year delegated to the Department of Justice, and might have been exercised through its licensing power, whether an agreement existed or not.

The zoning system, or, more accurately, the restricting of the area of distribution for refined cane sugar, for no restriction was placed on new beet and new Louisiana cane sugars from entering the consumption area of refined cane, was resorted to because new-crop sugars in other regions were on higher-priced levels. Those regions would have taken as much of the lower-priced cane sugar as could be secured before buying the higher-priced sugars produced in their own neighborhood. To attempt to equalize distribution later might have required considerable back haul; moreover, the new sugars were not under the control of the board, and it might have been found impossible to equalize distribution at a later time. Had factory and refinery prices of new and old crop sugars been on the same level, less need of zoning would have existed, though even then, under conditions of shortage, zoning would have prevented uneconomic "cross freighting." Nevertheless, more complaint arose out of this method of relieving the situation than out of any other, and ultimately caused it to be specifically prohibited in the act passed by Congress at the close of the year. (See p. 138.)

In part, this opposition, no doubt, was due to the fact that there was not enough sugar to go around, and inability to secure sufficient sugar was referred to the most obvious feature of the Government's

⁸⁰ The United States Sugar Equalization Board (Inc.) is a corporation organized July 11, 1918, under the laws of the State of Delaware. Its term of life, by its articles of incorporation, extends to July 14, 1923, unless "sooner dissolved in the manner provided by law." It has such commercial powers as were granted to it by its articles of incorporation, or as are conferred upon it by the corporation laws of Delaware. Its governmental powers, both under its articles of incorporation and by virtue of the President of the United States becoming the sole stockholder (see p. 28), are such as are delegated to it by the President. (See Exhibit XIII for articles of incorporation.)

The powers of licensing, rationing, and exercising the embargo were never delegated to it. On this point Mr. Zabriskie, president of the board, wrote to the President, Jan. 16, 1920, as follows (see p. 140):

"We desire to point out that the board has never had the power of licensing and the other methods of control given originally by the food control act and continued in part by the McNary act through the year 1920. The operations of the sugar board have been based on voluntary arrangements and agreements with producers and refiners and without the use of any licensing authority. The licensing and other control methods of the food control act were in the Food Administration, and some months ago were lodged in the Department of Justice. That department now has the sole authority in respect to licensing, hoarding, profiteering, and unfair practices, over all foods including sugar, and these administrative and regulatory powers are now being exercised by it; it could also establish a rationing plan if such drastic control seems to the Government advisable."

The power of embargo, a war emergency power, delegated to the President by Congress, was exercised by the War Trade Board, and is now lodged in the Department of State.

control. There was, however, genuine basis for much dissatisfaction. Contracts of long standing between buyers west of the Buffalo-Pittsburgh line and eastern refiners were on the latter's books. To be compelled to lose the contract on the lower-priced sugar for the higher beet would cause considerable loss to the buyer in all cases where the additional cost could not be included in his selling price. This difficulty was finally adjusted by the board's absorbing the difference where both bona fide contract with the refiner and a loss, because of having to take higher-priced sugar, could be shown. The method of adjustment appears in the following notice, issued to the trade, under date of October 29, 1919:

To all Atlantic and Gulf refiners:

We desire to advise you that, following the ruling of the United States Food Administration, of October 10, directing you not to ship or deliver any sugar to any point west of Pittsburgh and Buffalo and north of the Ohio River, the United States Sugar Equalization Board understand that certain of your customers within the territory mentioned desire to purchase beet sugar direct to fill the contract they had with you. We desire to advise you, in the event of any of your customers who have bona fide contracts, which were outstanding with you prior to October 10, 1919, such customers, provided they can show that they have suffered any loss by reason of our action, may buy beet sugar at a price not to exceed 10½ cents a pound f. o. b. factory, plus actual freight, and bill to your company for the difference between this price and the price stated in the contract with you, basis 9 cents, with the usual freight added from refinery, for which reimbursement will be made by us.

It must also be understood and agreed that such contract holders should apply the first purchase of beets against outstanding contracts.

Yours, very truly,

(Signed) UNITED STATES SUGAR EQUALIZATION BOARD (INC).
GEORGE A. ZABRISKIE.

But the more serious objection to zoning arose from the fact that in very many cases, where contracts of buyers west of the Buffalo-Pittsburgh line with eastern refiners were canceled, these would-be buyers were unable to secure beet sugars at any price. The connections of these dealers or manufacturers with the refiners were of long standing. They may never have purchased from the beet-sugar producers. In many cases they were flatly refused any consideration by the producer, on the ground that there was not enough sugar to go around, and, since they had never purchased sugar of him, he had neither basis nor reason for making them an allotment. Numerous complaints have come to the Commission from dealers and manufacturers, especially in the Middle West, that, deprived of their sugar, they were put to serious disadvantage with competitors who were better situated with respect to sugar supplies, and who used this better position to their advantage in selling other lines.

Feeling of resentment in this Middle West section was intensified when the board bought and transported beet sugar to the eastern States, both because it was felt that there was great need for it in that section, and because it was sold in the East for less than it could be bought for in the West.

Section 5. Survey of the year 1919.

SUPPLIES.—The following table shows the supplies for 1919, the sources from which they came, and the disposition which was made of them:

TABLE 9.—United States sugar supplies, 1919, sources and disposition.

[Basic figures, except for 1919-20 beet and Louisiana cane sugars, which were reported to the Commission, furnished by the United States Sugar Equalization Board]

I. SUPPLIES AND SOURCES.		Tons of 2,240 pounds.
Balance 1917-18 Cuban crop.....		14,589
Cuban crop, 1918-19 ¹	3,971,776	
Less Cuban consumption and sugars not accounted for.....	136,953	
Balance under contract to United States.....	3,834,818	
Less one-third purchased by royal commission.....	1,278,273	
Balance for the account of the United States.....	2,556,545	
Less quantity exchanged with royal commission, shipped to United States from 1917-18 crop.....	13,022	
Quota 1918-19 Cuban raws to United States.....	2,543,523	
Refiners' receipts Hawaiian raws.....	513,386	
Refiners' receipts Porto Rico and St. Croix raws.....	312,142	
Refiners' receipts Philippine raws.....	70,380	
Refiners' receipts Javan raws.....	9,974	
Refiners' receipts of other full-duty raws.....	25,805	
Refiners' receipts of raws from continental United States.....	38,042	
Total raw sugars available to United States.....	3,527,841	
Equivalent in terms of refined.....	3,280,892	
Refiners' stocks, Jan. 1, 1919 (refined basis).....	66,259	
Foreign raw and washed sugar to direct consumption.....	47,913	
Hawaiian refined.....	10,676	
Louisiana direct consumption (balance 1918-19 crop).....	91,000	
Louisiana direct consumption (1919-20 crop produced to Dec. 31).....	101,413	
Total cane-sugar supplies in terms of refined.....	3,598,153	
Beet (balance 1918-19 crop).....	483,905	
Beet (1919-20 crop produced to Dec. 31).....	604,267	
Total beet-sugar supplies.....	1,088,172	
Total supplies in terms of refined.....	4,686,325	
Less balance sugar refined on toll for royal commission from 1917-18 Cuban crop still due Jan. 1, 1919, and exported during the year.....	42,727	
Total quota to the United States, 1919.....	4,643,598	
Balance sugar refined on toll for royal commission from 1918-19 Cuban crop still due Jan. 1, 1920.....	52,340	
Total 1919 supplies available to the United States.....	4,695,938	
II. DISPOSITION.		
Consumed by the United States.....		4,071,357
Exports:		
Raws taken by Cuba for export to neutrals—United States' share of two-thirds—in terms of refined.....	30,511	

¹ Final figures on Cuban 1918-19 crop are from the report of the Cuban producers' committee, Dec. 23, 1919 (see Exhibit XIV).

² Consisting almost wholly of 1918-19 crop received in 1919.

³ Refined sugar is equivalent in weight to approximately 93 per cent of 96° centrifugal raw sugar.

⁴ A part of this balance due the royal commission, amounting to 19,987 tons, was later canceled, and the remainder of 32,353 tons is included in the exports of 1920. (See Table 27.)

Exports:—Continued.	Tons of 2,240 pounds.
Equalization board's f. o. b. Cuba exports of raws to neutrals, in terms of refined-----	124, 251
Exports of refined-----	189, 133
	343, 895
Stocks, Jan. 1, 1920:	
Refiners' raw and refined-----	52, 246
Beet sugar-----	224, 325
Louisiana cane sugar-----	4, 115
	280, 686
Total -----	4, 695, 938

The above table shows that the total available supplies for 1919 were considerably larger than those estimated in November, 1918 (see Table 4), although in domestic cane, Porto Rican, and Philippine sugars, the estimate was somewhat too high.

SHORTAGE CONDITIONS.—Notwithstanding the fact that supplies which in the beginning of the year had appeared to be sufficient, were available, shortage prevailed, becoming acute the latter half of the year. This would seem to point to a rapidly growing demand, which was probably due in part to hoarding.

EXPANDING DEMAND ANALYZED.—Naturally, with the removal, following the armistice, of the restrictions on sugar buying and using laid down by the Government, the inevitable rebound which takes place under such circumstances carried the consumption of sugar in the United States back to and beyond normal, the per capita figure during the second quarter of 1919 having reached, apparently, nearly the highest point in the history of the country.

High wages contributory to increased consumption.—But the mere rebound from a state of restriction to one of free purchasing was not of sufficient force to produce the great drain on the market which had reached an almost unprecedented stage of seriousness by the autumn of 1919. Had the rebound been the only factor probably no great inconvenience would have been felt. Effective demand, however, was far greater than it had been in prior years. This increase in effective demand was due in part to the country's great prosperity. People had more money than prior to the war, and they felt freer to spend for candies, sweets of all kinds, and soft drinks. Physical workers, who naturally crave and require sweets, were consuming far more sugar than before.

Prohibition of intoxicating liquors.—While statistics concerning the effect of prohibition on sugar consumption are not yet available, it is generally conceded that either directly, as the result of physiological needs, or indirectly, as the result of money diverted from drink to the purchase of sweets, it has largely contributed to the increased consumption of sugar.

In the hearings before the Senate subcommittee of the Committee on Agriculture and Forestry, in October, 1919, George A. Zabriskie, president of the United States Sugar Equalization Board, stated, "We found in the Food Administration that when we took alcohol away from a soldier that he craved sweet things." No doubt the great quantity of sugar and sweetmeats consumed by the American soldiers, both here and abroad, was a factor in the situation, while thousands of soldiers returning to the United States with a greater taste for sweets acquired in the Army, must have augmented domestic consumption.

Herbert Hoover, the Food Administrator, in testifying before a subcommittee of the House of Representatives, in October, 1919,¹ stated that prohibition had had the effect of increasing the consumption of candy and sweet drinks to such an extent that a minor shortage in sugar existed. Apparently prohibition is one of the causes of the greatly increased number of candy stores, ice cream establishments, and soft-drink manufacturers, the consumption of sugar by which has been a large factor in draining the supply. Mr. Hoover, in the same testimony referred to above, stated that 2,400,000 pounds of sugar were used yearly by the confectionery and soft-drink trades—that is, about 1,071,000 long tons, as compared with 433,036 tons in 1917, as estimated by the United States Food Administration, or an increase of 147 per cent.

It is clear from the above that so far as the United States was concerned, taking the year 1919 and country as a whole, a marked expansion in demand, rather than contraction in supply, was the fundamental cause of the shortage. Sugar was available in larger supply than ever before, yet the demand was not satisfied. Perhaps it might have been met by measures to augment somewhat the available supplies by increasing the importation of raws from other countries; to conserve stocks already secured, by checking in larger measure the exportation of raws and refined; to divert consumption from less essential uses; to equalize distribution and prices, both as to class of sugars and as to times and localities; and to eliminate speculation, requiring that sugar should pass direct from producer to consumer.

IMPORTATION OF FOREIGN RAWS, OTHER THAN CUBAN, SMALL.—The following table shows what the importation of full duty raw sugars was in 1919, as compared with that of previous years:

TABLE 10.—*Importation full-duty raw sugars, by calendar years, 1910-1919.*¹

[Quantities in tons of 2,240 pounds each; sugars on raw basis.]

Year.	Quantity.	Year.	Quantity.
1910.....	133, 879	1915.....	128, 446
1911.....	² 238, 948	1916.....	175, 654
1912.....	³ 86, 805	1917.....	128, 262
1913.....	⁴ 21, 516	1918.....	27, 436
1914.....	46, 219	1919.....	⁵ 61, 263

¹ Monthly Summary of Commerce and Finance of the United States. December issues for years 1912, 1913, 1916, and 1919.

² Includes 13,917 tons of beet sugar not above No. 16 Dutch standard in color

³ Includes 65,956 tons of beet sugar not above No. 16 Dutch standard in color.

⁴ Includes 16,040 tons of beet sugar not above No. 16 Dutch standard in color

⁵ After Oct. 1, 1913, sugars above No. 16 Dutch standard are included in the figures of the table, but the quantity of such sugars is negligible

⁶ Evidently includes considerably more than refiners' receipts, which are given by the United States Sugar Equalization Board as 35,779 tons for 1919.

That this importation might have been materially increased had the matter been taken in hand in time is highly probable. The explanation of the small import in 1918 lies in the policy pursued that year by the international sugar committee, whereby these sugars were largely allotted to Canada.

¹ Hearings before Subcommittee No. 3 of the Select Committee on Expenditures in the War Department, House of Representatives, Oct. 29, 1919.

The table below shows the countries from which full-duty sugars received by refiners and reported to the Sugar Equalization Board were imported in 1919, and the month in which they arrived. Relatively little, it will be noted, came in the latter half of the year. The total for the year, 35,779 tons, is much less than the quantity shown in the table above as reported by the Department of Commerce. In the latter quantity full-duty sugars passing directly into consumption which were not handled by the refiners are included.

TABLE 11.—*Importation full-duty raw sugars, 1919, by months and by countries from which imported.*

[As reported by refiners to the Sugar Equalization Board, in tons of 2,240 pounds, all sugars on raw basis.]

Month.	Haiti.	Honduraa.	Java.	Peru.	Santo Domingo.	Surinam.	Venezuela.	Total quantity.
January.....		214		1,261			127	1,702
February.....			600	3,196			1,010	4,806
March.....	1,373	133	3,905			858	337	6,586
April.....	1,168	2,995	2,400			32	3,025	9,540
May.....	1,332	202	3,069				292	4,895
June.....		399					1,667	2,066
July.....		811						811
August.....		1,821						1,821
September.....								
October.....								
November.....					1,266			1,266
December.....				946	157		933	2,036
Total.....	3,893	6,575	9,974	5,503	1,423	920	7,491	35,779

¹ Full-duty sugars passing directly into consumption which were not handled by the refiners are not included. This quantity is therefore much less than that given in Table 10 above, where such sugars are included.

The sources of all refiners' raw sugars in 1919, with the months in which they were received, appear in the table below, the column headed "Other foreign countries" including the receipts of the table next preceding:

TABLE 12.—*Refiners' receipts of raw sugars, by months and by countries from which derived, 1919.*

[As reported by refiners to the Sugar Equalization Board, in tons of 2,240 pounds each; all sugars on raw basis.]

Month.	Cuba.	Other foreign countries.	Hawaii.	Porto Rico and St. Croix	Phillipines.	Continental United States.	Total by months.	Total by quarters.
January.....	171,834	1,682	36,119	15,679	11,438	18,640	255,392	
February.....	283,060	4,833	46,017	33,054	17,925	13,069	397,958	
March.....	248,340	6,945	50,703	29,371	5,895	2,546	343,800	1,997,150
April.....	354,853	9,172	49,997	37,365	13,172	1,407	466,066	
May.....	352,092	5,097	59,167	59,167	8,385	470	448,258	
June.....	276,633	2,066	52,497	41,964	5,796	1,363	380,339	1,204,663
July.....	274,441	2,336	66,418	49,986	4,883	275	398,313	
August.....	214,451	296	70,566	31,556	1,921	235	319,054	
September.....	281,635		41,448	32,596		8	355,687	1,073,054
October.....	248,601		27,924	12,734		12	289,271	
November.....	161,701	1,266	3,181	4,507	774	14	171,423	
December.....	61,575	2,086	9,369	280	191	3	73,504	634,198
Total.....	2,929,336	35,779	513,386	312,142	70,380	38,042	3,899,065	3,899,065

¹ 927,349 tons, refined basis.
² 1,204,037 tons, refined basis.
³ 997,940 tons, refined basis.

⁴ 496,804 tons, refined basis.
⁵ 3,626,130 tons, refined basis.

* The "total quantity" shown in table 11 is the same as the total for "other foreign countries" shown in table 12, but the figures as reported by months do not always agree, there being an especially large discrepancy in the figures for the months of July and August, which agree, however, for these two months combined.

EXPORTS.—The sugar situation in the United States in 1919 was unlike that in early 1920. Attempt to embargo exports in the latter period, unless preceded by securing by contract a supply of foreign raws, would probably have resulted only in reducing by that much the importation of raws which might occupy the idle capacity of refiners. In 1919 two-thirds of the Cuban crop, less such as might be required for Cuban consumption, belonged by contract to the United States. The total Cuban crop amounted to 3,971,776 tons. Of this, 136,958 tons were consumed in Cuba. Two-thirds of the remainder amounted to 2,556,545 tons. This, by embargo, could have been retained in the United States.

The Cubans, however, succeeded in securing permission to export a certain quantity direct to various foreign countries. Altogether this amounted to 49,212 tons, of which, however, only two-thirds, or 32,803 tons, were finally charged against the share of the United States, the remainder being deducted from that belonging to the royal commission. Figures are not available to show how Cuban exports were distributed over the months of the year. The total, converted to a refined basis, appears in Table 13 below.

Sales made by the Sugar Equalization Board f. o. b. Cuba amounted to 150,105 tons, or, reduced to a refined basis, 139,598 tons. Of this total, 16,502 tons (15,347 refined basis) went to the United States. These sales were distributed over the year, as shown in the table below.

Exports of refined sugar made by refiners by permission of the board are also shown in this table. Of the refined, only exports made by refiners appear. Data are not available to show what the exports by others amounted to.

TABLE 13.—*Exportation from United States and Cuba of sugars available to the United States, by months, so far as data make possible, 1919.*

[Sugars refined on toll for the royal commission are not here included; for these see Table 14. Quantities in tons of 2,240 pounds; raws on refined basis. Figures furnished by the United States Sugar Equalization Board.]

Month.	Raw.		Refined. ¹	Total.
	Cuba's exports.	Equalization board's f. o. b. Cuba sales.		
January.....	(?)	.....	.....	(?)
February.....	(?)	.....	16,449	(?)
March.....	(?)	.....	12,740	(?)
April.....	(?)	.....	15,252	(?)
May.....	(?)	.....	27,372	(?)
June.....	(?)	.....	16,541	(?)
July.....	(?)	8,318	24,293	(?)
August.....	(?)	49,570	20,755	(?)
September.....	(?)	33,963	20,622	(?)
October.....	(?)	35,221	9,257	(?)
November.....	(?)	12,526	20,759	(?)
December.....	(?)	.....	5,044	(?)
Total board's f. o. b. Cuba sales.....	.....	139,598	.....	.....
Less board's sales to American buyers.....	.....	² 15,347	.....	.....
Total exports.....	³ 30,511	124,251	199,133	343,895

¹ Exports by refiners only, as reported by refiners to the equalization board.

² Data showing distribution, by months, of Cuba's f. o. b. exports and of the equalization board's sales to American buyers are not available.

From the above table it is clear that very considerable quantities of sugar which the United States might have retained were permitted to go elsewhere, even during the latter half of the year, at the height of the sugar shortage, though much, perhaps all, of the refiners' exports of refined shipped after July 15 had been contracted prior to that date.

If first consideration was to be given to the needs of the United States, encouragement of exports could be based only on the assumption that at the fixed price the supplies of the year would be greater than the demand.

During the first three months of the year, when the policy encouraging the exportation of sugar was formulated, supplies were passing out of the hands of refiners and producers at the rate of 81 pounds per capita per annum—a rate just sufficient to take the total supply estimated in November, 1918 (see p. 31), to be available for 1919, allowing nothing for the usual heavier demand later in the year. During April, May, and June, when exportation was continued, this movement of supplies from producer and refiner was proceeding at the rate of 102 pounds per capita per annum. For the five-week period, March 30 to May 3, according to data issued by the board and published in current trade papers, this movement was at the rate of 97,958 short tons weekly, or at the rate of 97 pounds per capita per annum. This rate of movement was a more reliable index of availability of an exportable surplus for the year as a whole than were refiners' stocks, frequently cited by the trade as being unduly large.

For a short time in the spring refiners' stocks were on the increase, and this increase was urged as a reason for encouraging exportation. During these months, however, shipments of sugar refined on toll contracts by the refiners for the Royal Commission on the Sugar Supply were far behind the board's schedule of shipments.

In the table below shipments of refined sugar to the royal commission, as scheduled by months and as actually made by months, are given. The scheduled shipments accumulated to the close of each month and the actual shipments and the arrearages so accumulated are also given.

TABLE 14.—*Royal commission sugar of the 1918-19 Cuban crop refined by American refiners on toll—scheduled and actual shipments of refined to the royal commission by months and accumulated arrearage at the close of each month, 1919.*

[Quantities in tons of 2,240 pounds. Data furnished by the United States Sugar Equalization Board.]

Month.	Scheduled shipments.	Actual shipments.	Scheduled shipments accumulated to close of month.	Actual shipments accumulated to close of month.	Accumulated arrearage at close of month.
January.....	22,000	.....	22,000	.....	22,000
February.....	36,000	9,141	58,000	9,141	48,859
March.....	63,000	21,026	111,000	30,167	80,833
April.....	93,000	64,303	204,000	94,470	109,530
May.....	65,000	73,591	269,000	168,061	90,939
June.....	65,000	74,950	314,000	243,011	70,989
July.....	45,000	40,810	359,000	283,821	75,179
August.....	37,000	1,490	396,000	285,311	110,689
September.....	35,000	12,800	431,000	298,111	132,889
October.....	35,000	60,710	466,000	348,821	117,179
November.....	34,000	39,075	500,000	387,896	112,104
December.....	.....	59,764	500,000	447,660	52,340
Total.....	500,000	447,660	.....	.....	.....

No specific sugar, either raw or refined, was set aside as belonging to the royal commission but from time to time the Sugar Equalization Board credited the refiner with certain quantities of raw sugar—107 tons of raw to each 100 tons of refined which had been allocated to the royal commission. These allocations to the royal commission were made by the board as the commission exercised its option to take American refined sugar under its agreement with the refiners. The paragraph in this agreement which governs the allocation of raws reads:

Delivery of raws.—That to the extent that the Royal Commission on the Sugar Supply exercises its option to take American refined sugar, an equivalent quantity of Cuban raws shall be transferred by the Royal Commission on the Sugar Supply to the American refiners through the American refiners' committee on the basis of paragraph 2, section 2, of page 3 of the Cuban contract dated October 24, 1918.

This agreement also contemplated that refiners should be compensated for any expenses which might be incurred by them due to delay in the commission's taking its refined sugar. It provides:

Tonnages.—Tonnage to load refined shall be furnished promptly by you and within the period for delivery of refined referred to in any notice of your availing yourselves of any part of the option herein given. If tonnage is not so provided you shall compensate us for interest, insurance, and storage, or at our option we shall have the privilege of sending the sugar to store for account, expense, and risk of the Royal Commission on the Sugar Supply.

As the refiner was credited with these raw sugars the same quantities were deducted from the total charged to him. The remainder was the quantity charged as going to make up the quota which, under the percentage allotment, the refiner was to receive during the year for refining on his own account. At the same time he was charged with a quantity of refined sugar allocated to the royal commission, and not until delivery was made to the commission did he receive credit. However he might dispose of the refined sugar in his hands, the charge stood against the refiner and delivery must ultimately be made to the royal commission on all sugar on which it had declared its option.

Following is the statement of the board covering the allocation of raws:

There never were any specific raw sugars belonging to the royal commission in the hands of our refiners. From time to time refiners were credited with raws on account of the royal commission's refined allocations, on the basis of 107 tons of raw sugar for 100 tons refined, and these amounts subtracted from the total raw sugars allotted to them.

These credits for the respective months of 1919 were as follows:

	Long tons.
Allocated on Mar. 6, January account.....	10, 700
Allocated on Mar. 6, February account.....	51, 360
Allocated on Apr. 4, March account.....	56, 710
Allocated on May 7, April account.....	99, 510
Allocated on June 3, May account.....	58, 850
Allocated on July 25, June account.....	58, 850
Allocated on October, balance in full.....	199, 020
Total.....	535, 000
Afterwards debited.....	21, 386
Final credit.....	513, 614

Converting into refined the raws, as credited above by months, on the basis of 107 tons of raws to 100 tons of refined, and accumulating these credits by months, shows the following results, the same figures, it will be noted as the accumulated scheduled shipments from February to June inclusive, shown in Table 14, above :

Month for which credit is made.	Monthly credit to refiners in terms of refined. ¹	Accumulated credit at close of each month.
January.....	10,000	10,000
February.....	48,000	58,000
March.....	53,000	111,000
April.....	93,000	204,000
May.....	55,000	259,000
June.....	55,000	314,000
October.....	186,000	500,000
Total.....	500,000	

¹ Converted from raw into refined on the basis of 107 tons of raw to 100 tons of refined.

Refiners' stocks of raw and refined sugars by months (except February and March) are given for the year 1919 in the following table:

TABLE 15.—*Refiners' stocks of raw and refined sugars by months (except for Feb. 1 and Mar. 1¹), 1919.*

[Quantities in tons of 2,240 pounds. Data furnished by the United States Sugar Equalization Board.]

Month.	Raw sugar in terms of refined.	Refined sugar.	Total.
1919.			
Jan. 1.....	18,522	47,737	66,259
Apr. 1.....	99,407	156,068	255,475
May 1.....	172,343	123,379	295,722
June 1.....	157,210	110,515	267,725
July 1.....	141,074	59,983	201,057
Aug. 1.....	107,297	35,774	143,071
Sept. 1.....	79,655	30,890	110,535
Oct. 1.....	51,749	39,040	90,789
Nov. 1.....	51,459	68,699	120,158
Dec. 1.....	51,217	57,375	108,492
Dec. 31.....	13,566	38,680	52,246

¹ Figures not available.

The stocks in the above table, it should be made clear, were available for use in the United States if the royal commission failed to provide shipping for their exportation. But only when taken in connection with what was due the royal commission on any given date do refiners' stocks for that date throw any light on the availability of an exportable surplus for the year. Even then other factors must be considered—rapidity of inflow of raws as compared to total available raws, other available supplies for the year, and the probable future demand.

Deducting from the above monthly stocks the arrearages of shipments to the royal commission, as shown for the close of each month

in Table 14, above, the net standing of the refiners' stocks appears as follows:

TABLE 16.—*Refiners' stocks, accumulated arrearage of shipments to the royal commission, and net standing of refiners' stocks, close of each month (except January and February¹), 1919.*

[Quantities in tons of 2,240 pounds.]

Month.	Refiners' stocks of raw and refined on basis of refined, close of month.	Accumulative arrearage of shipments to royal commission close of month.	Net standing of refiners' stocks, close of month.
1919.			
March.....	255,475	80,833	174,642
April.....	295,722	109,530	186,192
May.....	297,725	90,639	206,786
June.....	201,057	70,989	130,068
July.....	143,041	75,179	67,862
August.....	110,535	110,649	¹ 154
September.....	90,789	132,889	² 42,100
October.....	120,158	117,179	2,979
November.....	108,492	112,104	³ 3,612
December.....	52,246	62,340	⁴ 94

¹ Figures not available.

² Deficit.

Below is shown in parallel columns refiners' stocks at the close of each month of 1919, less the accumulated arrearage of shipments of refined to the royal commission for the month, and the total exports for the month, including the board's f. o. b. Cuba exports.

TABLE 17.—*Refiners' stocks (raw and refined), less arrearage of shipments of refined to royal commission, and total exports (exclusive of royal commission toll sugars) of raw and refined,¹ by months, 1919.*

[Quantities in tons of 2,240 pounds.]

Month.	Total exports of raw and refined. ¹	Refiners' stock, less arrearage of shipments of refined to royal commission.
1919.		
January.....		
February.....	16,449	
March.....	12,789	174,642
April.....	15,252	186,192
May.....	27,372	206,786
June.....	16,541	130,068
July.....	21,696	67,862
August.....	64,875	¹ 154
September.....	50,851	² 42,100
October.....	40,606	2,979
November.....	31,909	³ 3,612
December.....	5,044	⁴ 94
Total.....	313,384	

¹ Data showing how the equalization board's f. o. b. Cuba sales of raws of 15,347 tons to American buyers were distributed by months are not available. Distribution of these sales over the months has been made in the proportion that each month's total sales bear to the year's total sales and deduction from each month made. The remainder shows approximately the sales for the month to other than American buyers. (See Table 13.) Cuba's exports of raws are not included.

² Deficit.

The following table shows the amount of sugar in manufactures containing sugar exported in 1919 as compared with the year 1918.

This total of roundly 110,000,000 pounds, while not actually consumed by the people of the United States, is included in the consumption of sugar credited to this country in all consumption tables. Some limitation might have been placed on the exportation of these manufactures, though if confined to nonessentials it would have had no appreciable effect in augmenting the sugar supply.

TABLE 18.—Cane-sugar content in articles exported, 1915 and 1919.

[Data from Foreign Commerce and Navigation of the United States, Department of Commerce.]

Article.	12 months ending Dec 31, 1915.		12 months ending Dec 31, 1919	
	Weight of article.	Sugar content	Weight of article.	Sugar content.
	<i>Pounds</i>	<i>Pounds</i>	<i>Pounds</i>	<i>Pounds</i>
Condensed and evaporated milk.....	12,774,898	4,970,066	167,417,358	71,809,978
Infant's food.....	1,134,543	291,527	1,350,871	344,692
Medicinal preparations.....	(1)	494,792	(1)	734,192
Chewing gum.....	481,568	273,977	1,227,431	277,515
Confectionery.....	6,093,950	2,192,324	3,766,249	2,135,252
Canned peaches.....	(1)	(1)	3,731,264	308,719
All other canned fruits.....	(1)	5,500,127	12,685,675	1,103,340
All other preserved fruits.....	(1)	9,992	(1)	1,393,029
Sirup.....	15,823,767	12,192,014	3,978,959	32,364,932
Tobacco:				
Cigarettes.....	22,815	292	5,693,208	102,912
Plug.....	3,140,860	73,640	2,518,538	40,717
Smoking.....	(1)	(1)	2,780,057	103,509
Pickles and sauces.....	(1)	9,433	(1)	17,565
Perfumeries, etc.....	(1)	550	(1)	(1)
Flavoring extracts and fruit juices.....	(1)	19,936	(1)	(1)
Total.....		26,028,670		110,736,352

¹ Not reported.

² Gallons.

³ Thousands.

That the sugar sent overseas by the War Department in 1919 is relatively unimportant is shown by the table below, which also shows quantities sent in 1917 and 1918, and to June 1, 1920. These quantities do not appear as exports in the supply-and-consumption tables of this report, and are therefore a part of the country's consumption.

TABLE 19.—Sugar floated overseas by the War Department from Apr. 7, 1917, to June 1, 1920.

Sugar.	Total floated in 1917.	Total floated in 1918.	Total floated from Jan 1, 1919, to May 1, 1919.	Total floated from May 1, 1919, to June 1, 1920.	Total floated from Apr. 7, 1917, to June 1, 1920.
	<i>Pounds.</i>	<i>Pounds.</i>	<i>Pounds.</i>	<i>Pounds.</i>	<i>Long tons.</i>
Cut loaf.....	269,020	193,800	441,900	15,055	411
Granulated.....	6,743,000	120,105,657	22,296,632	2,250,106	67,587
Powdered.....	5,154	83,060		8,040	43
Total.....	7,017,174	120,382,517	22,738,532	2,273,201	68,041

Quantities of sugar in possession of the War Department October 15, 1919, are shown in the reports below, made by the department to the House of Representatives. It will be recalled that considerable quantities of sugar in the possession of the department had been

disposed of to the public, through the Sugar Equalization Board, earlier in the year. (See p. 48.)

OCTOBER 22, 1919.

The CHAIRMAN COMMITTEE ON MILITARY AFFAIRS,
House of Representatives, Washington, D. C.

SIR: In accordance with the provisions of House resolution 336, which was referred to this office for report by House of Representatives reference slip dated October 18, 1919, the following report is submitted:

(a) Sugar in possession of the War Department on hand in the United States October 15, 1919, 7,151,083 pounds.

(b) In addition, there is a certain amount of sugar in possession of the War Department, located in the island possessions, Siberia, and Europe. Reliable data as to the amount of this sugar is not at hand, but steps have been taken to secure it at the earliest practicable date.

A supplementary report will be made as soon as the data referred to in (b) above is available.

Very respectfully,

NEWTON D. BAKER,
Secretary of War.

WAR DEPARTMENT,
Washington, D. C., November 17, 1919.

SIR: In accordance with the provisions of House resolution 336, and referring to previous report on the amount of sugar in possession of the War Department, dated October 22, 1919, the following supplementary report is made:

Sugar in possession of the War Department Oct. 15, 1919.

	Pounds.
United States -----	7,151,083
American Expeditionary Forces, France -----	500,000
American forces in Germany -----	714,019
In Philippine Island -----	973,120
In Hawaii -----	68,200
In Siberia -----	247,000
Total granulated sugar -----	9,653,422
In Philippines (centrifugal sugar) -----	341,215
	9,994,637
All sugar in France was included in bulk sales to the French Govern- ment and unused portion will be delivered on Nov. 15; therefore, 500,000 pounds should be deducted -----	500,000
Net amount in possession of War Department Oct. 15, 1919 -----	9,494,637

Very respectfully,

P. C. MARCH,
*General, Chief of Staff,
Acting Secretary of War.*

The SPEAKER OF THE HOUSE OF REPRESENTATIVES.

CONSUMPTION OF MANUFACTURERS OF NONESSENTIALS UNCHECKED.—A considerable part of the year's consumption of sugar by manufacturers of nonessentials should apparently have been diverted to householders and the manufacturers of essentials. "Figures taken from the Sugar Market Review show that at least one-fourth of the sugar consumed in the United States goes to the manufacturer of confectionery and other sweet stuffs."³² Table below gives in detail the purchases of sugar by a group of manufacturers of essentials and nonessentials and hotels and restaurants for 1917, 1918, and the

³² Quoted from Government Control Over Prices, published by the War Trade Board, 1920, p. 85.

first 10 months of 1919, with comparison between the first 10-month period of the three years. The purchases of this group for the first 10 months of 1919 were 27 per cent larger than their purchases for the first 10 months of 1917. The purchases of the manufacturers of essentials in this group were 37 per cent larger and of nonessentials 20 per cent larger. Purchases as shown in this table were reported to the Federal Trade Commission.

TABLE 20.—*Sugar purchases of representative manufacturers and hotels and restaurants, 1917, 1918, and first 10 months of 1917, 1918, and 1919—Manufacturers grouped by character of products manufactured.*

[Quantities are comparative as to dates and groups of firms rather than absolute, since these firms constitute only a portion of the total number in the United States. They are, however, believed to be thoroughly representative and to cover a large proportion of the purchases of these groups.]

	Number of firms.	1917		
		Year (pounds).	Last 2 months (pounds).	First 10 months (pounds).
Total.....	3,529	1,266,152,346	193,579,739	1,072,572,607
Manufacturers of nonessentials.....	2,144	695,328,026	105,993,518	569,328,508
Candy.....	1,030	523,656,903	86,217,733	436,839,170
Ice cream.....	437	37,365,177	3,174,452	34,190,725
Soft drinks.....	348	58,615,048	5,628,975	52,986,073
Soda-fountain supplies.....	84	26,850,793	3,120,271	23,730,522
Two or more above products manufactured by one firm.....	234	11,296,022	1,830,629	9,465,393
Tobacco products.....	11	38,138,083	6,021,458	32,116,625
Manufacturers of essentials.....	992	566,131,670	85,000,107	471,131,563
Bakery goods.....	460	211,669,807	35,226,807	176,343,000
Canned and preserved goods.....	325	134,805,156	19,566,508	115,238,648
Condensed milk.....	70	153,966,909	21,868,511	132,098,398
Medicines and drugs.....	99	19,638,067	2,739,158	16,898,909
Soap.....	5	842,276	64,411	777,865
Table sirups.....	33	35,209,455	5,434,712	29,774,743
Hotels and restaurants.....	393	14,698,650	2,566,114	12,112,536

	1918			First 10 months, 1919 (pounds).	Per cent of increase over first 10 months, 1917.
	Year (pounds).	Last 2 months (pounds).	First 10 months (pounds).		
Total.....	1,218,770,365	197,030,413	1,021,739,952	1,363,914,639	27.2
Manufacturers of nonessentials.....	604,445,185	102,297,929	502,147,256	706,215,278	19.8
Candy.....	440,897,490	82,479,049	358,418,441	512,396,763	.....
Ice cream.....	39,755,027	4,059,152	35,695,875	48,325,072	.....
Soft drinks.....	51,961,395	5,669,947	46,291,448	77,787,3e2	.....
Soda-fountain supplies.....	25,497,877	3,430,362	22,067,515	29,747,848	.....
Two or more above products manufactured by one firm.....	9,744,595	1,488,868	8,255,727	11,067,851	.....
Tobacco products.....	36,588,801	5,179,651	31,418,150	36,870,362	.....
Manufacturers of essentials.....	601,083,190	92,788,930	508,294,260	643,959,963	36.7
Bakery goods.....	183,520,789	31,564,788	151,956,001	191,878,210	.....
Canned and preserved goods.....	168,010,809	29,6e5,564	138,345,245	166,709,004	.....
Condensed milk.....	193,341,855	22,230,495	171,111,370	218,743,600	.....
Medicines and drugs.....	20,267,685	3,691,831	16,575,854	20,494,868	.....
Soap.....	1,040,600	173,512	867,088	1,490,444	.....
Table sirups.....	34,901,432	5,462,750	29,438,702	44,643,848	.....
Hotels and restaurants.....	13,241,990	1,943,654	11,298,436	13,739,378	13.4

Table 21 below gives the stocks of sugar on certain dates in 1918 and 1919 as reported to the Commission by a group of manufacturers, hotels, and wholesale grocers. While the stocks of wholesale grocers continued to decline throughout 1919 to November 1, as compared to their 1918 stocks over the same period, the stocks of manufacturers from April 1 to November 1, 1919, continued to grow in comparison with their 1918 stocks during the same period. The stocks of manufacturers of nonessentials became by November 1, 1919, double what they were on the corresponding date of 1918.

The stocks of wholesale grocers increased only slightly from April 1, 1919, to July 1, and from that date to November 1 continued to decline. On the latter date they were less than one-third of what they were on July 1, 1919. Stocks of manufacturers increased from January 1, 1919, to September 1, with slight decreases on October 1 and November 1. With the exceptions of slight declines on September 1 and October 1, the stocks of manufacturers of nonessentials rose from January 1 to November 1, 1919, when they were more than one-third larger than on January 1, and slightly larger than on July 1.

TABLE 21.—*Sugar stocks of representative manufacturers, wholesale grocers, and hotels on certain dates in 1918 and 1919, with the percentages of 1919 to 1918 stocks.*

[Quantities are comparative as to dates and groups of firms rather than absolute, since these firms constitute only a portion of the total number in the United States. They are, however, believed to be thoroughly representative and to cover a large proportion of the stocks of these groups. Candy includes cocoa and chocolate, soda-fountain supplies includes extracts, bakery goods includes cereals, and medicines and drugs includes chemicals.]

	Number of firms reporting.	Jan. 1.			Apr. 1.		
		1918	1919		1918	1919	
		Quantity (pounds).	Quantity (pounds).	Per cent of 1918.	Quantity (pounds).	Quantity (pounds).	Per cent of 1918.
Total.....	4,009	157,429,275	146,981,801	93.5	216,774,235	188,215,575	86.8
Manufacturers.....	2,040	97,440,846	84,924,138	87.2	123,588,018	99,030,756	80.1
Nonessentials.....	1,228	39,361,777	38,743,697	98.4	53,837,688	47,357,546	88.0
Candy.....	631	20,884,383	23,756,597	113.8	30,715,822	27,690,328	90.1
Ice cream.....	262	2,375,787	3,822,789	160.9	2,994,949	3,290,533	109.6
Soft drinks.....	171	1,620,639	3,207,863	197.9	4,291,243	6,962,094	162.2
Soda-fountain supplies.....	30	807,398	471,139	58.4	1,454,272	852,126	58.6
Four commodities above (nonsegregated).....	123	368,645	157,278	42.7	165,996	469,210	28.3
Tobacco products.....	11	13,304,945	7,328,031	55.1	14,215,406	8,113,246	57.1
Essentials.....	812	58,079,069	46,180,441	79.5	69,748,330	51,673,240	74.1
Bakery goods.....	391	24,165,422	15,245,862	63.1	24,008,573	16,180,481	67.4
Canned and preserved goods.....	263	14,822,619	17,019,313	114.8	20,522,799	16,250,606	79.2
Condensed milk.....	68	15,400,805	10,416,239	67.6	21,096,148	15,647,328	74.2
Medicines and drugs.....	63	1,683,240	1,397,072	83.0	2,486,063	1,669,302	68.1
Soap.....	4	139,224	140,059	100.6	205,635	90,999	44.3
Table sirups.....	23	1,867,769	1,961,896	105.0	1,429,112	1,810,524	126.7
Hotels and restaurants.....	267	951,327	610,062	64.1	845,521	612,048	72.4
Wholesale grocers.....	1,702	59,037,102	61,447,601	104.1	92,342,696	88,572,741	95.9

TABLE 21.—*Sugar stocks of representative manufacturers, wholesale grocers, and hotels on certain dates in 1918 and 1919, with the percentages of 1919 to 1918 stocks—Continued.*

	July 1.			Sept. 1.		
	1918	1919		1918	1919	
	Quantity (pounds).	Quantity (pounds).	Per cent of 1918.	Quantity (pounds).	Quantity (pounds).	Per cent of 1918.
Total.....	257,883,826	213,047,468	82.6	259,769,831	174,657,771	67.2
Manufacturers.....	146,209,415	120,236,581	82.2	116,783,334	128,034,285	109.6
Nonessentials.....	61,535,618	61,456,988	99.9	44,731,032	59,928,589	134.0
Candy.....	31,755,684	39,267,061	123.7	23,024,248	37,101,600	161.1
Ice cream.....	6,734,785	4,669,694	69.3	5,279,725	5,636,725	106.8
Soft drinks.....	4,135,293	6,654,645	161.0	3,293,179	5,546,969	168.4
Soda-fountain supplies.....	582,755	954,971	163.9	528,961	823,271	155.6
Four commodities above (non-segregated).....	239,736	627,105	26.2	349,396	607,157	173.8
Tobacco products.....	18,087,365	9,280,212	51.3	12,255,523	10,212,867	63.8
Essentials.....	84,673,797	58,779,693	69.4	72,052,302	68,106,696	94.5
Bakery goods.....	27,643,629	22,176,589	80.2	17,926,335	19,492,681	108.7
Canned and preserved goods.....	33,336,454	19,247,315	57.7	31,313,195	24,337,369	77.7
Condensed milk.....	16,942,171	14,098,603	83.2	17,787,036	18,731,450	105.2
Medicines and drugs.....	2,412,424	1,458,498	60.5	1,907,765	1,451,777	76.1
Soap.....	169,432	221,300	130.6	228,471	241,027	105.5
Table syrups.....	4,169,687	1,577,388	37.8	2,859,500	3,851,392	133.2
Hotels and restaurants.....	1,008,974	787,776	78.1	696,514	1,015,434	145.8
Wholesale grocers.....	110,665,435	92,023,111	83.2	142,289,983	45,606,052	32.1
	Oct. 1.			Nov. 1.		
	1918	1919		1918	1919	
	Quantity (pounds).	Quantity (pounds).	Per cent of 1918.	Quantity (pounds).	Quantity (pounds).	Per cent of 1918.
Total.....	188,311,987	146,614,720	77.9	175,596,041	144,035,341	82.0
Manufacturers.....	93,290,674	115,364,120	123.7	78,567,630	112,138,160	142.7
Nonessentials.....	36,665,659	58,483,619	159.5	30,434,619	62,267,493	204.6
Candy.....	20,040,773	84,836,853	172.3	16,569,937	29,252,360	176.5
Ice cream.....	4,565,480	5,349,338	117.2	4,212,770	4,962,060	117.8
Soft drinks.....	2,240,030	4,602,109	205.4	2,747,445	11,753,072	427.7
Soda-fountain supplies.....	373,468	1,032,497	276.5	306,056	883,228	258.5
Four commodities above (non-segregated).....	311,765	445,724	143.0	199,125	391,983	196.9
Tobacco products.....	9,134,143	12,517,298	137.0	6,399,286	15,024,820	234.8
Essentials.....	56,625,015	56,880,301	100.5	48,133,011	49,870,667	103.6
Bakery goods.....	13,643,216	18,226,564	131.7	12,035,951	14,954,730	124.3
Canned and preserved goods.....	24,104,595	20,119,739	83.5	19,185,184	17,447,816	90.9
Condensed milk.....	14,016,316	14,962,668	106.8	12,487,792	14,474,675	115.9
Medicines and drugs.....	1,959,122	1,591,020	81.2	1,594,338	1,596,654	100.3
Soap.....	123,043	83,667	68.0	134,734	63,363	47.4
Table syrups.....	2,578,723	1,896,643	73.5	2,695,012	1,321,409	49.0
Hotels and restaurants.....	606,986	989,387	163.0	527,660	1,015,043	192.4
Wholesale grocers.....	94,414,327	30,261,213	32.1	96,500,751	30,882,136	32.0

DISTRIBUTION UNEVEN.—As pointed out elsewhere, a much more even distribution from refiner and producer in point of both time and place could have been realized had control over the 1919-20 beet and Louisiana cane sugar been secured. The Louisiana cane sugar had for the most part prompt marketing, with some holding back reported in the early part of the campaign until the question of price had been settled. (See table below for movement from Dec. 1 on.) The geographical distribution was not good, since considerable quantities of this sugar were permitted to go long distances north and beet sugars overlap into the south.

TABLE 22.—*Movement of 1919-20 Louisiana cane-sugar crop.*

[Quantities in tons of 2,240 pounds]

Month and year.	Production to date.	Sales to date.			Stocks on date.	
		Quantity.	Per cent of production to date.	Per cent of total crop. ¹	Quantity.	Per cent of production to date.
Dec. 1, 1919.....	45,873	40,449	88.18	27.44	5,424	11.82
Jan. 1, 1920.....	101,413	97,298	95.94	90.06	4,115	4.06
March 1, 1920.....	108,749	102,050	98.36	94.46	1,699	1.64

¹ Total 1919-20 crop, 108,036 tons.

The movement of beet sugar in 1919, taking the crop as a whole, was rapid as compared with the movement of other years. About 59 per cent of the total season's crop passed out of the producers' hands before December 31, as compared with an average of 35 per cent for the five years just preceding. This, however, does not tell quite the whole story. Production may have been little more rapid than sales in these previous years, and only small stocks of sugar may have been on hand. Statistics are not available on this point, except for one date in one crop year. The stocks, January 1, 1919, are known to have been large, 464,000 tons. The sales up to that date were only 29 per cent of the total 1918-19 crop. The sales of the 1917-18 crop up to January 1, 1918, were about 48 per cent. What the stocks were on that date is not known. It is evident, however, that in the year 1919 considerable stocks of beet sugar were on hand on various dates, as the table below (Table 23) makes clear. If the table showed the movement by individual companies the holding of stocks would be more apparent. There is complaint that lack of transportation facilities caused the piling up of stocks in some cases. On the other hand, complaint has come from dealers that they were unable to get sugar from these companies even though they furnished the trucks to haul it away.

TABLE 23.—*Movement of 1919-20 beet-sugar crop.*

[Quantities in tons of 2,240 pounds.]

Month and year.	Production to date.	Sales to date.			Stocks on date.	
		Quantity.	Per cent of production to date.	Per cent of total crop. ¹	Quantity.	Per cent of production to date.
Sept. 1, 1919.....	14,465	6,694	46.28	1.03	7,771	53.72
Oct. 1, 1919.....	52,176	38,247	73.30	5.90	13,929	26.70
Nov. 1, 1919.....	226,721	129,009	56.90	19.89	97,712	43.10
Dec. 1, 1919.....	450,427	272,773	60.56	42.05	177,654	39.44
Jan. 1, 1920.....	604,267	379,942	62.88	58.58	224,325	37.12
Mar. 1, 1920.....	647,882	511,824	79.00	78.91	138,058	21.00

¹ Total 1919-20 crop, 648,617 tons.

SPECULATION.—Dealing in “secondhand” sugars, which began to be a disturbing factor in the handling of sugar by the middle of 1919, was assuming large proportions by the last quarter of the year.

The table below shows the extent to which a group of 12 sugar speculators in Chicago was dealing in “secondhand” sugar October to December, 1919:

TABLE 24.—*Purchases and sales of a group of sugar jobbers in Chicago showing class of producers or dealers from whom purchases and to whom sales were made, fourth quarter, 1919.*

[Purchases and sales of each firm as reported to the Commission by that firm.]

PURCHASES, FOURTH QUARTER, 1919.

Sugar jobber (each number represents a firm).	From refiners and producers.		From other sugar jobbers and dealers.		Total.	
	Pounds.	Per cent of total.	Pounds.	Per cent of total.	Pounds.	Per cent of total.
1.....	1,283,000	31.7	2,766,950	68.3	4,049,950	100
2.....	1,055,490	82.1	643,484	37.9	1,698,973	100
3.....	80,293	2.3	3,414,556	97.7	3,494,849	100
4.....	536,546	77.9	152,451	22.1	688,997	100
5.....	.....	.....	818,129	100.0	818,129	100
6.....	940,854	80.9	222,309	19.1	1,163,163	100
7.....	1,240,379	68.1	580,939	31.9	1,821,318	100
8.....	3,958,820	53.0	3,513,008	47.0	7,471,828	100
Total.....	9,095,381	42.9	12,111,826	57.1	21,207,207	100
9.....	3,892,500	91.0	383,100	9.0	4,275,600	100
10.....	1,593,700	60.4	1,043,800	39.6	2,637,500	100
11.....	2,454,262	94.1	152,988	5.9	2,607,250	100
12.....	.....	.....	.....	.....	.....	.....
Total.....	7,940,462	83.4	1,579,888	16.6	9,520,350	100
Grand total.....	17,036,843	55.4	13,691,714	44.6	30,727,557	100

TABLE 24.—Purchases and sales by a group of sugar jobbers in Chicago showing class of producers or dealers from whom purchases and to whom sales were made, fourth quarter, 1919—Continued.

SALES, FOURTH QUARTER, 1919.

Sugar jobber (each number represents a firm).	To retailers.		To manufacturers.		To wholesale grocers.		To sugar jobbers.		Total.	
	Pounds	Per cent of total.	Pounds.	Per cent of total.	Pounds.	Per cent of total.	Pounds.	Per cent of total.	Pounds.	Per cent of total.
1.....	289,373	7.2	2,323,111	61.7	995,784	26.5	173,732	4.6	3,762,000	100
2.....	1,195,873	74.5	93,000	5.8	222,438	13.8	94,433	5.9	1,606,744	100
3.....	5,834	.3	605,005	27.7	470,966	21.5	1,102,295	50.5	2,184,100	100
4.....	27,480	4.3	453,871	70.6	161,549	25.1	.....	.....	642,900	100
5.....	.....	.....	723,757	71.5	120,085	11.9	168,000	16.6	1,011,842	100
6.....	1,199,902	100.0	.....	.....	.....	.....	.....	.....	1,199,902	100
7.....	975,733	79.1	202,788	16.5	16,000	1.3	38,400	3.1	1,232,921	100
8.....	.....	.....	2,743,906	39.9	2,094,021	30.5	2,035,591	29.6	6,873,518	100
Total.....	3,674,195	19.9	7,145,438	38.6	4,080,843	22.0	3,612,451	19.5	18,512,927	100
9.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
10.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
11.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
12.....	15,544	6.0	216,549	84.1	25,351	9.9	.....	.....	257,444	100
Total.....	15,544	6.0	216,549	84.1	25,351	9.9	.....	.....	257,444	100
Grand total...	3,689,739	19.7	7,361,987	39.2	4,106,194	21.9	3,612,451	19.2	18,770,371	100

Out of a total of 30,727,557 pounds purchased during this fourth quarter by 11 of these firms, 44.6 per cent were purchased from other dealers; only a little more than one-half came from refiners and producers. Eight firms purchased 57 per cent of a total of over 21,000,000 pounds from other sugar jobbers and dealers. One firm made all of its purchases, 818,129 pounds, from other dealers instead of from refiners and producers.

Of the total sales of nine firms of this Chicago group of sugar jobbers, amounting to 18,770,371 pounds, 41 per cent were made to other sugar jobbers and to wholesale grocers. One wholesale middleman between producer and retailer or manufacturer should have sufficed in times when sugar was so scarce.

A somewhat similar situation appears in New Orleans, as shown by the table below:

TABLE 25.—Purchases and sales by a group of sugar jobbers in New Orleans showing class of producers or dealers from whom purchases and to whom sales were made, fourth quarter, 1919.

[Purchases and sales of each firm as reported to the Commission by that firm.]

PURCHASES, FOURTH QUARTER, 1919.

Sugar jobber (each number represents a firm).	From refiners and producers.		From other sugar jobbers and dealers.		Total.	
	Pounds.	Per cent of total.	Pounds.	Per cent of total.	Pounds.	Per cent of total.
1.....	378,250	6.5	5,482,450	93.5	5,860,700	100
2.....	3,414,351	90.6	355,097	9.4	3,769,448	100
3.....	1,066,240	49.8	1,118,950	51.2	2,185,190	100
4.....	666,050	9.6	6,276,150	90.4	6,942,200	100
Total.....	5,524,891	29.5	13,232,647	70.5	18,757,538	100
5.....	10,223,413	91.7	919,713	8.3	11,143,126	100
6.....	6,327,581	58.6	4,487,258	41.5	10,814,839	100
7.....						
8.....						
Total.....	16,550,994	75.4	5,408,971	24.6	21,959,965	100
Grand total.....	22,075,885	54.2	18,639,618	45.8	40,715,503	100

SALES, FOURTH QUARTER, 1919.

Sugar jobber (each number represents a firm).	To retailers.		To manufacturers.		To wholesale grocers.		To sugar jobbers.		Total.	
	Pounds.	Per cent of total.	Pounds.	Per cent of total.	Pounds.	Per cent of total.	Pounds.	Per cent of total.	Pounds.	Per cent of total.
1.....	389,844	6.3	971,456	15.7	3,398,125	55.0	1,424,764	23.0	6,184,189	100
2.....	7,709	.2	1,074,611	28.5	2,038,089	54.1	649,090	17.2	3,769,439	100
3.....	620,904	20.7	654,500	21.9	1,611,750	53.9	105,000	3.5	2,992,154	100
4.....	1,695,175	23.1	1,863,483	25.4	2,860,110	39.0	913,322	12.5	7,332,150	100
Total.....	2,713,632	13.4	4,564,050	22.5	9,908,074	48.9	3,092,176	15.2	20,277,932	100
5.....										
6.....										
7.....	749,608	15.2	1,878,323	39.2	1,119,268	22.7	1,173,807	23.9	4,921,005	100
8.....			243,722	3.8	6,093,906	93.8	156,108	2.4	6,493,735	100
Total.....	749,608	6.6	2,122,044	18.6	7,213,173	63.2	1,329,915	11.6	11,414,740	100
Grand total.....	3,463,240	10.9	6,686,094	21.1	17,121,247	54.0	4,422,091	14.0	31,692,672	100

Section 6. Supply and demand situation, early in 1920.

ESTIMATES OF SUPPLIES AVAILABLE FOR 1920.—At the opening of 1920 refiners' stocks of sugar were low. All the old-crop sugar had been delivered to the refiners and had been largely refined and delivered to purchasers. As shown below (Table 26), there remained in refiners' hands, raw and refined, 52,246 tons (refined basis). There

was still due the royal commission on its toll contracts with the refiners 32,353 tons, leaving a net balance of 19,893 tons to apply on the new year's supplies. Of the Louisiana crop there remained to be marketed, according to estimates made at that time, 5,770 tons, and of the beet sugar, 313,361 tons.

The 1919-20 Cuban crop was estimated January 1 at 4,300,000 tons, raw basis. Of this probably 1,000,000 tons, based on trade estimates,²³ had been contracted for by foreign buyers, to be shipped either directly to foreign countries or to American refiners to be refined on toll.

The estimates of sugar crops produced elsewhere which were thought available for United States consumption are shown in the table below, which sets forth what appeared January 1 to be the supplies available to the United States for the year 1920:

TABLE 26.—*Estimated sugar supplies available to the United States in 1920, and probable consumption.*

[Estimate made as of January 1, 1920.]

	Tons of 2,240 pounds.
Estimated Cuban crop (1919-20).....	4,300,000
Estimated Cuban consumption.....	150,000
Estimated under contract to foreign buyers.....	¹ 1,000,000
Estimated total Cuban crop not directly available to the United States.....	1,150,000
Estimated balance Cuban crop available for United States in competition with foreign buyers.....	¹ 3,150,000
Hawaii (estimated shipments to United States).....	500,000
Porto Rico (estimated shipments to United States).....	427,000
Louisiana (estimated raws, 1920-21 crop).....	46,000
Philippines (estimated shipments to United States).....	95,000
Miscellaneous foreign raws (estimated available).....	95,000
Estimated total supplies of raw sugar available to United States.....	4,314,000
Equivalent in terms of refined.....	4,012,020
Refiners' stocks (refined basis).....	52,246
Less stocks due royal commission.....	32,353
Balance refiners' stocks.....	19,893
Louisiana (estimated balance 1919-20 crop).....	5,904
Louisiana (estimated direct consumption, 1920-21 crop).....	111,000
Beet (estimated balance 1919-20 crop).....	270,058
Beet (estimated proportion 1920-21 crop available before Dec. 31).....	295,568
Estimated total available for United States consumption (no allowance made for refined exports).....	4,714,731
Pounds percapita available for consumption, based on a population of 106,400,000 for July 1, 1920 ¹	99.3

¹ Quantity of Cuban crop estimated by the trade under contract Jan. 1, 1920, to buyers other than American may be much too low. President Menocal of Cuba in a cablegram to Senator McNary, Jan. 6, estimated the total quantity under engagement (to buyers both of the United States and other countries) at 2,250,000 tons. It has been generally assumed that the quantity under contract to American buyers was relatively small on that date.

² Based on the preliminary figure of 105,683,108 for Jan. 1, 1920, announced by the Bureau of the Census, Oct. 7, 1920.

The above table, on the basis of the earlier crop estimates, which were later reduced, showed available 99 pounds per capita per annum, on the basis of a population of 106,400,000. This allowed for relatively small engagements and for no further buying on the

²³ As early as Sept. 23, 1919, the Sugar Equalization Board estimated the quantity contracted for by foreign buyers as one-third of the total Cuban crop. (See letter of board, p. 133.) This estimate, however, was reduced to slightly less than one-fourth of the crop by George A. Zabriskie, president of the board, in his testimony before the Committee on Agriculture and Forestry, United States Senate, Oct. 18, 1919.

part of foreign buyers and for no exports of refined other than the sugar purchased as raws by foreign buyers and refined by American refiners on toll. Ninety-nine pounds per capita was admittedly a larger consumption for the United States than could be expected out of the total supply without severe competition in the world's market and a sharp bidding up of prices. As a matter of fact, there might be considerable additional buying of raws on the part of foreign countries, and unless an embargo was put in force considerable exports of refined in addition to the above toll sugars could be expected. On the other hand, the extent to which high prices in this country would attract to the United States sugars under contract to other countries, as well as free sugars not ordinarily available to the United States, was an unknown factor.

The value of the estimate lies in what appeared to be available at that time had the United States been disposed again to attempt collective buying, even at the hazard of somewhat enhancing the price and likewise disposed to forbid exportation.

SUPPLIES AND CONSUMPTION, FIRST QUARTER.—The supplies of sugar and its consumption the first quarter of 1920, with the figures for the corresponding quarter of 1919, are shown in the table below:

TABLE 27.—*Sugar supply and consumption in the United States first quarter, 1920, with comparative data, first quarter, 1919.*

[Basic figures, 1920, except those for 1919-20 beet and Louisiana cane sugars, which were reported to the Commission, furnished by Willett & Gray.]

	Tons of 2,240 pounds.	
	Jan. 1 to Apr. 1, 1920.	Jan. 1 to Apr. 1, 1919.
STOCKS, OPENING OF PERIOD.		
Refiners' raws (refined basis).....	13,566	18,522
Refiners' refined.....	38,680	47,737
Beet sugar.....	224,325	464,000
Louisiana direct consumption sugar.....	4,115	85,000
Total stocks, opening of period.....	280,686	615,259
RECEIPTS AND PRODUCTION FOR PERIOD.		
Refiners' receipts (refined basis).....	1,067,015	927,349
Beet-sugar production.....	44,350	19,905
Louisiana direct consumption sugar production.....	6,623	6,000
Receipts foreign raw and washed sugars to direct consumption.....	49,117	6,788
Receipts Hawaiian refined sugar.....	2,211	3,805
Total supplies for period.....	1,450,002	1,579,106
STOCKS, CLOSE OF PERIOD.		
Refiners' raws (refined basis).....	1,111,650	99,407
Refiners' refined.....	238,680	156,068
Beet sugar.....	116,751	272,468
Louisiana direct consumption sugar.....		6,000
Total stocks, close of period.....	267,081	533,943
CONSUMPTION FOR PERIOD.		
Refiners' sales.....	968,931	738,133
Beet-sugar sales.....	151,924	211,437
Louisiana direct consumption sugar sales.....	10,738	85,000

¹ Atlantic ports (New York, Boston, Philadelphia), period closing Apr. 1; remaining ports, period closing Apr. 8.

² Data on refined stocks not available; stocks equivalent to those on Jan. 1, are assumed.

³ Stocks based on sales as reported for January and February, and estimated for March.

⁴ Sales for March based on trade estimates.

TABLE 27.—*Sugar supply and consumption in the United States, etc*—Continued.

	Tons of 2,240 pounds	
	Jan. 1 to Apr. 1, 1920	Jan. 1 to Apr. 1, 1919.
CONSUMPTION FOR PERIOD—continued.		
Sales foreign raw and washed sugars to direct consumption.....	49,117	6,788
Sales Hawaiian refined	2,211	3,805
Total sales.....	1,182,921	1,045,163
Less refined exports.....	1,156,646	97,101
Total consumption for period.....	1,026,275	948,062
Pounds per capita consumption.....	21.6	20.2

¹ As reported by the Treasury Department; includes a balance of 32,353 tons due the royal commission on its 1918-19 contract.

² Exported through refiners.

³ Based on a population of 106,400,000, for July 1, 1920. See note 2, Table 26.

⁴ Based on a population of 105,000,000, for July 1, 1919. See note 3, Table 5.

The table shows how low were the stocks of sugar in primary hands as compared with the year previous. Much less of the beet and Louisiana cane was on hand than is usual at this time of the year. On the other hand, receipts and production during the quarter were much larger, and the stocks at the close of the period much smaller, than for the same quarter in 1919, thus showing larger supplies going to consumption. But again, exports increased over those of 1919 by 60 per cent. A considerable part of these exports may have been the sugar of foreign buyers purchased in Cuba and refined here on toll.

The rate of consumption per capita per annum during the quarter, based on the flow of sugar out of primary hands, was 86.4 pounds—5.6 pounds more than in the same quarter of 1919. It is doubtful, however, whether household consumption was any larger than or even as large as the year before. There are evidences of a very uneven distribution of sugar for household use, some fortunate chain stores and other dealers being able to secure it, and many other stores being without it much of the time, consequently some householders doubtless laid in more than a customary supply, while others went without.

On the other hand the manufacturer was relatively well supplied, and there are evidences of considerable supplies in the hands of the sugar jobber. Since sugar on leaving primary hands is counted as consumed, the hoarding of sugar, either by dealer, manufacturing consumer, or domestic consumer makes the consumption appear larger for the time than it actually is, and smaller at a later date.

SUGAR CONSUMPTION BY MANUFACTURERS.—The chief difficulty that the wholesale grocer must meet in supplying himself with sugar is his competition with the sugar-consuming manufacturer. Larger manufacturers are securing their sugar direct from the refiners, either buying it in the form of raws and having it refined on toll, or buying it in large quantities from the refiner often contracting for it months ahead of time of delivery.

Not only is the competitive position of the manufacturer in the purchase of sugar superior to that of the wholesale grocer, but in the sale of his product there is less opposition to an advance in price, and perhaps not any greater falling off of sales, due to an advance, than is the case in the sale of sugar.

Figures are not available to show what the consumption of sugar by manufacturers at the present time is. Estimates for all manufacturers vary from one-fifth to two-thirds of the total consumption and for the manufacturers of nonessentials are given as high as one-fourth or more. (See pp. 23, 24.)

So long as the demand for sugar at a moderate price is greater than the supply, its use in nonessential products should be curtailed. Many substitutes are available to the sugar-consuming manufacturer, which are not deleterious, and which would be more largely used, were all manufacturers alike required to use them.

SUPPLIES AND CONSUMPTION, APRIL AND MAY.—Sugar supplies and consumption for April and May of 1920, bringing statistics down to the latest date possible, are shown in the table below.

TABLE 28.—*Sugar supply and consumption in the United States, April-May and January-May, 1920.*

Basic figures on refiners' receipts and stocks furnished by Willett & Gray; other figures reported to the Commission or based on estimates as indicated.]

	Tons of 2,240 pounds	
	Apr 1 to June 1.	Jan. 1 to June 1.
STOCKS, OPENING OF PERIOD		
Refiners' raws (refined basis).....	111,650	13,566
Refiners' refined ¹	38,680	38,680
Beet sugar.....	116,751	224,325
Louisiana direct consumption sugar.....		4,115
Total stocks, opening of period.....	267,061	280,666
RECEIPTS AND PRODUCTION FOR PERIOD.		
Refiners' receipts (refined basis) ²	771,659	1,838,674
Beet-sugar production.....		44,350
Louisiana direct consumption sugar production.....		6,623
Receipts foreign raw and washed sugars to direct consumption.....	28,843	77,960
Receipts Hawaiian refined sugars.....	* 2,949	5,160
Total supplies for period.....	1,070,532	2,253,453
STOCKS, CLOSE OF PERIOD.		
Refiners' raws (refined basis) ³	87,184	87,184
Refiners' refined ¹	38,680	38,680
Beet sugar.....	52,751	52,751
Louisiana direct consumption sugar.....		
Total stocks, close of period.....	178,615	178,615
CONSUMPTION FOR PERIOD.		
Refiners' sales.....	796,125	1,765,056
Beet-sugar sales.....	† 64,000	215,924
Louisiana direct consumption sugar sales.....		10,738
Sales foreign raw and washed sugars to direct consumption.....	28,843	77,960
Sales Hawaiian refined.....	2,949	5,160
Totals sales.....	891,917	2,074,839
Less refined exports ⁴	152,704	309,350
Total consumption for period.....	739,213	1,765,488
Pounds per capita consumption, based on a population of 106,400,000 for July 1, 1920 ⁵	15.6	37.2

¹ Data on refined stocks not available. stocks equivalent to those on Jan. 1, are assumed.

² Atlantic ports (New York, Boston, Philadelphia), period closing June 3, remaining ports, period closing May 29.

³ As reported by the Monthly Summary of Foreign Commerce of the United States for April and May, 1920.

⁴ Exact data not available; figure estimated.

⁵ As reported by the Treasury Department. Total exports for the 5 months include a balance of 32,353 tons due the royal commission on its 1918-19 contract.

⁶ Based on a population of 106,400,000, for July 1, 1920. See note 2, Table 26.

Consumption during the first five months of the year was 37.2 pounds per capita, or at the rate of 89 pounds per capita per annum, a rate of consumption slightly less than that of the first six months of 1919. The consumption for April and May was 15.6 pounds per capita, or at the rate per annum of 94 pounds, about 8 pounds less than the rate for the second quarter of 1919.

The exports were running equal to those of last year, including in the latter the shipments which were refined for the royal commission on toll.

The total remaining supplies from sources which customarily furnish the United States with sugar from June 1 to the close of the year were smaller than the year before. Cuba had, June 5, 1920, an estimated balance of supply of 1,093,591 tons, as against 1,894,630 tons on this date last year. This, of course, did not mean that this total deficit would necessarily fall on the United States, but undoubtedly if the estimate was correct it meant considerable reduction in what was yet available from Cuba, as compared with that available following June 5, 1919. Considerably less of the beet sugar was in stock than on June 1, 1919. The remaining supplies from Hawaii and Porto Rico would probably not greatly exceed those available after June 1, 1919.

The chief hope in the situation at the beginning of June, 1920, so far as supply was concerned, was, first, that the higher price would attract considerable quantities from sources not ordinarily supplying this country; second, that the new crop of domestic cane and beet sugars available before the close of the year would be large; and, third, that there might be unusually large stocks, accumulated by dealers, speculators, or consumers, which would form an additional invisible supply.

The table below shows what, as reported by Willett & Gray, the importations of raw sugars, by countries, had been in 1920, up to June 1:

TABLE 29.—*Importation, raw sugars, by countries from which imported, Jan. 1 to June 1,¹ 1920.*

[Figures as published by Willett & Gray, in tons of 2,240 pounds each, all sugars on raw basis.]

Countries from which imported	Quantities	
Insular possessions of the United States:		
Porto Rico.....	193,721	
Philippines.....	3,699	
Hawaii.....	215,423	
St. Croix.....	4,476	
Cuba.....		416,922
Foreign countries other than Cuba:²		1,352,976
British West Indies.....	559	
Demerara.....	5,079	
Central America.....	5,065	
Surinam.....	97	
Mexico, Central America, etc.....	26,520	
Santo Domingo.....	43,094	
Brazil.....	22,449	
Peru.....	33,950	
Europe.....	7,645	
Java.....	2,150	

¹ Receipts at Savannah, New Orleans, and Galveston are for period closing May 29, 1920.

² No duplication is involved in the figures in the various items for Central America, Mexico, and Java. The countries from which imports come are grouped by Willett & Gray variously for the different ports of the United States, and it is not possible in combining the imports to wholly segregate these countries.

TABLE 29.—*Importation, raw sugars, by countries from which imported, Jan. 1 to June 1, 1920—Continued.*

Countries from which imported.	Quantities.	
Foreign countries other than Cuba—Continued.		
Java, Mexico, etc.....	210	
China.....	191	
Bundries.....	6,180	
Unclassified ¹		153,160
Total.....		2,038,784

¹ Receipts at Galveston and Savannah which are not segregated by Willett & Gray by countries from which imported. Based on the character of the receipts of New Orleans, probably 90 per cent were from Cuba and Porto Rico.

Approximately 165,000 tons, raw basis, were full-duty sugars, as compared with 28,000 tons of like sugar received up to June 1, 1919. The increase came principally from North and South American countries and near-by islands, and was no doubt due to the high prices prevailing here.

The prospects in June were good for both the Louisiana cane sugar and the beet sugar of the United States for the 1920-21 crops.

So long as any stringency prevailed there was hope in the distribution and consumption side of the situation only if rigid rationing of manufacturers were followed, speculation, hoarding, and unnecessary resales eliminated, refining on toll minimized, and distribution so guided as to equalize buying over periods of time and over localities.

Finally, the wholesale grocer might materially help to relieve any existing stringency if he were to throw the weight of his buying influence wholly on the side of direct unspeculative dealing with the producer, as has one large wholesale firm which is among the largest grocery dealers in sugar in the country. This firm reported to the Commission, in April, 1920, as follows:

From early in the year 1919 (when it first seemed likely sugar would be scarce) until now our policy has been to distribute as equitably as we could among our many customers all of the sugars which we had on hand or which we could obtain at a gross profit over actual cost not exceeding that permitted by the Department of Justice through the fair-price commissioner for our State; and our gross profit on all of the sugars which we have distributed within this period has averaged well within the permitted margins.

Furthermore, during this entire period (a) we bought no sugars except from producers; (b) we contracted for no sugars for future delivery; (c) we bought no so-called "toll sugars," paying with irrevocable letters of credit. In short, we have lent our entire influence in every way in which we could lend it to keeping down the price of sugars.

This we have done at a cost, direct and indirect, which can be appreciated only by those who are in the business of distributing groceries at wholesale to retailers in all parts of the United States.

Section 7. Refining on toll.

RISE OF THE TOLL BUSINESS.—A new factor affecting the supply situation for the wholesale grocer and small sugar-consuming manufacturer appeared with the opening of 1920. Prior to this the wholesale grocer or manufacturer could depend on a certain refiner or refiners for his supply of sugar; even though the supply was short, he could be sure that he would secure his proportionate share.

From this time on, however, the customer's request for sugar from his old refiner was commonly met with the statement that the refiner was withdrawn from the market; that no allotments were being

made; and that nothing could be promised for some time to come. Sometimes the difficulty was charged to transportation or labor troubles; sometimes to shortage of sugar. These and other similar explanations set forth, it is true, difficulties that actually existed; but they failed to make clear that the refiner was not making any allotments to his old customers, because the sugar he was refining was going to the trade through other channels; that is to say, it was being refined either on toll for exporters, foreign buyers, large manufacturers, and sugar speculators, or for the refiner's account to be sold to sugar operators and exporters rather than to the dealer on the direct route to the consumer.

If the wholesale grocer secured his customary supply of sugar, it was necessary for him to buy it after it had passed through the hands of one or more of these "second-hand" dealers, with an additional margin in the price for every new hand through which it passed. Not all refiners were refining on toll; a few absolutely refused all such business, among these being the two having the largest refining capacity. On the other hand, all were accepting more or less business from sugar operators who had no established custom and whose purpose was speculation. No satisfactory excuse can be offered for accepting this business so long as the current demands of the dealer, more immediate to the final consumer, were going unsatisfied.

Refiners' contracts to refine new-crop sugars on toll began to assume proportions of importance during the fall of 1919, before the new crop was yet made. The refiner had had a profitable experience in refining on toll the raw sugar belonging to the royal commission. No capital was tied up in this sugar in its prime cost, no buying or selling expense was incurred, no risk of loss through falling prices was assumed. Refining on toll at a margin equal to the refiner's margin when refining on his own account was a relatively easy, sure, and rapid money-making enterprise. Considerations for the established sugar-buying trade were entirely secondary. How the customer of long years' standing would secure his sugar under this new arrangement, or what he would have to pay for the sugar bought from irresponsible second hands, was no concern of the refiner.

It is claimed by these refiners that the uncertainty in which they were left as to the Government's policy in the purchase of the 1919-20 crop drove them to these contracts; that they were committed to the Government to enter into no buying contracts until it became clear what the policy of the Government would be. Such claims, however, are hardly tenable. Under these toll contracts the refiner was as definitely committing himself to private obligations by contracting to sell his refining capacity as though he had contracted to purchase for his own account.

Declaration of a definite policy as early as July, no doubt, was desirable, but no later than September 23 the refiners were advised as to conditions so that they might purchase raw sugar as in prewar times.²⁴

²⁴ See the letter of George A. Zabriskie, president of the Sugar Equalization Board, to the President of the United States, p. 133.

Again, on October 28, 1919, the Sugar Equalization Board, through a letter addressed to James H. Post, chairman of the American refiners' committee, advised the refiners as follows:

MY DEAR MR. POST: Referring to the matter of refiners purchasing new-crop sugar, discussed at yesterday's meeting, on which business may be done as per prewar times, we believe that it is to the interest of the country that refiners make purchases as soon as is in their judgment wise, and the price of refined sugar should represent the cost of raws plus a proper refining margin.

This will no doubt put the price of refined sugar above the 9-cent figure of old-crop Cubans, and to avoid any conflict we think that the higher priced commodity should be sold to the industries which can best absorb the difference and allow the 9-cent refining price to obtain to the consumer as long as we have any of the old-crop sugar left. Will you kindly arrange for the acquiescence of refiners in this, as we feel sure that they will be glad to cooperate?

This will place all the refiners on the same basis and place the industry in a position to get back to normal with the least possible disturbance.

Sincerely, yours,

UNITED STATES SUGAR EQUALIZATION BOARD (INC.),
GEO. A. ZABRISKIE, *President*.

(Signed)

EXTENT OF THE TOLL BUSINESS.—Toll contracts on 1920 new-crop deliveries had, even prior to the date of the above letter, been entered into by some of the refiners. For example, one refiner had by the middle of August contracted to refine for big sugar operators on toll 55,000,000 pounds of raw sugar. In September 86,000,000 pounds additional were contracted, in October 56,000,000 pounds, in November 43,000,000 pounds, and in December 2,000,000 pounds. Before the close of the year 242,000,000 pounds had been contracted to be refined on toll, at toll charges ranging from \$1.97 to \$2.47 per hundred pounds. During the period these toll contracts were being made sugar was being refined by these refiners under agreement with the Government on a margin of \$1.54 per hundred pounds.

By the close of the year, when contracts should have been entered into for raw sugar sufficient to supply the established mediums of trade that would have passed the sugar by the most direct route to consumer, several of the big refiners had tied up much of their refining capacity for months to come, with contracts to refine on toll for the larger sugar jobbers and speculators.

The tables below (Tables 30 and 31) analyze refiners' toll operations on the 1919-20 crop, which had been entered into by contract up to April 15, with deliveries to that date. All refiners having such operations, 8 out of the 15, representing 29 per cent of the total refining capacity of the country, are included. A larger proportion of the capacity of those not having toll operations than of those having, however, was idle. Of the total 1919-20 crop sugar refined by all refiners up to April 15, 45 per cent had been refined by these eight refiners. Moreover, the toll business is largely centered on the Atlantic coast, thus concentrating the dislocating effects on the trade very largely in that region.

Table 30 shows that of the total quantity of sugar of the 1919-20 crop refined by these eight refiners up to April 15, 19.3 per cent had been refined for others on toll. All but three of these were refining on toll from one-fifth to two-thirds of their total output.

TABLE 30.—*Refiners' toll sugars, 1919-20 crop, delivered on toll contracts to Apr. 15, 1920, compared with total refined to same date by same refiners, by totals and by individual refiners.*

Refiner (each number represents a firm).	Total refined both toll and refiner's account (pounds).	Total delivered on contract.		Refiner (each number represents a firm).	Total refined both toll and refiner's account (pounds).	Total delivered on contract.	
		Pounds.	Per cent of total refined.			Pounds.	Per cent of total refined.
Total.....	1,094,202,942	211,198,777	19.3	4.....	33,665,274	7,209,565	21.4
1.....	156,959,395	103,767,786	66.1	5.....	246,357,690	52,257,112	21.2
2.....	53,659,093	20,097,251	37.4	6.....	258,573,320	6,870,136	2.8
3.....	66,091,990	20,346,132	30.8	7.....	186,168,677	1,481,600	.8
				8.....	92,727,513	163,195	.02

Table 31 below shows that these eight refiners up to April 15 had contracted to refine on toll 599,651,826 pounds (refined basis). The average weighted toll charge on their contract toll sugar, not including the by-products which were retained by the refiner, was \$2.36, ranging for individual firms for which the refining was done from \$1.75 to \$3.17 per hundred pounds. Deliveries amounted to 211,198,777 pounds, or 35.2 per cent of the total contracted, the average toll charge being \$2.13 on deliveries made.

Of the total deliveries on toll contracts, distribution was made as follows: 88.5 per cent to sugar jobbers, 5.1 per cent to manufacturers, 2 per cent to wholesale grocers, and 4.4 per cent to others.²⁵ Division of contracts was in much the same proportions.

TABLE 31.—*Distribution of refiners' toll sugars, 1919-20 crop, to Apr. 15, 1920.*

Classes for whom sugar was refined or contracted to be refined on toll.	Number of firms.	Sugar contracted to be refined on toll.			Refined sugar delivered on contract.			
		Pounds (refined basis).	Per cent of all contracted	Average toll charge per 100 pounds	Pounds.	Per cent of all delivered.	Per cent of contracted.	Average toll charge per 100 pounds.
Total.....	41	599,651,826	100.0	\$2.36	211,198,777	100.0	35.2	\$2.13
Sugar jobbers.....	21	569,681,791	95.0	2.38	186,883,888	88.5	32.8	2.14
Manufacturers.....	10	11,008,934	1.9	2.03	10,716,070	5.1	97.3	2.04
Wholesale grocers.....	8	4,396,915	.7	2.08	4,278,519	2.0	97.3	2.08
Others ¹	2	14,564,186	2.4	2.00	9,320,300	4.4	64.0	2.00

¹ Consist of 1 chain store, and zone supply officer, U. S. Army.

The tables, taken together, make clear why so many wholesale grocers and small manufacturers were unable to secure their requirements from their customary sources of supplies. They had never before been compelled to depend on the sugar jobber for their supplies. They now could frequently secure them from no other source. And once the sugar came into these indirect channels of trade, the large manufacturer, in a competitive position superior to the wholesale grocer, was able to supply his needs whatever the price demanded by the sugar jobber.

²⁵ Consist of 1 chain store, and zone supply officer, U. S. Army.

The following from a wholesale grocery firm to the Commission, under date of April 15, 1920, shows how toll sugars were bid up above the nominal quotations of the refiners:

On April 8th we received a letter from our Broker, ———, New York, in regard to sugar, to which Mr. ——— added a P. S., as follows:

"Would you buy car prompt at 19c net f. o. b. Philadelphia, 600 bags fine."

This was just 2½ cents higher than our last purchase of sugar, or our last allotment, rather. In view of the extreme shortage of sugar and the dire circumstances that ——— was in for sugar, we wired Mr. ——— to buy the car, thinking we would take a chance.

We have a letter from him, under date of April 9th, as follows:

"Your letter of the 8th also Wire, noted, to buy 1 car toll granulated, but to-day the facts are, it is scarce, and we bid up to 21½c NET for a car for you, but later was advised that car was sold, at 22c NET cash f. o. b. Philadelphia, Pa.

"That gives you an idea so we can't tell you anything, but that to get sugars, it is the high bidder, so it is now up to you to instruct us, the most of the toll granulated offered was sold for future delivery, running up to JULY, so it is only now and then that offerings come out, and when they do they are quickly picked up, regardless of PRICE, it seems.

"Wire us Monday, if you want to chance HIGH priced Toll Granulated, IF IT CAN BE HAD, no refusal at any time on these offerings remember, as everyone wants sugars, and are now bidding strong for supplies."

Now, what gets us is the fact that these Toll operators are allowed to ask most any price they see fit for sugar, and apparently get away with it, when all during the war period the Wholesale Grocer was held down to from, 15c to 25c to 35c and finally to 50c per hundred margin. Now, if the particular party, who had in hand the car of Toll granulated quoted us by our Broker, could afford to sell same at 19c why should he be allowed to sell same at 22c, an additional profit of 3c per pound?

We have not had any sugar for nearly three weeks, none of the Refiners from whom we buy will take our order only on an allotment basis, that is to say, when they have the sugar they will allot it. From time to time, however, we hear of a car of Toll granulated being offered at most any price, and even if we attempt to purchase same we later learn that the car was sold at several cents higher than originally quoted. Just this minute we received telegram from our Broker stating that Toll granulated was being quoted at 25c per pound.

Is there not some way that we inland jobbers can get some relief in some manner or other. Manufacturers and Retailers are pounding us to death for sugar and all that we can say is, Nothing doing.

Section 8. The sugar speculator.

DESCRIPTIVE STATEMENT OF THE SPECULATOR'S ACTIVITIES.—In addition to the refiners' toll business which diverted the supplies from the usual trade channels and increased the difficulty of the wholesaler to secure sufficient supplies, there has been another disturbing element in the sugar business, viz, sales by the refiners of large quantities of sugar to sugar operators, who in times of relative shortage serve no legitimate economic function. These operators have secured their sugar by buying the raw and having it refined on toll and by buying the refined direct from the refiner.

Beginning in a considerable way about the middle of the year 1919, as the regulations of the Food Administration were relaxed, and continuing in increasing volume of business and numbers through the year and down to the present time, these sugar speculators or dealers in "second-hand" sugars have operated to affect adversely both supply and prices.

One class buying refined sugars of the refiners sell to wholesale grocers and manufacturers or to other operators in their own class. Had there been an abundance of sugar, these speculators might have served some useful purpose by assuming a risk that the wholesale

grocer or manufacturer was unwilling to assume; but at no time during the year was there sugar that was not wanted by the grocer or manufacturer. In multiplied cases that have come to the attention of the Commission these could not get supplies from the refiner or beet-sugar producer, but could buy only from the operator by paying a premium of from 1 cent to 6 cents or more.

As shown in the discussion of the refiners' toll business, a large portion of the sugar of these operators has in recent months come into their hands by their buying raw sugar and having it refined, but they have also been buying outright from the refiners large quantities of refined sugar. Table 32, below, shows the extent to which these sales of new-crop sugar, down to April 15, 1920, have been made by refiners. It will be noted that one refiner sold 71 per cent of the sugar refined from the new crop on his own account up to April 15, 1920, to exporters and jobbers other than wholesale grocers. These buyers are, as a class, identical with those shown in tables 33 and 34, who have made extensive resales to other than retailers or sugar-consuming manufacturers.

TABLE 32.—Refiners' sales of 1919-20 sugar to exporters and to jobbers other than wholesale grocers to Apr. 15, 1920, compared to total refined by refiners on refiners' own account.

[Quantities do not include refined by refiner on toll for others]

Refiner designated by number.	Total refined by refiner on refiners' own account to Apr. 15 (pounds).	Sales to exporters and to jobbers other than wholesale grocers.		Refiner designated by number	Total refined by refiner on refiners' own account to Apr. 15 (pounds).	Sales to exporters and to jobbers other than wholesale grocers.	
		Pounds	Per cent of total refined.			Pounds	Per cent of total refined.
Total..	2,213,568,071	492,825,358	22.3	8.....	33,561,842	5,947,935	17.7
1.....	45,745,858	32,515,503	71.1	9.....	184,687,077	7,265,610	3.9
2.....	194,100,568	131,996,140	68.0	10.....	560,263,854	18,812,416	3.4
3.....	252,697,184	112,659,658	44.6	11.....	161,134,788	4,872,202	3.0
4.....	365,089,329	120,358,697	33.0	12.....	73,832,072	1,377,697	1.9
5.....	64,306,033	18,875,100	29.4	13.....	53,191,609		
6.....	92,564,318	27,104,000	29.3	14.....	46,451,650		
7.....	59,486,171	11,040,000	18.6	15.....	26,455,709		

Many of these operators never handle any sugar or perform any physical service with reference to it. On the other hand, they are not regular brokers. Their services or terms are not those of the broker. They buy outright, as does the merchant, filling orders against their purchases, direct to their customers. Their margin is anything from the regular jobbers' margin to "what the traffic will bear." During the first few months of 1920 they held the jobber up for everything they could get. Even some regular brokers were, in addition to their brokerage business, taking on this merchandising business. Moreover, to make their profits appear reasonable should investigation overtake them, they bought and sold among themselves. In almost every large city there is a group of these speculators. Their purchases and sales show that operator A sells to operator B, B to operator C, etc. In other words, by passing

around any new sugar that comes into the hands of any one of the group until all have had it, the last one passing it out to the jobber or manufacturer, they pyramid their margins, although the record will show for any individual transaction perhaps only a nominal margin. Their transactions, however, without any additional risk or service, are multiplied by the number in the group, and the price to the wholesale grocer or manufacturer is increased by the number of margins taken between him and the producer of the sugar.

The Food Administration enforced a regulation³⁶ forbidding more than one resale on the same level of distribution, and in the case of that one no second margin could be taken, or the margin must be divided so that the final consumer's price could not be increased because of the resale. The resale then became one of accommodation only.

TYPICAL CASES OF SPECULATION IN SUGAR.—The table below shows the purchases and sales (in quantities) of sugar by a group of 12 of these sugar speculators in Chicago, made during January and February of this year.

TABLE 33.—*Purchases and sales by a group of sugar jobbers in Chicago showing class of producers or dealers from whom purchases and to whom sales were made, January and February, 1920.*

[Purchases and sales of each firm as reported to the Commission by that firm]

PURCHASES, JANUARY AND FEBRUARY, 1920.

Sugar jobber (each number represents a firm.)	From refiners and producers.		From sugar jobbers and dealers.		Total.	
	Pounds.	Per cent of total.	Pounds.	Per cent of total.	Pounds.	Per cent of total.
1.....	370,300	10.2	3,260,250	89.8	3,639,550	100
2.....	150,240	8.7	1,578,798	91.3	1,727,038	100
3.....	342,214	9.4	3,311,202	90.6	3,653,416	100
4.....	816,174	65.6	428,202	34.4	1,244,376	100
5.....	30,000	4.6	628,401	95.4	658,401	100
6.....	462,921	75.9	148,119	24.2	611,040	100
7.....	120,189	41.7	167,992	58.3	288,181	100
8.....	2,573,307	28.0	6,621,317	72.0	9,194,624	100
Total.....	4,865,345	23.1	16,151,281	76.9	21,016,626	100
9.....	2,002,500	40.9	2,895,200	59.1	4,897,700	100
10.....	331,700	15.2	1,845,300	84.8	2,177,000	100
11.....	324,724	20.6	1,249,640	79.4	1,574,364	100
12.....						
Total.....	2,658,924	30.7	5,990,140	69.3	8,649,064	100
Grand total.....	7,524,269	25.4	22,141,421	74.6	29,665,690	100

³⁶ *Rule 6. Resales within same trade prohibited, when.*—The licensee, in selling food commodities, shall keep such commodities moving to the consumer in as direct a line as practicable and without unreasonable delay. Resales within the same trade without reasonable justification, especially if tending to result in a higher market price to the retailer or consumer, will be dealt with as an unfair practice.

TABLE 33.—Purchases and sale by a group of sugar jobbers in Chicago showing class of producers or dealers from whom purchases and to whom sales were made, January and February, 1920—Continued.

SALES, JANUARY AND FEBRUARY, 1920.

Sugar jobber (each number represents a firm).	To retailers.		To manufacturers.		To wholesale grocers.		To sugar jobbers.		Total.	
	Pounds.	Per cent of total.	Pounds.	Per cent of total.	Pounds.	Per cent of total.	Pounds.	Per cent of total.	Pounds.	Per cent of total.
1.....	20,417	0.7	865,787	31.5	1,099,119	40.0	763,983	27.8	2,749,306	100
2.....	730,046	55.9	10,000	.8	69,600	5.3	496,583	38.0	1,306,229	100
3.....	59,634	1.8	265,588	7.8	1,440,563	42.3	1,638,184	48.1	3,403,669	100
4.....	.....	.....	494,581	45.4	595,886	54.6	.....	.....	1,090,467	100
5.....	.....	.....	180,663	20.6	201,653	22.9	496,629	56.5	878,945	100
6.....	528,536	71.8	168,000	22.8	39,954	5.4	.....	.....	736,490	100
7.....	360,248	41.1	378,922	43.2	45,908	5.2	91,500	10.5	876,578	100
8.....	1,088,583	12.4	1,600,525	18.1	4,489,891	50.9	1,635,401	18.6	8,814,400	100
Total.....	2,787,464	14.0	3,964,066	20.0	7,982,574	40.2	5,122,280	25.8	19,856,384	100
9.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
10.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
11.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
12.....	7,408	3.7	181,956	90.7	11,182	5.6	.....	.....	200,546	100
Total.....	7,408	3.7	181,956	90.7	11,182	5.6	.....	.....	200,546	100
Grand total...	2,794,872	13.9	4,146,022	20.7	7,993,756	39.9	5,122,280	25.5	20,056,930	100

It will be noted that out of a total of 29,665,690 pounds purchased during the two months by 11 of these firms, 74.6 per cent were purchased from other dealers; only one-fourth came from refiners and producers. Of the total sales of nine firms of this Chicago group of sugar jobbers, amounting to 20,056,930 pounds, 65 per cent were made to other sugar jobbers and to wholesale grocers. One firm alone, handling 3,400,000 pounds, sold 48 per cent of it to other sugar jobbers, and 42 per cent to wholesale grocers, leaving only 10 per cent to both retailers and manufacturers. Under the conditions of shortage and the need for price regulation there was no economic place for speculation and 100 per cent should have gone to retailers, manufacturers, and the very small wholesalers unable to buy direct from producer or refiner, except for the cases of resales to others within their group and to wholesale grocers, made for accommodation, the test of which accommodation would have been that no additional margin would have been taken on the resale.³⁷ In other words, there should have been under the prevailing conditions but one handling between refiner or producer and the retailer or manufacturer.

A similar situation prevailed in New Orleans, as the table below shows:

³⁷ Aside from one firm which reported loss, the margins on their sales as reported by these firms to the Commission, in so far as the data were adequate to show the actual margins, were the regular jobbers' margins, showing that no considerable sales were being made to others on the same level of distribution merely for the sake of accommodation.

TABLE 34.—Purchases and sales by a group of sugar jobbers in New Orleans showing class of producers or dealers from whom purchases and to whom sales were made, January and February, 1920.

[Purchases and sales by each firm as reported to the Commission by that firm.]

PURCHASES, JANUARY AND FEBRUARY, 1920.

Sugar jobber (each number represents a firm.)	From refiners and producers.		From sugar jobbers and dealers.		Total.	
	Pounds.	Per cent of total.	Pounds.	Per cent of total.	Pounds.	Per cent of total.
1.....	70,500	7.6	852,250	92.4	922,750	100
2.....	60,408	51.3	57,339	48.7	117,742	100
3.....	70,000	19.0	319,672	82.0	389,672	100
4.....	365,050	32.5	758,300	67.5	1,123,350	100
Total.....	665,953	22.2	1,987,561	77.8	2,553,514	100
5.....	299,147	28.1	765,640	71.9	1,064,787	100
6.....	137,954	3.4	3,888,239	96.6	4,026,193	100
7.....						
Total.....	437,101	8.6	4,653,879	91.4	5,090,980	100
Grand total.....	1,003,054	13.1	6,641,440	86.9	7,644,494	100

SALES, JANUARY AND FEBRUARY, 1920.

Sugar jobber (each number represents a firm.)	To retailers.		To manufacturers.		To wholesale grocers.		To sugar jobbers.		Total.	
	Pounds.	Per cent of total.	Pounds.	Per cent of total.	Pounds.	Per cent of total.	Pounds.	Per cent of total.	Pounds.	Per cent of total.
1.....	1,250	0.1	201,631	17.3	410,832	35.3	649,811	47.3	1,163,524	100
2.....			117,742	100.0					117,742	100
3.....	152,422	32.6	56,700	12.1	258,750	55.3			467,872	100
4.....	221,640	13.3	918,880	55.0	628,630	31.7			1,669,150	100
Total.....	375,312	10.9	1,294,953	37.9	1,198,212	35.1	649,811	16.1	3,418,288	100
5.....										
6.....										
7.....	327,276	21.4	689,766	45.1	100,209	62.5	511,974	33.5	1,629,016	100
8.....							60,000	37.5	160,209	100
Total.....	327,276	19.4	689,766	40.8	100,209	5.9	571,974	33.9	1,689,225	100
Grand total.....	702,588	13.8	1,984,719	38.8	1,298,421	25.4	1,121,785	21.0	5,107,513	100

In New Orleans six out of a group of eight of these sugar jobbers purchased 7,644,494 pounds in January and February, 87 per cent of which were purchased from other dealers and only 13 per cent from producers and refiners. One dealer buying 4,000,000 pounds secured 97 per cent from other dealers. Out of the total sales of six firms of this group, amounting to 5,107,513 pounds, 47 per cent went to other sugar jobbers and to wholesale grocers.

How the sugar is passed back and forth among these sugar jobbers is set forth still more clearly in the table below, which shows the inter-

purchases of eight members of the Chicago group given in Table 33 above. The table below, of course, shows only such quantities of sugar as were purchased from and sold to themselves, and does not include their dealings with other sugar jobbers or with wholesale grocers or other firms.

TABLE 35.—*The interpurchases of sugar by a group of Chicago sugar jobbing firms from Oct. 1, 1919, to Mar. 1, 1920.*

[Each firm in the table is designated by a number identical with the number given the same firm in Tables 24 and 33 above.]

Firms (by number) making purchases.	Firms (by number) from whom purchases were made.								
	1	2	3	5	7	8	10	11	Total.
	<i>Pounds.</i>	<i>Pounds.</i>	<i>Pounds.</i>	<i>Pounds.</i>	<i>Pounds.</i>	<i>Pounds.</i>	<i>Pounds.</i>	<i>Pounds.</i>	<i>Pounds.</i>
1.....	508,000	85,000	88,000	.....	.....	4,000	3,000	57,000	745,000
2.....	78,000	.....	10,000	.....	.....	.....	.....	120,000	206,000
3.....	179,000	20,000	.....	167,000	.....	1,196,000	.....	109,000	1,671,000
5.....	5,000	.....	18,000	.....	91,000	1,306,000	69,000	.....	1,489,000
7.....	13,000	.....	46,000	.....	.....	.....	93,000	.....	152,000
8.....	317,000	10,000	1,324,000	434,000	44,000	.....	159,000	.....	2,288,000
10.....	.....	11,000	172,000	.....	.....	5,000	.....	.....	188,000
11.....	180,000	.....	110,000	.....	38,000	.....	137,000	.....	465,000
Total....	770,000	549,000	1,765,000	689,000	173,000	2,511,000	461,000	286,000	7,204,000

The above table shows that from October 1, 1919, to March 1, 1920, these eight Chicago sugar jobbers purchased from and sold to one another 7,204,000 pounds of sugar, as follows:

Firm No.	Purchased from the group.	Sold to the group.	Firm No.	Purchased from the group.	Sold to the group.
	<i>Pounds.</i>	<i>Pounds.</i>		<i>Pounds.</i>	<i>Pounds.</i>
1.....	745,000	770,000	8.....	2,288,000	2,511,000
2.....	206,000	549,000	10.....	188,000	461,000
3.....	1,671,000	1,765,000	11.....	465,000	286,000
5.....	1,489,000	689,000	Total.....	7,204,000	7,204,000
7.....	152,000	173,000			

A more flagrant case of the reselling of sugar was reported by a Boston corporation. A request sent to this corporation by the Commission for information on its sugar business brought a response as follows:

Please be advised that this Corporation does not do any trading whatsoever. We have made no purchases of Sugar, therefore there are not any sales to be recorded.

This, however, was contrary to the Commission's information. At the same time the Commission endeavoring to secure similar information from certain other firms in New England (five in number) was meeting with dilatory tactics in each case. Finally pressure on these various firms brought the confession from the Boston corporation that these five firms were its branches, no hint of which could be gained from their names or from their previous correspondence. These five branches had in the last quarter of 1919 purchased from refiners 18,415,728 pounds of sugar, of which 12,129,236 pounds had

been purchased by one branch at \$9 per hundred. In January, 1920, this branch purchased 245,407 pounds, at a weighted average price of \$12.10 per hundred, a part of which was bought from one of the other branches. During the same month this branch, which had purchased so heavily, sold to the other four branches 1,905,176 pounds at an average price of \$15.50 per hundred. Most of this, of course, had been purchased at \$9 per hundred.

One of these branches, advertising itself in a Boston paper early in January as the "largest distributors of sugar in New England," was offering sugar at that time at \$19.50 per hundred, when refiners were quoting it at from \$15.20 to \$16.75 per hundred. Its purchases from refiners during October, November, and December, amounting to 2,568,296 pounds, had been made at \$9 per hundred.

PRICES.

CHAPTER III.

Section 1. Price disparities and speculation.

BASIC PRICE ON OLD-CROP SUGARS.—Through purchase of the 1918-19 Cuban crop by the United States Sugar Equalization Board at \$5.50 per hundred pounds, f. o. b. Cuba ports, for 96° centrifugal sugar, the board was able to sell this sugar to American refiners, laid down at their plants, at \$7.28. This price received by the board covered original cost and transportation, insurance, and duty charges, with a margin left over of \$0.38 per hundred pounds. By agreement between the board, the Food Administration, and the refiners, the refiners' margin was limited to \$1.54 per hundred pounds. This margin was arrived at as fair after an investigation by Oscar S. Straus, under the direction of the Food Administration, and was allowed from September 9, 1918, to the close of 1919, the margin allowed by the Food Administration prior to August 1, 1918, being \$1.30, and from August 1 to September 9, \$1.45.

The refiners' cost of \$7.28 for raws, plus the refining margin, made a price to distributors f. o. b. the refinery of \$8.82 per hundred pounds, the seaboard-basis price of \$9, less 2 per cent, which obtained on old-crop sugars throughout the year 1919. On the basis of the Food Administration's findings on cost of producing 1918-19 Louisiana cane and beet sugars, it was necessary for the Sugar Equalization Board, if a uniform price on old-crop sugars prevailed, to retain the \$0.38 per hundred pounds differential referred to above, since, on the basis of these findings, domestic sugars could not profitably be produced for less than \$8.82 per hundred pounds, seaboard basis, at which price domestic producers agreed with the Food Administration to sell.

DISTRIBUTORS' MARGINS.—Producers and distributors of sugars were still under license throughout 1919, and license regulations covering reasonable profits and trade practices were still operative. The maximum margin of wholesale dealers prior to the summer of 1918 had been set at 25 cents per hundred pounds. On June 6, 1918, it was increased by the Food Administration to 35 cents with the following restriction:

The maximum margin on sugar has been increased to 35 cents per 100 pounds for wholesale grocers and food jobbers who actually perform, as to substantially all the sugar handled by them, the functions of buying, warehousing, selling, and distributing. But this maximum charge is not allowed where such service is not performed. Margins for sugar dealers¹ are not changed.

Maximum margins on sales by retailers to consumers were on November 7, 1918, fixed at \$1.50 per hundred pounds for bulk sugar, and \$1 per hundred pounds for sugar in refiners' original package.

¹ Includes refiners, producers, and dealers whose sugar moves direct from refiner or producer to retailer. The maximum margin for these remained at 25 cents per hundred.

The above regulations on margins for wholesalers and retailers, though no longer prescribed by the Food Administration, were generally observed on old-crop sugars throughout 1919, though some local fair price committees set up other margins.

This uniformity of producers' price and distributors' margins should have meant, barring differences between localities due to varying freight differentials from the seaboard refining point, an almost uniform retail price throughout the country and for the year on all old-crop sugars.

On August 14, 1919, the Department of Justice addressed to Federal district attorneys the following telegram:

Dealers in sugar, except retailers doing a gross business of \$100,000 or less annually, are still subject to license under the food-control act. In addition to the provisions of the law itself, the regulations governing dealers in sugar prohibit the licensee from charging an exorbitant, unreasonable, or unfair commission, profit, or storage charge. They also provide that resales within the same trade without reasonable justification, if tending to result in a higher market price to retailers or consumers, will be dealt with as an unfair practice.

The United States Food Administration has taken the position that sugar should not retail for more than 11 cents, and where it is retailing for more it indicates that either the wholesaler or retailer is making an unreasonable profit.

The above notice called attention to the fact that dealers were still subject to the license; that under the license both profiteering and resales within the trade without justification were prohibited; and that 11 cents was regarded as the maximum fair retail price.

PRICE IRREGULARITIES.—Notwithstanding these regulations, it was a matter of common knowledge in the trade and basis of much complaint among consumers that retail prices on old-crop sugars from June, 1919, on, varied considerably from the maximum price regarded as fair. Numerous sugar operators were appearing in the trade, buying from the refiner and selling to the wholesaler or to other operators. It frequently became necessary for the wholesale grocer or sugar-consuming manufacturer, if he supplied his trade at all, to buy this so-called "secondhand" sugar of these operators, and always it was necessary to pay more for this sugar than the refiners' basic price. Had sugar refiners and producers, who were under license not to sell to speculators, complied with the regulations, and had the various dealers been required to obey the license rules, these unnecessary resales and higher prices therefrom would have been avoided, even though specific distributors' margins were no longer prescribed by license regulations.

On August 21 a second telegram was addressed by the Department of Justice to Federal district attorneys as follows:

All dealers in sugar, from the refiner to the retail dealer, doing \$100,000 business a year or more, are under license of the United States Food Administration and are subject to the rules of the food-control act of 1917. Licenses may be canceled for violations.

The United States Sugar Equalization Board (Inc.), a Government corporation, purchased and now owns and controls the entire domestic and Cuban crop of sugar for the crop years of 1918 and 1919. All of this raw sugar is sold to the refiners at 7.28 cents per pound. Refiners are under contract with the board to sell this sugar at 9 cents, less 2 per cent discount for cash, or 8.82 cents per pound net.

The margin allowed retailers under the Food Administration regulations was 1 cent per pound for sales in original packages, 1½ cents per pound in broken

packages. These margins are not now specifically in force, but under the law and the license regulations dealers are restricted to a reasonable profit, and the former margins prescribed by the Food Administration are of value in determining reasonable profits. It is therefore apparent that sugar should reach the consumers at approximately 11 cents, subject to some variation on account of the flexibility of the word "reasonable."

Resales within the same trade without reasonable justification, especially if tending to result in a higher market price to the retailer or consumer, will be considered and dealt with as an unfair practice. Unnecessary resales within the trade and the passing of sugar from wholesaler to wholesaler are undoubtedly responsible for much of the present radical increase in sugar prices in many localities.

There has been some misunderstanding in the trade on the subject, and in some cases dealers have purchased sugar at an unreasonable price. When this is a fact it will not be profiteering for them to sell at a reasonable advance over the cost.

Our desire is to secure a fair price for the consumer, and we do not wish to pursue a wholesale policy of recommending the cancellation of licenses. Where trade adjusts itself to a fair margin for the future, past transactions, unless flagrant, will not ordinarily be made the basis of a recommendation by this department for the cancellation of the license.

While the Food Administration margins of profit were in force wholesalers and jobbers actually performing the functions of buying, warehousing, selling, and distributing sugar were allowed a margin of 35 cents per hundred pounds, plus the 2 per cent discount from the 9-cent list, plus 15 cents per hundred pounds for expenses, or a total of 63 cents, being the maximum that may be added by the jobbers or wholesalers to the net price of \$3.82 per hundred pounds at the refinery.

Attempt was made, though with increasing difficulties in the presence of higher priced new-crop sugars, to hold down the retail price of old-crop sugars to the close of the year. Late in November the Department of Justice, when requested by the National Association of Retail Grocers that retailers be allowed a margin of 2 cents a pound, on the basis of increasing costs of doing business, advised the association that 1½ cents would still be regarded as a fair margin.

On December 2 announcement was made by Arthur Williams, Federal food administrator for New York City, of a decision reached by the Department of Justice, as follows:

Due to the present sugar shortage, it is desirable to make available every pound that can be obtained for the home as well as hotels, restaurants, and industries. For this reason it has been decided to permit retail dealers to sell such sugar as they can secure at an advance of 1 cent a pound over actual cost.

Cuban granulated sugar, controlled by the Government and distributed from refineries at 9 cents a pound, by wholesale dealers at 9½ cents a pound, must still be sold retail for 10½ cents or 11 cents when a single pound is purchased. Other sugars must not be sold at an advance of more than one-half cent wholesale and 1 cent retail as a maximum.

In all instances where the price exceeds 9½ cents a pound wholesale or 11 cents retail accurate record must be retained showing the kind of sugar and from whom purchased. The present supply, if equitably distributed, is sufficient to insure at least some sugar for all. Everyone is therefore urged to take only a fair share on the basis of the allotment of December of last year under the Federal Food Administration. This modification of the rules has been approved by George A. Zabriskie, of the Sugar Equalization Board, and by Howard Figg, representing the Attorney General.

SPECULATION.—Speculation in sugar, elsewhere discussed in greater fullness (see p. 87), became a disturbing factor in wholesale and retail prices the latter half of 1919. Its presence was admitted by the Sugar Equalization Board many times, but the board contended that it was powerless to prevent it.

Under the license regulations of the Food Administration speculation was prohibited both by Rule 6, prohibiting unnecessary resales, and by Rules 7, 8, and 10,² all of which were still in effect.

Large quantities of sugar were being handled during the last quarter of the year by outside operators, many of whose sales were made among themselves or to wholesale grocers rather than to manufacturers or retailers. (See Tables 24 and 25.)

This speculation not only tended to increase the general retail price level and to multiply the number of different prices to retailers and consumers, but was itself largely made possible by the many basic prices prevailing from time to time.

No fewer than four "established" factory prices for sugar were current in the fall of 1919: The 9-cent price, seaboard basis, for old-crop sugars; the somewhat higher price of the larger companies for the new-crop beet sugar, running progressively through the season at 10 cents, 10½ cents, and 12 cents, seaboard basis; the yet higher price for the same beet sugar sold by some of the same companies to manufacturers, their prices running from 2 cents to 3 cents higher than any price being received at the same time from wholesale grocers; and the 17-cent to 18-cent price at which Louisiana sugars were selling. Besides these four general price levels for factory or refinery sugar, several smaller beet-sugar companies were selling at various higher prices. Moreover, Brazil and other foreign sugars, which could not be secured the latter part of the year except at higher prices than the old-crop sugar was selling at, were permitted to be sold, under a ruling of the Department of Justice, at these higher prices, so long as no unreasonable margins were taken on resales in the United States. Relatively small quantities of these sugars came in, however.

By the time these various sugars reached the wholesaler or retailer there were in a given community either a multitude of prices or a general leveling up of prices. The situation offered the speculator an opportunity of buying low-priced sugars and selling them at the price of the higher sugars, and the speculating operator in sugars took advantage of the situation. Had the policy of price equalization been pursued, as pointed out presently, speculation of this kind would have been entirely prevented.

PRICES PAID BY WHOLESALERS, LAST QUARTER, 1919.—Because of these higher basic prices to wholesalers during the last quarter of the year,

² See page 89 for Rule 6. Rules 7, 8, and 10 are as follows:
RULE 7. Speculation prohibited.—No broker or other licensee shall buy or sell any food commodity for his own account unless he is also regularly engaged in and holds himself out to the trade as conducting the business of distributing such commodity otherwise than on a commission or brokerage basis, or unless he uses such commodities in manufacturing, provided that this rule shall not apply to sales on an exchange, board of trade, or similar institution.

RULE 8. Sales to speculators forbidden.—No licensee shall knowingly sell any food commodity to a broker or other licensee who is not buying for personal consumption or engaged in using such commodity in manufacturing, or who is not regularly engaged in and holding himself out to the trade as conducting the business of distributing such commodity otherwise than on a commission or brokerage basis, provided that this rule shall not apply to sales on an exchange, board of trade, or similar institution.

RULE 10. Unfair practices forbidden.—The licensee shall not buy, contract for, sell, store, or otherwise handle or deal in any food commodities for the purpose of unreasonably increasing the price or restricting the supply of such commodities, or of monopolizing, or attempting to monopolize, either locally or generally, any of such commodities.

and also because of the injection of the sugar operator between refiner or producer and wholesaler, the average price paid by the wholesale grocer for his sugar from all sources was in this quarter much higher than in the earlier part of the year when only old-crop sugars were on the market, at prices ranging from \$8.82 to \$9.50 per hundred, according to distance from seaboard refining point.

The following table shows average delivered prices paid by wholesale grocers, by months, from October 1 to the close of the year, with average actual margins received by these grocers:

TABLE 36.—*Sugar purchases and sales of 540 representative wholesale grocers showing average delivered prices paid and average margins received on sales, by regions and by months, October to December, 1919.*

Region.	Number of firms	October.			
		Pounds.	Price per 100 pounds.	Margin.	
				Per 100 pounds.	Percent of price.
United States.....	540	84,982,396	\$9 75	\$0 57	5 85
New England ¹	26	2,693,954	9 18	.46	5 01
Middle Atlantic ²	85	14,721,570	9 20	.56	6 09
East North Central ³	124	19,800,120	9 94	.60	6 04
West North Central ⁴	81	21,985,803	10 07	.58	5 76
South Atlantic ⁵	68	5,561,589	9 38	.52	5 54
East South Central ⁶	51	2,890,574	10 32	.66	6 40
West South Central ⁷	63	6,156,849	9 60	.64	6 53
Mountain ⁸	19	2,965,845	10 53	.55	5 22
Pacific ⁹	23	8,206,092	9 31	.50	5 37

Region.	Number of firms.	November.			
		Pounds.	Price per 100 pounds.	Margin.	
				Per 100 pounds.	Percent of price.
United States.....	540	68,815,216	\$11.03	\$0 64	5.68
New England ¹	26	1,201,784	9 12	.49	5 37
Middle Atlantic ²	85	10,901,783	9 74	.58	5 95
East North Central ³	124	16,422,946	11.50	.71	6.17
West North Central ⁴	81	16,973,039	10 53	.61	5.79
South Atlantic ⁵	68	4,181,934	11 30	.65	5.75
East South Central ⁶	51	3,238,555	15 59	.82	5.26
West South Central ⁷	63	5,633,035	13 21	.78	5.90
Mountain ⁸	19	2,328,681	10 88	.54	4.98
Pacific ⁹	23	7,933,459	9 72	.54	5.58

¹ Includes Maine, New Hampshire, Vermont, Massachusetts, Rhode Island, and Connecticut.

² Includes New York, New Jersey, Pennsylvania, Delaware, Maryland, and District of Columbia. No firm in Delaware reporting.

³ Includes Ohio, Indiana, Illinois, Michigan, and Wisconsin.

⁴ Includes Minnesota, Iowa, Missouri, North Dakota, South Dakota, Nebraska, and Kansas.

⁵ Includes Virginia, West Virginia, North Carolina, South Carolina, Georgia, and Florida.

⁶ Includes Kentucky, Tennessee, Alabama, and Mississippi.

⁷ Includes Arkansas, Louisiana, Oklahoma, and Texas.

⁸ Includes Montana, Idaho, Wyoming, Colorado, New Mexico, Arizona, Utah, and Nevada. No firms in Idaho or Utah reporting.

⁹ Includes Washington, Oregon, and California.

TABLE 36.—*Sugar purchases and sales of 540 representative wholesale grocers showing average delivered prices paid, etc.—Continued.*

Region.	Number of firms.	December			
		Pounds.	Price per 100 pounds.	Margin.	
				Per 100 pounds.	Per cent of price.
United States.....	540	60,687,833	\$12 59	\$0.73	5.80
New England ¹	26	1,128,820	9 42	.49	5 20
Middle Atlantic ²	85	10,209,726	11 93	.73	6 12
East North Central ³	124	14,944,729	13 66	.78	5 71
West North Central ⁴	81	11,788,684	11 52	.69	5 99
South Atlantic ⁵	68	3,128,338	13 49	.80	5 93
East South Central ⁶	51	3,211,901	16 58	.91	5 49
West South Central ⁷	63	5,125,323	14 83	.87	5 87
Mountain ⁸	19	2,442,355	11.51	.57	4 95
Pacific ⁹	23	8,707,957	10 55	.58	5 50

¹ Includes Maine, New Hampshire, Vermont, Massachusetts, Rhode Island, and Connecticut.

² Includes New York, New Jersey, Pennsylvania, Delaware, Maryland, and District of Columbia. No firm in Delaware reporting.

³ Includes Ohio, Indiana, Illinois, Michigan, and Wisconsin.

⁴ Includes Minnesota, Iowa, Missouri, North Dakota, South Dakota, Nebraska, and Kansas.

⁵ Includes Virginia, West Virginia, North Carolina, South Carolina, Georgia, and Florida.

⁶ Includes Kentucky, Tennessee, Alabama, and Mississippi.

⁷ Includes Arkansas, Louisiana, Oklahoma, and Texas.

⁸ Includes Montana, Idaho, Wyoming, Colorado, New Mexico, Arizona, Utah, and Nevada. No firms in Idaho or Utah reporting.

⁹ Includes Washington, Oregon, and California.

The margins by companies show a considerable range, though not often during this quarter much above 1 cent a pound. Margins higher than those received earlier in the year were being secured, apparently due to the fact that fair price committees were allowing these higher margins on the basis of increased costs, rather than because of the taking advantage of the opportunity to secure more, which the general confusion of prices might make possible.

It will be noted that a considerable difference in price prevailed as between different regions, due to the fact of the varying quantities of the higher-priced new-crop sugars received in the different regions. These differences of price, in turn, account for differences in margins, though the percentages of margins are by no means uniform as between regions.

RETAIL PRICES.—Information showing the retailer's margin is not available. If this gross margin in the fourth quarter of the year was no more than \$1.50 per hundred (the margin established by the Food Administration and continued by the Department of Justice as a fair one), sugar should have reached the consumer at an average price for the country as a whole of no more than 11.82 cents per pound for October; 13.17 cents per pound for November; 14.82 cents per pound for December; and an average for the quarter of 13.27 cents per pound.

Since the above prices and margins are average ones, individual prices in numerous instances were, of course, many points higher. The Bureau of Labor Statistics shows average retail prices somewhat lower, as follows: October, \$11.38 per hundred; November, \$12.48 per hundred; December, \$14.52 per hundred; and for the quarter an average of \$12.79 per hundred.

Section 2. Beet sugar, 1919-20 crop.

BEET-SUGAR COMPANIES REPORTING.—Thirty-one beet sugar companies, operating 81 factories in the United States, and representing 96 per cent of the 1919-20 outturn, furnished schedules showing, to March 1, 1920, their sales of sugar made from the 1919-20 beet crop. These schedules show the daily car-load sales to the different buyers and classes of buyers and the net price realized at the factory. Stocks of sugar on specified dates through the season, and the season's total outturn, or if not completed on March 1, 1920, total estimated outturn are also given.

The 31 companies under consideration, with factories grouped geographically, are given below :

CALIFORNIA GROUP.

Los Alamitos Sugar Co., Los Alamitos, Calif. Factory, Los Alamitos, Calif.	Spreckels Sugar Co., San Francisco, Calif. Factories, Spreckels, Calif.; Manteca, Calif.
Pingree Sugar Co., San Francisco, Calif. Factory, Corcoran, Calif.	American Beet Sugar Co., Denver, Colo. ^a Factory, Oxnard, Calif.
Alameda Sugar Co., San Francisco, Calif. Factory, Alvarado, Calif.	Holly Sugar Corporation, Denver, Colo. ^a Factories, Huntington Beach, Calif.; Dyer, Calif. (Santa Ana Sugar Co.).
Anaheim Sugar Co., Los Angeles, Calif. Factory, Anaheim, Calif.	
Union Sugar Co., San Francisco, Calif. Factory, Betteravia, Calif.	

INTERMOUNTAIN GROUP.

Beet Growers Sugar Co., Rigby, Idaho. Factory, Rigby, Idaho.	Utah-Idaho Sugar Co.—Continued. Factories—Continued.
Wyoming Sugar Co., Ogden, Utah. Factory, Worland, Wyo	Falls, Idaho; Spanish Fork, Utah; Toppenish, Wash.; Blackfoot, Idaho; Elsinore, Utah;
Layton Sugar Co., Layton, Utah. Factory, Layton, Utah.	Payson, Utah; West Jordan, Utah; Sunnyside, Wash.
Peoples Sugar Co., Salt Lake City, Utah. Factory, Moroni, Utah.	Springville-Mapleton Sugar Co. Springville, Utah. Factory, Springville, Utah.
Hooper Sugar Co., Ogden, Utah. Factory, Hooper, Utah.	The Amalgamated Sugar Co., Ogden, Utah. Factories, Ogden, Utah; Brigham, Utah; Logan, Utah; Lewiston, Utah; Smithfield, Utah; Burley, Idaho; Paul, Idaho; Twin Falls, Idaho.
Gunnison Valley Sugar Co., Salt Lake City, Utah. Factory, Gunnison, Utah.	
Utah-Idaho Sugar Co., Salt Lake City, Utah. Factories, Lehi, Utah; Sugar City, Idaho; Garland, Utah; Idaho	

^a Other factories in Mountain group.

MOUNTAIN GROUP.

- The National Sugar Manufacturing Co., Sugar City, Colo.
Factory, Sugar City, Colo.
- The Garden City Sugar & Land Co., Garden City, Kans.
Factory, Garden City, Kans.
- American Beet Sugar Co., Denver, Colo.
Factories, Rocky Ford, Colo.; Lae Animas, Colo.; Grand Island, Nebr.
- Holly Sugar Corporation, Denver, Colo.
Factories, Swink, Colo.; Grand Junction, Colo.; Sheridan, Wyo. (the Sheridan Sugar Co.).
- The Great Western Sugar Co., Denver, Colo.
Factories, Eaton, Colo.; Greeley, Colo.; Windsor, Colo.; Fort Collins, Colo.; Loveland, Colo.; Longmont, Colo.; Brighton, Colo.; Sterling, Colo.; Brush, Colo.; Fort Morgan, Colo.; Scottsbluff, Nebr.; Gering, Nebr.; Bayard, Nebr.; Billings, Mont.; Lovell, Wyo.

CENTRAL STATES GROUP.

- The Toledo Sugar Co., Detroit, Mich.
Factory, Toledo, Ohio.
- Michigan Sugar Co., Detroit, Mich.
Factories, Alma, Mich.; Bay City, Mich.; Caro, Mich.; Crosswell, Mich.; Saginaw, Mich.; Sebewing, Mich.
- Minnesota Sugar Co., Chaska, Minn.
Factory, Chaska, Minn.
- The Continental Sugar Co., Detroit, Mich.
Factories, Blissfield, Mich.; Fremont, Ohio; Findlay, Ohio.
- Wisconsin Sugar Co., Menomonee Falls, Wis.
Factory, Menomonee Falls, Wis.
- Columbia Sugar Co., Bay City, Mich.
Factories, Bay City, Mich.; Paulding, Ohio.
- The Ohio Sugar Co., Ottawa, Ohio.
Factory, Ottawa, Ohio.
- Northern Sugar Corporation, Mason City, Iowa.
Factory, Mason City, Iowa.
- Owosso Sugar Co., Owosso, Mich.
Factories, Owosso, Mich.; Lansing, Mich.
- Menominee River Sugar Co., Menominee, Mich.
Factory, Menominee, Mich.
- Holland-St. Louis Sugar Co., Holland, Mich.
Factories, Holland, Mich.; St. Louis, Mich.; Decatur, Ind.

GOVERNMENT CONTROL OF PRICES.—The first of the 1919-20 beet-sugar crop became available for distribution at a time (about Aug. 1) when there was a rapidly growing demand for sugar and when the general market was decidedly unsettled. Although there was considerable uncertainty as to the level at which the new crop should be sold and some agitation for higher prices, the companies operating during the early part of the season sold their sugar at prices only slightly above the basis for the old crop, viz, 9 cents per pound. Both the distribution and the price of the remaining portion of the 1918-19 Cuban crop continued to the close of its sale under control of the United States Sugar Equalization Board. During October, when most of the factories began operation, the question of the determination of a fair price for the new crop became more acute. The strong demand for sugar and a willingness on the part of the buyers to pay prices much higher than those at which the previous crop was sold caused some of the beet-sugar manufacturers to withhold their new stocks of sugar from the market until

* Other factories in California group.

it could be determined what would be the attitude of the Government in the control of prices.

These unsettled conditions continued until the latter part of October, when, after the food-control act had been amended by Congress to make possible the prosecution of those found guilty of profiteering, it became evident that sugar prices would be subject to control by the Department of Justice through the determination of a certain fair-price basis, at or below which there would be little likelihood of prosecution for profiteering. This made it evident that prices would not be determined by conditions of supply and demand.

On October 20, 1919, the Department of Justice sent the following telegram to all manufacturers of beet sugar:

After a thorough investigation by the recognized authorities on sugar the United States Sugar Equalization Board has notified the Department of Justice of the following facts:

As a considerable part of the country generally supplied at this time of the year with beet sugar may be embarrassed because of the beet-sugar factories' failure to sell beet sugar as produced, and this condition in turn lead to uncertainty regarding price, our judgment is that no higher price than 10 cents cash less 2 per cent seaboard is justified, and we hope you will decide at once to begin marketing your sugars on this basis and relieve the very serious situation. The price of 10½ cents net cash f. o. b. plant, which has been offered by the Sugar Equalization Board for sugars in excess of requirements in your territory, as shown by your 1917 deliveries, as a minimum up to 50,000 tons for November and December shipment to relieve an acute shortage among the manufacturers east, is not to be considered a precedent or basis for local prices.

I ask you to make your announcement of prices based on the above. The Department of Justice will treat as an unjust charge any price in excess of this and consider such a charge a violation of section 4 of the Lever Food-Control Act as amended. Please wire to-day your concurrence in the above.

A 10½-cent price was recognized by the Sugar Equalization Board in its announcement to refiners October 29 (see p. 59) that it would absorb the difference between the 9-cent price on refiners' cane sugar and the 10½-cent price on beet sugar where a firm which had a contract with a refiner was forced by the board's zoning order to buy the higher-priced beet sugar.

On November 13 the Department of Justice reiterated its position announced in the above ruling of October 20, that 10 cents per pound was a fair price to producers of beet sugar. It was further understood by the trade and so stated in the trade papers that sales to manufacturers at prices higher than this rate would be permitted, provided the manufacturers using the sugar did not increase the prices of their own products, and that any prices higher than the basic price were subject to investigation, though not necessarily to prosecution.

On November 14 the maximum price on beet sugar was advanced by the Department of Justice to 10½ cents per pound, seaboard basis, after a conference with beet-sugar producers, who complained that increased production costs made it impossible to secure a reasonable profit on the 10-cent price basis.

These "fair prices" were largely accepted by the beet-sugar manufacturers, and many of them, it would appear from a study of their sales data, adhered closely to this price. This is further indi-

cated by the fact that the weighted average factory price at which a total of 178,160,046 pounds of sugar sold during October by the companies making sales during this month, was \$10.38 per hundred pounds. The average price during November on all sales reported, a total of 282,428,437 pounds, was \$10.97 per hundred pounds. However, certain of the smaller companies, as will be shown later, sold their sugar during these months at prices very much higher than the 10-cent or the 10½-cent basis.

Another fair-price adjustment was made during the latter part of November, affecting only the producers in the region west of Buffalo and Pittsburgh and east of Chicago. Announcement was made on November 22 by the Department of Justice that producers in this region might advance their basic sugar price from 10½ cents to 12 cents. Although this new fair-price announcement was proclaimed on November 22, certain companies in this section withheld their sugars from the market for about 10 days previous to this date, apparently in anticipation of the authorized advance.

On November 21 the powers of the Food Administration were transferred by the President to the Department of Justice. This gave to the department all the powers exercised by the Food Administration under the food-control act, over the distribution of sugar as well as other foods, by licensing, rationing, preventing resales and other uneconomic and unfair trade practices, and by restricting profits and margins.

On December 4 the Department of Justice announced its purpose to confine its activities in respect to sugar, in the main, to the prevention of profiteering, holding that it did not possess the power to control the distribution of sugar, which it attributed to the Sugar Equalization Board. The announcement follows:

A conference has been held to-day between representatives of the Sugar Equalization Board and Department of Justice officials, in which the sugar situation was reviewed. The department has neither the power nor the facilities with which to control the purchase or distribution of sugar. The only governmental body having this power is the Sugar Equalization Board, and its control terminates December 31.

Congress, although requested to do so, has failed to extend the life of the board. The Department of Justice will confine its efforts in future to enforcement of provisions of the Lever Food-Control Act by prosecuting all instances of sales of sugar for an unjust or unreasonable profit.

The Department of Justice never has attempted to fix the price of sugar. In the past it has accepted the recommendations of the Sugar Equalization Board very largely in determining maximum fair prices. The fair margins of profit allowed are those established by the Food Administration.

When such determinations were made they have been communicated to the district attorneys, who were advised that any sales in excess of the maximum figure set should be considered unfair and unreasonable. The early termination of the Sugar Equalization Board will make it impossible to set any definite price on sugar in the future or control its distribution. Every sale will be treated on its own merits, and all cases where the district attorney has evidence indicating an unfair profit or withholding of sugar from the normal channels of consumption, or any discrimination in price to the manufacturer or to the jobber supplying the domestic consumer, will be proceeded against under the Lever Act.

MONTHLY AVERAGE PRICES BY COMPANIES.—The monthly weighted average price at the factory on carload sales to March 1, 1920, for each of the 31 companies reporting, together with the weighted average price for each company for the whole period and the weighted

average price of all for the different months, appear in the table given below. These are net prices realized at the factory; that is, delivered prices less freight from factory to point of delivery borne by the producing company. Delivered prices are based on seaboard prices of refined cane plus freight from seaboard to point of delivery.

TABLE 37.—Weighted average prices¹ received for sugar by each of 31 beet-sugar producing companies,² by months and for the periods July-December, 1919; January-February, 1920; and July, 1919-February, 1920.

[Price per hundred pounds.]

	July.	August.	Sep-tem-ber.	Octo-ber.	Nov-ember.	Dec-ember.	July-December.	Janu-ary.	Febru-ary.	Janu-ary-Febru-ary.	July-Febru-ary.
1		\$8.80	\$9.44	\$10.01	\$10.51	\$11.81	\$10.05	\$12.25	\$14.55	\$12.90	\$10.42
2	\$8.98						8.98				8.98
3			8.71	12.86	14.69	14.69	12.65				12.65
4			10.28	10.26	9.88	12.32	10.34	12.59	17.37	14.98	10.55
5		8.72	8.72	10.22	11.98	14.54	10.50	10.66	10.66	10.66	10.50
6		8.88	9.40	8.91	10.42	10.50	9.56	10.50	10.50	10.50	9.96
7					18.00	17.81	17.84				17.84
8				12.53	15.49		14.84				14.84
9				9.90	10.35	10.90	10.50	13.39	13.61	13.41	10.75
10				11.65	13.84	18.78	16.44				16.44
11				16.34	17.58	17.34	17.34	11.23		11.23	17.31
12					14.62	16.10	15.06				15.06
13			9.26	10.31	10.30	10.47	10.39	11.51	13.46	11.73	10.74
14				10.24	10.25	10.52	10.27	12.65	13.30	12.82	11.18
15				9.97	10.04	11.00	10.45	14.05	16.30	14.69	12.28
16				10.14	10.43	13.54	11.52				11.52
17					15.00	14.00	14.92				14.92
18		8.98	9.36	9.96	10.62	11.39	10.20	11.60	13.52	12.49	10.65
19				10.21	10.18	10.35	10.23	11.71	12.05	11.81	10.60
20		9.67	10.95	10.89	12.63	14.46	11.84	15.48	16.46	15.64	12.42
21				10.62	11.21	12.09	11.46	12.42	12.42	12.42	11.90
22				10.56	11.24	11.68	11.25	12.40	12.45	12.42	11.86
23				10.34	12.13	12.82	11.40	12.77	13.09	12.77	11.63
24				11.28	14.03	16.01	13.75	12.41	11.50	12.13	13.75
25				10.76	11.21	11.71	11.24	12.25	12.17	12.23	11.40
26				11.58	13.69	14.44	13.48	15.00	15.00	15.00	13.65
27				10.79	11.01	12.07	11.48	12.25	12.34	12.30	11.73
28				10.77	11.54	12.34	11.69	14.82	15.26	14.86	13.04
29				11.24	14.41	16.38	14.05				14.05
30				10.69	11.26	12.17	11.44	12.58	13.32	13.00	11.84
31				10.83	11.47	12.21	11.64	12.44	12.44	12.44	11.74
All com-panies	8.98	8.93	9.85	10.38	10.97	11.67	10.87	12.09	12.92	12.52	11.27

¹ Prices reported to the Commission were on carload sales at factory. Less than carload and local delivery sales constituted 12 per cent of total sales.

² These companies had 81 factories operating in the 1919-20 campaign, and their outturn was 96 per cent of the total for the campaign.

The companies showing sales in July, August, and September are those of the California group, where the sugar beets mature earlier than in other parts of the country. Most of the companies in the other sections of the country began manufacturing and selling their sugars in October, a few not until November.

The above table shows that the general monthly average price of all companies advanced gradually during the months when the largest volume of sales was made from \$10.38 in October to \$12.92 in February. The average of all companies to March 1 was \$11.27. A very much greater variation in prices appears when the average prices obtained by the different companies are compared both by months and for the whole period. Each month of the season to

March 1, 1920, and each of the two periods show a range of price between the lowest and the highest average,* as follows:

Period.	Lowest average price per 100 pounds.	Highest average price per 100 pounds	Difference per 100 pounds.
August.....	\$8 72	\$9 67	\$0 95
September.....	8 71	10 95	2 24
October.....	8 91	12 86	3 95
November.....	9 59	18 00	8 12
December.....	10 35	18 76	8 41
August-December.....	9 55	17 64	8 28
January.....	10 50	15 48	4 98
February.....	10 50	17 37	6 87
August-March.....	9 96	17 64	7 88

While the average price secured by all companies under consideration up to March 1, 1920, was \$11.27 on a total of 1,008,545,456 pounds of sugar sold, 21 of the 31 companies show average prices above this general average figure. That the average price of all companies is below the individual average prices of a majority of the companies is accounted for by the fact that generally the companies showing the largest volume of sales maintained the lowest prices. A comparison of both volume of sales and average prices to March 1 shows that the average price for the 10 companies having the largest volume of sales of sugar, a total of 807,159,175 pounds, or 80 per cent of the total sold by all companies, was \$11.09 per hundred pounds, while the average price for the 10 companies having the smallest sales (excluding the one small company reporting no sales after July), a total of 36,081,214 pounds, or 3½ per cent of the total, was \$13.99. This shows a difference of \$2.90 between the two groups.

The company reporting the largest volume of sugar sold to March 1 obtained the following monthly average prices per hundred pounds: October, \$10.21; November, \$10.18; December, \$10.35; January, \$11.71; February, \$12.05; or an average price for the period of \$10.60 for 291,225,116 pounds sold. This represents 29 per cent of the total sales of the 31 companies; and the comparatively low average prices of this company are important factors in making the general average price for all companies only \$11.27.

The 10 largest companies from the point of view of volume of sales made to March 1, 1920, it should be stated, are practically identical with the 10 companies showing the largest volume of sugar produced to March 1, 1920.

VOLUME OF SALES AND MONTHLY AVERAGE PRICES BY REGIONS.—In the following table is shown a monthly comparison of the total sugar sales and weighted average prices of the several companies operating in the four principal beet-sugar producing regions of the country. The companies and factories comprising these groups are identical with those listed on pages 100, 101.

* The company showing no sales after July not used in comparison.

TABLE 38.—*Tonnage sales, beet sugar, and weighted average prices¹ for 31 producing companies,² by regional groups of factories and for all groups, by months and for the period July 1, 1919, to Mar. 1, 1920.*

[Prices per hundred pounds.]

Region.	July.		August.		September.		October.	
	Pounds.	Average price.	Pounds.	Average price.	Pounds.	Average price.	Pounds.	Average price.
California group: 10 factories.....	819,000	\$8.98	12,465,300	\$8.93	62,525,000	\$9.85	54,487,200	\$10.21
Intermountain group: 26 factories.....					69,000	9.26	15,253,984	10.35
Mountain group: 23 factories.....					37,000	11.27	66,023,300	10.27
Central States group: 22 factories.....							42,385,562	10.74
All groups.....	819,000	8.98	12,465,300	8.93	62,631,000	9.85	178,160,046	10.38

Region	November		December.		July-December.	
	Pounds	Average price	Pounds	Average price.	Pounds.	Average price
California group 10 factories.....	21,055,700	\$11.57	24,626,500	\$12.13	175,978,700	\$10.41
Intermountain group: 26 factories.....	43,640,624	11.02	43,378,702	11.60	102,342,310	11.19
Mountain group: 23 factories.....	126,521,512	10.40	72,545,364	10.93	265,127,176	10.51
Central States group: 22 factories.....	91,210,601	11.62	69,519,765	12.32	203,125,928	11.67
All groups.....	282,423,437	10.98	210,070,331	11.67	746,574,114	10.87

Region.	January.		February.		July-February.	
	Pounds.	Average price.	Pounds.	Average price.	Pounds.	Average price.
California group: 10 factories.....	38,986,400	\$11.06	3,507,901	\$14.86	218,473,001	\$10.61
Intermountain group: 26 factories.....	35,140,419	12.78	9,208,264	15.46	146,690,993	11.84
Mountain group: 23 factories.....	54,936,240	11.98	24,788,400	12.33	344,851,816	10.88
Central States group: 22 factories.....	55,664,519	12.52	39,739,199	12.54	298,529,646	11.96
All groups.....	184,727,578	12.10	77,243,764	12.92	1,008,545,456	11.27

¹ Prices reported to the Commission were on carload sales at factory. Less-than-carload and local delivery sales constituted 12 per cent of total sales.

² These companies had 81 factories operating in the 1919-20 campaign, and their outturn was 96 per cent of the total for the campaign.

It will be noted that the companies operating in California sold their sugar at a lower average price for the period to March 1, 1920, than that of those operating in any of the other three sections. This may be due partly to the fact that about one-half of the sugar sold by the California group was sold prior to October, or before prices reached the higher levels attained after October. Most of the factories in the other sections did not begin operating until October. The five companies operating 23 factories in the mountain section, mainly

in Colorado, show the next lowest average price to March 1, 1920. This relatively low figure of \$10.88 is entirely due to the fact that the company having the largest volume of both production and sales of all the 31 companies under consideration operated in this section and maintained a comparatively low average of \$10.60, while the prices at which the other 4 companies in this Mountain group sold their sugar averaged above the Intermountain group average of \$11.84. The average prices, both for the earlier months and for the whole period, maintained by the companies in the Central States section were somewhat higher than in the other three sections. This is probably due to the fact that in this area a higher basic selling price was authorized by the Department of Justice than for the other beet-sugar producing sections of the country.

PRICES HIGHER TO MANUFACTURERS THAN TO WHOLESALE GROCERS PERMITTED.—While most of the 31 beet-sugar companies under consideration gradually advanced their sugar prices from the beginning of the campaign to March 1, several made a more decided advance in the month of November. A study of the sales data furnished by seven companies, all among the smaller producers of beet sugar, shows that these companies either delivered practically all of their sugar sold during the latter part of November to manufacturers or for manufacturing purposes at a considerably higher price than the maximum price sanctioned by the Department of Justice, which basic price governed the sales of most of the producers of beet sugar or made their sales to manufacturers during the month at a price conspicuously above that which they obtained from jobbers and wholesale grocers. Two of these seven companies began selling a larger proportion of their sugar to manufacturers at higher prices previous to November. A few sales at higher prices were reported by one company as beginning about the middle of October and by the other during the latter part of the month. One of the remaining five apparently advanced its price to manufacturers above other purchasers on November 10, one on November 13, and the other three a few days later.

The following analysis of the November sales of one of the above companies is somewhat typical and illustrates the tendency of these companies to divert sugar to manufacturers at higher prices during this period. From November 1 to 12, inclusive, this company sold 264,000 pounds, or 82 per cent of its carload sales made during this part of the month, to wholesale grocers, at an average price of \$10.67 per 100 pounds, and 60,000 pounds to manufacturers at \$10.65. From November 13 to 30 it sold 1,268,000 pounds to manufacturers at an average of \$15.64, making no other sales during the month. It might be added that the remainder of this company's 1919-20 carload sales were made in December to manufacturers at an average price of \$16.10 per 100 pounds.

Two other beet-sugar companies, in addition to the seven considered above, sold their sugars to manufacturers at higher prices than those obtained from other purchasers. These particular companies, however, differed from the seven in this respect: They began selling sugar to manufacturers at the higher prices at the opening of their campaign (one in August and the other in September) and continued this policy to March 1, 1920. The monthly sales and average prices

of these two companies appear in the following table, divided between manufacturers or those agreeing to sell for manufacturing purposes only and all other purchasers:

TABLE 39.—Tonnage carload sales, beet sugar, and weighted average prices to manufacturers¹ and to others than manufacturers, for two producing companies, by months and for the period Aug. 1, 1919, to Mar. 1, 1920.

[Prices per hundred pounds]

	August.		September.		October.		November.	
	Pounds	Average price.	Pounds	Average price.	Pounds.	Average price.	Pounds.	Average price.
First company:								
Manufacturers ¹	220,000	\$10 74	17,330,000	\$11 15	6,702,000	\$11 30	6,475,000	\$13 71
Others.....	380,000	9.05	2,681,000	9.67	4,097,500	10.21	3,155,000	10 43
Second company:								
Manufacturers ¹			2,378,000	11 06	3,381,000	11 12	120,000	11 03
Others.....			2,330,000	9.48	3,158,200	9.34	410,000	9 54

	December.		January.		February.		August-February.		
	Pounds	Average price	Pounds	Average price.	Pounds.	Average price	Pounds	Per cent of company's total tonnage sales.	Average price.
First company:									
Manufacturers ¹	5,496,100	\$15.72	5,172,000	\$17 06	1,187,000	\$17.51	12,582,100	73	\$13 04
Others.....	2,833,000	12 01	2,293,000	11 93	313,000	12 48	15,752,500	27	10 75
Second company:									
Manufacturers ¹	120,000	12 51	50,000	13 50	270,000	17 37	6,319,000	49	11 41
Others.....	400,000	12.26	220,000	12 38			6,518,200	51	9 68

¹ Includes buyers agreeing to sell for manufacturing purposes only.

The following figures show the total sales and average prices of the nine companies above mentioned, for the months of October, November, and December, divided between manufacturers and all other purchasers:

TABLE 40.—Tonnage carload sales, beet sugar, and weighted average prices to manufacturers¹ and to others than manufacturers, for nine producing companies, by months, Oct. 1, 1919, to Jan. 1, 1920..

[Prices per hundred pounds]

	Pounds.	Per cent of total tonnage sales.	Average price.
October, 1919:			
Manufacturers ¹	11,801,000	51.1	\$11.36
All others.....	11,380,775	48.9	10.24
November, 1919:			
Manufacturers ¹	15,543,000	56.8	14.06
All others.....	11,803,023	43.2	12.38
December, 1919:			
Manufacturers ¹	9,150,100	50.8	16.21
All others.....	8,823,498	49.2	15.20

¹ Includes buyers agreeing to sell for manufacturing purposes only.

In comparing the volume of sales and the prices secured in the three months, it will be seen that it was during November that the largest proportion of sales for any one month was made to manufacturers, and that the greatest difference in price between the two classes of purchasers occurred in this month as compared with either October or December. While in December the average price to manufacturers was only 1.01 per hundred above that to all other purchasers, it should be stated that most of these nine companies made a greater advance in December to others than manufacturers than to manufacturers.

The following provision appearing in a sales contract of one of the companies selling sugar to manufacturers at a price considerably above the basic price generally observed by the beet-sugar companies would indicate that this practice had been authorized by the Department of Justice:

As per ruling of the Depart. of Justice, this sugar has been sold with the specific understanding that it is to be sold to manufacturers only who will agree that the price of their product shall not be raised.

The refiner is advised by Depart. of Justice that this sale of sugar being for manufacturing purposes will be counted against any allotment the buyer may receive under any rationing plan hereafter adopted if so required and this is so understood.

Another similar contract arrangement applying only to sales to manufacturers is the following furnished by another of the beet-sugar companies as having been used by it:

It is understood and agreed to by purchaser that sugars covered by this contract must be resold to manufacturers and for manufacturing purposes only. Buyers will be directly responsible to the Federal authorities should any portion go to any other than manufacturing trade.

This sugar has been sold with the express understanding that it will be sold to manufacturers only, who will agree that the price of their product will not be raised on account of the increased cost of this purchase.

While it is apparent that several of the beet-sugar companies sold more than half of the sugar they distributed during November to manufacturers at prices considerably higher than the maximum prices to jobbers and wholesale grocers sanctioned by the Department of Justice, it should be noted that these companies, with one exception, were among the smaller producers of beet sugar, and that the total volume of sugar thus sold to manufacturers was a comparatively small part of the total sales of all companies. Only one of the larger beet-sugar companies made any difference in prices as between manufacturers and others.

While the proportion that sales to manufacturers at prices higher than to others bears to total sales by all beet-sugar producing companies is not large and would not seem to affect the wholesale grocer's available supply to any large extent, it did multiply the confusion caused by many price levels. Moreover, in the case of certain companies that permitted the bulk of their sugar to go to manufacturers, the local effect of such distribution was marked. In one of the Central States one company sold almost its entire 1919-20 output of sugar to manufacturers at prices substantially above those to the purchasers of the small part remaining.

The diversion of supply from wholesale grocers to manufacturers, however, was greater than it first appears. The two-price policy

threw into the hands of the manufacturer the large part of the sugar which the speculator secured from the producer at a low price, and could sell to the manufacturer at a price which the wholesale grocer was not permitted to pay.

REASONABLENESS OF PRODUCERS' BEET-SUGAR PRICES.—As has already been stated, the average price at which the aggregate sales of the 31 beet-sugar companies under consideration were made from the opening of the campaign to March 1, 1920, was \$11.27 per hundred pounds. This average price, tested by a strictly demand and supply basis, might not appear unreasonable. Since, however, it was a part of the public policy during this period to require under the food-control act that food commodities should be sold at reasonable prices and to test their reasonableness by profits, actual profits earned by individual companies, would appear to be the only competent standard.

The published financial statement⁶ for the last fiscal year for one of the largest beet sugar companies, whose average factory price on carload sales to January 1, 1920, was slightly above 10 cents, and whose total carload sales to that date amounted to approximately 50,000,000 pounds, showed earnings available for distribution on common stock as having increased 136 per cent over the previous year.

Moreover, many companies sold at prices very much above \$11.27 per hundred, the average price on sales up to March 1, 1920, and above the "fair prices" set by the Department of Justice (see pages 102-103). Table 37 above shows that the average prices per hundred pounds to March 1, of 10 of the beet-sugar producers obtaining the higher prices were as follows: \$13.04, \$13.65, \$13.75, \$14.05, \$14.84, \$14.92, \$15.06, \$16.44, \$17.31, and \$17.84. The weighted average price secured by these 10 companies was \$14.31 per hundred pounds for 49,671,329 pounds, the amount of sugar sold to March 1, 1920. This is \$3.04 per hundred pounds higher than the general average of all companies for the same period.

It is, however, the reasonableness, not of average prices that is in question, but of actual prices. So long as the reasonableness of prices is based upon costs plus reasonable profits, there can be no considerable variation of prices as the season progresses, except as costs vary. For example, the company above, whose average price from October to December was \$16.44 per hundred, had an average price in October of \$11.65, and individual sales in that month at still lower prices. Its average price in December was \$18.76, with individual sales in the month at more than \$1 per hundred higher than the average for the month. It must be clear that an increase in the monthly average price of 61 per cent in two months, and in individual price of 86 per cent in less than three months, could not ordinarily be justified on the basis of increase of costs.

Of the 10 companies showing the high average prices given above, 7 are identical with 7 of the 9 companies previously considered which sold their sugars to manufacturers at higher prices than to other purchasers. If the prices obtained by these companies from these other purchasers represent prices based on those sanctioned by the Department of Justice as reasonable in the light of costs, and apparently they were no lower, but in many cases actually higher than

⁶ Not verified by the Commission.

the basic prices, it follows that the higher prices to manufacturers were unreasonable and excessive.

According to sugar trade journals and other market publications, at least four of the largest of the beet-sugar companies have since March 1, 1920, been selling their sugar at very much higher prices than those obtained previously. While the bulk of the beet sugar produced during the 1919-20 season was marketed by March 1, a number of the manufacturers reported unsold stock on hand at this date aggregating 294,229,000 pounds. Some of this sugar was sold during April and May, according to trade reports, at prices ranging from \$17.50 to \$22.75 per hundred pounds. These same companies which were among the largest ones, show that to March 1 they obtained prices that apparently approximated those sanctioned by the Department of Justice as being reasonable. One of the companies, among the first in volume of production, sold its sugar at prices that averaged for the months to March 1, as follows: October, \$10.31; November, \$10.30; December, \$10.47; January, \$11.51; and February, \$13.46; while its more recent quotations were reported as being over \$22 per hundred pounds. Another of the larger companies from the point of view of production sold sugar during April at \$17.50 per hundred pounds, while its average price on all its sales to March 1 was only \$10.65.

The principal factor in the cost of beet sugar is the price paid for beets which are generally purchased between July and November. If the prices these companies received for their sugar during the earlier part of the season represented fair prices based on manufacturing costs, and if it can also be assumed that the costs of converting the beets into sugar as applied to the more recent sales had not very greatly advanced, it follows that such prices as have been secured during April and May, ranging from \$17.50 to \$22.75, represent excessive profits.

Section 3. Louisiana sugar, 1919-20 crop.

The sugar produced from the Louisiana sugar cane is usually made and marketed from October to January. During the fall of 1919 the grinding season did not get well under way until about the second week in November. A few factories, however, began grinding earlier and a small quantity of the new crop was marketed during the latter part of October.

CONDITIONS BEARING ON LOUISIANA SUGAR PRICES.—Two abnormal conditions marked the opening of the 1919-20 season, both of which had a decided bearing on the price situation. In the first place, the new crop was much below normal and did not promise at the opening of the campaign to be much more than half the usual yield. This outlook encouraged the producers of this sugar to demand a correspondingly higher price to save them from possible financial losses. If prices were to be placed on a cost-plus basis, it was held, the short crop and consequent high unit cost would be valid grounds for a substantial increase in price.

Another unusual circumstance at this particular time was the fact that the country was just at the height of the sugar shortage. The first of the Louisiana sugars became available just at the time of the

strongest general demand of the whole year for sugar. Both jobbers and manufacturers in many parts of the country had for weeks been unable to purchase as much sugar as they required. Consequently, this pressure of demand made possible for these new sugars, if thrown on an open market, a price considerably in advance of the restricted price on other sugars. Looked at from either a cost-plus or a demand-and-supply viewpoint, there appeared to the Louisiana producer sufficient reason for better prices.

Under these circumstances there remained apparently but one influence that served to somewhat restrain the Louisiana sugar producers from exacting the utmost the public might be willing to pay. The attitude of the Government toward such high prices had to be given some consideration. The fact that the Government's policy with regard to continuing its control over the sugar industry generally and over the Louisiana sugar in particular, had not at this time been determined, tended to delay the movement of the crop and to unsettle prices.

GOVERNMENT "FAIR PRICES" SET ON LOUISIANA SUGARS.—The first sales of the new crop during the latter part of October and the first week of November were made at prices varying from about \$15 to \$22.50 per hundred pounds. A little less than 6,000,000 pounds of the new crop had been sold at this range of prices by the 8th of November, the date when announcement was made of the adoption of what was regarded by officials of the Government as fair prices for the different grades of Louisiana sugar, at or below which there would be little likelihood of prosecution for profiteering.

The prices finally adopted were the result of a number of conferences held between committees of Louisiana sugar producers and the United States district attorney of New Orleans. Prominent citizens selected to represent the public were also consulted in the process of determining what, under the circumstances of a short crop, would constitute fair prices for the Louisiana sugars. These price conferences and other methods, such as a study of the cost of producing the new crop, employed by the district attorney, resulted in the recommendation to the Attorney General of the United States that \$17 and \$18 per hundred pounds be considered fair prices, respectively, for yellow clarified and plantation granulated sugar, the intermediate grades to be priced proportionately. Later it was agreed that \$17.60 would constitute a fair price for choice clarified sugar.

The correspondence which passed between the office of the Department of Justice at Washington and the United States district attorney at New Orleans showing just what the nature of the prices agreed upon was and how these prices were arrived at, is given in full in Exhibit XV.

Eighty-three per cent of the carload sales after November 8 were made at prices from \$17 to \$18 per hundred pounds, less than 1 per cent above these prices. The season's carload sales represented 93 per cent of the total crop. No data were secured on less-than-carload sales. Proportions of carload sales prior and subsequent to November 8 made at, above, and below established prices are shown in the following table:

TABLE 41.—Proportions of carload sales of 1919-20 Louisiana sugar prior and subsequent to Nov. 8, 1919, made at and above and below established prices.¹

[Pounds in thousands.]

	Carload sales under 17 cents per pound.		Carload sales 17 cents to 18 cents per pound.		Carload sales over 18 cents per pound.		Total carload sales.	
	Pounds.	Per cent of carload sales.	Pounds.	Per cent of carload sales.	Pounds.	Per cent of carload sales.	Pounds.	Per cent of carload sales.
Carload sales prior to Nov. 8.	928	15.95	824	14.16	4,067	69.89	5,819	100
Carload sales subsequent to Nov. 8.....	37,493	17.24	179,874	82.70	123	.06	217,490	100
Total carload sales.....	38,421	17.21	180,698	80.92	4,190	1.87	223,309	100

¹ These prices are based on the carload sales of 223,309,000 pounds of sugar, representing 92.6 per cent of the total 1919-20 Louisiana crop.

REASONABLENESS OF LOUISIANA SUGAR PRICES.—In considering the prices at which the Louisiana cane sugar sold it should be noted that high prices were eagerly offered and paid by manufacturers and distributors who were demanding more sugar than they could secure. It is claimed by many of the Louisiana sugar producers that they could have sold the bulk of their sugar at prices above those agreed upon. Some of the factories had contracted to sell their sugar at prices above the 17 cent and 18 cent basis, while others had contracted to sell at prices lower than these maximum prices. As to what the trend of later prices would have been had the market remained open, no very certain conclusion can be drawn from the carload sales made before November 8, amounting to less than 3 per cent of the total crop. Without knowing exactly the grades on which reported prices of early sales were based, it is impossible to compare satisfactorily prices before and after the settlement of the Department of Justice.

While there are indications that the Louisiana sugar producers, marketing their crop as they did during the period of general shortage, could have secured, without Government interference, prices approximately equal to those approved by the Attorney General, the reasonableness of these prices, in so far as actual costs are a test, has not yet been definitely determined by the Commission.

Certain facts, however, make it appear that the prices asked and obtained for the 1919-20 Louisiana sugar were higher than actual cost of production in many cases would justify. While some of the producers of the new crop were contending for an 18-cent price, it should be noted that representatives of the Louisiana sugar producers "offered" about October 20 to sell the entire new crop to the United States Sugar Equalization Board at 15 cents per pound. Also, it should be pointed out, some of the producers, previous to November 8, when the 17 cent to 18 cent basis was adopted, made sales of the new crop at prices below that basis.

¹ It has been denied by producers that such an offer was made. See footnote 8, p. 116.

Moreover, as a matter of economic and social policy, it may be questioned whether these sugars, admitting their higher cost, should have been permitted by the Government to go into the general market at higher prices than those at which other sugars were being sold, thereby both multiplying current price levels and creating dissatisfaction among other sugar producers. During November and December, when the bulk of the Louisiana sugar sold at \$17.60 and \$18 per hundred pounds, the average net price obtained by the beet-sugar manufacturers for over 200,000 tons was in November \$10.97 per hundred pounds and in December \$11.67. (See Table 38.) The refiners of 1918-19 Cuban raw sugars continued during this period to sell their sugar on the 9-cent basis. Certainly there was as great a demand for the beet sugars as for the Louisiana cane, and the fact that the market would pay high prices for the Louisiana sugars when sugars generally were not permitted to be marketed on a supply-and-demand basis would scarcely justify these prices.

Since the regulation of the market was on a cost-plus price basis, it would appear to have been better that the Louisiana producers should have been fully compensated for their costs, once fairly determined, by the Government's purchase of their crop and the absorption of excess of its cost over a uniform price level by slightly advancing the price of the lower-priced old-crop sugar.

EFFECTS OF THE LOUISIANA SUGAR PRICES ON PRICES OF OTHER SUGARS.—The Louisiana 1919-20 crop turned out to be only a little above 100,000 tons. While this is not much more than one-fortieth of the amount of sugar consumed in the United States during the past year, the higher prices at which this crop was sold had a decided influence on the Cuban sugar market. The first sales of the 1919-20 Cuban crop, made in August, 1919, for delivery January, 1920, were at prices ranging from \$0.75 to \$1 per hundred pounds above the price, \$5.50, at which the previous crop was sold to the United States Sugar Equalization Board. Sales for future delivery at from \$6.50 to about \$8 per hundred pounds were made during August, September, and October, 1919, covering about 25 per cent of the new crop. While it was apparent, especially during the latter part of this period, that there was a tendency on the part of Cuban sellers to demand higher prices, prices were not substantially advanced until some time after the Louisiana sugar was marketed at the high price it brought. These higher prices for our domestic product, equivalent to practically double the prices at which the Cuban raw for future delivery had been selling up to this time, encouraged the Cuban producers to withhold the sale of the new crop and thus strengthened the firmness of the market for Cuban raws to be delivered from January, 1920, on. (See Table 42 for prices.)

Likewise it was evident that the higher prices adopted November 8, 1919, for the Louisiana sugar had considerable bearing on the advanced prices certain beet-sugar companies secured after this date. Considerable dissatisfaction prevailed among some of the beet sugar interests on account of the fact that they were supposed to sell sugar on a 10½ cent basis, while the Louisiana producers were permitted to sell their plantation granulated at 18 cents per pound. The following comment from Edgar's Sugar House Bulletin, of Detroit,

Mich., dated November 14, 1919, shows this attitude of the beet-sugar producers:

The fact that a maximum price of 17 cents f. o. b. plantation for prime clarified and 18 cents for plantation granulated has been approved by the Attorney General and that imported sugars of inferior quality are finding ready sale as high as 15.10 to 15.25 duty paid is causing much dissatisfaction among some beet-sugar producers, who feel that they are being unjustly discriminated against, particularly as certain of them claim that they can not operate profitably under present conditions at the price for beet granulated and approved by the Attorney General. Some companies are reported to be selling to manufacturers at fancy prices. Our companies are allotting and confirming as fast as sugars are available, and entries take market price on day of shipment. Our present price is 10.50 seaboard basis less 2 per cent from date of invoice, plus New York all-rail prepaid rates—this price to jobbers and manufacturers alike.

Shortly after the Louisiana crop began selling at the prices approved as fair prices by the Department of Justice a number of the beet-sugar companies, especially the smaller ones, advanced their prices. Most of these advances were accomplished in two ways: A study of the price schedules secured by the Commission from the beet-sugar companies shows that within two weeks after November 8 certain companies began selling sugar to manufacturers at a substantial advance over previous prices, while other companies in the section east of Chicago and west of Buffalo and Pittsburgh advanced to a 12-cent basis. According to the sugar-trade journals and information received from some of the companies, both of these advances had the approval of the Department of Justice.

Section 4. Price equalization and control through Government purchase.

Producers' prices of sugars (see Table 37 for average monthly prices for beet-sugar companies) varied widely before the close of 1919, specific prices ranging from about 9 cents to 22 cents per pound. This, as has been pointed out, resulted in great confusion in the trade and offered opportunity for speculation and a general leveling up of prices.

In the beginning, domestic producers favored a continuance of Government control; and purchase of both the beet and the Louisiana cane sugars could have been made by the Government at relatively low prices.

CANE AND BEET SUGAR PRODUCERS FAVORED THE CONTINUANCE OF GOVERNMENT CONTROL.—Indorsement of the continued control of the sugar situation by the Government was made at the initial meeting of the Domestic Sugar Producers' Conference, which convened in New York City July 16, 1919. To this conference two delegates were sent from each of the domestic producers' associations—that is, from the domestic beet-sugar association, the Louisiana cane-sugar association, and the association of producers in Hawaii, Porto Rico, and the Philippines. At this meeting a resolution was introduced by the delegates from the United States Sugar Manufacturers' Association, the organization of beet-sugar producers, which recommended that the Sugar Equalization Board be continued in power, with authority to purchase the 1920 Cuban crop, "making proper provision for the protection of domestic sugar and for fixing a fair price to the ultimate consumer." This resolution was passed and presented to the President of the United States through the Sugar Equalization Board.

The action of the delegates of the United States Sugar Manufacturers' Association was ratified at the Chicago meeting of this association, September 26, 1919, when it passed the following resolution containing the resolution of the July meeting:

The Government control of the price and distribution of sugar during the war stabilized the domestic sugar industry, prevented abnormally high and fluctuating prices, eliminated speculation, secured an equitable distribution of sugar throughout the country, minimized local sugar famines, and saved American consumers many millions of dollars.

Because of the present world shortage of sugar the beet-sugar industry of the United States views with grave concern the entire relinquishment of Government control of sugar during the existing emergency, the abandonment of which control it is feared will create chaotic market conditions, inflated prices, and unequal distribution. Owing to the inadequate supply of sugar throughout the world and the increased cost of production, the price of the coming crop of sugar must inevitably be higher.

Believing that, notwithstanding the relief that may result from the forthcoming domestic beet-sugar crop, the governmental purchase of the coming Cuban crop of sugar is the only means of preventing an extreme shortage of sugar in this country except at exorbitant prices, we therefore unanimously ratify the action of our delegates to the Domestic Sugar Producers' Conference, held in New York City on July 16, 1919, in adopting and presenting to the United States Sugar Equalization Board, and through it to the President of the United States, the following resolution:

Resolved, That in view of the prospective continuation of scarcity of sugar supplies, this conference recommends that the United States Sugar Equalization Board be continued in power with authority to purchase the 1920 Cuban crop, making proper provision for the protection of domestic sugar and for fixing a fair price to the ultimate consumer, and that a committee be appointed to consider and report.

PRODUCERS WILLING TO SELL TO THE GOVERNMENT.—At a conference between Messrs. Zabriskie and Glasgow, of the Sugar Equalization Board, and representatives of the Louisiana sugar producers, held in Washington October 20–21, 1919, a proposal was made by the producers that the board purchase the Louisiana crop at 15 cents per pound. A counter suggestion was made by the board's officials, that it might be willing to purchase on a 10-cent basis with a guaranty of a return of 8 per cent to the producers, providing such guaranty did not increase the price to more than 14 cents. The board, however, did not accept the "offer"³ of the producers nor follow up the informal counter proposal of its officials.

A meeting of Louisiana cane-sugar producers at New Orleans October 28, while opposing any legislation that might prevent the producer from securing an open-market price for his sugar, unanimously recommended that a duly authorized committee be empowered to "confer with any authority of the National Government in event proposals are made for the purchase of the Louisiana crop of 1919." On November 3 this committee made an attempt to begin negotiations with the Government, looking to the sale of the Louisiana crop to the board, but was unsuccessful.

Many individual beet-sugar companies offered to sell to the board their sugars at 10 cents per pound. Apparently, then, producers generally, both on the mainland and in insular possessions of the

³ It has been denied by producers that an offer was made. Testimony on this point before the Committee on the Judiciary, 1920, by those present at the conference is conflicting.

United States, favored the purchase of the domestic crop and the continued control of the sugar situation by the Sugar Equalization Board, in order to maintain a stable market and an even distribution of sugar.

BENEFICIAL RESULTS THROUGH PRICE EQUALIZATION.—Had prices been equalized by the board through its purchase October 1 of the new beet and Louisiana cane sugars, or such portions as might be delivered before the close of the year, at such prices for various producers as would have afforded fair profits, the board selling the sugar at 10½ cents per pound and advancing the price on the approximately 450,000 tons remaining of old-crop Cuba sugar to that point, all sugars could have been maintained on a uniformly low basis, and losses to the board in the purchase of the new crop would have been absorbed by the advance in price of the old crop.⁹ If Government purchase of Cuban raws was to cease with the delivery of the old crop, all prices would, under the equalization plan, go up together at the beginning of 1920. Speculation under this plan could have been more effectually prevented and the supply of sugar could have been distributed more evenly, both as to time and place.

Section 5. Raw cane sugar, 1919–20 Cuban crop.

The price of refined sugar in the United States under open-market conditions, so far as supply is a controlling factor, is largely made by the price of Cuban raws. On the other hand, it must not be forgotten that the price of raw sugar reflects not only supply conditions but also the demand for refined sugar, the price of which is in part an index of that demand.

UPWARD TREND OF PRICES.—The price of the 1919–20 Cuban raws advanced almost constantly, and at times very rapidly, following July, 1919. At that time Cuban raws for December or January delivery sold for about three-fourths cent more than old-crop raws under the agreement; that is, for about 6.25 cents per pound f. o. b. Cuba, or about 7.65 cents New York City. The table below shows the upward trend of price, quotations being given for New York City, insurance, freight, and duty, amounting to about \$1.40 per hundred, being added to the Cuban price:

⁹ "As for continuing the control of sugar during 1920, the board felt that it was the wise course to pursue when it could have purchased the Cuban crop at 6½ cents per pound. It could then have stabilized the price at 10½ cents to 11 cents throughout the country, as this price was agreeable to the beet producers and the small amount of sugar produced in Louisiana could have been purchased at 15 cents, sold at 10½ to 11 cents, and the difference absorbed by the equalization board." Address of George A. Zabriskie, president of the United States Sugar Equalization Board, made at the convention of the New York Wholesale Grocers' Association, Feb. 25, 1920.

TABLE 42—Prices, 1919-20 Cuban raw sugars, duty paid, New York City, by weeks, August, 1919, to May, 1920; August to December, 1919, for January, 1920, delivery; January to May, 1920, "spot" quotations.

[Quotations derived from Willett & Gray's Weekly Statistical Sugar Trade Journal]

[Price per hundred pounds]

Year and month.	First week.	Second week	Third week.	Fourth week.	Fifth week
<i>"Futures" for delivery in January, 1920.</i>					
1919.					
August.....	\$7.66	\$7.91	\$7.91	\$7.91	.....
September.....	7.91	7.91	7.96	8.16	.....
October.....	8.53	8.53	8.66	9.03	\$9.60
November.....	9.97	9.29	9.41	9.79	.....
December.....		11.29	11.41	11.54	\$10.79
<i>"Spot"</i>					
1920.					
January.....	13.04	13.04	13.04	13.04	.....
February.....	13.04	12.04	16.28	16.16	.....
March.....	11.54	11.03	12.04	12.79	.....
April.....	14.04	16.55	18.56	19.56	19.56
May.....	19.56	20.01	23.57	20.56	.....

¹ Early January shipment.

² Second half January shipment.

The above table does not show tonnage sales. During August, however, approximately 150,000 tons were reported as sold for January to March, 1920, delivery, at from 6½ cents to 6¾ cents f. o. b. Cuba; and from September 1 to September 25 between 350,000 and 400,000 tons were reported as contracted for at about 6½ cents per pound. Other unreported sales may have been made.

The first notable advance above these prices occurred during the latter part of September after the offer of the new Cuban crop to the United States Sugar Equalization Board had been withdrawn. It was becoming apparent that should open-market conditions prevail demand at existing prices would overdraw the supply. Advance sales late in September were made at from 6¾ cents to 7¼ cents f. o. b. Cuba. Prices continued to advance during October, reaching 8¼ cents for December delivery and 7¾ cents for March to June delivery, but fluctuated around these figures during most of November, with fewer advance purchases.

Late in November and early in December trade in the new Cuban sugar crop improved, with a marked advance in price. This advance appears again to reflect the market and price situation in the United States. January to April advance sales were made at this time at from 8¼ cents to 8¾ cents f. o. b. Cuba, while by the middle of the month sales for prompt delivery reached the record price of 12¼ cents f. o. b. Cuba. This was practically double the price at which it was calculated the entire new crop could have been purchased only a few months previous. Most of the December sales for prompt delivery, however, were made at around 11¾ cents f. o. b. Cuba.

The bulk of the January sales for prompt delivery were made at prices ranging from 11 cents to 11½ cents f. o. b. Cuba, but during February prices declined to slightly below 9 cents f. o. b. Cuba.

Advances in the price of Cuban raw sugar were made early in March, which continued throughout the month. During the last

week of March sales of Cuban raws were made in New York as high as \$12.79 per hundred pounds, which meant about \$11.40 f. o. b. Cuban ports. The first two weeks of April, 1920, witnessed still greater advances in the price of the Cuban raw, actual sales being made in New York at \$16.55 per hundred pounds, equal to about \$15.15 f. o. b. Cuban ports.

PRICES AND REPORTED SHORTAGE.—It will be noted from the above table (Table 42) that in April and May the rise in price of Cuban raws was very rapid. This has been accounted for by a reduction in the estimate of Cuba's production for the current crop. The rise in price, however, was entirely disproportionate to the reported shortage. At the opening of the year the estimate made by the trade was placed at 4,300,000 tons. Early in April a reduction was made to 4,000,000 tons, at which point the estimate remained during April, when the rise in price was most marked.

There is every appearance that there was a skillful playing on the fears of the consumer that severe shortage would overtake him. The high price indicates not so much the breadth of demand as the strength of demand. It is not that the consumer wants so much more sugar—certainly not an additional amount proportionate to the rise in price—but that he wants what he does want intensely enough to pay much more than he has been paying rather than to be cut off entirely. This is merely saying that in the case of some commodities the consumer in a certain state of mind regards them as so vitally necessary that there is little elasticity of demand. Advance in price serves very tardily to check effective demand. It is this shrewd guess of the consumer's state of mind that enabled many sugar producers and dealers constantly to press for and secure higher prices.

There is, moreover, unfortunately, an opportunity for manipulation of crop estimates in a situation such as has recently existed. It is not known that such manipulation occurred this year. However, an overestimate at the beginning of the season, with a marked reduction later, with the consumer in this state of mind, is likely to result in a runaway market. A more conservative estimate of the Cuban crop in the beginning might this year have saved the American people many millions. So long as the price of the immediate supply depends on the estimate of future supply the consumer should be protected to the fullest extent possible by unbiased information made available to all alike. Especially is this true when the consumer of a commodity in one country is so largely dependent upon and takes such a large proportion of the output of that commodity from another country.

REASONABLENESS OF PRICES.—Data setting forth the costs of production of Cuban raws are not now available to the Commission, and the reasonableness of the prices presented above, as tested by costs, can not, therefore, be determined.

Reports of sugar-producing companies, however, show large increases of net earnings over previous years. Moreover, the willingness of Cuban producers early in the season to sell their present crop at a much lower price than now prevails is evidence that on the basis of costs as estimated at the earlier date a much lower price would have returned reasonable profits.

A study of actual costs might disclose that these are much larger than originally estimated, but much, perhaps all, of this increase over estimates, except in cases of reduced crop output, will be found to be due, first, to increased costs of cane, the purchase of which is contracted for on the basis of the current market price of sugar at time of grinding; and, second, to increased costs of local labor and materials, which are directly the result of unusual returns in the industry.

Nor is it at all certain that these prices are, as tested by supply and demand, reasonable for either producer or consumer. High prices, it is said, bring their own correction, but not without severe pains to the industry if they stimulate it to excessive production.

There are indications that the more farsighted of Cuban producers and Cuban public men had in mind the desirability of price stabilization in the long-time interest of the island when on different occasions they urged the United States to buy the present Cuban crop, although a desire to prevent a general slump in prices may have been responsible for these various tenders.

The following is in part a cablegram, signed by Rafael Montoro, secretary to the President of Cuba, and sent to Senator McNary, early in January:

There are no official records of contracts from the harvest now in progress, but the quantity under engagement is estimated at 2,250,000 tons, a preponderance of this having been sold to the United States. What proportion is in the hands of speculators can not be determined, but the unsold quantity is in the hands of many producers and remains to be harvested. The United States is recognized as their principal market. They wish not only to maintain, but to strengthen by all practical means, the close relation now existing between our countries.

The exchanges in commodities, in the production of which both excel, will approximate this year in their total value one thousand million dollars. The Cuban Government, conscious of the great convenience and lasting importance of these economic exchanges, put forth every effort to conclude, by agreement with the American Government, the disposition of the entire output of Cuban sugar for the year 1920.

For the two preceding years this Government, acting through commissioners, appointed by the President, maintained a stable condition of price and distribution. Under special authority these commissioners again presented Cuba's attitude and made formal tender of Cuba's entire wealth of sugar production. Unhappily, these tenders were without response and active trading ensued, which carried the market to its present level.

Under these conditions the possibility of the United States acquiring a large part of the remaining crop of Cuba is dependent upon the attitude of your Government. There exists here a group of patriotic men extensively engaged in the enterprise of producing sugar. They, with many others, operating on a lesser scale, can be depended upon to respond to any invitation on the part of American representatives to consider a true price for Cuba's product.

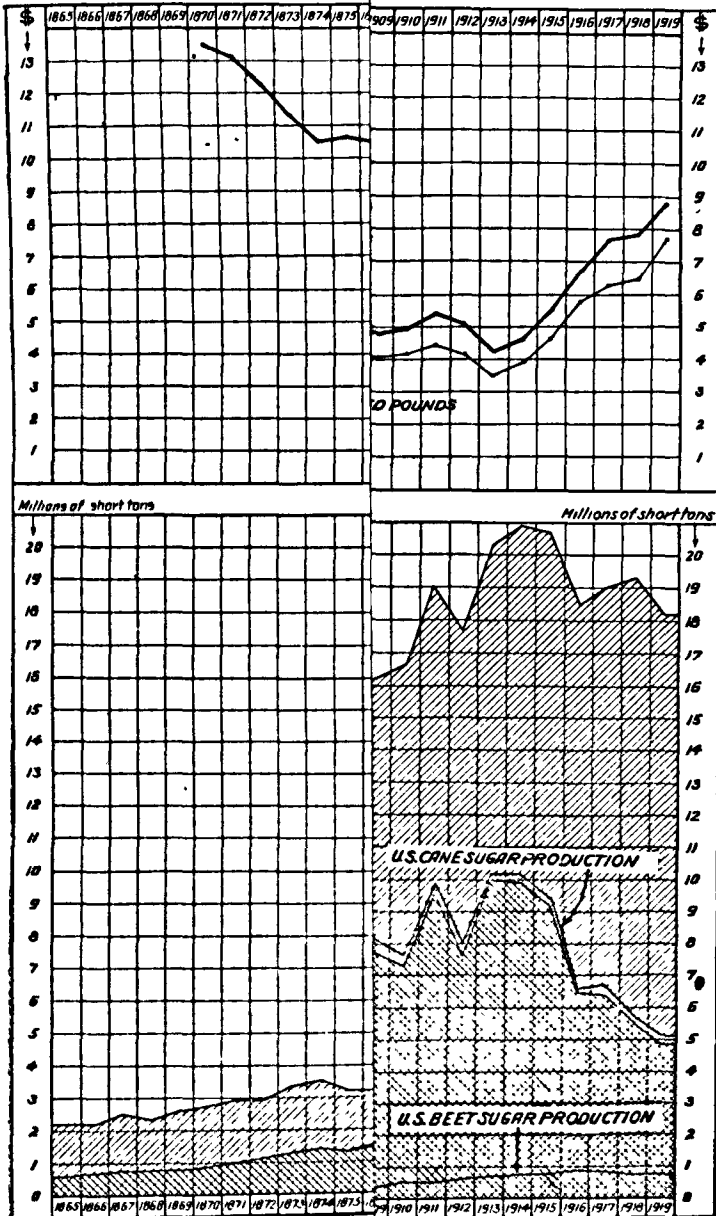
The present situation is unhealthy for every interest, industrially, financially, and morally, and the confident hope is felt here that terms may be arrived at, for whatever price may be paid with an assurance of a stabilized market will prove cheaper to the American consumer in all departments of trade than under existing conditions, and the producer receive for the product of his labor the approximate price paid by the consumer.

This Government awaits, with sincere interest, suggestions of American representatives and will lend its best influence to end the present error of wide fluctuations and undesirable situations.

From the point of view of the consumer there is evidence that prices of sugar went much above the point required to secure for him the maximum long-time benefit. The large returns to the sugar producer are dissipated in considerable measure to a class of

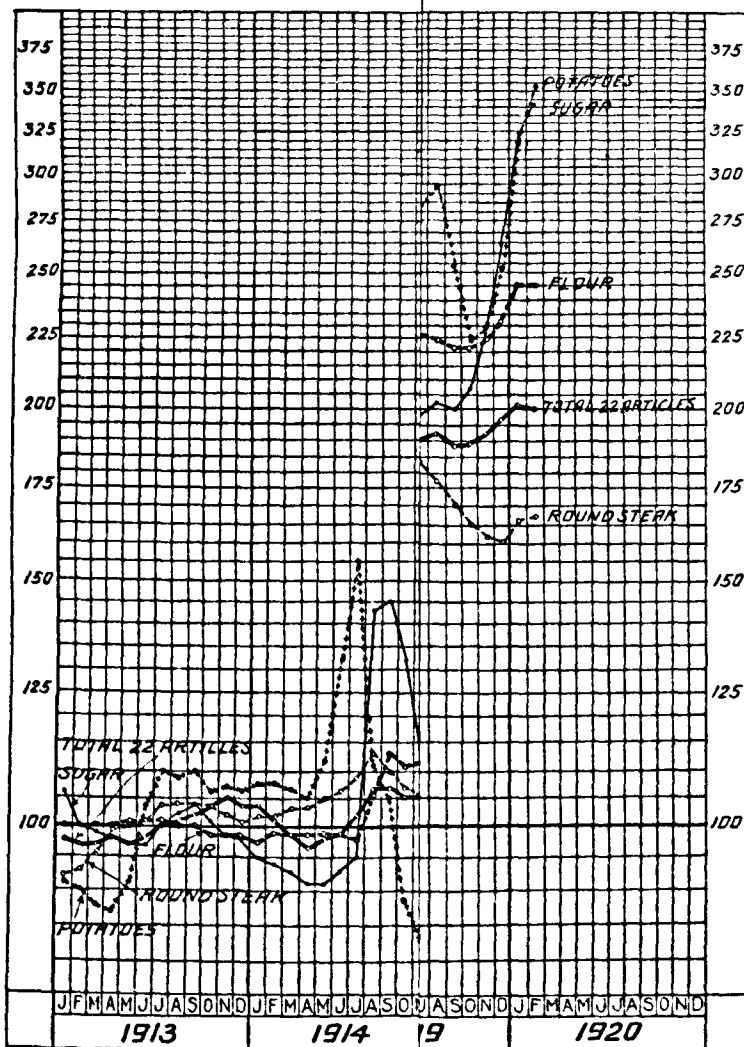
**NEW YORK PRIO WHOLESALE
PRG.**

(Production figures include ~~s~~ce from U S Statistical Abstract;
data on raw sugar price from ~~d~~ Related Products, War



RELATIVE RED 1913-1920- SEPARATELY FORK AND TOTAL WE

(Average price for 1913 = 100. Articles, bacon, ham, lard, hens, eggs, butter, cheese, milk, bread Statistics.)



laborers whose efficiency and output are decreased rather than increased by any marked increase in wages. The expansion of the cane-sugar industry is at present severely limited by both the character and the available volume of its labor.

Nor are excessive profits in any branch of the sugar-producing industry necessary either for the maintenance or for the healthful increase of its productivity. On the contrary, both producer and consumer will, in the long-time view, be benefited by more moderate profits.

It is said that the price of sugar has been relatively too low and that it was due a rise to bring it to a plane of equality with the prices of other foods; but until America entered the war it was, in the Western Hemisphere, presumably a supply-and-demand price. That it remained on practically a level for many years prior to 1914 (see Chart I, facing p. 120), while other prices generally advanced, was not because it was arbitrarily held down or because it was kept free from the influences that enhanced general prices, such as depreciation of the money standard, but because counter forces, such as decreased costs of production, were more potent in the sugar industry than in industry generally. During the war the price of sugar advanced in about the same ratio as did other prices (see Chart II, facing p. 120), and since the war even more rapidly.

If, however, it is meant when it is said that the price of sugar has been relatively low that more food value for the outlay could be obtained from sugar at former prices than from other foods, it should be noted that while sugar as a food has many substitutes which dietetically are sufficient, and itself may be substituted for other foods, it has no available substitute adequate as a sweetening agent in the domestic kitchen. The strength of its household demand lies largely in this latter use and not in its possible substitution for other foods.

It is doubtful, therefore, whether the increase in demand for sugar, which in any case appears to be attributable more largely to its use in manufacture than to its use in the household, can be accounted for on the assumption that price as compared with that of other foods has been relatively low, especially since no marked increase has been apparent until recently, during which time its price has more than kept abreast of the prices of other foods.

Section 6. Refiners' margins.

REFINERS' PRICES.—Refiners' prices, seaboard basis, less 2 per cent, as quoted by Willett & Gray, are shown in the table below, by weeks, since the new crop first came on the market. It will be seen that many companies were entirely withdrawn from the market, due to their refining on toll (see p. 83) or for other reasons, and many of the quotations are merely nominal, no sales being made at the quoted prices. The general paralleling of these prices with New York prices on duty-paid Cuban raws, carried over to this table from Table 42, will also be noted.

TABLE 43.—Refiners' quoted prices, seaboard basis, less 2 per cent, 1919-20 crop refined sugar, by weeks, December, 1919, to May, 1920, and quoted market prices of 1919-20 "spot" Cuban raw sugar, duty paid, New York City, by weeks for same period.

[Quotations are from Willett & Gray's Weekly Statistical Sugar Trade Journal. It should be noted that some of the companies are withdrawn from the market at times and the quotations are often merely nominal, no sales being made.]

[Price per hundred pounds.]

Refiner	December.			
	Fourth week.		Fifth week.	
	Refined	Raw.	Re ⁿ ed.	Raw.
National, New York.....	\$14 90	* \$13 04	\$14 90	* \$12 79
Federal, New York.....			16 42	12 79
Warner, New York.....			15 68	12 79
Revere, Boston.....			14 90	12 79
Average.....	14 90	13.04	15 47	12 79

Refiner	January.							
	First week.		Second week.		Third week.		Fourth week.	
	Refined	Raw.	Re ⁿ ed.	Raw.	Refined	Raw	Re ⁿ ed.	Raw
American, New York.....			\$14 70	\$13 04	\$14 70	\$13 04	\$14 70	\$13 04
National, New York.....	\$14 90	\$13.04	14.90	13 04	14 70	13 04	14 70	11 04
Arbuckle, New York.....			15.68	13 04	15 68	13 04	15 68	13 04
Warner, New York.....	15 68	13 04	15.68	13 04				
Revere, Boston.....	14.90	13 04			14.90	13.04	14 90	13 04
Pennsylvania, Philadelphia..	15 68		14 90	13 04				
McCahan, Philadelphia.....								
Savannah, Savannah, Ga.....	16 17	13.04						
Colonial, New Orleans.....	16.17	13 04						
California & Hawaiian, San Francisco.....			14 70	13 04	14 70	13.04	14 70	13 04
Western, San Francisco.....					14 70	13 04	14 70	13 04
Average.....	15 58	13.04	15 09	13 04	14 90	13 04	14 90	13.04

Refiner	February.							
	First week.		Second week.		Third week.		Fourth week.	
	Re ⁿ ed.	Raw	Re ⁿ ed.	Raw.	Re ⁿ ed.	Raw.	Re ⁿ ed.	Raw.
American, New York.....	\$14 70	\$13 04	\$14 70	\$12 04	\$14 70	\$10 28	\$14 70	\$10 16
National, New York.....	14 70	13 04	14 70	12 04	14 70	10 28	14 70	10 16
Arbuckle, New York.....	15 68	13 04	15 68	12 04	15 68	10 28	15 68	10 16
Warner, New York.....							15 68	10 16
Revere, Boston.....	14 90	13 04	14 90	12.04	14.90	10 28	14 90	10 16
Pennsylvania, Philadelphia..					14 46	10 28	14 46	10 16
California & Hawaiian, San Francisco.....	14 70	13 04	14 70	12 04	14 70	10 28	14 70	10 16
Western, San Francisco.....	14 70	13 04	14 70	12.04	14 70	10.28	14 70	10.16
Average.....	14 90	13 04	14.90	12.04	14 84	10.28	14.94	10.16

¹ No quotations are given by Willett & Gray for two of the refining companies.

² Quotation, being "spot," is slightly different from that appearing in Table 42, which for this date is in that table a price for January delivery.

TABLE 43.—Refiners' quoted prices, seaboard basis, less 2 per cent, 1919-20 crop refined sugar, by weeks, December, 1919, to May, 1920, etc.—Continued.

Refiner.	March							
	First week.		Second week		Third week.		Fourth week	
	Re ⁿ ed.	Raw.	Re ⁿ ed.	Raw	Re ⁿ ed.	Raw.	Re ⁿ ed.	Raw
American, New York.....	\$13.72	\$11.54	\$13.72	\$11.03	\$13.72	\$12.04	\$13.72	\$12.79
National, New York.....	13.72	11.54	13.72	11.03	13.72	12.04	13.72	12.79
Arbuckle, New York.....	15.68	11.54	14.70	11.03	14.21	12.04	14.21	12.79
Federal, New York.....			14.21	11.03	14.21	12.04	14.21	12.79
Warner, New York.....	15.68	11.54						
Revere, Boston.....	14.90	11.54	14.90	11.03	14.90	12.04	14.90	12.79
Pennsylvania, Philadelphia	14.46	11.54	14.46	11.03	14.46	12.04	14.46	12.79
California & Hawaiian, San								
Francisco.....	13.72	11.54	13.72	11.03	13.72	12.04	13.72	12.79
Western, San Francisco.....	14.70	11.54	13.72	11.03	13.72	12.04	15.68	12.79
Average.....	14.57	11.54	14.14	11.03	14.08	12.04	14.33	12.79

Refiner.	April.									
	First week.		Second week		Third week.		Fourth week.		Fifth week.	
	Re ⁿ ed.	Raw.	Re ⁿ ed.	Raw	Re ⁿ ed.	Raw	Re ⁿ ed.	Raw.	Re ⁿ ed.	Raw
American, New York.....	\$13.72	\$14.04	\$15.19	\$16.55	\$16.17	\$18.56	\$17.15	\$19.56	\$18.13	\$19.56
National, New York.....	13.72	14.04	15.19	16.55	16.66	18.56	17.15	19.56	17.15	19.56
Arbuckle, New York.....			16.17	16.55						
Federal, New York.....							22.54	19.56		
Revere, Boston.....	14.90	14.04								
Pennsylvania, Philadelphia.....	14.46	14.04								
McCahan, Philadelphia.....									17.15	19.56
Savannah, Savannah, Ga.....									15.68	19.56
California & Hawaiian, San										
Francisco.....	13.72	14.04	14.99	16.55			14.99	19.56	20.09	19.56
Western, San Francisco.....			15.44	16.55	16.66	18.56	16.66	19.56	22.30	19.56
Average.....	14.10	11.04	15.40	16.55	16.50	18.56	17.61	19.56	18.24	19.56

Refiner.	May.							
	First week.		Second week.		Third week.		Fourth week.	
	Re ⁿ ed.	Raw.	Re ⁿ ed.	Raw.	Re ⁿ ed.	Raw	Re ⁿ ed.	Raw
American, New York.....	\$19.13	\$19.56	\$19.11	\$20.01	\$21.07	\$23.57	\$22.05	\$20.56
National, New York.....	18.13	19.56	19.11	20.01	20.09	23.57	21.07	20.56
Arbuckle, New York.....	22.54	19.56	22.54	20.01	22.54	23.57	25.97	20.56
Warner, New York.....	22.54	19.56	22.54	20.01	22.54	23.57	22.54	20.56
Revere, Boston.....			21.07	20.01	21.07	23.57	21.07	20.56
McCahan, Philadelphia.....	17.15	19.56	17.15	20.01	19.11	23.57	19.11	20.56
Savannah, Savannah, Ga.....	15.68	19.56	18.13	20.01	18.13	23.57	18.13	20.56
Henderson, New Orleans.....			22.54	20.01	22.54	23.57	22.54	20.56
California & Hawaiian, San								
Francisco.....	22.30	19.56	22.30	20.01	22.79	23.57	22.79	20.56
Western, San Francisco.....	22.30	19.56	22.30	20.01	22.30	23.57	22.30	20.56
Average.....	19.85	19.56	20.68	20.01	22.22	23.57	21.76	20.56

REFINERS' NOMINAL MARGINS.—The above table will also show, by comparing raw and refined prices, what the refiner's nominal margin from week to week has been. All that such a margin denotes is the difference between the current price of raws and the refiner's current quotation. Whether the margin is an actual one depends

upon whether the refiner actually bought the raws from which his refined sales of that week were manufactured, at the current price of raws, and whether the sales were actually made at the quoted prices. On a rising market, with purchases made for future delivery, actual margins are probably considerably above the nominal. In some cases it will be noted from the table that the nominal margins are negative, yet in those very cases the actual margin may be quite liberal.

On the following page there are shown graphically the New York duty-paid price of Cuban raw sugar from late in December, 1919, to late in May, 1920, the average price of all refiners during this period, and individual prices of six refiners. The data on which the chart is based are from Table 43, above.

REASONABLENESS OF REFINERS' MARGINS AND PRICES.—The reasonableness of refiners' margins and prices can not, of course, be accurately determined without a study of costs, investments, and profits.

Some pertinent observations, however, may well be made. Prior to 1914 the average nominal margin for 12 years was \$0.86 per hundred. During the war the actual margin under Government control, through voluntary agreement with the Government, was set at \$1.30 per hundred from October 1, 1917, to August 1, 1918, at \$1.45 per hundred from August 1 to September 9, 1918, and at \$1.54 per hundred from the latter date to the close of the refining of the 1918-19 crop. These margins, which include refiners' costs and profits, were agreed to as satisfactory. It will be seen from the above table (Table 43) that nominal margins ranged up as high as \$5.52 per hundred. It will be noted, too, from the table that there were differences in some weeks between the prices of refiners located in the same competitive area of as much as \$6.86 per hundred. Such differences indicate little competition for trade. It is evident that under the conditions of an unsatisfied market the refiner could make, within broad limits, his actual margin what he pleased unless held in check by force of public opinion or by Government restraint.

As a matter of fact, the Department of Justice took the position in January, 1920, that the refiner's price should be based on his average cost of raws during the current month, with a nominal margin of 2 cents per pound. Profits accruing on purchases of previous months for delivery in the current month at prices below the current price were allowed, in addition to the 2-cent margin, on the ground that extra risk is involved in purchasing for future delivery. Under the market conditions that have obtained such a practice is open to question, and has apparently in some cases been productive of excessive margins. On the other hand, it must be remembered that there is legitimate ground for a reasonable growth in the refiner's margin, including as it does costs. With a loss of about 7 per cent of the weight of raws in the refining operation, only a part of which is recovered in by-products, the increase in cost in this item, as the price of raws advances, can be easily calculated.

In the face of rising costs, the published statements of some of the refining companies, which have not been verified by the Commission, show increases in net earnings for 1919 over 1918 ranging from 50 per cent to 190 per cent.

Section 7. Wholesale grocers' prices and margins, 1920.

Wholesale prices to the retail and manufacturing trade made decided advances early in 1920, in line with high refiners' and producers' prices. The table below shows the prices paid for sugar delivered to 540 wholesale grocers through January and February, 1920, and the gross margins on which these grocers operated.

TABLE 44.—*Sugar purchases and sales of 540 representative wholesale grocers showing average delivered prices paid and average margins received on sales, by regions and by months, January and February, 1920.*

Region.	Number of firms	January.				February.			
		Pounds.	Price per 100 pounds	Margin		Pounds.	Price per 100 pounds	Margin	
				Per 100 pounds	Per cent of price			Per 100 pounds	Per cent of price
United States.....	540	79,890,535	\$14.37	\$0.88	6.12	69,871,877	\$15.68	\$0.96	6.12
New England ¹	26	2,116,871	15.97	.91	5.70	1,091,392	15.35	1.08	7.04
Middle Atlantic ²	85	15,172,575	15.28	.92	6.02	13,492,759	15.93	1.00	6.28
East North Central ³	124	22,022,451	14.51	.94	6.48	21,174,860	15.73	1.00	6.36
West North Central ⁴	81	15,103,130	14.00	.88	6.29	15,159,576	15.95	.93	5.83
South Atlantic ⁵	68	3,901,626	15.55	.96	6.17	2,999,512	15.79	1.02	6.46
East South Central ⁶	51	2,722,603	16.17	1.02	6.31	1,882,182	15.99	1.01	6.32
West South Central ⁷	63	5,220,842	14.76	.96	6.50	5,817,489	15.44	.97	6.29
Mountain ⁸	19	3,380,789	12.36	.67	5.12	2,523,090	14.49	.74	5.49
Pacific ⁹	23	10,249,648	12.44	.68	5.47	5,731,137	14.90	.76	5.10

¹ Includes Maine, New Hampshire, Vermont, Massachusetts, Rhode Island, and Connecticut.

² Includes New York, New Jersey, Pennsylvania, Delaware, Maryland, and District of Columbia. No firm in Delaware reporting.

³ Includes Ohio, Indiana, Illinois, Michigan, and Wisconsin.

⁴ Includes Minnesota, Iowa, Missouri, North Dakota, South Dakota, Nebraska, and Kansas.

⁵ Includes Virginia, West Virginia, North Carolina, South Carolina, Georgia, and Florida.

⁶ Includes Kentucky, Tennessee, Alabama, and Mississippi.

⁷ Includes Arkansas, Louisiana, Oklahoma, and Texas.

⁸ Includes Montana, Idaho, Wyoming, Colorado, New Mexico, Arizona, Utah, and Nevada. No firms in Idaho or Utah reporting.

⁹ Includes Washington, Oregon, and California.

The table shows that the average price in January was \$14.37 per hundred, and in February \$15.68, with margins, respectively, of \$.88 and \$.96 per hundred, and a percentage margin in both months of 6.12. As between regions, prices show a tendency toward greater uniformity. The Mountain and Pacific States were selling in both months not only at the lowest price, but on the lowest percentage margins.

The Department of Justice, in face of considerable pressure for a revision of its order, continued to rule that 1 cent per pound for jobbers and 2 cents per pound for retailers were sufficient margins, although at one time a ruling was promulgated by the department (thereafter soon reversed) that a 5 per cent margin should be allowed to jobbers and a 12½ per cent margin to retailers. While such a plan appears more fair where costs are steadily advancing, there is less incentive under the plan to keep costs down.

CHAPTER IV.

GOVERNMENT POLICY IN RELATION TO THE 1919-20 CUBAN SUGAR CROP.

Section 1. Negotiations for the Cuban crop.

WORLD SHORTAGE.—With the coming of the summer of 1919 the United States Sugar Equalization Board had under consideration the Government's policy in relation to the 1919-20 crop sugars. It was realized by the board that a world shortage in sugar existed. Demands for sugar were being made from Europe, as announced by the board (see p. 130), and even from Japan, which it was not possible to fill without creating a serious shortage in the United States. Information secured by the board pointed to a world shortage in 1920 even more acute than in 1919. What the world conditions were in the summer of 1919 in sugar as bearing on the supply-and-demand situation in 1920 are set forth in Exhibit XVI.

OFFER OF THE CUBAN CROP—The all-important matter for immediate settlement was in regard to the Cuban sugar. A decision in respect to it, it was felt, would determine the policy toward domestic new-crop sugars and go far toward insuring a sufficient supply for the United States for the coming year.

On July 29, 1919, representatives of the Cuban Government and Cuban producers sent the following communication to the United States Sugar Equalization Board:

GEORGE A. ZABRISKIE,

President Equalization Board, 112 Wall Street, New York City.

DEAR SIR: In pursuance of the informal discussions conducted between the subscribers, speaking by authority for the Cuban Government, the members of the Equalization Board, as the purchasers and distributors of Cuba's sugar crop for the existing year, we deem it expedient to submit for your information, and as far as you may determine, for your action in confining the control and disposition of Cuba's crop of sugar for the ensuing year 1920.

In presenting our suggestions, while acting directly for the Cuban sugar producer, we accept the grave responsibility of speaking scarcely less for the American consumer, and for that vast army of foreign consumers whose needs are of such concern to the American Government.

Fortunately for every interest involved the great bulk of sugar required by importing countries is provided by the island of Cuba—but she takes no note of this "coin of vantage"—on the other hand, the island Republic, its hacendados and farmers, and manufacturers of sugar tender through its own Government, providing it meets with the consent and cooperation of the American Government, the entire wealth of her production under such terms as may be agreed upon by the contracting parties at a price moderate, but compensating to the producer and well within the economic reach of the consumer.

This is the fundamental basis upon which our tender is made.

If accepted through the continued life and active participation of your respected board or similar body, the whole question would be greatly simplified. If, on the contrary, the opportunity to serve—not the American people alone but the universal welfare—is for any reason, technical or otherwise, not availed of through one medium or another, there is not a community anywhere in America, in Europe, or Asia that will not feel the consequences of our

failure to provide a stable price for this most necessary article of human consumption.

Cuba approaches this question with full recognition of her relations to the American people and their Government and in the spirit of comity and desire for complete understanding.

We await with unflinching interest your reply, the subject of which we are assured is to you, as it is to us, the most momentous in the world's economy of to-day.

With assurances of great respect,
Faithfully, yours,

R. B. HAWLEY.
MANUFL RIONDA.

PURCHASE OF CUBAN CROP DEPENDENT ON LEGISLATION.—Purchase of the Cuban crop could result beneficially to the American consumer only as its distribution was effectively controlled. Such control could be achieved only through the continuance of the powers delegated to the Chief Executive under the food-control act, or by similar legislation. On August 8, 1919, the President in his message on the cost of living, delivered at the joint session of the two Houses of Congress, recommended an extension of the food-control act, which, as it appeared at that time, would expire at an early date with the proclamation of peace:

Let me urge, in the first place, that the present food-control act should be extended both as to the period of time during which it shall remain in operation and as to the commodities to which it shall apply. Its provisions against hoarding should be made to apply not only to food but also to feedstuffs, to fuel, to clothing, and to many other commodities which are indisputably necessities of life. As it stands now it is limited in operation to the period of the war and becomes inoperative upon the formal proclamation of peace. But I should judge that it was clearly within the constitutional power of the Congress to make similar permanent provisions and regulations with regard to all goods destined for interstate commerce and to exclude them from interstate shipment if the requirements of the law are not complied with. Some such regulation is imperatively necessary. The abuses that have grown up in the manipulation of prices by the withholding of foodstuffs and other necessities of life can not otherwise be effectively prevented. There can be no doubt of either the necessity or the legitimacy of such measures. May I not call attention to the fact, also, that although the present act prohibits profiteering the prohibition is accompanied by no penalty. It is clearly in the public interest that a penalty should be provided which will be persuasive.

Shortly after this, August 20, 1919, the United States Attorney General appeared before the Committee on Agriculture of the House of Representatives and asked for an amendment to the food-control act, in order that he might have adequate power to prosecute profiteers, a request which was granted. The President's recommendation to extend the period of operation of the act was not adopted.

CORRESPONDENCE WITH THE WHITE HOUSE.—In the meantime the Sugar Equalization Board, having considered the letter from the Cubans, decided to refer the matter to President Wilson, inasmuch as he was the sole stockholder in the corporation and decided the American policy with regard to sugar control. Accordingly, under date of August 14, 1919, he was advised of the Cuban request in the following letter:

DEAR MR. PRESIDENT: The Sugar Equalization Board is in receipt of a letter under date of July 29 from the Cuban commissioners, tendering to the American Government the Cuban sugar crop for 1920.

We deem it advisable that the Cuban commission should be advised at an early date as to whether our Government proposes to consider this tender. The authority of this board does not extend beyond the purchase and distribution of

this year's sugar crop, and we venture to suggest the control of sugar for the coming year must now be determined.

I am inclosing herewith a memorandum setting forth the sugar situation as it exists and such information as we possess concerning the prospects for the coming year and other points for your consideration in advising this board as to the policy you desire to be pursued.

The officers of the board are prepared to furnish you with any further information that you may desire.

UNITED STATES SUGAR EQUALIZATION BOARD (INC.),
 ———, *President.*

THE PRESIDENT OF THE UNITED STATES,
The White House, Washington, D. C.

The memorandum inclosed reads as follows:

The United States Sugar Equalization Board (Inc.) was incorporated on the 12th day of July, 1918, under the laws of the State of Delaware. The organization of the equalization board was accomplished under the approval of the President of the United States, who subscribed for \$5,000,000 of its capital stock (being the entire stock issued), which is now and has at all times been held for and on behalf of the United States.

The plan of the Food Administration for regulation and control of the price of sugar and the distribution thereof for the year 1917-18 in the United States, in view of the necessity for stimulation of production of domestic sugar, was not considered entirely sufficient for the year 1918-19, and thereupon it was concluded that the equalization board (under the approval of the President) should endeavor to purchase the entire crop of 1918-19 Cuban sugar and thereby insure a regular and sufficient supply of sugar to the people of the United States at a reasonable price under then existing conditions.

It must at all times be borne in mind that Cuban sugar is the main reliance of the people of the United States for their annual sugar supply, and while beet sugar and Louisiana cane is produced in the United States, and the United States gets sugar from Hawaii and other of its possessions, yet the sugar from all such sources is entirely insufficient to meet the normal requirements of the people of the United States, and Cuban sugar has been and, so far as can now be seen, will remain the largest single source of supply for the people of the United States for their annual requirements.

On the 24th day of October, 1918, the equalization board entered into a contract with representatives of the Cuban Government and agents of various Cuban producers of sugar in the island of Cuba under which the equalization board purchased substantially all the raw sugar produced in the island of Cuba during the crop season of 1918-19, a copy of which contract is hereto attached, marked "Exhibit A." [See Exhibit VI.]

The Sugar Equalization Board being duly authorized by said contract, resold one-third of the Cuban raw sugar purchased by it as aforesaid to the royal commission of the United Kingdom, for the use of it and its allies, and at the same price at which the raw sugar was purchased under the contract aforesaid. A copy of the contract of sale to the royal commission is hereto attached, marked "Exhibit B." [See Exhibit XVII.]

In furtherance of its plan of securing regular and sufficient supplies of sugar to the American people and the Army and Navy at a reasonable price, even during the disorganized period of world trade, the equalization board, on October 24, 1918, entered into a contract with the refiners of sugar in the United States and Herbert Hoover, as United States Food Administrator, under which the refiners agreed to purchase, and the equalization board agreed to sell to the refiners their entire requirements of raw sugar for the operation of their refineries for the period beginning October 24, 1918, and ending December 31, 1919, and the refiners agreed not to purchase any raw sugar from any person, country, or source of supply during said period other than from the equalization board. The price to be paid by the refiners for the raw sugar is 7.23 cents per pound, 96° average polarization (duty, if any, paid), delivered at refinery, and the refiners to sell all sugar refined by them at a price not more than 1.54 cents per pound wholesale of refined sugar, f. o. b. refinery, above the price of 7.23 cents per pound paid to the equalization board, the result being a wholesale price of sugar throughout the United States of not exceeding 9 cents per

pound at refining points. A copy of said contract is hereto attached, marked "Exhibit C." [See Exhibit XVIII.]

It will be observed that under the terms of this contract such refiner agrees to conduct his or its export business under the direction of the equalization board and to export or distribute to the domestic trade such proportion of its refined sugars as the equalization board may direct.

This contract was submitted to the Attorney General and his opinion was received to the effect that the contract was not in violation of any law of the United States.

By their terms the three contracts aforesaid expire on the 31st day of December, 1919. In view of the fact that the equalization board was incorporated and entered into the contracts aforesaid, with the approval of the President of the United States, and that the entire stock of the equalization board is held by him for and in behalf of the United States, the members of the board of directors of the equalization board deem it proper to submit to the President this memorandum.

1. By its purchase of the Cuban raw sugar the equalization board has been able to assure, up to this time, to the American people a regular and sufficient supply of refined sugar and at a wholesale price not exceeding 9 cents per pound at refining points, being the lowest price for refined sugar in any country in the world. Occasional and temporary local shortages have occurred, due principally to the interruption of regular shipments of raw sugar from Cuba during the recent marine strike, which occurred at the period of highest consumption.

2. Out of the price at which the raw sugar was sold to the refiners, the equalization board has, up to this time, accumulated reserves of about \$30,000,000, which belong to the United States, and but for the contracts aforesaid the equalization board believes that the price for refined sugar to the American people would have been much higher and much more would have gone to the Cuban producers, the refiners, or to speculators, at the expense of the American people.

3. There is to-day a world shortage of sugar. Demands are made from Europe and even from Japan for sugar which it is impossible to fill without creating a serious shortage in the United States, and from the information that the equalization board has been able to secure it seems probable that the world sugar shortage for 1920 will be more acute than for the year 1919.

4. A copy of the letter of July 29 from the Cuban commission tendering to the United States Government the Cuban crop for 1920 is attached hereto, marked "Exhibit D." [See p. 127.]

Conditions are so abnormal and the prospect of securing a regular supply of sugar at a reasonable price for the people of the United States for the year 1920 is so uncertain that the equalization board concludes, from a commercial point of view, that its duty requires it to suggest to the President that, in reply to the communication from the representatives of Cuban producers, negotiations be entered into for the purpose of securing the sugar required for the necessities of the people of the United States for the year 1920 from Cuba under somewhat the same arrangements as the equalization board was able to make with the Cuban commissioners and producers and the refiners in the United States for the year ending December 31, 1919. This suggestion is made entirely from our consideration of the sugar situation from the standpoint of assuring the American people a regular supply at a reasonable price, and, of course, is subject to the general policy of the Government as to the advisability of continuing control and regulation of food commodities.

The above memorandum, it will be noted, recommended that negotiations with the Cubans be entered into with a view of securing such sugar as would be required from Cuba to supply the United States for 1920. The basis of this recommendation was threefold: First, the recognition of the existence in 1919 of a world shortage of sugar, which in 1920 would probably become more acute; second, the desirability of securing for the American people a regular supply at a reasonable price, subject to the Government's general policy of control and regulation of food commodities; third, the apparent ability of this Government to secure at that time the Cuban crop.

A DISSENTING OPINION.—This memorandum was not unanimously¹ adopted, as Dr. F. W. Taussig, member of the board, disagreed with the expressed opinion and filed his dissent as follows:

I regret not to be able to reach the same conclusion as the other members of the Sugar Equalization Board. I believe that no negotiation should be entered in with the Cuban producers, and that the regulation and restriction of sugar prices should cease with the close of the present arrangement, December 31.

It is true that the evidence now available points to a shortage of sugar in 1920 and to a possibility of prices in that year as high as those of 1919, or even higher. But no certain conclusions can be reached about the future. Prices of sugar will be affected not only by the incoming supplies, but by the general political and monetary conditions of the whole world. The general level of prices in the United States and in other countries may be lower than it is now. Consumption may be reduced by changes in general business conditions or by restrictive measures in importing countries. The present recommendation of the board is that the United States (through the board) should repeat a huge commercial venture, in the hope of protecting consumers and of incurring no loss, but with the clear possibility of having to assume a loss. The operation would involve a guarantee by the Government of extremely high profits to the Cuban sugar planters, and also a virtual guarantee of similar profits to our beet-sugar producers as well as to the planters of Louisiana, Hawaii, and Porto Rico. It would necessarily lead to contracts with the sugar refiners which would guarantee good profits to them also. No doubt in the absence of Government regulation all these producers might make profits higher still; but prediction as to the outcome one way or the other can not be made with any confidence. Business of this kind may be undertaken by the Government under stress of war, but should cease now that we are at peace.

Moreover, the regulation of the price of sugar can not in my judgment stand alone. The whole relation of Government to industry in time of peace is involved. If the price of sugar is to be specifically controlled, so should that of bread, of meat, of clothing. In the main we must look for a remedy to the natural development of production and to the return of the entire world to normal financial and economical conditions.

The dissenting opinion expressed objection not only to the purchase of the Cuban crop but to any further regulation and restriction of sugar prices after the close of 1919. The basis of the dissent was twofold: First, while admitting the probability of a shortage of sugar in 1920 and the possibility of higher prices, it asserted the belief that future prices were involved in uncertainty, and that such uncertainty would place the Government in the position of assuming a huge commercial risk, while at the same time guaranteeing to producers and refiners high profits; second, it challenged the soundness of a policy that in time of peace would require the Government to regulate the price of sugar and not that of bread, of meat, or of clothing, and questioned the desirability of any general system of regulation in times of peace.

Considering the world shortage of sugar, the sharp increase in demand, and the relatively low price² at which sugar had been sold, the Government's risk of loss through failure of consumption to absorb the supply at the restricted price was negligible—certainly no

¹ Mr. Herbert Hoover, chairman of the board, was in Europe at the time the Cuban offer was made. In a cablegram to the President, dated July 23, he disclaimed any intimate knowledge of the American sugar situation but set forth the conditions in Europe which would have a bearing on the decision to be made by the United States Government. This cable is given in Exhibit XIX. On October 29, 1919, Mr. Hoover appeared before Subcommittee No. 3 (Foreign Expenditures) of the Select Committee on Expenditures in the War Department. His views as to what the Government policy should have been were there briefly given (see Exhibit XX). Appearing before the subcommittee of the Committee on the Judiciary, House of Representatives, May 14, 1920, he stated it as his conviction that the Government should have bought the Cuban sugar crop of 1919-20 when it was tendered July, 1919.

² By this is meant a price lower than that at which sugar was being sold in foreign countries.

greater than the year previous. It is true that the operation would have served to guarantee a profit to producers and refiners—"extremely high profits"—if such were their profits under the old contract, for the new contract according to the expected price basis would apparently have given profits little greater. But it was also probable that the operation would have prevented the open-market profits actually realized, which were much in excess, no doubt, of the "extremely high profits" referred to.

The second reason for dissenting would appear to have been the controlling one. With respect to the objection to the control of the price of sugar as against that of bread, of meat, or of clothing, it should be stated that the price of none of these had been controlled during the war after the manner of that of sugar; that the proposal was merely the continuance of a policy which, instituted in time of war as a measure to secure sufficient sugar at a reasonable price, was thought to be desirable in the unsettled period following the war; that if sugar was much below the general level of prices, and that level was soon reduced, the industry would be saved the difficulties of readjustment downward; while if that level was maintained or raised, prices might be moderately advanced without the panic and demoralizing speculation that attend a runaway market; that the policy in no sense was one of arbitrary price fixing imposed from without, but one whereby uniform prices might be arrived at by a series of voluntary agreements which allowed for profits satisfactory to the industry and sufficient to maintain it, and which provided for a primary distribution under the direction of the board and a secondary distribution at fair margins determined under the food-control act. If the producer was disposed, as he was in July, 1919, to give the consumer a fair supply at a reasonable price, he should not, it would seem, have been refused so long as fair play was assured and the unfair margin of the middleman was prevented.

In reply to the board's letter and the memoranda, Secretary Tumulty wrote the Sugar Equalization Board advising that the President was giving consideration to the Cuban proposal. On September 20, however, no word having been received from the President, the Sugar Equalization Board sent him the following communication:

The PRESIDENT OF THE UNITED STATES,
Washington, D. C.

MY DEAR MR. PRESIDENT: Referring now to my letter to you of the 14th day of August inclosing the report from the board of directors of the United States Sugar Equalization Board (Inc.), and also referring to you a letter from the representatives of the Cuban Government and producers of sugar, in reference to the Cuban crop of raw sugars for the year 1919-20, I desire to respectfully bring to your attention the fact that the time is fast approaching, if it has not arrived, when we will be unable to control the Cuban crop of sugar for the year 1919-20 unless action is taken at once.

I am informed that a considerable tonnage of Cuban sugars of the crop of 1919-20 has already been sold, and it seems entirely probable that the representatives of the Cuban sugar will withdraw their proposition unless some action is taken at once.

May I therefore respectfully ask an early determination of the policy which the United States Sugar Equalization Board (Inc.) is to pursue with reference to the matter referred to in my letter of the 14th day of August. I know the pressure you are under, and nothing but imperative necessity could make me add this matter to your burdens.

Very respectfully,

GEORGE A. ZABRISKIE, *President.*

A reply from Mr. Rudolph Forster, executive secretary, at the White House, was received as follows:

THE WHITE HOUSE,
Washington, September 22, 1919.

MY DEAR SIR: Allow me to acknowledge the receipt of your letter of September 20 and to say that I shall bring it to the attention of the President at the first favorable opportunity.

Sincerely, yours,

RUDOLPH FORSTER,
Executive Secretary.

Mr. GEORGE A. ZABRISKIE,
President of U. S. Sugar Equalization Board (Inc.),
111 Wall Street, New York City.

THE CUBAN PROPOSITION WITHDRAWN.—Under date of September 22 another communication came from the Cuban representatives, withdrawing their proposition of July 29. It reads as follows:

THE CUBAN-AMERICAN SUGAR CO.,
New York, September 22, 1919.

Mr. GEORGE A. ZABRISKIE,
Chairman Equalization Board, New York City.

DEAR SIR: We beg leave to refer to our letter bearing date of July 29, 1919, copy of which we inclose. As you will observe by its terms, we were pleased at that time to inform your respected board that the Republic of Cuba, its hacendados and farmers and manufacturers of sugar, acting through us in a representative capacity, were willing to tender to you or a similar body the entire production of Cuba on such terms as might be agreed upon by the contracting parties at a price moderate but compensating to the producer and well within the economic reach of the consumer, always provided that this offer met with full consent and cooperation of the United States Government.

In the interval that has transpired we have awaited your answer, confidently believing that the United States Government would undertake the continued control of sugar, and every interest concerned, especially the American consumer, would experience the advantage of a stabilized market. Unfortunately the logic of the situation has not impressed the Government, or in keeping with its traditional policy—the war being over—it is thought best to permit the market to be ruled by the natural law of supply and demand.

While we had hoped for a different conclusion to the negotiations put forward by Cuba, with the wealth of production represented by her producers, we reluctantly accept the situation now existing and return the authority under which we were acting. The spirit of the times is so fraught with speculation that wide fluctuations must inevitably ensue, but whatever developments may occur, speaking now only for ourselves, and whatever influence we may exert, we shall employ our best efforts in helping to maintain a conservative situation.

With assurances of great respect,

Faithfully, yours,

R. S. HAWLEY,
MANUEL RIONDA.

Thereupon, on September 23, the Sugar Equalization Board sent the following letter to the President:

THE PRESIDENT OF THE UNITED STATES,
The White House, Washington, D. C.

MY DEAR MR. PRESIDENT: The inclosed copy of a letter from Messrs. Hawley and Rionda, representing the sugar producers of Cuba, is self-explanatory, and in view of the fact that about one-third of the Cuban crop of next year has since been disposed of for export to countries other than the United States, we believe that the situation is out of hand.

Therefore in order to protect the interests of the American consumer we have advised American refiners as to conditions, so that they may purchase raw sugar as per prewar times.

Very respectfully,

GEORGE A. ZABRISKIE,
President United States Sugar Equalization Board (Inc.).

This letter marked the conclusion of the negotiations and their failure to secure the crop for the American people under the conditions of the previous year. Although in the communications from the Cuban representatives no mention was made of the price at which the crop could be bought by the Sugar Equalization Board, it was the opinion of the president of the board that it could have been purchased for 6½ cents or thereabout, 1 cent more than what was paid for the 1918-19 crop. By the middle of January, 1920, the price of Cuban raws of the 1919-20 crop had advanced to 13.04 cents, duty paid, f. o. b. New York, and by May 15 they were bringing around 20 cents a pound, 13 cents a pound more than they would probably have cost if the contract had been made in the summer or early fall of 1919.

Section 2. Opposition to Government control.

After the negotiations between the Sugar Equalization Board and the Cuban representatives had come to an end, more or less antagonism to any further control of sugar by the Government was expressed during the discussion of the matter in both Houses of Congress and in the press in the autumn and early winter. It was held that further sugar control would mean the purchase of the Cuban 1919-20 crop on a basis that would make the price of white sugar \$9.80 a hundred when on an open market it would sell for from \$15 to \$20. Sugar, it was claimed, had been singled out from among commodities and the price held down while others were sold without regulation, this being in line with Dr. Taussig's dissenting memorandum. As time went on and the prices of unregulated sugar advanced, there was a feeling in some quarters that the market had reached the peak and if left to the influence of normal trade factors would decline during the first few months of 1920; that if the Government entered the market at that time and purchased the remaining unsold part of the Cuban crop the effect was likely to be that of holding prices at a higher level than they would be under the working of the law of supply and demand.

From Cuba also came disapproval of the proposition. An organization known as the Asociación de Hacendados y Colonos issued a manifesto opposing further control over Cuban sugar by the United States Government, although stressing the willingness of the Cuban producers to have established during the war a price for their sugar which was below what could have been obtained in an open market, notwithstanding the fact that the prices of articles obtained from the United States and used in the Cuban sugar industry had increased much more than the price of sugar. Some criticism was also expressed concerning the profit of more than \$30,000,000 made by the Sugar Equalization Board in handling the Cuban crop of 1918-19, the feeling being that this money should have gone to the sugar producers instead of the United States Treasury.

Section 3. Congressional action.

The question of sugar supply being such an important one and the sugar shortage having become by this time so acute, the United States Senate instituted an inquiry into the sugar situation on October 3, 1919, under senate resolution 197, which reads as follows:

Resolved, That the Senate Committee on Agriculture and Forestry is hereby instructed to investigate the shortage of sugar and the price of sugar in the United States, and that the Sugar Equalization Board is respectfully requested to cooperate with the Senate committee on Agriculture and Forestry in the investigation.

Resolved further, That the Senate Committee on Agriculture and Forestry is directed to report to the Senate at the earliest possible time its conclusions, especially on the following:

- (a) The reasons for the shortage of sugar.
- (b) Information regarding the prices of sugar and whether any unjust or exorbitant profits have been made on sugar; and if so, by whom?
- (c) The prospect for relief from the sugar shortage.
- (d) Fixing the responsibility for the shortage of sugar.
- (e) Advice as to whether legislation to prevent speculation in sugar is desirable.
- (f) Whether the Sugar Equalization Board should be continued within its present capacity.

The hearing was conducted by a subcommittee of the Committee on Agriculture and Forestry. The testimony developed the information relative to the failure of the Government to purchase the Cuban sugar crop of 1919-20; that the Sugar Equalization Board did not feel at liberty to purchase the crop without being instructed to do so by the President, inasmuch as he was holder of the entire stock of the corporation. At a continuation of this hearing October 18 it was brought out that while the board could have proceeded to buy the Cuban crop under the powers it had, it did not do so because the President controlled the policy of the board, and the latter did not know whether it was the policy of the Government to continue to control sugar distribution through the next year.

It was further developed that the board was of the opinion that inasmuch as a considerable part of the Cuban crop was still not sold it could be purchased by the Government at a reasonable figure, probably about 6½ cents; but if the contract were made, there should be additional legislation authorizing the board to exercise the power of import and export embargo, the licensing power, the control of distribution, and the power to punish for profiteering.

As a result of the hearing of October 3, 1919, Senator McNary offered a bill to the Senate on October 9 which authorized the acquisition of raw sugar, the licensing of brokers and dealers, and the power of embargo on exports of sugar. Objection was offered to the bill on account of its comprehensiveness, whereupon another bill was prepared and introduced October 22 without the license feature. The United States Sugar Equalization Board, however, insisted that the powers as outlined in the first bill were absolutely necessary if the board should purchase the Cuban crop, it being pointed out in this and the subsequent hearing, October 18, that if the board were not given the power to license the sugar must inevitably be turned over to speculation, for which the American consumers would have to pay.

While Congress was considering the matter, Mr. Zabriskie, president of the Sugar Equalization Board, on October 31, wired to Senator McNary setting forth the opinion of the board, in part, as follows:

From the statement in the press from you this morning it appears to us that you have misinterpreted the attitude of the Sugar Equalization Board with regard to continued operations. In order that there may be no misunderstanding I wish to state explicitly that the Sugar Equalization Board does not consider

that any protection can be given to the American people in the matter of supplies and price of sugar during the year 1920 unless there is such legislation as gives the power to the board not only to purchase raw sugar but also to control speculation and profiteering, and to so control the distribution as to ration down the consumption of candy and sweet drinks to a point that will protect the American householder.

The present members of the Sugar Equalization Board consider that any measures short of this will be worse than complete free trade in sugar. Since the board some months ago proposed the purchase of Cuban sugars the price has risen to a speculative point that is in the minds of the board no longer fair to the householder, and as the Cuban sugars in any event comprise 50 per cent of the American consumption, the purchase of these sugars alone without the control of domestic sugar would not protect the American consumer. On the other hand the authority to control profiteering and to ration the manufacturing consumption of sugar and thus reduce the demand to approximately the supplies available would reduce speculation and profiteering and would protect the householder in the United States and would probably eventually enable the board to purchase Cuban sugars at a reasonable price.

The board has provided the American people with seven hundred million pounds more sugar this year than ever before in our history and has held the lowest price in the world to the American consumer.

The board has been consistently asking for a definition of Government policy for four months and it wishes again to disclaim any responsibility for the situation that has arisen. The board has no control of the new crop of Louisiana and beet sugars now coming into the market. The sole influence it is able to exert is by virtue of its ownership of the remainder of the old Cuban crop and this is now being distributed to the consumer on a basis of 9 cents wholesale price for sugar to the end of this year.

Under date of October 27, Mr. Zabriskie also wrote to the Attorney General setting forth the views of the board on the situation, as follows:

DEAR MR. ATTORNEY GENERAL: I am requested by the directors of the Sugar Equalization Board to address you upon the present situation in sugar. You are perhaps aware that the board and Mr. Hoover, each acting independently, laid the prospective situation before the President in July and August this year and sought advice as to the policy of the Government with respect to these questions.

It appeared to us that there was (subject to the buying power of Europe) a prospective shortage of sugar for the year 1920 and that the anticipation of this situation would be reflected by speculation in the sugar trades during the latter part of the year 1919. It was our view, therefore, that some decision must be reached as to the policy to be pursued by the Government in this matter, and it appeared to us that there were at that time two alternative policies.

In the one case, to continue absolute control measures by again entering negotiations with European powers for the joint purchase of the dominant crop; that is, of Cuba, and the practical allocation of the balance of the world's market to certain governments, as was done last year.

It must be obvious that as the United States must secure one-half its sugar by imports it can not at will obtain foreign sugar except by agreement with foreign Governments or by competition with them in the common markets, and therefore in the face of shortage if there was to be any control of price some international agreement is vital. The control of profiteering and speculation during a probable shortage is not only dependent upon the above measures in foreign sugar, but also upon an absolute control of the domestic production of sugar and of the distribution throughout the country, together with control of the profits of all distributors. The power to ration the country is also necessary if the householder is to be protected from the financially more enterprising manufacturer of sweet drinks and candy.

An alternate policy was to cease all governmental control of sugar and permit the establishment of absolute free trade, and this might result in a large increase in price, at least temporarily.

The President has not been able to secure unanimity of view amongst his advisors as to which of these policies should be adopted. In the meantime a large portion of the Cuban sugar crop has passed into the hands of speculators at increasing prices, and the board considers that the opportunity has

gone by for an en bloc purchase at a reasonable price. The purchase of the Cuban crop would, in any event, be useless without legislation giving it control of domestic sugar and its distribution during 1920. It appears now too late to expect this legislation before Louisiana sugars will also have largely passed into the hands of speculators and distributors, for no power exists to even temporarily control this output in the manner you have followed with beet producers.

The situation, therefore, at the present moment is that the legal powers of the board expire with the ratification of the treaty at probably a very early date, and the economic power which it possesses through the ownership of the remainder of the Cuban crop can only extend so far as this distribution of this sugar will spread over the country.

The policy of the board will necessarily, therefore, be confined to the minor portion of control which it is still able to exert until the expiration of the Cuban contract, late in December, and to equalize the distribution of new beet sugar under recent regulation. There is undoubtedly a large amount of speculation and even hoarding in process in the matter of sugar, all in anticipation of further rises in sugar prices.

The board does not wish to fail to call attention to the Government to any measures which might still be taken in the future, and it would point out that while it is too late to institute a satisfactory control of price and assurance of supplies it is still possible to protect the supply of sugar to the householder and prevent its absorption into the luxury trades and at the same time greatly mitigate speculation. If some department of the Government could be given the power to absolutely ration the candy and sweet-drink manufacturers so as to reduce American consumption of these trades, it would afford protection to the householder. Furthermore, if our Government would join with the foreign Governments in setting up an international committee to eliminate competition in the purchase of overseas sugar between nationalities, these two measures would undoubtedly greatly reduce the amount of speculation now in progress and prevent a considerable portion of the rise in price that in the present atmosphere is likely to take place at the end of the year.

The above would protect householders, but undoubtedly create very great difficulty to the manufacturer and distributor and would afford no assurance to sugar producers, unless the board also had the power to buy sugar when offered at fair prices.

At the present moment the Cuban and domestic sugars available for distribution until the end of December amount to approximately 750,000 tons, which will provide for consumption above normal during this period. With the distribution of this amount of sugar, the total supply to the American public during the year 1919 will amount to over 4,000,000 tons, or 350,000 tons greater than any consumption hitherto known in our history. It must be evident, therefore, that the Sugar Equalization Board has provided supplies of sugar against any reasonably anticipated consumption in the United States, where prices are the lowest in the world. The local sugar shortages in various parts of the country during the past month have been due not so much to the shortage of essential supplies as to a considerable amount of hoarding, largely amongst the consumers, and a certain amount of speculation on the part of dealers, together with a very large disturbance in the even flow of supply due to the prolonged strikes in Cuba and on the American seaboard in its effect upon ship arrivals.

With the probable shortage of sugar next year there may be a tendency on the part of some retailers and other dealers to increase the price during the next two months. There should be no justification for this, as the wholesale price will not advance (except in the case of domestic sugars), and the board is anxious to cooperate in the use of the new penalties recently placed at your disposal by Congress to rigorously prevent advantage being taken of the consumer by this situation.

Faithfully, yours,

Geo. A. ZARRISKIE,

President United States Sugar Equalization Board (Inc.).

THE McNARY BILL PASSED.—On November 3 the Senate Committee on Agriculture reported out what was known as the McNary bill. It gave the Sugar Equalization Board the authority to buy the Cuban.

sugar, and repealed the licensing and control features; but when it went to the House the licensing power was reinserted, and with this power the bill was finally passed by Congress December 20 and approved by the President December 31, 1919. It reads as follows:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the President is authorized to continue during the year ending December 31, 1920, the United States Sugar Equalization Board (Incorporated), a corporation organized under the laws of the State of Delaware, and to vote or use the stock in such corporation held by him for the benefit of the United States, or otherwise exercise his control over the corporation and its directors, in such a manner as to authorize and require them to adopt and carry out until December 31, 1920, plans and methods of securing, if found necessary for the public good, an adequate supply and an equitable distribution of sugar at a fair and reasonable price to the people of the United States. Sections 5 and 10 of the Act entitled "An Act to further provide for the national security and defense by encouraging the production, conserving the supply, and controlling the distribution of food products and fuel," approved August 10, 1917, as far as the same relates to raw or refined sugar, syrups, or molasses, are hereby continued in full force and effect until December 31, 1920, notwithstanding the provisions of section 24 of said Act: *Provided,* That the provisions of this Act shall expire as to the domestic product June 30, 1920: *And provided further,* That the zone system of sale and distribution of sugars heretofore established by the said United States Sugar Equalization Board shall be abolished and shall not be reestablished or maintained, and that sugars shall be permitted to be sold and to circulate freely in every portion of the United States. The termination of this Act shall not affect any act done, or any right or obligation accruing or accrued, or any suit or proceeding had or commenced in any civil case before the said termination pursuant to this Act: but all rights and liabilities under this Act arising before its termination shall continue and may be enforced in the same manner as if the Act had not terminated. Any offense committed and all penalties, forfeitures, or liabilities incurred prior to such termination may be prosecuted or punished in the same manner and with the same effect as if this Act had not been terminated.

The important features of the bill are those authorizing Executive control over distribution and prices and abolishing the zone system, the first being provided only to take care of the situation in case peace should be declared, as the food-control law provided that no further supervision by the Government should be exercised after the declaration of peace. Control over distribution is in part effected by continuing in force until December 31, 1920, sections 5 and 10 of the food-control act, which grants to the President the powers of license and requisition. It is provided, however, that the provisions of the act should expire as to domestic sugar June 30, 1920.

Section 4. Purchase of Cuban crop not attempted under new law.

In announcing that the McNary bill had become a law, Secretary Tumulty issued the following statement for the President:

The President has signed the sugar control bill. This bill confers discretion on the President in the matter of purchasing sugar from Cuba. It is doubtful whether it will be practicable or wise for the President to exercise the power conferred so far as the purchase and distribution of sugar are concerned. Some of the Cuban sugar has already been purchased, and there is no central control over sugar in Cuba as there was last year, and it might therefore be impossible for the Government now to step in and purchase the sugar without increasing the price to the consumer.

The bill however, continues the licensing power also, and this power may be used to assist in controlling profiteering among distributors. Much Cuban sugar is coming in now, and the indications are that prices have reached their peak, and that there will be tendency for prices to fall in the next few weeks.

Later, under date of January 3, 1920, the following statement on the situation was issued from the White House:

On the basis of the facts presented and the conclusions reached by the Sugar Equalization Board, the President has decided that the authority conferred by the McNary Sugar Act, passed December 20, so far as it involves the purchase and distribution of the Cuban crop by the Government, would not be exercised.

The matter of repeating the operation of the Government's purchasing and controlling the Cuban sugar crop for another year under war powers came up for active consideration in August, 1919. At that time there was an expectation that the treaty of peace with Germany would be ratified within a reasonable time and that peace conditions would reappear. There appeared to be a very definite view on the part of congressional leaders that the exercise of war power should not be extended another year. There was dissent by one member of the board of equalization from the conclusion reached at that time by the majority of the board that the control should be further exercised. His view was that it was desirable to return to normal conditions and that a beginning in respect to sugar should be made. The majority of the board was definitely of the opinion that the Cuban crop should not be bought unless it was clear that its powers of control over sugar would be effective and this could not be made certain without action by Congress.

The President had not reached a conclusion in the matter when he started on his western trip and was taken ill. On October 3, the equalization board, through its president, expressed to the Senate committee its view that the Cuban crop for 1920 should and could be purchased provided the powers of control heretofore exercised by the board were continued in full until December 31, 1920, thus enabling the board to see that the consumers should secure a fine sugar at a reasonable price. The board at that time felt that it could renew its contract with the Cuban and American producers as well as with the refiners. No action was taken by the Congress until December 20.

Conditions have now so changed that the members of the board do not believe that action by it under the provisions of the act of Congress referred to offers a solution of the problem of securing a regular supply of sugar for the people for the year 1920 at a reasonable price.

The board has had no contract with the western beet or the Louisiana sugar cane producers for the 1919-20 crop, which began to come into the market in the fall, and therefore from about October 15 the control which the board could exercise applied only to the remainder of the 1919 Cuban sugar crop, which it had purchased, and which was deliverable on or before November 30, 1919. A considerable quantity of the Cuban crop of 1920 has already been sold overseas and to American refiners. One of the elements which helped materially to make the board's action for the 1919 crop effective no longer exists. The board was able to deal with the unified Cuban selling agency for the 1919 crop and to secure and control the entire crop.

Now, there is no person or committee authorized to sell the balance of the 1920 Cuban crop. Therefore, if the Government of the United States, through the board, should appear in the Cuban market as a purchaser of the sugar, it would have to buy in individual lots to compete with private buyers, and the tendency would be to strengthen the market and further increase the price. Furthermore, it would be compelled to buy sugar at the time of the most adverse market conditions and maximum prices, and to seek to stabilize the price on the basis of this maximum or risk a very considerable financial loss.

Furthermore, the act of Congress limits the control of the board over domestic sugars to June 30, 1920, and should the board succeed in purchasing a large quantity of Cuban sugar for delivery throughout the year 1920 the board would find itself in the position of trying to maintain a uniform, reasonable price over the whole country, with no control whatsoever over the large quantities of sugar from Hawaii and Porto Rico, which come in mainly after June 30, and over the new Louisiana cane and western beet sugars, and this, too, at the time of the year when, if at all, absolute control of all sugars by the board would be essential.

In addition the act forbids the board from putting into effect its present system of zone distribution, under which consumers get their supply from the nearest and most convenient points of production. This system was most useful during the year 1919 in effecting a fair distribution of available sugar.

The conditions in the United States in respect to sugar are such for January, February, and March that there would be little hope of the board's being able to reduce the price of sugar by purchasing the Cuban crop and attempting to reestablish control of the industry.

It is possible that when the flow of raw sugars from the large crops of Cuba and Porto Rico reaches its peak in March and April prices may be somewhat reduced. The refiners' price is now 15.2 cents per pound wholesale, which is a considerable reduction from the first offerings of sugar refined from new cane sugars. The offerings of refined sugars for February deliveries are at 13.5 cents per pound wholesale, with still further reductions for March, which indicates a tendency in the industry toward settling down to normal conditions.

The recent act keeps alive the licensing power of the board, providing that whenever the President shall find that any storage charge, commission, profit, or practice of any licensee is unjust or unreasonable or discriminatory or unfair he may order the discontinuance of the same and, if necessary, find what is a just and fair charge, profit, or practice. This power, which will be invoked, if necessary, and exercised in cooperation with the Department of Justice, will be of assistance in preventing profiteering.

Apparently the supply of sugar available for consumption in the United States will be sufficient to meet the demands of the consumers, even on the present unnecessarily large basis of consumption. The United States, it is estimated, consumed in 1919 about 92 pounds for each person, as against a normal consumption of 85 pounds. It consumed 600,000 tons of sugar more than in 1918 and 300,000 tons more than were ever used in the history of the country. It consumed, therefore, over 9,000,000,000 pounds of sugar, or slightly more than 4,300,000 tons.

The crops for Louisiana, Porto Rico, and Hawaii will aggregate approximately 2,000,000 tons. Of the Cuban crop it is estimated that the Allies will take approximately 1,250,000 tons. They might take more but for the fact that their aggregate purchasing power is limited and they must use it not only for sugar but for many other foodstuffs and many raw materials and manufactured commodities. It is apparent, therefore, that the amount of sugar from which America draws her supplies will be large.

It is interesting to note the progress of sugar consumption in the United States. The year after the Civil War the people consumed 18 pounds per capita. Their consumption down to 1890 ranged from 24 to 50 pounds. By decades it was as follows: 1866-1875, 35 pounds; 1876-1885, 42 pounds; 1886-1895, 57 pounds; 1896-1905, 67 pounds; 1906-1914, 81 pounds.

For the years since it has averaged, it is estimated, 85 pounds, running up in 1919 to more than 90 pounds.

On January 16, 1920, the Sugar Equalization Board addressed the following letter to the President:

To His Excellency the PRESIDENT OF THE UNITED STATES.

The White House, Washington, D. C.

MY DEAR MR. PRESIDENT: The board is in receipt of the statement from the White House dated January 3, 1920, advising us that the President had decided not to exercise the authority given him by the McNary Act in respect to the purchase and distribution of the present Cuban raw sugar crop. In this policy the members of the board concur for the reasons stated in our communication to Secretary Houston of January 2.

The Sugar Equalization Board was created primarily for the purpose of purchasing and distributing the 1918-19 raw sugar crop. This has now been completed. In view of the decision from the White House, the members of the board conclude that there are no further duties for it to perform, except to proceed with the liquidation of its affairs in preparation for a dissolution. The board is acting accordingly.

In the statement from the White House referred to we find the following in reference to the McNary Act:

"The recent act keeps alive the licensing power of the board."

We desire to point out that the board has never had the power of licensing and the other methods of control given originally by the food-control act and continued in part by the McNary Act through the year 1920. The operations of

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the sugar board have been based on voluntary arrangements and agreements with producers and refiners and without the use of any licensing authority. The licensing and other control methods of the food-control act were in the Food Administration, and some months ago were lodged in the Department of Justice. That department now has the sole authority in respect to licensing, hoarding, profiteering, and unfair practices over all foods, including sugar, and these administrative and regulatory powers are now being exercised by it; it could also establish a rationing plan if such drastic control seems to the Government advisable.

Yours, very truly,

GEO. A. ZABRISKIE,
President U. S. Sugar Equalization Board (Inc.).

EXHIBITS.

EXHIBIT I.

SHORTAGE IN SUGAR AS REPORTED BY THE TRADE.

Section 1. Testimony before the Committee on Interstate and Foreign Commerce.

The following is from the testimony (July 14, 1919) before the Committee on Interstate and Foreign Commerce given by Hon. George Holden Tinkham, Representative in Congress from the State of Massachusetts, who introduced, June 30, 1919, the resolution directing the Federal Trade Commission to investigate sugar supply and prices:

The resolution was prompted by the following information: That in the District of Columbia, during the week previous to June 30, no one was allowed to buy more than 2 pounds, and from dispatches in the newspapers such as this:

"BURLINGTON, VT., July 1.

"An unexplained shortage of sugar has hit this city so hard that many stores have none on hand and a large number of families have been unable to obtain any. Several wholesale grocers say that they have been unable to get their orders filled by the refiners."

Also because in the city of Boston it was brought to my attention that a shortage of sugar existed. In relation to a shortage—so that you may know that one exists—I was given day before yesterday the two following telegrams by Congressman Charles B. Ward, of New York:

"KINGSTON, N. Y., July 11, 1919.

"Congressman CHARLES B. WARD,

"House of Representatives, Washington, D. C.

"Can you do anything with sugar equalization committee to facilitate shipment of sugar to J. J. Hasbrouck, New Paltz, N. Y., by B. H. Howells Sons, of New York; order dated June 10, No. 23602? Situation is serious for fruit growers. Letter follows.

"JOHN W. ECKERT."

That refers, as you see, to an order for sugar made on June 10, but which on July 11 had not been filled. Then I have another telegram addressed to Congressman Charles B. Ward, from Saugerties, N. Y.:

"Chain stores receiving unlimited sugar, at least three times normal; we independent grocers unable to secure any. Fruit and berries spoiling with our customers. Can and will you help us secure justice? Our jobbers are F. B. Matthews & Co., William R. Harrison & Co., and Everett & Treadwell, Kingston, who have sugar due from National and American Sugar Refining Cos. Refiners controlled by Government Sugar Equalization Board. We urgently ask your aid.

"MYRON BEDELL

"PETER CARNEIGHT.

"E. M. WILBER.

"G. C. LAYMAN.

"FRED VANDERMARK.

"VAN STEENBERG & KEARNEY.

"THEODORE B. CORNWALL."

Section 2. Reports to trade papers.

THE GENERAL SITUATION.—Hand-to-mouth buying by wholesale dealers in sugar without the stocking up usual to this time of year was reported by the sugar-trade papers as characteristic of all markets in the early months of the year 1919.

As early as February attention was called to the world shortage, the low stocks in this country, and the probable close balance between the year's supply and demand.

In March it was pointed out that shipments of sugar refined on toll for the Royal Commission on the Sugar Supply were far behind schedule and that the increase in exports which would come later might cause serious domestic embarrassment:

Exports of refined have been very light for the week, due to the harbor strike, and this business has practically come to a standstill for the present. A considerable amount of refined which was to go forward for the account of the Royal Commission is being carried into April. Shipments for this account to date have been much lighter than originally scheduled.

It is apparent now that a heavy movement for export will take place just at the time when the domestic demand is expected to increase under the normal seasonal stimulus. It is possible that such a development may result in a stringency in supplies later on. Anticipating this contingency the brokers are urging their customers to enter the market now and carry larger stocks. This is sound advice.¹

Referring again to the royal commission sugars, the same paper on April 19 stated:

This stock [raw] at North Atlantic ports is estimated at the close [of the week] at about 100,000 tons, which represents, at the present weekly rate of receipts, a reserve supply equivalent to one and one-half weeks' meltings. As a considerable portion of this sugar is for the account of the Royal Commission the net reserve supply to meet domestic requirements actually is very close to normal levels.

On April 12 it was observed that a much larger consumption had probably taken place since January 1 than was generally credited; that stocks were low and available supplies no more than normal, and that the heavy demand was yet to come.

Late in April it was noted that the current of demand was setting in much stronger. This current grew rapidly until by the close of May all of the eastern refiners were reported as oversold and a heavy demand from the principal distributing centers of the country became apparent.

Throughout June the market papers continued to report an unusual demand and an oversold market:

Consumers' demand for refined continues heavy throughout the country. As a result refiners are running near to capacity as possible and are extensively oversold. No orders are being accepted for delivery before late July and considerable business is being placed for August and September delivery.²

LOCAL CONDITIONS.—The following are typical of reports appearing in trade papers for several of the more important distributing centers:

New York City.—Throughout the months of June and July, 1919, the New York refiners were generally far behind on deliveries. For instance, the New York market report under date of July 25, appearing in *Facts About Sugar*, July 26, stated that in some cases the

¹ *Facts About Sugar*, Mar 22, 1919.

² *Facts About Sugar*, June 7, 1919.

refiners had not caught up on May contracts and June shipments had not been cleaned up. Locally the demand was as heavy and insistent as it had been since early June. Many manufacturers in the territory were at this time unable to secure sufficient supplies.

On October 10 the situation was described as critical, no sugar at all being available from several of the refiners. By October 17 the shortage in the New York market was reported to be growing more acute daily. Jobbers and wholesalers were generally low of stock and the supplies of retailers were becoming exhausted. A number of candy manufacturers were also in urgent need of sugar.

The New York Sun of October 18, referring to the rumor that a sugar famine "threatens" the United States, stated that housewives had not been able to get sugar for canning or for cooking and had had difficulty in many cases to get enough for table use.

The Louisiana Planter's New York letter under date of December 11 reported that there were still many complaints of famine conditions; that the majority of retailers were selling only one-half a pound to a customer; that housewives were unable to purchase sufficient amounts for consumption; and that manufacturers', wholesalers', and retailers' supplies were down to famine levels.

Boston.—Toward the close of August, 1919, the stocks of raw sugar in refiners' hands at Boston had become so depleted that the refined situation was acute. While at this time complaints of shortage in the New England territory were not so numerous as in some other sections, supplies of sugar in the hands of some of the large distributors were dangerously near the point of exhaustion.

Before the 1st of September it was reported that Boston retail dealers were largely limiting sales to 2 pounds of sugar to a customer, and many were even selling on a 1-pound basis. Still others were entirely out of sugar.

The situation became easier during a part of September, due to the fact that the Boston refineries received some increase of Cuban raw sugar, but by early October conditions had again become so acute that practically all retail dealers in New England were selling only a pound or two to a customer.

In Massachusetts the shortage was believed serious enough to call for an investigation by a special State commission which reported to the State legislature in December. This State also officially passed a resolution directed to Congress, asking an investigation as to the reasons leading to the deficiency in the sugar supply in that Commonwealth.

Philadelphia.—The shortage in sugar in Philadelphia and vicinity became most serious by July, 1919. Grocers complained that they experienced great difficulty in securing enough sugar to meet the demand from their customers. In some cases they ran entirely out of stock and were unable to fill orders for several days at a time.

It is claimed that newspaper reports published in this section exaggerating the situation, frightened the consumers and led to hoarding on their part. The demand from manufacturers was reported very heavy and urgent, it being claimed that such demand was considerably above normal for the time of the year. The retail trade also contended that trade over their counters was much above normal. Late in August urgent appeals for supplies were being received in

the Philadelphia market from all quarters. In some cases grocers were reported entirely exhausted.

Early October found much complaint among manufacturers and jobbers of difficulty in getting shipments on old contracts, some of which dated back as far as June. Demand continued in excess of supply with no relief in sight.

About the same time condensed-milk manufacturers were reported as suffering from a sugar shortage and were forced to curtail their production. This occurred notwithstanding the fact that the refiners tried to give this class of manufacturers preference.

By November some of the chain stores in Philadelphia confined sugar sales to Fridays and Saturdays with a 1-pound limit to each customer or sometimes a half pound.

Throughout December many of the grocery stores were without sugar much of the time and some manufacturers reported considerable losses entailed because of inability to get supplies.

The acute condition in the locality of Philadelphia continued throughout January and extended somewhat into February. However, some of the grocers began to raise the limit in quantity sold to a customer.

New Orleans.—At the beginning of the second week in August, 1919, the New Orleans sugar market was reported practically clear of all visible sugar. Local refiners were all oversold and a number of leading grocers said they had no sugar. By September 12 telegrams from a number of communities in the New Orleans territory indicated that the supply situation had reached a distressing stage. Small stores in this section found it impossible to secure even 100-pound lots from the jobbers. Most of the retail stores limited sales to 2 pounds to a customer, and in some instances to 1 pound. Jobbers were in the same position as the retailers, being unable to obtain supplies from any source.

Complaints and statements are to the effect that the shortage continued unabated practically throughout October and November. At the beginning of October, 1919, it is claimed that it was more difficult to get sugar for local uses in New Orleans than a year earlier. And on December 2 one of the largest retail grocery houses in the city had no sugar.

Detroit.—Detroit, which is the distributing center of one of the country's important beet-sugar sections, reported, as the factories were beginning to turn out the new crop about the middle of October, 1919, that the entire section seemed bare of sugar; that manufacturers of perishable food products particularly were in dire need; and that there was a constant stream of telegrams, letters, and buyers in person, pleading for deliveries of first cars.

While the Sugar Equalization Board expected the Chicago-Buffalo-Pittsburgh district to look to the beet-sugar factories in this section for its supply, their output was sufficient to care for but a small proportion of the needs of the territory.

Distressing conditions were stated to be prevailing throughout the section on October 31, and there was practically no change during November and December. In fact, the announcement was made at Detroit December 19 that the situation in all its distressing aspects

continued unchanged, the available supplies being absolutely inadequate to meet the demand and that many markets would be altogether without sugar for the Christmas holidays.

Pittsburgh.—When the Sugar Equalization Board put the zoning order into effect in October, 1919, Pittsburgh was supposed to get its entire supply of sugar from the eastern refiners. The Pittsburgh dealers complained that when they applied to these refiners they were willing to allot them only the same proportionate quantity of sugar as had been secured by them from these refiners the previous year. This was declared to be unfair and aggravated the shortage in Pittsburgh because the previous year part of the supply for this city had come from the beet sections.

Chicago.—With the opening of July, 1919, spot stocks of sugar in Chicago were practically exhausted and those held by second hands were in great demand at an advance over the basic price. By the middle of July the situation was described as being extremely desperate, with practically no sugars arriving. Local and out of town manufacturers and jobbers were wiring, phoning, and applying in person for immediate supplies which it was impossible to secure. On August 8 it was reported that jobbers were delivering only one and two bags of sugar to each customer.

The California & Hawaiian Sugar Refining Co. withdrew from the Chicago market on August 25, announcing that it could accept no new business during the remainder of the year. By September 19 the shortage of sugar in the Central States was reported as extremely acute, with very little relief being accorded from any source. While some new-crop California beet was being offered, its sale was restricted to manufacturers, thus barring it from the wholesalers. Many canners and preservers were in immediate danger of being forced to shut down, with subsequent wasting of large quantities of fall fruits and vegetables. "Resale" sugar was then unobtainable. It was claimed that at the beginning of October 80 per cent of the wholesale grocers and manufacturers in the immediate Chicago territory were entirely out of sugar.

The situation continued tense throughout the remainder of the year 1919. Never at any time during this period was there a sufficient quantity of beet sugar—the sugar upon which this territory was now practically dependent—to meet the demand.

Although there was some easing up in the famine conditions in this section the first of the present year, there was not sufficient supply to take care of the demand.

Minneapolis-St. Paul.—By the latter part of July, 1919, jobbers' and retailers' stocks of sugar in the Minneapolis-St. Paul territory were reported extremely low, and it was stated August 1 that no relief for the strained situation was in sight. The middle of August found the scarcity acute. Retailers were unable to get further supplies from wholesalers, as the latter's stocks were very close to exhaustion. For some months previous to this time the only cane sugar received in this market had come from San Francisco, and the quantity was not sufficient to provide distributors with the necessary supplies. A little later in the month domestic consumers could not get enough sugar to last them overnight, and they were advised to do their canning without sugar until supplies became more plentiful. In September the trade at Minneapolis-St. Paul was reported as

working on a day-to-day basis, doling out the meager supply received each succeeding 24 hours in widespread deliveries in an effort to stave off famine conditions. A limited amount of California new-crop beet could now be obtained by manufacturers, but the amount was too small to do much to relieve the situation. The shortage in this section continued unabated throughout the remainder of the year and there was practically no relief during the first two months of 1920.

St. Louis.—While St. Louis reported July 18, 1919, that the shortage had not yet been felt by the consumers, distributors' stocks were so low that they were using every possible means to stretch them. By August 1 near-by interior markets were stated to be bare of sugar. Jobbers were forced to curtail distribution to retailers. All resale sugars had been exhausted and first-hand dealers remained withdrawn. No shipments were coming from the East. A week later many jobbers were out of sugar and all others had very scant supplies. Conditions continued acute throughout the month, and by the end of August the retail trade was sharply curtailing distribution to consumers.

On September 19 jobbers were reported down to bare boards, so far as stocks were concerned. When a car did arrive it was distributed the same day to the retail trade on the basis of one bag per customer. The situation in this territory remained serious throughout the remainder of September and on through October and November. While conditions during December, 1919, and January, 1920, were somewhat easier, due to the arrival of a limited supply of beet sugar and Louisiana cane, by February the situation had again become practically as acute as ever.

As late as April 9 it was stated that the trade at St. Louis was endeavoring to buy from all sources of supply without result. No sugars were being offered except through second hands, and there was very little of that.

Kansas City, Mo.—While throughout July, 1919, the trade at Kansas City managed to keep the consumers supplied, refiners were withdrawn from the market and jobbers' and wholesalers' stocks ran very low and in some cases were exhausted. By August 1 spot sugar had become very scarce, and only scattered lots of second hands were obtainable. The different classes of dealers were sharply restricting distribution this month.

The supply situation in all parts of the Kansas City territory was reported September 5 as becoming extremely critical. The existing large volume of ripened fruit could not be utilized for preserving because of the scarcity of sugar. At this time the California & Hawaiian Sugar Refining Co., usually an important source of supply for this section, had withdrawn from the Kansas City market for the balance of the year. And it is stated that September 19 found scarcity conditions prevailing throughout southwestern United States, with no relief in sight. Although at some periods during the remainder of the year the arrival of new-crop beet sugar limited to manufacturers served to ease conditions somewhat, the trade as a whole was totally unable to satisfy the consuming demand. There was little change in the situation during the first two months of 1920.

San Francisco.—Although demand was heavy, the San Francisco territory seemed to have no trouble in getting its sugar supply during the summer months of 1919, except that from the middle of August on the local refiners began to fall behind in their deliveries, and the latter part of August both the California & Hawaiian Sugar Refining Co. and the Western Sugar Refining Co. withdrew from the market. Before the end of September the supply situation had become strained.

By October 10 the conditions for refined were becoming acute. Distribution was much curtailed on account of strikes and car shortage. Some beet was obtainable, but this was far below the needs of the market.

Generally speaking, during the last quarter of the year 1919 supply conditions in the San Francisco section were easier than in the other parts of the country except the Rocky Mountain region, but on December 12 only limited supplies of beet granulated were reported available, and this was being distributed through severely restricted allotments.

At the opening of 1920 all the cane sugar that was on hand was still being allocated and the only current supply was beet, which was being distributed in limited quantities. However, during the early months of the year conditions in this territory were comparatively easy, although the local refineries were either closed a part of the time or running under capacity, due to lack of sufficient supply of raws, which compelled them to continue allotting their output.

Section 3. Reports from wholesale grocers to the Commission.

Below are given a very few of the statements made by many hundreds of wholesale grocers in the spring of 1920 regarding the shortage of sugar in their respective localities during the year or more prior to their writing. These statements are arranged by States and numbered consecutively. They were made in response to inquiry concerning the difficulty of securing sugar:

ALABAMA.

(1)

Regarding any difficulty in securing sugar, wish to say that part of the trouble has been on account of the various strikes around the port of New Orleans, La. Further, we were somewhat afraid to buy sugar to meet the demands of our trade as we did not know when someone would claim that we were hoarding sugar. We also wish to say that for a while we thought that we could not make any money on sugar as the jobbers in New Orleans would buy sugar direct from the refinery, and then they would in turn sell to us. You readily see that it made two jobbers handle the same sugar.

ARKANSAS.

(2)

The only explanation that we can give with reference to not being able to get the sugar that we need is the sugar refineries have discriminated against the wholesale grocers by selling sugar for manufacturing purposes. This we know to be a fact. In November of last year quite a lot of sugar was booked with certain refineries at a 12¢ price New Orleans for manufacturing purposes only. It was sold to candy manufacturers, who were termed during the war as non-essential. We couldn't buy a pound of sugar, but still the manufacturers bought sugar and are now having this sugar delivered.

CALIFORNIA.

(3)

Early in August 1919 we were notified by both the California & Hawaiian Sugar Refining Company and the Western Sugar Refining Company that, owing to unlooked for heavy withdrawals of sugar, they would be forced to proportion their small supply amongst their customers on the Pacific Coast, and would be compelled to close their refineries until new raws arrived about the first of the year. This necessitated us depending upon the beet sugar refiners for our supplies until the first of the year, and we did not get one-half enough beet to supply the demand.

CONNECTICUT

(4)

We have not had one-third enough sugar since Oct. 1st, 1919, to the present date to supply the demands. We believe the policy is entirely wrong to furnish a small retail store with 25 barrels of sugar as has been the case in several instances in our territory simply because his name happens to be on the refiner's list as his next door neighbor, who is equally deserving, receives only from 50 to 300 pounds from the wholesale grocer. This irregularity in our opinion should be stopped as it does not mean a fair distribution to the consumers. Up to the present time our druggists, bakers, candy dealers, to say nothing of the extreme shortage of the families, are really suffering for the want of sugar.

Nearly all of these cars which we have furnished you data of, have been divided in small amounts and distributed to our 800 customers which we have on our books.

FLORIDA.

(5)

Our present views are that speculators were allowed to buy sugar, offering it to the jobbing trade at very large advances.

At the time that Louisiana was allowed to impose upon us their high prices, we bought granulated sugar from Cuba which we could have sold at a less price than the Louisiana sugar, and was unable to get permit from the United States Government to bring it in.

ILLINOIS.

(6)

The Eastern refiners have given us a very small lot of sugar so far this year. We have not had a single car direct from the refiner and we had one car bought second hand. In pre-war times the wholesale grocer distributed to the retail grocer at least 90 per cent of his supply, and it seems, if the refiner had distributed the same way and through his old line of distributors who had bought of them for years, a more equal distribution would have taken place, but we think it has gone through other channels, and caused the big range in prices.

(7)

We have had to take allotments of beet sugar when we could get them, which allotments have been few and far between. It has been absolutely impossible to buy our requirements from the beet sugar distributors during the past six months, and as the eastern cane markets were not open to offer their sugars in this market, the result has been we have had nowhere near enough sugar to take care of our customers' demand for same, getting what little we did on allotment basis.

Just to have sugars, we have been compelled to buy second-hand sugars, paying a premium for them, and yet by doing this, we have not had enough sugar. The major portion of the time the last year, we have been restricting sales of sugar, thereby permitting us to have a little bit for each customer, while our small receipts lasted.

We were handicapped the latter part of 1919 in securing sugar from the fact eastern refineries were prohibited from shipping into this territory. As far as

beet allotments were concerned, we did not feel we got our share, altho the distributor of beet sugars claims we got our share on basis of our purchases prior to the war period. We are, we consider reliably, informed that one jobber near Chicago was never without beet sugar. Another thing, while we have been unable to get allotments of beet sugar, the last month, the beet sugar distributor has been offering second hand beet sugars out of Chicago around 18 cents per pound, F. O. B. Chicago.

(8)

It is our belief that the difficulty we have experienced for more than a year in obtaining needed supplies of sugar has been due to a combination of causes, among which may be mentioned:—

(a) Comparatively short crops in producing countries and sections, from which America draws its supplies of raws.

(b) America's sources of supply drawn upon by countries normally supplied from other parts of the world.

(c) Blunders in attempts at governmental regulation.

(d) Unrestricted use of sugar in the production of articles of luxury.

(9)

We had great difficulty in securing sugar during the months of June to November, 1919, inclusive. As far as cane sugars were concerned this difficulty was in our opinion occasioned by large exports to foreign countries and to some extent to the fact that many large users of sugar contracted during April and May for their year's requirements, the effect being that cane refiners were unable to accept very little current business during the months of July, August, September and the first half of October. After October 15th, we were unable to buy any sugar at all from Eastern refiners and were obliged to depend entirely upon new crop beet sugars from the Western States. When these sugars were available for shipment early in October, it was reported to us that the refiners were unable to secure sufficient cars to make prompt shipments, so that from October 15th to December 15th, we were frequently without any stock of sugar at all. It is claimed, and we think with some reason, that not only large users of sugar, but also a good many jobbers and retailers, protected themselves by carrying more than normal stocks and it is also quite likely that many consumers kept themselves well provided with sugar in anticipation of probable higher prices after the Government control sugars had been disposed of. If beet sugars could have been more promptly distributed after October 1st, the situation would have been very much relieved in our market.

INDIANA.

(10)

Will state that we have had very serious difficulties in securing our sugar supplies. We attribute this a great deal to the unprecedented demand from consumers and an extraordinary demand from manufacturers, which hitherto was not so great. We also think that refiners have worked on toll sugars quite a great deal, which of course takes away a great deal of their supplies which would ordinarily go to the jobbing trade. Our greatest difficulty occurred in the fourth quarter, in securing supplies, and this we attribute in a great measure, to the Equalization Board's ruling that was effective Oct. 15, 1919, in which they ordered that no more sugar should be shipped north of the Ohio River from the South, nor west of Pittsburgh from the East. This ruling, of course, forced us to depend upon Michigan beet sugar, which was almost unobtainable. This ruling also caused the cancellation of at least 550,000 lbs. of sugar which we had purchased and as yet had not been delivered during the months of August, September and October.

IOWA.

(11)

Up until the 1st of June we were meeting our normal requirements in 1919. From July up until October 15th we did not secure half the amount of sugar we ought to have had to take care of our customary trade, and from

then on until the last of February, 1920, we were absolutely cut off from any sugar.

We have had very much difficulty in securing sugar. There are two brokerage concerns that have the exclusive distribution of the beet sugar for the Des Moines territory—Melnrath Brokerage Co. and Russell, Earl & Bend. We were advised in October to look for our supply of beet sugar where we secured same during the war. Our sugar buyer made a personal trip to Mason City and interviewed the secretary of the Northern Sugar Corporation. He was referred to the Melnrath Brokerage Co. who has the distribution of their sugars. We immediately had a personal interview with Mr. Scott, Des Moines broker for the Melnrath Brokerage Co., and he advised us that he would have to take care of his old trade on beet sugar and would have none for us. Then we interviewed Mr. Hills, local broker for Russell, Earl & Bend. Mr. Hills referred us to Mr. Russell of Kansas City. In about two weeks we were advised by Mr. Hills that he had received word from Mr. Russell that it would be impossible to let us have any sugar as they would have to distribute the small allotments that they received to their old connections.

Then we appealed to W. H. Edgar & Son of Detroit, Mich., and we were unable to secure any sugar from this source. As we had exhausted our sources of supply the only alternative we had was to advise our customers that we were absolutely unable to secure sugar, and we might state right here that it meant a loss of at least \$100,000.00 worth of business each month for four months. We, of course, felt that we were very rankly discriminated against.

KANSAS.

(12)

Will say that the Brokers' Sugar Committee of this K. C. Mo. district did not or could not deliver more than one-half of our requirements. In our opinion we attribute this principally 1st to export on sugar and 2nd to speculation of parties not engaged in wholesale grocery or food supply business.

KENTUCKY.

(13)

We had great difficulty in getting sugar. The first and second quarters our supply was nearly normal, but the third and fourth quarters our supply was not 1/5 or 1/6 of our customary demand from our trade. In our judgment the explanation is that the refineries did not care to supply the grocery jobbers with granulated sugar at 9 cents when they could get more money from manufacturers. There was never a time during the year of 1919 that we could not have gotten any quantity of candy or syrup. We never had as many candy salesmen call on us soliciting orders for candy in our thirty-five years' experience in the grocery business as called on us during the year 1919. Far up into 1920 we were solicited to buy candy by the carload all made out of last year's sugar. We are to-day deluged with circulars offering us candy and find more salesmen travelling through this section of the country offering candy than we ever did during all the years we have been in the grocery business.

(14)

We have had a serious difficulty for the last eighteen months in securing sufficient sugar to take care of our requirements and in our judgment this is due to the fact that sugar was sold to speculative purchasers and diverted from the regular channels through which it should go.

MARYLAND.

(15)

In answer to your third question, in which you ask if we had any difficulty in securing sugar and what, in our judgment, is the explanation, would state, that we think one of the principal reasons is that speculators have bought up large quantities of raw sugar and are having it milled into refined sugar by various refiners on toll, which has consumed their capacity and prevented the

refiners from supplying their regular trade. We can not help but believe that these speculators in sugar are making an enormous profit, as they are offering us sugar second handed and demand 16 cents a pound for it while the regular refiners are supplying their trade in a very meager way with the small quantity of sugar at 14 cents per lb. f. o. b. New York, but the refiners seem to be absolutely unable to accept our orders and keep us supplied.

MASSACHUSETTS.

(16)

At present we have only the American Sugar Refining Co. to depend on and have to take what we can get on an allotment basis. We used to buy sugar from Arbuckle when they had a Boston office and from New York. After Arbuckle left Boston and the zone system was put into effect by the Government, we had only the American to rely on and were put on an allotment basis of what we had previously bought of them, during a period when we had bought from all three.

(17)

We believe that the refiners have discriminated against the wholesale grocers in favor of the sugar dealers. It has been a great hardship for the small grocers who are dependent on the wholesale grocer for their supplies.

MICHIGAN.

(18)

There has not been a time during the period you inquire about when we have had a stock of sugar in our warehouse. The demand has been so acute that we could not accumulate a working stock and to-day we are practically without sugar. When a carload arrives, it goes out minimum quantity on orders that have accumulated during the previous days when we were out of stock.

(19)

We have been out of sugar for more than a year I should say about half of the time. After going to the labor and expense of getting up orders and sending our trucks out with the goods, the first question in many cases they asked the truckman was, have you any sugar? If the reply was, we have not, our truckman would be told to take the goods back as they would not accept them without sugar. This has occurred a great many times and when help is so hard to get and wages are so high it means quite a loss to us.

MINNESOTA.

(20)

We have had much difficulty in securing sugar since June 1st, 1919. The producers of sugar had to face a very much heavier consumption of the article than ever before. According to all information that has reached us, the domestic beet manufacturers sold out earlier than customary; the immense export business of the eastern cane manufacturers, permitted of the accumulation of no reserves, with the result that when the beet domestic product was gone, that we were forced to rely upon the product of the New York refiners, who in their oversold condition, were unable to ship orders at all promptly, and under the increased demand from the entire country, became swamped with business, with the usual results that follow such a condition.

(21)

We are not so situated to-day that we can buy anything on the present market, practically all purchases are from what we consider speculators, that is the normal market in New York is from 14 cents to 15 cents, whereas there appears to be no sugar available for this market at less than 17 cents and 17½ cents net, with letter of credit and bill of lading. Practically all of our sugars purchased so far this year have been on letter of credit and bill of lading basis.

MISSOURI.

(22)

We have had difficulty in securing sugar, but hesitate to give an opinion of the explanation. During the last few months of 1919 we were unable to get any sugar from any except the Louisiana plantation refiners, while at the same time, competitive jobbers located a few miles north of us in Missouri and also those located in Oklahoma were selling beet sugar to the retail trade from 5 cents to 8 cents cheaper than we could buy in Louisiana, and we could not buy from the same source as they.

NEBRASKA.

(23)

We could not secure enough sugar between September first and January first to take care of our wants. Formerly we had relied on the early beet shipments from California, Utah and Colorado to take care of our September and October requirements, and last year owing to the Sugar Equalization Board commandeering a large portion of the early production we were unable to place any contracts and only had what sugar was allotted us.

We were unable to obtain supplies from the East for the reason the Sugar Equalization Board did not allow shipments of eastern sugar to come west of Pittsburgh and Buffalo or shipments from New Orleans north of the Ohio River.

After January first we secured a small amount of sugar from the East and also a limited amount was allotted us by some of the beet refiners but the amount we were able to secure in the East and what was allotted us did not take care of over 50 per cent of our requirements.

NEW HAMPSHIRE.

(24)

Our difficulty in securing sufficient supply of sugar might be attributed to the following reasons:

a. Insufficient allotments from refiners, who did not furnish us with as large a quantity as previous years, regardless of the fact that sugar consumption had increased perceptibly.

b. Allotment of large quantities to manufacturers during the early part of 1919, thereby using up for this purpose the available amount left for family demands during the latter part of 1919.

c. On account of the low price established by the Sugar Equalization Board, consumers had no reason to economize in the use of sugar during 1919, and consequently the low price unquestionably brought about a marked increase in consumption.

NEW JERSEY.

(25)

We have had difficulty all the time in securing sugar and apparently the supply was not equal to the demand. We, however, note that the candy manufacturers and soft-drink manufacturers do not seem to be short of sugar.

NEW MEXICO.

(26)

During the last four months of 1919 we could get no sugar although 175 miles north of here they were getting sugar. We understand this ruling was made by the refiners, and we see no reason why it was made.

NEW YORK.

(27)

In the matter of beet sugar distribution, we believe that we were discriminated against. Elmira with a population of 33,000 and four jobbers received

only 2,500 bags while Ithaca with two jobbers and a population of 15,000 received 5,000 bags. Out of the 2,500 bags that came here, 300 were given to a candy manufacturer who we know had sixty days' supply. This arrived at the time when sugar was very short here and we ought to have had a great deal more.

(28)

Regarding difficulty in securing sugar, what in our judgment is the explanation, will say as near as we can learn the shortage of sugar according to advices from the refiners has been due to a great extent to the enormous demand for sugar from the manufacturers of confectionery and soft drinks. These manufacturers have not hesitated to pay almost any price for sugar in order to obtain same as it has been possible for them to add the cost to the finished product which they have turned out and consequently they pay any price that was necessary to secure sugar. We are also inclined to believe while we have no authority for this statement that some of the refiners have catered to larger buyers of sugar in order to secure their business when conditions become normal regardless of the small buyers.

NORTH CAROLINA.

(29)

We have had great difficulty in getting sugar and have got disgusted with the whole thing. We have been informed by several candy manufacturers that they have no trouble in getting all the sugar wanted. We see no reason why we and other jobbers can not be supplied with sugar if the candy people can get it so easily.

We are attaching a letter received to-day which in our opinion is nothing more than an effort to coerce us into placing our orders at higher prices than the market justifies.

NORTH DAKOTA.

(30)

Will say that we believe there would have been ample sugar for all of us had the manufacturers purchased their sugar on the same basis as they did before the war. We have been informed, but of course we can not prove the information, that candy factories have stocked up with sugar enough to last them for the whole year of 1920, candy factories in the Twin Cities and Chicago. How true this is, I can not say.

OHIO.

(31)

We had contracts placed with a number of eastern refiners, but on account of the prohibition taking effect October 15 of shipments of New York refined west of Buffalo and Pittsburgh made it impossible for us to obtain sugar already contracted for. Expecting up to that date to obtain the sugar we had not made contract for beet sugar which we should have made if we had been advised that these contracts would not be permitted to be shipped and when we did attempt to obtain beet sugar we as well as many other jobbers in Ohio were notified by the sales agents of these beet factories that inasmuch as we had not been accustomed to purchase beet sugar from them to any extent heretofore they did not feel disposed to fill our orders now. We received this same kind of reply from a number of different factories. In fact only two factories appeared to be willing to fill our orders.

The reasons given, however, we suspect were only partly true and we understood that whereas the Sugar Equalization Board would not permit sugar to come west they were at the same time offering the beet sugar refiners more for their products than those refiners were permitted to charge us. Furthermore those same beet sugar refiners were selling sugar to manufacturers of various kinds at a higher price than we were permitted to offer or perhaps to speak more properly the offers were larger than the refiners were permitted to accept from us as jobbers.

Would say that the whole state of Ohio, we understand also Indiana, was badly caught up by the fact that sugar which normally should have come into

this section of the country was diverted at a higher price to other sections. This appeared to be the case with our business and we have heard the same complaint from other Ohio jobbers.

OKLAHOMA.

(32)

We have had constant difficulty in obtaining sugar since July, 1919, and as the information which we have received as to the cause of this shortage has been so varied and so multitudinous, we are somewhat at a loss to answer this question. From the best information we can obtain, however, it seems that it was greatly due to the fact that Congress failed to make authorization for the purchase of the Cuban crop last autumn, or at least failed to act in such manner as would indicate to the refining interests just where they stood.

We admit, however, that this view has been passed on to us probably from refining sources.

OREGON.

(33)

In answer to your inquiry as to our reason for our explanation of our inability to secure sugar, we can probably throw no new light on this subject. Our understanding is that the Coast refineries were obliged to supply such a large territory throughout the Middle West that they could not give us enough sugar here at home.

Furthermore, the demand for all kinds of products into which sugar enters has increased very largely. We also notice this fact that when the newspapers give publicity to a prospective shortage everybody tries to buy all the sugar he can get hold of, whereas, if consumers would be satisfied to go along ordering normal requirements there might be enough to give everyone a fair supply. We know of dealers who had standing orders from consumers for the regulation two pounds every day until further notice. It seems to be the disposition of many folks that when goods are scarce they want them worse than ever; when they are plentiful it does not make nearly so much difference.

PENNSYLVANIA.

(34)

We have had much difficulty in securing sugar. In our judgment the fault lies before the sugar reaches the wholesaler by profiteering such as sugar purchased from brokers when the refineries could not deliver at their prices while the brokers were able to deliver at much higher prices from the very same refineries.

(35)

It has not been so much trouble in securing sugar if we were willing to buy second hands and pay the prices asked. It has been difficult to secure sugar from refiners. This is not only true of the year 1919, but also of the first two months of 1920 and even at the present time. Second hand dealers seem to have plenty of sugar to sell, but refiners have very little.

RHODE ISLAND.

(36)

It is our opinion that our being unable to secure sufficient sugars for our trade is due to the fact that the refineries are allotting their sugar to a certain few people, and under the circumstances we are unable to obtain our normal supply.

SOUTH CAROLINA.

(37)

The difficulty we found in securing sugars, was, we were always told by the different sugar concerns that they were doing all they could for us and that their supply was limited, having to take care of so many jobbers, also that the Equal-

zation Board had allotted each jobber supply based on previous purchases for a given period to be supplied by certain sugar concerns, and of course we could only take what they were disposed to let us have.

SOUTH DAKOTA.

(38)

Our judgment in regard to the difficulty in securing sugar is, we feel, due to the fact that the Sugar Equalization Board was not continued so as to control the price of sugar and in that way speculators got hold of sugar and sold it at any old price. At the same time we were unable to get sugar these speculators were allowed to come into our district and sell, in other words, peddle it from jobbing town to jobbing town at prices much higher than what the market was, but we could not get anybody to confirm any orders for us, and what sugar we have gotten has been diverted to us by our brokers in proportion to what they thought our needs were. At the same time they were getting us a few bags of sugar here, they were taking care of every pop factory, candy factory, and other factories that manufactured non-essentials, and we who are distributors in a legitimate manner to the consumer were not allowed to get our proportion, therefore gentlemen, we feel that something was wrong somewhere, inasmuch as speculators in Chicago and Minneapolis could ship all of their customers sugar while we had to depend upon our brokers who were, as we understood it, still functioning through the Beet Sugar Distributing Committee, and we got just what they would deliver to us.

TENNESSEE.

(39)

We have had a great deal of difficulty in securing sugar for the past 2 years and we are not in position yet to state with any degree of certainty what the trouble has been. We know that we were very much handicapped on account of the zoning arrangement put in effect by the Sugar Equalization Board which prohibited us from securing sugar from the New England States which was our customary source of supply. The zone line came down to Bristol, Tenn.-Va., and as we are only 26 miles south of this point we were compelled to look to La. for our supply and as you know the supplies in La. were not only scarce but very high. We realize that the zone system may have been a good thing for the country in general but on account of our location it worked a hardship on us.

TEXAS.

(40)

We have not in our warehouse to-day a pound of any kind of sugar.

We also have formerly been able to secure quantities of beet sugar from the Great Western Sugar Refining Co., but as you will notice they have made practically no shipments to us during the entire period mentioned, although we have attempted, from time to time, to make bookings with them which they refused to entertain.

We understand that when the demand for beet sugar is good from points taking a less freight rate than applies to Texas that the chances for Texas securing any of these sugars is very slim. And as every section of the country was demanding sugars during the period mentioned by you, if you will investigate the amount of beet sugar shipped into Texas as compared with those points taking lower freight rates and arriving at destination quicker than Texas shipments arrive to us, getting in this way for the refineries prompter returns for their shipments, we believe that you will find that this statement is correct.

VERMONT.

(41)

Our difficulty in obtaining sufficient sugar in 1919, we believe, was due to insufficient supply of raw sugars and a larger allotment to manufacturers, especially during the spring and summer, thereby diminishing the available supply for home consumption during the fall of 1919.

VIRGINIA.

(42)

We had great difficulty in securing supply of sugar after June 1 of last year. Refiners gave us as an excuse that they were badly oversold and required to furnish foreign Governments a large percentage of their capacity, with the result that we could not secure sugar that we needed. We had to accept this statement as being the reason why we did not receive it.

WASHINGTON.

(43)

As to the reason for the difficulty in connection with our obtaining sugar, we wish to say that the immediate course in our opinion was the fact that the people from whom we purchased could not secure an adequate supply and this, notwithstanding the fact that we have every reason to believe that the beet sugar manufacturers in the state of Washington deliberately held up the shipments of the beet sugar that was produced last fall.

We have been quoted this morning a price of \$15.10 per 100 lbs. for beet sugar manufactured in this state. Now this sugar must have been made from beets grown last year and had it been delivered to us in November or December it would have cost us either \$9.70 or \$11.35, according to the date. It appears to us that this sugar has been held in spite of the shortage from the time when it was produced until the present time and the price advanced from the \$9.70 or \$11.35 price to the \$15.10 price. This is the only explanation of the shortage which we can give.

WEST VIRGINIA.

(44)

We believe that our difficulty in securing sugar was that the sugar was being sold to those who would pay the highest price and that we were not bidding on sugar, or trying to secure sugar from other people than those from whom we had been securing our regular supplies of sugar. We had sugar offered to us by people whom we had never known to be in the sugar business, at prices a great deal higher than the prices we paid.

WISCONSIN.

(45)

We have had a great deal of difficulty in securing sugar since before the holidays. We attribute this fact to the loading of candy people. Their salesmen boasted that they had been supplied with sugar throughout the year, and one salesman for some Chicago candy factory stated they had the largest stock of sugar on hand they had ever carried. This was during the time the greatest scarcity existed. The candy factories not only received enough for manufacturing purposes but they are able to sell sugar in carload lots to retailers and others. This has been done right in our own territory. We are in a territory that seems to have been overlooked entirely on sugar. The Eastern territory of course received the cane sugar, and further west they were supplied with the beet, and in this particular territory we depend on sugar from most any source we can pick it up. We did not receive a single sack of beet sugar from any Wisconsin refiner in the past season, our sugar coming practically from the Menominee River Sugar Co., Menominee, Michigan.

(46)

Candy manufacturers, etc., would over-bid the jobbers, securing ample supplies and reimbursing themselves by adding to the cost of the finished products. Practically all available supplies of sugar were in second or third hands and it was very difficult to confirm a sale.

(47)

Government regulations which restricted the price and not the distribution. Interference with the natural law of supply and demand.

(The table below was issued February, 1920, by the United States Sugar Manufacturers' Association. The 1919 figures would appear to be subject to revision.)

EXHIBIT II.

UNITED STATES SUGAR CONSUMPTION AND SOURCES OF SUPPLY, CALENDAR YEARS 1910-1919.

[In terms of refined. Converted into short tons from Willlett & Gray.]

	1910	1911	1912	1913	1914	1915	1916	1917	1918	1919
Total consumption.....	3,752,398	3,753,558	3,924,084	4,192,316	4,192,128	4,257,715	4,097,640	4,125,631	3,915,079	Short tons, 4,380,713
Compared with preceding year (increase).....	108,818	1,160	171,126	267,632	19,811	46,558	27,991	27,991	210,552	18,300,713
Compared with preceding year (increase-per cent).....	2.845%	0.031%	4.559%	6.819%	0.473%	1.082%	-3.759%	0.683%	-5.164%	18.300%
Consumption consisted of:										
Louisiana.....	372,967	322,643	298,037	222,633	191,376	251,740	251,975	263,476	253,428	172,518
United States beet.....	511,840	567,644	578,873	700,952	699,214	861,568	784,267	879,268	891,028	976,924
Hawaiian cane.....	314,263	340,999	589,455	567,342	571,631	570,375	596,045	663,139	481,344	576,003
Porto Rican cane.....	310,725	318,997	319,523	370,835	307,047	336,347	439,861	482,946	371,307	321,306
Philippine Islands cane.....	108,257	188,617	147,764	49,974	135,393	134,626	124,521	81,580	52,177	61,312
Virgin Islands (St. Croix) cane.....	17,024	18,939	16,974	21,784	22,624	17,248	15,660	5,694	4,138	9,290
Sugars from foreign molasses, maple, etc.....								29,695	33,046	36,185
Total domestic.....	1,834,314	1,952,239	1,940,926	1,942,920	1,897,185	2,171,907	2,214,372	2,431,798	1,788,466	2,176,028
Cuba (cane), 20% tariff preferential.....	1,837,004	1,578,370	1,864,647	2,229,731	2,261,119	2,082,594	1,860,532	1,667,701	2,169,993	2,315,067
Total preferential and nondutiable.....	3,671,318	3,530,609	3,805,573	4,172,651	4,158,301	4,234,498	4,080,905	4,119,499	3,893,459	4,491,125
Foreign consumed, paying full duty:										
Foreign raw beet.....	80,134	205,315	43,603	1,265	51,563	16,246	12,469	3,305	21,619	37,989
Foreign refined beet.....	902	15,585	73,678	17,450	638	1,126				
Foreign refined cane.....	48	1,338	1,770	715	1,725	5,845	4,235	2,827		
Total foreign, paying full duty.....	81,081	222,950	119,112	19,666	53,826	23,217	16,734	6,132	21,619	64,667
A. B. R. Co.'s production consumed in United States.....	1,519,392	1,511,642	1,483,126	1,493,977	1,455,072	1,391,627	1,326,775	1,090,731	1,151,270	1,189,263
Other U. S. refiners' production consumed in United States.....	1,399,426	1,544,210	1,776,454	1,909,146	1,831,853	1,813,598	1,815,708	1,962,434	1,804,633	2,176,277
Beet sugar factories' production consumed in United States.....	511,840	567,644	578,561	700,351	689,214	861,568	784,267	879,268	891,028	976,924
Hawaiian refined production consumed in United States.....	15,285	15,123	14,126	15,116	14,150	12,207	16,513	14,636	18,985	19,957
Foreign refiners' production consumed in United States.....	946	2,019	1,831	931	2,262	6,971	4,245	2,827		29,677
Total amount refined sugars.....	3,676,989	3,669,818	3,854,106	4,119,521	4,102,567	4,085,881	3,949,513	3,869,920	3,651,337	4,367,937

Consumption refined sugar manufactured by A. S. R. Co.....	Per cent.	42.14	Per cent.	42.12	Per cent.	38.48	Per cent.	35.47	Per cent.	34.06	Per cent.	33.64	Per cent.	28.04	Per cent.	31.53	Per cent.	27.02
Consumption refined sugar manufactured by other United States refiners.....		43.49		41.91		46.09		47.09		44.38		45.97		48.90		51.76		48.73
Consumption refined sugar manufactured by beet-sugar factories.....		13.92		15.51		15.01		17.00		21.09		19.86		22.60		16.19		22.37
Consumption refined sugar manufactured by Hawaiian cane factories.....		0.42		0.41		0.37		0.37		0.30		0.42		0.38		0.52		0.37
Consumption refined sugar manufactured by foreign refiners.....		0.03		0.05		0.05		0.03		0.17		0.11		0.08		0.00		0.61
Consumed in raw plantation state (tons).....		75,507		90,019		70,577		72,794		171,834		148,128		233,711		263,743		187,855
Exports of refined sugar (calendar years) (tons) 1.....		96,835		21,800		42,414		33,384		503,249		789,217		513,257		204,101		680,367

1 Includes exports of both foreign and domestic refined sugars. (From Monthly Summary of Commerce and Finance.)
 1 11 months ending Nov. 30, 1919.

EXHIBIT III.

**AGREEMENT WITH THE UNITED STATES FOOD ADMINISTRATOR
AS TO SALE AND DISTRIBUTION OF BEET SUGAR, CROP 1918-19.**

This agreement, entered into this 18th day of September, 1918, between Herbert Hoover, United States Food Administrator, acting for and in behalf of the President of the United States, and _____, of _____, State of _____, hereinafter called the producer,

Witnesseth, that:

Whereas the United States Food Administrator, pursuant to an act of Congress, approved August 10, 1917, known as the food control act, has issued, and from time to time continues to issue, rules and regulations relating to the conduct of the business of all persons importing, manufacturing, storing, or distributing sugar; and

Whereas the said Food Administrator is desirous of securing an equitable, fair, and economic distribution of available sugars among the various consuming communities; of minimizing the burdens upon the transportation facilities required for such distribution; and of preventing unjust, unreasonable, unfair, and wasteful commissions, profits, and practices; and

Whereas the United States Food Administrator has urgently requested all producers of beet sugar in the United States to enter into an agreement with him, in order to accomplish the purposes contemplated by said act:

Now, therefore, in consideration of the premises and agreements of the United States Food Administrator hereafter set forth, the undersigned producer hereby agrees:

1. That in selling and distributing beet sugar produced from the crop of 1918-19 it shall observe, respect, and be governed by any and all regulations which said United States Food Administrator, either directly or through his duly appointed Food Administration sugar-distributing committee, may from time to time prescribe under the provisions of said act.

2. That it will ship sugar at such times, to such places, and in such quantities as may be directed by the United States Food Administrator, through the said sugar-distributing committee; that it will route all sugars as directed by that committee; that it will promptly comply with any and all directions for change of destination and route, or for reconsignment; and that it will ship all sugar sight draft attached to bill of lading, unless, at its request, it is otherwise permitted by the sugar-distributing committee. In case such request is made and such permission given, the loss, if any, shall be borne by the requesting producer: *Provided*, That nothing in this agreement shall authorize the United States Food Administrator to direct distribution to a particular individual, firm, or corporation.

3. That it will sell all sugar at not to exceed the basic market price for fine granulated cane sugar in 100-pound bags or barrels at seaboard refining points, as established by the United States Food Administration, plus such prepaid basing freight rates as may be ruling at point of destination on day of sale, or on such other day as shall be directed by the United States Food Administration, less the differential, if any, between cane and beet sugar which may then be in force at point of destination, the said committee being authorized to establish or revoke a differential whenever it may be deemed advisable: *Provided*, That no differential shall be established at any point unless it is established at all other points within the same zone. For the purpose of this agreement the United States shall be divided into such zones as may be approved by the United States Food Administrator; provided, that unless otherwise permitted by the United States Food Administrator, such price shall not exceed the maximum basic price of \$9 per 100 pounds at seaboard refining points.

4. That it will not tender for regular trade distribution at ruling market prices any "off sugar," or any sugar which is inferior to standard granulated sugar. That should the producer have inferior sugar in its possession, it shall notify the sugar distributing committee of such fact. After the committee is satisfied that the sugar reported is actually "off sugar," said committee, or the producer itself under the committee's instructions, may dispose of such product at a discount from the ruling market price, the resulting loss to be borne exclusively by the producer.

5. That it will promptly make complete and true reports to the sugar distributing committee of all sales made by it at such intervals and in such forms as may be required by said committee.

6. That it will promptly remit to the sugar distributing committee its proportionate amount (based upon production) of all expenses actually paid, incurred, or estimated to be incurred by said committee in making the distribution herein provided for.

7. That on the 31st day of December, 1918, and every three months thereafter, the said Food Administration sugar distributing committee will calculate the average net proceeds per pound of sugar then sold and invoiced by all producers who have entered into agreements with the United States Food Administration similar to this agreement, and cause copies of the results of such calculation to be mailed to each of such producers. The difference between such average and the actual amounts paid to the respective producers shall be temporarily adjusted by requiring producers whose actual price is in excess of such calculated average to pay such excess to the United States Food Administrator, or to a representative appointed by him who will distribute such excess proportionately to those producers whose actual price is less than the calculated average.

8. That prior to March 31, 1919, the undersigned, together with all other beet sugar producers who have entered into agreements as aforesaid, will select an adjustment committee of five persons. All producers operating east of the Missouri River shall constitute and be deemed to be a separate group; and all producers operating west of the Missouri River shall constitute and be deemed to be a separate group. Each of these separate groups shall select two members of said adjustment committee, and such four members shall select the remaining fifth member of said committee. Said adjustment committee shall thereupon determine the amount of allowance, if any, per hundred pounds, which shall be paid by one group to the other group, in order to correct any injustice resulting from distribution under this agreement. The adjustment committee shall report their determination to the Food Administration sugar distributing committee, and thereupon said distributing committee shall adjust its calculations in conformity with such determination and all exchange payments between the United States Food Administrator or his representative and the undersigned shall be made in accordance therewith.

9. That at the close of the 1918-19 selling campaign, but not later than August 31, 1919, the said sugar distributing committee shall prepare a final settlement statement showing the actual price per pound of sugar received by each producer, the average net proceeds per pound of sugar resulting from the sale of all sugars constituting the crop of 1918-19, the allowance between groups as determined by the adjustment committee and the amount that each producer should receive for his sugar, based upon such average price and as modified by the adjustment committee; provided that all unsold sugars on hand on August 31, 1919, shall be inventoried in such manner and at such price as the Food Administration sugar distributing committee may direct.

In consideration of the foregoing agreements, the United States Food Administrator agrees:

10. That the President of the United States, acting by and through the said Food Administrator, has appointed a committee of the United States Food Administration to be known as the Food Administration sugar distributing committee, to carry out, subject to his approval, the provisions of said act of Congress so far as they relate to the distribution of beet sugar, which committee is composed of the following persons, to wit: W. L. Petrikin (chairman), W. H. Hannam, S. H. Love, E. C. Howe, S. W. Sinsheimer, H. A. Douglas, W. P. Turner.

11. That he will cause said sugar-distributing committee to direct the distribution of the beet-sugar crop herein referred to in the most economical and efficient method consistent with an equitable distribution of sugar where needed throughout the United States.

12. That the said committee shall establish package differentials for package goods not in excess of differentials for similar package goods established for the cane refiners of the United States; shall from time to time issue and mail to each producer schedules of prepaid basing rates at the different shipping points, to be based on freight rates from seaboard refining points; and shall issue and mail to each producer uniform price lists showing seaboard base price and the terms upon which sugar may be sold, including the differential, if any, be-

tween cane and beet sugar. No sale of sugar shall be made by any producer except at the price, differential, and terms stated in the last price list issued. Whenever a change occurs in price, terms, or differential the said committee shall issue a new price list, which shall not become effective until after a copy thereof has been mailed to and approved by the United States Food Administrator.

13. Nothing in this contract shall require the United States Food Administrator or his representative to make any payments except out of funds paid to him under this contract or similar uniform contracts with other producers.

14. Sugar shall be delivered to the United States Government for Army and Navy uses and for Red Cross, Y. M. C. A., Belgian Relief, Salvation Army, and kindred organizations when and in such amounts as the Government may specify, at prices to be fixed by the United States Food Administrator, and the net proceeds of such sugar shall be included in calculating the general average net proceeds per pound of all sugar sold by producers entering into this agreement.

15. The output of any beet-sugar producer whose output is commandeered by the Government of the United States or the Food Administration for public purposes shall not, so far as it is reasonably possible to prevent the same, be permitted to be handled, sold, or distributed in any manner which will detrimentally affect the markets of the producer or the net proceeds resulting from the sale and distribution of sugar as provided in this agreement.

16. It is understood and agreed by the producer that a violation of any of the terms of this agreement may result in and be cause for revocation of its license.

17. This agreement shall remain in full force and effect from the date hereof until the final disposition of the crop of 1918-19.

In witness whereof the parties hereunto have signed this agreement the day and year first above written.

United States Food Administrator.

Producer.

By _____.

EXHIBIT IV.

SUPPLEMENTARY AGREEMENT WITH THE UNITED STATES FOOD ADMINISTRATOR AS TO BEET SUGAR, CROP 1918-19.

This agreement, entered into this 18th day of September, 1918, between Herbert Hoover, United States Food Administrator, acting for and in behalf of the President of the United States, and the _____ Sugar Co., of _____, State of _____, hereinafter called the producer,

Witnesseth, that:

Whereas the parties to this contract have entered into a uniform agreement of even date herewith in regard to the distribution of beet sugar produced from the crop of 1918-19; and

Whereas the producer, together with other eastern producers, is in a special situation as regards distribution:

Now, therefore, in consideration of the premises and of said agreement of even date herewith, it is hereby mutually agreed:

1. That when the adjustment referred to in paragraph 8 of the principal agreement of even date herewith has been made, but in any event prior to March 31, 1919, all producers located east of the Missouri River and entering into a supplementary agreement similar to this, shall select an "eastern adjustment committee" of three persons. Said committee shall consider the location of the various factories among such producers constituting the eastern group, and shall determine whether the same net price per hundred pounds among all the members of said group is in all respects just and equitable.

2. If the committee shall find that such a net price is not just and equitable, it shall then cause proper and equitable deductions or additions to be made from or to the various amounts due and payable to such eastern producers as adjusted and reported by the Food Administration sugar distributing committee.

3. The adjustment committee shall report their determination to the Food Administration sugar distributing committee, which shall adjust its calculations in conformity with such determination, and all exchange payments between the United States Food Administrator or his representative and the undersigned shall be made in accordance therewith.

In witness whereof, the parties hereto have signed this supplementary agreement the day and year first above written.

United States Food Administrator.

By _____
Producer.

September 18, 1918.

EXHIBIT V.

AGREEMENT WITH UNITED STATES FOOD ADMINISTRATION AS TO LOUISIANA SUGARS.

This agreement, entered into this ____ day of _____, 1918, between Herbert Hoover, United States Food Administrator, acting in this behalf for the President of the United States, and _____ of _____, hereinafter called the producer, Witnesseth, that:

Whereas, the United States Food Administrator, pursuant to the act of Congress approved August 10, 1917, known as the food-control act, has issued regulations for the conduct of the business of all persons importing, manufacturing, storing, or distributing sugar, and desires under said act to secure an equitable distribution of the cane sugar crop of the season of 1918-19 and to prevent unjust, unreasonable, unfair, and wasteful commissions, profits, and practices, and

Whereas, the United States Food Administrator has requested all producers of cane sugar in the State of Louisiana to enter into an agreement with him covering the sale and distribution of all cane sugar produced in the State of Louisiana and manufactured for direct consumption, and

Whereas, the United States Food Administrator has appointed a committee of the United States Food Administration to be called the Louisiana sugar committee, and, subject to his approval, to superintend the distribution of Louisiana sugar and carry out the provisions of this contract. A majority of said committee shall constitute a quorum and the assent of four members of said committee at a meeting duly called shall be considered the action of the committee. The committee shall be composed of the following persons, and in the event of vacancies occurring the United States Food Administrator shall appoint successors to all such vacancies: R. E. Milling (chairman), C. D. Kemper, E. J. Gay, J. C. LeBourgeois, W. J. Barkley, E. A. Pharr, E. A. Burguleres.

Whereas the undersigned _____ is a producer of cane sugar and is desirous of aiding and promoting the efficient administration of said act and of securing the purpose contemplated by said act by agreement as authorized by section 2 of the aforesaid act of Congress:

Now, therefore, in consideration of the premises and the agreements of the United States Food Administrator hereafter set forth, the producer hereby agrees:

(1) That in selling and distributing Louisiana cane sugar he will observe and respect and be governed by any and all orders and regulations which said United States Food Administrator, through the said sugar committee, may from time to time make or prescribe, or any general or special regulations issued under the provisions of said act.

(2) That the "basic price" of fine granulated sugar at any time for the purposes of this contract shall be that price which is then determined by the United States Food Administrator under the provisions of his uniform contracts with the sugar refiners of the United States dated October 1, 1917, as the maximum price which may be charged by such refiners for fine granulated in barrels or 100-pound bags f. o. b. seaboard points with the customary discounts, terms and conditions, which contract is on file with the United States Food Administrator and made part hereof by reference; and the basic price of Louisiana sugars shall be such basic price less the following differ-

entials: Plantation granulated, no differential; white clarified, 10 cents per hundredweight; off plantation granulated, 10 cents per hundredweight; off white, 15 cents per hundredweight; choice yellow clarified, 15 cents per hundredweight; prime yellow clarified, 20 cents per hundredweight; kettle, 20 cents per hundredweight; off yellow clarified, 30 cents per hundredweight; seconds and thirds, first group, 80 cents per hundredweight; second group, 90 cents per hundredweight; third group, \$1 per hundredweight; fourth group, \$1.10 per hundredweight; fifth group, \$1.20 per hundredweight.

The differential on all grades of semirefined direct consumption sugars not listed above shall be the differential indicated for sugars of equal grade, or if of an intermediate grade at the differential of the listed grade next below; and the differential on sugars, the grade and price of which can not be thus determined, shall be fixed by the said sugar committee.

The above grades shall be determined with reference to the standard samples thereof as fixed by the New Orleans Sugar and Rice Exchange with the approval of the United States Food Administration and now on file with said exchange. In case of dispute regarding the grade the final decision shall be made by the Louisiana sugar committee.

(3) That unless the aforesaid Louisiana sugar committee permits the sale at a lower price by reason of deterioration, or sets a lower price for any or all grades under the provisions of section 4 hereof, the producer will sell direct consumption sugars manufactured by him at not more than such price as is found to be just and fair by the United States Food Administrator, hereafter called the "maximum price." The said United States Food Administrator agrees that he will not name a price less than the basic price mentioned in section 2 hereof for sugar in barrels or 100-pound bags *f. o. b.* New Orleans or point of origin carrying the same freight rate as New Orleans: *Provided, however,* That if domestic beet sugar is generally selling at a higher price than the basic price of fine cane granulated sugar, the United States Food Administrator will not name a price less than the price of domestic beet sugar less the differentials named in paragraph 2, provided that if there is a sale to the United States or any of its agencies such price shall not necessarily govern.

That he will sell raw sugar at a price delivered at customary Louisiana refining points not greater than the price which may be found to be just and fair by the United States Food Administrator and not less than the price of duty paid 96° Cuban raw sugar delivered at such refining points.

That he will sell washed sugar (which is defined as any first sugar above the grade of raw sugar, and below the grade of off yellow clarified, and having a color test of not less than 22 Dutch standard) at a price 40 cents above the price of raw sugar as determined by the foregoing paragraph and paragraph 4, with an addition of one-sixteenth of a cent per pound for each degree or fraction thereof above 96° and a deduction of one-tenth of a cent per pound for each degree or fraction thereof below 96°.

(4) The producer further agrees that the said sugar committee, with the approval of the United States Food Administrator, may name a price for any grade or grades of Louisiana sugar from time to time at any figure not greater than the price for such grade or grades which may be fixed as the "maximum price" therefor by the United States Food Administration under paragraph 3 hereof, and that after the prices thus fixed are posted at the New Orleans Sugar and Rice Exchange he will sell the sugar at the price named until changed under the provisions of this contract.

(5) In the event that the producer is required by the United States Food Administrator directly or through said committee to ship sugar to a point carrying a freight rate higher from point of origin to point of destination than that from New Orleans to point of destination the producer may add to the price prescribed under paragraphs 3 and 4 hereof the extra freight, provided that the selling price to the retailer shall not be greater than the maximum authorized selling price of similar sugars at such point to retailers.

(6) (a) The producer further agrees that he will ship sugar at such time; to such places, and in such quantities as may be directed by the United States Food Administrator through the said sugar committee, that he will route all sugars as directed by said committee, and that he will promptly comply with all orders for change of destination and route and for reconignment.

Provided, That if no instructions or directions are given by the said Food Administrator or the sugar committee he may continue to distribute his sugar in the customary manner heretofore existing for the distribution of such sugars, subject to the price provisions of this contract.

Provided further, That nothing in this contract shall require the producer to ship or dispose of his sugar when prices lower than the "maximum price" named under paragraph 3, less the differentials stated in paragraph 2, are named by the sugar committee under paragraph 4.

(b) The producer, unless notified to the contrary, will keep the committee constantly informed of the quantity and grade of sugar that is being produced daily and the disposition of the same.

(7) In consideration of the foregoing agreement, the United States Food Administrator agrees:

(a) That he will cause the said sugar committee to direct the disposition of direct consumption sugars in the most economical and efficient method consistent with equitable distribution and the needs of the country.

(b) That he will use his best efforts to secure preference in the distribution and sale to local refiners of Louisiana raw sugars manufactured by the producer herein, if the producer is desirous of selling to such refiners.

(c) That he will use his best efforts with the proper authorities to secure an adequate supply of railroad cars for the distribution of all Louisiana sugars covered by this contract.

(8) Sugar shall be delivered to the United States Government for Army and Navy uses when and in such amount as the Government may require at price to be fixed by the United States Food Administrator.

(9) It is understood and agreed by the producer that a willful violation of any of the terms of this agreement may result in and be cause for revocation of his license.

(10) This agreement shall remain in full force and effect from October 1, 1918, and until the final disposition of the crop of the season 1918-19, and for each succeeding year thereafter until the existing state of war between the United States Government and Germany shall have been terminated and the fact of such termination shall have been proclaimed by the President of the United States: *Provided*, That either party hereto may withdraw from the contract after the disposition of the crop of 1918-19, by giving 30 days' written notice to that effect before October 1, 1919; or may withdraw for any subsequent crop year by giving such notice on or before October 1 of that year.

(11) The word "he" wherever used in this contract to indicate the producer, shall refer to such producer, whether an individual, partnership, or corporation, as the case may be.

In witness whereof, the parties hereto have subscribed this agreement on the day and year first above written.

UNITED STATES FOOD ADMINISTRATION.
By _____,
_____, *Producer*.

EXHIBIT VI.

AGREEMENT AS TO CUBAN SUGARS, 1918-19 CROP, BETWEEN THE UNITED STATES SUGAR EQUALIZATION BOARD (INC.) AND A COMMISSION OF THE REPUBLIC OF CUBA AND AGENTS OF CUBAN PRODUCERS.

United States Sugar Equalization Board (Inc.).

[United States Food Administration, Washington, D. C.]

Officers.—Herbert Hoover, chairman; George M. Rolph, president; T. F. Whitmarsh, treasurer; Robert A. Taft, secretary.

Directors.—Herbert Hoover, T. F. Whitmarsh, C. M. Woolley, George M. Rolph, W. A. Glasgow, Frank W. Taussig, George A. Zabriskie.

Cuban Commission.

[Appointed by Hon. Mario G. Menocal, President of the Republic of Cuba.]

Carlos Manuel de Cespedes, Robert B. Hawley, Manuel Riouda.

Agreement entered into this 24th day of October, 1918, in the city and State of New York, by and between United States Sugar Equalization Board (Inc.),

a corporation of the State of Delaware, party of the first part, Carlos Manuel de Cespedes, Robert B. Hawley, and Manuel Rionda, a Cuban commission, parties of the second part, and agents of various Cuban producers acting severally for the producers of sugar in the island of Cuba, parties of the third part, witnesseth:

Whereas the United States Sugar Equalization Board (Inc.) was created and is acting as an agency of the United States for the purpose in part of equalizing the distribution and selling price of sugar, and to that end has power and authority to purchase domestic or foreign raw sugar in such quantities, at such prices and upon such terms and conditions as it may deem advisable, and to resell said sugar in its discretion at, below, or above cost and upon the same or other and additional terms and conditions; and

Whereas the President of the Republic of Cuba, by executive order, has appointed Carlos Manuel de Cespedes, Robert B. Hawley, and Manuel Rionda a Cuban commission to arrange for the sale of sugar produced in the island of Cuba during the crop season 1918-19, and to pledge the Republic of Cuba to the terms and conditions provided herein to be performed by said Republic; and

Whereas, the said Cuban commission has represented that there is power and purpose in the Government of the Republic of Cuba to cooperate in the establishment of a stabilized price for the whole of the Cuban crop of 1918-19, and also to control by license the export of any Cuban sugar to any person, entity, or country under specified terms and conditions, including price; and

Whereas, the said United States Sugar Equalization Board (Inc.) and the said Cuban commission have arranged for the purchase and sale of sugar produced in the island of Cuba during the crop season 1918-19, upon the terms and conditions hereinafter stated:

Now, therefore, the parties hereto each for its or himself for the part to be performed by it or him, or in behalf of others herein described, agree as follows:

I. The said Cuban commission agrees that it will immediately arrange that each and every producer of sugar in the island of Cuba, shall duly authorize an agent in the city of New York, one of the parties hereto (hereinafter severally or collectively called the Seller), to contract for and sell to the United States Sugar Equalization Board (Inc.) (hereinafter called the Buyer) the whole of his or their output of sugar deliverable at the option and upon the direction of the Buyer for shipment to the United States, United Kingdom, Canada, France or Italy, or to any other country upon the terms and conditions hereinafter stated; said authorization shall be in writing and filed with the Buyer and shall state the name and location of the factory or factories of each of the said producers and the estimated production of each during the crop season 1918-19.

II. Pursuant to the said authorizations the Sellers on behalf of himself and his principals agrees to sell and to deliver to the Buyer all the raw sugar produced by him or his principals in the island of Cuba during the crop season of 1918-19 (except that actually used for local consumption in Cuba) and the Buyer agrees to purchase and receive the same, on the following terms:

For shipment to the United States at the price of 5.83 cents¹ per pound cost and freight to New York/Philadelphia basis 96° average outturn polarization, net landed weights, based on a freight rate of 38½ cents per 100 pounds from north side ports west of and including Caibarien, subject to United States raw sugar contract terms, a copy of which is hereto annexed marked "Schedule A" and made a part hereof;

For shipment to the United Kingdom, France, and Italy at the price of 5.50 cents per pound f. o. b. northern ports, or 5.45 cents per pound f. o. b. south side ports basis for 96° centrifugal sugar, subject to all the conditions of the usual contract form for shipment to these countries, a copy of which is hereto annexed marked "Schedule B" and made a part hereof;

For shipment to Canada, if shipped direct to a Canadian port, at the same prices and upon the same terms as are provided for shipments to the United Kingdom, except that all matters of disagreement shall be determined pursuant to the provisions of article 6 hereof, but if shipped via a United States port, at the same prices and upon the same terms as are provided for shipments to the United States.

¹ Inasmuch as the buyer assumes all risk of insurance up to an average rate of 31 cents per \$100, which risk includes the excess insurance of 7 cents per \$100 paid by the seller under the agreement for the 1917-18 crop, the basic cost and freight price is made 5.83 cents per pound for shipments to the United States in place of 5.85 cents per pound. The difference of 0.005 is to compensate the buyer for the excess insurance paid by the seller under the agreement for the 1917-18 crop and to provide for the contingency of advancing rates under the buyer's average rate policy up to an average of 31 cents per \$100.

For shipment to all countries other than the United States, the United Kingdom, Canada, France, and Italy, at the same prices and upon the same terms as are provided for shipments to the United Kingdom, except, however, that net shipping weights, less 1 per cent, and Cuban tests shall be accepted by the Buyer and the Seller (weight to be calculated on United States standard), and that payment for such sugar shall be made by the Buyer in cash in New York in 10 days after presentation of shipping documents, or, at Seller's option, by 10 days' sight draft drawn on Buyer with shipping documents attached, and except that all matters of disagreement shall be determined pursuant to the provisions of article 6 hereof.

Shipments are to be made as soon as possible after grinding commences and not less than 2 per cent of the amount shall be shipped during December, 1918; the balance in approximate equal monthly shipments from January to November, 1919, both inclusive.

Sugar shall be shipped in sound jute bags containing approximately 325 pounds each. In all cases where shipment is made in secondhand bags there shall be deducted not less than 15 cents for each secondhand bag.

The Buyer reserves the right to order larger quantities shipped in any month if tonnage is obtainable and sugar is produced and available.

The Buyer will notify the Seller from time to time of proposed allocations of sugar for shipment as between the United States and other countries, and shipments shall be made as directed.

The Seller undertakes to pay all lighterage charges and all shipping expenses, and also all Cuban taxes both domestic and export.

On all shipments on the cost and freight basis provided in schedule A, the Seller undertakes to pay all necessary expenses at the port of discharge to effect delivery to Buyer on such safe wharf or refinery dock as may be designated by Buyer.

The Seller agrees to pay to the Buyer a commission of one-half of one per cent on the sugar shipped to other than United States ports.

The Seller agrees to pay on the sugar shipped to United States ports, a brokerage to be calculated on the average tons of Cuban sugar handled by brokers in the United States heretofore acting in their legitimate capacity as brokers in the three-year period of 1915-1917, but the total disbursement for this purpose shall not exceed \$350,000. The concurrent decision of the Buyer and the Cuban commission shall be final and conclusive on any question or dispute arising under this clause.

In the event of any steamer being lost its cargo shall be settled on the bill of lading net weights and Cuban tests as soon as possible but not later than 30 days after proof of loss.

The parties obligated to provide tonnage will use due diligence and every effort so to do, but are released from responsibility by acts or circumstances beyond their control.

Marine insurance to be covered by the Buyer from shore to shore including the risk of lighterage to and from the vessel at ports of loading and discharge. Sugar shall not be loaded on any steamer, or other vessel not acceptable to the insurers under Buyers' average rate policy, unless specific directions to load an unacceptable vessel are given by either the Buyer or the Seller and insurance satisfactory to the Buyer is obtained. When such specific directions are given the excess insurance over an average rate of 31 cents per \$100 shall be paid by the party ordering the vessel loaded. All war risk, from shore to shore, is for account of Buyer.

III. The Buyer shall have the right, from time to time, to assign this contract, without recourse, in respect to any part of the sugar contracted for herein, to the Governments of the United Kingdom, Canada, France, or Italy, or to any duly constituted agency representing all or either of said Governments, or to any sugar refiner of the United States. The Buyer, upon taking any such assignment, shall give notice thereof to the Seller.

IV. The purchase of the sugar crop of 1918-19 by the Buyer as herein provided is made in reliance upon the representation and agreement of the Cuban Government that it will effectually prohibit any sugars of the 1918-19 crop from being shipped or exported from the island of Cuba except under this contract, and that it will enact such laws and promulgate such orders and decrees as are necessary to faithfully fulfill and observe the stipulation and condition aforesaid.

In the event of failure on the part of the Cuban Government to take the action above provided, or to faithfully fulfill and observe said stipulation and

condition, or in the event of the inoperation, rescission or suspension thereof, the Buyer shall have the option, upon notice in writing to the Seller, to cancel this contract in respect to any undelivered portion of the said sugar crop of 1918-19.

If the Seller fails to deliver the sugar required to be delivered to the Buyer under this contract or if any sugar is directly or indirectly shipped or exported from the island of Cuba by the Seller or his principal to any consignee other than the Buyer or its assigns, the Buyer shall have the right, either in law or in equity, to sue for and recover all damages resulting therefrom, whether or not the above option of cancellation is exercised.

V. This contract is also made in reliance upon the representation and agreement of the Cuban Government that it will place no restrictions or embargoes on the export of molasses to the United States.

VI. All matters of disagreement arising under this contract between the Buyer and the Seller which can not be adjusted by them to their mutual satisfaction, shall be left to arbitration in Washington. But before any arbitration can be called by the Seller the matter in dispute shall be submitted by it or him to the Cuban commission and its approval of and consent to the arbitration obtained in writing. For the purposes of the arbitration, the Buyer and the Seller shall each select one arbitrator, and the two so selected shall select a third, and the decision of any two of said arbitrators shall be final and conclusive upon the parties thereto. Any expenses attached to such arbitration shall be divided equally between said parties. It is agreed, however, that as to disputes arising on shipments to the United Kingdom, France, or Italy the arbitration clause in Schedule B shall apply.

VII. The Cuban Commission is acting hereunder solely in a representative capacity as an administrative agency of the Cuban Government under the express authority of said Government and its members do not assume nor shall they be charged with any personal liability. Upon the execution of this contract the Cuban Government will promptly take such governmental action as is necessary on its part to carry out its terms. It is understood and agreed by the parties hereto that the obligations of the Buyer hereunder are conditioned upon the undertakings of the Cuban Government herein expressed and upon the faithful fulfillment and observance thereof.

It is also agreed that the stockholders, directors, and officers of the United States Sugar Equalization Board (Inc.), do not assume nor shall they or either of them be charged with any personal liability under this contract or in respect to any matter or thing arising therefrom.

VIII. It is contemplated by the Buyer and Seller that the greater part of the sugar delivered for shipment to the United States will be resold directly or indirectly to the Atlantic and Gulf sugar refiners of the United States, who will be made the consignee of such sugar. For the convenience of the parties in all such cases, it is agreed that before departure of vessel from loading port the Seller, upon the request of the Buyer, will execute with the consignee a confirmation in the form of Schedule A hereto annexed, and will settle with such consignee in accordance with this contract, and it is further agreed that the Buyer will guarantee performance by the consignee unless the sugar is assigned pursuant to Article III hereof. All such consignments shall be by negotiable bill of lading to Sellers' order duly indorsed and said bill of lading shall not be delivered to consignee until payment for 95 per cent of the invoice is made as provided in said Schedule A.

IX. It is agreed that the Seller or his principals shall not export from the island of Cuba during the term of this contract any edible sirups fit for human consumption from which sugar may be commercially extracted without the consent of the Buyer.

X. Should any unforeseen circumstances, such as war, rebellion, insurrection, political disturbances, strikes, lack of fuel, riots, or civil disturbance in the island of Cuba, prevent the making of the sugar covered by this contract, the Seller shall so advise the Buyer immediately and thereupon shall be released from delivery of such portion of the crop as can not be made or delivered, but the Seller agrees to use due diligence to carry out this contract in its entirety notwithstanding the circumstances mentioned.

Should any unforeseen circumstances, such as war, fire, explosion, acts of God, and the public enemy, strikes, riots, car shortage, lack of fuel, lack of storage facilities or disturbances in the United States, prevent the Buyer from receiving or delivering or the refiners of the United States from refining the sugar purchased under this contract the Buyer shall immediately give notice

of such conditions to the Seller and thereupon the Buyer shall be released from any damages by reason of nonacceptance of raw sugar (except sugars afloat) during the time that the above conditions continue, but the Buyer will use all due diligence notwithstanding the unforeseen circumstances to carry out this contract as far as possible in its entirety.

In witness whereof, the parties hereto, being duly authorized, have executed this agreement as of the day and year first above written.

UNITED STATES SUGAR EQUALIZATION BOARD (INC.),

By _____, *President.*

By _____, *Secretary.*

CUBAN COMMISSION,

By _____,

Agents of Various Cuban Producers.

(Acting severally for the producers of sugar in the island of Cuba under the authorizations dated October 24, 1918, and filed with the Buyer.)

[Schedule A.]

CONFIRMATION.

[United States raw sugar contract—Cuba—Cost and freight.]

New York, _____, 191—.

To _____ Refining Co. (Hereinafter called "Consignee") :

At the request of the United States Sugar Equalization Board (Inc.), we hereby confirm the sale to you for its account under the terms of the agreement as to Cuban sugars, 1918-19 crop, dated October 24, 1918, of about _____ long tons of Cuba centrifugal sugar. Delivery of 5 per cent, more or less, than this amount to be settled for on same basis.

Shipment to be made by negotiable bill of lading per steamship _____ expected to load at _____ about _____, 191—, for port of _____ via steamer (or steamers) or by car ferry via Key West. The consignee must give notice of destination at least two days before steamer finishes loading at the last loading port. The consignee can order steamers to New York, Philadelphia, Boston, Savannah, New Orleans, or Galveston, but to only one port for each trip.

At a price of 5.89 cents a pound, cost and freight, basis 96° average return polarization, net landed weights, and is based on a freight rate of 33½ cents from north side ports west of and including Calbarien to New York or/and Philadelphia. In case the rate of freight to Boston, Savannah, New Orleans, or Galveston is lower/higher than the rate to New York or/and Philadelphia from said north side ports, the amount of the reduction/increase shall be deducted from/added to the above price. In case the rate of freight from said north side ports to New York or/and Philadelphia is increased/decreased, the above price shall be increased/decreased by the amount of such increase/decrease.

Discharge of the sugar in the United States to be made at a customary safe wharf or refinery, as directed by the consignee. Demurrage and dispatch money at port of destination to be for account of consignee and at port of loading to be for account of Seller. Consignee not to be responsible for demurrage or other loss caused by reason of the failure of Seller to furnish all necessary Cuban papers. Documents required to effect a prompt entry and discharge of cargo in the United States to be furnished by the Seller. Party in default in producing necessary papers for entry of sugar shall be liable for demurrage of the vessel and for actual expense incurred.

Payment to be made by the consignee to _____ either in cash on presentation of all necessary shipping documents or at Buyer's option by one day sight draft attached to negotiable bill of lading to Sellers' order, duly indorsed for 95 per cent of the invoice, based on net shipping weights and tests, less interest for nine days at the rate of 6 per cent per annum. Any balance to be paid immediately after final settlement of weights and tests, with interest on balance at the rate of 6 per cent per annum from 10 days after date of entry of steamer. If sugar is shipped in sailing vessel, payment to be made in cash on presentation of documents after entry of vessel at customhouse for 95 per cent of the invoice based on net shipping weights and tests, any balance to be paid immediately after final settlement of weights and tests, with interest on said balance as above. All payments to be made in New York or New York exchange.

Samples to be drawn mutually by consignee and seller. Three tests to be made of each sample of sugar, one by Seller's public chemist, one by consignee's public chemist, and one by the New York Sugar Trade Laboratory. The average of the two nearest polarizations to be taken as the final test. Settlement on each shipment to be made on the final test, with the allowance of one-twentieth cent per pound for each degree above the selling basis to 98°, and one-tenth cent per pound for each degree below the selling basis down to 94°, fractions in proportion. Any marks below 94° test, three-twentieths cent per pound per degree down, fractions in proportion, but no sugar to be delivered below 93°, unless on discount terms mutually satisfactory to consignee and Seller.

Marine and war risk insurance arranged by United States Sugar Equillzation Board (Inc.).

Accepted :

—————, *Seller.*

————— *REFINING Co., Consignee.*

[Schedule B.]

CONDITIONS OF THE USUAL CONTRACT FORM FOR SHIPMENT TO THE UNITED KINGDOM, FRANCE, AND ITALY.

————— tons (of 2,240 pounds net each) of Cuba centrifugal sugar, fair average quality of the crop.

For shipment.

Free on board steamers of one or two customary safe north side Cuban ports for each cargo.

Basis 96 per cent average outturn polarization. For any excess above 96 per cent, one-twentieth cent per pound per degree to be added to contract price; for any deficiency below 96 per cent, one-tenth cent per pound per degree to be deducted from contract price down to 94 per cent polarization. If any mark or marks polarize below 94 per cent, an allowance of three-twentieths cent per pound per degree to be deducted in addition to the aforementioned allowance from 96 per cent to 94 per cent, but no sugar to be delivered below 93 per cent.

Fractions in all cases in proportion.

Net landed weights and outturn polarization at port of discharge.

Usual conditions of sampling and polarizing.

Sellers have the option of delivering at one or two customary safe south side Cuban ports. Vessels are to receive sugars as fast as possible and the Sellers are to supply the cargoes at not less than 6,000 bags per working day at north side ports and at Cienfuegos and 4,500 bags per day at all other south side ports in default of which demurrage is to be paid by Sellers at the same rate as heretofore.

Sugar to be shipped in vessels to be provided by Buyers to load as above. Buyers to give Sellers reasonable notice of expected readiness.

Payment to be made by Buyers in cash in New York in exchange for complete sets of bills of lading and certificates of origin (old and new forms) immediately upon receipt of a cable from ———, to ———, saying that the documents are in their possession in New York.

Marine insurance from shore to shore, including craft risk loading and discharging, on usual full Lloyd's conditions to be for Buyers' accounts.

War risk, if any, to be for Buyers' account.

Any dispute arising out of this contract to be settled by arbitration under the rules of the Sugar Association of London (cane sugar section), Buyers being considered as refiners.

If sugar shipped to Europe, Buyers to give Sellers at once copies of such documents as are required by, and on form acceptable to the customs at port of destination, including full details of such consular certificates as are needful. Sellers to have shipping documents made on similar forms as soon as shipment is complete, but they are not to be held responsible for any delays owing to absence of or distant locations of consuls from port of shipment.

In the event of Buyers failing to provide tonnage as above, they are to reimburse Sellers for the actual cost and proved loss of holding over the sugar, including interest at 5 per cent per annum, the provisions of tonnage not to be unduly delayed.

EXHIBIT VII.

SUGAR CROPS OF THE WORLD, 1918-19, AS ESTIMATED BY WILLETT & GRAY, NOVEMBER 14, 1918.

	Tons of 2240 pounds.
United States—Louisiana.....	244, 135
Texas.....	
Porto Rico.....	410, 000
Hawallian Islands.....	550, 000
West Indies—St. Croix.....	6, 500
Cuba.....	3, 600, 000
British West Indies—Trinidad.....	60, 000
Barbadoes.....	80, 000
Jamaica.....	40, 000
Other British West Indies.....	35, 000
French West Indies—Martinique, <i>exports</i>	35, 000
Gadeloupe.....	35, 000
San Domingo.....	175, 000
Mexico.....	40, 000
Central America.....	30, 000
So. America—Demerara (<i>exp.</i>).....	125, 000
Surinam.....	15, 000
Venezuela— <i>exports</i>	15, 000
Ecuador.....	7, 000
Peru.....	250, 000
Argentine.....	100, 000
Brazil.....	350, 000
Total in America.....	<u>6, 202, 635</u>
British India (consumed locally).....	2, 950, 000
Java.....	1, 700, 000
Formosa and Japan.....	440, 000
Philippine Islands, <i>exports</i>	224, 000
Total in Asia.....	<u>5, 314, 000</u>
Australia.....	256, 000
Fiji Islands, <i>exports</i>	100, 000
Total in Australia and Polynesia.....	<u>356, 000</u>
Egypt (consumed locally).....	100, 000
Mauritius.....	255, 000
Reunion.....	50, 000
Natal.....	130, 000
Mozambique.....	50, 000
Total in Africa.....	<u>585, 000</u>
Europe—Spain.....	6, 000
Total cane sugar crops.....	<u>12, 463, 635</u>
Europe—Beet Sugar crops.....	3, 704, 000
United States—Beet Sugar crop.....	635, 000
Canada—Beet sugar crop.....	17, 000
Grand total Cane and Beet Sugar.....	Tons. 16, 819, 635
Estimated decrease in the world's production.....	Tons. 294, 751

EXHIBIT VIII.

**OPTION GIVEN TO ROYAL COMMISSION ON THE SUGAR SUPPLY
BY REFINERS OF THE UNITED STATES FOR THE REFINING OF
321,000 TONS CUBAN RAW SUGAR.**

NOVEMBER 22, 1918.

THE ROYAL COMMISSION ON THE SUGAR SUPPLY.

London, England.

GENTLEMEN: We are advised by Mr. George M. Rolph, the head of the Sugar Division of the United States Food Administration and President of the United States Sugar Equalization Board (Inc.), that you have made arrangements with the latter company for the assignment by it to you of a portion of the Cuban sugar crop for 1918-19 and that such arrangements are made with the approval of the Food Administration. We also understand that with the approval of the Food Administration and with a view to securing a supply of refined sugar for distribution to the United Kingdom, France, and Italy you are considering the advisability of having a part of your purchase refined in the United States.

At the present writing, we are negotiating with the United States Sugar Equalization Board looking toward the purchase of our requirements of raw sugar for the period up to December 31, 1919, and the sale of the same at an agreed margin.

Accordingly, therefore, in consideration of the margin to be paid to us as hereinafter set forth we, sugar refiners of the United States, at the request of the United States Equalization Board (Inc.), severally agree to give and do hereby give to your commission the option of having refined in our refining plants during the year 1919 up to 321,000 tons of Cuban raw sugar of the crop of 1918-19 to produce an equivalent quantity up to 300,000 tons of refined sugar, upon the following terms and conditions:

Quantity and option.—Three hundred thousand tons refined granulated sugar at the rate of 27,275 tons monthly beginning February 1, 1919, and if option for any month is not exercised, the total quantity is automatically reduced by the amount so not taken in any month.

Declaration of option.—By 60 days' written or cable notice to the American refiners' committee previous to first day of month in which refined is to be delivered except for deliveries during February, 1919, for which the declaration of the option must be made before January 1, 1919.

Delivery of raws.—That to the extent that the Royal Commission on the Sugar Supply exercises its option to take American refined sugar, an equivalent quantity of Cuban raws shall be transferred by the Royal Commission on the Sugar Supply to the American refiners through the American refiners' committee on the basis of paragraph 2, section 2, of page 3 of the Cuban contract dated October 24, 1918.

Selling price of refined.—The price of refined sugar delivered in customary packages will be the cost and freight price of the raw sugar delivered at refinery, plus insurance, duty, and the refiners' margin in effect for domestic business as approved by the United States Sugar Equalization Board (Inc.) at the date of shipment, less a drawback allowance of 1 cent per pound, said drawback allowance and price subject to any change in United States custom laws or in the event of an export, or excise tax of any Government action which would alter the refiners' margin herein agreed upon, as more particularly stated in printed form of refined sugar export contract attached.

Tonnages.—Tonnage to load refined shall be furnished promptly by you and within the period for delivery of refined referred to in any notice of your availing yourselves of any part of the option herein given. If tonnage is not so provided you shall compensate us for interest, insurance, and storage, or at our option we shall have the privilege of sending the sugar to store for account, expense, and risk of the Royal Commission on the Sugar Supply.

Shipment to be made subject to terms of refined sugar export contract, a copy of which is hereto annexed and marked Schedule A. [See Exhibit VIII.]

Releases from responsibility.—Both your commission and ourselves shall be relieved from any liability hereunder if prevented from carrying out our obligations by acts of God or from causes beyond our control.

Ports of shipment.—You shall take the refined sugar at any of the following ports as may be directed by us: Boston, New York, Philadelphia, Savannah, New Orleans.

We hereby severally accept and agree to be bound by the foregoing option for our pro rata portion of said option as set forth in the percentage named. If the percentages named do not total 100 per cent we agree that the percentages for the refiners signing this option shall be raised pro rata to make this option good for 100 per cent delivery.

By _____
THE AMERICAN SUGAR REFINING Co. (38.001 per cent).

By _____
THE NATIONAL SUGAR REFINING Co. OF NEW JERSEY (11.94 per cent).

By _____
ARBUCKLE BROS. (6.613 per cent).

By _____
WARNER SUGAR REFINING Co. (6.187 per cent).

By _____
COLONIAL SUGARS Co. (2.185 per cent).

By _____
FEDERAL SUGAR REFINING Co. (8.645 per cent).

By _____
WM. HENDERSON (1.220 per cent).

By _____
THE W. J. McCAHAN SUGAR REFINING Co. (2.489 per cent).

By _____
PENNSYLVANIA SUGAR Co. (4.537 per cent).

By _____
REVERE SUGAR REFINERY (2.985 per cent).

By _____
SAVANNAH SUGAR REFINING CORPORATION (2.149 per cent).

By _____
LEON GODCHAUX Co. (1.433 per cent).

By _____
Approved.

UNITED STATES SUGAR EQUALIZATION BOARD (INC.).
By _____, *President*

EXHIBIT IX.

REFINED SUGAR EXPORT CONTRACT WITH THE ROYAL COMMISSION ON THE SUGAR SUPPLY.

The _____ Sugar Refining Co. has sold, and the Royal Commission on the Sugar Supply, London, England, has purchased _____ bags of 100 pounds each, of fine granulated sugar, packed in regular 100 pound bags at _____ cents per pound, net cash, f. o. b. steamer, stevedoring to be borne by ship. The price is subject to any change in export price that may be ruling on date of shipment.

Invoice payable in New York on presentation of shipping documents; draw-back payable to the Sugar Refining Co.

The Royal Commission on the Sugar Supply agrees to pay to the _____ Sugar Refining Co. the sum of \$1 for each customhouse entry which may be necessary on this contract.

Delivery to commence _____ at _____.

Deliveries: The Royal Commission on the Sugar Supply agrees that on lots of 2,500 tons or more that the steamer will load at the wharf designated by refinery provided steamer can always safely load afloat.

The Royal Commission on the Sugar Supply further agrees that steamer will load at two refineries provided that quantities of not less than 2,500 tons are loaded at each refinery and provided that steamer can always safely load afloat. Expense of moving to be for account of vessel. Time lost in moving to be for account of sellers, provided steamer is moved promptly after loading is completed at the first berth. In case demurrage is incurred, the time lost in moving shall be for account of each seller in the proportion that his part of the cargo bears to the whole. If, through the disability of the wharf designated by the refinery, it is impossible to safely berth steamer, then the refinery must deliver the cargo to a loading berth appointed by steamer, within lighterage limits of the loading port, in which case all lighterage expense to be for refinery account.

If the refinery is able to load steamer, subject to foregoing provisions, but the steamer elects for its own convenience not to go to the wharf designated by the refinery, but to load at its own pier, then the lighterage expenses at cost shall be for buyers' account.

The Royal Commission on the Sugar Supply agrees to give the seller at least seven days' notice of approximate date of arrival of vessel, whenever possible. In the event of not receiving notice the refinery shall not be held for damages, but will make all possible effort to furnish the sugars required.

Date of delivery: Delivery on full-cargo lots to be made at minimum rate of 1,000 tons of 2,240 pounds per weather working day, Sundays and holidays excepted. Any demurrage incurred to be charged for at 48 cents per gross registered ton of steamer per day.

Steamer's lay-days to count from the time the steamer is in berth ready to load. Any time lost by steamer through berth being occupied on arrival thereat or through awaiting shippers' instructions after steamer reports within the customary working hours of the port ready for cargo, to be for seller's account.

Part cargoes: Part cargoes, that is, lots of less than 2,500 tons delivered by one refinery, may be delivered to steamer at its own wharf or at the refinery wharf where the steamer is receiving the minimum quantity of 2,500 tons, at the option of the refineries.

Delivery by lighter: The steamer to have three weather working days, Sundays and holidays excepted, free for discharge of lighters. Time to count from the time the lighter captain gives written notice to the clerk of the steamer of lighter's arrival alongside. As far as possible, the buyer is to give the seller at least seven days' notice of the approximate arrival of all vessels. In case of delay of vessels, demurrage on lighters if incurred, shall begin five days from date on which buyer advises seller that vessel will receive cargo.

No demurrage will be charged by steamer in case the steamer has alongside sugar from one or more refineries sufficient to load 1,000 tons of 2,240 pounds per day.

Any lighterage expense resulting from steamer's failure to take delivery of full quantity ordered, to be for buyer's account.

The demurrage on lighters to be charged to buyers at cost, but claims must be presented in accordance with custom of the port.

In consideration of ——— passing the customhouse entry and carrying the drawback, the Royal Commission on the Sugar Supply hereby agrees to furnish customhouse bill of lading and landing certificate free of charge, these to be delivered promptly to the customhouse department of ———.

Any necessary consular certificates or expense for vising any documents to be for buyer's account.

If ——— is unable to collect the drawback through any neglect on buyer's part to fulfill the foregoing agreement, buyer agrees to reimburse it promptly in full for the amount of said drawback.

This sale is based on present rate of duty, and present laws as to drawback. If seller is unable, by reason of legislation, to collect the full amount of duty paid on any of the sugar delivered under this contract by way of drawback, the buyer agrees to pay the seller, in addition to the contract price, an amount equal to such duty which seller is unable to collect.

All additional duties, excises, or other taxes hereafter levied or assessed on the raw or refined sugar necessary to fill this contract to be at buyer's expense in addition to the price specified.

The seller will not be responsible for any delivery under this contract, if prevented or delayed by war conditions, strikes, labor difficulties, accidents, embargo, fire, or any other cause beyond its control, or if seller's supply of raw material shall be interrupted by any such cause. In such case, the obligation to deliver under this contract is canceled to such an extent as deliveries shall be prevented or interrupted thereby and no liability shall be imposed upon the seller for damages resulting therefrom.

The sale is made subject to the seller's ability to secure an export permit if such permit is required.

Brokerage of 3 cents per 100 pounds to be paid.

Accepted:

Accepted:

_____, Seller.

_____, Buyer.

EXHIBIT X.

SUPPLEMENTARY OPTION GIVEN TO THE ROYAL COMMISSION ON THE SUGAR SUPPLY BY THE REFINERS OF THE UNITED STATES FOR THE REFINING OF 214,000 TONS ADDITIONAL CUBAN RAW SUGAR.

APRIL 30, 1919.

ROYAL COMMISSION ON THE SUGAR SUPPLY,
London, England.

GENTLEMEN: Referring to letter of February 27 from your representative, Mr. J. R. Bruce, wherein you requested the American refiners' committee to increase the tonnage of refined sugar under the option of November 22, 1918, from 300,000 to 400,000 tons, and to his letter of April 17, wherein you requested a further increase of the tonnage of refined sugar in the said option agreement to a total of 500,000 tons of refined sugar, we hereby confirm the increase in the quantity of refined sugar that may be called for from 300,000 to 500,000 tons, upon the terms and in accordance with the conditions of the said contract of November 22, 1918.

And we hereby severally accept and agree to be bound by the foregoing option for our pro rata portion of said option as set forth in the percentage set opposite our names. If the percentages named do not total 100 per cent we agree that the percentages for the refiners signing this option shall be raised pro rata to make this option good for 100 per cent delivery.

THE AMERICAN SUGAR REFINING Co. (38.001 per cent).
By _____,
THE NATIONAL SUGAR REFINING Co. OF NEW JERSEY (11.94 per cent).
By _____,
ARBUCKLE BROS. (6.613 per cent).
By _____,
WARNER SUGAR REFINING Co. (6.187 per cent).
By _____,
COLONIAL SUGARS Co. (2.185 per cent).
By _____,
FEDERAL SUGAR REFINING Co. (8.645 per cent).
By _____,
WM. HENDERSON (1.220 per cent).
By _____,
THE W. J. McCAHAN SUGAR REFINING Co. (2.489 per cent).
By _____,
PENNSYLVANIA SUGAR Co. (4.537 per cent).
By _____,
REVERE SUGAR REFINERY (2.985 per cent).
By _____,
SAVANNAH SUGAR REFINING CORPORATION (2.149 per cent).
By _____,
LEON GODCHAUX Co. (1.443 per cent).
By _____,

Approved:

UNITED STATES SUGAR EQUALIZATION BOARD (INC.).
By _____, *President.*

EXHIBIT XI.

LETTER OF THE UNITED STATES SUGAR EQUALIZATION BOARD, JULY 1, 1919, DIRECTING A TWO WEEKS' EMBARGO ON REFINERS' EXPORTS OF SUGAR.

JULY 1, 1919.

Mr. JAMES H. POST,
Chairman American Refiners Committee,
111 Wall Street, New York City.

MY DEAR MR. POST: Owing to the acute shortage of refined sugar in the United States at the present time, and the great danger of the spoilage of fruits and

vegetables because of it, please advise all refiners and arrange for the suspension of shipments of sugar for export, including that for the Royal Commission, for a period of two weeks, which time we hope will be sufficient to relieve the situation here and exports be resumed.

Yours very truly,

U. S. SUGAR EQUALIZATION BOARD, INC.
 _____, *President.*

EXHIBIT XII.

LETTER OF THE UNITED STATES SUGAR EQUALIZATION BOARD, JULY 14, 1919, DIRECTING REFINERS TO DISCONTINUE SALES OF SUGAR FOR EXPORT UNTIL FURTHER NOTICE.

JULY 14, 1919.

AMERICAN REFINERS COMMITTEE,
 111 Wall Street, New York City.
 Mr. JAMES H. POST, *Chairman.*

GENTLEMEN: In reference to my letter of July 1st, the demand for refined sugar in the United States has become so acute as to warrant our suggesting to the refiners that they make no further sales of sugar for export until the supply in the United States is more adequate and until such time as we give you further advice on the subject.

Yours very truly

U. S. SUGAR EQUALIZATION BOARD, INC.
 _____, *President.*

EXHIBIT XIII.

CERTIFICATE OF INCORPORATION OF UNITED STATES SUGAR EQUALIZATION BOARD (INC.).

First. The name of this corporation is United States Sugar Equalization Board (Inc.).

Second. The location of its principal office in the State of Delaware is in the city of Wilmington, county of New Castle. The name of the resident agent therein and in charge thereof is the Delaware Charter Co. The street and number of said principal office and the address by street and number of said resident agent is 900-904 Market Street.

Third. The objects and purposes for which and for any of which this corporation is formed are to do any or all of the things herein set forth to the same extent as natural persons might or could do, viz: To purchase, or otherwise acquire, manufacture, sell or otherwise dispose of, store, handle, and otherwise deal in and with raw and refined cane and beet sugar, sirups, molasses and other commodities, and to do all acts and things necessary, expedient or incidental to the efficient conduct of said business within or without the State of Delaware.

To exercise all powers which may be delegated to it by the President of the United States.

The foregoing clauses shall be construed both as objects and powers; and it is hereby expressly provided that the foregoing enumeration of specific powers shall not be held to limit or restrict in any manner the powers of this corporation.

In general, to have and to exercise all the powers conferred by the laws of Delaware upon corporations formed under the act hereinafter referred to.

Fourth. The total authorized capital stock of this corporation is \$5,000,000, divided into 50,000 shares of \$100 each.

The amount of capital stock with which this corporation will commence business is the sum of \$1,000, being 10 shares of \$100 each.

Fifth. The names and places of residence of each of the original subscribers to the capital stock and the number of shares subscribed for by each are as follows:

Name.	Residence.	Number of shares.
George M. Rolph.....	San Francisco, Calif.....	4
Theodore F. Whitmarsh.....	New York, N. Y.....	3
George A. Zabriskie.....	do.....	3

Sixth. This corporation is not to have perpetual existence. Its existence is to commence on the 15th day of July, 1918, and is to cease on the 14th day of July, 1923, unless it is sooner dissolved in the manner provided by law.

Seventh. The property of the stockholders shall not be subject to the payment of corporate debts to any extent whatever.

Eighth. The directors of this corporation shall hold office for one year from the date of their election and until their successors are elected and qualified, unless sooner removed. The holder or holders of two-thirds of the outstanding capital stock may call a special meeting of stockholders at any time, upon mailing notice to the other stockholders of the time and place of said meeting, three days prior to said appointed time, which notice may be waived by unanimous consent, or by the presence of all stockholders at said special meeting; and the stockholders present may by a majority vote remove any director or directors from office and elect a successor or successors to hold office for the remainder of the unexpired term.

In furtherance, and not in limitation of the powers conferred by statute, the board of directors are expressly authorized to make, alter, amend, and rescind the by-laws of this corporation, and to authorize and cause to be executed mortgages and liens upon the personal property of this corporation, and to authorize the borrowing of such sums of money from time to time, and the making and execution of such notes, mortgages, pledges, and liens on the personal property of this corporation, as they may deem advisable.

This corporation reserves the right to amend, alter, change, or repeal any provision contained in this certificate of incorporation, in the manner now or hereafter prescribed by statute, and all rights conferred on stockholders herein are granted subject to this reservation.

We, the undersigned, being each of the original subscribers to the capital stock hereinbefore named for the purpose of forming a corporation to do business both within and without the State of Delaware, and in pursuance of an act of the Legislature of the State of Delaware entitled "An act providing a general corporation law" (approved March 10, 1889) and the acts amendatory thereof and supplemental thereto, do make and file this certificate, hereby declaring and certifying that the facts herein stated are true, and do respectively agree to take the number of shares of stock hereinbefore set forth, and accordingly have hereunto set our hands and seals this — day of July, 1918.

_____. [SEAL]
 _____ [SEAL]
 _____ [SEAL]

In presence of—

UNITED STATES OF AMERICA,
 District of Columbia, ss:

Be it remembered that this _____, 1918, personally came before me, a notary public for the District of Columbia, parties to the foregoing certificate of incorporation, known to me personally to be such, and severally acknowledge the said certificate to be the act and deed of the signers, respectively, and that the facts therein stated are truly set forth.

Given under my hand and seal of office the day and year aforesaid.

[SEAL]

 Notary Public, District of Columbia.

EXHIBIT XIV.

COMPLETE DISTRIBUTION OF THE CUBAN CROP OF 1918-19.

FINAL FIGURES OF THE CUBAN PRODUCERS' COMMITTEE, DECEMBER 23, 1919.

[In tons of 2,240 lbs.]

Production of entire Island (Guma)-----	3,971,776
Less:	
Estimated local consumption and sugar not accounted for-----	136,958
Taken by Cuba for shipment to Neutral Countries-----	49,212
	186,170
Estimated balance for shipment account U. S. Sugar Equalization Board and Royal Commission-----	3,785,606
<i>Portion of United States.</i>	
Two-thirds of above quantity-----	2,523,737
Less: Quantity exchanged with Royal Commission shipped to United States from 1917-1918 crop-----	13,022
Quota of United States-----	2,510,715
Plus: Total Raws exchanged for Refined with Royal Commission----	519,500
Total United States portion-----	3,030,215
Cleared to date to United States-----	2,874,199
Cleared to date to Canada, etc-----	154,448
Total shipped to United States-----	3,028,647
Under-assigned to United States-----	1,568
<i>Portion of British Commission.</i>	
One-third of above quantity to be shipped to Europe-----	1,261,869
Plus: Quantity exchanged for last crop with United States-----	13,022
Quota of Europe-----	1,274,891
Less: Raws to be refined in United States-----	519,500
Total estimated to be shipped for account of Royal Commission-----	755,391
Less:	
Cleared to date for Europe-----	704,982
Cleared to date for Canada % Europe-----	51,977
Total shipped to Royal Commission-----	756,959
Over-assigned to Europe-----	1,568

Shipments by months.

(In bags.)

Cleared in—	United States.		Europe.		Total.
	United States.	Canada.	Europe.	Canada.	
December, 1918.....	34,936				34,936
January, 1919.....	1,346,985	14,000	56,058		1,457,043
February, 1919.....	1,959,341	16,400	338,993		2,314,734
March, 1919.....	2,198,851		650,036	78,500	2,927,387
April, 1919.....	2,232,157		505,779		2,737,936
May, 1919.....	1,945,672		947,480	48,995	3,241,147
June, 1919.....	1,947,042		455,901	22,064	2,424,107
July, 1919.....	1,734,304		279,555	22,500	2,027,359
August, 1919.....	1,899,226		302,577	50,350	2,243,153
September, 1919.....	1,807,752		430,371	62,101	2,300,224
October, 1919.....	1,601,894		614,849		2,216,743
November, 1919.....	1,063,301		221,833	79,332	1,364,466
December, 1919.....	17,142		141,341		158,483
Total.....	20,119,393	30,400	4,934,873	363,842	25,448,508

Cleared to date against Sugar Equalization Board's f. o. b. sales..... 1,050,734

Total sugar taken by Cuba for shipment to Spain, Mexico, etc..... 344,485

Total quantity exported, bags..... 26,843,727

Distribution of sugar by Equalization Board and British Royal Commission.

	Tons.
United States.....	2,874,199
Europe.....	704,982
Canada.....	56,320
Total.....	3,635,501

Distribution of Equalization Board's F. O. B. sales, crop 1918-1919.

Resales to:	Tons.
Canada.....	73,809
France.....	50,684
United States.....	16,502
Roumania.....	4,000
Amsterdam.....	2,824
Constantinople.....	2,286
Total.....	150,105

Distribution of 50,000 tons taken by Cuba for shipment to neutral countries, crop 1918-1919.

	Tons.
French Africa.....	3,183
Holland.....	3,162
France.....	5,679
Turkey.....	3,251
Mexico.....	1,429
Greece.....	1,476
Spain.....	30,902
Panama.....	130
Total.....	49,212
Total quantity exported.....	3,834,818

EXHIBIT XV.

CORRESPONDENCE PRESENTED BY ATTORNEY GENERAL PALMER
BEFORE THE COMMITTEE ON THE JUDICIARY, APRIL 29, 1920, RE-
LATING TO THE PRICE OF LOUISIANA SUGAR.

[Pp. 156-159 of the hearings before the Committee on the Judiciary, House of Representatives, on H. Res. 469.]

Attorney General PALMER. * * * I want to read to you, Mr. Chairman, absolutely, all—every word—of the correspondence between the Department of Justice at Washington and its representative in Louisiana, Mr. Mooney, the United States attorney, in order that you may judge of what was done, not by a single sentence, but by the entire correspondence, and by all of the facts and circumstances surrounding the thing.

Mr. HUSTED. Is that correspondence fully set forth in House Document No. 644?

Attorney General PALMER. What is that? Is it my answer to that resolution?

Mr. HUSTED. Yes.

Attorney General PALMER. No; there are only a couple of telegrams there, I think.

The first is a letter of October 29, 1919, signed by Howard Fligg, special assistant to the Attorney General, and addressed to Henry Mooney, Esq., United States Attorney, New Orleans, La., and reads as follows:

"We have made every effort possible to reach an agreement with the Louisiana producers and refiners to establish a fair price on the present crop sugars. Certain efforts were made for the purchase of the entire crop with the hope of equalizing price for the entire United States and the loss being absorbed by the Sugar Equalization Board, but no agreement was reached with them. They have made the statement that 14 to 15 cents will allow them a margin of profit. Prices in excess of that amount should immediately be investigated and they should be called before you and asked to justify this price. It is very possible that prosecutions will have to be started against some of these operators, but use every method possible first to bring them to an equitable agreement.

"Keep us posted as to the progress being made and what your view of the general situation is."

On October 30, 1919, the next day, this letter was written by Mr. Fligg to Mr. Mooney:

"I have to-day had a conference with Senators Gay and Ransdell and Congressman Martin of your State in reference to the sugar situation there. They are most anxious for the sugar situation to be so arranged in Louisiana as to in no way come in conflict with this department. To the suggestion that an equitable and fair price might be arrived at between the producers and your office, these gentlemen thought that it was both feasible and possible.

"I am informed that a committee was appointed at a general meeting of the producers held in New Orleans on the 28th of this month, with authority to negotiate with the equalization board for the sale of the entire Louisiana crop, and I would suggest that you get in touch with this committee with the view of reaching some agreement as to price.

"Former Senators Guion and Foster were suggested as well qualified to assist and advise you in this matter.

"I am disposed to think a price from 14 to 15 cents will be fair, but this could be determined after getting facts and figures from the producers. There will be some protest even on this price, as in a small portion of the sugar section I understand that the growers would not break even at 20 cents, but the large majority would make a reasonable profit on the lesser price, and that is the one you will have to consider. By the stabilization of this price it will allow you to base your action for future prosecutions on prices in excess of this agreed price. It will relieve your office as well as ours of considering the innumerable protests now coming in as to the wide variation of prices being asked for Louisiana sugars. There are certain existing contracts which, in my opinion, where they are bona fide written contracts, you should insist upon being filled. I call your attention to section — of the food-control act, which very clearly states the necessity for the fulfillment of all existing contracts.

"This committee will call upon you in a few days and arrange a definite date for a hearing. Please keep us fully posted as to progress being made. This question is a very large one, and one that must be settled so that a stabliza-

tion of price may be established for the entire United States, largely based upon your agreement with Louisiana sugar interests."

The next is a telegram dated November 3, 1919, signed by Mr. Mooney, United States attorney, addressed to the Attorney General:

"Answering your letters October twenty-ninth and thirtieth, and pursuant to your suggestion, I conferred with special committee composed of thirty-four sugar producers, this committee having been appointed at a general meeting held October twenty-eighth, at which there were more than three hundred cane growers present. I explained to the committee the department's attitude and took the liberty of stating the substance of your two letters to me. After some discussion, and in an effort to bring about an amicable arrangement, the committee unanimously adopted the following resolution:

"A committee of Louisiana sugar planters being in session with Mr. Mooney, United States district attorney, resolved as follows: Realizing that there is at best only half a crop of cane in tonnage with a very low sucrose content indicated from tests made to date, and that all products entering into the cost of growing sugar cane and manufacturing have largely increased, we believe in all fairness and justice we are entitled to an open market on our sugar, but understanding that the Department of Justice wishes the planters to name a fixed price and desiring to thoroughly understand the position of the Department of Justice, this committee respectfully urges Mr. Mooney to ascertain if a governmental agency will buy the entire crop at a fixed price. This committee then will meet again on call of Mr. Mooney and its chairman to consider any answer. As most of the planters begin grinding this week it is imperative that this department and the planters have some definite answer at once.' If possible therefore request you wire me to-morrow in reply to the resolution quoted."

And the next day, November 4, 1919, Mr. Mooney, United States attorney, sent to the Attorney General the following telegram:

"Have arranged a conference with former United States Senators Murphy J. Foster and Walter Gulon for to-morrow morning at nine thirty in accordance with suggestion your letter October thirtieth they have agreed to assist and advise me in an effort to fix fair price for this year's crop."

The next is a telegram to the United States attorney at New Orleans, La., dated November 4, 1919, signed by "Palmer"—that is, signed by the Attorney General:

"Your wire third, resolutions of committee sugar planters Louisiana, received. No governmental agency empowered to purchase sugar crop. Suggestions for an agreed price was to prevent the necessity for prosecution under section 4, Lever Act. Prices now being asked are a distinct violation, and unless a prior agreement is reached you are instructed to institute proceedings under this act for violations of a reasonable margin where prices charged are in excess of what you determined as being a fair price to the planters and refiners of Louisiana sugars."

On November 5, 1919, the Attorney General sent this telegram to Mr. Mooney:

"Report result of sugar conference by wire."

On November 5, Mr. Mooney sent this telegram to the Attorney General:

"Your telegram re Louisiana sugar situation and my conference with ex-Senators this morning. Both consider 17 cents fair price. Both favor open market. I have not agreed to price and will take no definite step without your approval. Am holding further conference with producers and consumers and will wire you to-morrow. Am writing."

On November 5, 1919, Mr. Mooney wrote this letter to the Attorney General:

"Concerning the local sugar situation, I beg to say that this morning I conferred with former United States Senators Murphy J. Foster and Walter Gulon, both of whom gave me the benefit of their views in regard to the general situation, and particularly, as to what they would deem a fair price for the present Louisiana crop. They are of the opinion that 17 cents per prime yellow clarified, would be a fair price at the present time. They believe that within the next few weeks, and as soon as the Cuban crop reaches the market, prices will materially decline, so that a 17-cent maximum would mean probably a much lower average price for sugar to the planter, there being no probability that he could market his whole crop at present prices, and a considerable portion would have to be sold at a much lower figure.

"The committee of sugar producers, I understand, will meet in this city to-morrow afternoon, and I shall again confer with them. I have not agreed

to the price suggested by ex-Senators Foster and Gulon, and will fix no price until hearing from you after having conferred with the planters to-morrow and transmitting their views to you with my own recommendation.

"Both ex-Senators Foster and Gulon express themselves as being emphatically in favor of an open market, believing that conditions would promptly establish a fair price both to the consumer and producer. They stated that, from all the information they had, the Louisiana crop was a failure, in that the tonnage of cane production was small (about a 40 per cent crop at the outside), and owing to the continued warm weather the cane itself was green and deficient in sucrose.

My understanding of the situation is that, in the absence of additional legislation, a fair price is to be fixed at or below which the planter can dispose of his sugar without question from this department, but that all sales in excess of the fair price so established must be examined into, and if in any given case the facts show that the producer has profited, he is to be prosecuted. But, on the other hand, if the fact be, even in cases where sales are made in excess of the fair price suggested, that the planter was actually disposing of his product at its cost to him or even at a reasonable profit, there can be no prosecution.

"I will thank you to advise me whether my understanding of the department's attitude and of my instructions are correct.

"This afternoon I held a conference with the three largest consumers here, and they took the position that the planters' demands are excessive. They also claim that by the action of the Equalization Board they are virtually compelled to buy their sugar from the Louisiana producer, that threatened prosecutions really afford them no relief so far as their business is concerned, and that they are at the mercy of the Louisiana sugar producer. The New Orleans Coffee Co., whose representative was a member of the conference, showed me a letter from the American Sugar Refining Co., dated November 4, 1919, from which I quote as follows:

"From a recent circular received from the Federal Sugar Equalization Board, it is our understanding that this territory will have to look to the Louisiana planters for its requirements, for the next two months. When we again resume operations, we will be glad to have you take the matter up with us."

"In conclusion, my investigation satisfies me that at 15 cents some of the producers would be making a good profit, and at 17 cents these same producers would be making a very large profit, but that there are a great number of planters in Louisiana who will make nothing, even if the maximum price for yellow clarified was fixed at 17 cents. I am endeavoring to obtain all information I can possibly gather from all sources within the limited time before me and hope to be able to make my recommendation to you to-morrow."

That was signed by Mr. Mooney, United States Attorney.

On November 7—I am not sure whether this telegram appears in the House document that you referred to, Mr. Chairman, or not, the telegram of November 7, beginning, "After a protracted meeting with the sugar planters." Is this telegram in that document?

Mr. HUSTED. That is where it begins.

Attorney General PALMER. Well, I will not bother to read that—yes, I think I will read it.

Mr. HUSTED. I think it would be well for you to read that.

Mr. PALMER. Yes, I would like to read it; it is dated November 7, and signed by Mooney, United States attorney, and addressed to the Attorney General:

"After a protracted meeting with the sugar planters their committee agreed to a fair price of 17 cents per pound for prime yellow clarified sugar net on plantation with one cent additional per pound for choice plantation granulated intermediate grades in proportion. The committee further recommended that all sales where delivery has begun by evidence of bills of lading shall stand but recommended that all contracts for a higher figure be abrogated in fairness to all producers and manufacturers whose action in making contracts has been delayed by deference to authorities. Prime yellow clarified sold on the open market in New Orleans yesterday at 20½ cents. Market virtually bare with ready buyers for all sugar of that grade at that price.

"My session with the planters was a protracted one and was held after I had talked to many of the leading consumers and obtained their views. The committee itself was composed largely of the most conservative element of planters, yet there was only one member of the committee originally consenting to the 17 cents suggestion. All other members holding for a higher price

because of the admitted short crop and low sugar yield. Stating in this connection that such cane as had passed through the mill showed an unusually poor yield of sugar making estimates of production made a week ago high and indicates losses to many even at price agreed.

"I have sought the very best sources of advice in this matter and have reached the conclusion that the 17 cents agreed upon is reasonable, and recommend that the department accept it. I have reached this conclusion because 17 cents as a maximum price does not carry with it any guarantee that the entire crop can be disposed of at that figure, and it is probable that the average for the crop would be considerably less. I have before me your telegram of the 6th referring to willingness of conference committee to accept 14 or 15 cents as price for entire crop. I had this fact in mind when I wired you November 3, but as Government is not in a position to guarantee the producer any fixed price for his crop and is necessarily limited to establishing a fair price, which virtually means maximum price it would be impossible to secure consent of planters to fix the fair average price as a maximum price because of the vast difference existing between maximum price and average price for crop. I believe the action of the planters yesterday represents the extreme limit of their concessions, although they met me in a conciliatory spirit. Sincerely hope that maximum price suggested may be acceptable to the department. Please instruct me by wire."

To that telegram the Attorney General replied—well, I do not know that it was a reply. My copy of this next telegram is dated November 6, from the Attorney General to Mooney:

"Consider 17 cents unreasonable. Conference committee here recently indicated 14 or 15 cents would purchase entire crop. Statement made that profit could be realized at that figure. Open market Louisiana sugar will and is causing the breaking up of stabilization plan for entire country."

That is signed "Palmer."

On November 8, 1919, this telegram from the Attorney General to the United States attorney:

"Your wire 8th detailing result of conference; consider agreed price rather high, but hereby concur in maximum fixed price of 17 cents for Louisiana plantation clarified; 18 cents for Louisiana clear granulated; understanding that all contracts for a higher figure to be abrogated; further suggest if possible you secure an agreement in writing by authorized committee of Louisiana producers and refiners to be used as prima facie evidence where prices are charged in excess of agreement. You are hereby instructed to immediately prosecute any violator of this agreed price."

That telegram is signed "Palmer."

On November 10, this telegram from the Attorney General to the United States attorney at New Orleans, La.:

"Reset replying to your telegram immediately investigate American sugar refinery holdings and libel if facts warrant.

"PALMER."

On December 4, this telegram was sent from the Attorney General to Mr. Mooney:

"The following telegram has been sent to all other United States attorneys: 'The department in previously indicating reasonable price for sugar was guided largely by opinions of Equalization Board as this board soon goes out of existence and as due to widely differing conditions; refining costs vary; no fixed price can be set as reasonable; every sale must be treated on its own merits and where there is evidence showing an unreasonable profit or the withholding of sugar from the normal consumption channels or unfair discrimination in price as between manufacturers and wholesalers supplying retail trade you are directed to institute proceedings under the food control act the same policy applies to wholesalers.' The general principles stated, of course, apply to your district, but in view of fact that 17 and 18 cent price as proposed by Louisiana interests was considered maximum reasonable price and as highest in country; assume that above principle would not allow higher price as to wholesalers' margin. Deal in accordance with above telegram.

"PALMER."

EXHIBIT XVI.

OUTLOOK ON WORLD SUPPLY AND DEMAND WHEN CUBAN CROP WAS OFFERED IN 1919.

In the summer of 1919, when the Government's future policy in relation to sugar was to be determined, there existed as regards sugar an unprecedented relation between world supply and demand. A shortened yearly supply, due to the directly and indirectly destructive agencies of war, had overtaken the world. On the other hand there had come about an enlarged demand, due to the rebound of a retarded consumption through the war period, and to the additional classes acquiring the taste for sugar or the purchasing power necessary to secure it.

Section 1. Changes in supply situation, 1910-1920.

The situation with regard to supply may be understood more clearly from the comparative table below, showing what had been the status of the sugar crop for the period 1910-11 through 1918-19, together with the summer estimates for the 1919-20 crop. In this and in the subsequent tables the data are given according to the latest estimates as of the summer of 1919, without regard to revisions which were made afterward as more complete returns arrived. Such data are used in order to show what the outlook was during the summer of 1919. The table follows:

TABLE 45.—World refined sugar production, by crop years 1910-11 to 1919-20, inclusive.¹

(Tons=2,240 pounds; all sugars in terms of refined.)

Crop year.	Cane.		Beet						Total production.
	Tons.	Per cent of total production.	United States and Canada.		Europe		Total beet.		
			Tons.	Per cent of total beet.	Tons.	Per cent of total beet.	Tons.	Per cent of total production.	
1910-11.....	7,693,031	50	455,220	6	7,179,431	94	7,634,651	50	15,327,682
1911-12.....	8,285,147	58	541,101	9	5,562,015	91	6,103,116	42	14,388,263
1912-13.....	8,441,673	51	635,208	8	7,388,422	92	8,023,630	49	16,465,303
1913-14.....	8,988,840	53	666,973	8	7,244,880	92	7,911,853	47	16,960,693
1914-15.....	9,414,003	56	660,236	9	6,717,128	91	7,377,394	44	16,791,367
1915-16.....	9,786,339	65	797,397	15	4,497,824	85	5,295,221	35	15,081,560
1916-17.....	10,275,316	66	747,077	14	4,453,086	86	5,202,163	34	15,477,479
1917-18.....	11,287,457	71	694,117	15	3,821,067	85	4,515,184	29	15,802,641
1918-19.....	11,005,937	74	697,162	18	3,239,170	82	3,936,362	26	14,942,299
1919-20.....	11,237,970	74	870,000	22	3,089,934	78	3,959,934	26	15,197,904

¹The figures in this table are derived from data in Willett & Gray's Weekly Statistical Sugar Trade Journal wherein European weights are given in metric tons and in terms of raw sugar, except for France, whose sugar is expressed in terms of refined. All tonnages in this and succeeding tables based on data from the Weekly Statistical Sugar Trade Journal have been converted to long tons where they were not already so expressed and all raw sugars have been converted to refined, Eastern Hemisphere sugars being converted in the ratio of 90 to 100 and Western Hemisphere sugars in the ratio of 93 to 100. The figures for the crop years prior to the year 1919-20 are the latest published by Willett & Gray up to the summer of 1919, while those for 1919-20 are their first estimates for that year, as of November 13, 1919.

The table shows that the total sugar production after the outbreak of the war declined through the crop years of 1914-15 and 1915-16, underwent a slight advance in 1916-17 and 1917-18, and then declined in 1918-19 lower than for several years and, according to the summer estimates, also in 1919-20. The general trend of the outturn was downward and the 1919-20 estimate was 1,702,789 tons under the 1913-14 crop, the largest in the history of the world. An examination of the cane and beet sugar columns shows the cause of the downward movement. The cane crop tonnages show a steadily increasing figure except for the crops of 1918-19 and 1919-20, and the percentages show that from 1912-13 forward there was an advance every year in the ratio of the cane production to the total sugar outturn. Beet sugar, however, fell steadily from 1912-13, when the tonnage was 8,023,630, or 49 per cent of the total crop, to 3,936,362 tons, or 26 per cent of the total; in 1918-19 a decline of 4,087,268 tons, or 50 per cent, from the 1913-14 crop. The first estimate in 1919 for the 1919-20 crop placed the beet-sugar outturn at 3,959,934 tons, which was also 26 per cent of the total sugar production, and 50 per cent under 1913-14.

This decline in the beet-sugar crop was due, of course, to the World War. Europe has always been the great beet-sugar producing section of the world, and the table shows that even down to the latest crop estimate it was producing 78 per cent of the total beet-sugar crop. The figures for the United States and Canada (the latter's production is insignificant) show that the general trend was upward, from 9 per cent of the total beet-sugar outturn in 1914-15 to 18 per cent in 1918-19, and an estimated 22 per cent for 1919-20. But the European beet-sugar column reflects the disastrous effects of the war, the production falling from 7,244,880 tons, or 92 per cent of the world's beet-sugar output in 1913-14, to 3,239,170 tons, or 82 per cent of the beet-sugar crop in 1918-19, a decrease of more than 50 per cent, while the estimated figure for the 1919-20 crop fell to 3,089,934 tons, a decline from the 1913-14 figure of 4,154,946 tons, or 57 per cent.

Section 2. The beet-sugar situation.

The production of beet sugar in Europe by countries is given in the table below for the period 1910-11 through the first estimates for 1919-20:

TABLE 46.—*European beet-sugar production, by crop years 1910-11 to 1919-20, inclusive.*¹

[Tons—2,240 pounds; all sugars in terms of refined.]

	1910-11	1911-12	1912-13	1913-14	1914-15	1915-16	1916-17	1917-18	1918-19	1919-20
Germany.....	2,308,474	1,333,536	2,420,143	2,409,346	2,214,473	1,328,684	1,420,735	1,391,201	1,250,645	1,151,156
Austria-Hungary.....	1,362,374	1,022,737	1,700,585	1,508,499	1,419,313	895,887	836,928	591,928	620,052	1,694,342
France.....	713,451	508,461	993,392	792,289	296,177	133,753	181,283	197,103	108,050	147,632
Belgium.....	252,197	218,069	265,961	202,689	181,318	100,047	119,009	116,038	96,454	110,724
Holland.....	196,077	237,043	280,736	203,731	212,589	238,437	176,533	176,533	146,138	221,447
Russia.....	1,866,588	1,823,516	1,225,714	1,465,084	1,765,179	1,407,406	1,170,689	911,103	620,052	310,026
Sweden.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
Denmark.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
Italy.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
Spain.....	522,616	469,468	628,240	712,320	600,572	549,291	124,010	188,579	188,579	132,868
Switzerland.....	.....	.....	.....	.....	.....	.....	111,202	119,542	119,542	106,265
Bulgaria.....	.....	.....	.....	.....	.....	.....	3,543	3,543	3,543	3,543
Total.....	7,250,777	5,612,860	7,484,761	7,324,108	6,746,946	4,627,657	4,452,178	3,817,906	3,237,436	3,100,463

¹ Figures derived from data in Willett & Gray's Weekly Statistical Sugar Trade Journal, which gives tonnages in metric tons and in terms of raw, except for France. All tonnages have been converted to long tons, and all raw sugars converted to refined in the ratio of 80 to 100. The totals in this table do not agree with those of Table No. 45, owing to the fact that the details by countries could not be secured as of the same date.

² Listed as Czechoslovakia, etc., this year.

³ Includes Ukraine, Poland, etc., this year.

Germany, Russia, and Austria-Hungary, in the order named, were the foremost producers of beet sugar in the world in prewar times. In 1914-1915 they produced together 5,376,356 tons, or about 80 per cent of the European outturn, 73 per cent of the world beet-sugar production, and 32 per cent of the total sugar crop. After the outbreak of and subsequent to the war, each of the European nations that produced beet sugar underwent a decline in production, due to invasion, lack of man power, the necessity of producing more cereals, and changes in economic administration of the industry incident to social upheavals.¹ On the other hand, five nations produced beet sugar, the first outturn for these countries, in 1916-17. These were Sweden, Denmark, Spain, Switzerland, and Bulgaria.

Added to these causes of shortage, in the summer of 1919 a drought was reducing the outturn in practically every beet-growing country in Europe. There was also a discouraging outlook as to sugar-beet seed at this time. Nothing could be expected from Russia, as the seed-producing regions had been devastated by war and revolution; Germany had disposed of her war-time accumulation to Czechoslovakia to such an extent that she was undergoing a shortage, as beet-seed production had been restricted by the Government in favor of more greatly needed crops. In Holland, likewise, the production had been restricted, and France and Italy were unable to alleviate the situation, inasmuch as they have to obtain their supplies from other countries. Such a situation in Europe was serious, not only for that part of the world, but for the United States also, as it normally imports nearly 7,000 long tons of beet seed.

GERMANY.—At this time Germany, although still the greatest beet-sugar producing country in the world, was far below her prewar average. For the period 1909-1914, her average production had been 2,232,143 long tons, of which she consumed an average of 1,160,714 tons and had as an average net surplus 1,071,429 tons for export. Inasmuch as 75 per cent of this surplus normally went to the United Kingdom, the war, of course, closed her greatest outlet and reduced her production, though it never fell below her average prewar consumption, except as indicated below in the estimated figures for the 1919-20 crop.

Beginning with the campaign year 1910-11, the production, imports, exports, and consumption of Germany through the campaign year 1918-19 were as shown in the table below:

¹ Prior to the war the sugar-beet crop was raised, to a great extent, upon large estates, the owners of which were able to give ample attention to them and to rotate with the beets those cereals and other crops which best suit the soil in the growing of beets. According to a special correspondent for the International Sugar Journal, the social upheavals which took place after the war caused the large estates to be greatly broken up in Russia and Poland, including parts of former German territory, the result being that the owners of the smaller estates were not so well equipped for beet farming, wanted to grow more immediately remunerative crops, and on the whole are represented as being less skillful in conducting the industry. Hence, the crop inevitably was reduced.

TABLE 47.—*German production, imports, exports, and consumption of sugar, in terms of refined, 1910-11 to 1918-19, inclusive.¹*

[In tons of 2,240 pounds]

Crop year	Production.	Imports.	Exports	Consumption ²
1910-11.....	2,294,077	1,640	1,039,527	1,225,866
1911-12.....	1,326,666	1,971	294,888	1,102,258
1912-13.....	2,397,235	2,252	990,308	1,265,472
1913-14.....	2,405,668	2,021	1,033,912	1,273,916
1914-15.....	2,223,420	14,921	154,484	2,066,908
1915-16.....	1,342,251	8,631	36,244	1,279,132
1916-17.....	1,379,997	5,826	10,099	1,239,581
1917-18.....	1,365,055	4,390	13,604	1,404,972
1918-19.....	1,188,351	.....	.....	1,152,447

¹ Table derived from Die Deutsche Zuckerindustrie of May 23 and Oct. 3, 1919.² As the figures in the consumption column are not equivalent to the production figures plus the imports and minus the exports, it is assumed that when the consumption figure is smaller than the production plus imports and minus exports, some sugar has been held over from the preceding year, and when the consumption figure is larger, sugar that was held over has been consumed.

The European harvesting period is from September to January, hence in the year of the opening of the war, 1914, the German production was reduced by something less than 200,000 tons. The crop continued consistently to decrease down to date, except in 1916-17, when it rose nearly 38,000 tons above that of the preceding year. Despite this decline, however, the annual consumption figure of Germany has remained above the prewar average of 1,160,714 tons.

In the summer of 1919 the estimate of the 1919-20 crop varied from 1,000,000 to 1,250,000 long tons. These estimates, however, were too high, as those made after the first of the new year indicated a crop of only about 750,000 tons of raw sugar.

RUSSIA.—The second great beet-sugar producing country, Russia, was practically eliminated from the sugar situation by the events of the war. Prior to the outbreak Russia was planting approximately 2,000,000 acres of beets, had 295 active factories, and in 1914-15 produced 1,967,336 long tons of beet sugar. In normal times she was exporting an average of 267,857 long tons. However, her 1918-19 crop had probably not exceeded 700,000 long tons, and the probabilities were that the new crop for 1919-20 would not be as large as the previous one, although conditions in Russia were such that nothing of a very definite nature could be ascertained.

AUSTRIA-HUNGARY AND CZECHOSLOVAKIA.—Prior to the war Austria-Hungary was the third largest beet-sugar producing country in the world, her average for the period 1909-1914 being 1,473,214 long tons, 870,536 long tons of which were exported. With the post-bellum breaking up of the Austro-Hungarian Empire the region where most of the coal mines and sugar-beet refineries were went to the new Republic of Czechoslovakia. Hence Czechoslovakia became the market for the surrounding sugar-beet territory. During the summer of 1919 the estimates of the sugar crop from this country ranged from 535,714 to 714,286 long tons, of which 133,929 to 250,000 were reported to be available for export. This was the only country in Europe that could be depended on to have any appreciable quantity of sugar to sell to other countries. Inasmuch as the United Kingdom had been the chief purchaser of these sugars prior to the war, it would probably take the exportable part of the 1919-20 crop.

FRANCE.—In prewar times France was producing an average of 660,714 long tons of beet sugar and was consuming 629,464 tons, there being a surplus of 31,250 tons for export, which went chiefly to North Africa. But as the principal beet-growing sections of this country were in northern France, much of her sugar-raising territory was destroyed by the German invasion. Her sugar-beet acreage was accordingly reduced from 564,624 acres in 1912-13 to 163,840 in 1917-18. In 1918-19 this area was still further reduced to 148,020 acres.

For the period 1910-11 through 1918-19 the production, imports, exports, and consumption of French beet sugar were as follows:

TABLE 48.—French production, imports, exports, and consumption of sugar, in terms of refined, 1910-11 to 1918-19, inclusive.¹

[In tons of 2,240 pounds.]

Year.	Production.	Imports.	Exports.	Consumption. ²
1910-11.....	640,222	137,947	144,031	677,393
1911-12.....	458,046	317,552	136,786	630,068
1912-13.....	863,798	129,550	207,045	692,024
1913-14.....	706,072	143,870	152,931	641,065
1914-15.....	298,176	361,068	92,660	628,554
1915-16.....	133,753	524,309	132,844	554,582
1916-17.....	182,507	(*)	(*)	(*)
1917-18.....	197,103	294,397	120,634	388,246
1918-19.....	108,358	422,515	117,248	406,979

¹ Table derived from Journal des Fabricants du Sucre, of Dec. 31, 1919.

² As the figures in the consumption column are not equivalent to the production figures plus the imports and minus the exports, it is assumed that when the consumption figure is smaller than the production plus imports and minus exports, some sugar has been held over from the preceding year, and when the consumption figure is larger, sugar that was held over has been consumed.

* Not available.

In the summer of 1919 the French Government report on domestic sugar-beet acreage showed only 163,435 acres planted as against 169,195 in the preceding year. Based on this acreage, estimates as to the refined sugar outturn for 1919-20 ranged from 123,000 to 131,000 long tons, figures so far below the consumption figure of the preceding year that France would have to import more than three times her domestic outturn if she maintained her consumption of 1918-19. By August, 1919, the situation had become such that a decree was issued forbidding export or reexport of sugar beets, except as the minister of finance might determine, in order to keep available supplies up to the highest point possible.

ITALY.—While in prewar times Italy had not produced quite enough sugar for domestic use, in 1919 she was reported to have increased her sowings of beet roots by 50 per cent over the preceding year, and was expecting an outturn of about 150,000 tons, which was enough, it was claimed, for home consumption under restricted conditions.

SPAIN.—Even in Spain, untouched by the ravages of war, the outlook in the summer of 1919 was anything but favorable, for the crops were suffering from adverse weather conditions, and difficulties between refiners and agricultural interests relative to prices and terms had occurred to such an extent that a 50 per cent reduction in outturn was expected. In the face of such conditions it was thought that increased imports would be necessary.

UNITED KINGDOM.—The production figures of the United Kingdom prior to and during the war are insignificant, as that country has always imported practically all of the sugar it consumed. In prewar times it imported an average of 50 per cent of its sugar from Germany and 20 per cent from Austria-Hungary; but with the outbreak of the war the situation changed. Practically all imports from the Continent ceased, and the United Kingdom became an active buyer in the markets of the Far East and of the Western Hemisphere.

The following table shows for the calendar years 1914–1919, inclusive, in terms of refined sugar, the imports, exports, and tonnages available for consumption for the United Kingdom:

TABLE 49.—United Kingdom imports, exports, and consumption of sugar, calendar years 1914–1919, inclusive.¹

[In tons of 2,240 pounds; sugars in terms of raw and refined.]

	1914	1915	1916	1917	1918	1919*
Imports:						
Raw.....	1,099,150	976,875	1,126,479	1,218,039	1,284,099	1,129,708
Refined.....	893,890	505,527	410,765	169,470	21,551	487,759
Total.....	1,993,040	1,482,402	1,537,244	1,387,509	1,305,650	1,597,467
Exports:						
Raw.....	7,983	1,327	3,256	612	208	23,996
Refined.....	15,930	5,702	5,418	1,194	1,797	5,159
Total.....	23,913	7,029	8,674	1,806	2,005	39,145
Consumption: ²						
Raw.....	169,724	293,737	237,844	231,668	158,230	303,377
Refined.....	1,499,113	1,252,414	1,156,538	866,433	782,177	1,228,303
Total.....	1,668,837	1,546,151	1,394,382	1,098,101	940,407	1,531,680

¹ Data derived from the International Sugar Journal, January, 1917, February, 1919, and January, 1920. Although the figures for this year could not have been available in the summer of 1919, they are presented here to give completeness to the table. For the seven months ending July 31, 1919, the total imports were 1,009,995 tons, the exports 13,985 tons, and the consumption 890,502 tons (See International Sugar Journal, September, 1919).

² The consumption figures are not obtained by deducting the exports from the imports, but are taken directly from the source cited in note (1) above. The discrepancy between the imports less the exports and the consumption figure may be partly explained by the fact that stocks were probably carried over from one year to another. Also, the total figures for imports would be reduced in proportionately greater degree than would the figures for exports or consumption if raws should be reduced to terms of refined, because of the larger proportion of raws in the total import figure, the discrepancy being thereby lessened in most cases.

The figures of import for the United Kingdom declined in 1915, rose in 1916, declined again for the next two years, and rose nearly 300,000 tons in 1919. The fluctuations were probably due to interference with shipping, and these changes were immediately reflected in the consumption figures. With the seas again unmolested, it is noted that the imports of the United Kingdom in 1919 increased nearly 300,000 tons, falling short of the 1914 figure by 395,561 tons.

In England in prewar times the per capita consumption was 80 to 83 pounds; but this, of course, was reduced under restrictions during the war, and during 1918 and 1919 it was down for the most part to 52 pounds. In the spring of 1919, for a short while Government control of sugar was abrogated in the United Kingdom, but as demand showed signs of expanding almost immediately to the point of producing shortages, Government control was resumed.

According to statistics issued by the British Board of Trade on imports and consumption for the first half of 1919, an increase of 60 per cent over the same period for the preceding year had taken place.

CANADA.—So far as beet sugar in other parts of the world than Europe is concerned, the United States and Canada are the only others to be mentioned. Each of these countries consumes its own production. The situation in the United States will be considered in another connection. Canada produces a very small tonnage of beet sugar, the 1918-19 crop having barely exceeded 22,000 long tons; and in July, 1919, the estimate for the 1919-20 crop, although a greater acreage had been planted, was a bare 20,000 long tons. For the fiscal year ending March 31, 1919, Canada had consumed 342,358 long tons of sugar, an increase of 49,473 long tons, or 17 per cent greater than for the preceding year, and early in 1919 contracts had been made for 100,000 bags of Peruvian sugar. But the demand in Canada was outrunning the supply, and by August a serious shortage was felt throughout the Dominion generally, and especially in the western Provinces. During the entire year the per capita consumption in Canada reached the highest for any country in the world, 94.95 pounds.

Section 3. The cane sugar situation.

Such was the lowered production and the increasing demand in 1919 in Europe, the great beet-sugar producing part of the world, that it was compelled to turn to cane sugar for relief. Cane sugar had received considerable impetus during the period of the war, as it is produced in countries which were not subject to devastation, and the increased demand was such as to encourage increased production. Referring again to Table 45, it is seen that in 1912-13 from 8,441,673 tons, or 51 per cent of the world sugar crop, cane sugar production advanced to 11,287,457 tons in 1917-18; that is, to 71 per cent of the total. In the next year it declined to 11,005,937 tons, which, although a smaller tonnage than that of the preceding year, was a still greater percentage (74 per cent) of the total, due to the continued decline of the beet-sugar crop.

But while the outturn of cane sugar in 1918-19 was 2,564,264 tons greater than in 1912-13, an increase of 30 per cent, the beet-sugar outturn in 1918-19 was 3,936,362 tons, or 4,087,268 tons less than the crop in 1912-13, a decline of 51 per cent. In several years of the period under consideration the increase in cane tonnage had been sufficient to cause the total sugar crop to rise above the preceding outturn, but despite this the steady decrease in beet-sugar tonnage was such that the general trend of the total outturn was downward.

THE ASIATIC OUTLOOK.—As the cane-sugar prospects so far exceeded those of beet sugar, the world very naturally was scrutinizing every cane-sugar producing country.

Although in Asia there are two great cane-sugar sources—India and Java—from the one nothing could be expected for the outside world and from the other less than in the preceding year. India is the second largest cane-sugar producing country in the world. Prior to the war it showed an average production of 2,339,286 long tons, which, however, was 580,357 tons under her consumption average of 2,919,643 tons, so that even in normal times India was importing sugar, largely from Java and Mauritius. But in August,

1919, the Indian crop of 1918-19 was reported 803,571 long tons under normal, so that still further supplies would have to be imported from Java that might otherwise have gone to Europe.

From Java itself came the news that its crop, maturing from May to November, would be smaller than usual. During the war, on account of interrupted shipping conditions, a great surplus of sugar had accumulated in Java; but after the signing of the armistice this surplus had been rapidly liquidated, so that none of it was left to aid the situation in 1919-20. Hence with a heavy shortage in India and the Javan outturn below normal, distant countries could expect little aid from Asiatic sources.

Although never great factors in the world's sugar situation, the other Asiatic and the African sources of cane sugar were evidently in a way to render even less aid than usual, according to estimates in the summer of 1919. The island of Mauritius, ordinarily a producer of 250,000 to 275,000 long tons of raw sugar, was suffering from unfavorable weather conditions, and its estimated outturn was placed considerably below that of 1918-19.

The crop in Formosa was scrutinized more closely in this period of shortage, and it, too, showed strong indications of being smaller than ever, on account of a smaller acreage planted to cane, the greatly advanced price of rice having caused the natives to turn to that crop instead of to cane.

Moreover, aside from the increased demand coming from India, heavy demand had developed in the Far East for Javan sugar. In Japan higher wages in a time of prosperity had led to a higher standard of living and consequent greater consumption of sugar. Japan was also doing an increased export business in sugar, and in order to meet the demands of this and her domestic consumption she was buying in practically every market where there was any chance of securing supplies, picking up even small lots in the Occident. The indications were that Japan would need 450,000 long tons of sugar.

Likewise, in China the consumption of sugar, which before the war was very small, had greatly increased, and this new demand had been met largely by Java.

Whereas in normal times an average of about 60 per cent of the Philippine crop went to continental United States, difficulties in transportation and high freight rates had shut off the crop from this country, and it was foreseen that with both Japan and China eager to purchase in larger quantities than ever before the bulk of the 1919-20 crop would go to those Far Eastern markets.

Hence, with shortages certain for Europe and India and the Far East, the sugar-consuming countries, to the extent of their buying power, were looking to the cane sugar of the Western Hemisphere for relief.

THE WESTERN HEMISPHERE.—The following table of cane-sugar production by cane-producing sections of the world shows that the smaller cane crop in 1918-19 was due to the smaller outturns in Asia, Australia and Polynesia, and Spain, as the outturns of the Western Hemisphere and Africa were greater than in the preceding year.

TABLE 50.—*World cane-sugar production, by continents and by crop years, 1910-11 to 1919-20, inclusive.*
 [Ton—2,240 pounds, all sugars in terms of refined.]

Crop year.	Western Hemisphere.		Asia.		Australia and Polynesia.		Africa.		Europe (Spain).		Total tons.
	Tons.	Per cent of total.	Tons.	Per cent of total.	Tons.	Per cent of total.	Tons.	Per cent of total.	Tons.	Per cent of total.	
1910-11.....	3,497,697	43	3,533,655	43	268,726	4	374,059	5	18,264	(1)	7,698,081
1911-12.....	3,697,325	47	3,786,023	46	268,766	3	345,477	4	14,558	(1)	8,288,147
1912-13.....	4,105,993	46	3,784,773	44	170,805	2	389,767	5	13,435	(1)	8,441,673
1913-14.....	4,836,949	52	3,563,625	40	319,500	3	427,198	5	11,908	(1)	8,686,840
1914-15.....	4,790,633	51	3,841,756	41	313,567	3	471,409	5	6,638	(1)	9,414,013
1915-16.....	4,994,192	51	4,112,957	42	224,713	2	490,640	5	3,837	(1)	9,768,339
1916-17.....	5,074,801	49	4,466,569	43	259,838	2	470,262	5	4,126	(1)	10,273,316
1917-18.....	6,329,630	47	5,144,344	46	357,030	3	660,049	4	5,400	(1)	11,287,457
1918-19.....	6,089,833	53	4,115,064	37	275,400	3	520,200	5	5,400	(1)	11,065,937
1919-20.....	6,207,270	56	4,140,000	37	301,500	3	525,800	4	5,400	(1)	11,237,970

¹ Figures derived from data in Willett & Gray's Weekly Statistical Sugar Trade Journal, which gives European tonnages in metric tons and in terms of raw, except for France. All tonnages have been converted to long tons and all raw sugars converted to refined. Eastern Hemisphere sugars are converted in the ratio of 96 to 100, and Western Hemisphere sugars in the ratio of 93 to 100. The figures for the crop years prior to the year 1919-20 are the latest published by Willett & Gray up to the summer of 1919, while those for 1919-20 are their first estimates for that year, as of Nov. 13, 1919.

² Less than 1 per cent.

The table shows that in 1918-19, of a world cane crop of 11,005,937 tons of refined sugar, the Western Hemisphere produced 6,089,853 tons, or 55 per cent of the total, and the estimated figures for the 1919-20 crop place the percentage at 56. The only other cane-raising section of the world which approximated the Western Hemisphere figures was Asia, which in the first year shown by the table exceeded the western outturn. But from 1911-12 the Western Hemisphere crop has exceeded that of Asia. In 1918-19 the Asiatic percentage had sunk to 37 per cent of the total, and the estimated figures for 1919-20 showed the same percentage. More than half the Asiatic production is grown in India, and all of this, as already noted (see p. 191), goes into domestic consumption. Of the remaining Asiatic production, all but about 600,000 tons is grown in Java, whose great outlet has been for a long time India, Port Said, and Hongkong, these having taken in prewar times 75 per cent of the Javan production. It has already been pointed out (see p. 192) how increased demand in the Far East was such that any surplus remaining after the usual Javan exports were made would readily be absorbed by Japan and China.

The following table shows the crops of the principal cane-sugar producing countries of the Western Hemisphere for the period 1910-11 through the estimated crop for 1919-20:

TABLE 51.—Cane-sugar production of the Western Hemisphere, by countries and by crops years, 1910-11 to 1919-20, inclusive¹

[Tons=2,240 pounds, all sugars in terms of refined.]

Crop year.	Cuba	Porto Rico	Santo Domingo.	Continental United States	Hawaii.	All other countries. ²	Total.
	Tons.	Tons	Tons	Tons.	Tons.	Tons	Tons.
1910-11.....	1,379,609	274,350	83,881	291,810	470,669	991,578	3,497,667
1911-12.....	1,763,265	297,600	89,323	299,654	494,276	953,205	3,897,323
1912-13.....	2,238,540	325,800	78,735	131,994	474,038	851,786	4,103,863
1913-14.....	2,415,891	302,250	98,374	249,553	512,360	1,058,181	4,636,809
1914-15.....	2,111,180	286,606	100,688	204,782	536,783	1,240,594	4,780,633
1915-16.....	2,797,361	401,142	117,234	115,104	492,802	1,040,549	4,864,192
1916-17.....	2,812,060	417,167	121,039	253,158	545,224	830,833	5,074,501
1917-18.....	3,204,857	378,812	134,850	204,142	478,983	929,948	5,320,650
1918-19.....	3,720,000	348,770	153,450	236,152	483,600	1,147,901	6,089,853
1919-20 ³	3,999,000	372,000	167,400	118,110	520,800	1,089,960	6,267,270

¹ Figures derived from data in Willett & Gray's Weekly Statistical Sugar Trade Journal

² Include West Indies not otherwise specified, Mexico, Central America, and South America.

³ Estimate as of Nov. 13, 1919

⁴ In the summer of 1919 the estimate for Cuba was 4,500,000 tons, according to the Louisiana Planter of Aug. 16, p. 97

⁵ In September, 1919, the estimate was 200,000 tons raw, or approximately 186,000 tons, in terms of refined.

⁶ Contains Louisiana and Texas crops The Department of Agriculture estimate for Louisiana as of July 9, 1919, was 156,369 short tons raw sugar, or about 130,000 long tons, refined basis.

The table shows that of the cane-sugar producing countries of the Western Hemisphere, Cuba produces by far the greatest quantity, the crops throughout the period constantly increasing, except for a slight decline in 1914-15. In the summer of 1919 the returns for the 1918-19 crop indicated that Cuba had produced 3,720,000 tons of sugar, or 61 per cent of the Western Hemisphere total, 34 per cent of the world cane-sugar production, and 25 per cent of the world's total sugar production. No other country in the world makes such a sugar-production showing. The bulk of the Cuban crop is exportable, as the do-

mestic consumption of the island is less than 200,000 short tons annually.

Section 4.—The demand situation.

Toward the close of the year 1918, the world sugar situation, as it appeared to the United States Sugar Equalization Board, was as follows:

TABLE 52.—*Estimate, by United States Sugar Equalization Board, of world sugar situation in 1919.*

[From page 76, of Government Control of Sugar, by Joshua Bernhardt, statistician of the United States Sugar Equalization Board. Publication authorized by the directors of the United States Sugar Equalization Board. The Macmillan Co., 1920. Used by permission of the publisher.]

	Short tons.
Estimated exportable surplus of Western Hemisphere for 1919.....	2, 028, 000
Estimated necessary imports of United Kingdom, France, Belgium, Italy, in 1919.....	2, 546, 000
Required for above Allies in 1919 to be obtained from sources outside Western Hemisphere.....	518, 000
Required for the rest of Europe (taking into account the following countries: Russia, Holland, Germany, Austria-Hungary, Sweden, Spain, Denmark, Norway, Switzerland, Roumania, Serbia, Bulgaria, Greece, Finland, and Portugal).....	925, 000
Total required for all Europe to be obtained from sources outside Western Hemisphere.....	1, 443, 000
Available from sources outside Western Hemisphere:	
From Java, 1918-19 crop ¹	450, 000
From Mauritius ¹	220, 000
From Philippines ¹	125, 000
From Reunion.....	35, 000
Total.....	830, 000
Deficit.....	613, 000
Excess of world "carry-over" stocks of sugar, above normal needs, resulting from the war-shipping situation—mainly in Java.....	900, 000
Net world surplus for 1919.....	287, 000

¹ Amount available after deducting usual exports to countries outside of Europe and Western Hemisphere.

But the situation changed before many months of 1919 had passed, for with the armistice declared, shipping was free to operate again, and the 900,000 tons of excess "carry over," shown above, rapidly melted away from Java and from other ports. Then began to arrive the news, noted above (see p. 192), that Indian, Javan, Formosan, and other oncoming crops of the world were falling below their usual figure.

INCREASING DEMAND.—As the summer wore along it became evident that no diminution in the world demand, but on the contrary an increase, was to be expected. In some countries wartime rationing had been abolished or the rations increased; in all of them there was a rebound toward normal consumption, tentatively, at least, if not in actual tonnages. If rations should be quickly abolished the countries of Europe would, to the extent of their ability to buy, through the Cuban market for sugar. Also, as noted above (see p. 192), Japan and China had greatly increased their consumption, and the former, unable to secure all its supplies in the Orient, had already come to occidental markets. Hence, even if the demand in the United States had increased no further than its prewar normal, the situation

in Europe and the Far East was such as to foreshadow an unusual drain upon the 1919-20 crop.

The world shortage of sugar in 1918-19 was nearly 2,000,000 long tons as compared with 1913-14. Such being the world situation as to supply and demand, it might be expected that European purchases would become a disturbing factor in the Cuban market.

RESTRAINING FORCES.—But there were certain restraining forces which checked the tendency on the part of Europe to drain the occidental supply. Otherwise, the situation might have become far more serious. Of course, one of the first saving factors was that nearly all the European countries which had engaged in war were still under a Government ration and price régime. Also, while in these countries there had developed an effort on the part of the people to get back to a normal basis of living, and while they were bringing all the pressure possible to bear upon their Governments to buy liberally in foreign markets, these Governments, acting as the financiers of the people, strove to make careful distinction between necessities and luxuries, and were holding imports down as much as they could; for imports had to be made largely through the means of money, as few of the European belligerents had sufficient goods to offer in exchange for commodities from other countries.

Moreover, the rate of exchange did and still does exercise a great restraining influence upon European imports. The money of the European nations which had been at war had greatly depreciated in the exchange market, as is shown in the following table of average exchange values:

TABLE 53.—*Exchange values of European money in summer of 1919.*

[Average for the day]

	Par.	June				July			
		Day of month—				Day of month—			
		7	14	21	28	4	12	19	26
Pound sterling.....	\$4.8665	\$4 62	\$4 61	\$4 61	\$4 60	\$4 52	\$4 49	\$4 37	\$4 39
Franc.....	.1930	.15	.16	.16	.16	.15	.15	.14	.14
Lira.....	.1930	.12	.13	.12	.13	.13	.12	.12	.12

	Par.	August.				September			
		Day of month—				Day of month—			
		2	9	16	25	6	13	20	27
Pound sterling.....	\$4.8565	\$4 76	\$4 72	\$4 28	\$4 20	\$4 15	\$4 17	\$4 16	\$4 24
Franc.....	.1930	.14	.13	.17	.12	.12	.12	.11	.12
Lira.....	.1930	.12	.11	.11	.10	.10	.10	.10	.10

The table shows that the pound sterling, already 25 cents below par on June 7, dropped in July to \$4.37, or 50 cents below; in August to \$4.20, or 67 cents; and in September to \$4.15, or 72 cents below par. The French franc through the summer ranged from 16 cents to 11 in value as compared with 19.30 cents par; and the Italian lira ranged

from 13 cents to 10, or from 6 to 9 cents under par. Under such circumstances the buying power of the money of these nations was considerably reduced, and in the face of the plentiful supply and higher value of money in the United States they could not prevent the latter from securing the Cuban sugars that it was willing to pay for, even if an economic contest had occurred.

The cause itself of this depreciated condition of European money also acted as a great deterrent to excessive buying by these countries in foreign markets; that is, they were unable to pay cash, and having neither exports nor bills of exchange to offer for commodities they were unable to secure credit.

EXHIBIT XVII.

ASSIGNMENT TO THE ROYAL COMMISSION ON THE SUGAR SUPPLY BY THE UNITED STATES SUGAR EQUALIZATION BOARD (INC.) OF ITS RIGHTS TO ONE-THIRD OF THE SUGAR PURCHASED UNDER AGREEMENT AS TO CUBAN SUGARS, CROP 1918-19, DATED OCTOBER 24, 1918.

Whereas on the 24th day of October, 1918, the United States Sugar Equalization Board (Inc.) entered into an agreement as party of the first part with Carlos Manuel de Cespedes, Robert B. Hawley, Manuel Rionda, a Cuban Commission, parties of the second part, and agents of various Cuban producers acting severally for the producers of sugar in the island of Cuba, parties of the third part, under and by the terms of which the seller therein described agreed "on behalf of himself and his principals" to sell and deliver to the buyer (United States Sugar Equalization Board) all the raw sugar produced "by him or his principals in the island of Cuba during the crop season of 1918-19" except that actually used for local consumption in Cuba; and

Whereas by the third paragraph of said agreement right and power was given to the United States Equalization Board to assign said contract without recourse in respect to any part of the sugar contracted for therein as follows:

"The Buyer shall have the right from time to time to assign this contract, without recourse, in respect to any part of the sugar contracted for herein, to the Governments of the United Kingdom, Canada, France or Italy, or to any duly constituted agency representing all or either of said Governments, or to any sugar refiner of the United States. The Buyer, upon making any such assignment, shall give notice thereof to the Seller"; and

Whereas the United States Sugar Equalization Board (Inc.) has this day agreed to transfer to the Royal Commission on the Sugar Supply, an agency duly authorized to act and now acting in making this purchase on behalf of the Government of Great Britain (not including Canada), France, and Italy, without recourse the rights of the United States Sugar Equalization Board (Inc.), to one-third of all of the raw sugar purchased by the said United States Sugar Equalization Board (Inc.) under the agreement aforesaid of October 24, 1918:

Now, therefore, by this agreement, the United States Sugar Equalization Board (Inc.) does hereby assign to the Royal Commission on the Sugar Supply, without recourse upon the said the United States Sugar Equalization Board (Inc.), its rights to and to have delivered to it one-third of all of the raw sugars purchased by the said United States Sugar Equalization Board (Inc.) (together with any commission upon such one-third of all the raw sugars purchased by the United States Sugar Equalization Board (Inc.), under said agreement of October 24, 1918, to which the United States Sugar Equalization Board (Inc.) would be entitled under said agreement) under the agreement of October 24, 1918, aforesaid, at the respective prices for delivery f. o. b. northside and southside Cuban ports, and upon the terms therein stated.

A condition of this assignment is the right of the Royal Commission on the Sugar Supply at its option to take 321,000 tons, or any part thereof, of the one-third of the Cuban crop hereby assigned for shipment to the United States for refining purposes on the cost and freight terms of paragraph 2, section 2 of page 3 of the Cuban contract dated October 24, 1918.

And the said the Royal Commission on the Sugar Supply as to such one-third of the raw sugars from Cuba as aforesaid does hereby accept said assignment and agree to and does hereby assume as to said one-third of the sugars aforesaid all of the payments, duties, and obligations of the said United States Sugar Equalization Board (Inc.) under the agreement of October 24, 1918, aforesaid.

Said agreement of October 24, 1918, is made a part hereof.

Witness the signature of the United States Sugar Equalization Board (Inc.) by George M. Rolph, its president, and the seal thereof hereto affixed duly attached by H. H. Bundy, its secretary, and witness the signature of the Royal Commission on the Sugar Supply of the United Kingdom of Great Britain by J. Ramsey Drake, this _____ day of December, 1918.

THE UNITED STATES SUGAR EQUALIZATION BOARD (INC.),
By _____, *President.*

Attest:

Secretary.

THE ROYAL COMMISSION ON THE SUGAR SUPPLY,
By _____

EXHIBIT XVIII.

AGREEMENT BETWEEN THE UNITED STATES SUGAR EQUALIZATION BOARD (INC.) AND HERBERT HOOVER, UNITED STATES FOOD ADMINISTRATOR, AND UNITED STATES SUGAR REFINERS, OCTOBER 24, 1918.

Agreement entered into this 24th day of October, 1918, in the city and State of New York, between the United States Sugar Equalization Board (Inc.), a corporation of the State of Delaware, hereinafter described as the "Equalization Board," and the refiners of sugar in the United States acting severally, signatory hereto, hereinafter described as the "Refiners," and Herbert Hoover, as United States Food Administrator, hereinafter described as the "Food Administrator," witnesseth:

Whereas, the Equalization Board has been created and is acting as an agency of the United States for the purpose in part of equalizing the distribution and selling price of sugar, and contemporaneously with the execution of this agreement has entered into an agreement bearing even date herewith for the purchase of raw sugar produced in the island of Cuba during the crop season 1918-19, which agreement, described as the "Cuban agreement," is hereto annexed and marked "Exhibit A," [see Exhibit VI] and

Whereas, with a view to securing regular and sufficient supplies of sugar to the American people and the Army and Navy at a reasonable price, even during the disorganized period of world trade, the Equalization Board has, in the interest of the American people and the Allies, purchased the Cuban sugar crop of 1918-19 for distribution to the American people, their Allies and others, and

Whereas, the Food Administrator and the Equalization Board are desirous of securing an equality of distribution of said sugars according to the requirements or to secure such exports from said sugar as may be in surplus and may be determined by the agencies of the Government as necessary to meet its international obligations, and

Whereas, it is necessary and advisable in order to secure an equitable distribution of sugar throughout the United States to apportion Cuban and other sugars among the Refiners for their requirements, and to that end to continue the American Refiners' Committee, and

Whereas, the American Refiners are desirous of fully cooperating with the agencies of the Government in the purposes above set forth,

Now, therefore, the parties hereto in consideration of the premises and the mutual covenants herein contained, each for itself and himself, for the part or proportion of this agreement to be performed by it or him, severally and not jointly, agree as follows:

I. The Food Administrator and said Refiners agree that the agreement of October 1, 1917, between the Refiners and the Food Administrator, shall be and same hereby is canceled and annulled so far as the rights and obligations of

the parties hereto to each other are concerned, except as to such sugars of 1917-18 crop as have not been delivered.

II. Such of the following-named persons as are officers of companies signatory hereto, are hereby appointed by the Food Administrator for the period of this agreement and shall constitute the American Refiners' Committee, with the powers and duties hereinafter set forth: James H. Post, chairman, Claus A. Spreckels, Charles M. Warner, George H. Earle, jr., Robert M. Parker.

And the following-named persons who are representatives of companies signatory hereto are appointed as alternates on said committee, who shall have the privilege of being present at all meetings and serving in the place of any absent member or filling any vacancies in said committee in the order named: Dwight P. Thomas, W. J. McCahan, Jr., Benjamin A. Oxnard, M. E. Goetzinger, John Furr, William Henderson, W. T. Eldredge, E. L. Wemple.

III. Until the 31st day of December, 1919, the Refiners will not purchase any sugar except from the Equalization Board, other than such sugars as are provided under the said agreement of October 1, 1917, and Hawaiian sugars hereinafter referred to: *Provided, however*, That Refiners may purchase sugars, other than the crop of 1918-19, for delivery after December 31, 1919.

IV. The sugar provided by the Equalization Board shall be distributed among the Refiners who enter into this agreement to meet their requirements, in the proportions set forth in "Exhibit B," [see below] which is made a part hereof, and in case there is a disagreement between a Refiner and the American Refiners' Committee as to apportionment, the matter shall be submitted to the United States Food Administrator and his decision shall be final, and any sugar received by a Refiner from any source shall be charged against his pro rata amount under such distribution. The Hawaiian sugar that may be deliverable under any contract to any refiner party hereto shall be taken over in rotation in an order to be determined by lot to be drawn by the chairman of the American Refiners' Committee and upon the terms provided for in such contract for account of the New York and Philadelphia Refiners, parties hereto, and the rights and obligations of the purchaser under said contract are to be assumed by said Refiners.

V. The American Refiners' Committee is, under the direction, supervision, and control of the Equalization Board, hereby charged with the duty and responsibility on behalf of the Refiners hereto, of arranging, routing, and distributing to the several Refiners, the sugar to be purchased as hereinafter set forth from the Equalization Board and such duties shall, so far as possible, be carried out in accordance with the requirements and convenience of the several Refiners.

VI. The several Refiners, not in any way limiting their ordinary power or business discretion to determine to what extent they may severally operate their refineries, agree to and do hereby purchase from the Equalization Board and the Equalization Board agrees, subject to its commitments from time to time to Governments or persons outside the United States and to the requirements of the United States Government and buyers in the United States other than refiners, to sell to the Refiners their entire requirements of raw sugar for the operation of their several refineries for such time as the respective refiners in their respective judgments determine to operate their respective refineries, for the period beginning with the date of this agreement and ending on December 31, 1919 (except such raw sugars as are purchased by the Refiners under the agreement of October 1, 1917, and the Hawaiian contracts herein referred to); and they severally agree not to purchase any sugar from any person, country, or source of supply, during said period, other than from the Equalization Board.

For all such purchases of sugar from Cuba the several Refiners agree to pay the price of 7.28 cents per pound, 96° average outturn polarization (duty, if any, paid).¹

All sugar furnished the Refiners from Cuba shall be settled for by each Refiner on the same terms and conditions under which said sugar was purchased by the Equalization Board under the Cuban agreement. The Refiners severally agree for their proportions of the Cuban sugar hereby purchased by them to pay the amounts required to be paid by the Equalization Board, under, by, and

¹ For sugar polarizing over 96° there shall be added to the price 7 cents per 100 pounds per degree up to 98°. For sugar polarizing under 96° there shall be deducted from the price 12 cents per 100 pounds per degree down to 94°. For sugar polarizing between 94° down to 93° there shall be deducted from the price 17 cents per 100 pounds per degree, fractions in proportion.

in accordance with the terms of the Cuban agreement, and in addition thereto to pay to the Equalization Board the difference between the amount per pound they are required to pay under the Cuban agreement for the sugar delivered and 7.28 cents per pound for 96° test.

The Equalization Board states that the amount so paid to it may be used by it for the liquidation of any losses it may incur on excess stocks of sugar purchased by it or in equalizing the distribution or price of sugar to the American people. Any balance in the treasury of the Equalization Board after the discharge of its obligations hereunder and other liabilities belongs to its only stockholder, the United States.

VII. The Refiners severally agree to receive, accept, and pay for any sugar, other than from Cuba, which may be purchased by the Equalization Board from time to time, for the requirements of such Refiners, respectively, as stated in Paragraph VI, at the price of 7.28 cents per pound 96° test, average outturn polarization (duty, if any, paid) delivered at refinery, with allowances for differences in test as specified in Paragraph VI, provided that the Sugar Equalization Board is not required to deliver sugar under this and the preceding Paragraph VI unless due notice of the requirements of such refiner is given to the said board and the sugars are reasonably obtainable at a delivered duty paid price of 7.28 cents per pound or less.

VIII. Marine insurance on sugar purchased by the Equalization Board on a cost and freight basis shall be arranged by the American Refiners' Committee under direction of the Equalization Board, from shore to shore, including the risk of lighterage to and from the vessel at ports of loading and discharge, the cost thereof to be paid by the Refiners severally and charged against the price of the sugar delivered hereunder.

IX. The Equalization Board, however, reserves the right in its sole discretion, from time to time, to change the price to the Refiners as to any sugar to be delivered under this agreement, upon giving 15 days' previous notice of such change of price, and in case of any such change of price, settlement by the Refiners for their purchases of all sugar shall thereafter be upon the basis of such changed price instead of the 7.28 cents per pound 96° test above mentioned. Due regard to be given allowances up and down from 96°.

X. In making settlement for sugars purchased by them hereunder, the Colonial Sugar Co. and the Leon Godchaux Co. (Ltd.) shall each be entitled to charge against any sum or sums to be severally paid by them (to cover inland freight to refining points when paid by such Refiners) the sum of 3½ cents per 100 pounds of sugar purchased by them from the Sugar Equalization Board aforesaid. These charges, however, may be canceled or changed from time to time at the option of the Equalization Board.

XI. Each of the undersigned Refiners agrees that it will sell all sugar refined by it at a price not more than \$1.54 net per 100 pounds wholesale of refined sugar on the basis of fine granulated sugar in barrels or in 100-pound bags (when used as the standard basis) f. o. b. refinery above the price for 96° centrifugal sugar paid to the Equalization Board provided for in this agreement, with such differentials as are now shown on its official price list, same being subject to change from time to time on consent and approval of the Equalization Board. Said net margin shall be exclusive of the 2 per cent cash discount, payment in 10 days to the trade. This margin is determined on a delivered duty-paid price of from 7.10 to 7.35 cents per pound for 96° test raw sugar, and in case the price provided for in this agreement goes below 7.10 cents per pound the margin aforesaid shall be decreased in such a manner as to return substantially the same profit to the Refiner. In case the basic price goes above 7.35 cents per pound, said margin shall be increased to accomplish the same purpose. It is mutually agreed between the parties hereto that said margin shall be promptly revised by the parties hereto from time to time in case of changes in cost of refining and of wholesale distribution, or in the event of an excise or similar tax.

It is further understood that the margin upon any sugar purchased under the Hawaiian contracts above referred to may be increased by the amount of the differential under which such sugar is purchased.

XII. It is further understood that inasmuch as this agreement has been entered into at the request of the Food Administration and the Equalization Board for the purposes above recited, in view of the limitation on the price to be secured by the Refiner for its refined product, it is mutually agreed between the Equalization Board and the Refiners that in case of an advance or decline

in the price of sugar from 7.28 cents per pound for 96^o test, raw basis, due to any action of the Equalization Board, the Equalization Board will pay to each of the Refiners in the event of a decline in price, and each of the Refiners will pay to the Equalization Board in the event of a raise in price, a sum equivalent to the change in price multiplied by the number of pounds of raw or refined sugar (raw basis)¹ which each of the Refiners may have purchased hereunder, and which is undelivered or on hand or in transit on the date when such change takes place.

XIII. Each Refiner signatory hereto agrees to conduct his or its export business under the direction of the Equalization Board, and to export or distribute to the domestic trade such proportion of its refined sugar as the Equalization Board may direct, upon prices and terms which will yield the Refiner the same margin as is specified in Paragraph XI, and in the event of sales for export at a higher price, the excess over the Refiners' margin is to be for the account of the Equalization Board.

The Equalization Board furthermore agrees in conducting its export business that it will endeavor where conditions permit to provide (in case the Refiners desire) additional quantities of dutiable raw sugar, after giving due consideration to the requests and requirements of other nations or buyers.

XIV. So long as raw sugars are available for Refiners' requirements, the said Food Administrator and the said Equalization Board will not restrict the sale and distribution of refined sugar made from raw sugar purchased under this agreement. The Food Administrator or the Equalization Board shall have the right to supervise the domestic distribution of sugar during the life of this contract. No restrictions shall be placed upon domestic consumption until after the Refiners have been consulted.

XV. In the event that any Refiner named in Exhibit B [see below] does not enter into this agreement its pro rata proportion of sugar shall be allotted to the Refiners signatory hereto, if they desire, in the proportions and at the price and upon the terms and conditions herein provided as to the sugar purchased hereunder.

XVI. From October 1, 1919, to December 31, 1919, if requested so to do by the Equalization Board, the Refiners agree to refine any raw sugar the Equalization Board may have purchased and not sold to Refiners at the Refiners' margin then in effect, to be ascertained as provided in Paragraph XI, less 3 cents per 100 pounds. The Refiners agree to offer said sugar for sale and distribution, if requested so to do, at such price and on such terms as said Equalization Board may direct, for a commission of 3 cents per 100 pounds.

XVII. Should any unforeseen circumstances such as war, rebellion, insurrection, political disturbances, strikes, lack of fuel, marine loss, fire, explosion, riots or civil disturbances, embargoes, prohibitions, or other causes, either in the United States, Cuba, or elsewhere, prevent the Equalization Board from making delivery of the sugar according to the terms hereof, it shall so advise the Refiners' committee immediately and be released from delivery of such portion of the sugar as can not be delivered, but the Equalization Board agrees to use due diligence to carry out this agreement in its entirety, notwithstanding the circumstances mentioned.

XVIII. All matters of disagreement arising under this agreement between the Equalization Board and any other party hereto which can not be adjusted by them to their mutual satisfaction, shall be left to arbitration in Washington.

The Equalization Board and the American Refiners' Committee shall each select one arbitrator and the two so selected shall select a third, and the decision of any two of said arbitrators shall be final and conclusive upon the parties thereto. In case the disagreement is between only one Refiner and the Equalization Board, the arbitrator provided to be appointed by the American Refiners' Committee shall be appointed by such one Refiner. Any expense attached to such arbitration shall be divided equally among the parties to the arbitration.

XIX. It is agreed by all parties hereto that said Equalization Board may earn a profit on any sugar it may purchase and resell to said Refiners or on any sugar it may purchase from said Refiners and resell for export.

XX. It is further understood that the individual members of the said American Refiners' Committee are acting herein as volunteers, in a purely administra-

¹ Refined sugar shall be reduced to raw basis by adding 7 per cent to its weight.

tive capacity, and accordingly the parties hereto agree that said members of the said committee shall not incur any personal liability, individually or collectively, under the terms of this contract, nor be responsible for any damage of whatever kind connected with any matter or thing relating to this contract; nor shall they be responsible or liable for any act, fault or misconduct of any agents or persons employed by them, and the parties hereto hereby further release and discharge the said individual members of the said committee from any and all claims of whatever kind for personal liability or responsibility as aforesaid.

XXI. The Refiners severally agree to pay their pro rata share on the basis of sugar purchased of any expenses incurred by the American Refiners' Committee in carrying out this agreement.

XXII. This agreement shall remain in full force and effect up to and including December 31, 1919, and shall cover all sugar shipped or in transit prior to that date.

In witness whereof, the parties hereto have subscribed this agreement as of the day and year first above written.

United States Sugar Equalization Board (Inc.), by _____, president; _____, United States Food Administrator; The American Sugar Refining Co. for itself and for its constituent companies: The American Sugar Refining Co. of New York, The Franklin Sugar Refining Co., The Spreckels Sugar Refining Co., operating under United States Food Administration's license No. F 0241, by _____, president; The National Sugar Refining Co. of New Jersey for itself and its constituent companies: The New York Sugar Refining Co., The National Sugar Refining Co., The Mollenhauer Sugar Refining Co., operating under United States Food Administration's license No. F 0039, by _____, president; Arbuckle Bros., by _____; Warner Sugar Refining Co., by _____; Federal Sugar Refining Co., by _____; The W. J. McCahan Sugar Refining Co., by _____; Pennsylvania Sugar Co., by _____; Revere Sugar Refinery, by _____; Savannah Sugar Refining Corporation, by _____; Colonial Sugars Co., by _____; Wm. Henderson, _____; Imperial Sugar Co., by _____; The Leon Godchaux Co. (Ltd.), by _____; California & Hawaiian Sugar Refining Co., by _____; Western Sugar Refining Co., by _____.

EXHIBIT B.—*Basis of proportionate distribution as fixed on November 4, 1918, at a meeting of the American Refiners' Committee of the United States Food Administration.*

	Per cent.
American Sugar Refining Co.....	38.001
Arbuckle Bros.....	6.613
California & Hawaiian Sugar Refining Co.....	6.945
Colonial Sugars Co.....	2.185
Federal Sugar Refining Co.....	8.645
William Henderson.....	1.220
Imperial Sugar Refining Co.....	1.122
The W. J. McCahan Sugar Refining Co.....	2.489
National Sugar Refining Co.....	11.940
Pennsylvania Sugar Co.....	4.537
Revere Sugar Refining Co.....	2.985
Savannah Sugar Refining Corporation.....	2.149
Warner Sugar Refining Co.....	6.187
Western Sugar Refining Co.....	3.549
The Leon Godchaux Co. (Ltd.).....	1.433

EXHIBIT XIX.

MR. HERBERT HOOVER'S CABLEGRAM FROM EUROPE TO THE PRESIDENT, JULY 23, 1919, REGARDING THE CONTINUANCE OF GOVERNMENT CONTROL IN THE UNITED STATES OVER THE SUGAR SITUATION.

Paris, July 23. Fruit 354 for Barnes, July 23. Please transmit the following to the President as a cable from me.

"It is necessary to take important decisions as to the sugar control in the United States in order to anticipate the marketing of a new beet harvest and to settle policy with Cuba for the next year. You will recollect that last July I presented to you the view that either in event of continued war and the consequent shipping isolation of the East Indies sugar, or in the event of peace and the opening of new demands, there would be a world shortage in the year 1919. I recommended that we form the Sugar Equalization Board to purchase the Cuban sugar crop jointly with the allies and to arrange for equalization in marketing with the domestic sugar in order to assure American supplies at reasonable prices and to eliminate speculation and profiteering, and that the board should secure a small margin in handling Cuban sugar to cover losses in the event of reverse on Atlantic shipping and to equalize freight and distribution costs. These things were done and to-day the United States is the only large nation possessing liberal supplies for the entire year and at a saving of 4 cents per pound under the world price, or equal to about \$25,000,000 per month saving to the consumer. These courses of action grew out of war disruption of supply and distribution.

"Decision must now be made as to whether Congress should be recommended to legislate authority for the continuation of these measures over the year 1920 providing again for the purchase of the Cuban crop and the control of domestic production, stabilization of price and distribution. The intrinsic situation is by no means clear as to the prospect of supplies, and it is argued by many that there will be a continued shortage over the year 1920 with attendant speculation and profiteering unless action is taken.

"The matters to be considered are (a) the crop prospects of the world in which there is undoubtedly an increase over pre-war in the Western Hemisphere and East Indies, but the European beet production (outside Russia) will be apparently 25 per cent short of pre-war average, and although the Russian situation is unknown there are no exports likely; (b) the probable consumption of the world as to which there is an undoubted increase of Europe, especially in the United States, but with regard to Europe the limited buying power during the next year (unless there is very rapid economic recovery) will tend to restrain the nonessential use of sugar.

"The problem is also affected by (a) whether European governments will continue their national buying with national finance and be in a position to contract for national supplies for long periods in advance to the prejudice of a free market and the ability of normal commerce to purchase on the same terms. This will probably depend upon whether the United States will allow credits to foreign countries to be used for such form of purchase; (b) whether in the long view the adjustment of production to world necessity will not be more rapid under free operation of supply and demand, although there may be great fluctuations in the process of readjustment; (c) whether, from a social point of view, it is desirable to perpetuate a great governmental control in commerce now that the war interference of supply through short shipping, the necessity of control of cargoes, etc., has largely disappeared even though speculation and profiteering may result. Any continuation of control will require action by Congress, and it must embrace appropriations, the continuation of power of embargo, control of speculation, profiteering and distribution. The alternative course to any action of the above character is for the sugar equalization board to announce its cessation of control at an early date prior to the marketing season of domestic beet and cane sugars and to dispose of the remaining stocks from the old crop purchased by them at the market prices from day to day until they are exhausted.

"Owing to the delays in the Austrian treaty it seems impossible for me to withdraw American control of railways, coal mines and transport of food in Central Europe before the middle of September without producing absolute chaos in that area, and therefore I will not be able to arrive home before that

date. The determination of the sugar policies requires immediate consideration, and my lack of intimate knowledge of the American situation after eight months' absence and my inability to leave here renders it impossible for me to be of useful service in the matter. I therefore suggest you request Prof. Taussig, Mr. Zabriskie and the other members of the Sugar Equalization Board to present you their recommendations in the matter independent of myself. If, as a result of your councils, you should decide to propose to Congress that the control be continued, it is imperative that a new chairman should be chosen in my place at once in order that he may be of assistance to Congress in legislation, and that he should be in charge from the beginning, as I must, in any event, retire this autumn. If it be decided that there should be no extension of control I would be glad to be relieved anyway as I wish a rest, but if this should be inconvenient to you I would, of course, continue until the board is wound up this fall.

"HOOVER."

EXHIBIT XX.

TESTIMONY OF MR. HERBERT HOOVER, CONCERNING SUGAR, BEFORE SUBCOMMITTEE NO. 3 (FOREIGN EXPENDITURES) OF THE SELECT COMMITTEE ON EXPENDITURES IN THE WAR DEPARTMENT, HOUSE OF REPRESENTATIVES, OCTOBER 29, 1919.

Mr. BLAND. Is the European crop of sugar normal this year?

Mr. HOOVER. No, sir; the European crop on our estimate is about 30 per cent down. The first of last July was the earliest time we could begin to forecast the sugar available for 1920. We made a survey of European sugar conditions, based on acreage for one could not tell the actual condition of the crop. But based on acreage we surmised that production in Europe would be about 70 per cent of the prewar production.

Mr. BLAND. They will have to draw heavily upon the Cuban crop themselves, to supply themselves, won't they?

Mr. HOOVER. Yes; and of course another difficulty in the situation is that during the last two years of the war a great deal of shipping was taken off of the Tropics of the Eastern Hemisphere, and thus they were subjected to very speculative movements in prices up and down that tended to stultify their production. The whole Eastern Hemisphere, take it by and large, is down in production very materially. Of course, the Western Hemisphere has increased its production materially, but on the other hand our consumption has increased beyond any possible anticipation. The European sugar production consumption to-day is probably 60 per cent of the prewar normal, but their populations are chafing under it energetically, and if they have money to buy sugar they will be heavy buyers.

Mr. BLAND. As I remember it probably I may be inaccurate as to pounds, but the equalization board's testimony is that we are going to have to get at least 2,000,000 tons of the Cuban crop ourselves to tide us over.

Mr. HOOVER. It will take fully 2,000,000 tons; perhaps more.

Mr. BLAND. And that is about half the crop, isn't it?

Mr. HOOVER. Well, I fancy we will have to have a larger proportion of the crop than that.

Mr. BLAND. Now, this statement that you said was out this morning—does it touch that phase of the situation?

Mr. HOOVER. The sugar board makes the suggestion that the price of raw sugar has risen to a point where it can not be advantageously purchased, and that in order to protect the household consumer—who are the critical section of consumption—it would be advisable to ration the manufacturing trades, candy, and sweet drinks, over the next year in order to try to make supplies and consumption balance.

Mr. BLAND. That would not have been necessary if we had gotten into the game and gotten our share of the Cuban crop?

Mr. HOOVER. I think we will get our share of the Cuban crop, but that does not stop the speculative effect on prices or the fact that the world as a whole is short of sugar.

Mr. BLAND. With this obtained, with this sugar from Cuba we would have made up the 80 pounds per capita, and putting an embargo on the exportation

of sugar we could have had plenty to have taken care of our own people, could we not?

Mr. HOOVER. Well, it is a rather complex question, Mr. Bland. Consumption this year is 93 pounds per capita—that is the appalling thing—as against 73 last year and against 84, the highest ever known before; and moreover we can not enter into the Cuban market without considering the European buyers. Cuba is a free State, and we either have to compete with foreign buyers by bidding each other up, or we have to join with them and make a joint deal. When we come to a joint deal, then Europe will be demanding its share. No one knows what that will be yet. It will depend a good deal on what their financial resources are. But in the meantime, with an impending sugar shortage of the entire world, of course the speculating forces have now turned loose. If the sugar was rationed to the manufacturing trades, sweet drinks, and candy, etc., the probabilities are that the speculator would be a great deal frightened, because he would have no knowledge of what the consumption was likely to be. The consumption then would be in the control of some Government agency, not in the unlimited play of the law of supply and demand. With that uncertainty before the speculator, I should think the largest end of the speculative fever in sugar would go off.

Mr. BLAND. The War Trade Board has plenty of power to stop the exportation, haven't they, of sugar?

Mr. HOOVER. I believe the sugar board requested them to do it last June, and they did not seem to think they ought to.

Mr. BLAND. Now, in the absence of their acting, it will require legislation on the part of Congress to put a ban on the export of sugar, will it not?

Mr. HOOVER. Yes, but a ban on exports would not be sufficient, because the country is dependent for fifty per cent of its sugar from abroad.

Mr. BLAND. Well, you mean—that don't maintain if we obtain our part of what we had expected to obtain of the Cuban crop?

Mr. HOOVER. I don't quite understand.

Mr. BLAND (to the reporter). Will you read Mr. Hoover's last answer?

(The reporter read the answer as follows:)

“Mr. HOOVER. Yes, but a ban on exports would not be sufficient, because the country is dependent for 50 per cent of its sugar from abroad.”

Mr. HOOVER. And for the sugar we get abroad, we are dependent on some sort of agreement or competition with Europe.

Mr. BLAND. We would now, in view of the fact that we did not take advantage of the opportunity to get the sugar at the old price of the Cuban producers, before they entered into negotiations with the Europeans.

Mr. HOOVER. I think the difficulty in that matter arises in this way: That both the Sugar Equalization Board and I represented the sugar situation to the President independently. I did so as soon as we had completed the survey in Europe, at the earliest moment possible—about the 1st of July. The Sugar Equalization Board also did it independently, and two policies were laid in front of him: The one to continue sugar control, purchase the Cuban crop, control the profits of the refiners, distribution, and so forth; all of which would have required legislation. The other policy was to let sugar go free and let the highest bidder take it, both internationally and individually. There are arguments in favor of both policies. The latter policy has the essential argument in favor of it that the world's supply of sugar would be more quickly corrected by enlarged production as to prices, perhaps, than if prices were kept normal.

Mr. BLAND. And reduce consumption?

Mr. HOOVER. And reduce consumption. The unfortunate part of it is that the manufacturers—the manufacturers of sweet drinks, candy, and so forth—are in a financial position to acquire their sugar a long ways ahead, and the householder is not, and the result is that trades always secure their supplies in a short market, when the householder will go without. That is one difficulty of a free market.

The President asked for advice from different ones of his advisers, and he could get no agreement as to what was the best policy. They were on both sides—and you find them on both sides to-day.

Mr. BLAND. For many reasons.

Mr. HOOVER. For many reasons; yes.

68TH CONGRESS }
1st Session

SENATE

100
{ DOCUMENT
No. 130

WHEAT FLOUR MILLING
INDUSTRY

COMMUNICATION

FROM

THE CHAIRMAN OF THE FEDERAL
TRADE COMMISSION

TRANSMITTING

THE REPORT OF THE COMMISSION ON THE
WHEAT FLOUR MILLING INDUSTRY

IN RESPONSE TO SENATE RESOLUTION NO. 212, SIXTY-
SEVENTH CONGRESS, SECOND SESSION
AGREED TO JANUARY 18, 1922



MAY 14 (calendar day, MAY 16), 1924.—Ordered to lie on the table

WASHINGTON
GOVERNMENT PRINTING OFFICE
1924

SUBMITTED BY MR. NORRIS

IN THE SENATE OF THE UNITED STATES,
June 3, 1924.

Ordered. That the report of the Federal Trade Commission, relative to wheat-flour milling industry, transmitted to the Senate on May 16, 1924, in response to Senate resolution 212 (agreed to January 18, 1922, Sixty-seventh Congress, second session), be printed as a Senate document with illustrations.

Attest:

GEORGE A. SANDERSON, Secretary.

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The commission desires to mention as especially contributing to the preparation of this report Messrs. W. H. England, T. A. Carroll, C. G. Farwell, J. B. Peat, and H. H. Moore.

LETTER OF SUBMITTAL

FEDERAL TRADE COMMISSION,
Washington, May 16, 1924.

THE PRESIDENT OF THE SENATE.

SIR: There is submitted herewith a report on the wheat flour milling industry. This report, made in response to a Senate resolution, deals primarily with the costs and profits of commercial flour milling concerns, and shows a marked decline in flour costs, resulting from the unprecedented decline in wheat prices since 1920.

From January, 1919, to September, 1922, the monthly average quoted prices of flour declined 33 per cent in the northwestern (Minneapolis) district and 43 per cent in the southwestern (Kansas City) district; wheat prices declined 50 per cent in Minneapolis and 55 per cent in Kansas City, while bread prices declined about 2 per cent in Minneapolis, about 15 per cent in Kansas City, due to a price war, 6.6 per cent in Boston, and 2 per cent in New York City.

The above comparison shows that the decline in wheat prices, so disastrous to the farmer, has benefited the purchaser of bread very little.

ATTEMPT TO HAMPER THE INQUIRY

Soon after the commission sent out its cost and profits report form to flour milling companies an effort was made to hamper the inquiry by the publication of an opinion of the attorneys for the Millers' National Federation, the leading trade association of the flour industry, advising that "any miller has a right to refuse to answer the questionnaire, or any part, and to afford no information unless he chooses, but if he desires to accord some information he can give it, when, how, and as he pleases, but we would advise that under no circumstances the emissaries or representatives of the Federal Trade Commission, or any outsider, be given access to millers' books, papers, or documents, or be permitted to take any information or copies."

ATTITUDE OF FLOUR MILLERS

Although this advice was given wide publicity, practically every company requested, including the members of the federation, disregarded it and cooperated heartily in sending in the data requested, or in granting access to their books and in assisting the commission's accountants in the preparation of the reports.

When the commission's cost and profit report form was sent to the wheat-flour milling industry, certain flour trade journals and some millers complained of the expense and time which would be required to compile the data requested. A number of companies having good accounting records returned the schedule completely filled out

within a few days, the time required for their preparation being reported as from 20 to 48 hours for one man. This corresponded with the experience of the commission's accountants in preparing reports for some of the larger flour-milling concerns.

CONCENTRATION IN THE INDUSTRY

The number of merchant wheat-flour mills decreased from 6,900 in 1914 to 4,800 mills in 1921 (the latest census enumeration), a decline of 30 per cent, while the average production per mill increased from about 16,900 barrels to 23,000 barrels per annum, or 36 per cent.

Although there were about 4,800 merchant wheat-flour mills in the United States in 1921, a few companies produced a large proportion of the total output. In that year five large flour-milling companies, operating 49 mills, and each producing in excess of 2,000,000 barrels, had an aggregate production of over 25,000,000 barrels, or nearly 23 per cent of the country's total; and eight companies with 87 mills, each producing in excess of 1,000,000 barrels, had a total production of almost 30,000,000 barrels, or 27 per cent of that total. This concentration was largely the result of the expansion of business on the part of some of the largest flour-milling concerns, although it was partly the result of the merging of different interests.

The bulk of the wheat flour produced in the United States is manufactured in a few States. In 1921 flour mills located in Minnesota alone produced one-fifth of the total output of the entire country, those of Minnesota and Kansas combined three-eighths, and those in Minnesota, Kansas, New York, and Missouri one-half of the total. The three principal wheat-flour milling centers in the order of their importance are Minneapolis, Buffalo, and Kansas City.

About 99 per cent of the total wheat-flour output of the country is produced by so-called merchant mills, which purchase grain and sell the mill products, as contrasted with the custom mills, which grind the grain for a fixed charge.

FLOUR-MILLING PROFITS 1919-1922

Extensive data on flour-milling investment and income for the four-year period 1919-1922, were secured from 108 companies, which produced over 40 per cent of the total wheat-flour output of the country. The investment and rate of return thereon are shown on two different bases, (1) milling investment, and (2) company investment. The milling investment includes the funds actually used in the milling business, while the company investment is that which the stockholders collectively, as a company, have in the business. The milling investment includes borrowed funds but excludes outside investments, while the company investment includes outside investments but excludes borrowed funds.

The average rate of net profit on the milling investment for all companies combined for the four-year period 1919-1922 was 10.6 per cent, the annual average rates being as follows: 1919, 13.9 per cent; 1920, 14.9 per cent; 1921, 1.6 per cent; and 1922, 10.9 per cent. The average rate of profit of these companies varied considerably according to the sections of the country in which they were located.

By districts, the four-year average rates of profit of the companies reporting were as follows: Northwestern district, including Minnesota and neighboring States, 11.7 per cent; southwestern, including Kansas and neighboring States, 11 per cent; mountain and coast, including the north Rocky Mountain and Pacific Coast States, 9.3 per cent; southeastern, including States east of the Mississippi and south of the Ohio Rivers, 7.8 per cent; and central and eastern, including States east of Wisconsin and Iowa, 7.6 per cent.

The average rate of milling profit for individual companies showed a wide range in each year of the period. Thus in 1920 when the average for all companies was 14.9 per cent, the rate for individual companies ranged from a loss of 51.4 per cent to a profit of 49.2 per cent. On the other hand, in 1921, when the average rate of profit for all companies was only 1.6 per cent, the range was from a loss of 72.6 per cent to a profit of 44.1 per cent. Taking the average rate of profit for the four-year period 1919-1922 for each individual company, the range was from a loss of 10.6 per cent to a profit of 40 per cent.

On the company investment, which excludes borrowed funds employed in the business, the average rate of return for the four-year period for these 108 companies was 12.7 per cent, the rates for the several years being as follows: 1919, 18.3 per cent; 1920, 20.9 per cent; 1921, a loss of one-tenth of 1 per cent; and 1922 a profit of 12.5 per cent.

PROFITS PER BARREL

The milling profit per barrel showed a wide range for different years and for different milling districts. The average profit per barrel for all companies was as follows: 47 cents in 1919, 58 cents in 1920, 6 cents in 1921, and 32 cents in 1922, with an average for the four-year period of 36 cents per barrel.

There was, of course, a wide range for different sections of the country. For example, the four-year average profit per barrel for different districts was as follows: Mountain and coast, 54 cents; central and eastern, 40 cents; southwestern, 39 cents; northwestern, 32 cents; and southeastern, 31 cents. The extreme range in annual averages by districts was from a profit of \$1.06 per barrel in 1920 in the mountain and coast district to a loss of 31 cents per barrel for the same district in the following year.

PROFITS FOR THE PERIOD 1913-1922

The profits for 28 identical companies, producing about 29 per cent of the total wheat flour production for the entire country, which were secured for the 10-year period, 1913-1922, averaged 18.5 per cent on the milling investment for the entire period. For the four-year period, 1919-1922, the average rate of profits of these 28 companies was 13.9 per cent, as compared with 10.6 per cent for the 108 companies. The range in annual average rate of profit for the 10-year period for the 28 companies was from 2.6 per cent in 1921 to 36.5 per cent in 1917. On the company investment the rate of profit for these 28 companies for the 10-year period, 1913-1922, averaged 19.9 per cent. These 28 companies included most of the very large wheat flour milling concerns.

COST OF PRODUCTION

Costs of wheat-flour production for 108 different companies, producing over 40 per cent of the output for the entire country, are presented for the four-year period 1919-1922, and for 28 identical companies, producing 29 per cent of the output for the 10-year period 1913-1922.

The four-year average cost of the 108 companies was \$8.85 per barrel, the annual average cost ranging from \$10.98 per barrel in 1920 to \$5.97 per barrel in 1922. For the 10-year period the annual average cost of producing a barrel of wheat flour increased rapidly from 1913 to 1920, after which there was a sharp decline. The annual average cost for the 28 companies increased from \$3.84 per barrel in 1913 to \$11.09 per barrel in 1920, and then decreased to \$6.03 per barrel in 1922.

COST OF WHEAT IN FLOUR

During the four-year period, 1919-1922, the average cost of the wheat constituted almost 90 per cent of the cost of flour and its by-products, cost of packages nearly 4 per cent of this total cost, labor about 2.5 per cent, and general expenses and depreciation about 2.5 per cent. The average quantity of wheat used per barrel of flour was 4.56 bushels, ranging from 4.47 bushels in 1919 to 4.63 bushels in 1920.

The average cost of wheat ranged from \$11.57 per barrel of flour in 1920 to \$5.84 per barrel in 1922. In 1922, by districts, the average cost of wheat per barrel of flour was as follows: Mountain and Coast, \$5.07; Northwestern, \$6.18; Southwestern, \$5.27; Southeastern and Central and Eastern, each \$6.19 per barrel.

This marked decline in the cost of wheat per barrel of flour does not fully reflect, of course, the disastrous decline in the prices of wheat from 1920 to 1922. The purchase prices of wheat at the mills, for these 108 companies, averaged \$2.28 per bushel in 1919; \$2.50 in 1920; \$1.82 in 1921; and \$1.28 in 1922. The decrease in this average delivered price of wheat from 1920 to 1922 was almost 50 per cent. If the prices of wheat were reckoned at the farm the percentage of decline would be, of course, still greater.

FLOUR AND FEED PACKAGES

The cost of packages was the second largest item in the mill cost of flour and averaged 40 cents per barrel for the four-year period 1919-1922.

The absence of Federal laws regulating the sizes of flour and feed packages and the widely varying State laws and customs have resulted in an unnecessary diversity and multiplicity of packages, thus increasing cost of production and distribution. The need of standardizing the sizes of packages has long been recognized. The laws of various States requiring that the weight contents shall be marked on each package do not satisfy this need. Forty-one States have such laws for flour packages, and 46 States for commercial feeding stuffs. Weight marking laws afford no relief from the waste involved in a multiplicity of packages, nor do they give full protection against deception of the consumer.

Not less than 34 different sizes of flour packages are now in use in the domestic trade. Reports from 80 representative milling companies show that more than 97 per cent of their combined sales in 1922 were in 12 different sizes of packages, which in fact really represented only 6 different sizes of packages, namely, the barrel, half barrel, quarter barrel, eighth barrel, and sixteenth barrel, and the special 140-pound export sack. The close resemblance between 48 and 49 pound sacks, 24 and 24½ pound sacks, and 12 and 12½ pound sacks, respectively, affords an easy opportunity for deceiving the uninformed or unobservant purchaser.

Aside from the 140-pound sack, which is the customary size for bulk sales and export business, the entire list of flour packages might well be limited to a few standard sizes each one of which would be so distinctly different in weight as to leave no room for mistake by the purchaser. The proposed "decimal weight law" would accomplish this purpose. It aims at simplicity and economy, and its adoption would remove the unsatisfactory conditions arising from the present multiplicity of packages. This proposed law appears to have practically the unanimous and unqualified approval of all the factors engaged in the different branches of business which have to do with the production and distribution of flour and feed.

WHEAT, FLOUR, AND BREAD PRICES

Monthly average quoted prices for hard spring wheat flour in the northwestern district, (first family patent) based upon millers' quotations, f. o. b. mill, increased from \$10.31 per barrel in January, 1919, to \$15.66 per barrel in May, 1920, an increase of 52 per cent, and then declined to \$6.88 per barrel in September, 1922, or 33 per cent below the January, 1919, average price. The monthly average quotation for the same grade of hard winter wheat flour in the southwestern district increased from \$10.08 per barrel in January, 1919, to \$13.32 per barrel in May, 1920, an increase of 32 per cent, and then declined to \$5.79 per barrel in September, 1922, or 43 per cent below the January, 1919, average price.

The monthly average price of No. 1 northern hard spring wheat at Minneapolis increased from \$2.21 per bushel in January, 1919, to \$3.09 per bushel in May, 1920, an increase of 40 per cent, and then fell to \$1.10 per bushel in September, 1922, or 50 per cent below the average price in January, 1919. In Kansas City the monthly average price of No. 2 hard winter wheat increased from \$2.31 per bushel in January, 1919, to \$2.93 per bushel in May, 1920, an increase of 27 per cent, and then declined to \$1.04 in September, 1922, or 55 per cent below the average price in January, 1919.

Data collected and published by the United States Bureau of Labor Statistics show that bread prices have not decreased in like degree with the prices of wheat and flour. For example, in Minneapolis, the retail price of a 1-pound loaf of bread was 9.2 cents in January, 1919, and 9 cents in September, 1922; in Kansas City it was 9.3 cents in January, 1919, and 7.9 cents in September, 1922; in Boston 9.1 cents in January, 1919, and 8.5 cents in September, 1922; and in New York City 10 cents in January, 1919, and 9.8 cents in September, 1922.

By the commission:

HUSTON THOMPSON, *Chairman.*

WHEAT FLOUR MILLING INDUSTRY

SUMMARY

ORIGIN AND SCOPE

This report on the wheat-flour milling industry is made in compliance with Senate Resolution 212, Sixty-seventh Congress, second session, adopted January 18, 1922, which directed the commission "to extend its investigation of commercial wheat-flour milling from the date of the conclusion of its investigation of said industry included in its report to Congress on September 15, 1920, up to the close of the fiscal year ending June 30, 1921."

In harmony with the wording of this resolution the commission limited the intensive work of the present inquiry to the phases of the wheat flour milling industry covered by its previous report. In order to furnish Congress with more recent information the period covered on flour milling costs and profits was extended to include the business year ending in 1922.

ATTEMPT TO HAMPER THE INQUIRY

Soon after the commission sent out its cost and profit report form to flour milling companies an effort was made to hamper the inquiry by the publication of an opinion of the attorneys for the Millers' National Federation, the leading trade association of the flour industry, advising that "any miller has a right to refuse to answer the questionnaire, or any part, and to afford no information unless he chooses, but if he desires to accord some information he can give it when, how, and as he pleases, but we would advise that under no circumstances the emissaries or representatives of the Federal Trade Commission, or any outsider, be given access to millers' books, papers, or documents or be permitted to take any information or copies."

ATTITUDE OF FLOUR MILLERS

Although the above advice was given wide publicity, practically every company requested, including the members of the federation, disregarded it and cooperated heartily in sending in the data requested or in granting access to their books and in assisting the commission's accountants in the preparation of the reports.

When the commission's cost and profit report form was sent to the wheat flour milling industry certain flour trade journals and some millers complained of the expense and time which would be required to compile the data requested. A number of companies having good accounting records returned the schedules completely filled out within a few days, the time required for their preparation being reported as from 20 to 48 hours for one man. This corresponded with the experience of the commission's accountants in preparing reports for some of the larger flour milling concerns.

GROWTH AND CONCENTRATION IN THE INDUSTRY

Wheat flour is produced by two classes of mills, namely, (1) merchant flour mills, which purchase grain and sell the mill products after grinding, (2) custom or neighborhood mills which grind their customers' grain for a fixed charge or toll, which may be taken in cash or in kind. Although the number of custom mills was about double the number of merchant mills in 1921, the latter produced over 99 per cent of the country's total wheat flour output.

Since 1914 the annual total quantity of wheat flour produced by merchant mills in census years has fluctuated from about 110,000,000 to 132,500,000 barrels. The change from year to year is largely due to fluctuations in inventories and in the quantity exported. For the fiscal years ending June 30, 1914, to 1923, the quantity exported has ranged from 11,820,000 barrels to 24,180,000 barrels.

During the period 1914 to 1921 (the latest census enumeration) the number of merchant flour mills decreased from 6,876 to 4,809, which represents a decline of 30 per cent, while the average production per mill increased from 16,929 barrels in 1914, to 23,049 barrels in 1921, or an increase of 36 per cent. The decrease in the number of mills was due to the gradual elimination of the smaller ones.

Although there were about 4,800 merchant wheat flour mills in the United States in 1921, a few companies produced a large proportion of the total output. In that year five large flour milling companies, operating 49 mills and each producing in excess of 2,000,000 barrels, had an aggregate production of over 25,000,000 barrels or nearly 23 per cent of the country's total; and eight companies with 87 mills, each producing in excess of 1,000,000 barrels, had a total production of almost 30,000,000 barrels, or 27 per cent of that total. This concentration was largely the result of the expansion of business on the part of some of the largest flour milling concerns, although it was partly the result of the merging of different interests.

The bulk of the wheat flour produced in the United States is manufactured in a few States. Minnesota is by far the largest wheat flour producing State, Kansas ranks second, New York third, Missouri fourth, and Illinois fifth. In 1921 Minnesota alone produced 21.4 per cent of the country's total, Kansas 15.7 per cent, New York 7.6 per cent, Missouri 5.7 per cent, and Illinois 4.7 per cent. These five States had about 55 per cent of the 1921 total.

The three principal wheat-flour milling centers in the order of their importance are Minneapolis, Buffalo, and Kansas City. These three centers have in their immediate vicinity a milling capacity sufficient to produce approximately 37 per cent of the country's total wheat-flour production.

METHODS OF DETERMINING PROFITS

The investment and rate of return thereon is presented on two different bases, (1) milling investment and (2) company investment.

The milling investment, as the term implies, includes the actual capital used in the milling business. It was computed as the sum of the capital stock, bonds, other borrowed money, surplus, and special reserves, less any appreciation, good will, or outside investments as determined from an analysis of the assets.

The company investment is the investment which the stockholders collectively, as a company, have in the business. It was obtained by deducting bonds and other borrowed money from the milling investment, but adding thereto the outside investments.

Two kinds of profit, corresponding to the two kinds of investment, are presented, namely, (1) milling net income, which is the net profit received from all sources excepting that from outside investments; (2) company net income, which is the net profit that accrues to the stockholders collectively, as a company, before the payment of income or excess-profits taxes.

PROFITS ON THE MILLING INVESTMENT

Net profits are presented covering companies producing from 40 to 50 per cent of the total output of wheat flour for the period 1919-1922, and for 28 identical companies which produced about 29 per cent of the total output for the period 1913-1922.

The average rate of return on the milling investment for all companies ranged from a maximum of 14.9 per cent in 1920 to a minimum of 1.6 per cent in 1921. For the four-year period 1919-1922 the true or weighted average rate of return (obtained by dividing the sum of the earnings for all companies covered by their aggregate investment) was 10.6 per cent, while the simple average (obtained by dividing the sum of the rate of return for each company by the number of companies covered) was 8.5 per cent. The average rate of return varied considerably for different sections of the country. For example, for the four-year period the companies covered for the northwestern district, operating mills in Montana, the Dakotas, Minnesota, Wisconsin, northern Nebraska, and northern Iowa, had an average net profit of 11.7 per cent; the southwestern district, embracing mills operated in the States of Texas, Oklahoma, Kansas, southern Nebraska, Missouri, and Arkansas, had an average of 11 per cent; the mountain and coast district, covering mills in Colorado, Idaho, Utah, Oregon, Washington, and California, had an average of 9.3 per cent; the southeastern district, which covers companies with mills in the southeastern section of the United States east of the Mississippi and south of the Ohio Rivers, averaged 7.8 per cent; and the companies with mills in the eastern and central district, embracing the Central and Eastern States, had an average of only 7.6 per cent.

SIZE OF INVESTMENT AND RATE OF PROFIT

Dividing the companies into five groups according to size of investment, the companies with the largest investments, taken as a group, had a much higher average rate of milling profit for the four-year period than companies with the smallest investments, but there was very little difference in the average rate for the medium group and either of the two larger groups; their average rates of return on milling investment for the four-year period was 10.5 per cent, 10 per cent, and 11 per cent, respectively. If a simple average were taken instead of a true average, the group of com-

panies with investments of medium size would still show the second highest rate of return.

During the four-year period, 1919-1922, the smaller companies had also a greater fluctuation in the rate of return from year to year than the large companies, or those of intermediate size. The four-year average rate of return on the milling investment for companies having an average investment under \$250,000 was 6.1 per cent and the rate during the period ranged from an average loss of 5.4 per cent in 1921 to an average net profit of 18.6 per cent in 1919; companies having an average investment ranging from \$250,000 to \$500,000 had a four-year average return on investment of 8.4 per cent, with a range in average annual net profit from only one-tenth of 1 per cent in 1921 to 14.8 per cent in 1919; companies with an investment ranging from \$500,000 to \$1,000,000 earned 10.5 per cent for the four years, the average annual profit ranging from a loss of 2.6 per cent in 1921 to a net profit of 18 per cent in 1919; companies with investments of from \$1,000,000 to \$2,000,000 earned 10 per cent for the period and had average annual returns ranging from a loss of four-tenths of 1 per cent in 1921 to a net profit of 15.5 per cent in 1919; and the largest flour-milling concerns with an investment of \$2,000,000 and over had an average rate of return for the four-year period of 11 per cent, ranging from an average of 2.8 per cent in 1921 to 15.5 per cent in 1920.

MILLING PROFITS OF INDIVIDUAL COMPANIES

There was a wide range in the profits of individual companies. The annual average rate of return on the milling investment for 108 individual companies for the period 1919-1922, ranged from a loss of 10.6 per cent to a net profit of 40 per cent. Fourteen companies showed an average loss for the four-year period, the losses ranging from 1.2 per cent to 10.6 per cent.

As already stated, the smaller companies generally had a lower average rate of profit on their milling investment than the large companies or those of intermediate size. For the four-year period, 1919-1922, the 14 companies showing a loss constituted 13 per cent of the total number, but they had only 2.5 per cent of the total investment and 2.5 per cent of the production of the 108 companies. Twenty-one other companies, or 19.4 per cent of the total number of companies, earned less than 5 per cent (not including those showing a loss) and only had 9.8 per cent of the investment and 7.7 per cent of the production. Twenty-three companies, constituting 21.3 per cent of the total number of companies and earning from 5 to 10 per cent, had 31.7 per cent of the investment and 29.8 per cent of the production. Twenty-nine companies, constituting 26.9 per cent of the total number of companies and earning from 10 to 15 per cent had 41.6 per cent of the investment and produced 42.1 per cent of the combined production. Thirteen companies, constituting 12 per cent of the total number of companies, and earning from 15 to 20 per cent, had 12.9 of the investment and 15.6 per cent of the production, while eight companies, constituting 7.4 per cent of the total number of companies, and earning from 20 to 40 per cent during the period, had only 1.5 per cent of the investment and 2.3 per cent of the production. Thus, although as a group the larger companies had the

highest average rates of profit, the companies with the highest rates of return were much below the average. On the other hand, some of the smaller companies showed the largest losses for the four-year period. Those having a loss had a much smaller production per dollar invested than those earning 20 per cent and over.

Approximately 50 per cent of the investment and 44 per cent of the flour manufactured was produced by companies that individually earned on the average 11 per cent or less for the period 1919-1922; two-thirds of the investment was owned by concerns producing 58.5 per cent of the output covered, and they individually earned 13 per cent or less for the period; seven-eighths of the investment was owned by companies covering 83.6 per cent of the production which earned individually less than 15.5 per cent for the four years; while one-eighth of the investment was owned by companies with about one-sixth of the production, which earned from about 16 to 40 per cent for the period.

There was an even wider range in the profits and losses for individual years. In 1919 only two companies showed a loss, and the return on investment ranged from a loss of 11.1 per cent to a profit of 50.5 per cent, with an average of 13.9 per cent. In 1920, due to the sudden decline in wheat and flour prices during the last half of the year, 20 companies showed losses ranging from 1.2 per cent to 51.4 per cent, while profits ranged as high as 49.2 per cent, with an average of 14.9 per cent. In 1921, 57 companies had losses running as high as 72.6 per cent, while the remaining 50 companies had earnings ranging from less than one-tenth of 1 per cent to 44.1 per cent, with an average of only 1.6 per cent. In 1922, 17 companies showed a loss and 84 companies had a profit, the range being from a loss of 32.4 per cent to a profit of 47.3 per cent, with an average of 10.9 per cent.

PROFIT ON COMPANY INVESTMENT

As already stated, the company investment includes all of the money put into the business by the stockholders collectively as a company, or earnings accruing to them and left in the business. The return upon the company investment was higher than upon the milling investment for each year excepting 1921. This was partly due to the difference in the amounts of the two investments and partly because interest paid is not deducted from income in the case of earnings on the milling investment, whereas it is a deduction from the company income.

The average annual rate of return on the company investment for the 108 companies was 18.3 per cent in 1919, 20.9 per cent in 1920, a loss of one-tenth of 1 per cent in 1921, and a profit of 12.5 per cent in 1922, with an average of 12.7 per cent for the four-year period.

The annual average rate of return on the company investment for the northwestern district ranged from 4.7 per cent in 1921 to 21.5 per cent in 1920 with an average of 15.4 per cent for the period and for the other districts the results were as follows: Southwestern district, a loss of 2.9 per cent in 1921 and a maximum profit of 24.4 per cent in 1920, with a four-year average of 12.6 per cent; the mountain and coast district ranked third in profitableness, with a four-year average rate of profit of 9.8 per cent, and an annual range from a loss of 6.6 per cent in 1921 to a profit of 25.4 per cent in 1920; the central and eastern

district had a four-year average of 8.2 per cent, ranging from 1.1 per cent in 1921 to 16.1 per cent in 1919; the southeastern district had the lowest average profit for the four-year period, 8 per cent, and a range from an average loss of 4.2 per cent in 1921, to an average profit of 18.5 per cent in 1922.

PROFITS PER BARREL

The milling profit per barrel showed a wide range for different years and for different milling districts. The average annual milling profit per barrel on all flour sold for all companies covered ranged from 6 cents in 1921 to 58 cents in 1920, with an average for the period 1919-1922 of 36 cents per barrel. The average milling profit per barrel for all companies for different years was as follows: 47 cents in 1919, 58 cents in 1920, only 6 cents in 1921, and 32 cents in 1922.

There was, of course, a wide range for different sections of the country. For example, the four-year average for different districts was as follows: Mountain and coast, 54 cents per barrel; central and eastern, 40 cents; southwestern, 39 cents; northwestern, 32 cents; and the southeastern, 31 cents per barrel. The extreme range in annual averages, by districts, was from a profit of \$1.06 per barrel in 1920 in the mountain and coast district to a loss of 31 cents per barrel for the same district in the following year.

The company profit per barrel was somewhat lower than the milling profit in each year due to interest paid for borrowed funds.

PROFITS FOR THE 10-YEAR PERIOD 1913-1922

The profits for 28 identical companies, producing about 29 per cent of the total wheat-flour production for the entire country, which were also secured for the 10-year period 1913-1922, averaged 18.5 per cent on the milling investment for the entire period. For the four-year period 1919-1922, the average rate of profits of these 28 companies was 13.9 per cent, as compared with 10.6 per cent for the 108 companies. The range in annual average rate of profit for the 10 years was from 2.6 per cent in 1921 to 36.5 per cent in 1917.

There was a wide range for individual companies. The combined 10-year average rate of milling profits for the 28 individual companies ranged from 4.9 per cent to 30.9 per cent. The individual company range for the single year 1921, the least profitable year, was even greater; namely, from a loss of 62.4 per cent to a profit of 24.3 per cent, while in 1917, which was the most profitable year, the lowest individual company profit was 8.3 per cent and the highest 94.3 per cent.

On the company investment the average rate of profit for the 10-year period 1913-1922 was 19.9 per cent. These 28 companies included most of the very large flour milling concerns.

PROFIT PER BARREL 1913-1922

The average milling profit per barrel for the 28 companies in 1922 was exactly double that for 1913, being 14 cents in 1913 and 28 cents per barrel in 1922. The average for the 10-year period was 30 cents per barrel, ranging from 6 cents in 1921 to 58 cents per barrel in 1917.

COST OF WHEAT-FLOUR PRODUCTION

Costs of wheat-flour production are presented for 108 different flour milling companies producing over 40 per cent of the total flour output for the four-year period 1919-1922, and for 28 identical companies producing about 29 per cent of the total for the 10-year period 1913-1922. These 108 companies ground 900,400,000 bushels of wheat and produced 197,530,000 barrels of flour during the four-year period 1919-1922. The four-year average cost of production was \$8.85 per barrel, and the average annual cost ranged from \$10.98 per barrel in 1920 to \$5.97 per barrel in 1922.

There were considerable differences in the average costs for different sections of the country. In the northwestern district, which produces largely hard spring wheat flour, the cost averaged \$9.10 per barrel for the period 1919-1922, with a maximum of \$11.38 per barrel in 1920 and a minimum of \$6.26 per barrel in 1922. The average cost for the southwestern district, which makes chiefly hard winter wheat flour, was \$8.41 per barrel, with a cost of \$10.54 per barrel in 1920 at the peak and \$5.44 per barrel in 1922, which was the lowest point. The southeastern district, which produces soft winter wheat flour, had a four-year average cost of \$9.02 per barrel, with a maximum of \$11.28 per barrel in 1920 and a minimum of \$6.20 per barrel in 1922. The central and eastern districts, which grind mainly soft winter wheat, produced locally, and hard spring wheat from Canada, Minnesota, and the Dakotas, had a four-year average cost of \$8.99 per barrel, with annual costs ranging from \$11.08 in 1920 to \$6.21 per barrel in 1922. The four-year average for the mountain and coast district, which grinds hard spring wheat produced in the Mountain States, and the soft wheats grown in the Pacific Coast States, was \$8.43 per barrel, while the yearly range was from \$9.89 per barrel in 1920 to only \$5.58 per barrel in 1922.

For the 10-year period the annual average cost of producing a barrel of wheat flour increased rapidly from 1913 to 1920, after which there was a sharp decline. The annual average cost for the 28 companies increased from \$3.84 per barrel in 1913 to \$11.09 per barrel in 1920, and then decreased to \$6.03 per barrel in 1922. The lowest annual average cost for an individual company during the 10-year period was \$3.46 per barrel in 1913, and the highest was \$12.27 in 1920. The lowest post-war cost for a single company was \$4.94 per barrel in 1922.

COST OF WHEAT IN FLOUR

During the four-year period 1919-1922 the average cost of the wheat constituted almost 90 per cent of the cost of flour and its by-products; the cost of packages nearly 4 per cent of this total cost, labor about 2.5 per cent, and general expenses and depreciation about 2.5 per cent. The average quantity of wheat used per barrel of flour was 4.56 bushels, ranging from 4.47 bushels in 1919 to 4.63 bushels in 1920. There was a considerable range in the quantity of wheat required to produce a barrel of flour for different sections of the country. The northwestern district used the greatest quantity of wheat per barrel of flour for each year of the period 1919-1922, the range being from 4.5 bushels in 1919 to 4.74 bushels in 1920, with an average of 4.63 bushels for the four years. The mountain

and coast district used the smallest quantity, its average for the four years being 4.42 bushels, ranging from 4.43 bushels in 1920 to 4.41 bushels in 1922.

The average cost of wheat ranged from \$11.57 per barrel of flour in 1920 to \$5.84 per barrel in 1922. In 1922, by districts, the average cost of wheat per barrel of flour was as follows: Mountain and coast, \$5.07; northwestern, \$6.18; southwestern, \$5.27; southeastern and central and eastern, each \$6.19 per barrel.

This sharp decline in the cost of wheat per barrel of flour does not fully reflect the disastrous decline in the prices of wheat from 1920 to 1922. The purchase prices of wheat at the mills for these 108 companies averaged \$2.28 per bushel in 1919, \$2.50 in 1920, \$1.82 in 1921, and \$1.28 in 1922. The decrease in this average delivered price of wheat from 1920 to 1922 was almost 50 per cent. If the prices of wheat were reckoned at the farm the percentage of decline would be, of course, still greater.

COMPARISON OF COSTS BY COMPANIES

There was a wide range in the cost per barrel of producing wheat flour for individual companies. This wide range was largely due to differences in the cost of the wheat ground. Wheat prices vary widely in different sections of the country, depending upon the kind and quality of wheat and upon its proximity to market. For example, in 1920, the year of highest costs for the four-year period, the cost of flour for individual companies ranged from \$8.61 to \$13.99 per barrel; in 1922, the low cost year, the range was from \$4.87 to \$8.12 per barrel. While there was a very wide range in individual costs for different years, most of the companies, and the bulk of the production for each year, fell within a fairly narrow range. In 1922, for example, companies producing over 53 per cent of the output covered had production costs ranging from \$5 to \$6 per barrel and 95 per cent of the output covered was produced at less than \$7 per barrel, while the extreme range, as just stated, was from \$4.87 to \$8.12 per barrel.

FLOUR AND FEED PACKAGES

As already stated, the cost of packages was the second largest item in the mill cost of flour; it averaged 40 cents per barrel for the four-year period 1919-1922.

The absence of Federal laws regulating the sizes of flour and feed packages and the widely varying State laws and customs have resulted in an unnecessary diversity and multiplicity of packages, thus increasing the cost of production and distribution. The need of standardizing the sizes of packages has been recognized. The laws of various States requiring that the weight contents shall be marked on each package do not satisfy this need. Forty-one States have such laws for flour packages and 46 States for commercial feeding stuffs. Weight marking laws afford no relief from the waste involved in a multiplicity, nor do they give full protection against deception of the consumer.

Not less than 34 different sizes of flour packages are now in use in the domestic trade. Reports from 80 representative milling com-

panies show that more than 97 per cent of their combined sales in 1922 were in 12 different sizes of packages, which in fact really represented only 6 practically different sizes of packages, namely, the barrel, half barrel, quarter barrel, eighth barrel, sixteenth barrel, and the special 140-pound export sack. The close resemblance between the 48 and 49 pound sacks, the 24 and 24½ pound sacks, and the 12 and 12½ pound sacks, respectively, affords an easy opportunity for deceiving the uninformed and unobservant purchaser.

MULTIPLICITY OF FLOUR PACKAGES

As a result of special inquiries addressed to various State and local officials and flour milling companies, extensive information was obtained regarding the weights of the different sizes of flour packages prescribed either by law or by regulation or in use by virtue of trade custom. It appears that not less than 34 different sizes of packages are in use in the domestic trade in the various States. A study of the data shows that 12 States and the District of Columbia have no laws or regulations fixing the size of flour packages or containers. These States are Arizona, Colorado, Florida, Montana, New Hampshire, New Jersey, New Mexico, New York, Utah, Vermont, Washington, and Wyoming. On the other hand, there are 33 States in which the law prescribes the standard weight of a barrel of flour and 2 in which it is fixed by regulation at 196 pounds, while in Texas the law provides for a 200-pound barrel, though the 196-pound barrel is in use by custom. In 13 States only the standard barrel is prescribed by law, all other packages being in use by custom. In addition to the standard barrel and half barrel, 19 States have provided by law or regulation for from two to four other packages, most of which are irregular sizes or not even fractional parts of the standard barrel. These States are California, Idaho, Illinois, Kansas, Michigan, Minnesota, Mississippi, Missouri, Nebraska, Nevada, North Carolina, North Dakota, Oklahoma, Oregon, Pennsylvania, South Carolina, South Dakota, Virginia, and West Virginia. Fourteen of these States have from one to seven such packages by custom. It may be noted also that Michigan is the only State that has provided by law for a complete list of packages down to the 6½-pound sack that are even fractions of the standard 196-pound barrel. In a number of States many sizes of packages are in use by custom. Alabama, by administrative regulation, and Georgia, by statute, have the standard 196-pound barrel, while the half barrel and all smaller packages are even fractions of a 192-pound barrel. Texas is the only State in which the so-called decimal weight basis, i. e., 200-pound barrel, has been adopted, but, by a decision of the attorney general of the State, flour may be offered for sale in any size package when properly marked showing the net weight contents.

Nineteen States have from one to four flour packages in use at the present time which deviate from the standard barrel or even fraction of a barrel. Under the proposed so-called decimal weight system the illogical and uneconomical complexity in the sizes of flour packages would be avoided and the opportunity for deception would be greatly reduced.

PACKAGE WEIGHT MARKING LAWS

The misbranding section in the Federal food and drugs act requires that all articles of food in package form entering into interstate commerce must have the quantity of the contents plainly and conspicuously marked on the outside of each package in terms of weight, measure, or numerical count. The main purpose of the Federal package weight requirement is to safeguard the interests of the public in purchasing articles of food and prevent fraudulent dealing in short-weight packages of food shipped in interstate commerce. So far as reported to this commission, 41 States also require that the weight contents of flour packages must be marked thereon, while in 46 States there is a similar requirement for commercial feeding stuffs. -

The abuses resulting from a multiplicity and diversity of packages are not removed by marking the weight on the package. On the contrary, the various marking requirements rather tend to promote the multiplicity of packages, which is one of the principal grievances of the millers. While there is no question but that these weight-marking provisions have been of benefit to the public in general, yet for certain classes of consumers the protection intended by the marking requirements has not been fully attained. The weight shown upon the package is a notice that it contains a certain quantity of flour, and with many purchasers this is all the protection necessary. Unfortunately all purchasers do not understand the significance of the weight figures on flour packages. The number of this class of purchasers is of course unknown, but considering merely the illiterate, according to the census of 1920 there were 72,000,000 persons 15 years of age and over in the United States, and of this number 4,686,000, or 6.5 per cent, were classed as illiterate. This part of the public is not adequately protected by the requirement that the weight of the contents be plainly marked upon the package. Throughout the hearings on the several bills that have been before Congress, also in communications to this commission, reference was made to the deception and fraud practiced by unscrupulous retail dealers in selling flour to unobservant purchasers.

INCONVENIENCE OF PRESENT DIVERSITY OF PACKAGES

While at least 34 different sizes of packages are either authorized by law or in use by custom, it does not necessarily follow that all of these packages are needed in actual trade. As shown by the official list of flour packages approved by the Millers' National Federation (see Appendix, p. 127) only 21 separate sizes in 4 different kinds of containers are provided for. Two are for the 196-pound and 98-pound standard barrel and half-barrel in wood, 2 in 140-pound and 98-pound jute sacks, 19 range from 2-pound to 98-pound cotton sacks, and 15 paper sacks which with four exceptions duplicate the sizes for the cotton sacks. So far as the demand for particular sizes of flour packages is concerned, reports from 80 representative milling companies show that in 1922 about 94 per cent of the sales by southeastern mills required only five different sizes of packages, while in other sections of the country from 92 to 97 per cent of the flour sales were in seven different sizes of container

Furthermore, while more than 97 per cent of the combined sales of all these companies were in 12 different sizes of packages, as a matter of fact, the 12 sizes represented only 5 regular package units and 1 special unit, the 140-pound sack. The difficulties and abuses which are complained of by the milling industry are largely ascribed to the present duplicate classification for the quarter-barrel, eighth-barrel, and sixteenth-barrel sizes.

Aside from the 140-pound sack, which is the customary size for bulk sales and export business, the entire list of flour packages might well be limited to a few standard sizes each one of which would be so distinctly different in weight as to leave no room for mistake by the purchaser. The elimination of the duplication of packages particularly for the quarter-barrel, eighth-barrel, and sixteenth-barrel sizes is important because it would remove the possibility of deceiving the uninformed and unobservant purchaser, and also because the consumer, as a consequence of the added expense of packing in so many different packages, must ultimately pay a higher price for flour. The proposed "decimal-weight law" would accomplish these purposes (see p. 99). It aims at simplicity and economy and its adoption would remove the unsatisfactory conditions arising from the present multiplicity of packages. This proposed law appears to have practically the unanimous and unqualified approval of all the factors engaged in the different branches of business which have to do with the production and distribution of flour and feed.

WHEAT, FLOUR, AND BREAD PRICES

Monthly average quoted prices for hard spring wheat flour in the northwestern district (first family patent) based upon millers' quotations f. o. b. mill, increased from \$10.31 per barrel in January, 1919, to \$15.66 per barrel in May, 1920, an increase of 52 per cent, and then declined to \$6.88 per barrel in September, 1922, or 33 per cent below the January, 1919, average price. The monthly average quotation for the same grade of hard winter wheat flour in the southwestern district increased from \$10.08 per barrel in January, 1919, to \$13.32 per barrel in May, 1920, an increase of 32 per cent, and then declined to \$5.79 per barrel in September, 1922, or 43 per cent below the January, 1919, average price.

The monthly average price of No. 1 northern hard spring wheat at Minneapolis increased from \$2.21 per bushel in January, 1919, to \$3.09 per bushel in May, 1920, an increase of 40 per cent, and then fell to \$1.10 per bushel in September, 1922, or 50 per cent below the average price in January, 1919. In Kansas City the monthly average price of No. 2 hard winter wheat increased from \$2.31 per bushel in January, 1919, to \$2.93 per bushel in May, 1920, an increase of 27 per cent, and then declined to \$1.04 in September, 1922, or 55 per cent below the average price in January, 1919.

Data collected and published by the United States Bureau of Labor Statistics show that bread prices have not decreased in like degree with the prices of wheat and flour. For example, in Minneapolis the retail price of a 1-pound loaf of bread was 9.2 cents in January, 1919, and 9 cents in September, 1922; in Kansas City it was 9.3 cents

in January, 1919, and 7.9 cents in September, 1922; in Boston 9.1 cents in January, 1919, and 8.5 cents in September, 1922; and in New York City 10 cents in January, 1919, and 9.8 cents in September, 1922. Bread prices in other cities show a similar situation.

From January, 1919, to September, 1922, as shown above, the monthly average quoted prices of flour declined 33 per cent in the northwestern district, and 43 per cent in the southwestern district; wheat prices declined 50 per cent in Minneapolis and 55 per cent in Kansas City; while bread prices declined about 2 per cent in Minneapolis, about 15 per cent in Kansas City due to a price war, 6.6 per cent in Boston, and 2 per cent in New York City. This comparison shows that the decline in wheat prices, so disastrous to the farmer, has benefited the purchaser of bread very little.

CHAPTER I

ORIGIN OF THE INQUIRY AND DEVELOPMENT OF THE INDUSTRY

Section 1. Resolution directing the inquiry.

On September 15, 1920, the Federal Trade Commission submitted a report to Congress on commercial wheat flour milling, and on January 18, 1922, the following resolution, introduced by Senator Norris, was adopted by the United States Senate:

Resolved, That the Federal Trade Commission be, and it is hereby, directed to extend its investigation of commercial wheat flour milling from the date of the conclusion of its investigation of said industry included in its report to Congress on September 15, 1920, up to the close of the fiscal year ending June 30, 1921.

In harmony with the wording of the above resolution, the commission limited the intensive work of this inquiry to the phases of the flour industry covered by its report on commercial wheat flour milling. As the entire force of the commission was engaged on pressing inquiries begun before the above resolution was passed, work on this report was not commenced until late in 1922. In order to furnish the Senate with recent information the period covered was extended so as to include the business year ending in 1922.

Section 2. Salient features of the 1920 report.

ORIGIN AND SCOPE.—The report of September 15, 1920, on commercial wheat flour milling, mentioned above, had its origin in connection with the general food investigation made by the commission during the World War and covered the five-year period ending in 1918. That report analyzed the operations of 37 important wheat flour milling concerns which ground somewhat more than 30 per cent of the total quantity of wheat flour produced by all flour mills in the United States for each year of the period covered.

LOCALIZATION OF COMMERCIAL MILLING.—In the general survey of the flour milling industry attention was called to the fact that the United States may be divided into definite areas according to wheat flour production and consumption. These areas were described as (1) "selling areas," in which there is normally a large surplus production of flour over the consumptive requirements of the population; (2) "buying areas," which include sections of the country in which the wheat flour production is not sufficient to meet the consumptive requirements of the population; (3) "neutral areas," in which the production and consumption are approximately equal; and (4) "small production areas," in which there was an entirely inadequate production of flour for the local population; of course these areas were also buying territories.

The selling areas include the Pacific Northwest, Montana, North Dakota, Minnesota, Nebraska, Kansas, Oklahoma, and Missouri. The "buying areas" (including "small production areas") embrace Nevada, Utah, Wyoming, Arizona, New Mexico, all the Southern States (except Tennessee), West Virginia, Pennsylvania, Delaware, New Jersey, New York, and the New England States. The "neutral areas," in which production and consumption nearly balance,

cover California, Colorado, South Dakota, Iowa, Wisconsin, Michigan, Illinois, Indiana, Ohio, Kentucky, Tennessee, Virginia, and Maryland.

Statistical data relative to the average annual production of wheat and wheat flour and the estimated population of these areas are presented for a period of years. As no material changes have taken place in this connection since the publication of the 1920 report, no extension of the data relating thereto is included in this report.

CONCENTRATION IN THE FLOUR-MILLING INDUSTRY.—The former report called attention to the fact that there was a concentration of wheat flour milling in a few favorably located cities, that 10 of the larger milling concerns probably had sufficient capacity to produce over half of the annual wheat-flour consumption in the United States, and that there had been an increase in the number of large flour mills. Minneapolis, Buffalo, and Kansas City, in the order named, were and are still the principal flour-milling centers. Statistics were presented which showed that the number of flour mills in the United States having an annual output in excess of 100,000 barrels was constantly increasing and that the number of mills with a smaller capacity was constantly decreasing. Although a large part of the annual production of flour was still produced by relatively small concerns, each operating a single plant, the report stated that "the tendency toward concentration in the wheat-flour industry is notable."

COSTS, PRICES, AND PROFITS.—The discussion of costs, prices, and profits was largely based upon data secured from 37 companies operating 86 mills, located in territory extending from New York City in the East to Billings, Mont., in the West; and from Duluth, Minn., in the North, to Nashville, Tenn., in the South.

These 86 mills were placed, according to geographical location, into three groups: The northwestern, 43 mills, mostly in Minnesota and North Dakota, grinding practically nothing but hard spring wheat; the southwestern, 24 mills, in the States of Kansas, Oklahoma, and Missouri, grinding probably from 80 to 90 per cent of hard winter wheat and from 10 to 20 per cent of soft winter wheat; and the eastern group, 19 mills, located roughly in a territory extending from New York to Chicago and from Grand Rapids, Mich., to Nashville, Tenn., grinding, as far as could be learned, both hard and soft winter wheat, according to occasion and location.

The salient features regarding the quantities of wheat ground, flour produced, and quantity and value of flour sales for these 37 companies as presented in the 1920 report are shown in the following table:

TABLE 1.—Quantity of wheat consumed, flour produced and sold, and amount of flour sales, for 37 companies for their business years, 1914-1918

Year	Wheat consumed	Flour		
		Produced	Sold	
	<i>Bushels</i>	<i>Barrels</i>	<i>Barrels</i>	<i>Dollars</i>
1914.....	168,062,000	37,985,000	38,450,000	159,658,875
1915.....	170,311,000	37,699,000	38,231,000	212,038,742
1916.....	198,892,000	43,761,000	43,430,000	227,969,628
1917.....	165,568,000	35,991,000	36,777,000	314,318,500
1918.....	150,464,000	33,901,000	34,650,000	254,192,287

The quantities of wheat ground by these 37 companies ranged from a minimum of about 150,000,000 bushels in 1918 to a maximum of nearly 200,000,000 bushels in 1916; the value of their sales increased from about \$160,000,000 in 1914 to \$354,000,000 in 1918.

The average receipts and profit per barrel and the rate of return on the investment for the 37 companies, as presented in the 1920 report, were as follows:

TABLE 2.—Average receipts and profits per barrel of flour and rate of return on investment for 37 companies for their business years, 1914-1918

Year	Receipts per barrel	Profit per barrel	Rate of return on investment
1914.....	\$4. 15	\$0 14	12. 6
1915.....	5 55	. 21	17 2
1916.....	5. 25	. 14	13 1
1917.....	8. 55	. 65	38 4
1918.....	10 22	. 65	34. 1

The average receipts f. o. b. mill per barrel of wheat flour increased from \$4.15 in 1914 to \$10.22 in 1918; the profit per barrel increased from 14 to 65 cents, while the rate of return on investment ranged from a minimum of 12.6 to a maximum of 38.4 per cent.

Incomplete data gathered on the flour jobbing business showed a marked increase from 1914 to 1918 in the expense of handling flour. Car-lot jobbing expenses, for individual concerns, varied from about 5 to 16 cents per barrel in 1914 and from 6 to 19 cents per barrel in 1918; while the average expenses for less-than-car-lot business increased from 25 cents per barrel in 1914 to 39 cents per barrel in 1918. The per-barrel profit on car-lot business showed a wide range for individual companies and for different years; in 1918 the net profits on this business ranged from 12 to 31 cents per barrel. On the less-than-car-lot business the average per-barrel profit, including proprietors' salaries, increased from 16 cents per barrel in 1914 to 35 cents in 1917 and then declined to 16 cents per barrel in 1918. Owing to lack of funds to cover the expenses of the inquiry, the costs and profits of flour jobbers were not ascertained for the present report.

Section 3. Development of the flour milling industry.

Cereals have constituted an important part of the food of man from the earliest times. Among primitive peoples the tools for making flour were very crude and included a mortar, in which the grains of cereal were crushed by pounding with a mallet or pestle. This impact form of crushing the grain was followed by the use of the friction method, in which the wheat was ground between two stones known as the saddle-stone method. Later the simple mill, or quern, operated by two persons, introduced a revolving motion in the upper stone. The principle employed in this form of mill was followed for several thousand years during which the only important advancement made related to the motive power used and not to the method of grinding. The Greeks and Romans in-

creased the capacity of their flour mills by enlarging the stones and utilizing animals, wind, and water for motive power. This enlargement of the mill led to the establishing of a flour market.

In succeeding centuries, however, improved processes were adopted. The grain was elevated mechanically and was thus fed into the hopper regularly. Then improved means were devised for sifting the product. The flour still mixed with the bran and other feed by-products was again elevated and, descending through a series of sieves of various materials, was thus separated from the bran and the lower grades of meal. In the middle of the seventeenth century French engineers introduced a sifting bag, and in the eighteenth century a system of repeated milling was inaugurated, which is now the standard practice.

In the development of the milling industry in the United States many innovations were introduced. The old sifting process (bag sifter) was replaced by reel separators in which silk was finally used as the bolting cloth. Elevators, conveyors, and flour cooling systems were installed and the entire technique of the milling industry was changed by the development of the automatic mill. This was the era of the gristmill where wheat, grown in the neighborhood, was ground into flour and middlings, with bran as a residual product.

About 1820 several cities, such as Rochester, N. Y., St. Louis, Mo., and Richmond, Va., were important milling centers doing a considerable volume of business for domestic and foreign trade. Wheat flour during the greater part of the nineteenth century was made almost entirely from winter wheat, with local exceptions in various States where spring wheat only was available. The entire wheat crop in 1840, according to the census returns, was only 88,000,000 bushels, which was all grown east of the Mississippi River, but in 1866 it had increased to 152,000,000 bushels, and production continued to increase rapidly as settlers moved into the States west of the Mississippi River.

The States adjacent to the Canadian borders all raised spring wheat, which was not considered suitable for conversion into good flour because the product had a dark color. This was due to a defective milling process, wherein the dry outer skins of hard wheat were ground to a fine bran, which could not be eliminated, and thus injured the appearance and value of the flour.

A machine for purifying the meal was the result of various experiments during the first half of the nineteenth century. The process consisted in subjecting the mass of middlings to a current of air by which the lighter branny particles were blown away, while the heavier components remained. One of these machines was installed in a mill at Minneapolis in 1870 and immediately the flour made from the despised spring wheat advanced to a leading position among the various brands of flour sold in the American domestic and export trade, and Minneapolis became the chief wheat-flour milling center of the United States. The method of grinding grain by the use of rolls was first devised by a Swiss engineer about 1820. By 1880, or soon thereafter, all the large mills in America were converted to roller mills, and this method became the standard practice throughout the United States and Canada. Adoption of the purifier and the rolls revolutionized the milling industry in this country. Large commercial mills were erected at strategic points, while many local

mills declined to the position of grist mills, grinding for a toll. The merchant miller of to-day has a broad market and is often engaged in the export trade so that he may be vitally interested in the growth of wheat and the exports of flour from Canada, Argentina, Australia, India, and Egypt.

Section 4. Kinds of wheat and their flour products.

Wheat in the United States is classified according to season of planting as fall or winter and spring wheat, according to texture as soft and hard wheat, and as to color as dark, red, yellow, and white. Certain climates and soils favor the growth of one kind more than another, so that in certain sections a hard winter wheat flourishes while a soft variety will not, and vice versa. The Eastern, Southern and the Central States east of the Mississippi River, excepting Wisconsin, produce soft wheat chiefly; Minnesota, Wisconsin, Montana, the Dakotas, and northern Nebraska, hard spring wheat; Kansas, Oklahoma, and southern Nebraska, hard winter wheat; and the Pacific Coast States both soft spring and soft winter wheat. Durum, a very hard spring wheat, thrives in a broad stretch of country extending from Minnesota and the Dakotas to Texas.

According to prevailing milling methods there are certain differences between both the flour yield and the quality of flour made from the different wheats, which are of distinct commercial importance. From the heaviest soft wheat the yield of flour is generally about 80 per cent; from the heaviest hard wheats about 74 per cent; the lightest soft wheat yields about 65 per cent flour, and the lightest hard wheat about 67 per cent.

Soft-wheat flour has less gluten in it than hard-wheat flour, and is less nutritious and savory; but it has more starch and the loaf made from it is whiter and more attractive. It is, therefore, particularly suited for being made into crackers, the hot soda biscuit of the Southern States, pastry and cake.

Hard-wheat flour is rich in gluten, the part of the wheat which builds tissue. It readily absorbs water, and the gluten, swelling several times greater than its dry bulk, becomes elastic and tenacious. It is best suited for making the ordinary white loaf, or "light bread" or "baker's bread." The wheat from which such flour comes is typified in the Turkey red of Kansas and the hard spring wheat of the Red River region of North Dakota and Minnesota. Unlike soft-wheat flour, the hard-wheat product is not so well esteemed for making pastry and cake, as, on account of the tenacity of its gluten, it becomes tough when prepared for these purposes.

The flour made from durum wheat has a high gluten content, and in the United States it is used chiefly for making macaroni. In France and Russia, however, it is also made into bread, which, though dark in color, has a fine flavor. The dark color of the bread made from durum flour probably has much to do with the prejudice in this country against using it in bread making.

Section 5. Process of wheat flour manufacture.

Flour is made from the wheat berry by successive processes of grinding and sifting. Preliminary to these processes the wheat is cleaned, scoured, and conditioned.

The cleaning is done by passing the grain through two separators—the receiving and the milling—both supplied with sieves and air-

suction devices for removing foreign matter. In the receiving separator the weed seed, trash, straw, etc., are eliminated, and in the milling separator the grain is still more thoroughly cleaned. Other separators are provided for removing oats, mustard, garlic, etc., and metallic substances are taken out by a magnetic separator. The dirt and dust which remain on the wheat are then removed in a scouring machine, within which are beaters which drive the grains against the rough interior in order to free them of such substances.

The wheat is then conditioned by being subjected to heat and water and left to stand in bins from 24 to 72 hours, according to the kind of wheat. This process softens the cells and toughens the bran coating, so that it will not break up into too fine particles. When this process is completed, the wheat is again scoured and is then ready for milling.

By the process of milling wheat is ground and the product is separated into flour and feed in the proportions, roughly, of 67 to 75 of the former and 33 to 25 of the latter. At first the wheat berries are repeatedly passed through grooved iron rollers adjusted to revolve at different speeds, so as to crush and tear the grains as they pass and so at each successive passing to wear them down. Each time that the partially ground product comes from a set of rollers it is sifted and the coarser parts, such as bran, which are used for feeds, are separated from the middlings, or grits, which are ground into flour.

When the middlings have been sufficiently purified of the bran particles or feeds they are repeatedly passed through sets of smooth rollers, each successive set being closer together than the preceding. Both flour and middlings come from each set of rollers and are separated by sifting before the middlings pass on to another set, and eventually all the middlings are ground down to flour and a fine branny material, which is thrown into the feeds.

Each time the stock is sifted, whether coming from the grooved or smooth rollers, a flour stream is produced, and it is according to the disposition made of these streams that the various grades of flour result.

The wheat products as adopted by feed-control officials are defined as follows:¹

Wheat bran is the coarse outer covering of the wheat kernel as separated from cleaned and scoured wheat in the usual process of commercial milling.

Standard middlings consists mostly of fine particles of bran, germ, and very little of the fibrous offal obtained from the "tail of the mill." This product must be obtained in the usual commercial process of milling and shall not contain more than 9.5 per cent crude fiber.

Flour middlings shall consist of standard middlings and red dog flour combined in the proportions obtained in the usual process of milling and shall not contain more than 6 per cent crude fiber.

Red dog flour consists of a mixture of low-grade flour, fine particles of bran, and fibrous offal from the "tail of the mill" and shall not contain more than 4 per cent crude fiber.

Brown shorts (red shorts) consists mostly of the fine particles of bran, germ, and very little of the fibrous offal obtained from the "tail of the mill." This product must be obtained in the usual commercial process of milling.

Gray shorts (gray middlings or total shorts) consists of the fine particles of the outer bran, the inner bran or bee-wing bran, the germ, and the offal or fibrous materials obtained from the "tail of the mill." This product must be obtained in the usual process of commercial milling.

¹Directory of Ohio Flour Mills, 1923, pp. 94-95.

White shorts or white middlings consists of a small portion of the fine bran particles and the germ and a large portion of the fibrous offal obtained from the "tail of the mill." This product must be obtained in the usual process of flour milling.

Wheat mixed feed (mill-run wheat feed) consists of pure wheat bran and the gray or total shorts or flour middlings combined in the proportions obtained in the usual process of commercial millings.

Wheat bran and standard middlings consists of the two commodities as defined above, mixed in the proportion obtained in the usual process of commercial milling.

Screenings consists of the smaller imperfect grains, weed seeds, and other foreign materials having feeding value separated in cleaning the grain.

Scourings consist of such portions of the cuticle, brush, white caps, dust, smut, and other materials as are separated from the grain in the usual commercial process of scouring.

Section 6. Commercial grades of wheat flour.

The grades of wheat flour most commonly sold are patents, straights, clears, and low grade.

Patents are made of the purified middlings, the flour streams used coming only from the smooth rollers. Its quality is designated by the proportion of the total flour content of the wheat from which it is made. The limitations of a patent flour are not clearly defined and millers themselves sometimes disagree as to whether a flour is a patent. The situation was summed up in a Federal case, *Lexington Mill & Elevator Co. v. United States*,² a few years ago, the court pointing out that "by 'patent flour' is meant flour containing less than the total of the flour content of the wheat," and that "there is no fixed standard as to the percentage of the flour content which may be properly termed patent flour."

Continuing, it pointed out as follows:

When the process first originated, a relative low percentage was called patent flour; as improvements were made in the methods of manufacture, a higher percentage was customarily so labeled. Different mills adopt different standards, varying in accordance with the efficiency of their methods of manufacture. The quality of the wheat milled also enters into the question. The better the wheat the higher the percentage of the flour content that may properly be classed as patent flour. The case of the Government rests entirely on the evidence of some millers that in their opinion no greater percentage than 85 per cent can be properly classed as patent flour. This evidence is based upon the experience of those witnesses with different machinery and wheat, and is not predicated upon the claimant's methods of manufacture. There is a concurrence of the witnesses that the term "patent flour" does not connote any fixed or maximum percentage of the flour content of the berry.

In general, patent flours range from about 60 per cent to 90 per cent, but 85 per cent is usually the maximum and is known as standard patent. In making an 85 per cent patent the distribution of 100 pounds of flour produced is 85 pounds of patent, 10 pounds of clears, and 5 pounds of low grade. A short patent may contain only 60 per cent to 70 per cent of the total flour content and is a much more concentrated flour than the standard patent.

A clear flour is a grade between patent and low grade, being not good enough for the former and better than the latter.

Where the miller makes a patent flour that part of the flour which does not go into the patent goes into the clears and low grade; consequently when a standard patent is produced the proportion of the

²202 Fed. 618 (circuit court of appeals, eighth circuit, Jan. 23, 1913).

clears is decreased and when a short patent is made the quantity of the clears is increased. A short patent is higher in grade than a standard patent and a long clear is higher than a short clear.

In describing red dog the Miller's Almanack states: *

As to second clear and red dog—they are so close in quality that some mills run them together; but where second clear is made, it usually runs about 3 per cent, while red dog will run from 5 to 10 per cent, the percentage varying according to the method of milling shorts. Some mills regrind the shorts and, in fact, regrind the bran, making a large stream of red dog.

A straight flour is the result of mixing all the flour streams except the low grade; in other words, a mixture of the patents and clears is all the flour obtained after the feed and low grade have been removed. There may be variations of a straight flour, as a "cut" straight, from which a small percentage of the patent has been removed. A 50 per cent cut straight flour is made by taking out 50 per cent of the patent (containing 80 per cent of the flour content) and running the other 50 per cent with the clears, so that of 100 pounds of flour produced 58 pounds are cut straight, 40 pounds patent, and 2 pounds low grade. Again, a small per cent of clears may be added to a straight flour, the result being a "filled" or "stuffed" straight, which may be practically the same as a cut straight, as the addition of clears, which are of lower grade than the straight and patent, may reduce the straight to the same quality as is produced by the extraction of a given quantity of patent flour.

Low grade, as the name signifies, is an inferior flour and is the flour leavings after the patents, clears, and straights have been sifted out. The low grade produced in grinding is ordinarily 5 per cent of the total flour, so that when a straight flour is made 95 pounds of 100 are straight and 5 pounds are low grade.

These proportions vary considerably for different mills, and they also vary according to the quality of the wheat ground. As stated in the Miller's Almanack: *

These percentages vary in every mill, and there is no fixed basis to go on. A mill which is thoroughly equipped with cleaning and milling machinery of the latest type can produce a 75 per cent patent more easily than can the poorly equipped mill produce a 65 per cent patent. * * * Further, the percentage of patent will vary in every mill every day, this resulting from a variation in wheat which comes in.

Another flour, in the process of the manufacture of which no separation of feed and flour takes place, is called graham flour. It is simply the result of grinding the cleaned wheat to a moderate degree of fineness. Whole, or entire, wheat flour is prepared by a process somewhat similar to that used in making graham flour, except that after the wheat has been cleaned and before it is ground it is subjected to a mechanical process whereby the three outer layers of the berry are removed, and leaving what is known as the cereal in to be ground with the gluten and flour cells.

* The Miller's Almanack and Yearbook, 1923, p. 40.

CHAPTER II

PRODUCTION AND FOREIGN TRADE

Section 1. Growth of flour milling in the United States.

In the preceding paragraphs reference has been made to the gradual extension of the use of the gristmill as the pioneer settlers in the various States occupied desirable arable lands. Under such circumstances the production of flour was practically limited to the quantity necessary to sustain the local population. All mills were essentially neighborhood mills and only limited quantities of flour were sold in other markets.

Later, however, the rapid development of the large wheat-growing areas in the Prairie States together with the introduction of the purifier and the invention of rolls all combined to facilitate the construction of larger units manufacturing a standardized and uniform product which could be offered for sale in distant domestic and foreign markets. The transition to the present system, therefore, was a gradual growth.

The reports of the Census Bureau are the chief source of information regarding the development of the milling industry since the middle of the nineteenth century, and a statement of the number of mills from 1850 to 1921 is shown in the following table:

TABLE 3.—*Number of merchant and custom flour and grist mills, 1850-1921*

Census year	Merchant flour mills	Flour and grist mills		
		Merchant mills	Custom mills	Total
1850.....				11,891
1850.....				13,898
1860.....				22,573
1870.....				24,338
1880.....				18,470
1890.....		9,476	15,782	25,258
1904.....	7,685	10,051		
1909.....	7,342	11,691	11,961	23,652
1914.....	6,876	10,788		
1919.....	6,733	10,708	10,427	21,135
1921.....	4,809	8,019		

A merchant mill is one that purchases grain and then sells the products after grinding, whereas a custom or neighborhood mill grinds the customer's grain for a fixed charge which may be taken as cash or in kind. The number of merchant mills was not shown separately prior to 1899.

Many of the merchant mills do not grind wheat. In 1904 the merchant wheat flour mills numbered 7,685, and since that year the number has steadily declined to only 4,809 in 1921. The marked decline in 1921 was partly due to the fact that the Census Bureau enumerated only those mills having products of \$5,000 value and over, while for earlier years the minimum was \$500.

The total number of mills increased from 11,891 in 1850 to 24,338 in 1879, and then declined to 18,470 in 1889.

At the end of the nineteenth century, the total number of mills attained its maximum. Approximately 40 per cent were merchant mills, while the remainder were custom mills. The number of custom mills declined from 15,782 in 1899 to 10,427 in 1919, while the number of merchant flour and grist mills reached its maximum of 11,691 in 1909, after which there was an uninterrupted decline to 8,019 in 1921.

The Census shows in 1919 that the total value of all grain products milled in the United States amounted to about \$2,147,000,000, of which over \$1,450,000,000 was wheat flour. Based upon the total value of all manufactured products the milling industry ranked sixth. In that year nearly 619,000,000 bushels of wheat, 137,000,000 bushels of corn, 76,000,000 bushels of oats, 28,000,000 bushels of barley, 17,500,000 bushels of rye, 5,500,000 bushels of buckwheat, and 4,000,000 bushels of other grains were ground.

The following table shows the quantity of wheat ground, and the quantity and value of flour produced in the specified years by merchant mills and by all mills:

TABLE 4.—Quantity of wheat ground and quantity and value of wheat flour produced by merchant mills and by all mills for census years 1899-1921

Census year	Wheat milled		Quantity of flour produced		Value of flour produced	
	Merchant mills	All mills	Merchant mills	All mills	Merchant mills	All mills
	<i>Bushels</i>	<i>Bushels</i>	<i>Barrels</i>	<i>Barrels</i>	<i>Dollars</i>	<i>Dollars</i>
1899.....	471,306,986	459,914,004	99,763,777	103,524,094	333,997,686	348,143,800
1904.....	494,035,083	(¹)	104,013,278	(¹)	480,238,514	(¹)
1909.....	498,430,314	503,468,556	105,736,645	107,108,461	530,116,254	557,914,979
1914.....	545,728,451	(¹)	116,403,770	(¹)	543,839,568	(¹)
1919.....	612,562,471	618,667,518	132,463,604	133,670,872	1,436,444,111	1,450,333,051
1921.....	521,233,509	(¹)	110,846,277	(¹)	871,731,960	(¹)

¹ Data not shown.

The value of flour produced by all mills increased from about \$348,200,000 in 1899 to over \$1,450,000,000 in 1919. A large part of this increase in value was due to the higher value per barrel. For example, in 1899 the average per barrel was \$3.36 while in 1919 it was \$10.85.

The quantity of flour produced by all mills increased from about 103,525,000 barrels in 1899 to the maximum of 133,670,000 in 1919; this represented an increase of about 30 per cent. Although there was an increase in the total quantity of wheat ground the proportion produced by custom mills declined from 3.6 per cent in 1899 to less than 1 per cent in 1919.

Section 2. Wheat flour production by States.

The census has reported the production of merchant flour mills by States, beginning with the 1909 census. The quantity of wheat ground by merchant mills increased from 496,500,000 bushels in 1909 to a maximum of 612,600,000 bushels in 1919, and then decreased to 521,200,000 bushels in 1921. The importance of custom mills has steadily declined until in 1919 the quantity of wheat ground by them was only 6,100,000 bushels or about 1 per cent of the total for all

mills. The quantity of wheat ground and of flour produced by States for 1921, as reported by the census, is shown in the following table:

TABLE 5.—Quantity of wheat ground and of flour produced by States, 1921

State	Wheat ground	Flour produced	Per cent	
			Wheat	Flour
	<i>Bushels</i>	<i>Barrels</i>		
Minnesota.....	111,619,978	23,733,071	21.4	21.4
Kansas.....	82,389,905	17,337,496	15.9	15.7
New York.....	37,880,394	8,357,930	7.3	7.6
Missouri.....	28,945,433	6,270,368	6.8	6.7
Illinois.....	23,991,908	5,214,574	4.6	4.7
Washington.....	21,021,447	4,470,253	4.0	4.0
Texas.....	18,540,482	4,008,777	3.6	3.6
Ohio.....	18,513,767	3,844,424	3.6	3.4
Indiana.....	15,749,107	3,253,703	3.0	3.0
Pennsylvania.....	14,800,686	3,007,340	2.9	2.7
Oklahoma.....	12,705,228	2,780,783	2.4	2.5
Oregon.....	11,538,248	2,527,886	2.2	2.3
Nebraska.....	11,151,294	2,341,877	2.1	2.1
Tennessee.....	10,793,905	2,233,594	2.1	2.0
Michigan.....	10,118,710	2,122,073	2.0	1.9
California.....	6,582,279	1,974,034	1.8	1.8
Kentucky.....	9,489,540	2,033,138	1.9	1.8
North Dakota.....	9,428,847	1,994,030	1.8	1.8
Virginia.....	8,373,120	1,760,810	1.6	1.6
Wisconsin.....	7,988,165	1,701,788	1.5	1.5
Colorado.....	6,645,417	1,480,579	1.3	1.3
North Carolina.....	6,579,500	1,340,705	1.3	1.2
Montana.....	5,634,461	1,276,037	1.1	1.2
Iowa.....	4,897,944	912,086	.9	.8
Maryland.....	4,453,051	836,249	.9	.9
Idaho.....	3,675,654	787,092	.7	.7
Utah.....	3,478,320	741,894	.7	.7
Georgia.....	2,467,731	542,203	.5	.4
South Dakota.....	1,764,229	354,521	.3	.3
West Virginia.....	1,677,592	379,162	.3	.4
Other States.....	5,330,059	1,065,022	1.0	1.0
Total.....	521,233,509	110,846,277	100.0	100.0

Minnesota, Kansas, and New York, in the order named, were the three leading flour-producing States in 1921. The Minnesota flour mills grind hard spring wheat grown in Minnesota, North and South Dakota, and wheat imported from Canada. The Kansas mills grind mostly hard winter wheat grown in Kansas and bordering States, while New York mills, especially those located in Buffalo and vicinity, use large quantities of wheat imported from Canada, or grown in States farther west. Minnesota and Kansas have ranked first and second, respectively, for many years. In 1909 Illinois ranked third and New York State fourth in the quantity of wheat ground, but beginning with the 1914 census New York has been third, while Illinois has dropped to fifth place. Missouri was sixth in 1909 and fourth in 1921.

Minnesota mills alone produced over 21 per cent of the total output of wheat flour for 1921; Kansas mills produced nearly 16 per cent, New York mills about 8 per cent, and Missouri mills 6 per cent. Flour mills located in these four States produced one-half of the total production of the entire country for 1921, while 11 States produced nearly 75 per cent of the country's total.

Flour mills furnish a market for the bulk of the wheat produced in the United States. Thus the total quantity of wheat ground by merchant mills, about 521,235,000 bushels in 1921, was equivalent to approximately two-thirds of the average production for the 12-year period ending in that year.

Section 3. Concentration in the industry.

As shown above, the number of merchant flour mills decreased from 6,900 in 1914 to 4,800 mills in 1921 (the latest census enumeration), which represents a decline of 30 per cent, while the average production per mill increased from about 16,900 barrels to 23,000 barrels, or 36 per cent. About 99 per cent of the wheat flour produced in the United States is manufactured by merchant mills. The decrease in the number was due to the gradual elimination of smaller mills.

Although there were over 4,800 merchant wheat flour mills in the United States in 1921, a few companies produced a large proportion of the total output. In that year five large flour milling companies operating 49 mills and each producing in excess of 2,000,000 barrels, had an aggregate production of over 25,000,000 barrels or nearly 23 per cent of the country's total; and eight companies, with 87 mills, each producing in excess of 1,000,000 barrels, had a total production of almost 30,000,000 barrels, or 27 per cent of that total. This concentration was largely the result of the expansion of business on the part of some of the largest flour-milling concerns, although it was partly the result of the merging of different interests.

Section 4. Domestic and foreign demand.

As shown in the 1920 report, the normal domestic consumption of flour in the United States is approximately 1 barrel per capita.¹ Domestic consumption has always taken the great bulk of the flour production of this country.

Wheat flour has been exported from the United States since early colonial days. The abolition of the "corn laws" in Great Britain in 1846 greatly stimulated wheat flour exportation from this country. In 1850 about 2,000,000 barrels of flour were exported, and a few years later flour was exported from the Pacific coast to Central and South America and the Orient. During the last 13 years flour exports have taken from about 7½ to 17½ per cent of the total flour production of the country, while flour imports have been comparatively small. The quantity and value of flour exports and imports from 1911 to 1923, inclusive, are given in the following table:

TABLE 6.—Quantity and value of wheat flour exports and imports for the fiscal years ending June 30, 1911–1923

Year ending June 30—	Exports		Imports	
	Barrels	Value	Barrels	Value
1911.....	10, 129, 435	\$49, 386, 946	141, 562	\$25, 287
1912.....	11, 006, 487	50, 959, 737	158, 777	665, 546
1913.....	11, 394, 805	53, 171, 537	107, 558	423, 981
1914.....	11, 521, 461	54, 454, 175	69, 911	268, 855
1915.....	16, 182, 765	94, 869, 343	64, 200	249, 742
1916.....	15, 520, 669	87, 237, 806	329, 905	1, 689, 418
1917.....	11, 942, 778	93, 198, 494	174, 704	1, 458, 279
1918.....	21, 879, 951	244, 861, 140	675, 066	6, 372, 333
1919.....	24, 181, 979	267, 966, 269	37, 140	375, 911
1920.....	21, 651, 961	240, 574, 670	159, 036	1, 806, 546
1921.....	16, 179, 956	154, 524, 355	1, 420, 884	13, 591, 494
1922.....	15, 796, 824	97, 386, 131	619, 105	3, 559, 501
1923.....	14, 882, 714	83, 991, 002	429, 421	2, 307, 861

¹ Report of Federal Trade Commission on commercial wheat flour milling, p. 14.

The quantities exported increased from 10,129,000 barrels in the fiscal year 1911 to 16,183,000 barrels in 1915, and to a maximum of 24,182,000 barrels in 1919. Since then the export sales have decreased and the quantity for the fiscal year 1923 was only 14,883,000 barrels. During the three fiscal years, 1918-1920, about 67,500,000 barrels, or an annual average of 22,500,000 barrels, were exported, which is approximately 20 per cent of the present annual production for the entire country. The average quantity exported was much smaller for the three fiscal years, 1921-1923, than for the preceding three-year period, but it was 50 per cent larger than for the three years immediately preceding the World War. The value of the exports, which was about \$49,387,000 in 1911, increased rather steadily until the maximum amount of \$267,966,000 was reached in 1919, since which time a marked reaction has set in and the value declined to \$83,991,000 in 1923. The average export price per barrel in the fiscal year 1911 was almost \$5, while the maximum reached in 1919 was a little over \$11 per barrel. In the fiscal year 1923 the average was about \$5.65 per barrel.

In addition to the foreign demand for flour, as outlined in the preceding paragraph, mention should also be made of the exports of wheat. The quantity of domestic exports of wheat for the fiscal year ending June 30, 1919, was 178,583,000 bushels, for the next year 122,431,000 bushels, and for 1921 the quantity increased to 293,261,000 bushels. It then declined to 208,321,000 bushels in 1922, and to 154,951,000 bushels in 1923. For the five fiscal years ending June 30, 1923, the total quantity of wheat flour exported from the United States was nearly 92,695,000 barrels, while the quantity of wheat exported was equivalent to about 212,800,000 barrels of flour.

During this 5-year period almost 70 per cent of the combined wheat and wheat flour exports were in the form of wheat. This large demand for the raw material from which flour is manufactured rather than the flour itself is partly due to the fact that some nations seek to develop the milling industry within their own borders by laying a heavy import duty on foreign manufactured flour, while wheat may be admitted free or practically free of duty.

Practically all of the wheat flour imported into the United States comes from Canada. During the fiscal years 1911-1915 imports of wheat flour were small. In the war years 1916 and 1918 imports were much larger, while the maximum quantity of 1,420,000 barrels was imported during the fiscal year ending June 30, 1921. Although a duty of 20 per cent ad valorem was imposed upon flour imports in the emergency tariff law signed May 27, 1921, and a duty of \$0.78 per hundred pounds was provided for in the McCumber-Fordney law signed September 21, 1922, flour is still imported in considerable quantities.

Canadian wheat may be imported into the United States by flour milling concerns, ground into flour, and exported without being subject to the duty of 30 cents per bushel under the provisions of the present tariff law. Any flour or by-product made from such wheat is subject to the duty, however, if it is subsequently sold for domestic consumption. These provisions are (1) the milling provision, under which the entire mill or a portion of the mill is operated under bond; all products manufactured by the bonded portion must be exported; (2) the drawback provision, under which the prescribed duty is paid

at the time of importation and later a refund of 99 per cent of the duty is made when the flour and by-products are exported, provided that at least 30 per cent of wheat grown in the United States was mixed with the imported wheat before being ground. A recent report of the United States Department of Agriculture states that nearly 50 per cent of the wheat imported from Canada into the United States since the emergency tariff became effective May 28, 1921, was imported in bond, ground into flour, and exported. The report also states that:

All of the Canadian wheat reported as having been milled in bond was milled under the milling provision. Canadian wheat milled in bond is statistically included in the general imports of the United States. All calculations, therefore, of imports of Canadian wheat that enter the United States for consumption should make allowance for the wheat milled in bond, the department points out. Flour manufactured from imported wheat is statistically included in the exports of domestic flour. Two flour mills in the United States grind Canadian wheat in bond. Both of these mills are located in the Buffalo district.

Flour exports are made to all parts of the world. During the four-year period 1911-1914 the United Kingdom, Hongkong, Japan, the Netherlands, Cuba and other islands of the West Indies, Brazil, and Central American countries took the bulk of the flour exported from the United States. Hongkong is, of course, an important Chinese seaport. In the last two war years the Allies took the great bulk of flour exports.

For the fiscal year ending June 30, 1919, both the quantity and value of flour exports were larger than for any other fiscal year in the entire history of the country. During the first six months of this fiscal year the heavy war demand stimulated exportation. The United Kingdom alone took practically 45 per cent of the total, France and Italy combined an additional 25 per cent, while the Netherlands and Cuba were the only other countries importing large quantities.

Beginning with 1920 there have been important changes in the distribution of flour exports. Exports of flour to the United Kingdom decreased to less than 2,000,000 barrels in 1923. Exports to France, which were nearly 4,000,000 barrels in 1919, had almost disappeared by 1923; in fact the quantity exported to France in the latter year was so small that it was not shown separately. On the other hand, exports to Germany, which were negligible in 1919, aggregated almost 2,000,000 barrels in 1921, over 1,500,000 barrels in 1922, and a little over 1,000,000 barrels in 1923. China, including Hongkong, and the Philippines, which purchased large quantities of flour in the United States in pre-war years but bought very little flour during the war, became important customers during the last two years. Japan, which was a large pre-war importer of American flour, has bought very little since the war. Cuba, Haiti, and other islands of the West Indies have been steady customers of American flour mills. Brazil is the only South American country that is now buying important quantities of flour from the United States. Appendix, Table 1, page 105, shows the quantity and value of flour exports by countries of destination, by fiscal years ending June 30, for the period 1919-1923.

CHAPTER III

INVESTMENT AND PROFITS

Section 1. Source of information.

The information covering investment and profits for the period 1919-1922 was secured either directly from the books of flour-milling concerns by the commission's examiners or was furnished by the companies on report forms supplied by the commission. In order to ascertain the facts with regard to both large and small mills report forms were sent to all mills reported as having a daily capacity of 400 barrels or over, and in some cases to mills of much smaller capacity. Report forms were sent to a total of 563 concerns (operating an even larger number of mills), and returns were obtained from 228 companies. Over 100 concerns were excused from making reports for various reasons. Nearly one-half of this number had closed down or were no longer grinding wheat, and 50 others, including some important concerns, signified their willingness to furnish the information if they could be given assistance in the preparation of their reports. This requested assistance could not generally be furnished due to lack of funds. No reply was received from about 150 companies.

Of the 228 concerns from which reports were secured 108 contained complete information covering costs, investment, and profits, 72 furnished sufficient information covering company investment and profits, while 48 either covered less than two years or were otherwise incomplete. No reports were used in the data presented here, unless they covered milling operations for two years or longer.

The report forms sent to the flour-milling industry by the commission called for cost statements, as well as balance sheets and profit-and-loss statements. In many cases, however, the companies furnished the latter without including any cost statements; consequently the data for investment and profits cover a larger number of concerns and a larger proportion of the industry than that presented for costs. In 1922, for example, the companies for which investment and profits are shown included 37 per cent of the capacity and about 50 per cent of that year's total production.

Section 2. Attitude of the Millers' National Federation.

Soon after the commission sent its report form to flour-milling concerns the attorneys for the Millers' National Federation advised the secretary of the federation regarding the course to pursue with reference to the commission's inquiry. In submitting their opinion to the secretary of the federation the attorneys said in part:¹

You will thus see there are two questions, the legal, which we have endeavored to answer, and the practical, which we leave to each miller individually, taking into account the comparative time, trouble, and damage of answering or not answering the questionnaire, or affording the information desired, or any part of it. The long and short of it is that any miller has a right to refuse to answer the questionnaire, or any part, and to afford no information unless he chooses;

¹ *Northwestern Miller*, Nov. 29, 1922, p. 982.

but if he desires to accord some information he can give it when, how, and as he pleases, but we would advise that under no circumstances the emissaries or representatives of the Federal Trade Commission, or any outsider, be given access to millers' books, papers, or documents, or be permitted to take any information or copies.

Although this advice was given wide publicity, practically every company requested, including the members of the federation, disregarded it and cooperated heartily in sending in the data requested or in assisting the commission's examiners in the preparation of reports. They are to be congratulated upon their breadth of vision in voluntarily cooperating in a matter of public service.

Section 3. Principal milling districts.

For the purposes of this inquiry the country was divided into five districts, namely, northwestern, southwestern, southeastern, central and eastern, and mountain and coast. This grouping is primarily a geographical one, but in deciding the States to be included in each group consideration was also given to the character of the wheat produced in those States. The States included in the northwestern district produce chiefly hard spring wheat, most of the States in the southwestern district raise hard winter wheat mainly, the central and eastern and southeastern groups grow soft winter wheat, while the Pacific Coast States grow mostly white wheats.

Usable schedules were received from companies operating mills in 30 States (including the District of Columbia), consequently only those States have been classified. The five districts discussed in this report, with the States included in each, are shown in the following table:

TABLE 7.—States included in the five flour milling districts

Northwestern	Southwestern	Southeastern	Central and eastern	Mountain and coast
Iowa. Minnesota. Montana. North Dakota. Wisconsin.	Arkansas. Kansas. Missouri. Nebraska. Oklahoma. Texas.	District of Columbia. Georgia. Kentucky. Maryland. North Carolina. Tennessee. Virginia.	Illinois. Indiana. Ohio. New York. New Jersey. Pennsylvania.	California. Colorado. Idaho. Oregon. Utah. Washington.

These five districts were further subdivided into two groups each according to whether their business years ended June 30 or December 31, or approximately those dates.

Section 4. Flour-mill accounts.

When the commission's report form was sent to flour-milling concerns some of the millers and certain trade journals complained of the amount of labor and time which would be required to compile the information requested. A number of companies having good accounting records returned complete schedules within a few days. In order to ascertain the facts they were asked to report the time required to compile the reports. The time reported ranged from 20 to 48 hours for one man. The commission's examiners visited a number of the larger flour-milling concerns and the time required to

secure complete reports was about the same as that reported by the above-mentioned mills.

It was difficult to secure complete reports for some companies because it was impossible to obtain readily the actual number of bushels and the value of the purchases of wheat that went into the mill, or the actual number of barrels of wheat flour produced. The value of the sales for some companies included the value of the sales of both flour and feed. In such cases it was necessary to separate the two on some equitable basis or to ascertain the quantities and values from the invoices. The item of package cost, which is the largest single item of total mill cost (see p. 69) except wheat was not always shown separately for flour and feed. Some millers charged interest paid into their milling costs, whereas good accounting practice excludes all interest from direct manufacturing cost and treats interest actually paid as a financial item in profit and loss.

Section 5. Method of computing investments and profits.

INVESTMENT.—The investment of the companies covered in this report is shown on two different bases, namely, milling investment and company investment. The mean investment—that is, one-half of the sum of the investment at the beginning and at the end of each year—has been taken as the investment for the year. In the case of notes payable, however, the monthly average has been used instead of one-half of the amount at the beginning and end of the year. Inventory valuations and depreciation charges have been accepted as reported by the company. The two different kinds of investment shown are as follows:

1. *Milling investment*, which is the investment in the milling business of the company (it being impossible to separate the flour-milling investment from total milling investment), was computed from the liabilities side of the balance sheet, and consists of the capital stock, bonds, other borrowed money, surplus, and special reserves, such as dividends declared and not paid, and reserves for contingencies and for Federal taxes. Appreciation and good will were deducted to get the actual investment of the company.³ From the figure thus obtained outside investments were deducted to obtain the milling investment of the company. Reserves for depreciation and bad debts were treated as deductions from plant account and accounts receivable, respectively.

2. *Company investment*, which is the investment that the stockholders collectively as a company have in the business, was obtained by deducting the bonds and other borrowed money from the milling investment, but adding back thereto the outside investments.

INCOME.—The operating profit of the company from its flour-milling business was obtained by deducting the cost of sales (including selling expense) from the value of flour sold. The profit on feed was treated as a credit to costs, and hence was taken up in the cost of sales. The profit or loss on coarse grains and on the other activities of the company was added to or deducted from its operating profit to obtain the profits from its milling business. Inasmuch as two kinds of invest-

³ In the case of one important company its various subsidiary milling companies paid rentals to the holding company for the mills they operated, so that to enable a segregation of the mill operations geographically the total investment was divided among the several mills, appropriate adjustments were made with respect to the rentals in their income accounts. Similar adjustments were also made for two other companies.

ment are shown, two kinds of profits corresponding thereto were computed as follows:

1. *Milling net income*, which is the profit received by the company from all sources except outside investments, was used for computing return on milling investment. To obtain the milling profit, all the miscellaneous gains and losses (before deducting interest on bonds and other borrowed money) were added to or deducted from the total operating profit of the company according to whether they showed a gain or a loss. The income from outside investments was then deducted to obtain the milling profit.

2. *Company profit*, which is the net income that accrues to the stockholders collectively as a company before the payment of income or profits taxes, was obtained by deducting the interest on bonds and other borrowed money from the milling profit and adding back thereto the income from outside investments.

Milling investment and profits are shown for 108 different companies (107 being the maximum in any one year), whereas the company investment and profits are shown for 182 different companies (173 being the maximum in any one year).

Section 6. Monthly fluctuations in borrowed funds.

Considerable amounts of borrowed money are used in the milling business. These are largely short term loans and fluctuate from month to month, being lowest in the middle of the calendar year when the quantities of wheat and flour carried on hand by the milling companies are lowest.

The monthly fluctuations of 121 flour milling companies are shown in the following table:

TABLE 8.—*Monthly borrowings of 121 flour milling companies, 1919-1921*

Month	1919	1920	1921	Total	Index numbers
January.....	\$84,681,316	\$147,936,790	\$72,924,435	\$305,542,541	132
February.....	77,619,121	133,395,419	64,147,932	275,162,472	119
March.....	83,151,237	110,157,927	52,362,761	245,671,925	106
April.....	75,335,657	95,451,605	40,446,027	211,233,489	91
May.....	53,847,413	74,267,170	33,689,192	161,803,775	70
June.....	34,402,057	65,563,758	29,824,558	119,808,373	52
July.....	47,853,879	53,736,191	24,361,623	134,951,693	58
August.....	60,862,680	59,047,228	41,430,256	161,340,164	63
September.....	123,795,217	78,078,959	55,037,207	256,911,383	111
October.....	134,378,724	89,357,667	62,044,663	285,781,054	124
November.....	144,503,723	88,870,798	60,549,864	293,924,385	127
December.....	148,443,655	82,991,562	57,829,515	289,264,732	125
Averages.....	91,572,890	89,076,209	50,222,171	230,871,331	100

The above table shows that for the three years combined the lowest borrowings were in June and July, and that May, June, July, and August were the four lowest months. During each year there was a wide variation between the highest and lowest months. The largest monthly total for the three years combined was 155 per cent greater than that for the smallest monthly total. The three-year fluctuations are probably fairly representative, for part of the period wheat prices were very high and part of the period they were low. In times of high prices, of course, the amount of money borrowed to carry high-priced grain and high-priced flour would naturally be larger than when wheat prices are low.

The table shows that for the three years combined the borrowings were heaviest during the six months beginning with September and lightest during the preceding six months.

Section 7. Milling investment, net income, and rate of return.

As has already been shown (sec. 5), the milling investment was obtained by deducting the outside investments from the total investment. The effect of the inclusion of outside investments on the investment, net income, and rate of return of the milling companies would be so slight that it is unnecessary to discuss at length both total investment and milling investment and the return on each. As the milling investment is the investment of special interest to the millers and those studying the milling business, brief mention only is made of the total investment, the main discussion being based upon the milling investment, net income, and rate of return thereon.

It is of interest to note the return on outside investments, however, and the effect of outside investments on the milling investment of the milling companies. This is shown in the following table:

TABLE 9.—*Net income for total, outside, and milling investment, and rate of return, 1919-1922*

Item	Investment	Net Income	Rate of return
1919			
Total investment.....	\$181,265,023	\$24,362,876	<i>Per cent</i> 13.4
Outside investment.....	13,753,043	1,012,766	7.4
Milling investment.....	167,511,980	23,350,110	13.9
1920			
Total investment.....	215,161,967	30,678,329	14.3
Outside investment.....	12,267,592	535,776	4.4
Milling investment.....	202,894,375	30,142,553	14.9
1921			
Total investment.....	176,785,756	3,465,091	2.0
Outside investment.....	12,068,699	877,490	7.3
Milling investment.....	164,697,057	2,587,601	1.6
1922			
Total investment.....	162,361,263	17,314,031	10.7
Outside investment.....	14,264,871	1,211,389	8.5
Milling investment.....	148,096,392	16,102,642	10.9
1919-1922			
Total investment.....	735,574,009	75,620,327	10.3
Outside investment.....	52,374,205	3,637,421	6.9
Milling investment.....	683,199,804	72,182,906	10.6

The above table shows that the inclusion of outside investments exerted on the whole an unimportant influence upon the rate of return except in 1921. In every year its effect was to reduce slightly the rate of return, except in the poor year of 1921, when its effect was to increase it from 1.6 per cent to 2 per cent. This was due to the fact that, although the outside investments were less than 7 per cent of the total investment in that year, the rate of return thereon was 7.3 per cent, as compared with 1.6 per cent on the milling investment alone. In fact, the surprising feature disclosed by a study of the

outside investments is the high rate of return in every year except 1920, when it was only 4.4 per cent. In the other three years it varied from 7.3 per cent in 1921 to 8.5 per cent in 1922, with an average for the period of 6.9 per cent. Many of the companies had large holdings of Liberty bonds on which they received approximately 4½ per cent interest. The large return shown above was due to the fact that two of the companies in the northwestern district had very large returns from other outside investments.

Section 8. Milling investment, net income, and rate of return, by districts.

The method of arriving at the milling investment and net income was described in section 5. The investment showed a marked increase in 1920 over 1919, but there was a considerable decrease in both 1921 and 1922 over the high year of 1920. In fact, in most of the districts the investment in 1922 was less than in 1919.

The return on investment for all districts combined showed an increase in the prosperous year 1920 over 1919, although the companies with a business year closing December 31 showed a very marked decline, as shown by the following statement:

Year	All districts			Northwestern			Southwestern		
	June	De- cember	Average	June	De- cember	Average	June	De- cember	Average
1919.....	13.4	16.6	13.9	13.7	13.4	13.7	15.1	21.0	16.7
1920.....	16.8	3.1	14.9	15.5	1.4	14.7	20.6	6.8	17.7
1921.....	1.3	3.2	1.6	5.1	.1	4.7	12.4	6.6	1.3
1922.....	10.9	10.9	10.9	13.4	8.5	12.9	9.3	9.4	9.3

¹ Loss.

This decline in the returns from the milling business, in the case of the companies with a business year closing June 30, was not reflected until 1921, when they barely showed a profit, whereas the December 31 companies in 1921 showed a profit, although a small one, which was practically the same as for the previous year. This situation was due to conditions in the wheat flour markets. Export wheat, for instance, reached its highest price in May, 1920, and then a steady decline set in which lasted (with only a few upturns) for a year and a half, when the price was only a little more than a third of that of May, 1920. This great decline was naturally reflected in heavy inventory losses, particularly in flour, and generally resulted in an actual loss on the year's operations in which the greatest decline took place. In 1922 when prices were more stable both groups of companies showed a profit, which was 10.9 per cent in each case.

The following table shows the average milling investment, net income, and rate of return for 108 different companies (maximum in any one year 107) engaged in the flour milling business, by districts:

TABLE 10.—Milling investment, net income, and rate of return, by districts, 1919-1922

District	Number of companies	Investment	Net income	Rate of return	
				Per cent	Rank
1919					
Northwestern.....	26	\$74,943,237	\$10,287,051	13.7	2
Southwestern.....	41	39,013,773	6,658,062	16.7	1
Southeastern.....	9	10,526,724	1,377,642	13.1	3
Central and eastern.....	13	17,334,274	2,078,201	12.0	4
Mountain and coast.....	12	24,793,973	2,949,154	11.9	5
Total.....	101	167,511,980	23,350,110	13.9	.....
1920					
Northwestern.....	27	91,701,468	13,452,624	14.7	2
Southwestern.....	43	82,846,622	9,331,007	17.7	2
Southeastern.....	9	10,045,854	310,236	3.1	5
Central and eastern.....	13	17,982,794	1,520,794	8.5	4
Mountain and coast.....	13	30,317,647	5,527,912	18.2	1
Total.....	105	202,894,375	30,142,553	14.9	.....
1921					
Northwestern.....	26	71,823,226	3,498,693	4.7	1
Southwestern.....	45	45,646,555	1,129,622	10.8	2
Southeastern.....	9	7,693,273	153,924	10.7	4
Central and eastern.....	13	15,794,757	447,213	2.8	2
Mountain and coast.....	14	23,739,246	1,084,750	4.6	5
Total.....	107	164,697,057	2,587,601	1.6	.....
1922					
Northwestern.....	26	64,094,693	8,285,709	12.9	2
Southwestern.....	44	41,088,194	3,815,674	9.3	3
Southeastern.....	9	7,081,047	1,109,622	15.7	1
Central and eastern.....	19	12,711,194	821,238	6.5	5
Mountain and coast.....	12	23,111,274	2,070,379	9.0	4
Total.....	101	148,096,392	16,102,642	10.9	.....
1919-1922					
Northwestern.....		302,562,624	35,434,077	11.7	1
Southwestern.....		179,505,134	19,675,121	11.0	2
Southeastern.....		35,346,898	2,743,566	7.8	4
Central and eastern.....		63,823,009	4,867,456	7.6	5
Mountain and coast.....		101,962,139	9,462,686	9.3	3
Total.....		683,199,804	73,182,906	10.6	.....

¹ Loss.

The above table shows an average return for all districts combined of 13.9 per cent in 1918, 14.9 per cent in 1920, 1.6 per cent in the bad year of 1921, and a recovery to 10.9 per cent in 1922. The highest rate of return was in a different district in each year, southwestern in 1919, mountain and coast in 1920, northwestern in 1921, and southeastern in 1922. Conditions were more stable, however, in the large producing northwestern district, which showed next to the highest rate of return in 1919 and 1922, was third in 1920, and was highest in the very poor year of 1921, with returns of 13.7, 12.9, 14.7, and 4.7 per cent, respectively. In 1921 only one other district showed a profit, the central and eastern, with a return of 2.8 per cent. The other three districts showed losses, varying from 4.6 per cent in the mountain and coast district to 0.7 and 0.3 per cent in the southeastern and southwestern districts, respectively.

Section 9. Milling investment, net income, and rate of return, by principal States.

The two most important flour milling States are Minnesota and Kansas, although New York, Illinois, and Missouri are also large producers of flour. A study of the return on investment in these two States as compared with the country as a whole is consequently of special interest. The net income for these two States for the period is practically three-fifths of the net income for all districts, whereas the investment is only a little more than half of the total investment for all districts, so the rate of return for the two States is somewhat higher than the return for all districts combined.

The following table shows the milling investment, net income, and rate of return for the companies covered in the States of Minnesota and Kansas, compared with all other States.

TABLE 11.—Milling investment, net income, and rate of return for the States of Minnesota and Kansas, compared with all other States, 1919-1922

State	Number of companies	Investment	Net Income	Rate of return
1919				
Minnesota.....	23	\$74,361,401	\$10,234,094	13.8
Kansas.....	17	15,057,345	2,570,524	17.1
Above States.....	40	89,418,746	12,804,618	14.3
Other States.....	61	78,093,234	10,545,492	13.5
Total.....	101	167,511,980	23,350,110	13.9
1920				
Minnesota.....	24	91,089,650	13,481,828	14.8
Kansas.....	17	16,872,233	4,094,765	23.9
Above States.....	41	107,961,883	17,576,593	16.2
Other States.....	64	94,932,492	12,621,990	13.3
Total.....	105	202,894,375	30,208,583	14.9
1921				
Minnesota.....	24	71,350,436	3,411,477	4.8
Kansas.....	17	14,656,632	231,091	1.6
Above States.....	41	86,007,068	3,642,568	4.2
Other States.....	66	78,839,969	1,054,967	1.3
Total.....	107	164,847,037	4,697,535	2.8
1922				
Minnesota.....	24	63,635,261	8,281,873	13.0
Kansas.....	17	14,674,443	1,294,163	8.8
Above States.....	41	78,309,704	9,576,036	12.2
Other States.....	60 ¹	69,796,688	6,526,578	9.4
Total.....	101	148,096,392	16,102,614	10.9
1919-1922				
Minnesota.....		309,438,748	35,409,272	11.5
Kansas.....		61,260,653	8,134,573	13.2
Above States.....		361,699,401	43,543,845	12.0
Other States.....		321,562,468	28,632,061	8.9
Total.....		683,261,869	72,175,906	10.6

¹ Loss.

The above table shows that the rate of return for Kansas flour mills averaged slightly higher than for Minnesota. For 1919, 1920, and 1921 each of these States averaged higher than all other States combined. In 1922 Minnesota showed a higher rate of return than the other States, whereas Kansas was lower.

The State of Minnesota is the predominant flour-producing State of the country, and the rate of return for that State is practically the same as for the whole northwestern district, as reported to the commission. The rate of return varied from 4.8 per cent in the poor year of 1921 to 14.8 per cent in the year 1920, the other two years being 13 per cent or over.

The State of Kansas, which is the second most important flour-producing State in the country and the most important in the southwestern district, shows considerable fluctuation in its rate of return on investment. It increased from 17.1 per cent in 1919 to 23.9 per cent in the very prosperous year of 1920, slumping badly the next year to 1.6 per cent, but recovering to 8.8 per cent in 1922.

The other 28 States of the country covered by this table showed practically the same rate of return in 1919 and 1920, averaging a little more than 13 per cent. In the bad year of 1921 they showed a loss of 1.3 per cent, but the next year showed a profit of 9.4 per cent.

Section 10. Milling investment, net income, and rate of return, by investment groups.

For the purpose of determining the relation of the size of investment and the rate of return, the five districts have been reclassified into five groups on the basis of investment of the different companies, as follows: (1) Those with an investment of less than \$250,000, (2) investments of \$250,000 to \$500,000, (3) investments ranging from \$500,000 to \$1,000,000, (4) investments from \$1,000,000 to \$2,000,000, and (5) companies with an investment of \$2,000,000 and over. The differences in the rate of return for the different investment groups in most years is surprisingly small, although in 1920 and 1921 the lowest investment group made the poorest showing.

The following table shows the milling investment, net income, and rate of return, by investment groups:

TABLE 12.—*Milling investment, net income, and rate of return by investment groups 1919-1922*

Group	Number of companies	Investment	Net income	Rate of return	
				Per cent	Rank
1919					
Under \$250,000.....	22	\$4,096,099	\$763,871	18.6	1
\$250,000 to \$500,000.....	26	8,705,903	1,290,236	14.8	4
\$500,000 to \$1,000,000.....	22	15,392,070	2,771,510	18.0	2
\$1,000,000 to \$2,000,000.....	14	19,525,175	3,024,153	15.5	3
\$2,000,000 and over.....	17	119,792,733	15,496,340	12.9	5
Total.....	101	167,511,980	23,350,110	13.9	.....
1920					
Under \$250,000.....	18	3,244,947	52,823	1.6	5
\$250,000 to \$500,000.....	30	10,548,600	1,039,517	9.9	4
\$500,000 to \$1,000,000.....	21	15,677,009	2,578,591	16.4	1
\$1,000,000 to \$2,000,000.....	18	24,915,058	3,402,334	13.7	3
\$2,000,000 and over.....	18	148,608,761	22,969,289	15.5	2
Total.....	105	202,894,375	30,142,553	14.9	.....
1921					
Under \$250,000.....	24	3,905,572	1,210,780	5.4	5
\$250,000 to \$500,000.....	30	10,676,493	13,208	.1	2
\$500,000 to \$1,000,000.....	23	16,893,387	444,480	2.6	4
\$1,000,000 to \$2,000,000.....	12	14,389,014	1,583,340	1.4	3
\$2,000,000 and over.....	18	118,832,591	3,290,983	2.8	1
Total.....	107	164,697,057	2,597,601	1.6	.....
1922					
Under \$250,000.....	24	3,814,306	319,349	8.4	4
\$250,000 to \$500,000.....	28	9,736,889	990,340	10.2	3
\$500,000 to \$1,000,000.....	22	15,786,138	1,821,471	11.5	2
\$1,000,000 to \$2,000,000.....	13	17,269,676	1,224,419	7.1	5
\$2,000,000 and over.....	14	101,490,272	11,747,063	11.6	1
Total.....	101	148,096,392	16,102,642	10.9	.....
1919-1922					
Under \$250,000.....		15,060,924	925,263	6.1	5
\$250,000 to \$500,000.....		39,666,986	3,334,261	8.4	4
\$500,000 to \$1,000,000.....		63,748,694	6,724,062	10.5	2
\$1,000,000 to \$2,000,000.....		76,089,923	7,596,576	10.0	3
\$2,000,000 and over.....		488,624,357	53,063,674	11.0	1
Total.....		683,199,604	72,182,906	10.6	.....

¹ Loss.

In 1919 the group with an investment of less than \$250,000 showed the highest profit, 18.6 per cent, while in the two following years it showed the lowest return, 1.6 per cent and a loss of 5.4 per cent, and in 1922 it had next to the lowest return, 8.4 per cent. It also showed the lowest return for the period with an average of 6.1 per cent. On the other hand, the group with the highest investment, \$2,000,000 and over, which showed the lowest return in 1919 had the highest rate of return in 1921 and 1922, with 2.8 and 11.6 per cent, respectively, and was second in 1920, with 15.5 per cent. This group with large investment was apparently better fortified to withstand poor years in business. For the four-year period it showed a slightly higher rate of return than any other group, with an average of 11 per cent. The group with an investment ranging from \$500,000 to \$1,000,000 made the second best showing, with an average of 10.5

per cent for the four-year period, although there was a loss of 2.6 per cent in the poor year 1921. The other two groups showed average profits of 10 per cent or less, while the average for all groups was 10.6 per cent.

The following table compares the true and simple average rates of profit:

TABLE 13.—Comparison between the true and simple average rate of profit on the milling investment by profit groups, 1919-1922

Investment group	True average rate of profit	Simple average rate of profit
1919		
Under \$250,000.....	18.6	18.5
\$250,000 to \$500,000.....	14.8	15.5
\$500,000 to \$1,000,000.....	18.0	18.4
\$1,000,000 to \$2,000,000.....	15.5	16.8
\$2,000,000 and over.....	12.9	13.7
Total.....	13.9	16.7
1920		
Under \$250,000.....	1.6	.8
\$250,000 to \$500,000.....	9.9	10.6
\$500,000 to \$1,000,000.....	16.4	15.7
\$1,000,000 to \$2,000,000.....	13.7	14.1
\$2,000,000 and over.....	15.5	15.8
Total.....	14.9	11.4
1921		
Under \$250,000.....	15.4	19.4
\$250,000 to \$500,000.....	1	.7
\$500,000 to \$1,000,000.....	12.6	13.1
\$1,000,000 to \$2,000,000.....	1.4	1.7
\$2,000,000 and over.....	2.8	2.0
Total.....	1.0	12.7
1922		
Under \$250,000.....	8.4	6.5
\$250,000 to \$500,000.....	10.2	10.0
\$500,000 to \$1,000,000.....	11.5	12.0
\$1,000,000 to \$2,000,000.....	7.1	6.9
\$2,000,000 and over.....	11.6	11.5
Total.....	10.9	9.3
1919-1922		
Under \$250,000.....	6.1	2.8
\$250,000 to \$500,000.....	8.4	9.1
\$500,000 to \$1,000,000.....	10.5	10.4
\$1,000,000 to \$2,000,000.....	10.0	9.8
\$2,000,000 and over.....	11.0	10.3
Total.....	10.6	8.5

¹ Loss

As already explained, the true average was obtained by dividing the aggregate profits of the companies in each group by their aggregate investment, while the simple average was obtained by dividing the sum of the rates of return for all companies in a group by the number of companies.

When the true average is higher than the simple average, it was due either to (1) the larger companies in a group showing higher profits than the intermediate or smaller sized ones, or (2) certain small companies having made smaller profits or larger losses than

were shown by the larger companies, and when the opposite is the case the smaller companies were either (1) generally more prosperous or (2) certain larger companies had small profits.

In 1919 the simple average for all investment groups, excepting group 1, with an investment under \$250,000, was somewhat higher than the true average rate of profit. In that year the smaller and intermediate size companies in each group generally had higher profits than the larger companies. For all companies combined the simple average was 16.7 per cent as compared with 13.9 per cent for the true average.

In 1920 the simple average for group 1, the smallest size group, group 3, the intermediate size group, and for all groups combined, was smaller than the true average. That is, the larger companies in those groups had the highest rate of profit, while in the other groups the smaller companies had the highest profits.

In 1921 three groups showed a loss for the true average and four groups and all companies combined showed a loss based on the simple average. The per cent of loss was also larger for each group and for the total based upon the simple average. As a rule, only the largest companies showed a profit.

In 1922 the true average was slightly higher than the simple average for all groups excepting the intermediate size group with investments ranging from \$500,000 to \$1,000,000.

Section 11. Milling investment, net income, and rate of return, by production groups.

For the period 1919-1922 the true average rate of profit was somewhat higher than the simple average for all groups combined and for each group excepting group 2. Appendix Table 2 gives a comparison of the true and simple average rate of return by size groups for each milling district.

For the purpose of determining the relation between the annual volume of production and the return upon investment, the companies were placed in five groups, as follows: (1) Companies producing less than 125,000 barrels, (2) companies producing from 125,000 to 250,000 barrels, (3) companies producing from 250,000 to 500,000 barrels, (4) companies producing from 500,000 to 1,000,000 barrels, and (5) companies producing 1,000,000 barrels or over. The difference in the rate of return for different groups was much greater than was shown when the companies were arranged by investment groups. The intermediate-sized production group had the highest average rate of return for the four-year period, 11.8 per cent, and the largest production group the second highest average rate of return, 11.5 per cent. As shown on page 36, the companies having the largest investment, as a group, had the highest four-year average return on investment, 11 per cent as compared with 10.5 per cent for those with an intermediate-sized investment.

The following table shows the annual production, milling investment, net income, and rate of return by production groups, 1919-1922:

TABLE 14.—Production, investment, earnings, and rate of return by production groups, 1919-1922

Production group in barrels	Production	Investment	Income	Rate of return
	<i>Barrels</i>			<i>Per cent</i>
1919				
Under 125,000.....	2,978,833	\$10,849,957	\$1,611,569	14.9
125,000 to 250,000.....	4,519,415	15,320,017	2,257,940	14.7
250,000 to 500,000.....	6,839,522	20,265,140	3,827,336	18.9
500,000 to 1,000,000.....	8,308,111	26,819,684	3,703,181	12.8
1,000,000 and over.....	27,517,196	92,257,182	11,956,684	13.0
Total.....	49,963,077	167,511,980	23,350,110	13.9
1920				
Under 125,000.....	3,448,521	14,913,933	769,305	5.3
125,000 to 250,000.....	3,470,625	13,173,916	1,609,591	12.2
250,000 to 500,000.....	8,082,287	29,152,893	5,009,454	17.5
500,000 to 1,000,000.....	5,043,109	20,887,539	3,175,553	15.2
1,000,000 and over.....	21,120,310	124,766,004	19,470,310	15.6
Total.....	51,184,852	202,894,375	30,142,553	14.9
1921				
Under 125,000.....	2,849,124	12,460,376	1,694,929	15.6
125,000 to 250,000.....	4,483,209	16,416,476	1,593,930	13.6
250,000 to 500,000.....	6,847,001	24,001,478	298,537	1.2
500,000 to 1,000,000.....	4,523,493	19,022,320	1,453,026	12.4
1,000,000 and over.....	27,531,290	92,796,407	4,030,949	4.3
Total.....	46,234,207	164,697,057	2,587,601	1.6
1922				
Under 125,000.....	2,813,447	9,678,888	725,798	7.5
125,000 to 250,000.....	3,340,329	11,159,745	929,512	8.3
250,000 to 500,000.....	8,657,779	22,071,703	2,031,313	9.2
500,000 to 1,000,000.....	6,300,748	20,972,191	2,643,706	12.6
1,000,000 and over.....	29,127,002	84,212,865	9,767,313	11.6
Total.....	50,148,305	148,096,392	16,102,642	10.9
1919-1922				
Under 125,000.....	12,089,925	47,903,154	2,438,743	5.1
125,000 to 250,000.....	15,813,578	56,069,154	4,200,679	7.5
250,000 to 500,000.....	30,126,679	95,493,214	11,255,640	11.8
500,000 to 1,000,000.....	24,204,461	89,701,734	9,069,414	10.1
1,000,000 and over.....	115,295,798	394,032,548	45,218,656	11.5
Grand total.....	197,530,441	683,199,804	72,182,906	10.6

¹ Loss.

In 1919 the companies having the smallest production made their best showing with average earnings of 14.9 per cent, which was exceeded only by the group with intermediate production. The two groups with the largest production had the smallest rate of return.

In 1920 the group with the smallest production had much the smallest return on investment, only 5.3 per cent. The intermediate size group had the highest average rate of return, 17.5 per cent. The two largest groups ranked second and third, with average earnings in excess of 15 per cent.

As already pointed out the year 1921 was one in which many companies covered lost money. When grouped on the basis of production only two groups, the largest and intermediate size groups, showed a profit, the latter earning 1.2 per cent and the companies with the largest production 4.3 per cent. The group with the next to the largest production and the two groups with small production all showed losses, the amount of the loss increasing as the production decreased.

In 1922 the larger companies generally had the highest rates of profit. The group having the smallest production per company

earned 7.5 per cent, while the rate of profit increased with each size group to 12.6 per cent for the next to the largest companies, and then declined to 11.6 per cent for the largest production group.

Section 12. Rate of return on investment, by companies.

The rate of return by companies, ranged from low to high for each of the four years, is shown in Appendix Table 3.

The range for the year 1919 was from a loss of 11.1 per cent to a profit of 50.5 per cent. Only two companies out of the 101 presented showed a loss, and but two showed a profit of 50 per cent or over. A profit of less than 10 per cent was shown by 25 companies, while 74 companies showed a profit of over 10 per cent. The average was 13.9 per cent.

The range for the year 1920 was from a loss of 51.4 per cent to a profit of 49.2 per cent. Twenty companies showed a loss. A profit of less than 10 per cent was shown by 26 companies, while 59 companies showed a profit of 10 per cent or over. The latter companies, however, were large enough to not only offset the losses and low profits of the first group, but to raise the profits of the whole group to a slightly higher figure than in 1919, namely, 14.9 per cent.

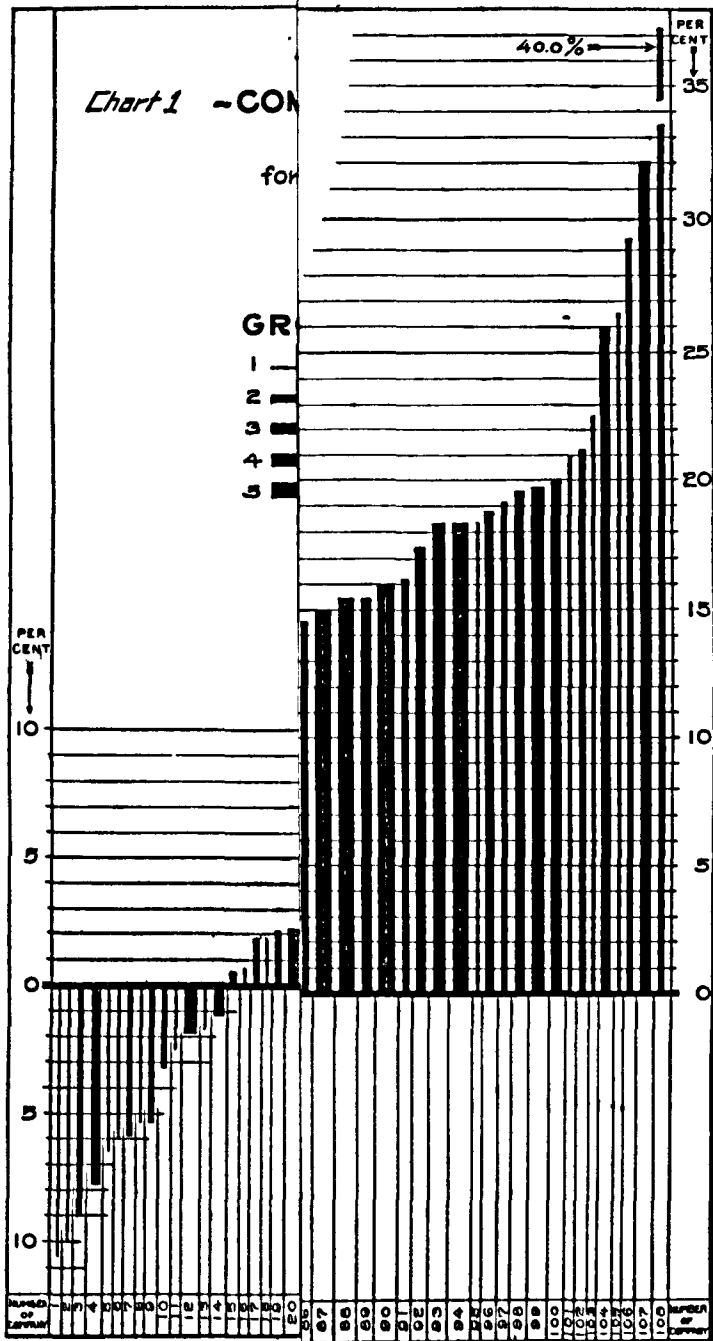
The range in the rate of return on investment in 1921 was from a loss of 72.6 per cent to a profit of 44.1 per cent. A profit of less than 10 per cent was shown by 32 of the companies, while only 18 companies showed a profit of 10 per cent or over. The profit shown by the 50 companies which made a profit was barely sufficient to offset the losses made by the 57 other companies, the profit for the group averaging 1.6 per cent.

The range in the rate of return in 1922 varied from a loss of 32.4 per cent to a profit of 47.3 per cent. A profit of less than 10 per cent was shown by 47 companies, while only 37 companies showed a higher rate of return. Seventeen companies showed a loss. The average rate was 10.9 per cent.

Section 13. Graphic presentation of profits.

The rate of return on the milling investment for individual companies covering their four years' business for the period 1919-1922 is shown graphically in Chart 1, opposite. The data upon which this chart is based are given in Appendix Table 4, page 108. The total quantity of flour produced by these companies for the period was 197,530,441 barrels, the aggregate earnings \$72,182,906, and the weighted or true average rate of return 10.6 per cent.

The companies were placed in the following five groups, depending on the size of their average investment for the period: Group 1, companies having an average investment of under \$250,000; Group 2, companies with an investment of from \$250,000 to \$500,000; Group 3, companies with an average investment of from \$500,000 to \$1,000,000; Group 4, companies with an average investment ranging from \$1,000,000 to \$2,000,000; and Group 5, companies having an average investment of \$2,000,000 and over. The group in which each company is placed is indicated by the width of the column showing the average rate of return upon investment, Group 1 having the narrowest column and Group 5 the widest. The companies were arranged consecutively from the greatest loss to the highest rate of return. The range for the four years' business was from a loss of 10.6 to a profit of 40 per cent.



Most of the companies showing a loss or a very large profit were small ones. Eleven of the 14 companies showing a loss and 6 of the 8 earning 20 per cent or over had an average investment of less than \$500,000. On the other hand, 13 of the 17 companies having an average investment of \$2,000,000 and over earned from 5 to 15 per cent for the four years. The following statement shows the number of companies in each profit group:

Group	Number of companies showing loss	Number of companies showing profit					Total
		Under 5 per cent	5 to 10 per cent	10 to 15 per cent	15 to 20 per cent	20 to 40 per cent	
1.....	7	6	3	2	1	3	22
2.....	4	8	8	6	2	3	31
3.....	2	4	2	9	5	2	24
4.....	1	2	3	6	2	.....	14
5.....	1	1	7	6	3	.....	17
Total.....	14	21	23	29	13	8	108

The above tabulation and the chart show that while many of the smallest companies earned less than 5 per cent or sustained a loss on their four years' business, certain small companies had large earnings. The companies of intermediate size were quite evenly distributed throughout the entire range of profits.

The companies showing a loss had 2.5 per cent of the investment and 2.5 per cent of the production for the four-year period. Those earning less than 5 per cent had 9.8 per cent of the investment and 7.7 per cent of the production. The companies earning from 5 to 10 per cent had 31.7 per cent of the investment and 29.8 per cent of the production. Companies earning from 10 to 15 per cent had 41.6 per cent of the investment and 42.1 per cent of the production. Companies earning from 15 to 20 per cent had 12.9 per cent of the investment and 15.6 per cent of the production, while those earning in excess of 20 per cent had only 1.5 per cent of the investment and 2.3 per cent of the production. Companies having 30 per cent of the total investment earned 8.1 per cent or under or had a loss for the four years, companies owning two-thirds of the investment earned 13 per cent or under; the average rate of profit on 92 per cent of the investment was 16.2 per cent or under, while companies having 1 per cent of the investment earned in excess of 25 per cent.

Section 14. Company investment, net income, and rate of return, by districts.

The milling investment and return thereon has already been discussed. The company investment differs from the milling investment in that it is based upon the money put into the business by the stockholders collectively as a company, or earnings accruing to them and left in the business. Borrowed funds are not, of course, a part of this investment. The return upon the company investment was higher than upon the milling investment in every year except in 1921. This was partly due to interest paid not being deducted from income in the case of return on milling investment, whereas, in the case of company investment, it is a deduction from income. It was also partly due to the difference in the amount of the investment. (See sec. 5.)

The following table shows the company investment, net income, and rate of return, by districts, for the same companies which have already been discussed in the case of milling investment and return thereon:

TABLE 15.—*Company investment, net income, and rate of return for companies reporting, by districts, 1919-1922*

District	Investment	Net Income	Rate of return
1919			
Northwestern district.....	\$47,536,260	\$9,090,706	19.1
Southwestern district.....	28,262,034	5,821,502	20.6
Southeastern district.....	5,931,414	1,037,448	17.5
Central and eastern district.....	9,856,208	1,548,192	16.1
Mountain and coast district.....	17,130,115	2,394,879	14.0
Total.....	108,716,031	19,902,727	18.3
1920			
Northwestern district.....	49,890,250	10,750,942	21.5
Southwestern district.....	33,233,824	8,121,216	24.4
Southeastern district.....	5,913,452	6,098	1
Central and eastern district.....	10,453,510	1,007,108	9.6
Mountain and coast district.....	19,738,290	5,012,521	25.4
Total.....	119,224,326	24,897,853	20.9
1921			
Northwestern district.....	49,771,648	2,340,867	4.7
Southwestern district.....	34,929,697	1,967,690	5.6
Southeastern district.....	5,334,568	1,225,738	23.0
Central and eastern district.....	10,385,510	110,912	1.1
Mountain and coast district.....	21,161,390	1,406,784	6.6
Total.....	121,582,813	1,782,421	1.5
1922			
Northwestern district.....	50,489,727	8,252,001	16.3
Southwestern district.....	32,789,436	3,274,044	10.0
Southeastern district.....	5,327,980	998,311	18.5
Central and eastern district.....	8,859,854	548,774	6.2
Mountain and coast district.....	20,504,465	1,678,876	8.2
Total.....	117,971,362	14,742,006	12.5
1919-1922			
Northwestern district.....	197,687,885	30,404,516	15.4
Southwestern district.....	129,214,991	16,219,082	12.6
Southeastern district.....	22,507,314	1,806,097	8.0
Central and eastern district.....	39,555,082	3,254,969	8.2
Mountain and coast district.....	78,529,260	7,679,492	9.8
Grand total.....	467,494,632	69,364,163	12.7

¹ Loss.

The above table shows an average rate of return on company investment for the four-year period of 12.7 per cent, as against a return of 10.6 per cent on the milling investment for the same companies. The return varied from a loss of one-tenth of 1 per cent in 1921 to a profit of 20.9 per cent in 1920. The northwestern district showed the highest average rate of return for the whole period, 15.4 per cent, although it had the highest rate in only one year, the poor year of 1921. The southwestern district had the second highest average rate of return for the period, although it was highest in 1919 only. In fact the highest rate of return was shown by a different district in each of the four years. Although the southeastern district had the highest rate of return in 1922, for the whole period it showed the lowest return of any of the districts, 8 per cent.

In only one year was a loss shown for any district, but in that year, 1921, three districts showed losses varying from 2.9 per cent in the southwestern district to 6.6 per cent in the mountain and coast district, the latter having had the highest rate of return in the previous year. A loss was registered by all districts combined in 1921.

In addition to the reports covering the companies which have already been discussed in connection with the milling investment and company investment, there were many reports which did not give sufficient detail to compute the rate of return on the milling investment, but which did contain sufficient information to compute it for company investment. These reports were tabulated and the results incorporated with the results already shown for the rate of return on the company investment. The effect was to lower a little the rate of return shown in the previous table. This increased the number of companies from a maximum of 107 in a single year to 173.

The following table shows the company investment, net income, and rate of return, by districts, for all companies from which reports usable for this purpose were received.

TABLE 16.—Company investment, net income, and rate of return for all companies, by districts, 1919-1922

District	Investment	Net income	Rate of return
1919			
Northwestern district.....	\$49,760,692	\$9,426,719	Per cent 18.9
Southwestern district.....	43,626,249	8,800,451	20.2
Southeastern district.....	8,639,886	1,648,533	19.5
Central and eastern district.....	20,647,618	3,544,273	17.2
Mountain and coast district.....	25,024,004	3,332,330	14.1
Total.....	147,698,139	26,993,306	18.3
1920			
Northwestern district.....	52,457,677	10,994,425	21.0
Southwestern district.....	49,962,665	11,222,767	22.5
Southeastern district.....	9,137,094	560,521	6.1
Central and eastern district.....	21,430,257	1,415,863	6.6
Mountain and coast district.....	28,393,385	7,434,131	26.2
Total.....	161,381,068	31,627,707	19.6
1921			
Northwestern district.....	53,118,294	2,135,595	4.0
Southwestern district.....	52,171,779	1,430,662	2.7
Southeastern district.....	8,735,047	34,095	.4
Central and eastern district.....	22,250,112	186,269	1.4
Mountain and coast district.....	28,931,696	1,350,865	11.6
Total.....	165,206,928	12,703,196	11.6
1922			
Northwestern district.....	53,804,784	8,724,354	16.2
Southwestern district.....	48,333,410	4,669,996	9.7
Southeastern district.....	8,362,446	1,448,929	17.3
Central and eastern district.....	16,676,823	1,131,014	6.8
Mountain and coast district.....	27,042,520	2,178,046	8.1
Total.....	154,219,983	18,153,339	11.8
1919-1922			
Northwestern district.....	309,141,437	31,281,093	10.0
Southwestern district.....	194,094,103	23,282,533	12.0
Southeastern district.....	34,874,183	3,735,988	10.7
Central and eastern district.....	81,004,810	8,004,881	7.4
Mountain and coast district.....	169,391,605	9,786,642	5.8
Grand total.....	628,506,118	74,071,156	11.8

¹ Loss.

The above table shows an average rate of return for the period of 11.8 per cent as against a return of 12.7 per cent for those companies from which complete schedules were received. Of course, in the case of individual years and individual districts greater differences were shown, but there are no striking differences by years for all districts combined as compared with the previous table. In 1919 they were the same, 18.3 per cent. In 1920 the rate of profit was 19.6 per cent for the 173 companies, instead of 20.9 per cent for the 108 companies, and in 1921 the loss was 1.6 per cent for the 173 companies and 0.1 per cent for the 108 companies. In 1922 there was an even smaller difference. For each year the combined results were lower than those previously shown. For all years combined the district which showed the largest difference in rate of return was the southeastern district, which showed a rate of 10.7 per cent on this basis, instead of 8 per cent as given in the previous table.

Section 15. Cost of sales and profit per barrel.

During the war period the United States Grain Corporation allowed the millers a profit of 25 cents a barrel. The average operating profit for all districts combined for the four-year period 1919 to 1922 was \$0.32 per barrel, which resulted in a milling profit of \$0.36 per barrel and the company profit of \$0.30 per barrel. Appendix Table 5, page 109, shows the quantity of flour sold and the amounts of the receipts, the cost of sales, and profits, by districts, 1919-1922.

The following table shows the cost of sales, selling expense, value of sales, and profit per barrel, by districts:

TABLE 17.—Cost of sales, value of sales, operating profit, milling profit, and company profit per barrel, by districts, 1919-1922

District	Cost of flour sold			Value of flour sold	Operating profit	Other gains or losses	Milling profit	Less interest paid	Company profit
	Cost of sales	Selling expense	Total						
1919									
Northwestern.....	\$10 10	\$0 29	\$10 39	\$10 74	\$0.35	\$0 01	\$0.34	\$0.04	\$0 32
Southwestern.....	9 61	.15	9 76	10.26	.50	.07	.57	.07	.50
Southeastern.....	10 34	.17	10 51	11 10	.59	1.06	.53	.13	.40
Central and eastern.....	10.26	.22	10 48	11 03	.55	.05	.60	.14	.46
Mountain and coast.....	9.49	.09	9 58	10 03	.45	.26	.71	.13	.58
Total.....	9 96	.23	10 19	10 61	.42	.05	.47	.07	.40
1920									
Northwestern.....	11.31	.40	11.71	12.12	.41	.07	.48	.10	.38
Southwestern.....	10.50	.23	10.73	11.33	.60	.11	.71	.09	.62
Southeastern.....	11.25	.25	11.50	11.70	.20	1.05	.15	.13	.31
Central and eastern.....	11.25	.33	11.58	11.98	.40	.06	.46	.15	.31
Mountain and coast.....	9.86	.11	9.97	10.49	.52	.54	1.06	.10	.06
Total.....	10.95	.32	11 27	11 73	.46	.12	.58	.10	.48
1921									
Northwestern.....	8.66	.47	9.13	9.34	.21	1.08	.13	.04	.09
Southwestern.....	8.38	.28	8.66	8.67	.01	1.02	1.01	.07	1.06
Southeastern.....	8.08	.25	8.33	8.25	1.08	.05	1.03	.09	1.12
Central and eastern.....	8.87	.33	9.20	9.36	.16	.05	.16	.12	.04
Mountain and coast.....	8.85	.19	9.04	8.74	1.30	1.01	1.31	.08	1.39
Total.....	8.58	.39	8.97	9.08	.11	1.05	.06	.06	.00

¹ Less interest paid plus income from outside investments.

² Loss.

TABLE 17.—*Cost of sales, value of sales, operating profit, milling profit, and company profit per barrel, by districts, 1919-1922—Continued*

District	Cost of flour sold			Value of flour sold	Operating profit	Other gains or losses	Milling profit	Less interest paid	Company profit
	Cost of sales	Selling expense	Total						
1922									
Northwestern.....	\$6 21	\$0 40	\$6 61	\$6 80	\$0 28	\$0 02	\$0 30		\$0 30
Southwestern.....	5 45	.25	5 70	5 99	.29	1 01	.28	\$0 04	.24
Southeastern.....	6 22	.27	6 49	6 90	.41	.10	.51	.05	.46
Central and eastern.....	6 77	.33	7 10	7 40	.30	.02	.32	.10	.22
Mountain and coast.....	5 63	.15	5 78	5 91	.13	.34	.47	.09	.38
Total.....	5 98	.33	6 31	6 58	.27	.05	.32	.03	.29
1919-1922									
Northwestern.....	9 07	.39	9 46	9 77	.31	.01	.32	.05	.27
Southwestern.....	8 42	.23	8 65	9 00	.35	.04	.39	.07	.32
Southeastern.....	9 05	.23	9 28	9 59	.31		.31	.10	.21
Central and eastern.....	9 47	.39	9 77	10 13	.36	.04	.40	.13	.27
Mountain and coast.....	8 48	.13	8 61	8 84	.23	.31	.54	.10	.44
Total.....	8 88	.31	9 19	9 51	.32	.04	.36	.06	.30

¹ Loss

The above table shows that the average operating profit per barrel for the four-year period by districts was very uniform, varying from \$0.31 to \$0.36, except in the mountain and coast district, where it was \$0.23. The addition of other gains and losses, however, raised the mountain and coast district from the lowest to the highest for the milling profit, this district showing a profit of \$0.54 a barrel, whereas the other four varied from \$0.31 to \$0.40. This large miscellaneous income in the mountain and coast district was due mainly to profits made by one company in the handling through its elevators of grains other than wheat. The inclusion of returns from outside investments and the deduction of interest paid from the milling profit gives the company profit, which showed considerable variation even aside from the mountain and coast district. It varied from \$0.21 per barrel in the southeastern district to \$0.32 in the southwestern and \$0.44 in the mountain and coast district, with an average for all districts of \$0.30.

The mountain and coast district had the lowest cost of sales in two years and the southwestern in only one year, yet for the four-year period the southwestern district had the lowest average cost of sales, \$8.42, with the mountain and coast second, although after adding selling expense the latter district was lowest with \$8.61, as its selling expense was \$0.10 per barrel lower than that of any other district. The central and eastern district had the highest cost of sales in two years, and also the highest average for the period, \$9.47 per barrel.

There was considerable variation in the selling expense, the northwestern district being the highest in each year and averaging \$0.39 per barrel, while the mountain and coast district was the lowest in every year, averaging \$0.13.

The central and eastern district, which has been shown as a high-cost district, received the highest price for its product in two years and for the period, being \$10.13 per barrel for the period, while the mountain and coast district was lowest in three years and for the period, and received \$1.29 less than the central and eastern district,

or \$8.84 per barrel. This resulted in its obtaining the lowest average profit for the period, only \$0.23 per barrel, as against a return of \$0.31 for the northwestern and southeastern districts and up to the maximum of \$0.36 per barrel for the central and eastern. The inclusion of the returns from the other activities of the company modified these figures to a certain extent in every district, but particularly in the mountain and coast district, where the average per barrel was \$0.31, due to large earnings from handling of other grains than wheat.

This resulted in the mountain and coast district having the highest milling profit in two years and for the period, but in 1921 it was the lowest, showing a heavy loss. The lowest profit for the period was \$0.31 per barrel in the southeastern district, although the northwestern's showing was only 1 cent higher. The average for the four-year period was \$0.36 per barrel, which, as already shown, gave an average return of 10.6 per cent on the milling investment.

The inclusion of the return on outside investments and the deduction of interest paid to obtain the company profit per barrel reduced the return for the four-year period in amounts ranging from \$0.05 to \$0.13 per barrel, according to the district, but the mountain and coast district still showed the highest profit of \$0.44 per barrel, and the southeastern was still lowest with \$0.21 per barrel. The four-year average company profit per barrel was \$0.30.

CHAPTER IV

COST OF WHEAT-FLOUR MILLING, 1919-1922

Section 1. Proportion of industry covered for costs.

Complete reports including costs, investment, and profits were secured from flour-milling concerns producing over 40 per cent of the total output of flour for the four-year period ending in 1922. All the cost reports obtained which were sufficiently complete were tabulated for the purposes of this report and the same companies were tabulated for milling investment and return thereon. The number of different companies tabulated for costs was 108, although the maximum number in any one year was 107, in 1921. The total estimated quantity of wheat flour produced in the United States and that produced by companies for which the cost of production is presented are shown in the following table:

TABLE 18.—*Number of barrels of flour produced in the United States compared with production of companies reporting cost of production to the commission, 1919-1922*

Year	United States ¹	Commission cost reports	Per cent reporting
	<i>Barrels</i>	<i>Barrels</i>	
1919.....	132,333,000	49,963,077	37.8
1920.....	108,783,000	51,184,852	47.1
1921.....	121,014,000	46,234,207	38.2
1922.....	125,310,000	50,148,305	40.0
Total.....	487,440,000	197,530,441	40.5

¹ Millers Almanack, 1923, p. 193.

The census shows a slightly larger total for the United States for 1919, its total for both merchant and custom mills being 133,670,672 barrels. The census does not report the total production for both merchant and custom mills for any other year of this four-year period.

The above table shows that the cost reports to the commission covered almost one-half of the wheat flour produced in this country in 1920, as compared with the low point of about 38 per cent in 1919. The average for the four-year period, 1919-1922, was a little over 40 per cent. These cost statements may be regarded as representative of the entire flour-milling industry.

Although the above mills produced over 40 per cent of the total wheat-flour production of the United States during the four-year period and 40 per cent in 1922, yet in the latter year they operated at

less than 60 per cent of their capacity as reported by the mills, as shown by the following table:

TABLE 19.—*Annual capacity of flour mills in the United States compared with annual production of companies reporting cost of production to the commission by districts for the year 1922*

District	Annual capacity	Production	Per cent
	<i>Barrels</i>	<i>Barrels</i>	
Northwestern.....	38,975,000	22,579,809	57.9
Southwestern.....	24,240,000	13,349,818	55.3
Southeastern.....	5,235,000	2,150,898	41.1
Central and eastern.....	11,977,200	7,646,016	63.8
Mountain and coast.....	8,009,700	4,394,704	54.9
Total.....	88,416,900	50,148,305	56.7

The annual capacity in the above table was computed on the basis of 300 operating days to the year, yet the production of the five districts in 1922 was only 56.7 per cent of the capacity of those same companies. There was comparatively little variation in the relation of production to capacity except in the case of the southeastern district, where the production was only 41.1 per cent of the capacity. In the other four districts the production ranged from 54.9 per cent of the rated capacity in the mountain and coast district to 63.8 per cent in the central and eastern district.

As already stated (see p. 43), information covering the company investment, earnings, and rate of return on investment was presented for a larger proportion of the industry. For example, the annual capacity of the above mills represented about 27 per cent of the wheat-flour milling capacity of the entire country, while the capacity of mills covered for the company investment and profits included about 37 per cent of that capacity.

Section 2. Quantity of wheat consumed per barrel of flour produced, by districts.

When only the quantity of wheat consumed or flour produced were given in the reports submitted by the company the commission in compiling its statements estimated that $4\frac{1}{2}$ bushels of wheat were used to produce a barrel of flour, in accordance with the rough estimates made by the millers themselves. That this figure is approximately correct is shown by the fact that for the four-year period the average number of bushels used per barrel of flour for all districts combined was 4.56 bushels.

The following table shows the number of bushels of wheat used, barrels of flour produced, and bushels used per barrel of flour produced, by districts:

TABLE 20.—*Bushels of wheat used per barrel of flour produced, by districts, 1919-1922*

District	Bushels of wheat used	Barrels of flour produced	Bushels used per barrel
1919			
Northwestern.....	112,165,900	24,903,100	4.50
Southwestern.....	60,378,711	11,324,023	4.45
Southeastern.....	11,594,806	2,604,413	4.45
Central and eastern.....	20,700,337	6,962,050	4.41
Mountain and coast.....	18,433,826	4,169,491	4.42
Total.....	223,263,580	49,963,077	4.47
1920			
Northwestern.....	115,242,536	24,335,033	4.74
Southwestern.....	57,809,745	12,711,371	4.55
Southeastern.....	9,507,734	2,091,928	4.54
Central and eastern.....	31,684,296	6,908,012	4.59
Mountain and coast.....	22,689,539	6,138,508	4.42
Total.....	236,934,140	51,184,852	4.63
1921			
Northwestern.....	103,191,464	22,199,815	4.65
Southwestern.....	52,661,292	11,639,090	4.52
Southeastern.....	8,688,534	1,920,538	4.52
Central and eastern.....	31,002,078	6,975,540	4.44
Mountain and coast.....	15,647,323	3,523,424	4.43
Total.....	211,190,691	46,234,207	4.57
1922			
Northwestern.....	104,216,106	22,556,809	4.62
Southwestern.....	60,901,351	13,399,818	4.54
Southeastern.....	9,888,881	2,150,898	4.60
Central and eastern.....	34,650,741	7,646,016	4.53
Mountain and coast.....	19,361,451	4,394,764	4.41
Total.....	229,018,532	50,148,305	4.57
1919-1922			
Northwestern.....	434,816,008	93,964,557	4.63
Southwestern.....	221,751,099	49,074,302	4.52
Southeastern.....	39,669,955	8,767,777	4.52
Central and eastern.....	128,037,442	28,491,618	4.49
Mountain and coast.....	76,132,439	17,232,187	4.42
Total.....	900,406,943	197,530,441	4.56

The above table shows that the northwestern district used the greatest quantity of wheat per barrel of flour in all four years, varying from 4.5 bushels in 1919 to 4.74 in 1920, and averaging 4.63. The mountain and coast district used the smallest quantity of wheat for the four-year period, 4.42 bushels per barrel of flour. It was the lowest in all four years, except 1919, when it was 0.01 of a bushel above the central and eastern district, which used next to the smallest quantity of wheat for the period. The southwestern and southeastern districts averaged the same consumption for the period, with 4.52 bushels, and differed little in any year except 1922. Except in the case of the mountain and coast district, every district used the smallest number of bushels in 1919 and the greatest number in 1920. The quality of the 1920 spring wheat crop was inferior, which accounts for the larger number of bushels required to produce a barrel of flour in the northwestern district in that year.

Section 3. Method of computing costs.

The schedules sent out to the flour milling industry called for an analysis of costs, but not in any great detail. These costs, as reported, have been tabulated to show the following items: Wheat cost (including options, i. e., gains and losses on hedges in futures, and self-rising ingredients), labor, other milling expenses, depreciation, packages, feed credit (credit of value of feed by-products to cost of flour), and general expenses. A number of milling concerns do not hedge in the grain futures markets. In some cases it was necessary to estimate the proportion of package costs which should be assigned to flour milling and the proportion which should be deducted from the value of feed. In other cases it was necessary to estimate the value of the feed itself as the value of sales included the value of both flour and feed sold. Such estimates were all based upon the best figures obtainable, either the results of some mill in the immediate vicinity or an average figure for the mills in that district being applied.

Section 4. Total cost and cost per barrel, by districts.

As has already been shown, the cost statements tabulated by the commission cover over 40 per cent of the production of wheat flour in the United States during the four-year period under review. They show a total production for the period of nearly 200,000,000 barrels of flour at a total cost of almost a billion and three-quarters dollars, or an average of \$8.85 per barrel.

The following table shows the total number of barrels of wheat flour produced, the total mill cost, and the cost per barrel, by districts:

TABLE 21.—Barrels of flour produced, total mill cost, and cost per barrel, by districts, 1919-1922

District	Flour produced	Total flour cost	
		Amount	Per barrel
1919			
Northwestern.....	<i>Barrels</i> 24,903,100	\$251,033,068	\$10 08
Southwestern.....	11,324,023	108,911,066	9 62
Southeastern.....	2,804,413	28,944,172	10 33
Central and eastern.....	6,962,050	71,284,777	10 24
Mountain and coast.....	4,169,491	39,614,808	9 50
Total.....	49,963,077	497,721,921	9 96
1920			
Northwestern.....	24,335,033	276,985,592	11 38
Southwestern.....	12,711,371	134,035,312	10 54
Southeastern.....	2,091,928	23,598,846	11 28
Central and eastern.....	6,908,012	78,535,414	11 08
Mountain and coast.....	5,138,508	50,813,768	9 89
Total.....	51,184,852	561,968,932	10 98
1921			
Northwestern.....	22,169,615	186,290,904	8 40
Southwestern.....	11,639,090	96,993,402	8 33
Southeastern.....	1,920,538	15,274,777	7 95
Central and eastern.....	6,975,540	60,902,754	8 73
Mountain and coast.....	3,529,424	30,291,975	8 66
Total.....	46,234,207	390,753,812	8 43

TABLE 21.—Barrels of flour produced, total mill cost, and cost per barrel, by districts, 1919-1922—Continued

District	Flour produced	Total flour cost	
		Amount	Per barrel
1922			
Northwestern.....	Barrels 22,556,809	\$141,199,042	\$6.26
Southwestern.....	13,399,818	72,637,362	5.44
Southeastern.....	2,150,898	13,342,773	6.20
Central and eastern.....	7,646,016	47,501,116	6.21
Mountain and coast.....	4,394,764	24,509,464	5.58
Total.....	50,148,305	299,389,757	5.97
1919-1922			
Northwestern.....	98,964,557	855,608,606	9.10
Southwestern.....	49,074,302	412,777,172	8.41
Southeastern.....	8,767,777	79,110,568	9.02
Central and eastern.....	28,491,618	256,208,061	8.99
Mountain and coast.....	17,232,187	145,230,015	8.43
Total.....	197,530,441	1,748,834,422	8.85

The above table shows that the southwestern district had the lowest average cost of production for the period, \$8.41 per barrel, although it had the lowest cost in only one year out of the four. The mountain and coast district, on the other hand, which had the lowest cost in two years out of the four, had the second lowest cost for the period, \$8.43, or 2 cents per barrel higher than the southwestern district. These two districts produced about one-third of the flour produced by all the companies covered for costs. The great northwestern district, which produced nearly one-half of the flour, had the highest average cost for the period, \$9.10 per barrel, and was also highest in two out of the four years. The other two districts were almost as high for the period, as the cost in the southeastern district was only 8 cents lower, or \$9.02 per barrel, while the cost in the central and eastern district was nearly as high at \$8.99 per barrel.

Section 5. Principal elements of cost per barrel, by districts.

The most striking feature disclosed by a study of the different elements of cost making up the total mill cost is that the cost of producing flour for the four-year period was \$0.16 per barrel less than the cost of the wheat ground. This was due to the fact that the cost of converting the wheat into flour, including depreciation and general expenses, was less than the value of the by-product—feed—obtained during the process of manufacture for two of the years and for the whole period. When wheat costs were high the mill cost of the flour was less than the cost of the wheat, but when wheat costs were on a lower level the mill cost of the flour was greater than the cost of the wheat.

Appendix Table 6 shows the quantities and amounts while the table following gives the per barrel cost of wheat, value of feed, and the principal elements of the cost of producing a barrel of flour, by districts, 1919-1922.

TABLE 22.—Principal elements in the cost of producing wheat flour, by districts, 1919-1922

District	Wheat	Labor	Other milling	Defreciation	Pack-ages	Gen-eral ex-pense	Cost of flour and feed	Less feed credit	Net flour cost
1919									
Northwestern.....	\$10 35	\$0 21	\$0 17	\$0 02	\$0 47	\$0 16	\$11 38	\$1 30	\$10 08
Southwestern.....	9 53	.21	.19	.04	.47	.24	10 68	1 36	9 32
Southeastern.....	10 76	.23	.16	.06	.55	.30	12 06	1 73	10 33
Central and eastern.....	10 51	.21	.13	.02	.53	.18	11 68	1 34	10 24
Mountain and coast.....	9 31	.31	.22	.05	.47	.20	10 56	1 06	9 50
Total.....	10 19	.22	.17	.03	.48	.19	11 28	1 32	9 96
1920									
Northwestern.....	12 24	.27	.20	.02	.50	.21	13 44	2 06	11 38
Southwestern.....	10 91	.26	.21	.04	.49	.28	12 19	1 65	10 54
Southeastern.....	11 72	.30	.21	.06	.74	.39	13 42	2 14	11 28
Central and eastern.....	11 60	.30	.15	.02	.55	.24	12 86	1 78	11 08
Mountain and coast.....	9 89	.38	.22	.05	.50	.20	11 24	1 35	9 89
Total.....	11 57	.28	.20	.03	.51	.24	12 63	1 85	10 98
1921									
Northwestern.....	8 41	.26	.21	.03	.33	.20	9 44	1 04	8 40
Southwestern.....	8 11	.26	.21	.05	.43	.33	9 39	1 06	8 33
Southeastern.....	7 82	.26	.18	.09	.43	.36	9 14	1 19	7 95
Central and eastern.....	8 67	.23	.14	.02	.35	.24	9 65	.92	8 73
Mountain and coast.....	8 20	.45	.22	.07	.45	.27	9 66	1 08	8 58
Total.....	8 33	.27	.20	.04	.37	.25	9 46	1 03	8 43
1922									
Northwestern.....	6 18	.22	.19	.02	.24	.20	7 05	.79	6 26
Southwestern.....	5 27	.21	.18	.05	.23	.27	6 21	.77	5 44
Southeastern.....	6 19	.23	.15	.09	.37	.32	7 35	1 15	6 20
Central and eastern.....	6 19	.17	.12	.02	.26	.20	6 96	.75	6 21
Mountain and coast.....	5 07	.33	.19	.06	.34	.19	6 18	.60	5 58
Total.....	5 84	.22	.17	.04	.26	.22	6 75	.78	5 97
1919-1922									
Northwestern.....	9 38	.24	.19	.02	.39	.19	10 41	1 21	9 10
Southwestern.....	8 46	.23	.20	.05	.40	.28	9 62	1 21	8 41
Southeastern.....	9 22	.25	.16	.07	.52	.34	10 68	1 56	9 02
Central and eastern.....	9 17	.22	.13	.02	.42	.21	10 17	1 18	8 99
Mountain and coast.....	8 17	.36	.21	.06	.45	.21	9 46	1 03	8 43
Total.....	9 01	.25	.19	.03	.40	.22	10 10	1 25	8 85

In the four years covered by the table the average cost of the wheat used per barrel of flour manufactured constituted from 87 to 90 per cent of the gross mill costs. From this it is obvious that any material change in wheat prices must have a great effect upon the cost of producing a barrel of flour, but the selling price of flour does not with any accuracy reflect these variations. It may be that the variation is shunted off in feed prices.

The above table shows that the average cost of the wheat used for the four-year period was \$9.01 per barrel of flour produced, whereas the cost of the flour itself was only \$8.85, or \$0.16 per barrel less. That is, the cost of milling the wheat, which amounted to \$1.09 per barrel of flour produced, was more than offset by the amount received for the feed produced, which amounted to \$1.25 per barrel. The mountain and coast district had the lowest cost of wheat for the period, \$8.17 per barrel of flour produced, and also for three out of the four

years, yet the mill cost of flour for this district was \$3.43 per barrel, or \$0.02 higher than for the southwestern district. The southwestern district had next to the lowest wheat cost but had lower operating costs and a larger feed credit, than the mountain and coast district, which resulted in its having a lower flour cost. The northwestern district had the highest wheat cost for the period, \$9.38, which was \$0.16 higher than for the southeastern district, but its flour cost was only \$0.08 higher, or \$9.10 per barrel. The operating costs in the southeastern district were greater than similar costs in the northwestern district, but the feed credit more than sufficed to offset the larger operating costs.

Labor cost averaged \$0.25 per barrel for the period and there was little variation between the districts, except in the case of the mountain and coast district, where it was \$0.36, or \$0.11 per barrel higher than in any other district. The labor cost in this district was at least 8 cents higher than any other district in every year, and in 1921 it was \$0.19 higher. It ranged from \$0.31 per barrel in 1919 to \$0.45 in 1921, a difference of \$0.14. The variation in the central and eastern district, however, was nearly as great, being \$0.13, varying from \$0.17 in 1922 to \$0.30 in 1920, yet this district had the lowest average labor cost for the period, \$0.22 per barrel. The least variation was in the southwestern district, which varied only \$0.05 per barrel, being \$0.21 in both 1919 and 1922 and \$0.26 in the other two years.

The item of other milling expense showed considerable variation, the central and eastern district being the lowest in each year, ranging from \$0.12 per barrel in 1922 to \$0.15 in 1920 and averaging \$0.13. The highest district in each year was the mountain and coast district, which fluctuated from \$0.19 per barrel in 1922 to \$0.22 in the other three years, with an average of \$0.21 per barrel. The other districts averaged a little lower.

Depreciation was not adjusted by the commission but was accepted as charged by the companies. Naturally this resulted in considerable variation by districts, yet the average for all districts combined for the four-year period is 3 cents a barrel, which is what the United States Food Administration allowed the millers to charge during the war period. The northwestern and central and eastern districts each averaged 2 cents per barrel, which is practically what they charged in each year of the period. The southeastern district, however, had the high average charge for depreciation of \$0.07 per barrel, charging \$0.06 per barrel in 1919 and 1920 and \$0.09 in the other two years. The mountain and coast and southwestern districts averaged \$0.06 and \$0.05 per barrel, respectively.

The largest element of manufacturing cost apart from the wheat itself is the cost of packages. The most striking feature is the high cost in the southeastern district, particularly in 1920, when it was \$0.74 per barrel, or \$0.19 higher than for any other district. For the entire four-year period it had the highest average, \$0.52 per barrel, which was \$0.07 higher than the mountain and coast average. The northwestern district had the lowest average cost of packages with a cost of \$0.39 per barrel, which was 1 cent lower than for the southwestern and for all districts combined. By years

these districts were almost the same, except in 1921, when the southwestern was \$0.10 higher.

General expense showed great variations, both the southeastern and southwestern districts being high. The southeastern district was highest in each year and averaged \$0.34 per barrel, while the southwestern, which was next to the highest in each year, averaged \$0.28 per barrel. The northwestern district had the lowest general expense in two years and the lowest for the period with \$0.19 per barrel. The other two districts averaged \$0.02 per barrel higher. The average for the period for all districts per barrel was \$0.22.

The credit for feed fluctuates with the cost of wheat. It averaged \$1.25 per barrel of flour produced for the four-year period, varying from \$1.03 in the mountain and coast district to \$1.56 in the southeastern district. In fact, the mountain and coast district had the smallest feed credit in all but one year, whereas the southeastern had the largest in each year. The highest wheat cost was in 1920, which resulted in the highest feed credits, varying from \$1.35 in the mountain and coast district to \$2.14 in the southeastern. The lowest wheat cost was in 1922, which resulted in the lowest feed credit, ranging from \$0.60 in the mountain and coast district to \$1.15 in the southeastern. The maximum variation in the average feed credit for the other three districts for the period was \$0.13, ranging from \$1.18 in the central and eastern to \$1.31 in the northwestern district.

The average net mill cost for the period showed a variation of \$0.69 per barrel, ranging from \$8.41 in the southwestern district to \$9.10 in the northwestern district. The cost of the mountain and coast district was only a trifle higher than the southwestern district in this respect, while the other two districts were nearly as high as the northwestern.

Section 6. Comparison of cost per barrel by companies.

During each year of the period 1919-1922 there was a wide range in the per-barrel cost of producing flour for individual companies. It has already been shown that the largest item in the cost of a barrel of flour is the cost of the wheat. The price of wheat varies widely in different sections of the country, chiefly due to the kind of wheat, its quality, and proximity to market. There was also considerable difference in elements of milling cost for individual companies. For the four-year period the milling costs ranged from a maximum of \$13.99 per barrel in 1920 to a minimum of \$4.87 per barrel in 1922.

Appendix Table 7 shows the cost by individual companies arranged from the lowest to the highest. To facilitate a study of costs the companies have been arranged in cost groups, each covering a range of \$1 in cost, as is shown in the following table:

TABLE 23.—Number of companies, average production per company, and proportion of wheat flour produced at specified cost groups, 1919-1922

Cost group	Number of companies	Production			Number of companies	Production		
		Total number barrels	Per cent	Average number barrels		Total number barrels	Per cent	Average number barrels
		1919			1920			
\$8 00-\$8 99.....	1	119,685	0.2	119,685	1	159,861	0.3	159,861
\$9 00-\$9 99.....	53	21,678,048	43.4	409,020	16	8,585,753	16.8	536,612
\$10 00-\$10 99.....	41	27,257,143	54.6	664,808	32	20,443,515	39.9	638,860
\$11 00-\$11 99.....	6	608,201	1.8	151,367	41	15,467,177	30.2	377,248
\$12 00-\$12 99.....					14	6,169,367	12.1	440,455
\$13 00-\$13 99.....					1	362,146	.7	362,146
Total.....	101	49,963,077	100.0	494,684	105	51,184,852	100.0	487,475
		1921			1922			
\$4 00-\$4 99.....	1	133,795	0.3	133,795	4	2,797,157	5.6	699,289
\$5 00-\$5 99.....					52	26,702,563	63.3	513,511
\$6 00-\$6 99.....	19	3,915,240	8.4	208,065	37	18,455,511	36.8	498,798
\$7 00-\$7 99.....	23	4,769,285	10.3	207,360	7	2,118,855	4.2	202,694
\$8 00-\$8 99.....	29	29,423,326	63.7	1,014,597	1	74,219	.1	74,219
\$9 00-\$9 99.....	20	5,244,034	13.5	312,202				
\$10 00-\$10 99.....	20	982,758	2.1	98,276				
\$11 00-\$11 99.....	5	765,769	1.7	153,164				
Total.....	107	46,234,207	100.0	432,095	101	50,148,305	100.0	496,518

The above table shows that in 1920 the majority of companies had high costs; 56 companies producing 43 per cent of the wheat flour had a cost of \$11 or more per barrel. In 1922 the majority of companies had low costs; 56 companies producing about 59 per cent of the total had costs of less than \$6 per barrel. Only one company in one other year had a cost below \$6 per barrel. In two years, however, there were other companies with costs in excess of \$11 per barrel, six in 1919, and five in 1921.

In 1919 the cost averaged \$9.96 per barrel and ranged from \$8.67 to \$11.42. Only one company had a cost below \$9 while for six the costs were above \$11. More than half of the companies with over 43 per cent of the production had costs ranging between \$9 and \$10 per barrel, while 41 companies producing nearly 55 per cent of the total had costs ranging from \$10 to \$11 per barrel.

In 1920, the year of highest costs and highest returns, the costs averaged \$10.93 per barrel and ranged from \$8.61 to \$13.99. No single cost group as shown in the table contained a majority of the companies or of the production, but the greatest number was in the \$11 to \$12 group with over 30 per cent of the total output, while 32 companies with costs ranging from \$10 to \$11 per barrel produced nearly 40 per cent of the total.

In 1921 the costs averaged \$3.43 per barrel and ranged from \$4.90 per barrel for one company, which was the only company below \$6, to \$11.69, there being five companies above \$11. Only about one-fourth of the companies appeared in any one group, 29 of them producing about 64 per cent of the total, having a cost of from \$5 to \$9 per barrel.

In 1922 the costs averaged \$5.97 per barrel and ranged from \$4.87, the lowest of the entire four-year period, to \$8.12. There were, however, four companies with a cost below \$5 per barrel. More than half of the companies producing 53 per cent of the total output had a cost between \$5 and \$6 per barrel.

In general the table also shows that for each year excepting 1922 the largest companies as a class had intermediate costs and that certain small companies had the lowest costs, while other small companies had the maximum costs. In 1922 one of the largest companies was in the low-cost group. In 1921 the range in cost for the large companies was from \$8 to \$9 per barrel, and 29 companies in that group with an average annual production of over 1,000,000 barrels, produced nearly 64 per cent of the total output of the 107 companies.

Section 7. Graphic presentation of individual costs.

Chart 2 (opposite) shows in graphic form the principal elements of the cost of producing a barrel of flour by companies, while the data upon which the chart is based are given in Appendix Table 8, page 113. The year 1922 was selected partly because it was the most recent one and partly because it appears to have been an average year. In 1922 the average rate of return for the milling business for all companies covered was 10.9 per cent, while the average for the four-year period, including both profitable and unprofitable years, was 10.6 per cent.

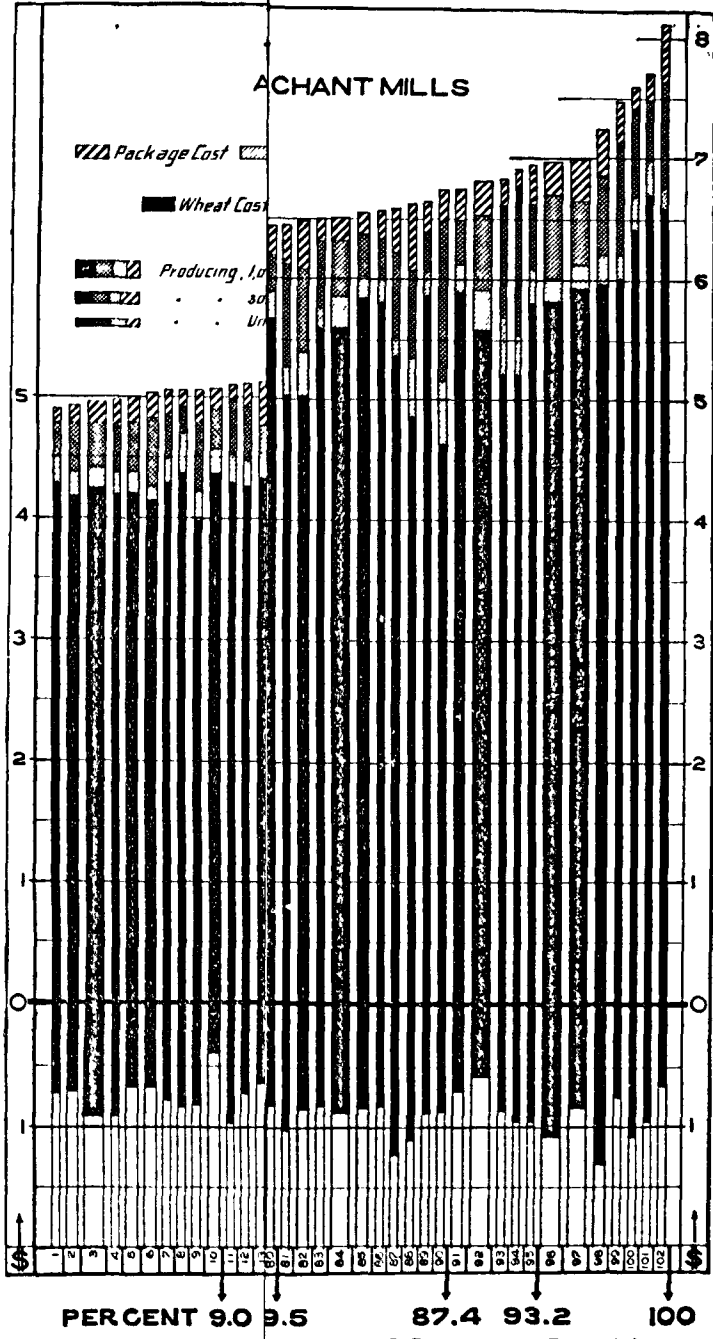
The principal elements of the mill cost of producing a barrel of wheat flour, in the order of their importance are (1) wheat, (2) packages, (3) labor, and (4) general expense. The amount of depreciation charged in flour milling costs is very small, and all other milling costs constitute only a small proportion of the total. Chart 2 shows separately the wheat, package, and labor costs, while the general expense, depreciation, repairs, and other expenses are included in "Other costs."

The mill cost of producing a barrel of wheat flour for each company is shown by the height of the column above the zero line, while the portion below the zero line represents the amount of receipts from by-products (i. e., bran, shorts, middlings, etc.), which was credited to the total cost of producing flour and feed. The total length of the black portion of the column both above and below the zero line represents the total or gross cost of the wheat used by each company in producing a barrel of flour and the by-products made in connection therewith.

The relative importance of each company's production in 1920 is indicated by the width of each column. Three groups are designated, the widest column being used for the largest production group; these groups are (1) companies producing 1,000,000 barrels or over, (2) companies producing from 300,000 to 1,000,000 barrels, and (3) companies producing under 300,000 barrels in 1922.

The chart shows that the bulk of the cost of a barrel of flour is the cost of the wheat, while for most companies the next most important item is the cost of packages. The item of packages differed greatly for individual companies, depending upon differences in method of sales. One company, for example, which sold most of its flour in bulk had a very low package cost. The chart also shows that the labor and other costs, including general expense and depreciation, varied greatly for individual companies.

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The range in costs of the large companies was almost as great as for the smaller ones, the range being from \$4.97 to \$7 per barrel. This difference for the large companies was mainly due to differences in wheat cost, which ranged from \$4.23 to \$5.95 per barrel of flour produced. The range in cost for the intermediate companies was slightly greater than for the large ones, ranging from \$4.94 to \$7.25 per barrel, while the range for the small companies was from \$4.87 to \$8.12 per barrel.

The difference in cost from company to company was very gradual, except for the five highest cost companies. The greatest difference in cost for the first 50 companies was slightly less than \$1 per barrel. These companies produced about 45 per cent of the total production covered at a cost of \$5.84 per barrel, or less. Sixty per cent of the total was produced by 60 companies at a cost of \$6.03, or less, per barrel; the cost of 87 per cent was \$6.74, or less, per barrel. The simple average cost was \$5.97 per barrel which was exactly the same as the weighted or actual average cost for the 102 companies in 1922 and three companies (Nos. 57, 58, and 59) had this same cost. Fifty-nine per cent of the total was produced at or under the average cost. The mean between the high and low cost, i. e., one-half of the sum of the lowest and highest costs, was \$6.52 per barrel; one company, No. 84, had this same cost. Eighty-four per cent of the total output was produced at or below the mean average of \$6.52 per barrel.

There was an increase of exactly \$1 per barrel (\$5.44 to \$6.44) for 51 companies beginning with company 30. These companies produced a little over 61 per cent of the total output, their average cost being \$5.93 per barrel, which is only 4 cents per barrel less than the average for all companies combined.

CHAPTER V

INVESTMENT, COSTS, AND PROFITS 1913-1922

Section 1. Companies covered for the 10-year period.

In the report on commercial wheat flour milling issued by the Federal Trade Commission in 1920 the results for 37 companies (41 companies, treating subsidiaries as separate companies) were shown for the five-year period, ending in 1918. Most of these same companies were also covered in the present inquiry for the four-year period, 1919-1922. From some of them, however, complete information was not received, so for a comparison of the results for the period it was possible to use only 28 companies instead of 41, as in the previous report. Consequently it was not possible to use any of the tabulations shown in the previous report, but it was necessary to work up an entirely new set of tables. In addition to the above period, however, it was found possible to use the figures on file with the commission for the same companies for their business year ending in 1913, which had not been used previously, thus giving comparative results for 28 identical companies over a 10-year period. The same geographical grouping is used as in the previous report.

Section 2. Proportion of milling capacity covered.

Although these 28 identical companies operated only 78 mills out of about 4,800 commercial wheat flour mills in the United States, yet they represent almost one-sixth (16.2 per cent) of the total capacity of the country in 1922, and produced over one-fourth of the flour produced in that year.

The following table shows the total production of flour in the United States, compared with the production of the 28 identical companies for the nine-year period, 1914-1922:

TABLE 24.—Number of barrels of flour produced in the United States compared with the production of the 28 identical companies, 1914-1922¹

[In thousands of barrels]

Year	United States ¹	Identical companies	Per cent
	<i>Barrels</i>	<i>Barrels</i>	
1914.....	116, 023	33, 895	29.2
1915.....	114, 633	33, 259	29.0
1916.....	119, 947	39, 205	32.7
1917.....	117, 785	33, 504	28.4
1918.....	110, 610	30, 250	27.3
1919.....	132, 353	34, 464	25.9
1920.....	109, 783	34, 741	31.9
1921.....	121, 014	32, 057	26.5
1922.....	125, 310	34, 322	27.4
Total.....	1, 066, 438	305, 697	28.7

¹ 1913 is omitted as the United States production is not available.

² Miller's Almanack, 1923, p. 193.

The above table shows very close uniformity in the proportion of the total flour production of the country produced by the 28 companies. It averaged 28.7 per cent for the nine-year period, and ranged from 26 per cent in 1919 to 32.7 per cent in 1916, which was the year of maximum production for the 28 companies during the period. Their production was approximately 4,500,000 barrels greater in that year than in any other year, although the production for the country was less than in three other years.

Section 3. Method of computing investment, profits, and costs.

INVESTMENT.—The investment for the 10-year period, 1913–1922, is shown on two different bases, and, with the exception of 1913, the mean of the investment at the beginning and at the end of each year has been taken as the investment for the year. The investment at the beginning of 1913, however, was not available so the investment at the end of the year was used as the investment for that year. Inventory valuations and depreciation charged have been accepted as shown by the company and not revised as was done in the previous report. The two different kinds of investment shown are as follows:

1. *Milling investment*, which is the investment in the milling business of the company (it being impossible to separate the flour milling investment from total milling investment) was computed from the liabilities side of the balance sheet and included the capital stock, bonds, surplus, and contingent reserves. Appreciation and good will were deducted.¹ Reserves for depreciation and bad debts were treated as deductions from plant account and accounts receivable respectively. In the reports received for the period 1913–1918 no analysis of the interest account or of notes payable was made, consequently it was impossible to arrive at the total amount of borrowed money used in the business. The amount of bonds and bond interest paid thereon was obtained, however. Although the amount of borrowed money was obtained for the period covered by the present report in order to make a comparative study for the 10-year period, it was necessary to put the figures for the 28 companies for the 4-year period on the basis of the figures available for the previous 6-year period by including in the investment only that part of the borrowed money represented by bonds. From the investment figure thus obtained, outside investments were deducted to obtain the milling investment of the company.

2. *Company investment*, which is the investment that the stockholders, collectively as a company, have in the business, was obtained by deducting the bonds from the milling investment, but adding back thereto the outside investments.

INCOME.—The operating profit of the company from its flour-milling business was obtained by deducting the cost of sales (including selling expenses) from the value of the flour sold. The profit on feed was treated as a credit to costs and hence is taken up in the cost of sales. The profit on coarse grains and from the other activities of the company, also the net interest (except interest on bonds and outside investments) and bad debts, are added to the operating profit of the company to obtain the profit from its total milling

¹ See footnote, Chapter III, p. 29

business. As there have been two kinds of investment shown, two kinds of profits to correspond thereto have been computed, as follows:

1. *Milling profit*, which is the profit received by the company from all sources except outside investments, is used for computing return on milling investment. To obtain the milling profit all the miscellaneous gains and losses (before deducting interest on bonds) were added to, or subtracted from, the total operating profit of the company, according to whether they showed a gain or a loss. The income from outside investments was then deducted to obtain the milling profit.

2. *Company profit*, which is the profit that accrues to the stockholders, collectively as a company, before the payment of income or profits taxes, was obtained by deducting the interest on bonds from the milling profit and adding back thereto the income from outside investments.

Costs.—The costs for the 28 identical companies for the 10-year period were tabulated in the same form as for the companies used in the present report, except that the item of packages covers the cost of packages for both feed and flour instead of for flour alone, and consequently the credit for feed is larger by the amount of feed packages included in the package item. The cost items shown are wheat cost (including options, i. e., gains or losses on hedges in futures, and self-rising-ingredients), labor, other milling expenses, depreciation, packages (both flour and feed), feed credit (credit of value of feed by-products to cost of flour), and general expenses.

Section 4. Milling investment, net income, and rate of return.

The method of arriving at the milling investment and net income has already been described (see p. 59). The investment for the 28 identical companies combined shows an increase in every year over the preceding year, nearly doubling in the 10-year period. The return on this investment averaged 18.5 per cent for this period. The wheat-flour mills owned by these 28 companies are located in three districts which are differently defined from the five districts shown in the preceding chapter. The three districts are (1) northwestern, including mills in Minnesota, North Dakota, and Montana; (2) southwestern, with mills in Kansas, Missouri, and Nebraska; and (3) the eastern, with mills in Tennessee, Kentucky, Ohio, and New York. The first two districts are similarly defined, although they do not cover as large a number of States as in the preceding chapter, while companies grouped in the southeastern and central and eastern districts in the preceding chapter are here grouped together in the eastern district, but operate in a smaller number of States.

The following table shows the average milling investment, net income, and rate of return for 28 identical companies engaged in the flour-milling business, by districts:

TABLE 25.—Milling investment—Net income and rate of return on investment for 28 identical companies by districts, 1913-1922

Year and district	Investment	Net income	Rate of return
			<i>Per cent</i>
1913—Northwestern.....	\$24,861,446	\$3,956,276	15.9
Southwestern.....	5,125,591	185,732	3.6
Eastern.....	7,828,121	503,613	6.4
Total.....	37,815,158	4,645,621	12.3
1914—Northwestern.....	25,551,470	4,927,949	19.3
Southwestern.....	5,347,788	881,650	16.5
Eastern.....	7,883,008	734,910	9.3
Total.....	38,782,266	6,544,709	16.9
1915—Northwestern.....	27,465,420	5,298,132	19.3
Southwestern.....	6,140,073	1,461,907	23.8
Eastern.....	8,181,459	976,767	11.9
Total.....	41,787,452	7,726,806	18.5
1916—Northwestern.....	30,491,987	7,093,805	23.2
Southwestern.....	6,965,003	1,004,692	14.4
Eastern.....	8,481,309	840,020	9.9
Total.....	45,938,299	8,912,517	19.4
1917—Northwestern.....	36,438,276	14,248,163	39.1
Southwestern.....	8,887,520	3,996,794	45.0
Eastern.....	9,114,874	1,639,278	18.0
Total.....	54,438,670	19,884,235	36.5
1918—Northwestern.....	41,603,762	11,124,861	26.8
Southwestern.....	11,198,845	3,747,435	33.5
Eastern.....	10,060,302	2,167,630	21.5
Total.....	62,762,909	17,039,926	27.1
1919—Northwestern.....	40,957,712	7,451,402	18.2
Southwestern.....	12,349,477	2,888,857	23.4
Eastern.....	11,274,046	1,635,856	14.5
Total.....	64,581,235	11,976,115	18.6
1920—Northwestern.....	44,268,064	10,294,172	23.3
Southwestern.....	14,772,979	4,064,629	27.5
Eastern.....	11,661,829	707,094	6.1
Total.....	70,702,892	15,067,895	21.3
1921—Northwestern.....	45,075,363	1,923,663	4.3
Southwestern.....	15,453,499	4,383,657	28.5
Eastern.....	11,840,166	349,765	3.0
Total.....	72,369,028	1,879,771	2.6
1922—Northwestern.....	44,773,875	7,032,187	15.7
Southwestern.....	15,765,686	1,623,681	10.3
Eastern.....	11,983,956	1,331,522	11.1
Total.....	72,523,016	9,984,390	13.6
1913-1922—Northwestern.....	361,384,925	73,312,611	20.3
Southwestern.....	102,016,849	19,462,919	19.1
Eastern.....	98,309,069	10,886,453	11.1
Total.....	561,730,843	103,661,983	18.5

¹ Loss.

The above table shows that the investment for all companies combined increased in every year, advancing from \$37,800,000 in 1913 to \$72,500,000 in 1922, or nearly 100 per cent. Both the southwestern and eastern districts increased their investment in every year, but the northwestern district showed a decrease in two years. For

the whole period, however, the northwestern district increased its investment from nearly \$24,900,000 in 1913 to nearly \$44,800,000 in 1922, or 80 per cent. During the same period the investment in the southwestern district more than tripled and in the eastern district increased more than 50 per cent.

The net income varied with business conditions. It ranged from about \$1,880,000 in the lean year of 1921 to about \$19,880,000 in the prosperous year of 1917, when the United States entered the World War. For the whole period over 70 per cent of the net income was earned by the companies in the northwestern district. Only one district showed a loss during the whole period, namely, the southwestern in 1921.

The average return on investment for all groups combined for the 10-year period was 18.5 per cent, ranging from 2.6 per cent in 1921 to 36.5 per cent in 1917. Both the northwestern and southwestern districts showed a higher average rate of return, with 20.3 and 19.1 per cent, respectively, but the eastern district with average earnings of only 11.1 per cent materially reduced the percentage for the entire group. For individual years the northwestern district showed the highest average rate of profit in five years and next to the highest rates in the other five years, the rates ranging from 4.3 per cent in the lean year of 1921 to 39.1 in the prosperous year of 1917.

The southwestern district, however, showed the greatest variation in average profits of any of the three districts, ranging from a loss of 2.5 per cent in 1921 to a profit of 45 per cent in 1917. This district showed the highest rates of profit in 5 years and the lowest in 3 years out of the 10-year period. The eastern district showed the lowest rate of profit in 7 years out of the 10. It made its poorest showing, with 3 per cent, in 1921, the low year for the other two districts. Its best year, instead of being in 1917, as was the case with the other two districts, came in 1918, with an average of 21.5 per cent, which was much lower than the other districts showed in several years.

Section 5. Return on investment by companies.

A study of the returns for the individual companies for the 10-year period reveals much greater variations. The annual rate of return for one company ranged from a loss of 62.4 per cent to a profit of 39.4 per cent.

The following table shows the rate of return on investment for the 28 identical companies, by companies:

TABLE 26.—Rate of return on milling investment for 28 identical companies, 1913–1922

District	1913	1914	1915	1916	1917	1918	1919	1920	1921	1922	Average
Northwestern:	<i>Per cent</i>	<i>Per cent</i>	<i>Per cent</i>	<i>Per cent</i>	<i>Per cent</i>	<i>Per cent</i>	<i>Per cent</i>	<i>Per cent</i>	<i>Per cent</i>	<i>Per cent</i>	<i>Per cent</i>
1.....	3.5	14.4	27.8	18.2	48.5	54.5	0.5	47.0	14.2	1.5	9.2
2.....	8.7	8.8	9.4	8.2	15.8	28.1	11.8	32.2	13.1	11.2	12.8
3.....	27.8	21.3	12.9	12.5	39.4	31.9	11.5	12.8	62.4	25.9	4.9
4.....	7.8	15.3	40.2	24.4	38.7	51.5	41.4	41.1	13.3	2.3	28.0
5.....	11.6	11.8	4.9	20.6	29.6	14.8	29.1	25.9	18.0	13.6	18.8
6.....	17.6	24.7	30.5	25.9	58.6	25.1	15.1	27.5	2.3	23.5	24.5
7.....	18.9	19.8	13.4	19.4	22.1	32.4	19.0	11.6	8.3	11.5	16.3
8.....	19.3	19.6	18.6	30.4	28.4	26.0	21.5	20.6	13.4	15.6	22.3
9.....	18.3	21.0	12.8	31.5	38.2	24.9	27.6	41.3	1.2	8.1	21.7
10.....	7.3	8.7	8.7	14.8	30.6	17.4	9.6	12.8	1.9	1.1	10.6
Average.....	15.9	19.3	19.3	23.2	39.1	26.8	18.2	23.3	4.3	15.7	20.3
Southwestern:											
1.....	22.2	20.7	18.8	11.3	60.2	31.4	26.3	44.0	3.5	17.3	24.5
2.....	7.3	.1	14.1	20.8	31.5	40.3	19.5	18.6	12.7	10.3	18.1
3.....	.1	11.8	18.1	13.2	57.7	26.2	16.8	31.0	24.5	10.4	16.5
4.....	16.0	34.0	19.1	30.5	94.3	15.5	35.5	12.3	24.3	24.4	30.9
5.....	13.9	28.8	34.8	23.3	17.4	37.1	18.4	4.7	16.8	13.1	17.7
6.....	13.0	13.9	16.1	11.8	38.6	18.4	7.2	14.1	13.1	2.2	12.4
7.....	17.3	17.3	18.0	18.5	18.5	38.5	18.2	38.5	9.8	10.2	21.6
8.....	12.5	26.8	22.7	0	22.8	13.0	46.6	31.1	14.1	8.2	18.6
9.....	23.4	32.3	32.4	16.5	33.5	38.0	31.1	34.2	6.2	8.5	22.2
10.....	5.0	32.4	25.3	10.5	34.0	16.6	54.4	50.8	7.8	47.5	27.7
11.....	27.5	5.8	69.4	10.5	33.5	55.3	28.7	6.3	1.8	1.8	19.9
12.....	12.2	2.4	34.8	4.8	33.8	12.3	12.9	.4	.2	1.8	7.2
Average.....	8.6	16.5	23.9	14.4	45.0	33.5	23.4	27.5	12.5	10.3	19.1
Eastern:											
1.....	4.4	14.1	17.9	16.3	26.7	23.4	12.2	12.0	34.3	4.3	5.9
2.....	11.4	15.2	18.9	3.4	52.9	34.8	28.7	16.6	22.3	57.3	25.2
3.....	5.8	1.6	10.7	9.4	22.2	38.4	6.5	47.4	10.3	8.9	14.5
4.....	8.9	24.4	29.9	18.5	43.4	47.7	37.3	50.0	14.3	3.3	28.1
5.....	19.3	19.3	12.6	4.9	12.7	12.8	24.6	4.0	1.5	10.3	8.0
6.....	5.8	7.6	9.1	9.9	8.3	14.3	11.4	10.1	5.7	5.7	8.1
Average.....	6.4	9.3	11.9	9.9	18.0	21.5	14.5	6.1	3.0	11.1	11.1
Average.....	12.8	16.9	18.5	19.4	36.5	27.1	18.6	21.3	2.6	13.8	18.5

* Loss.

Of the 10 companies in the northwestern district which averaged 20.3 per cent for the period, only 2 showed an average profit for the 10-year period of less than 10 per cent, namely, 9.2 and 4.9, respectively, while 4 showed an average profit of more than 20 per cent. Of the 12 companies in the southwestern district, which averaged 19.1 per cent for the 10-year period, only 1 showed an average profit of less than 10 per cent, namely, 7.2 per cent, while another showed an average profit of nearly 31 per cent. The eastern district of six companies made much the poorest showing with a 10-year average profit of 11.1 per cent, and three of the companies showed average profits of less than 10 per cent, while two of them showed average profits in excess of 20 per cent.

The greatest variations were shown in the case of the two companies showing the lowest profit in the northwestern district. Company No. 3, with an average return of 4.9 per cent for the 10-year period showed a range from a loss of 62.4 per cent in 1921 to a profit of 39.4 per cent in 1917. Company No. 1 with a 10-year average return of less than 10 per cent showed next to the highest profit for a single year, namely, 54.5 per cent in 1918, and also showed next to the greatest loss during the period, namely, 47 per cent in 1920. The greatest range for any other company was for company No. 4 in the

southwestern district which, with the maximum average profit for the period of 30.9 per cent, had a range from 94.3 per cent in 1917, the highest profit for a single year, to 12.3 per cent in 1920.

In the lean year of 1921, with an average return of 2.6 per cent, 12 companies out of the 28 showed losses, only 2 companies showed returns of over 20 per cent, and only 6 over 10 per cent. In the year 1917, on the other hand, only 1 company earned less than 10 per cent, only 4 less than 20 per cent, and 6 earned in excess of 50 per cent.

Section 6. Return on company investment.

The milling investment and the return thereon have already been discussed. As the company investment represents the money put into the business by the stockholders collectively, as a company, and does not include borrowed money, it is smaller than the milling investment in every year, except when the outside investments are greater than the bonded debt. As already stated bonds were the only form of borrowed money that could be shown separately for the 28 identical companies. In every year the return on the company investment for the group as a whole was larger than the return on the milling investment. For the first six years of the period this difference was quite marked, but for the last four years it was small.

The data for the company investment are shown in more detail in Appendix Table 9. The following table shows the return on the company investment for the 28 identical companies by districts:

TABLE 27.—Rate of return on company investment for 28 identical companies, by districts, 1913-1922

Year	District			28 companies	Year	District			28 companies
	North-western	South-western	Eastern			North-western	South-western	Eastern	
	<i>Per ct.</i>	<i>Per ct.</i>	<i>Per ct.</i>	<i>Per ct.</i>		<i>Per ct.</i>	<i>Per ct.</i>	<i>Per ct.</i>	<i>Per ct.</i>
1913.....	19.1	3.5	7.6	15.1	1919.....	19.1	20.7	18.5	19.0
1914.....	21.9	16.9	10.1	19.4	1920.....	23.6	25.8	5.3	21.5
1915.....	22.1	25.0	14.0	21.4	1921.....	5.3	11.8	2.0	3.2
1916.....	25.2	15.1	11.6	21.6	1922.....	17.2	9.9	11.8	14.7
1917.....	42.2	47.5	21.2	40.2					
1918.....	28.1	34.3	24.5	28.8	Average....	21.9	18.7	12.2	19.9

¹ Loss.

The above table shows an average return on the company investment for the 10-year period of 19.9 per cent, as against a return of 18.5 per cent on the milling investment. (See section 4.) The return on investment by districts shows the same relation from low to high as the return on milling investment. In each year the return on company investment in the northwestern district was greater than the return on milling investment. The same did not hold true for the other two districts, however. In fact, the average return for the southwestern district was slightly lower on company investment than it was on milling investment. This was due to the outside investments included in the company investment being greater than the amount of bonded indebtedness.

The average return on company investment for all districts varied from 3.2 per cent in 1921 to 40.2 per cent in 1917. It averaged 21.9 per cent for the northwestern district, ranging from 5.3 per cent in 1921 to 42.2 per cent in 1917. In fact, 1921 was low for all three

districts, with the southwestern showing a loss of 1.8 per cent and the eastern showing the very low average profit of 2 per cent. The eastern district, however, made its best showing in 1918, with 24.5 per cent, whereas the other two districts had their best year in 1917, the southwestern district showing an average profit of 47.5 per cent.

Section 7. Profit per barrel of flour.

The milling profit for the 28 identical companies for the 10-year period averaged \$0.30 per barrel and the company profit was \$0.31 per barrel. In this connection it must be borne in mind that the milling profit in this table has already had all interest deducted except interest on bonded indebtedness, whereas in the case of the companies discussed for the 4-year period no interest was deducted from the milling profit, but it was among the items deducted therefrom to obtain the company profit. Appendix Table 10 gives data covering the quantity and amounts of sales and profits, while Appendix Table 11 shows the per barrel cost of sales, selling expense, value of sales, and profit by districts.

The cost of sales may differ somewhat from the cost of production due to inventory differences and to the inclusion of the cost of any purchased flour which is resold.

Appendix Table 11 shows that the operating profit per barrel was practically the same for all districts for the 10-year period, averaging \$0.33 for the group and for the northwestern district, while the other two districts were 1 cent higher. By years, the operating profit showed wide variations, however, ranging from \$0.17 in 1913 to \$0.57 per barrel in 1917, and the northwestern district ranged from \$0.18 to \$0.60 per barrel in the same years. Although the southwestern district had its lowest operating profit in the same year of 1913, its highest profit, \$0.60 per barrel, came in 1920. The eastern district had its poorest year in 1921 with a profit of \$0.17 per barrel, while its best year was in 1919 with a profit of \$0.57.

The milling profit per barrel averaged 3 cents less than the operating profit, because the other activities of the companies showed a loss for the period. The loss for the northwestern district also averaged 3 cents per barrel, while for the southwestern district it was only 1 cent. It was greatest for the eastern district at 4 cents per barrel. In six years out of the ten all districts showed a loss from other activities, and in only one year, 1918, did they all show a profit.

The company profit per barrel averaged 1 cent more than the milling profit. The increase was the same for both the northwestern and southwestern districts. The decrease of 5 cents in the eastern district was not reflected in the average. The difference between the milling profit and the company profit was practically the same in every year as the difference shown for the 10-year average. The average for the group was \$0.31 per barrel, the same as for the northwestern district, while the southwestern district showed a profit of \$0.34 and the eastern district a profit of only \$0.25.

Section 8. Total cost of flour per barrel.

The cost of flour per barrel showed wide fluctuations during the 10-year period and was much lower during the pre-war period, 1913-1916, than it has been since. The average for all districts combined is not widely different from the average for the northwestern district in any year, the maximum variation being \$0.19 per barrel in the highest cost year of 1920.

WHEAT FLOUR MILLING INDUSTRY

The following table shows the cost of producing flour per barrel for the 28 identical companies, by companies and by districts:

TABLE 28.—Annual average cost of producing wheat flour, per barrel, by companies and districts, 1913-1922

District and company	1913	1914	1915	1916	1917	1918	1919	1920	1921	1922	Average
Northwestern:											
1	\$3 68	\$4.35	\$5 20	\$6.51	\$9 62	\$9.72	\$10.17	\$11 32	\$6.06	\$5.78	\$6.94
2	3 59	3 90	5 05	6.78	8 43	9 39	9 96	11.36	9 17	6.56	7 09
3	3 82	3.70	5 63	4 42	6.29	9 91	9 97	11 52	9 02	6.44	6.94
4	3 94	3 68	4.78	4 61	7.08	9 34	9 83	10 69	9 28	6.18	6.78
5	3 88	3 76	5 52	4 83	8.51	9 71	9 93	12.07	8.73	6.82	7 00
6	3 78	3 51	5 31	4 59	7 98	9.43	10.08	10.91	8 31	6.90	6 91
7	3 66	3 60	5.25	4 56	8 00	9 12	10 11	11 51	8 47	6.24	6 95
8	3 80	3 79	5 42	4 75	9 37	9 36	10 16	11 47	8 67	6.82	6 78
9	3 75	3.69	5 95	4 82	8 07	9 69	10 13	11 68	9 45	6.98	7 33
10	3 71	3.52	5 39	4 23	7.67	9.56	9 98	10.78	8 94	6.87	6 65
Average	3 75	3.62	5 32	4.66	8.06	9.28	10.06	11 29	8.53	6.21	6 97
Southwestern:											
1	3 61	3 44	4 84	4 39	6.33	6 40	9 28	10 32	8 51	5.14	6 44
2	3 70	3.60	5 16	4 49	7 89	9 33	9 55	10 53	7 76	6.54	7 15
3	3 72	3 49	4.33	4 46	6.53	9 84	9 16	9 86	8 73	4.97	6 84
4	3 52	3 64	5.62	5.73	8.40	9.86	9 49	10 72	6 08	5 15	6 82
5	3 46	3.57	4 84	6.45	9 62	9 63	9 65	11 31	6 03	5 06	6 39
6	4 16	4 16	5 00	4 85	8 03	10.04	9 33	10 31	8 75	5 11	6 80
7	3 47	3 49	4 42	4 63	8 46	9 33	9 73	10 11	8 61	4 94	7 43
8	4 91	3 85	4 91	6 22	6 92	9 93	9 03	10 89	6 96	5 43	6 88
9	3 57	3.57	4 46	4 60	6 79	9 31	9 35	10 39	8 96	5 41	6 70
10	4 47	3 71	4 47	5 07	7 07	9 61	9 62	9 89	9 76	6 76	7 02
11	4 02	3 78	4 53	4 76	7 22	9 72	9 75	11 17	6 51	6 48	6 75
12	4 41	3 96	4 59	4 94	7 07	9 83	9 72	11 69	6 44	5 61	6 79
Average	3 87	3.63	4 66	4 67	7 16	9 63	9 41	10 31	8 10	5 25	6 86
Eastern:											
1	4 89	4 35	5 15	5 51	7 77	10.02	10 47	11 55	7 09	6 97	7 09
2	4 53	4 21	5 14	5 03	6 91	9 69	9 88	10 78	6 83	6 62	6 82
3	4 04	3 56	4 42	4 78	5 93	9 38	9 87	9 19	9 35	6 10	6 67
4	4 53	3 84	4 76	5 09	6 95	9 74	9 99	9 94	10 45	6 21	6 64
5	4 15	4 54	5 87	6 43	10 23	10 24	10 75	12 27	9 02	7 71	7 56
6	4 44	4 18	5 81	5 36	9 08	10 25	10 55	12 18	9 13	7 00	7 85
Average	4 48	4 14	5 34	5 30	7 93	9 98	10 30	11 23	8 39	6 42	7 29
All districts	3 84	3 63	5 22	4 73	7 90	9 49	9 97	11 09	8 43	6 08	6 99

The cost of production showed the cost of the flour actually produced within a given year while the cost of sales, shown in the preceding table, shows the cost of the flour sold. These two costs may differ somewhat, due to inventory differences, and the inclusion in cost of sales, of the cost of any purchased flour which is resold.

The above table shows an average cost of producing flour for the 10-year period of \$6.99 per barrel, which was 2 cents higher than for the northwestern district and 13 cents higher than for the southwestern district, but 30 cents lower than for the eastern district. The southwestern district showed the lowest cost for the period and also for 6 of the 10 years. In fact it had the lowest cost in each of the last 4 years. The northwestern district had the second lowest cost for the period, but was lowest in 4 of the 10 years. During the last 4 years it was next to low twice and the highest twice. The eastern district which generally had higher wheat, package, labor and overhead costs had the highest cost for the 10-year period and was highest in 7 of the 10 years, one of the other two districts being lowest in each year.

The lowest cost year for the period in all three districts was in 1914, when the average cost was \$3.68 per barrel, which was \$0.06 higher than for the northwestern district, \$0.05 higher than for the southwestern, but \$0.46 lower than for the eastern district. The highest cost year was 1920 in all three districts when the average cost

was \$11.09 per barrel, or three times the cost in 1914. The cost in the northwestern district was \$0.19 higher in 1920 than for all districts combined, while the eastern district had a cost that was only \$0.14 higher than the average for all districts. The southwestern district had a lower cost than any other district, its cost of \$10.31 per barrel being \$0.78 below the average for all districts.

The lowest cost for any company for the entire period, 1913-1922, was in the southwestern district in 1914, when one company had a cost of \$3.44 per barrel. The highest cost for the period for an individual company was \$12.27 per barrel in the eastern district in 1920, although one other company in the same district had a cost only \$0.09 lower. These two companies also had the highest average costs for the 10-year period, although in reverse order.

The lowest average cost for the period was \$6.39 per barrel for a company in the southwestern district, which also had the lowest cost in 2 of the 10 years.

Section 9. Elements of flour cost.

Throughout the entire 10-year period the cost of the wheat ground constituted from 87 to 92 per cent of the gross mill cost, which includes the cost of the flour manufactured and packed and the feed obtained therefrom, while the cost of the packages was the second largest single item. The labor cost ranged from a minimum of \$0.10 per barrel to a maximum of \$0.27 per barrel and constituted from less than 2 to only 3 per cent of the total cost of the packed flour and feed.

Appendix Table 12 gives the quantities produced and the amount for each item of cost by districts, while the following table shows the per barrel cost by principal items of expense for all districts combined:

TABLE 29.—Annual average mill costs per barrel of wheat flour, for 28 identical companies, with index numbers, 1913-1922, and average for 10-year period

Item	Cost per barrel										Average 10 years
	1913	1914	1915	1916	1917	1918	1919	1920	1921	1922	
Wheat.....	\$3.95	\$3.87	\$5.32	\$4.96	\$5.46	\$9.77	\$10.25	\$11.55	\$8.42	\$5.99	\$7.25
Labor.....	.10	.11	.11	.10	.13	.17	.21	.37	.25	.20	.17
Other mill costs.....	.08	.08	.08	.08	.11	.16	.16	.19	.19	.17	.13
General expense.....	.06	.09	.10	.09	.13	.17	.17	.22	.23	.20	.14
Depreciation.....	.01	.01	.01	.01	.01	.02	.02	.02	.02	.02	.02
Package.....	.27	.27	.23	.25	.22	.48	.62	.64	.45	.31	.38
Gross mill costs.....	4.49	4.43	6.05	5.49	6.16	10.77	11.41	13.18	9.55	6.99	8.09
Feed credit.....	.65	.75	.83	.76	1.26	1.28	1.44	2.09	1.12	.86	1.10
Net mill costs.....	3.84	3.68	5.22	4.73	7.90	9.49	9.97	11.09	8.43	6.08	6.99

INDEX NUMBERS, 1913-100

Wheat.....	100	96	140	126	214	247	259	370	213	152	184
Labor.....	100	110	110	100	130	170	210	370	250	200	170
Other mill costs.....	100	100	100	100	138	200	200	225	238	213	163
General expense.....	100	113	125	113	163	213	213	275	275	250	175
Depreciation.....	100	100	100	100	100	200	200	200	200	200	200
Package.....	100	200	85	93	119	178	239	257	167	115	141
Gross mill costs.....	100	99	135	122	204	246	254	294	213	153	189
Feed credit.....	100	118	128	117	194	197	222	323	172	133	169
Net mill costs.....	100	96	136	123	206	247	260	266	226	157	162

As shown in the above table, all items entering into the cost of flour continued to advance and reached their highest level in 1920. In the next two years there was a marked decline, more especially in the controlling factor, wheat, with the result that, after crediting the receipts from feed, the average net mill cost of flour manufactured in 1922 was \$5.06 per barrel less than in 1920. This represented a decline of 45.6 per cent in two years.

WHEAT COST.—As stated in Chapter IV, the average cost for all companies of the wheat used in the 4-year period was 87 to 90 per cent of the gross mill cost. In the 10-year period the proportion ranged from 87 per cent in 1914 and 1922 to more than 92 per cent in 1917, the average for the period being 90 per cent. As shown by the table, the cost of the wheat ground by the mills fluctuated during the first four years, after which there was a constant increase to the maximum in 1920. The cost of the wheat ground in this year reached \$11.85 per barrel, and, as shown by the index number, the increase over the average for 1913 was equivalent to 200 per cent. The decline in wheat prices, that was well under way in the last half of 1920, led to a decrease in the cost of the wheat ground which continued through the next two years, until in 1922 it was only \$5.99 per barrel of flour manufactured, or practically one-half of that of 1920, but somewhat more than 50 per cent greater than for 1913.

Comparison of these data shows very clearly that the average results for all companies were largely influenced by the figures for mills in the northwestern group. This was due to the larger volume of wheat ground by the mills in that district. Extending the comparison to the details for the different districts, it will be noted that in some important respects the mills in the southwestern district possessed certain advantages over those in other groups. For example, in six years of the period the cost of wheat ground per barrel of flour manufactured by the southwestern mills was lower than for the northwestern mills, while throughout the entire period their wheat cost was from \$0.23 per barrel to \$1.08 per barrel lower than for mills in the eastern district.

LABOR COST.—Although the labor cost is a minor factor in the total cost of a barrel of flour, yet the figures show that, as between 1913 and 1920, there not only was a substantial increase in this item, but in the downward course in the last two years the tendency to decline was not so marked as in the case of wheat and packages. It will be observed also that, while the average cost of labor in 1920 was 170 per cent higher than in 1913 and 1916, the decline in 1922 amounted to only 26 per cent as against 49 per cent for wheat and 52 per cent for packages. During the 10-year period the labor cost ranged from a minimum of \$0.10 per barrel to a maximum of \$0.27 per barrel with an average of \$0.17.

As shown in Appendix Table 12, in five years of the period the average cost of labor for the northwestern mills was \$0.01 per barrel lower than for the southwestern district, while in three years this item was the same for both groups, but in 1917 and 1920 the southwestern mills had an advantage of \$0.02 and \$0.01 per barrel, respectively, over those in the northwestern district. Throughout the 10 years the labor cost for the eastern mills was higher than for the other districts. The lowest average labor cost for any district was

\$0.09 per barrel for the northwestern district in 1913 and the highest \$0.35 per barrel in the eastern district in 1920.

PACKAGE COST.—As stated in Chapter IV, the cost of packages constitutes the largest single item of cost, excepting wheat in producing a barrel of flour. This item, for the 28 companies, includes both flour and feed packages, consequently the figures are not exactly comparable with those for the four-year period shown in Chapter IV. The highest level in both cases was reached in 1920, the range for the 28 companies being from an average of \$0.23 per barrel in 1915 to \$0.64 per barrel in 1920. Based upon the lowest cost in 1915, the increase amounted to 178 per cent. In the downward course in 1921 and 1922 the package cost decreased 52 per cent. In seven years of the period the average cost of packages, for the southwestern mills was slightly lower than for the northwestern mills, while, excepting 1919 and 1921, this cost for the eastern mills ranged from \$0.03 per barrel to \$0.18 per barrel higher than for the other groups.

OTHER MILL COSTS.—"Other mill costs" appear to have run along more uniformly than other expense items. After doubling in amount in 1918, as compared with the first four years, the maximum was not reached until 1921, when the index number indicates an increase of 138 per cent. As in the case of labor and general expense, the factors which go to make up the item of other mill costs showed a strong tendency to hold to the highest level. Compared with the larger number of companies in the last four years, the 28 identical companies had an apparent advantage of 1 or 2 cents per barrel. The "other mill costs" were practically the same for all districts for the period, averaging \$0.13 per barrel for the group and for the northwestern district, while the other two districts averaged 1 cent higher.

For the whole period the variation was from \$0.08 in the first four years to \$0.19 per barrel in 1921. The lowest average cost for any district was \$0.07 per barrel in the northwestern district for the first four years, while the highest average cost, \$0.20 per barrel, was also in this same district in 1921. In the first five years "Other mill costs" for the northwestern mills were \$0.02 to \$0.05 per barrel lower than for the other groups, while in the last half of the period the margins between the three groups amounted to only \$0.01 or \$0.02 per barrel, with the advantage for the most part in favor of the eastern mills.

DEPRECIATION.—As already stated, the commission did not revise the depreciation charged by the companies. This item was small for most of them, the average for the 28 companies for the 10-year period being \$0.02 per barrel. During the first five years the average for all companies was only 1 cent per barrel. In 1913 only one-half of the companies charged depreciation, in 1918 all but two charged depreciation, while in the last three years 23 of the 28 made a depreciation charge.

GENERAL EXPENSE.—General expense ranged from an average of \$0.08 per barrel in 1913 to \$0.22 per barrel in 1920 and 1921, an increase of 175 per cent. The decline of 2 cents a barrel in 1922 was hardly appreciable, and rather indicated a tendency to hold to the high level reached in 1920. Salaries constituted the largest single item included in general expense. Comparison of this item for all companies during several years of the period shows three companies paying as low as \$0.02 per barrel, while the charge by one company in

1920 amounted to \$0.35 per barrel. In the latter case, however, the accounts showed a tendency to minimize profits and to take them in the form of high salaries. About 92 per cent of the salary charges reported were within a range of \$0.02 to \$0.20 per barrel, the average for all companies being around \$0.10 per barrel.

There were great variations in the item of general expense in the different districts. For the whole period the average for all districts was \$0.14 per barrel, which was 1 cent higher than for the northwestern district, 3 cents lower than for the southwestern, and 9 cents lower than for the eastern district. The average for the northwestern district was lowest in each year, and that for the eastern was highest. The lowest average general expense was \$0.07 per barrel in the northwestern district in three years, while the highest was \$0.30 per barrel in the eastern district in 1921.

GROSS MILL COST.—The "gross mill cost" includes the cost of wheat and the cost of packages, as well as the cost of milling the wheat and of packing the products—flour and feed. During the first four years of the period the average gross mill cost fluctuated from year to year, after which there was a rapid increase until the peak was reached in 1920. In the last two years there was a decided decrease. The changes from year to year were largely due to the cost of the wheat.

NET MILL COST.—As already pointed out, the net cost of producing a barrel of flour was computed by treating feed products as by-products, and crediting the receipts therefrom to the total mill cost in order to secure the cost of producing a barrel of wheat flour. The receipts from the sale of bran, middlings, and other by-products obtained in the conversion of wheat into flour are an important factor in the determination of the net results of the business. According to the table, aside from the average cost of the wheat used, in every year, excepting 1921 and 1922, the credit from feed sales exceeded all milling, overhead, and package expenses combined by amounts ranging from \$0.11 per barrel in 1913 to \$0.76 per barrel in 1920.

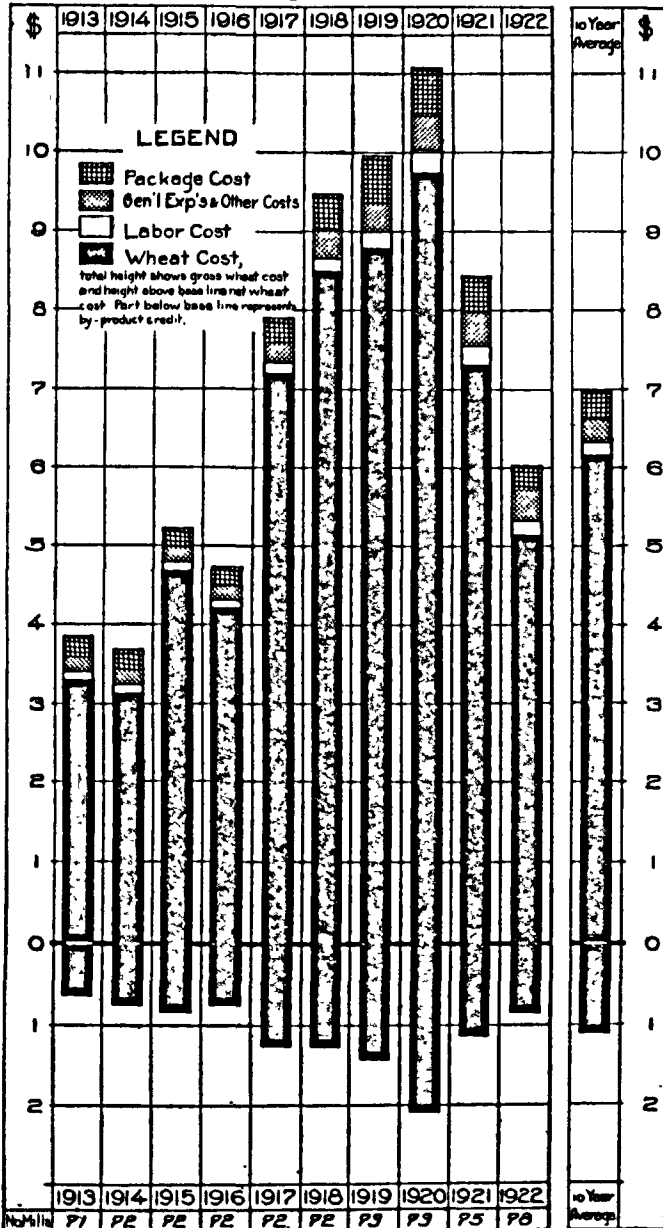
Finally, as shown by the net mill costs, notwithstanding that the feed credits for the eastern mills were larger than for the southwestern group in all years excepting 1921, their net costs were higher in every year. On the other hand, in six years of the period the costs for the southwestern mills were lower than for the northwestern group, while in two years, 1914 and 1916, the margin in favor of the latter amounted to only 1 cent per barrel. Further comparison shows that in the other two years, 1913 and 1918, in which the northwestern mills had the lowest net costs, their advantage in this regard was largely due to the lower cost of the wheat ground.

The average net cost of producing flour for the 10-year period was \$6.99 per barrel, which was \$0.26 less than the cost of the wheat from which the flour was made, due to a credit for feed of \$1.10. The cost varied from \$6.86 per barrel in the southwestern district to \$7.29 in the eastern district, the northwestern district being \$6.97 per barrel. The total costs of flour, however, have been discussed already in the preceding section.

Section 10. Graphic presentation of the principal elements of cost.

Chart 3, opposite, shows graphically the annual average total cost and the principal elements of the cost of producing a barrel of flour

Chart 3-COMPARISON OF THE ANNUAL AND 10 YEAR AVERAGE MILL COST and principal items of Cost of Wheat Flour, per barrel, for 28 representative Flour Milling Companies 1913-1922.



for 28 identical companies combined for the 10-year period 1913-1922. The data upon which this chart is based are shown in Appendix Table 12, p. 120.

The total annual average mill cost of producing a barrel of wheat flour is shown by the height of the column above the zero line, while the portion below the zero line represents the amount of receipts from by-products—i. e., bran, shorts, middlings, etc.—which were credited to the total cost of producing flour and feed. The total length of the black portion of the column, both above and below the zero line, represents the total, or gross cost, of the wheat used in producing a barrel of flour and the by-products made in connection therewith.

The outstanding features shown by the chart are (1) the large proportion of the total cost of a barrel of flour which is represented by the wheat cost, and (2) the small proportion due to labor. For every year, excepting 1922, and for the 10-year period the cost of packages was the second largest single item.

CHAPTER VI

WHEAT-FLOUR PRICES

Section 1. Method of distribution.

The sections of the country where a surplus of wheat is produced and the bulk of the flour is manufactured, as shown in the preceding chapters, include the northwestern and southwestern districts. The principal milling centers in these districts are Minneapolis and Kansas City. From these and other milling centers the product is distributed by rail and water routes to domestic markets or goes into the export trade. The jobbing trade is important, especially in eastern markets, but there is a considerable direct trade with retail grocers and bakers. The grocery store is the chief source of local flour supply for the inhabitants in the cities, small towns, and villages throughout the United States. In the larger cities especially the bakers are also important purchasers of flour, generally buying in carload lots. Bakers often purchase their supplies directly from the flour millers, but more frequently various types of middlemen, such as brokers, jobbers, or wholesalers, intervene and really form the connecting link between the producers and the larger consumers. Some of the larger mills maintain branch houses at populous distributing points throughout the country and supply the retail and bakery trade directly in this way. A considerable portion of the population purchase their supplies of flour directly from the local flour mills, which are found in many sections of the country, especially in the wheat-growing areas where suitable sources of water power are available. The local demand for feed, such as bran and middlings, for domestic animals is also an important factor leading to the establishment of these mills.

In the distribution of flour, bags of cotton, jute, or paper, or barrels of wood are used, varying in contents from a minimum of 2 pounds to a maximum of 196 pounds. Comparatively little flour is now distributed in wooden packages, because wooden containers are more expensive and packages of smaller size facilitate handling and sale. Domestic prices are quoted on the basis of a barrel of 196 pounds packed in 98-pound cotton bags, while in the foreign trade a jute bag containing 140 pounds or a sack of 280 pounds is chiefly used as a basis for price quotation, especially in English-speaking countries. In shipments to Latin countries in Europe and South America price quotations are frequently made on the basis of 100 kilograms or 220.5 pounds, while for Cuba the usual price quotation is for a 200-pound unit. The legal regulations and requirements regarding the weight of flour packages in domestic trade are discussed in the following chapter.

Section 2. Prices of wheat flour reported by millers, 1919-1922.

In order to secure more exact information with respect to flour prices, the principal flour-milling companies were requested to furnish their price quotations to the trade for first-grade family patent

flour, with dates of change for the period 1919-1922. From these data monthly average prices were computed which are shown in the table below. These averages were computed by multiplying each price by the number of days that it was in effect, and dividing by the number of days in each month. During 1919, while wheat prices were still under Government control, flour prices were stable, but in 1920, 1921, and 1922, when there were rapid fluctuations in the market price of wheat, millers made frequent changes in their quotations. In many cases, especially in 1920 and 1921, there were more than 20 changes in the price quotations during a month, and in a number of instances some mills reported two changes in a single day.

The following table shows the monthly average wheat flour prices, based upon quotations secured from flour-milling companies, for the northwestern and southwestern wheat flour-producing districts for the period 1919-1922.

TABLE 30.—*Monthly average price quotations per barrel for first-grade family patent wheat flour, reported by millers by districts, 1919-1922*

Month	Northwestern ¹				Southwestern ¹			
	1919	1920	1921	1922	1919	1920	1921	1922
January.....	\$10.31	\$15.02	\$3.64	\$7.36	\$10.08	\$12.99	\$9.00	\$6.19
February.....	10.43	13.98	9.49	8.28	10.06	12.31	8.58	6.83
March.....	11.19	13.87	9.25	8.32	10.41	12.07	8.43	7.08
April.....	12.26	15.01	8.47	8.52	10.97	12.51	7.48	7.08
May.....	12.73	15.66	8.99	8.48	11.21	13.32	7.78	7.13
June.....	12.14	14.78	9.42	7.97	11.03	13.07	7.80	6.59
July.....	12.23	14.21	9.39	8.06	10.61	12.60	6.91	6.37
August.....	12.23	13.34	8.49	7.35	10.25	11.73	6.63	6.83
September.....	11.90	13.10	8.47	6.88	10.30	11.87	6.84	5.79
October.....	12.35	11.59	7.76	6.91	10.49	10.92	6.56	6.09
November.....	13.23	9.76	7.44	7.12	11.32	9.83	6.28	6.23
December.....	14.50	9.39	7.40	7.20	12.10	8.91	6.24	6.21

INDEX NUMBERS ²

January.....	100	146	94	71	100	129	89	61
February.....	101	136	92	80	100	122	86	68
March.....	109	135	90	81	103	120	84	70
April.....	119	146	82	83	109	124	74	70
May.....	123	152	87	82	111	132	77	71
June.....	118	143	91	77	109	130	77	65
July.....	119	138	91	78	105	125	69	63
August.....	119	129	82	71	102	116	66	58
September.....	115	127	82	67	102	118	68	57
October.....	120	112	75	67	104	108	65	60
November.....	128	95	72	69	112	98	62	62
December.....	141	91	72	70	120	88	62	62

¹ Monthly average prices computed from price changes reported by various flour-milling companies.

² January, 1919=100

According to the table there was a rapid increase in wheat-flour price quotations in the northwestern district from an average of \$10.31 per barrel in January, 1919, to the maximum of \$15.66 per barrel in May, 1920. This advance was very sharp from September to May, during which time there was a rapid advance in wheat prices. The unprecedented price decline in wheat, which began in June, 1920, led to a precipitate decline in flour prices, which fell to an average of \$9.39 per barrel in December, a decrease of \$6.27 per barrel in seven months. Prices fluctuated somewhat during the first half

of 1921, but beginning in July a decline set in which continued through January, 1922. During the following six months the tendency was toward a slightly higher level, the average being about \$1 per barrel higher than for January. Beginning in August there was a sharp decline, which culminated in the lowest monthly average price for the four-year period, \$6.88 per barrel in September, after which there was a moderate advance to an average of \$7.20 in December.

The monthly average price quotations in the southwestern district were considerably lower than for the northwestern district, with the single exception of November, 1920. The maximum difference in the monthly average prices was \$2.50 per barrel in April, 1920. During the year 1919 the spread between the two districts increased from \$0.23 per barrel to \$2.40 per barrel, while after the price decline set in this difference gradually lessened.

The monthly average with minor fluctuations ranged from \$10.08 per barrel in January, 1919, to the peak price of \$13.32 in May, 1920, after which a sharp decline set in which continued through December, when the average was \$8.91 per barrel. During 1921 and 1922 prices in the southwestern district generally followed the same trend as the northwestern district, until the minimum average price of only \$5.79 per barrel was shown for September, 1922, which was followed by an advance to an average of \$6.21 per barrel in December.

Section 3. Quoted market prices of wheat flour, 1913-1923.

The course of wheat-flour prices during the four and one-half year period, 1919-1923, is discussed in this report, and also for the preceding six-year period, 1913-1918, in order that a proper perspective may be obtained.

The unusual conditions affecting all prices during the World War, including abnormal demand, comparatively limited production, lack of transportation facilities, the extraordinary increase in the hazards of ocean transportation, and the various price fixing and other regulations adopted by all the belligerents had the effect of disorganizing all the markets and the channels of distribution. The United States Food Administration, which was established August 10, 1917, continued to function until May, 1919, although certain activities were discontinued December 20, 1918, shortly after the armistice on November 11, 1918. The United States Grain Corporation, on the other hand, continued to operate until May, 1920, and thus indirectly, but in an important way, the production and prices of flour were affected by its activities. Furthermore, prior to the declaration of war by the United States on April 7, 1917, the World War had continued for about three years, during which time this country as a neutral nation was forced to contend with many difficulties in attempting to maintain the usual channels of foreign trade, particularly with other neutral countries located in the vicinity of the warring nations. Consequently, in order to begin with a more normal period when the usual competitive conditions controlled the commerce of the world, the tabulation of the prices was extended backward to include 1913.

PRICE QUOTATIONS AT MINNEAPOLIS.—The location of Minneapolis in the immediate vicinity of the great spring wheat growing area with many flour mills operating in that neighborhood indicated the selection of the flour prices at this market for the

spring wheat flour industry. The following table shows the monthly average market price quotations of hard spring wheat, first patent flour, per barrel, at Minneapolis, together with index numbers for the period 1913-1923.

TABLE 31.—Monthly average market price quotations of hard spring wheat first patent flour, per barrel, in cotton sacks at Minneapolis, with index numbers, 1913-1923

Month	1913	1914	1915	1916	1917	1918	1919	1920	1921	1922	1923
January.....	\$4.18	\$4.21	\$6.71	\$6.41	\$8.95	\$9.80	\$10.28	\$15.07	\$9.04	\$7.48	\$4.95
February.....	4.22	4.33	7.83	6.07	8.55	10.10	10.55	14.06	9.53	8.60	7.09
March.....	4.09	4.31	7.23	5.58	9.45	9.94	11.21	13.74	9.26	8.29	6.97
April.....	4.36	4.25	7.41	5.95	12.06	9.79	12.22	14.78	8.41	8.55	7.32
May.....	4.39	4.30	7.42	6.85	15.01	9.31	12.42	15.54	9.17	8.48	7.05
June.....	4.57	4.18	6.18	5.46	13.22	9.88	12.02	14.51	9.35	7.84	6.60
July.....	4.45	4.29	6.71	5.91	12.54	10.63	12.16	14.02	9.32	8.14	6.30
August.....	4.38	5.36	6.31	7.55	12.98	10.49	12.01	12.62	8.54	7.32	6.43
September.....	4.28	5.56	5.03	8.22	10.89	10.16	11.94	13.03	6.69	6.82	6.54
October.....	4.16	5.48	5.22	9.08	10.30	10.50	12.63	11.56	7.82	6.77	6.53
November.....	4.19	5.55	5.20	9.53	10.03	10.51	13.35	9.62	7.60	7.06	6.33
December.....	4.18	5.70	5.97	8.46	9.93	10.47	14.67	9.39	7.38	7.15	6.38
Annual average.....	4.29	4.79	6.39	7.01	11.17	10.16	12.12	13.16	8.75	7.70	6.71

INDEX NUMBERS (1913=100)

January.....	97	98	156	149	209	231	240	351	232	174	162
February.....	98	101	171	141	199	235	246	328	222	198	165
March.....	95	100	169	130	220	232	261	320	216	193	162
April.....	102	99	173	139	281	228	285	345	196	199	171
May.....	102	100	173	136	350	217	290	362	214	198	164
June.....	107	97	144	127	308	230	280	338	218	193	154
July.....	104	100	156	138	295	248	283	327	217	190	147
August.....	102	125	147	176	302	245	280	294	199	171	150
September.....	100	130	117	192	254	244	278	304	206	159	162
October.....	97	128	122	212	240	245	294	299	182	158	152
November.....	98	139	121	222	234	245	311	224	177	165	148
December.....	97	133	139	197	231	244	342	219	173	167	149
Annual average.....	100	112	149	163	260	237	283	307	204	179	156

These average price quotations were obtained by taking one-half of the sum of the highest and lowest weekly price quotations of hard spring wheat first patent flour in cotton or jute sacks at Minneapolis, as reported by the Northwestern Miller. Wheat flour, as it is quoted on the open market, is primarily classified into patent, straight, and clear grades. Within each of these principal categories, several subsidiary classifications are found, while many specific brands are manufactured by the several mills. The highest grade of hard spring wheat patent flour reported during the period was selected. During the period of control by the United States Food Administration, September, 1917-December, 1918, the quality of flour produced was under strict regulation. At first 285 pounds of wheat was allowed for the manufacture of one barrel of flour or 68.8 per cent extraction. Later this was changed to 264 pounds or 74.3 per cent. Toward the end of December, 1917, the maximum limit of low-grade flour to be made was fixed at 5 per cent; consequently at that time the price quotations are for 95 per cent flour. On February 15, 1918, the use of substitutes in the baking of bread became mandatory (1 pound in 4) and at the beginning of March the manufacture of 100 per cent flour was authorized. These regulations, of course, affected the quality of the product which was manufactured by all

millers during 1918. Many of the milling regulations were canceled on December 20, 1918.

An exhibit, giving also the price quotations at Kansas City, with index numbers, is shown in Appendix Table 13, page 124. Chart 4, opposite page 78, shows the trend of price quotations at Minneapolis and Boston, together with the price of $4\frac{1}{2}$ bushels of wheat.¹

The monthly average price of the hard spring wheat first patent flour f. o. b. mill Minneapolis was quite uniform during the 19 months ending with July, 1914. The range in the monthly average was from \$4.09 per barrel in March, 1913, to \$4.57 per barrel for June of the same year. This uniformity of flour prices was due to the fact that wheat prices were very stable.

Notwithstanding the fact that a large crop of wheat was harvested in 1914, both wheat and flour prices increased sharply, the average for flour increasing from an average of \$4.29 in July to \$5.70 per barrel in December, as a result of the outbreak of the World War. This continued until an average price of \$7.42 per barrel was reached in May, 1915. During the next four months the monthly average price of flour fell precipitately to an average of \$5.03 per barrel in September. Two dominating factors combined to produce this temporary decline in flour prices: (1) The operations of the belligerents interrupting transportation in export trade, and (2) the large crops of wheat harvested in the United States, Canada, and Australia. Despite the heavy war demand, flour prices remained lower until August, 1916, than in the previous high-price month of May, 1915. The 1916 wheat crop was a small one, only 636,000,000 bushels, and as a result flour prices advanced sharply, with minor fluctuations, until a new high monthly average of \$15.01 per barrel for flour was reached in May, 1917. The 1917 wheat crop was also a small one. 637,000,000 bushels, and there were practically no stocks of old-crop wheat, while few shipments could be made from Australia and Argentina owing to the scarcity of ocean tonnage and the hazard of long ocean voyages. September 1, 1917, the price of wheat in the United States was fixed, and the duty of controlling wheat prices was assigned to the United States Food Administration. Later the profits of flour milling concerns were fixed at \$0.25 per barrel, with certain provisions regarding the disposition of feeds. As soon as wheat prices were stabilized, flour prices began a decline, which continued almost without interruption through May, 1918, when the monthly average was \$9.31 per barrel. In the summer of 1918 the price of wheat was increased \$0.06 per bushel effective July 1, 1918, and at that time there was a considerable increase in the price of flour. The monthly average price was fairly uniform for the last six months of 1918.

Soon after the armistice, November 11, 1918, some of the Food Administration regulations affecting flour were discontinued. For example, the official regulations governing the percentage of flour extraction and those governing sales of flour for future delivery were withdrawn. The United States Grain Corporation was required, however, to maintain the minimum wheat prices for the 1919 crop marketed before June 1, 1920. This continued stabilization of grain prices tended to stabilize flour prices also, since the millers purchased their principal raw material at fixed prices.

¹ Four and one half bushels is the approximate wheat equivalent of a barrel of flour.

Beginning in February, 1919, a price advance began which continued with minor fluctuations until a maximum monthly average price of \$15.54 was reached in May, 1920. This was the peak price for the 11-year period 1913-1923, and was \$0.53 per barrel higher than the monthly average for May, 1917. The high prices of May, 1917, and May, 1920, were both chiefly due to high wheat prices. The high wheat prices of 1917 were partly due to the small 1916 wheat crop and the poor prospects for 1917 and partly to the British wheat corner on the Chicago Board of Trade. The high level reached in 1920 was mainly due to heavy purchases of wheat in the spring of that year by foreign governments, especially by the British Royal Commission.²

Following the peak price in May, foreign purchasers of wheat withdrew from the American market and in consequence wheat prices declined. This downward movement in wheat was reflected by a drop in flour prices which continued, with some interruptions, until it reached \$7.38 per barrel in December, 1921. During this period of about a year and a half, therefore, the average monthly price declined from \$15.54 per barrel to \$7.38 per barrel, a decrease of \$8.16 per barrel. Wheat prices fell even more sharply, namely, from a monthly average of \$2.97 per bushel in May, 1920, for No. 2 wheat at Chicago, to \$1.13 per bushel in December, 1921.

During the first four months of 1922 there was an upward movement in both wheat and flour prices. Apparently speculation in wheat futures had considerable influence upon wheat prices, which in turn led to a higher level of flour prices.³ The decline in flour prices which began in May was less precipitate than for wheat. In the latter part of 1922 flour prices reached a lower level than in 1921, and in 1923 they sank still further.

The maximum monthly average for 1922 was \$8.55 per barrel in April and the minimum \$6.77 per barrel in October. Beginning with November, 1922, there was a gradual increase with minor fluctuations to \$7.32 per barrel in April, 1923, which was followed by a sharp decline to \$6.38 per barrel in December. July, 1923, had the lowest post-war monthly average price, \$6.30 per barrel, for the period 1919-1923. These low flour prices in 1923 followed the marked decline in wheat prices.

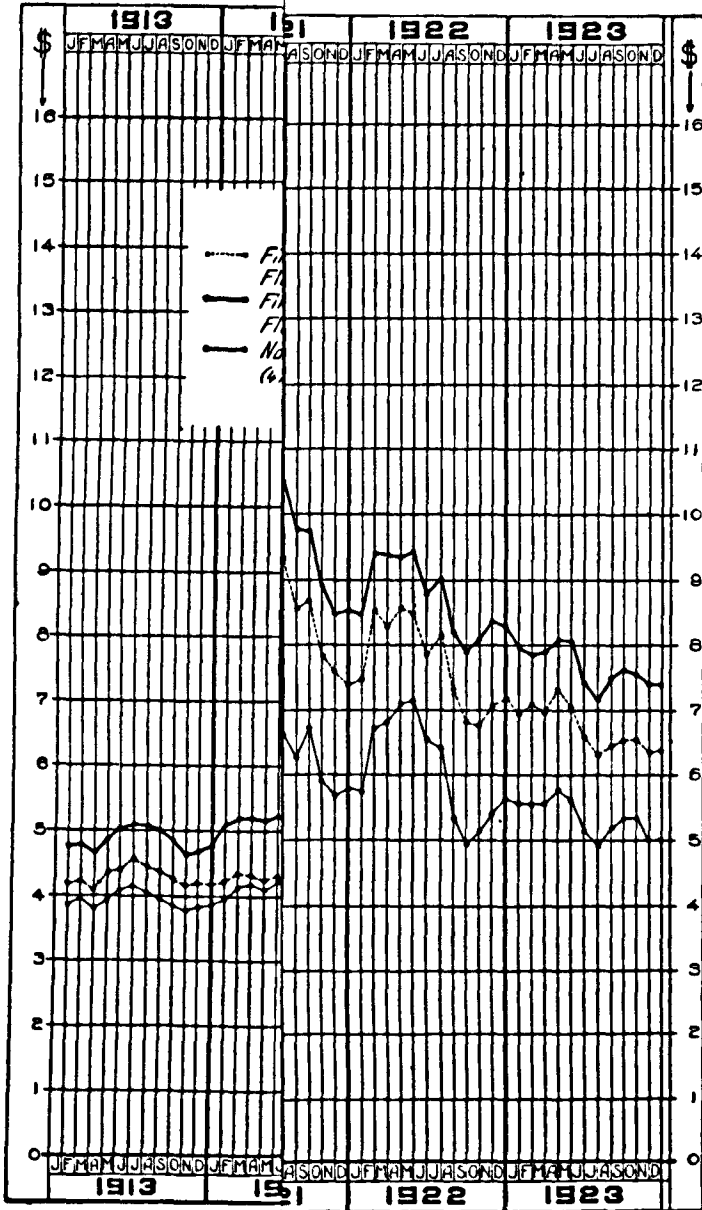
Throughout the eleven-year period the lowest annual average price was \$4.29 per barrel in 1913, and the highest \$13.16 for 1920. There was a marked decline in the annual average price for 1921, which was \$8.75 per barrel, or only two-thirds that of 1920. The decline in the annual average price of wheat flour continued during the next two years, the average for 1923 being \$6.71 per barrel, which was the lowest since 1915.

PRICE QUOTATIONS AT KANSAS CITY.—Kansas City is the outlet for the chief hard winter wheat flour milling region in the United States. The general conditions affecting the prices of flour during the period 1913-1923 were discussed in preceding paragraphs devoted to the Minneapolis market. While the bulk of wheat grown in the Kansas City region is hard winter wheat, some millers operating in this area grind hard spring or soft winter wheat and quotations for soft winter wheat flour are made in the Kansas City market.

² Federal Trade Commission, *Methods and Operations of Grain Exporters*, vol. 2.

³ Federal Trade Commission, *Methods and Operations of Grain Exporters*, vol. 1, ch. 2.

**Chart 4 - MONTARD SPRING WHEAT FLOUR
AT MINNEAPOLIS OF NO. 1 NORTHERN**



The monthly average market prices for hard winter wheat, first patent, flour per barrel, in cotton or jute sacks, at Kansas City, with index numbers for the period 1913-1923, are shown in Appendix Table 13, page 124. The following table shows the differences between these prices and the monthly average prices, already discussed, for hard spring wheat, first patent, flour at Minneapolis for the period 1913-1923.

TABLE 32.—Differences between the monthly average price quotations for hard winter wheat, first patent flour, at Kansas City, and hard spring wheat, first patent flour, at Minneapolis, 1913-1923

Month	Excess of monthly average price at Minneapolis over Kansas City											
	1913	1914	1915	1916	1917	1918	1919	1920	1921	1922	1923	
January.....	\$0.26	\$0.26	\$0.46	\$0.66	\$0.12	1 0 21	\$0.17	\$0.99	\$0.72	\$0.83	\$0.55	
February.....	.28	.38	.31	.33	.17	1 15	.25	1.42	.58	1.18	.69	
March.....	.21	.33	.45	.45	.15	1.37	.50	.74	.57	.85	.53	
April.....	.37	.25	.61	.75	.15	1.52	.28	1.29	.67	.99	.71	
May.....	.36	.30	.74	.77	.57	1 07	1.57	1.02	.95	.98	.52	
June.....	.42	.20	.37	.64	.38	1.60	.02	.63	1.06	.73	.52	
July.....	.35	.71	1.13	.77	.69	(1)	1.05	.57	.87	1.15	.76	
August.....	.31	1.03	.77	.65	.55	.25	1.31	.22	1.55	1.10	.67	
September.....	.09	.19	.12	.82	.16	.31	.96	.49	1.39	.71	.49	
October.....	.15	.40	.31	1.00	1.20	.36	1.07	.48	.83	.39	.31	
November.....	.24	.57	.22	.46	1.29	.30	1.28	.34	1.06	.69	.33	
December.....	.23	.51	.79	.43	1.07	.35	1.15	.20	.82	.64	.47	
Year.....	.27	.42	.82	.64	.20	1.11	.62	.68	1.02	.85	.55	

1 Excess of Kansas City prices over Minneapolis.
 * Monthly average the same for both markets.

During most of this 11-year period the average price quotation for Minneapolis exceeded that for Kansas City, the average for Kansas City being higher for only 10 months, while in one month, July, 1918, the average quotation was the same for the two markets. For the nine-month period, October, 1917-June, 1918, the average for Kansas City ranged from \$0.07 per barrel to \$1.07 per barrel higher than for Minneapolis, and the year 1918 was the only one in which the annual average quotation for Kansas City exceeded that for Minneapolis. Again, in May, 1919, the monthly average quotation for Kansas City was higher than for Minneapolis.

The Minneapolis price quotation was higher than Kansas City continuously from the beginning of the period, January, 1913, through September, 1917, a period of four and three-fourths years, and again from August, 1918, until December, 1923, with the single exception of May, 1919, the Minneapolis quotation was higher. The excess of the Minneapolis over the Kansas City quotation during these periods ranged from \$0.02 to \$1.55 per barrel.

PRICE QUOTATIONS AT BOSTON.—Boston is the only important eastern market for which strictly comparable wholesale price quotations for hard spring wheat flour are published for the period 1913-1923. The market reports for New York, Philadelphia, and Baltimore frequently quoted prices without designating whether they were for hard spring, hard winter, or soft winter wheat flour. The monthly average price quotations for hard spring wheat first patent flour in cotton sacks of 98 pounds, in carload lots, at Boston, are shown in the table following:

TABLE 33.—Monthly average market prices of hard spring wheat, first patent flour, per barrel, in cotton sacks, at Boston, with index numbers (average for 1913=100) 1913-1923

Month	1913	1914	1915	1916	1917	1918	1919	1920	1921	1922	1923
January.....	\$4.76	\$5.08	\$7.49	\$7.36	\$10.24	\$10.65	\$11.12	\$16.06	\$10.84	\$9.48	\$7.96
February.....	4.78	5.18	8.05	7.28	9.73	10.83	11.23	14.63	10.53	9.39	7.86
March.....	4.65	5.19	7.98	6.64	10.60	10.63	11.88	14.44	10.19	9.38	7.90
April.....	4.89	5.16	8.23	6.99	12.83	10.68	13.11	15.59	9.64	9.37	8.00
May.....	5.03	5.21	8.27	6.93	14.98	10.38	14.28	16.37	10.51	9.41	8.07
June.....	5.09	5.16	7.04	6.52	14.09	10.29	13.38	15.78	10.63	8.78	7.40
July.....	5.08	5.13	7.47	6.70	13.67	11.41	13.33	14.95	10.48	9.02	7.17
August.....	5.00	6.43	7.34	8.28	13.82	11.28	13.25	14.41	9.75	8.19	7.44
September.....	4.86	6.63	5.68	9.00	12.20	11.04	12.44	14.00	9.73	7.88	7.62
October.....	4.64	6.28	6.09	9.76	11.76	11.02	13.44	12.98	8.90	8.04	7.64
November.....	4.69	6.52	6.24	10.51	11.39	11.06	14.01	10.59	8.49	8.34	7.38
December.....	4.75	6.66	6.78	9.51	10.64	11.12	15.59	10.40	8.53	8.30	7.38
Annual average.....	4.85	5.72	7.22	7.96	12.14	10.88	13.10	14.18	9.85	8.72	7.66

INDEX NUMBERS

January.....	98	105	154	152	211	220	229	331	224	178	145
February.....	99	107	166	150	201	223	232	302	217	194	162
March.....	96	107	165	137	216	223	245	284	210	183	163
April.....	101	106	170	144	265	220	274	320	199	183	167
May.....	104	107	171	143	309	214	263	338	217	194	166
June.....	105	106	145	134	291	212	276	325	219	161	153
July.....	105	106	154	138	280	235	275	308	216	196	148
August.....	103	133	151	171	285	233	273	297	201	160	154
September.....	100	137	117	186	252	228	256	289	201	162	157
October.....	96	129	126	201	242	227	277	268	184	166	155
November.....	97	134	129	217	235	228	289	218	175	172	152
December.....	98	137	140	196	217	229	321	214	176	171	152
Annual average.....	100	118	149	164	250	224	270	292	203	180	158

The monthly average price quotations shown above are presented graphically in Chart 4 (opposite p. 78). Flour made from the soft winter wheat grown east of the Mississippi River, from the hard winter wheat of Nebraska, Kansas, and Oklahoma, and from the hard spring wheat of Minnesota and the Dakotas is all sold regularly in this market. A comparison of the monthly average price quotations for Minneapolis, which are also indicated on the chart, shows that the Boston price was uniformly higher than that for Minneapolis throughout the entire period with the single exception of May, 1917.

The annual average price quotations in the Boston market increased from a minimum of \$4.85 in 1913 to a maximum of \$14.18 per barrel in 1920, and then declined rapidly to \$7.66 per barrel in 1923. The most marked increase in a single year was \$4.18 per barrel between 1916 and 1917, while the largest decline was \$4.33 per barrel from 1920 to 1921. The increase from the low annual average for 1913 to the peak price in 1920 was \$9.33 per barrel, while the decline from the peak price amounted to \$6.52 per barrel in 1923.

As already stated, with the exception of May, 1917, the monthly average price quotation of flour at Boston was higher than at Minneapolis, the range being from \$0.41 to \$1.80 per barrel. In May, 1917, flour prices at Minneapolis were abnormally high, as a result of the highly speculative condition of the wheat market following the heavy purchases of wheat futures on the Chicago Board of Trade by the Allies. In order to stop the upward trend of wheat prices, about the middle of May all of the grain exchanges in this

country fixed maximum settlement prices on future contracts for May delivery and limited further trading in May futures to the settlement of existing contracts. About the same time maximum prices were fixed for July and September futures. As a result of this action flour prices declined rapidly, and in June the Boston price quotation averaged \$0.87 per barrel above Minneapolis. Due to increased freight rates, especially after August 26, 1920, the spread between Boston and Minneapolis became larger, the annual average spread being \$1.02 in 1920, \$1.10 in 1921, \$1.02 in 1922, and then declining to \$0.95 in 1923.

GRAPHIC PRESENTATION OF WHEAT AND FLOUR PRICES.—As already stated, monthly average market price quotations for No. 1 northern hard spring wheat, at Minneapolis, and hard spring wheat first patent flour at Minneapolis and Boston are presented in Chart 4, opposite page 78, for the period 1913-1923. The monthly average wheat prices are charted for 4½ bushels, which is the approximate quantity ground to produce a barrel of flour. (See Appendix Table 14.)

The chart shows that the spread between the monthly average price of flour and the value of the wheat equivalent (4½ bushels) at Minneapolis was much greater beginning about January, 1920, than prior to that time. This increase in the spread in 1920 was partly due to the fact that the cost of milling and packing wheat flour was greater than formerly and partly to the fact that profits were higher in that year. (See pp. 44, 52, 67, and 118.) In 1921 and 1922 milling costs decreased only slightly, but profits were much smaller than in 1920. The chart shows that Minneapolis flour quotations responded promptly to changes in wheat prices.

The monthly average flour quotations at Minneapolis and Boston generally show the same trend, and, as already pointed out, the average spreads between the two prices were greater after 1920 than for the earlier years. The wider spread in the later years was partly due to higher transportation charges.

Section 4. Prices of bread.

While this inquiry under the terms of the resolution was not directed to the study of bread prices or the profits of bakers, a comparison of the wholesale price quotations of flour with the retail prices of bread is made for the period under review, based on available published data.

The distinction between quoted and actual prices should be borne in mind. The former represent the "asking" or first-hand offering prices common to most mercantile selling transactions, and for tracing the trend of prices they serve all practical purposes. Actual prices, on the other hand, represent the net returns from sales by the mills, which probably are slightly lower on the average than the published quotations. The prices for bakers' bread are the usual selling prices in certain cities as reported by the Bureau of Labor Statistics.

The bulk of the bread sold at retail is made by bakeries which purchase flour in large quantities, sometimes directly from the millers but often through flour jobbers. Except where the bakeries are located near the mills supplying them, there is a considerable item of freight included in the cost of the flour used which often amounts to from one-fourth to one-third of a cent for a pound loaf of bread.

A more exact presentation of the important factors in the price of bread would, of course, be much more satisfactory, but this would require a careful study of the operations of representative bread-baking companies and retail dealers. Reports of the United States Food Administration³ and of the State of Minnesota⁴ have been utilized for certain basic facts regarding the baking industry in the United States. The quantity of bread produced from a barrel of flour usually averages from 275 to 280 one-pound loaves, depending primarily upon the quality (gluten content) of the flour and the efficiency of the baker. Ordinarily the other ingredients in a loaf of bread are milk and water, shortening, sugar, yeast, and salt. Each baker has his own formula for the material content of the dough, and generally 18 ounces of dough are required to make a 16-ounce or 1-pound loaf of bread.

A comparison is made, in the table below, between the annual average wholesale price quotations of flour and the annual average retail prices of bread in Minneapolis, Kansas City, and Boston for the period 1913-1923:

TABLE 34.—Annual average wholesale price quotations of flour and retail prices of bread at Minneapolis, Kansas City, and Boston, 1913-1923

[In cents per pound]

Year	Minneapolis		Kansas City		Boston	
	Whole-sale flour	Retail bread	Whole-sale flour	Retail bread	Whole-sale flour	Retail bread
1913	2.2	5.6	2.1	6.0	2.5	6.9
1914	2.4	5.7	2.2	6.1	2.9	6.0
1915	3.2	6.4	3.0	7.1	3.7	6.5
1916	3.6	6.9	3.2	7.8	4.1	6.8
1917	5.7	9.5	5.6	10.2	6.2	9.8
1918	5.2	8.9	5.2	10.0	5.6	9.0
1919	6.2	9.5	5.9	9.9	6.7	9.4
1920	8.7	10.7	6.4	12.5	7.2	11.2
1921	4.5	9.5	4.0	10.4	5.0	10.0
1922	3.9	8.8	3.5	7.8	4.4	8.5
1923	3.4	9.0	3.1	8.2	3.9	8.4

As shown by the table, the annual average wholesale price quotations of flour at Minneapolis, which in 1913 was 2.2 cents per pound, increased continuously to 5.7 cents in 1917, and later to a maximum price of 6.7 cents per pound in 1920, declining thereafter to 3.4 cents in 1923. For bread the annual average price, which was 5.6 cents per pound in 1913, reached a maximum of 10.7 cents in 1920, thereafter declining to 9 cents in 1923.

At Kansas City the average price for wholesale flour was 2.1 cents per pound in 1913, reached a maximum of 6.4 cents in 1920, and then rapidly declined to 3.1 cents in 1923. Retail bread prices started at a higher level at Kansas City than in Minneapolis, and averaged higher during most of the period. In fact, it was only during the last two years of the period that the price of bread became lower in Kansas City than in Minneapolis, although the annual average price of wholesale flour was lower for 10 years and the same for 1 year. The

³ Report of Federal Trade Commission on bakery business in United States, November, 1917, to the United States Food Administration.

⁴ Production, Distribution, and Prices of Bread, Minnesota State Department of Agriculture, January, 1920.

retail price of bread was higher in Kansas City than either in Minneapolis or in Boston, except during the last two years of the period. A "bread war" in Kansas City, which began early in 1922, was apparently the cause of lower average prices for 1922 and 1923.

Although, as would be expected, the price of wholesale flour was higher in Boston than in Minneapolis, the annual average price of a pound loaf of bread was higher in Minneapolis in 1916, 1917, 1919, 1922, and 1923 than in Boston.

The spreads or differences between the average wholesale price quotations for flour and the retail prices of bread from year to year tend to indicate in a very rough way the variations in the amounts absorbed by the aggregate costs and profits of flour jobbing, freights, and commercial bread-baking companies for the particular markets under consideration. A careful study, however, of the flour-jobbing and bread-baking businesses would not only enable a separation to be made between the costs and profits covered by these spreads but also would doubtless develop considerable differences both in their trends and in their amounts from that obtained by a mere comparison of prices. These annual average spreads are given in the following table:

TABLE 35.—Annual average excess, in cents per pound, of the retail price of bread over the wholesale price of flour, 1913-1923

Year	Minneapolis	Kansas City	Boston	Year	Minneapolis	Kansas City	Boston
1913.....	2.4	2.9	2.4	1919.....	3.3	4.0	2.7
1914.....	2.9	2.9	2.1	1920.....	4.0	6.1	4.0
1915.....	2.1	4.1	2.8	1921.....	5.0	6.4	5.0
1916.....	2.2	4.6	2.7	1922.....	4.9	4.2	4.1
1917.....	2.6	4.6	2.6	1923.....	5.6	5.1	4.5
1918.....	2.7	4.8	2.4				

The annual average spread between the retail price of bread over the wholesale price quotations for flour ranged from 3.1 to 5.6 cents per pound at Minneapolis during this 11-year period, from 3.9 to 6.4 cents at Kansas City, and from 2.6 cents to 5 cents per pound at Boston. This spread was lower for Boston than for Kansas City in each year of the period, and lower than, or the same as, Minneapolis.

The above statistics show one thing very definitely, and that is that the development of the bread-baking industry has not lowered the price of bread and that the price of bread is not sensitive to a reduction in the cost of flour. In other words, the bread-baking industry has developed a power of resistance to conditions of supply and demand in flour.

Section 5. Comparison of wheat, flour, and bread prices.

Prices of wheat, flour, and bread increased from 1919 to 1920. In the case of wheat and hard winter wheat flour in the southwestern district the monthly average price reached its peak in May, 1920, while hard spring wheat flour prices in the northwestern district reached their peak in May of the same year, after which there was a sharp decline for both wheat and flour, which continued downward with only minor fluctuations through 1921, 1922, and 1923. Bread prices, on the other hand, decreased only slightly from 1920 to 1923.

As shown above, monthly average quoted prices for hard spring wheat flour in the northwestern district (first family patent) based upon millers' quotations f. o. b. mill increased from \$10.31 per barrel in January, 1919, to \$15.66 per barrel in May, 1920, an increase of 52 per cent, and then declined to \$6.88 per barrel in September, 1922, or 33 per cent below the January, 1919, average price. The monthly average quotation for the same grade of hard winter wheat flour in the southwestern district increased from \$10.08 per barrel f. o. b. mill in January, 1919, to \$13.32 per barrel in May, 1920, an increase of 32 per cent, and then declined to \$5.79 per barrel in September, 1922, or 43 per cent below the January, 1919, average price.

The annual average purchase price of wheat for companies whose business year ended in December for all districts was \$2.36 per bushel in 1919, \$2.54 per bushel in 1920, then declined to \$1.49 per bushel for 1921 and to \$1.24 per bushel in 1922. There was considerable difference for different sections of the country, as shown in the following table:

TABLE 36.—Annual average purchase prices of wheat per bushel f. o. b. mills by flour milling companies by districts, 1919-1922

District	1919	1920	1921	1922
Northwestern.....	\$2.38	\$2.56	\$1.54	\$1.29
Southwestern.....	2.30	2.56	1.41	1.17
Mountain and coast.....	2.18	2.25	1.19	1.17
Southeastern.....	2.41	2.58	1.58	1.30
Central and eastern.....	2.41	2.41	1.61	1.37
All districts.....	2.36	2.54	1.49	1.24

The annual average purchase prices f. o. b. mill were generally somewhat higher in the southeastern and central and eastern districts and lowest for the mountain and coast districts. The annual average price of hard spring wheat used by millers in the northwestern district was slightly higher in 1919, 1921, and 1922 (but the same in 1920) than the hard winter wheat consumed by millers in the southwestern district. The decrease in the annual average price from 1920 to 1922 was slightly more than 50 per cent for all districts, 48 per cent in the mountain and coast district, about 43 per cent in the central and eastern, about 50 per cent in the northwestern and southeastern districts, and nearly 55 per cent in the southwestern district.

The monthly average price of No. 1 northern hard spring wheat at Minneapolis increased from \$2.21 per bushel in January, 1919, to \$3.09 per bushel in May, 1920, an increase of 40 per cent, and then fell to \$1.10 per bushel in September, 1922, or 50 per cent below the average price in January.⁵

In Kansas City the monthly average price of No. 2 hard winter wheat increased from \$2.31 per bushel in January, 1919, to \$2.93 per bushel in May, 1920, an increase of 27 per cent, and then declined to \$1.04 per bushel in September, 1922, or 55 per cent below the average price of January, 1919.

⁵ See United States Department of Agriculture, *The Wheat Situation, 1922*, p. 97.

Data collected and published by the United States Bureau of Labor Statistics show that bread prices have not decreased in like degree with the prices of wheat and flour. For example, in Minneapolis the retail price of a 1-pound loaf of bread was 9.2 cents in January, 1919, and 9 cents in September, 1922; in Kansas City it was 9.3 cents per pound in January, 1919, and 7.9 cents in September, 1922; in Boston, 9.1 cents per pound in January, 1919, and 8.5 cents in September, 1922; and in New York City, 10 cents in January, 1919, and 9.8 cents in September, 1922.

From January, 1919, to September, 1922, the monthly average quoted prices of flour declined 33 per cent in the northwestern district and 43 per cent in the southwestern district, wheat prices declined 50 per cent in Minneapolis and 55 per cent in Kansas City, while bread prices declined about 2 per cent in Minneapolis, about 15 per cent in Kansas City, due to a price war, 6.6 per cent in Boston, and 2 per cent in New York City. Appendix Table 15 shows the monthly average price of bread per 1-pound loaf in 24 different cities. This comparison shows that the decline in wheat prices, so disastrous to the farmer, has benefited the purchaser of bread very little.

CHAPTER VII

FLOUR AND FEED PACKAGES

Section 1. Origin and source of information.

The great diversity in the weights of different flour packages has caused many difficulties, and the need of standardization has been recognized in the flour-milling industry for many years. Efforts made through State and Federal legislation to bring about reforms which would relieve the flour millers of the annoyance due to conflicting State laws and customs and at the same time eliminate the opportunities for abuses which are an outgrowth of the existing situation have accomplished very little. Up to the present time the only important laws enacted are those requiring that the weight contents of packages shall be marked thereon.

The package requirements of different States were made the subject of special consideration in this inquiry because the industry has been endeavoring to have them reformed and also because the consumer, as a consequence of the added expense of packing in so many different-sized packages, must ultimately pay a higher price for his flour.

The information on this subject was obtained through the cooperation of various State officials, and in many instances aid was received from municipal officials, also, and from flour-milling companies.

Section 2. Wheat-flour packages in use by law, regulation, or custom.

As a result of a special inquiry addressed to various State and local officials and milling companies comprehensive information was obtained with respect to the weights of the different sizes of flour packages prescribed either by law or by regulation or in use by virtue of local trade custom. Package weights prescribed by law are weights specifically named by statute, while those prescribed by regulation are weights designated by State officials who are authorized by statute to make rules and regulations.

Not less than 34 different-sized packages are authorized or in use for the domestic trade in the various States. Reports from millers showed 25 different sizes in use, two of which, 110 and 80 pound packages, were not reported by State or municipal authorities. The 110-pound sack is evidently used in the export trade to Latin countries, as it is one-twentieth of a metric ton. Under the laws of some States other sizes of packages are permitted, provided the weight content is indicated on the package or container. It was not practicable in all cases to obtain a complete list of the packages customarily in use.

Twelve States and the District of Columbia have no laws or regulations fixing the size of flour packages or containers. These States are Arizona, Colorado, Florida, Montana, New Hampshire, New Jersey, New Mexico, New York, Utah, Vermont, Washington, and Wyoming. On the other hand, there are 33 States in which the law prescribes the standard weight of a barrel of flour; 2 States

in which it is fixed by regulation at 196 pounds; and in Texas the law provides for a 200-pound barrel, though the 196-pound barrel is in use by custom. In South Carolina, in addition to the 196-pound container, there is also, by regulation, a 192-pound sack, a 98-pound half barrel in wood, and a 96-pound sack.

The weights for flour packages prescribed by law or regulation or established by trade custom in the different States are shown in the following table:

TABLE 37.—Package weights for wheat flour prescribed by law or regulation or in use by custom, by States, in 1922

[L=Prescribed by law; R=By regulation; C=In use by custom.]

State	Weight of package contents (pounds)														Other sizes			
	200	196	140	100	96	96	50	48	48	25	24½	24	12½	12		10	6	5
Alabama ¹		R				R			R				R			R		
Arizona ¹		R	O						R	O			R			C		C
Arkansas ¹					C	R	O											C
California ¹			O					R			R							
Colorado.....				C			O											
Connecticut ¹									C									C
Delaware ¹																		C
Florida ¹																		C
Georgia ¹																		C
Idaho.....																		
Illinois ¹									L	C								C
Indiana ¹																		C
Iowa ¹								O										C
Kansas ¹																		C
Kentucky.....																		C
Louisiana ¹																		C
Maine ¹																		C
Maryland ¹																		C
Massachusetts ¹																		C
Michigan ¹																		C
Minnesota.....																		C
Mississippi ¹																		C
Missouri ¹																		C
Montana.....																		C
Nbraska ¹																		C
Nevada ¹																		C
New Hampshire.....																		C
New Jersey ¹																		C
New Mexico ¹																		C
New York ¹																		C
North Carolina ¹																		C
North Dakota ¹																		C
Ohio ¹																		C
Oklahoma ¹																		C
Oregon ¹																		C
Pennsylvania ¹																		C
Rhode Island ¹																		C
South Carolina ¹																		C
South Dakota ¹																		C
Tennessee ¹																		C
Texas ¹	L																	C
Utah ¹																		C
Vermont ¹																		C
Virginia ¹																		C
Washington.....																		C
West Virginia ¹																		C
Wisconsin ¹																		C
Wyoming ¹																		C
District of Columbia.....																		C

¹ States requiring the weight of contents to be marked on package.

In 13 States the standard barrel only is prescribed by law, all other packages being in use by custom. These States are Arkansas, Connecticut, Indiana, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Ohio, Rhode Island, South Carolina, Tennessee, and Wisconsin. Maine and Ohio have exact fractional parts of

the standard barrel, while below the half-barrel size all the Southern States in this group use an exact fraction of a 192-pound barrel. Besides the standard barrel, reports from Connecticut show six other packages in use by custom, with two sizes for the quarter barrel, while Indiana has 11 such packages, with two weights in the quarter, eighth, and sixteenth barrel sizes.

Alabama by regulation and Georgia by law have the standard 196-pound barrel, while the half-barrel and all smaller packages are even fractions of a 192-pound barrel. Georgia is the only State prescribing the 140 and 280 pound packages by law.

The Delaware law prescribes the standard barrel and half barrel only, four smaller sizes being in use by custom, with two weights for an eighth of a barrel. Utah appears to be the only State where flour is not packed or sold in the barrel-size package.

In addition to the standard barrel and half barrel, 19 States have provided by law or regulation for from two to four other packages, most of which are irregular sizes or not exact fractional parts of the standard barrel. These States include California, Idaho, Illinois, Kansas, Michigan, Minnesota, Mississippi, Missouri, Nebraska, Nevada, North Carolina, North Dakota, Oklahoma, Oregon, Pennsylvania, South Carolina, South Dakota, Virginia, and West Virginia. Fourteen States in this group have from one to seven of such packages by custom. Aside from the 140-pound sack, Michigan is the only State that has provided a complete list of packages down to the 6½-pound sack that are even fractions of the standard 196-pound barrel.

In Iowa many sizes of packages are in use by custom. Besides the standard barrel and the 49-pound quarter-barrel sack prescribed by law, the reports received from different sections of this State indicate that 14 other packages were in use by custom, and that there were two different weights for the quarter, for the eighth, and for the sixteenth barrel sizes.

Texas is the only State in which the so-called decimal weights basis, i. e., 200-pound barrel, has been adopted. By a decision of the attorney general of the State, however, flour may be offered for sale in any size package when properly marked showing the net-weight contents.

Section 3. Packages used in the flour business.

The origin of the common unit of weight for the standard barrel of flour and the confusion resulting from the adoption of different sizes of packages for the smaller fractional parts of the barrel were explained before the House Committee on Coinage, Weights, and Measures, as follows: ¹

The accustomed barrel of flour of 196 pounds is by tradition only; that is, there has never been Federal action on it. A number of States—in fact, practically all of the States—have by statute made 196 pounds the legal barrel of flour. It comes down to us as 14 English stone of 14 pounds each. That was originally an old English 196 pounds of flour, which we accepted, and it has gone into commerce and has found a very important place.

The packages commonly used in the family trade are, first, the 98 pounds, or half-barrel; 49 pounds, or quarter-barrel; 24½ pounds, or one-eighth barrel; 12½ pounds, or one-sixteenth barrel, the larger sizes of half-barrel and quarter-

¹ Statement by Mr. A. P. Husband, secretary Millers' National Federation, hearing, May 6, 1921, pp. 3, 4.

barrel being more popular in the country and suburban districts, while the smaller sizes are more popular in the cities. There are smaller sizes, as 10 pounds, 7 pounds, 5 pounds, 3 pounds, etc.; but attention is directed particularly to those fractions of a barrel around which has grown, we will say, abuses.

Beginning with the 49-pound sack, which is the true quarter of a barrel of 196 pounds, a number of States have legislated that in selling flour in quarter-barrel sacks they shall be 48 pounds, and that instead of $24\frac{1}{2}$ pounds, which is the true division for the eighth, that they shall have 24 pounds, and instead of $12\frac{1}{2}$ pounds, a true one-sixteenth, that they shall be 12 pounds.

Now, the effect is that a man who goes to buy a barrel of flour buys 196 pounds. If he buys four quarters, in the States in which the statutes have been passed, he gets 192 pounds.

A list of the packages used in the flour-milling industry with the cost differentials adopted by the Millers' National Federation is shown in appendix Exhibit 1, page 127. This list provides for 21 different-sized packages in four kinds of containers. Two are for the 196-pound and 98-pound standard barrel and half-barrel in wood, 2 in 140-pound and 98-pound jute sacks, 19 ranging from 2-pound to 98-pound cotton sacks, and 15 in paper sacks which, with four exceptions, duplicate the sizes for the cotton sacks.

Mill sales are made on a basis of the 98-pound cotton sack, two to the barrel. A graduated list of differentials shows the cost per barrel over or under the 98-pound basis for sales in all other kinds and sizes of packages. For example, taking the list effective December 16, 1922,¹ bulk sales in $12\frac{1}{2}$ -pound cotton sacks requiring 16 to the barrel would cost \$0.60 per barrel over the base price. On the other hand, if the sale was for delivery in paper sacks of the same size the price would be \$0.30 per barrel over the base price. Thus, if the price of a barrel of flour delivered in 98-pound cotton sacks was \$9 a barrel, delivered in $12\frac{1}{2}$ -pound cotton sacks it would be \$9.60, whereas the same order filled in $12\frac{1}{2}$ -pound paper sacks would cost \$9.30 per barrel. The package differentials range as high as \$1.60 per barrel for bulk sales in 2-pound paper sacks, shipped 96 to the barrel, while for the same size cotton sacks the maximum differential would be \$2.70 per barrel.

To reflect the situation with respect to the packages used in actual operations the principal flour milling companies in different sections of the country were requested to furnish information showing the proportion of their sales in various packages during the year 1922. The reports show that in the general run of business about 20 different sizes of sacks were used. It may be noted, however, that in 1922, in the wide range of selling territory covered by some of the largest mills, it was necessary to carry four kinds of containers and about 40 different sizes of packages to supply their trade.

Confining the comparison to the packages most commonly in use, the following table shows for geographical districts the per cent of sales of flour in each size of package.

¹ Still in effect December, 1923.

TABLE 38.—Per cent of flour-mill sales in different sizes of packages, by geographical districts, 1922

Size of package	Geographical districts					Average
	Mountain and coast	North-western	South-western	South-eastern	Central and eastern	
200 pounds.....		0.1	1.3			0.4
196 pounds.....		.2	1.4	1.3	2.1	1.1
140 pounds.....	4.8	17.6	21.1	16.3	13.6	16.1
100 pounds.....	.1	.1	.1			.1
98 pounds.....	36.5	38.5	27.7	8.6	19.8	26.3
96 pounds.....				2.9	1.0	.7
49 pounds.....	23.2	27.8	1.6		10.4	19.9
48 pounds.....	18.3	1.3	26.2	15.7	4.4	14.0
24½ pounds.....	2.4	9.4	4.5		20.2	8.2
24 pounds.....	9.0	1.2	11.4	41.6	18.2	18.0
12½ pounds.....		.7	.2		1.3	.5
12 pounds.....	2.8	.9	1.9	11.5	5.4	4.0
10 pounds.....	.6	.1		.1	.2	.1
6 pounds.....			.5	1.2	.7	.5
5 pounds.....	.4	1.3	.5		1.7	.9
All other sizes.....	1.9	.8	1.6	.5	1.0	1.2
Total.....	100.0	100.0	100.0	100.0	100.0	100.0

This table gives the results for 80 of the principal flour-milling companies reporting upon this subject, whose combined production in 1922 amounted to 30,342,293 barrels. This was equivalent to nearly one-fourth of the estimated total quantity of flour manufactured by all the merchant mills in the United States in that year.

Comparison of the figures shows that, while the sizes ranged all the way from a 200-pound sack down to a 2-pound package, the great bulk of sales was made in five or six popular sizes. Among other features shown by the table it will be noted that the sale of flour in the standard 196-pound wood barrel is insignificant, while sales in the 140-pound sacks are very large. The strong position of this size is due to the fact that it is used largely for bulk sales to the bakers trade east of the Rocky Mountains and also in the export business. The 98-pound sack predominates practically in all sections except in the Southeastern States where the 24-pound sack is by far the most popular size. More than 41 per cent of the mill sales in this section in 1922 was in the 24-pound sack. The strong showing of the 98-pound sack in the mountain and coast district is attributed to the fact that practically all sales to the bakers trade on the Pacific coast are in this size of sack.

In the 24 to 49-pound sacks, the mills in the mountain and coast, southeastern, and central and eastern districts report from 53 to about 57 per cent of the sales.

Mills in the northwest, southwest, and southeast divisions sold large quantities in the 140-pound size. In the quarter-barrel sizes the mills in the Southwest and Southeast favor the 48-pound sack as against the 49-pound size which is popular with the mills in the Northwest and Mountain and Coast States, although in the latter district also the 48-pound sack is noticeably strong.

The packages used by mills in the central and eastern district which extends from Illinois east to the seaboard may be said to represent the trade demands of a densely populated territory which is made up largely of the industrial, commercial, and business classes

of consumers. In this district also the apartment-house trade and the "cash and carry" chain-store system of distribution have encouraged the use of the smaller sizes of flour packages. It will be noted that a large proportion of the sales in this district were in the 24 and 24½-pound packages, and there was also a more general use of the smaller sizes.

A summary of the packages in the above table, showing their relation to the barrel and fractional parts of a barrel follows:

Weight of package	Approximate unit	Per cent
200 and 196 pounds.....	Barrel.....	1.6
140 pounds.....	Special.....	16.1
100, 98, and 96 pounds.....	Half barrel.....	27.1
49 and 48 pounds.....	Quarter barrel.....	24.9
24½ and 24 pounds.....	Eighth barrel.....	23.2
12½ and 12 pounds.....	Sixteenth barrel.....	4.5
6.5 pounds and under.....		2.7
Total.....		100.0

According to this statement, including the 140-pound sack, 97.3 per cent of the sales by the 80 mills in 1922 was packed in 12 different sizes of packages, which in fact represented only 5 regular package units and 1 special unit.

So far as the demand for particular sizes of flour packages in different sections of the country is concerned, further comparison of the data shows that in actual trade certain sizes are popular in one part of the country and other sizes in other sections. This situation is apparent from the following statement:

TABLE 39.—Per cent of flour sales in specified sizes of packages, by districts

Size of package	Mountain and coast	North-western	South-western	South-eastern	Central and eastern
140 pounds.....	4.6	17.6	21.1	16.3	13.6
98 pounds.....	34.5	38.5	27.7	8.6	19.8
49 pounds.....	23.2	27.8	1.6		10.4
48 pounds.....	18.3	1.3	26.2	15.7	4.4
24½ pounds.....	2.4	9.4	4.5		20.2
24 pounds.....	9.0	1.2	11.4	41.6	18.2
12 pounds.....	2.8	.0	1.9	11.5	6.4
7 sizes.....	97.0	96.7	94.4	93.7	92.0
Other sizes.....	3.0	3.3	5.6	6.3	8.0
Total.....	100.0	100.0	100.0	100.0	100.0

By the foregoing data it will be seen that in 1922 from 92 per cent to 97 per cent of the sales of the 80 mills reporting were packed in only seven different sizes of packages.

While the larger mills dispose of a considerable part of their flour in many States and therefore are obliged to use a wide assortment of packages, most milling companies distribute the bulk of their product in the States in which their mills are located and in neighboring States. The distribution of packages shown above reflects in general the package-weight requirements and customs of the States that are included in the different districts. (See Table 37, p. 87.)

Aside from the 140-pound sack, which meets special needs for bulk sales, storage, and export business by mills east of the Rocky Mountains, it is obvious that the entire list of flour packages might well be limited to a few standard sizes, each one of which should be so distinctly different in weight as to leave no room for mistake on the part of the dealer or purchaser; such standardization would result in more economical production and distribution for those engaged in the flour trade and ultimately in lower prices to the consumer.

The difficulties and abuses which are complained of by the milling industry are largely ascribed to the present duplicate classification for the quarter-barrel, eighth-barrel, and sixteenth-barrel sizes. As shown in the official package-differential list, page 127, there are two different sizes of packages for each of three fractional parts of the barrel. One set provides for 49, 24½, and 12½ pound sacks, which are exact fractions of the standard 196-pound barrel, while another set has the 48, 24, and 12 pound sacks, which are factors of a 192-pound barrel. The proposed decimal-weight plan, which is strongly urged by the millers' associations, would eliminate all of these conflicting sizes and establish 100 pounds avoirdupois as the base unit, with 50, 25, 10, and 5 pound packages as the smaller sizes.

Section 4. Laws requiring the marking of weight on packages.

So far as reported to the commission, 41 States have made provision by law for marking the weight contents on flour packages or containers, while in 46 States there is a similar requirement for commercial feeding stuffs. With regard to flour packages, many of the State laws are patterned more or less closely after the package-weight provision in the misbranding section of the Federal food and drugs act of 1906, as amended March 3, 1913. The sections in the Federal law which apply to flour and other articles of food are as follows:

THE FOOD AND DRUGS ACT, JUNE 30, 1906, AMENDED AND APPROVED MARCH 3, 1913

AN ACT For preventing the manufacture, sale, or transportation of adulterated or misbranded or poisonous or deleterious foods, drugs, medicines, and liquors, and for regulating traffic therein, and for other purposes

* * * * *
 SEC. 2. That the introduction into any State or Territory or the District of Columbia from any other State or Territory or the District of Columbia, or from any foreign country, or shipment to any foreign country, of any article of food or drugs which is adulterated or misbranded within the meaning of this act is hereby prohibited.

* * * * *
 SEC. 8. The term "misbranded" as used herein shall apply to all drugs, or articles of food, or articles which enter into the composition of food, the package or label of which shall bear any statement, design, or device regarding such article, or the ingredients or substances contained therein which shall be false or misleading in any particular, and to any food or drug product which is falsely branded as to the State, Territory, or country in which it is manufactured or produced.

That for the purpose of this act an article shall also be deemed to be misbranded: In the case of food:

* * * * *
 Third, if in package form, the quantity of the contents be not plainly and conspicuously marked on the outside of the package in terms of weight, measure, or numerical count: *Provided, however,* That reasonable variations shall be permitted, and tolerances and also exemptions as to small packages shall be estab-

- lished by rules and regulations made in accordance with the provisions of section 3 of this act.

SEC. 6. * * * The term "food," as used herein, shall include all articles used for food, drink, confectionery, or condiment by man or other animals, whether simple, mixed, or compound.

As stated in section 2, this act applies to interstate and foreign commerce and to the Territories and the District of Columbia. Under section 6 the term "food" applies also to commercial feeding stuffs that are intended for consumption by domestic animals.

Most of the State laws upon this subject are quite specific in that they provide that the "net," or "true net," or "correct," or "correct net," or "exact," or "correct and exact," or "actual" weight must be marked on each package. Preference, however, seems to be given to the term "net weight."

NET WEIGHT WHEN PACKED.—The term "net weight when packed" is frequently used on flour and feed packages and on packages containing other articles of food which are subject to shrinkage. Because of the variations in weight which may occur after packing and before shipment, a statement of "net weight when packed" is not necessarily a statement of the net weight when shipped. Therefore, under the Federal food and drugs act it is required that food in package form shall bear a statement of the quantity of the contents at the time it is offered for interstate shipment or otherwise comes within the jurisdiction of the act.³ The Oregon law follows the Federal food and drugs act on this point. The terms net weight when packed or when wrapped are not permissible.

The main purpose of the Federal package-weight requirements is to safeguard the interests of the public in purchasing articles of food in original packages. It aims to prevent fraudulent dealing in short-weight packages of food shipped in interstate commerce. To make this law more effective, so that it will reach transactions of a local or purely intrastate character, most of the States have supplemented the Federal law and made its protective features in this regard applicable to all packages of food entering into commerce.

So far as flour and commercial feeding stuffs are concerned, aside from other provisions in the pure food and drugs laws and the special regulations applicable to feeding stuffs, the important requirement under the Federal or State laws, and in most instances under both laws, is that the weight contents of food packages or containers must be either marked, printed, stamped, branded, or otherwise indicated on the outside of each package.

The essential requirements of the different State laws are shown in the Appendix, Exhibit 2, page 128.

Section 5. Inadequacy of laws for marking the weight on packages.

The State pure food laws generally contain the important features of the Federal food and drugs act of 1906, as amended in 1913, and for all practical purposes the provision in the State laws requiring the marking of the weight contents on food packages is similar to that of the Federal law.

While there is no question that this particular provision has been of great benefit to the public in general, yet for certain classes of

³ Service and regulatory announcements, No. 24, United States Department of Agriculture, Bureau of Chemistry.

consumers the protection intended by the marking requirement has not been fully attained.

In so far as the relief sought by the milling industry is concerned, the situation is not at all improved by the marking provision. In Texas the marking requirement rather tends to promote the multiplicity of packages, which is one of the principal grievances of the millers. Under the Texas weights and measures law of June 18, 1919, the standard of weight for a barrel of wheat flour was fixed at 200 pounds, the half-barrel sack 100 pounds, the quarter-barrel sack 50 pounds, and the eighth-barrel sack 25 pounds. No further provision was made for any other size of container or package for wheat flour. It appears, however, that under a decision by the attorney general of the State the sale of flour in any size of package is permitted provided the net weight contents are marked on each package. As a result of this decision, instead of having the decimal-weight packages, there are in use in Texas at the present time nine other sizes of flour packages that are not specified in the law of 1919.

The weight shown upon the package is a notice that it contains a certain quantity of flour, and with most purchasers this is all the protection necessary, for apparently there remains no opportunity for deception. Unfortunately, however, all purchasers do not understand the significance of the weight figures on flour packages. The number of this class of purchasers is, of course, unknown, but considering merely the illiterate, according to the census of 1920, there were 72,000,000 people 15 years of age and over in the United States, and of this number 4,686,000, or 6.5 per cent, were classed as illiterate. This part of the public is not protected by the requirements that the weight of the contents be plainly marked upon the package. Much buying is done through children to whom a weight mark means nothing.

Throughout the hearings on the several bills that have been before Congress, also in communications to this commission, reference was made to the deception and fraud practiced by unscrupulous retail dealers in selling flour to uninformed and nonobservant purchasers. The close resemblance between the 5 and 6 pound sack of flour, the 12 and 12½ pound sizes, the 24 and 24½, or the 48 and 49 pound sacks affords ample opportunity for deceiving the uninformed or unsuspecting purchaser who does not look to see whether the weight stamped on the package offered is the weight expected in the package of similar size which he has previously bought.

A study of the data in Table 37, page 87, shows that 11 States have prescribed irregular packages below the half-barrel size, and in 7 other States a similar irregularity of packages has been established by custom. In none of these States, however, are there packages or sizes likely to result in confusion. On the other hand, there are 19 States having from 1 to 4 nearly similar packages in use at the present time. While 15 States of this latter group require that the weight must be indicated on each package, yet this provision alone affords no relief from the evil of multiplicity, nor does it give protection against mistakes or fraud.

Under the proposed decimal weight system the absurd and uneconomical complexity in the sizes of flour packages which exists at the present time would be avoided and the opportunities for deception would be reduced.

Section 6. Package weights for commercial feeding stuffs.

Reports received concerning the package requirements for commercial feeding stuffs were not as complete as in the case of flour packages. It was found that while in all States excepting Idaho and Montana the State laws and regulations require that the weight contents shall in some manner, either by labels or tags, be indicated on each package or container, yet only 18 States report having laws or regulations prescribing the weights of the different sizes of packages.

The object of the feed laws is to protect the purchaser from fraud and false representations by unscrupulous manufacturers and dealers. Therefore, in addition to the requirement that the weight contents must be marked on or affixed to each package, there are about 42 States in which the laws and regulations also require that each package shall give the name, brand, or trade-mark under which the feed is sold, the name and address of the manufacturer, the minimum percentage of crude protein and crude fat, and the maximum percentage of crude fiber. In 31 States the name of the ingredients in the feed must also be shown.

Table 40 gives a list of the feed-package weights reported for the different States.

TABLE 40.—Package weights for commercial feeding stuffs prescribed by law or regulation or in use by trade custom in different States, 1922¹

[L=Prescribed by law; R=by regulation; C=in use by custom]

State	Weight of package contents (pounds)										Other size sacks
	200	175	150	125	100	90	80	75	50	25	
Alabama.....	L	L	L	L	L			L	L	L	10 and 5 lbs. L. 60 lbs. R.
Arkansas.....	L	L	L	L	L		R				
California.....											
Delaware.....					C						
Florida.....		R			R				R		
Georgia.....	L	L	L	L	C			L	L		
Idaho.....					C						
Illinois.....					C						
Indiana.....					L				L	L	
Iowa.....					C				C	C	
Kansas.....					L						
Kentucky.....	L		L		L				L		
Louisiana.....		L	L		L						
Maine.....					C						
Maryland.....					C						
Massachusetts.....					C						
Minnesota.....					C						
Mississippi.....	R		R		C			R	C	C	
Missouri.....					R				C	C	
Nebraska.....					C				L	L	
New Jersey.....					C						
New Mexico.....					C						
New York.....					C						
North Carolina.....	L	L	L	L	L			L	L	L	
Ohio.....					L						
Oklahoma.....					L						
Pennsylvania.....					C						
Rhode Island.....					C						
South Carolina.....	L	L	L	L	L			L	L	L	
South Dakota.....	L	L	L	L	L			L	L	L	
Tennessee.....	L	L	L	L	L			L	L	L	
Texas.....					L						10 and 5 lbs. L.
Utah.....					C	C					
Virginia.....	L	L	L	L	L			L	L	L	140 lbs. L.
Washington.....					C	C		C	C		
Wisconsin.....					C			C	C		
District of Columbia.....					C						

¹ The States of Arizona, Colorado, Connecticut, Michigan, Montana, Nevada, New Hampshire, North Dakota, Oregon, Vermont, West Virginia, and Wyoming do not regulate the weight of commercial feed packages, and the size of packages in use by custom was not reported.

It will be seen that, with a few exceptions, the weights ranging from the 5-pound package for poultry feed to the 200-pound sack are based upon the decimal system. States in the southeastern district particularly have a most complete arrangement of decimal weight packages.

The 80 and 90 pound sacks meet a special need in the Pacific Coast States and in Utah, while in all other States reporting the 100-pound sack is in general use either by law or by trade custom.

The 18 States having laws regulating the sizes of commercial feed packages include Alabama, Arkansas, California, Florida, Georgia, Indiana, Kansas, Kentucky, Louisiana, Mississippi, Nebraska, North Carolina, Oklahoma, South Carolina, South Dakota, Tennessee, Texas, and Virginia.

Of the other 31 States and the District of Columbia, for which no laws regulating the sizes of commercial feed packages have been found, 19 reported the sizes most commonly in use by trade custom. The States in this group include, Delaware, Idaho, Illinois, Iowa, Maine, Maryland, Massachusetts, Minnesota, Missouri, New Jersey, New Mexico, New York, Ohio, Pennsylvania, Rhode Island, Utah, Washington, Wisconsin, and the District of Columbia. Montana has no regulations upon the subject. In Colorado the law requires that the weight, if stated, must be correct.

Section 7. The proposed uniform package law.

Primarily the agitation for uniform package laws was confined to wheat flour. More or less trouble was encountered in handling commercial feeding stuffs, but by far the greatest difficulty was found in meeting the requirements of custom weights and the different State laws regulating the smaller sizes of wheat-flour packages. Consequently, when the original bill was drafted for Congress there was no intention of having it apply to any commodity except wheat flour,⁴ but discussion of the subject developed the need for a more comprehensive measure. As a result when the first bill aiming at standardization was finally introduced in the Sixty-fifth Congress, it provided for a standard of weights for flour, meal, and feeding stuffs. This bill was originally drafted at a conference between Mr. A. P. Husband, secretary Millers' National Federation, and representatives of the United States Bureau of Standards and the Federal Trade Commission.⁵

This bill ignored the prevailing package weights entirely and substituted the decimal system. It specified that the standard should be 100 pounds avoirdupois, or multiples of 100 pounds, or fractions thereof, including 1, 2, 4, 5, 10, 25, and 50 pounds.⁶ In effect, this plan would establish 200 pounds as the standard for a barrel of flour and at the same time eliminate all the irregular and inharmonious weights in use for packages below 100 pounds. Special provision was also made for packages used in the export trade.

Owing to the congested condition of the legislative calendar, this bill failed to pass. In the first session of the Sixty-sixth Congress a similar bill⁷ passed the House in December, 1919, but failed of

⁴ Hearings before House Committee on Coinage, Weights, and Measures, Sept. 19, 1919, part 2, p. 26.

⁵ Hearings before Committee on Coinage, Weights, and Measures, Oct. 3, 1919, part 3, p. 76.

⁶ H. R. 10957, Sixty-fifth Congress, first session.

⁷ H. R. 7482, Sixty-sixth Congress, first session.

action by the Senate.⁸ Again, in the first and fourth sessions of the Sixty-seventh Congress the bill was introduced, and while in each instance it received the unanimous approval of the House and was reported favorably without amendment in the Senate, the crowded condition of the legislative calendar again prevented final action by that body.⁹

The bill in its present form, with amendment, as reported to the House, March 14, 1924, by the Committee on Coinage, Weights, and Measures, is given in the Appendix, Exhibit 3, page 129.

A study of this bill shows that its chief purpose is to establish a simple and uniform standard of package weights which would answer every reasonable requirement of the flour trade and the public. The various sizes of packages are so clearly defined as to leave no room for the confusion that constantly arises under the present incongruous system of package weights. Section 2 of H. R. 3241, introduced December 13, 1923, reads as follows:

That the standard packages for the following wheat-mill, rye-mill, and corn-mill products, namely, flours, hominy, grits, and meals, and all commercial feeding stuffs, when the same are packed, shipped, sold, or offered for sale in packages of five pounds or over, shall be those containing net avoirdupois, weight one hundred pounds, or multiples of one hundred pounds, or the following fractions thereof, five, ten, twenty-five, and fifty pounds; and in addition, for wheat flour, rye flour, and corn flour only, one hundred and forty pounds; and for commercial feeding stuffs only, sixty, seventy, and eighty pounds.

Although this bill was reported favorably, it failed to pass, apparently on account of the congested condition of the calendar.

The information received by this commission from milling companies, bag manufacturers, and others informed upon the subject all goes to show that the bill has practically the unqualified approval of all the factors engaged in the different branches of business that have to do with the production and sale of cereal mill products. Manufacturers of cereal specialties and wholesale grocers have expressed themselves with regard to the trade requirements in their particular lines of business, and individually and through their associations they have voiced their approval of the measure.¹⁰

Section 8. Unnecessary investment and package expense.

An argument urged in support of the proposed standardization of flour and feed packages is the waste of capital involved in carrying inventories of the large number of sizes of packages in use. It is said that the necessity of carrying stocks of numerous different sizes of packages requires a larger amount of capital than is warranted by the volume of business handled, and, furthermore, that this involves an additional expense in packing and shipping which adds to the cost of production.

The amount of capital necessary to carry stocks of packages adequate to meet trade demands depends upon the volume of business and the particular class of trade that is served. Obviously mills whose trade is confined to States in which the packages are regular and uniform in size are in much better position in this respect than those whose trade extends into various States where by law or

⁸ Hearings, H. R. 4901, May 6, 1921, p. 6.

⁹ H. R. 4901, Sixty-seventh Congress, first session, and H. R. 7103, Sixty-seventh Congress, fourth session.

¹⁰ Hearings before Committee on Coinage, Weights, and Measures, H. R. 7462, first session, Sixty-sixth Congress, and H. R. 4901, first session, Sixty-seventh Congress.

custom the package requirements include a full complement of regular and irregular sizes.

Comparison of reports for 25 flour milling companies that are equally distributed among the five geographical milling districts of the country shows that in the five years 1918-1922 the amounts invested in package inventories at the end of different business years for individual companies ranged from \$10,000 to more than \$2,000,000. Limiting the comparison to those having package inventories averaging less than \$100,000 per year, 18 of the 25 companies show an average of \$50,580, while for the other 7 companies that carried package stocks in excess of \$100,000 per year the average amounted to \$473,884.

Further comparison shows that among the smaller companies a greater proportion of the total inventory account was invested in packages. Thus, 14 of the 25 companies had a milling capacity in excess of 2,000 barrels per day. Their package account for the five years averaged 10.4 per cent of their total inventory investment. On the other hand, in the case of the other 11 companies whose milling capacity was less than 2,000 barrels per day their package investment during the five years averaged 18.2 per cent of the total inventory investment.

From this it would appear that in reducing the amount of capital necessary to carry stocks of packages the smaller companies would receive the greatest benefit.

The importance of package expense is indicated by the fact that for the 10-year period 1913-1922, excepting the cost of the wheat itself, packages constituted the largest single item in the cost of a barrel of flour (see Table 29, p. 67).

With respect to the expense incurred under the present package system and the advantage offered by standardization of flour packages, an official of a Kansas flour-milling company stated:

We can not urge too strongly the adoption of a law to standardize the size of flour and feed packages. The present individual State laws and also general requirements of the trade pertaining to flour packages in particular make it necessary that we tie up an exorbitant sum of money in empty bags.

If a law was adopted standardizing the sizes of these packages it would mean that we would only have to carry about 40 per cent of the bag stock that we are forced to have at the present time. All these additional expenses must, of course, be added to the selling price of flour, and as we are interested in getting out flour to the ultimate consumer at the lowest possible basis, we are naturally interested in any legislation that will eliminate certain unsatisfactory practices tending to elevate the cost of necessities.

Expressing approval of the decimal-weight bill, and also referring to the investment required to carry stocks of bags adequate to meet current demands, the president of another milling company in Kansas said:¹¹

We are unanimous in favoring the immediate passage of the above bill. The general public probably does not realize the very important part that bag costs represent in marketing wheat flour and corn-meal products. It is a conservative estimate the mills of even modest capacity are compelled to carry under present conditions probably 40 different-sized bags. This represents an investment of many thousand dollars.

Should the bill become a law, a considerable saving to the consumer would undoubtedly result.

¹¹ Hearings before the House Committee on Coinage, Weights, and Measures, Part I, p. 19.

Regarding the investment necessary to handle the package situation, and the saving to the consumer by the proposed decimal-weight plan, a representative of the American Corn Millers' Federation stated: ¹³

I had an opportunity to go into that in detail with specific plants. In one plant I have in mind the monthly bag inventories before we suggested to the Food Administration to put us on a decimal basis approximated \$100,000. It meant that much money was tied up every month. The consumer had to pay the interest on that and the profit on that, and it probably involved a storage space and equipment of a cost of \$20,000 additional to the plant, as also several extra men, and altogether I believe to that one plant it will reduce the necessity for a charge to the consumer of \$25,000 every year; rather, they could sell at \$25,000 less for their products and have the same income as on the present basis.

As to the saving in the cost of packing wheat and corn products under the proposed standardization of packages, the general manager of one of the largest milling companies in the State of Texas said: ¹⁴

Aside from any selfish interests that we may have in the matter, we beg to call your attention to the fact that the standardization of packages for flour, meal, etc., will unquestionably result in a great saving in the cost of packing wheat and corn products, which correspondingly will result in a relative saving to the consumer. It seems to us this should be given due consideration at this particular time, when the attention of the entire country is concentrated on the all-important question of reducing the "high cost of living."

With regard to the efforts of the Millers' National Federation in behalf of the decimal weight bill and the wastefulness of the present package system, an official of one of the largest flour milling companies in Illinois wrote to the commission as follows:

For the past few years the Millers' National Federation has tried to get Congress to pass a decimal weight bill which would, in our opinion, still further facilitate business. At the present time different States have different weight requirements, and the basic unit of a barrel, 196 pounds, is confusing. From an economical point of view the present system is wasteful and extravagant, as millers are required to carry in stock dozens of different-sized bags, ranging from 2 pounds to 280 pounds, whereas with the decimal weight bill many of the odd sizes would be eliminated. Furthermore, it would be to the advantage of the buyers, for at the present time a quarter barrel of flour in some States is 48 pounds, whereas in others it is 49 pounds.

Section 9. Attitude of bag manufacturers with respect to the proposed decimal weight system.

A change in the sizes of flour packages such as proposed by the decimal-weight plan also interests the bag and sack manufacturers. As a result of correspondence with bag manufacturers whose output constitutes fully 90 per cent of the total product for the country, it was found that the preponderance of sentiment was strongly in favor of the decimal-weight plan for flour and feed packages.

The following excerpts from statements submitted by representative bag manufacturers are of interest in this connection. On the general subject of standardizing flour and feed packages one manufacturer wrote to the commission:

Any legislation that would tend to standardize weights for packages of flour and kindred products and feeds throughout the United States has our earnest support. At the present time there is considerable variation in the weights packed by mills for shipment into the different States. For instance, one-sixteenth barrel is packed 12 and 12½ pounds; one-eighth barrel is packed 24 and

¹³ Hearings before the House Committee on Coinage, Weights, and Measures, Oct. 2, 1918, Part III, p. 67.
¹⁴ *Ibid.*, Part I, p. 14.

24½ pounds; one-fourth barrel is packed 48 and 49 pounds; one-half barrel is packed 96 and 98 pounds.

In some instances we have printed one-half barrel sacks—that is, on the same bag, “98 pounds, North Carolina”; “96 pounds, South Carolina”—so we assume the miller must pack this according to the State to which he intends shipping his product. There is absolutely no sensible reason why this should not be uniform throughout the United States. We believe that the decimal-weight system, namely, 100-pound unit, and fractional parts or multiples of this unit is the proper basis. As manufacturers of bags, and having considerable amount of electros made up with the old weight marks, it will cost us some money to make the desired changes in our engravings; but we are firmly of the opinion that this cost will be more than offset by the splendid results that a law of this kind properly enforced would accomplish.

Favoring standardization and pointing out certain advantages which would result from its adoption, the president of another company wrote the following:

Any action taken toward standardizing packages for flour would certainly meet our approval; this inasmuch as at the present time various States differ as to what constitutes the fractional amounts of a barrel. If decimal weights on basis of 200 pounds to the barrel could be used it would simplify the manufacture of packages and printing of same so that we would not be continually in hot water as to furnishing various mills with correct sized bags and correct printing of weights. Often a small error has proven quite expensive.

Expressing the belief that the decimal-weight plan would tend to economy and simplicity of operation, the president of a large bag company in the Middle West said:

With reference to the proposed standardization of the weight contents of packages, we are very much in favor of what was proposed in the bill H. R. 7103 before the last Congress and think that the adoption of this bill would tend to economy and simplicity of operation both for millers and for bag manufacturers.

The manager of one of the largest cotton-bag manufacturing companies in the country submitted the following statement:

Regarding the proposed Federal standardization of flour and feed packages, we wish to state that in our opinion this is a move in the right direction, as it is one which will undoubtedly benefit the flour miller as well as the bag manufacturers as follows:

The standardization of sizes, quality of material, and one class of package for the respective sizes which will put the product on a more competitive basis, and, likewise, prove economical to both the flour miller and bag manufacturer.

By the millers using one class of container for the respective size packages it will enable them to carry a smaller stock of bags inasmuch as it will then not necessitate their carrying bags of various dimensions. The bag manufacturer would likewise be benefited by his not being required to carry cloth of various weights and constructions.

Flour being a very competitive commodity, we know for a fact that some millers pay as high as \$5 to \$8 per thousand for a special class of bag as a container in order to help advertize and sell their product.

As a result of the commission's efforts to obtain the opinion of various bag manufacturers with regard to the proposed standardization of flour and feed packages, the matter was taken up by the Rope Paper Sack Manufacturers' Association. On May 29, 1923, the secretary of this association wrote the commission as follows:

Referring to your recent letter of May 15, I am pleased to advise you that this association went on record at its meeting of May 23 as being strongly in favor of the passage of a bill for standardizing flour and feed packages.

Section 10. Deception and fraud due to similar-sized packages.

With regard to the sale of flour in package form, while it is conceded that the size, shape, style, and general similarity in certain flour-package units below the half-barrel size makes them easily susceptible

of deception, and while the testimony of representatives of the milling industry indicate their belief that some of the retail dealers in various localities take unfair advantage of the indifference or ignorance of some classes of customers, yet no concrete evidence has been adduced in this connection by the millers.

Deception or fraud in the sale of flour appears to be most easily accomplished in States that permit a multiplicity of packages, and especially such packages as may be easily confused, such as 49 and 48 pound sacks, 24½ and 24 pound sacks, and 12½ and 12 pound sacks.

Deception in the form which is here considered is a matter that naturally comes under the observation of officials whose duties bring them in contact with the methods of merchants who deal directly with the consumers. In the communications received by the commission, two State officials having supervision over the weights and measures laws have called attention to the use of flour packages that are not authorized by the State laws. Thus in Illinois it is pointed out that despite the fact the law specifies that the quarter-barrel sack of flour shall weigh 49 pounds and the eighth-barrel sack 24½ pounds, the grocers generally are selling flour in 48 and 24 pound sacks.

In West Virginia the law says that a barrel of flour shall contain 196 pounds and the legal one-eighth-barrel size is 24½ pounds, yet in many cases it has been found that eight 24-pound sacks have been delivered for a barrel, thus creating a shortage of 4 pounds to the barrel.

In the State of Iowa the law specifies that a sack of flour shall weigh 49 pounds, or one-fourth of a barrel. Yet an official in one of the mining districts in that State reports that—

The only way that flour is sold is by the sack and half sack. The sack weighs 48 pounds (called 50 pounds) and the half sack 24 pounds.

Replying to an inquiry regarding the size of packages in which retail dealers sell flour to the family trade, an official in another city in Iowa said:

They sell flour in 25, 50, and 100 pound sacks; also in any quantity that may be wanted less than 25 pounds.

The ease with which deception and fraud in the sale of flour in package form is made possible is forcibly illustrated by the experience of an official of the United States Food Administration during the years 1918 and 1919. In his official capacity as investigator for the Food Administration he had occasion to investigate the sales of flour and grain products and the sizes of packages in which flour was packed and sold. In relating his experience in St. Louis, Kansas City, and Minneapolis, he stated:

In a house-to-house canvass among the poorer classes not more than 1 housewife in 20 could tell what size package of flour she had purchased or was in the habit of purchasing. The answers were invariably that she had purchased a 25-cent sack of flour, a 40-cent sack of flour, a 60-cent sack of flour, or some similar designated price. When questioned as to the number of pounds she had purchased for 25 cents, 40 cents, or 60 cents, I found almost no one who could answer the question intelligently.

In the cases of the better classes, like families of locomotive engineers, foremen of industrial plants, foremen of laborers, etc., I found a small percentage who could readily distinguish between one-half barrels, one-fourth barrels, one-eighth barrels, one-sixteenth barrels, and the like. But the large majority

of housewives were found to be entirely ignorant concerning the fact that a standard barrel of flour contained 196 pounds, a half barrel 98 pounds, and a quarter barrel 49 pounds. They had "never examined a bag of flour to see how much it contained."

When questioned concerning odd-sized packages, such as 48 pounds, 24 pounds, 12 pounds, etc., the housewives answered that they did not know whether such sized packages were being sold, whether they had purchased odd-sized packages, or whether they had been getting proportionate parts of a standard barrel of 196 pounds.

My investigation also included retail stores where the storekeepers, almost without exception, said that they did not take any trouble to tell their customers or educate them in the size of the packages of flour being sold; that the number of pounds were plainly stamped upon the packages, and that this was sufficient notice to the public. When questioned concerning odd-sized packages, such as 48s for 49s, 24s for 24½s, etc., the answers were almost invariably that the dealer made no distinction between these sizes; both sold for the same price, but these same dealers admitted that they frequently made "a few cents more" on the barrel when they sold 48s and 24s, because they could buy these packages "a little cheaper."

The multiplicity of different packages, the lack of interest or intelligence in the subject, and the long-established trade customs and practices are exceedingly difficult to eradicate and, in my opinion, have led and are still leading to deceptive practices upon the part of retail merchants. During the year thousands of families are defrauded out of a few cents on each purchase of flour, and this in the long run amounts to thousands of dollars.

It is believed that standard-sized packages would do away with much of this deception and correct, to a very large extent, these fraudulent practices. Perhaps the most economical way would be to adopt a standard package of 100 pounds and provide that only exact multiples thereof could be used in interstate commerce. The decimal system is very much easier for an ignorant, uneducated person to calculate than the English system of weights and measures. Further, the majority of our ignorant population in the cities, especially at this time, are foreign born, but they are already familiar with the decimal system of weights and measures, that system having been used in the country of their nativity.

Numerous reasons could be advanced for adopting the decimal system of weights and measures and applying it uniformly in interstate commerce, but I know of no good reasons that can be advanced against the adoption and use of the decimal system except "custom and practice," which we should be all the more ready to discard for something better.

So far as deception and fraud in the sale of flour in the smaller sizes of packages is concerned, this statement reveals conditions that are believed to exist in many localities throughout the country.

Section 11. Policy of the United States Food Administration during the World War.

The importance of eliminating superfluous sizes of flour packages was recognized during the World War, when economy was sought in the production and distribution of all commodities. As in other branches of industry, the flour-milling companies—wholesalers, jobbers, and retailers—all felt the necessity of adjusting their operations to meet war-time requirements.

To facilitate the handling of flour and at the same time to keep the cost to the consumer as low as possible the United States Food Administration issued instructions to the flour millers of the country stating that after December 1, 1917:

As a part of the regulations governing milling, no flour mill operating under agreement with the United States Food Administrator shall, after December 1, 1917, sell flour in other than one-eighth, one-quarter, one-half barrel, or larger packages; and effective January 1, 1918, no mill shall ship flour in packages other than those described.

This plan was in effect about one month when the one-sixteenth barrel package was authorized, and later, on April 1, 1918, the

entire regulations on this subject were withdrawn. This course was deemed necessary because the Food Administration had issued "Substitution regulations," requiring purchasers of wheat flour to buy an equal quantity of flour substitutes, and, because the cancellation of the smaller sizes of flour packages interfered with the proper enforcement of the new regulations it was thought advisable to reinstate the customary commercial packages.¹⁴

The significant thing accomplished by the Food Administration was the elimination of more than 50 per cent of the different sizes of flour packages theretofore in use in the trade. Thus one large flour-milling concern reported a maximum of 65 different-sized packages used in a pre-war year, while it reported only 17 different sizes for 1922.

¹⁴ United States Food Administration, Milling Division, Circulars Nos 9 and 12.

APPENDIX

APPENDIX TABLES

TABLE 1.—Quantity and value of wheat flour exported from United States by countries, for the fiscal years ending June 30, 1919–1923, inclusive

Countries	1919		1920	
	Barrels	Value	Barrels	Value
Belgium.....			1,201,191	\$13,157,337
Denmark.....	160,767	\$1,814,153	19,576	199,697
France.....	3,984,365	42,639,971	2,832,952	30,295,214
Germany.....			278,136	3,071,005
Greece.....	129,841	1,591,944	155,001	1,841,727
Italy.....	2,393,974	28,214,504	2,484,823	26,988,728
Netherlands.....	1,117,018	13,269,744	117,224	1,323,859
Norway.....	185,345	2,178,734	11,428	118,733
Poland and Danzig.....			2,090,438	22,966,804
United Kingdom.....	10,896,719	120,749,770	4,743,111	51,814,877
Other European.....	2,009,850	32,440,683	2,176,646	24,484,739
Canada.....	33,701	341,743	16,313	179,969
Central America.....	242,215	2,753,700	476,496	5,545,922
Mexico.....	384,040	4,354,026	261,054	2,896,573
Cuba.....	1,058,028	11,652,051	1,598,144	18,791,331
Haiti.....	138,564	1,655,875	345,808	4,428,768
Other West Indies.....	242,187	2,728,163	579,857	6,518,901
Brazil.....	31,639	373,956	391,451	4,748,397
Venezuela.....	74,635	868,924	136,276	1,698,379
British West Africa.....	23,438	290,154	95,000	1,333,690
Hongkong.....	1,606	15,822	158,150	1,738,957
Philippines.....	6,039	63,403	98,659	1,110,741
Other countries.....	168,208	1,966,919	1,385,967	15,437,313
Total.....	24,181,979	267,966,269	21,651,961	240,574,670

Countries	1921		1922		1923	
	Barrels	Value	Barrels	Value	Barrels	Value
Austria.....	523,289	\$3,004,482				
Belgium.....	665,191	5,717,489	123,479	\$787,765	42,072	\$227,633
Denmark.....	87,173	814,481	350,403	2,480,205	194,899	1,170,991
Finland.....	295,202	3,673,086	432,891	3,950,745	299,853	1,785,501
France.....	11,385	87,768				
Germany.....	1,988,070	17,493,847	1,516,333	8,543,188	1,062,684	5,659,680
Greece.....	419,917	3,918,505	63,810	373,370	317,738	1,709,938
Italy.....	815,277	3,288,777	60,058	303,879	54,280	275,247
Netherlands.....	1,263,405	12,021,500	917,560	5,899,782	982,736	6,253,064
Norway.....	242,134	2,389,858	408,410	2,574,501	219,555	1,213,066
Poland and Danzig.....	1,034,632	7,178,488	146,744	879,615	158,785	829,787
United Kingdom.....	3,090,158	26,789,208	3,190,762	20,076,205	1,913,483	10,307,948
Other European.....	1,206,658	11,303,373	2,083,106	11,633,937	1,765,746	9,863,599
Canada.....	35,601	301,174	68,216	446,313	66,936	375,264
Central America.....	426,615	4,316,715	498,827	3,355,762	537,898	3,344,016
Mexico.....	359,898	3,614,576	245,670	1,702,529	365,664	2,214,168
Cuba.....	986,341	10,528,618	1,068,721	7,555,672	1,083,582	6,762,208
Haiti.....	210,762	2,618,585	162,489	1,154,711	281,000	1,646,494
Other West Indies.....	693,549	6,298,974	608,773	3,491,571	473,121	2,849,205
Brazil.....	622,066	7,859,876	327,018	2,203,076	477,589	2,910,879
Venezuela.....	148,855	1,657,880	77,309	673,195	83,061	557,333
British West Africa.....	55,600	782,283	65,574	659,362	108,708	890,060
Egypt.....	492,873	4,229,176	190,224	1,296,727	293,147	1,515,321
Hongkong.....	142,496	988,990	973,356	5,224,401	825,197	4,263,791
Japan.....			623,012	3,372,309	243,560	1,345,281
China.....			573,438	2,985,640	1,860,752	9,772,660
Philippines.....	197,704	1,870,969	334,046	2,044,789	468,838	2,803,135
Other countries.....	866,211	9,274,967	781,686	4,876,882	697,498	4,150,747
Total.....	16,179,956	154,594,358	15,796,824	97,366,131	14,882,714	83,991,008

TABLE 2.—Comparison of the true and simple average rate of return by districts, and investment groups, 1919-1922

Group and district	1919		1920		1921		1922		1919-1922					
	Number of companies	True average rate	Simple average rate	Number of companies	True average rate	Simple average rate	Number of companies	True average rate	Simple average rate	Number of companies	True average rate	Simple average rate		
		P. d.	P. d.		P. d.	P. d.		P. d.	P. d.		P. d.	P. d.		
<i>Under \$250,000</i>														
Northwestern.....	7	25.8	22.8	5	2.5	2.3	6	10.6	12.0	6	15.0	12.4	11.7	9.8
Southwestern.....	9	14.4	13.5	8	10.9	15.0	8	10.5	13.8	8	8.4	12.6	1.6	12.0
Southeastern, central, and eastern.....	4	14.7	18.1	3	13.1	8.0	7	11.4	12.4	6	10.0	11.2	5.6	7.3
Mountain and coast.....	3	18.8	21.9	2	8.8	9.3	3	20.4	33.0	4	8.1	8.6	6.8	1.7
All districts.....	22	18.6	18.5	18	1.6	0.6	24	15.4	19.4	24	8.4	6.5	6.1	3.8
<i>\$250,000 to \$500,000</i>														
Northwestern.....	6	12.7	12.5	10	8.1	8.1	9	12.4	14.1	8	3.6	3.5	4.7	4.2
Southwestern.....	9	17.3	18.0	8	6.0	6.7	10	6.6	6.5	12	12.5	12.5	11.0	11.0
Southeastern, central, and eastern.....	7	16.1	18.1	8	15.2	16.7	5	13.8	13.7	5	8.6	10.2	10.0	11.7
Mountain and coast.....	4	10.2	9.8	4	12.2	12.2	6	11.7	14.5	3	16.9	16.9	7.4	6.6
All districts.....	26	14.8	15.5	30	9.9	10.6	30	0.1	10.7	28	10.2	10.6	8.4	9.1
<i>\$500,000 to \$1,000,000</i>														
Northwestern.....	3	21.0	19.0	1	12.6	12.6	1	13.2	13.2	2	6.8	7.4	11.7	11.6
Southwestern.....	12	14.1	19.2	13	22.2	21.4	16	2.1	1.7	13	12.4	12.6	13.2	12.6
Southeastern, central, and eastern.....	4	19.0	14.5	4	4.9	3.8	3	15.5	15.6	4	8.1	5.6	8.6	8.2
Mountain and coast.....	3	21.0	16.5	3	7.0	7.5	3	24.5	25.6	3	19.6	20.6	4.5	4.8
All districts.....	22	18.0	18.4	21	16.4	15.7	23	12.6	13.1	22	11.5	12.0	10.5	10.4
<i>\$1,000,000 to \$2,000,000</i>														
Northwestern.....	3	10.7	12.4	4	8.1	8.6	3	2.5	2.6	4	9.3	9.2	8.0	8.3
Southwestern.....	6	20.7	21.6	7	18.5	19.1	4	2.8	1.9	7	8.5	8.0	13.1	13.0
Southeastern, central, and eastern.....	5	13.0	13.7	5	10.5	9.7	6	14.7	14.7	2	8.1	2.5	6.7	8.8
Mountain and coast.....				2	19.2	18.9							19.2	19.0
All districts.....	14	15.5	16.8	18	13.7	14.1	12	10.4	10.7	13	7.1	5.9	10.0	9.8
<i>\$2,000,000 and over</i>														
Northwestern.....	7	13.5	14.1	7	15.6	16.7	7	5.5	5.0	6	12.9	10.8	12.3	11.7
Southwestern.....	6	14.3	14.8	7	17.9	18.6	7	2.5	10.2	4	8.5	8.5	9.8	10.5
Southeastern, central, and eastern.....	2	11.0	12.2	2	3.5	1.3	3	7.3	10.2	2	12.4	23.2	8.4	11.7
Mountain and coast.....	2	11.2	10.8	2	19.6	17.2	2	2.3	14.0	2	7.5	7.3	9.7	7.9
All districts.....	17	12.9	13.7	18	15.5	15.8	18	2.8	2.0	14	11.6	11.5	11.0	10.8
<i>All groups</i>														
Northwestern.....	26	13.7	16.4	27	14.7	9.5	26	4.7	10.0	26	12.9	8.4	11.7	8.5
Southwestern.....	41	16.7	17.5	43	17.7	12.9	45	10.3	10.5	44	9.3	8.4	11.0	9.4
Southeastern, central, and eastern.....	22	12.4	16.4	22	6.5	10.2	22	1.7	12.5	19	9.8	9.7	7.7	8.4
Mountain and coast.....	12	11.9	14.7	13	18.2	12.5	14	14.6	15.0	22	9.0	12.6	9.3	8.7
All districts.....	101	13.9	16.7	105	14.9	11.4	107	1.6	12.7	101	10.9	9.3	10.6	8.5

¹ Loss.

WHEAT FLOUR MILLING INDUSTRY

TABLE 3.—Rate of return on milling investment for individual companies, by years, 1919-1923

1919	1920	1921	1922	1919	1920	1921	1922
Per cent	Per cent	Per cent	Per cent	Per cent	Per cent	Per cent	Per cent
11.1	15.4	17.6	13.4				
2.0	15.3	16.2	12.6	15.9	11.8	1.0	8.9
.1	14.3	15.9	10.7	18.9	11.9	1.0	9.0
1.8	12.3	13.6	8.7	16.3	12.0	.0	9.1
4.7	10.6	13.2	8.3	16.5	12.6	.3	9.2
4.7	8.2	12.1	7.2	16.7	12.6	.3	9.3
4.9	17.9	13.1	15.7	16.8	13.0	.4	9.5
8.0	16.9	17.4	15.2	16.8	13.2	.4	9.6
6.6	14.8	12.6	12.9	17.2	13.3	1.4	9.6
6.8	14.7	11.6	12.2	17.3	15.0	1.5	9.6
7.0	14.1	19.6	11.8	17.7	15.7	1.5	9.7
7.0	14.0	18.3	11.4	17.8	15.9	2.0	9.9
7.1	13.9	17.9	11.0	17.8	16.1	2.1	10.1
7.2	12.5	17.3	1.9	18.1	16.6	2.6	10.4
7.2	12.4	16.2	1.8	18.7	17.1	2.8	10.5
7.6	12.0	15.3	1.2	18.8	17.2	2.9	10.7
7.6	11.8	15.2	1.0		17.3	3.3	
7.9	11.5	14.8	.6			3.6	
8.1	11.4	13.9	1.2	19.1	17.5	4.2	10.9
9.0	11.2	13.0	2.6	19.2	17.7	4.8	11.3
9.2	.6	12.9	2.9	19.4	17.9	4.8	11.4
9.5	.8	12.5	3.1	20.3	18.5	5.3	11.4
9.6	1.3	11.9	4.3	20.3	18.7	5.5	12.6
9.7	1.7	11.6	4.2	20.6	18.8	5.7	12.7
9.7	2.4	10.7	4.5	20.6	18.9	5.8	13.0
9.8	2.5	19.8	4.5	20.8	18.9	6.3	13.0
9.9	2.6	19.5	4.0	20.9	19.4	6.3	13.1
10.3	2.9	18.5	5.2	21.0	20.9	6.5	13.3
10.5	3.5	17.5	5.5	21.4	21.2	7.1	13.6
11.0	3.7	17.1	5.7	22.6	21.4	7.1	14.0
11.5	3.7	17.1	6.0	22.7	22.1	7.8	14.5
11.6	4.0	16.7	6.2	22.9	22.3	7.9	15.7
11.6	5.1	16.2	6.3	23.6	22.9	8.6	15.7
11.7	5.6	16.2	6.4	23.8	23.0	9.0	16.8
	5.8	16.0		24.4	24.5	9.8	17.3
				24.6	24.6	10.0	18.4
				24.8	24.8	10.0	19.0
				25.9	25.9	10.4	19.1
				28.4	28.5	11.1	19.6
				27.6	27.0	11.3	19.6
				27.8	27.3	11.5	21.6
				30.6	27.8	12.6	21.7
				30.7	28.4	13.4	22.3
				34.1	29.0	14.5	24.6
				34.3	29.1	15.2	26.2
				36.2	29.8	16.3	30.7
				37.9	31.1	16.6	32.4
				45.2	34.2	19.2	39.9
				45.5	36.6	21.0	40.7
				50.0	36.7	21.2	44.5
				50.5	37.0	26.3	47.3
					38.2	27.7	
					49.2	44.1	
				13.9	14.9	1.6	10.9

¹ Loss.

² Average.

WHEAT FLOUR MILLING INDUSTRY

TABLE 4.—Rate of return on investment by 108 merchant flour-milling companies for 4 years, 1919-1922

Company No.	Group No.	Rate of return	Company No.	Group No.	Rate of return	Company No.	Group No.	Rate of return
		<i>Per cent</i>			<i>Per cent</i>			<i>Per cent</i>
1	1	¹ 10.6	37	2	5.2	73	1	11.5
2	1	¹ 10.0	38	3	5.5	74	4	11.5
3	2	¹ 9.0	39	5	5.6	75	3	11.7
4	3	17.8	40	2	5.6	76	4	12.3
5	1	¹ 6.5	41	4	6.0	77	5	12.4
6	1	¹ 6.0	42	2	6.5	78	3	12.5
7	2	¹ 5.9	43	5	6.6	79	3	12.6
8	1	¹ 5.3	44	2	6.9	80	5	12.9
9	2	¹ 5.3	45	2	7.2	81	2	13.0
10	2	¹ 3.2	46	5	7.3	82	5	13.2
11	1	¹ 2.5	47	5	7.8	83	2	13.5
12	4	11.8	48	1	7.9	84	3	14.1
13	1	11.7	49	1	8.0	85	3	14.2
14	3	¹ 1.2	50	2	8.1	86	2	14.5
15	2	.4	51	4	8.2	87	5	14.9
16	1	.6	52	2	8.4	88	5	15.4
17	2	1.8	53	4	8.4	89	3	15.4
18	1	1.8	54	5	8.6	90	5	15.9
19	2	2.1	55	2	8.8	91	2	16.2
20	3	2.2	56	3	9.0	92	3	17.4
21	1	2.3	57	5	9.1	93	4	18.3
22	1	2.5	58	1	9.9	94	5	18.3
23	1	2.6	59	2	10.0	95	1	18.3
24	2	3.1	60	4	10.0	96	3	18.8
25	1	3.2	61	1	10.0	97	2	19.1
26	2	3.3	62	4	10.3	98	3	19.5
27	2	3.3	63	3	10.4	99	4	19.7
28	4	3.4	64	4	10.4	100	3	19.9
29	3	3.9	65	2	10.5	101	1	20.9
30	2	4.2	66	2	11.0	102	2	21.2
31	3	4.3	67	4	11.0	103	1	22.5
32	5	4.3	68	2	11.0	104	3	25.0
33	4	4.5	69	5	11.2	105	1	25.5
34	2	4.5	70	3	11.4	106	2	29.4
35	3	4.6	71	5	11.4	107	3	32.0
36	5	5.1	72	3	11.5	108	2	40.0

¹ Loss.

TABLE 5.—Cost of sales, operating profit, milling profit, and company profit by districts, 1919-1922

Year and district	Flour sold (barrels)	Total mill cost	Purchased flour and inventory variations	Selling expense	Cost of flour sold
1919					
Northwestern district.....	28, 114, 822	\$286, 678, 099	\$2, 656, 819	\$8, 132, 579	\$292, 153, 859
Southwestern district.....	11, 725, 576	104, 911, 096	3, 700, 756	1, 791, 744	114, 403, 596
Southeastern district.....	2, 617, 245	26, 894, 172	158, 728	452, 906	27, 505, 806
Central and eastern districts.....	3, 453, 646	35, 623, 746	193, 664	759, 517	36, 189, 599
Mountain and coast districts.....	4, 145, 719	39, 614, 808	257, 323	354, 028	39, 715, 513
Total.....	50, 057, 008	497, 721, 921	761, 678	11, 494, 774	509, 968, 373
1920					
Northwestern district.....	27, 833, 152	317, 096, 847	2, 467, 455	11, 246, 748	325, 876, 140
Southwestern district.....	13, 147, 047	134, 035, 312	4, 122, 792	3, 000, 496	141, 158, 510
Southeastern district.....	2, 114, 797	23, 598, 846	192, 424	518, 508	24, 309, 778
Central and eastern districts.....	3, 287, 527	36, 424, 159	574, 171	1, 078, 768	38, 077, 098
Mountain and coast districts.....	5, 263, 194	50, 813, 768	468, 507	581, 875	51, 864, 150
Total.....	51, 645, 717	561, 968, 932	2, 890, 349	16, 426, 395	581, 285, 676
1921					
Northwestern district.....	26, 658, 015	222, 106, 110	8, 540, 941	12, 672, 172	243, 409, 223
Southwestern district.....	11, 977, 245	96, 993, 402	3, 279, 218	3, 598, 736	103, 871, 356
Southeastern district.....	1, 940, 242	15, 274, 777	402, 123	480, 327	16, 157, 227
Central and eastern districts.....	2, 905, 939	24, 967, 548	785, 747	956, 510	26, 739, 805
Mountain and coast districts.....	3, 579, 971	30, 291, 975	1, 367, 334	663, 595	32, 352, 904
Total.....	47, 061, 412	389, 753, 812	14, 375, 363	18, 201, 340	422, 330, 515
1922					
Northwestern district.....	28, 041, 263	171, 821, 663	2, 459, 318	11, 180, 316	185, 461, 297
Southwestern district.....	13, 667, 130	72, 837, 362	1, 579, 187	3, 458, 101	77, 874, 650
Southeastern district.....	2, 156, 370	13, 342, 773	70, 767	573, 356	13, 986, 895
Central and eastern districts.....	2, 533, 030	16, 878, 495	261, 685	830, 312	17, 972, 492
Mountain and coast districts.....	4, 448, 269	24, 509, 464	529, 586	667, 401	25, 706, 451
Total.....	50, 846, 062	299, 389, 757	4, 902, 543	16, 709, 485	321, 001, 785
1919-1922					
Northwestern district.....	110, 647, 252	997, 792, 719	5, 875, 965	43, 231, 815	1, 046, 900, 519
Southwestern district.....	50, 516, 998	412, 777, 172	12, 681, 863	11, 649, 077	437, 108, 112
Southeastern district.....	8, 828, 654	79, 110, 568	824, 042	2, 025, 096	81, 959, 706
Central and eastern districts.....	12, 180, 142	113, 923, 948	1, 429, 939	3, 625, 107	118, 978, 994
Mountain and coast districts.....	17, 377, 153	145, 230, 015	1, 108, 104	2, 300, 899	149, 639, 018
Total.....	199, 550, 199	1, 748, 834, 422	22, 919, 933	62, 831, 994	1, 834, 586, 349

* Loss.

TABLE 5.—Cost of sales, operating profit, milling profit, and company profit by districts, 1919-1922—Continued

Year and district	Value of flour sold	Operating profit	Other gains or losses	Milling profit	Less interest paid ¹	Total company profit
1919						
Northwestern district	\$302,081,349	\$9,927,490	\$359,561	\$10,287,051	\$1,226,345	\$9,060,706
Southwestern district	120,260,890	5,857,284	800,778	6,658,062	846,560	5,811,502
Southeastern district	29,060,257	1,554,451	† 176,809	1,731,642	340,194	1,017,448
Central and eastern districts	38,091,108	1,901,509	176,692	2,078,201	490,009	1,588,192
Mountain and coast districts	41,566,830	1,851,317	1,097,837	2,949,154	554,273	2,394,879
Total	631,060,424	21,092,051	2,258,039	23,350,110	3,447,383	19,902,727
1920						
Northwestern district	337,304,223	11,28,083	2,024,541	13,452,624	2,701,682	10,750,942
Southwestern district	148,995,801	7,837,291	1,493,716	9,331,007	1,209,791	8,121,216
Southeastern district	24,735,938	426,160	† 115,934	310,226	304,160	6,066
Central and eastern districts	39,381,500	1,304,402	216,382	1,520,784	513,878	1,007,108
Mountain and coast districts	54,589,183	2,725,038	2,802,874	5,527,912	515,391	5,012,521
Total	605,006,650	23,720,974	6,421,579	30,142,553	5,244,700	24,897,853
1921						
Northwestern district	248,870,257	5,461,034	† 2,052,341	3,408,693	1,067,828	2,340,867
Southwestern district	103,818,350	146,994	† 276,616	† 129,622	868,058	† 997,680
Southeastern district	15,998,041	† 159,186	105,262	† 53,924	171,814	† 225,798
Central and eastern districts	27,199,504	459,698	† 12,466	447,213	337,301	109,912
Mountain and coast districts	31,289,355	† 1,063,549	† 21,210	† 1,084,759	822,025	† 1,406,784
Total	427,175,507	4,844,992	† 2,257,391	2,587,601	2,767,024	† 179,423
1922						
Northwestern district	193,174,677	7,713,380	672,329	8,285,709	33,708	8,252,001
Southwestern district	81,791,449	3,918,799	† 101,125	3,815,674	541,630	3,274,044
Southeastern district	14,875,533	888,618	220,984	1,109,602	121,311	988,311
Central and eastern districts	18,741,432	768,940	52,318	821,258	272,454	548,774
Mountain and coast districts	26,264,253	557,802	1,512,577	2,070,379	391,503	1,678,876
Total	334,847,344	13,845,559	2,257,083	16,102,642	1,360,636	14,742,006
1919-1922						
Northwestern district	1,081,430,506	34,529,987	904,090	35,434,077	5,029,561	30,404,516
Southwestern district	454,896,480	17,758,368	1,916,753	19,675,121	3,456,039	16,219,082
Southeastern district	84,669,789	2,710,063	33,503	2,743,566	837,479	1,906,087
Central and eastern districts	123,413,544	4,434,550	432,906	4,867,456	1,613,470	3,253,986
Mountain and coast districts	153,709,626	4,070,608	5,392,078	9,462,686	1,783,194	7,679,492
Total	1,898,089,925	63,503,576	8,679,330	72,182,906	12,819,743	59,363,163

¹ Less interest paid, plus income from outside investment.² Loss.

TABLE 6.—Wheat ground, flour produced, and cost of milling (including packages), by districts, 1919-1922

Year and district	Number of mills	Daily capacity (barrels)	Bushels of wheat ground	Barrels of flour produced	Wheat cost †	Labor	General expense
1919							
Northwestern district.....	60	128,500	112,165,900	24,403,100	\$257,810,955	\$5,165,993	\$3,983,507
Southwestern district.....	57	72,450	50,378,711	11,324,023	111,269,546	2,392,735	2,704,221
Southeastern district.....	11	17,450	11,864,806	2,604,413	28,012,147	601,504	760,300
Central and eastern districts.....	15	42,524	20,700,337	6,962,050	72,164,290	1,495,179	1,260,481
Mountain and coast districts.....	27	26,999	18,433,826	4,169,491	28,799,935	1,286,508	857,036
Total.....	180	287,923	223,263,580	49,963,077	509,086,873	10,941,917	9,574,545
1920							
Northwestern district.....	55	150,300	115,242,536	24,335,033	297,827,285	6,591,827	5,224,210
Southwestern district.....	59	75,700	57,808,745	12,711,371	138,651,871	2,266,418	2,580,498
Southeastern district.....	11	17,450	9,507,734	2,091,928	24,807,431	624,563	815,266
Central and eastern districts.....	18	42,524	21,684,286	6,908,012	80,146,339	2,082,342	1,650,259
Mountain and coast districts.....	28	27,399	22,689,839	5,138,508	50,811,410	1,930,883	1,024,712
Total.....	178	313,373	236,934,140	51,184,852	591,944,336	14,499,033	12,294,944
1921							
Northwestern district.....	61	129,850	108,191,464	22,169,615	186,359,710	5,865,584	4,512,440
Southwestern district.....	67	81,200	52,661,292	11,639,090	94,374,027	2,058,963	2,817,992
Southeastern district.....	11	17,450	8,698,534	1,920,538	16,025,733	493,497	699,672
Central and eastern districts.....	18	42,524	21,002,078	6,975,540	60,483,279	1,611,737	1,648,069
Mountain and coast districts.....	29	27,699	18,647,323	3,529,424	28,931,287	1,384,375	946,821
Total.....	193	298,623	211,190,691	46,234,207	385,174,036	12,614,056	11,624,994
1922							
Northwestern district.....	61	129,850	104,216,108	22,556,809	139,368,662	4,918,512	4,465,815
Southwestern district.....	68	80,800	60,901,351	13,399,818	70,650,954	2,785,986	2,644,122
Southeastern district.....	11	17,450	9,888,881	2,150,898	13,309,964	495,948	700,159
Central and eastern districts.....	12	39,924	24,650,741	7,646,016	47,368,258	1,264,381	1,543,827
Mountain and coast districts.....	37	26,969	19,261,451	4,394,794	22,290,542	1,471,494	816,972
Total.....	189	294,723	229,018,632	50,148,306	392,998,377	10,936,221	11,170,895
1919-1922							
Northwestern district.....			434,816,008	93,964,557	881,366,612	22,541,916	18,185,972
Southwestern district.....			221,751,090	49,074,302	414,976,398	11,507,102	13,746,833
Southeastern district.....			39,669,965	8,767,777	80,855,275	2,215,512	2,964,266
Central and eastern districts.....			128,037,442	28,491,618	261,162,163	6,453,539	6,102,636
Mountain and coast districts.....			76,132,439	17,232,187	140,833,174	6,273,158	2,645,541
Total.....			900,407,943	197,530,441	1,778,193,622	48,991,227	44,665,378

† Includes options and self-rising ingredients.

TABLE 6.—Wheat ground, flour produced, and cost of milling (including packages), by districts, 1919-1922—Continued

Year and district	Depreciation	Packages	Other mill costs	Gross mill costs	Feed credit	Net mill costs
1919						
Northwestern district.....	\$450,715	\$11,672,968	\$4,290,466	\$283,374,699	\$32,341,531	\$251,033,098
Southwestern district.....	426,608	5,376,056	2,174,796	124,373,047	15,462,851	108,911,096
Southeastern district.....	149,727	1,428,221	427,290	31,893,179	4,494,007	29,894,172
Central and eastern districts.....	119,807	3,712,658	870,416	80,822,831	9,354,054	71,263,777
Mountain and coast districts.....	227,590	1,971,489	911,905	44,064,461	4,439,653	39,614,808
Total.....	1,374,442	24,161,387	8,674,853	563,814,017	60,092,096	497,721,921
1920						
Northwestern district.....	428,583	12,043,908	4,932,777	327,048,590	50,062,908	276,985,592
Southwestern district.....	583,199	6,286,677	2,646,423	155,018,066	20,982,774	134,035,312
Southeastern district.....	134,687	1,543,708	450,419	28,075,973	4,477,127	23,598,846
Central and eastern districts.....	113,669	3,815,406	1,014,546	88,822,600	12,287,146	76,535,414
Mountain and coast districts.....	248,864	2,599,024	1,112,829	57,727,722	6,913,854	50,814,768
Total.....	1,508,902	26,288,722	10,156,994	656,692,931	94,723,999	561,968,932
1921						
Northwestern district.....	564,612	7,329,739	4,743,984	299,376,099	23,065,165	186,290,904
Southwestern district.....	640,935	4,967,414	2,519,838	109,379,169	12,285,767	96,993,402
Southeastern district.....	167,568	827,327	348,055	17,561,842	2,287,065	15,274,777
Central and eastern districts.....	152,284	2,421,325	977,496	67,294,190	6,391,430	60,902,764
Mountain and coast districts.....	240,008	1,592,202	802,789	24,097,362	3,805,407	20,291,975
Total.....	1,765,397	17,138,007	9,392,162	437,708,652	47,954,840	389,753,812
1922						
Northwestern district.....	586,520	5,543,693	4,247,906	159,131,106	17,932,096	141,199,043
Southwestern district.....	682,493	3,007,913	2,423,850	83,195,318	10,357,956	72,837,262
Southeastern district.....	185,335	793,798	319,857	15,805,061	2,462,268	13,342,773
Central and eastern districts.....	137,611	2,006,442	902,268	53,222,574	5,721,458	47,501,116
Mountain and coast districts.....	243,440	1,497,902	846,535	27,166,885	2,657,421	24,509,464
Total.....	1,835,299	12,849,748	8,740,406	338,520,946	39,131,189	299,389,757
1919-1922						
Northwestern district.....	2,030,430	36,590,308	13,215,133	978,930,266	123,421,780	855,508,606
Southwestern district.....	2,333,290	19,638,060	9,764,897	471,969,820	59,189,348	412,777,172
Southeastern district.....	637,207	4,593,054	1,545,611	92,831,056	13,720,487	79,110,568
Central and eastern districts.....	523,271	11,955,830	3,764,716	289,962,155	33,754,094	256,208,061
Mountain and coast districts.....	959,902	7,660,617	3,674,058	163,046,450	17,818,435	145,230,015
Total.....	6,484,040	80,437,864	36,964,415	1,996,726,546	247,902,124	1,748,824,422

TABLE 7.—Net cost of manufacturing flour per barrel, by companies, arranged from low to high, 1919-1921¹

1919						1920						1921					
Company No.	Cost per barrel	Company No.	Cost per barrel	Company No.	Cost per barrel	Company No.	Cost per barrel	Company No.	Cost per barrel	Company No.	Cost per barrel	Company No.	Cost per barrel	Company No.	Cost per barrel	Company No.	Cost per barrel
1	\$5.67	37	\$9.75	73	\$10.29	1	\$8.61	37	\$10.58	73	\$11.51	1	\$4.90	37	\$7.51	73	\$9.02
2	9.03	38	9.78	74	10.30	2	9.19	38	10.69	74	11.51	2	6.03	38	7.56	74	9.09
3	9.05	39	9.79	75	10.31	3	9.34	39	10.72	75	11.52	3	6.07	39	7.57	75	9.13
4	9.08	40	9.80	76	10.32	4	9.37	40	10.73	76	11.54	4	6.09	40	7.71	76	9.13
5	9.09	41	9.83	77	10.34	5	9.44	41	10.78	77	11.54	5	6.13	41	7.76	77	9.17
6	9.14	42	9.87	78	10.35	6	9.47	42	10.78	78	11.55	6	6.15	42	7.95	78	9.21
7	9.16	43	9.88	79	10.35	7	9.73	43	10.81	79	11.57	7	6.30	43	7.96	79	9.28
8	9.25	44	9.89	80	10.36	8	9.77	44	10.87	80	11.66	8	6.36	44	8.02	80	9.30
9	9.28	45	9.92	81	10.38	9	9.79	45	10.87	81	11.66	9	6.42	45	8.11	81	9.35
10	9.29	46	9.93	82	10.40	10	9.84	46	10.89	82	11.68	10	6.44	46	8.17	82	9.44
11	9.33	47	9.96	83	10.40	11	9.86	47	10.91	83	11.69	11	6.48	47	8.20	83	9.45
12	9.34	48	9.96	84	10.47	12	9.89	48	10.93	84	11.76	12	6.51	48	8.22	84	9.45
13	9.34	49	9.96	85	10.51	13	9.92	49	10.93	85	11.80	13	6.66	49	8.21	85	9.47
14	9.35	50	9.97	86	10.52	14	9.94	50	11.02	86	11.82	14	6.66	50	8.34	86	9.51
15	9.37	51	9.97	87	10.55	15	10.01	51	11.06	87	11.93	15	6.69	51	8.35	87	9.61
16	9.40	52	9.98	88	10.56	16	9.96	52	11.07	88	11.93	16	6.77	52	8.37	88	9.67
17	9.41	53	9.98	89	10.59	17	9.97	53	11.09	89	11.97	17	6.81	53	8.47	89	9.71
18	9.46	54	9.99	90	10.72	18	10.02	54	11.15	90	11.98	18	6.83	54	8.51	90	9.78
19	9.46	55	10.00	91	10.74	19	10.05	55	11.17	91	12.07	19	6.88	55	8.55	91	9.80
20	9.49	56	10.04	92	10.75	20	10.05	56	11.20	92	12.18	20	6.96	56	8.57	92	9.83
21	9.54	57	10.06	93	10.81	21	10.10	57	11.22	93	12.22	21	7.01	57	8.61	93	10.04
22	9.55	58	10.07	94	10.88	22	10.11	58	11.25	94	12.23	22	7.03	58	8.62	94	10.07
23	9.55	59	10.08	95	10.95	23	10.12	59	11.30	95	12.25	23	7.03	59	8.65	95	10.24
24	9.56	60	10.09	96	11.02	24	10.23	60	11.31	96	12.27	24	7.04	60	8.68	96	10.37
25	9.56	61	10.11	97	11.03	25	10.25	61	11.31	97	12.30	25	7.05	61	8.70	97	10.44
26	9.57	62	10.12	98	11.08	26	10.29	62	11.32	98	12.32	26	7.07	62	8.71	98	10.52
27	9.61	63	10.13	99	11.17	27	10.27	63	11.35	99	12.34	27	7.08	63	8.73	99	10.76
28	9.62	64	10.13	100	11.25	28	10.31	64	11.36	100	12.45	28	7.12	64	8.73	100	10.82
29	9.62	65	10.15	101	11.42	29	10.33	65	11.36	101	12.65	29	7.17	65	8.75	101	10.86
30	9.63	66	10.15	-----	-----	30	10.33	66	11.39	102	12.72	30	7.21	66	8.83	102	10.98
31	9.65	67	10.16	-----	-----	31	10.37	67	11.41	103	12.73	31	7.23	67	8.89	103	11.08
32	9.71	68	10.17	-----	-----	32	10.37	68	11.43	104	12.76	32	7.27	68	8.91	104	11.26
33	9.72	69	10.18	-----	-----	33	10.39	69	11.45	105	13.99	33	7.43	69	8.94	105	11.27
34	9.72	70	10.19	-----	-----	34	10.43	70	11.47	-----	-----	34	7.44	70	8.94	106	11.38
35	9.73	71	10.22	-----	-----	35	10.48	71	11.47	-----	-----	35	7.46	71	8.95	107	11.69
36	9.73	72	10.22	-----	-----	36	10.53	72	11.49	-----	-----	36	7.48	72	8.95	-----	-----

¹ See Appendix Table 8 for details of cost for 1922.

TABLE 8.—Manufacturing cost per barrel, of wheat flour for 102 companies,¹ arranged in the order of net mill costs, from low to high, 1922

Company No.	Wheat	Labor	General expense	Depreciation	Pack-ages	Other mill costs	Gross mill costs	Feed credit	Net mill costs
1.....	\$3.00	\$0.22	\$0.11	\$0.04	\$0.08	\$0.14	\$5.64	\$0.72	\$4.87
2.....	4.86	.20	.22	.04	.15	.16	5.63	.69	4.94
3.....	5.18	.17	.23	.02	.19	.13	5.89	.69	4.97
4.....	5.09	.18	.15	.08	.24	.16	5.90	.91	4.99
5.....	4.87	.17	.21	.11	.20	.15	5.67	.67	5.00
6.....	5.05	.11	.21	.13	.20	.25	5.71	.65	5.03
7.....	5.05	.21	.24	.05	.23	.05	5.83	.77	5.06
8.....	5.18	.33	.15	.09	.13	.09	5.88	.82	5.06
9.....	4.79	.23	.33	.06	.28	.18	5.87	.81	5.06
10.....	4.73	.20	.15	.05	.18	.14	5.45	.37	5.06
11.....	5.25	.23	.26	.06	.11	.15	6.06	.96	5.10
12.....	4.96	.22	.21	.07	.19	.17	5.82	.71	5.11
13.....	4.97	.20	.11	.05	.37	.07	5.77	.64	5.13
14.....	5.26	.15	.15	.04	.17	.12	5.89	.75	5.14
15.....	4.88	.26	.21	.06	.24	.16	5.81	.66	5.15
16.....	4.85	.19	.27	.03	.39	.23	5.98	.74	5.23
17.....	4.84	.25	.20	.27	.36	.59	6.24	1.02	5.22
18.....	4.91	.21	.32	.04	.19	.09	5.78	.53	5.23
19.....	5.43	.26	.27	.06	.32	.14	6.48	1.19	5.29
20.....	5.17	.21	.21	.04	.28	.13	6.04	.74	5.30
21.....	5.02	.21	.25	.12	.14	.12	5.77	.45	5.32
22.....	5.04	.19	.26	.05	.15	.22	5.91	.58	5.33

¹ Two widely separated mills of one company were treated as separate companies.

TABLE 8.—Manufacturing cost per barrel, of wheat flour for 102 companies, arranged in the order of net mill costs, from low to high, 1922—Continued

Company No.	Wheat	Labor	General expense	Depreciation	Packages	Other mill costs	Gross mill costs	Feed credit	Net mill costs
23.....	\$5.05	\$0.25	\$0.16	\$0.04	\$0.33	\$0.22	\$8.05	\$0.72	\$3.33
24.....	5 17	.19	.16	.03	.28	.33	6.16	.80	5.36
25.....	5 27	.34	.21	.10	.18	.19	6.29	.92	5.37
26.....	5 01	.21	.35	.11	.26	.26	6.14	.73	5.41
27.....	5 06	.16	.16	.04	.30	.38	6.00	.58	5.42
28.....	5 14	.32	.23	.12	.31	.17	6.29	.86	5.43
29.....	4 97	.22	.40	.....	.30	.22	6.11	.68	5.43
30.....	4 81	.36	.36	.13	.26	.17	6.09	.65	5.44
31.....	5 37	.17	.17	.09	.20	.13	6.13	.67	5.46
32.....	5 00	.35	.33	.....	.25	.17	6.10	.63	5.47
33.....	5 52	.20	.25	.03	.15	.16	6.31	.83	5.48
34.....	5 39	.26	.29	.07	.46	.13	6.60	1.08	5.52
35.....	5.49	.20	.16	.....	.22	.23	6.30	.76	5.54
36.....	5 43	.12	.11	.06	.24	.29	6.25	.70	5.55
37.....	4 84	.18	.44	.08	.24	.39	6.17	.81	5.56
38.....	5 60	.31	.28	.09	.30	.15	6.53	1.02	5.61
39.....	4 40	.48	.60	.09	.30	.24	6.21	.56	5.65
40.....	4 95	.44	.60	.06	.12	.20	6.13	.47	5.66
41.....	5 33	.25	.20	.....	.32	.22	6.32	.63	5.69
42.....	5 80	.25	.29	.03	.30	.10	6.77	1.05	5.72
43.....	5 32	.20	.29	.03	.34	.27	6.45	.72	5.73
44.....	5.70	.19	.14	.05	.23	.12	6.43	.69	5.74
45.....	5 70	.21	.28	.06	.34	.20	6.79	1.04	5.75
46.....	5 93	.18	.17	.10	.26	.20	6.84	1.08	5.76
47.....	5 38	.34	.34	.04	.24	.13	6.47	.71	5.76
48.....	5 59	.25	.40	.06	.29	.22	6.81	1.02	5.79
49.....	5 60	.27	.24	.03	.48	.15	6.67	.83	5.84
50.....	5 82	.17	.18	.02	.24	.14	6.57	.72	5.84
51.....	5 65	.31	.20	.11	.35	.36	6.96	1.09	5.87
52.....	5.58	.36	.26	.....	.22	.14	6.56	.69	5.87
53.....	5 26	.36	.22	.05	.40	.27	6.37	.69	5.88
54.....	6 05	.12	.14	.01	.25	.10	6.67	.72	5.95
55.....	6 07	.21	.16	.10	.23	.15	6.92	.97	5.95
56.....	6.14	.15	.15	.02	.17	.14	6.77	.91	5.96
57.....	6.30	.19	.23	.08	.28	.16	7.23	1.26	5.97
58.....	5.56	.35	.41	.10	.27	.16	6.85	.88	5.97
59.....	5.64	.42	.47	.04	.34	.19	7.10	1.12	5.97
60.....	5.93	.11	.20	.07	.25	.24	6.80	.77	6.03
61.....	5 70	.40	.16	.08	.26	.20	6.80	.72	6.09
62.....	5 20	.19	.56	.09	.26	.46	6.76	.67	6.09
63.....	6 39	.28	.32	.12	.33	.21	7.65	1.56	6.10
64.....	5.87	.33	.09	.....	.20	.27	6.76	.66	6.10
65.....	5.42	.12	1.09	.06	.15	.26	6.99	.66	6.12
66.....	5.94	.28	.28	.16	.25	.14	6.99	.86	6.13
67.....	6.04	.18	.19	.11	.23	.15	7.05	.90	6.15
68.....	6.15	.22	.12	.08	.16	.15	6.93	.75	6.15
69.....	6.13	.28	.24	.04	.20	.20	7.09	.92	6.17
70.....	6.16	.11	.14	.05	.19	.35	7.00	.82	6.18
71.....	6.17	.34	.40	.11	.27	.06	7.35	1.16	6.19
72.....	5.94	.29	.30	.....	.22	.29	7.04	.82	6.21
73.....	5.26	.49	.44	.12	.48	.27	7.06	.82	6.24
74.....	6.32	.22	.13	.01	.23	.19	7.10	.86	6.24
75.....	6.00	.35	.22	.....	.25	.16	6.98	.72	6.26
76.....	6.25	.13	.19	.07	.26	.17	7.07	.73	6.34
77.....	5.84	.37	.51	.12	.28	.19	7.31	.92	6.39
78.....	5.78	.28	.52	.08	.41	.24	7.31	.89	6.42
79.....	6.15	.26	.24	.05	.23	.25	7.18	.75	6.43
80.....	6.49	.22	.16	.05	.25	.10	7.27	.83	6.44
81.....	6.07	.23	.61	.08	.33	.16	7.48	1.03	6.45
82.....	5.89	.35	.48	.09	.42	.12	7.35	.86	6.49
83.....	6.40	.17	.40	.08	.19	.07	7.31	.81	6.50
84.....	6.48	.25	.19	.03	.27	.18	7.40	.88	6.52
85.....	6.70	.16	.21	.03	.19	.12	7.41	.85	6.56
86.....	6.64	.18	.22	.03	.24	.08	7.39	.82	6.57
87.....	6.59	.16	.46	.06	.37	.16	7.82	1.23	6.59
88.....	5.97	.47	.63	.....	.58	.09	7.74	1.10	6.64
89.....	6.75	.19	.21	.03	.25	.10	7.53	.88	6.65
90.....	5.50	.51	1.09	.....	.25	.25	7.69	.96	6.70
91.....	6.60	.22	.17	.05	.27	.15	7.46	.70	6.76
92.....	6.16	.33	.32	.04	.29	.26	7.40	.58	6.82
93.....	6.05	.49	.54	.....	.22	.38	7.68	.85	6.83
94.....	6.18	.32	.72	.16	.15	.24	7.87	.96	6.91
95.....	6.75	.29	.38	.10	.34	.05	7.91	.95	6.96
96.....	6.91	.18	.33	.05	.26	.33	8.06	1.08	6.99
97.....	6.76	.19	.33	.04	.35	.15	7.82	.82	7.00
98.....	7 28	.23	.33	.11	.39	.22	8.56	1.31	7.25
99.....	6.78	.18	.60	.17	.35	.16	8.24	.76	7.48
100.....	7.51	.28	.55	.03	.19	.14	8.70	1.10	7.60
101.....	7.65	.29	.38	.09	.23	.03	8.67	.96	7.71
102.....	7.23	.20	.60	.09	.48	.18	8.78	.68	8.12

TABLE 9.—Company investment, income, and rate of return for 28 identical flour-milling companies, 1913-1922

Year and group	Investment	Income	Rate of return
			<i>Per cent</i>
1913			
Northwestern.....	\$22,882,616	\$4,374,181	19.1
Southwestern.....	4,884,226	171,170	3.5
Eastern.....	4,774,166	363,527	7.6
Total.....	32,541,008	4,908,878	15.1
1914			
Northwestern.....	23,599,349	5,166,878	21.9
Southwestern.....	5,063,625	856,477	16.9
Eastern.....	4,950,863	500,498	10.1
Total.....	33,613,777	6,523,853	19.4
1915			
Northwestern.....	25,506,747	5,638,324	22.1
Southwestern.....	5,729,323	1,432,844	25.0
Eastern.....	5,408,594	759,183	14.0
Total.....	36,639,574	7,830,351	21.4
1916			
Northwestern.....	28,516,427	7,185,081	25.2
Southwestern.....	6,495,970	977,826	15.1
Eastern.....	5,948,584	691,630	11.6
Total.....	40,960,981	8,854,537	21.6
1917			
Northwestern.....	34,394,433	14,504,091	42.2
Southwestern.....	8,427,680	4,004,853	47.5
Eastern.....	6,808,726	1,446,082	21.2
Total.....	49,630,839	19,956,026	40.2
1918			
Northwestern.....	40,223,959	11,318,277	28.1
Southwestern.....	11,059,535	3,793,079	34.3
Eastern.....	8,133,243	1,089,310	24.5
Total.....	59,416,837	17,100,666	28.8
1919			
Northwestern.....	41,855,739	8,011,014	19.1
Southwestern.....	14,071,191	2,917,194	20.7
Eastern.....	9,411,613	1,456,169	15.5
Total.....	65,338,543	12,384,377	19.0
1920			
Northwestern.....	43,898,343	10,341,588	23.6
Southwestern.....	15,997,832	4,121,203	25.8
Eastern.....	9,694,535	511,644	5.3
Total.....	69,590,710	14,974,435	21.5
1921			
Northwestern.....	43,971,623	2,335,769	5.3
Southwestern.....	16,414,892	1,263,327	7.7
Eastern.....	9,533,821	194,320	2.0
Total.....	69,920,336	2,296,762	3.2
1922			
Northwestern.....	44,651,546	7,684,424	17.2
Southwestern.....	16,809,696	1,650,093	9.8
Eastern.....	9,622,923	1,138,842	11.8
Total.....	71,084,165	10,473,359	14.7
1913-1922			
Northwestern.....	349,500,784	78,590,530	21.9
Southwestern.....	104,953,970	19,631,510	18.7
Eastern.....	74,282,018	9,051,208	12.2
Total.....	528,736,772	105,243,248	19.9

¹ Loss.

TABLE 10.—Cost of sales, operating profit, milling profit, and company profit, by districts, for 28 identical companies, 1913-1922

Year and group	Flour sold	Total mill cost	Purchased flour and inventory variations	Selling expense	Cost of flour sold	Value of flour sold	Operating profit	Other gains or losses	Milling profit	Less interest paid	Total company profit
1913											
Northwestern.....	26,562,782	\$96,537,189	\$396,055	\$5,309,679	\$101,450,713	\$106,313,538	\$4,762,825	\$806,549	\$3,956,276	\$417,905	\$4,374,181
Southwestern.....	4,444,766	17,140,562	54,164	596,556	17,793,352	18,102,775	309,393	123,661	185,732	14,562	171,170
Eastern.....	3,188,554	13,722,221	627,893	533,338	14,883,452	15,618,960	735,508	231,996	503,612	140,085	363,527
Total.....	34,196,102	127,399,972	286,002	6,441,673	134,127,547	139,935,273	5,807,726	1,162,106	4,644,620	263,258	4,908,878
1914											
Northwestern.....	20,210,012	94,601,035	398,692	6,639,187	99,031,529	105,038,658	5,797,129	779,180	4,977,040	298,629	5,166,878
Southwestern.....	8,516,037	34,296,188	1,094,373	256,600	35,391,181	36,047,714	1,056,533	179,571	837,940	25,377	863,477
Eastern.....	3,635,692	14,800,594	163,735	706,896	15,661,274	15,912,746	1,151,466	416,568	794,910	224,412	560,468
Total.....	34,371,641	124,597,767	820,015	7,122,672	132,540,454	140,457,469	7,917,015	1,372,307	6,544,708	20,855	6,523,853
1915											
Northwestern.....	24,021,852	126,264,241	1,786,555	6,013,034	134,063,830	139,647,987	5,484,157	296,028	5,288,132	350,192	5,638,324
Southwestern.....	6,302,121	24,363,204	280,028	715,688	25,358,920	26,622,376	1,263,456	198,452	1,461,908	29,063	1,432,845
Eastern.....	4,427,426	22,867,634	735,410	721,327	24,324,371	25,313,736	989,365	12,598	976,767	217,584	759,183
Total.....	34,751,129	173,495,079	2,801,993	7,450,049	183,747,121	191,584,099	7,836,978	1,110,171	7,726,607	103,845	7,830,352
1916											
Northwestern.....	28,029,753	136,026,960	1,498,171	6,987,575	138,506,364	147,093,777	8,287,413	1,223,609	7,063,804	121,277	7,185,081
Southwestern.....	4,554,056	25,720,463	1,170,692	789,635	26,891,151	27,837,264	1,154,413	147,721	1,006,692	20,867	977,825
Eastern.....	4,391,644	22,724,397	335,657	624,396	23,060,420	24,871,442	691,022	151,002	840,020	148,390	691,630
Total.....	36,800,635	184,371,820	4,481,822	8,471,637	189,367,635	199,802,483	10,434,948	1,522,332	8,912,616	167,080	8,854,536
1917											
Northwestern.....	24,601,035	194,027,823	1,668,891	7,568,661	203,165,104	217,938,968	14,773,864	1,523,721	14,248,163	250,629	14,504,992
Southwestern.....	5,834,138	41,266,763	118,866	1,026,282	42,411,910	45,633,542	3,221,632	775,692	3,998,794	8,199	4,006,963
Eastern.....	3,834,347	28,222,581	890,368	868,969	31,002,968	32,656,563	1,653,615	14,337	1,639,278	160,196	1,469,082
Total.....	34,269,640	264,516,875	2,578,155	8,464,952	276,179,082	296,228,113	19,649,131	253,104	19,884,235	71,792	19,956,027
1918											
Northwestern.....	22,114,400	206,197,818	1,061,061	6,623,731	213,882,610	223,555,157	9,672,557	1,453,394	11,124,961	163,416	11,318,277
Southwestern.....	6,187,849	46,093,491	3,499,028	780,143	50,592,662	52,928,514	3,074,855	3,793,513	3,747,455	45,644	3,793,077
Eastern.....	3,678,766	34,178,642	1,539,398	603,542	36,322,782	38,292,830	1,970,148	197,481	2,167,629	178,319	1,989,310
Total.....	30,881,014	287,071,151	6,099,487	7,017,406	300,808,044	314,776,901	14,678,537	2,361,366	17,039,925	60,741	17,100,666

WHEAT FLOUR MILLING INDUSTRY

1919	Northwestern.....	23,007,070	244,295,265	3,048,569	7,225,150	248,471,658	257,291,949	8,920,604	1,308,602	7,451,407	848,612	8,011,014
	Southwestern.....	6,797,962	60,473,763	3,358,640	1,079,741	60,472,103	66,113,613	3,201,610	1,213,653	2,688,457	28,337	3,917,194
	Eastern.....	3,730,249	26,863,857	1,361,957	865,032	26,386,923	41,506,468	3,119,566	1,483,710	1,633,656	179,667	1,458,769
	Total.....	24,495,230	243,627,864	8,169,126	9,169,923	332,773,890	368,912,090	14,141,179	3,165,965	11,678,115	408,263	13,384,377
1920	Northwestern.....	24,498,039	278,898,249	8,111,392	10,185,891	286,093,473	297,583,394	11,473,039	1,175,896	10,293,173	45,415	10,341,588
	Southwestern.....	6,992,212	68,574,173	3,096,971	1,260,264	73,261,538	77,461,141	4,210,603	1,154,874	4,064,629	64,574	4,121,203
	Eastern.....	3,261,766	27,667,031	1,321,221	1,265,360	26,164,713	46,366,869	1,102,156	386,033	707,094	193,450	311,644
	Total.....	24,862,017	285,260,450	9,089,584	12,981,245	388,618,726	413,912,643	16,792,818	1,725,923	15,067,896	69,461	14,974,435
1921	Northwestern.....	23,135,151	195,119,097	7,646,721	11,465,755	214,261,673	218,898,400	4,638,887	3,713,224	1,923,693	413,108	3,331,799
	Southwestern.....	6,260,251	49,465,002	2,196,213	1,761,764	63,442,668	64,097,848	3,644,850	1,038,607	1,263,657	101,330	2,943,227
	Eastern.....	3,166,562	25,814,262	665,544	1,077,653	27,657,439	28,094,950	593,401	1,194,726	348,765	135,445	194,230
	Total.....	22,600,964	270,398,361	10,508,477	14,355,192	285,263,030	301,090,258	8,818,228	5,938,457	1,674,771	358,991	3,284,703
1922	Northwestern.....	24,204,941	140,014,318	3,091,327	9,864,866	160,870,611	168,194,369	7,225,749	1,983,861	7,033,189	633,237	7,664,426
	Southwestern.....	7,263,168	26,877,907	1,354,066	1,792,968	40,024,901	43,133,096	3,008,073	1,477,365	1,628,680	29,413	1,658,093
	Eastern.....	4,284,053	21,170,565	261,617	1,066,149	22,294,321	23,386,957	1,366,626	84,896	1,331,523	102,669	1,138,943
	Total.....	24,862,157	207,062,790	4,466,040	12,767,103	223,264,633	234,856,283	10,870,450	3,868,080	9,664,990	468,969	10,173,369
10 YEARS	Northwestern (10).....	248,354,616	1,721,873,701	3,211,705	75,963,248	1,800,067,654	1,881,010,406	80,942,764	7,630,148	75,313,611	3,247,918	78,560,529
	Southwestern (12).....	58,253,626	385,871,614	15,103,630	10,761,802	411,727,006	431,938,310	20,308,204	7,744,265	19,462,919	188,592	19,651,611
	Eastern (6).....	20,558,229	261,032,934	4,928,016	8,542,761	274,503,701	286,990,664	13,493,903	1,609,510	10,896,433	11,833,248	9,061,208
	Total.....	343,166,269	2,268,777,149	22,343,351	94,277,861	2,498,298,361	2,598,940,283	113,647,921	9,963,938	103,661,963	1,681,263	168,243,345

1 Loss.

1 Loss interest paid plus income from outside investment.

TABLE 11.—Cost of sales, value of sales, operating profit, milling profit, and company profit per barrel, for 28 identical companies, by districts, 1913-1923

District	Cost of flour sold			Value of flour sold	Operating profit	Other gains or losses	Milling profit	Less interest paid ¹	Company profit
	Cost of sales	Selling expense	Total						
1913									
Northwestern.....	\$3.62	\$0.20	\$3.82	\$4.00	\$0.18	\$0.03	\$0.15	\$0.01	\$0.16
Southwestern.....	3.87	.13	4.00	4.07	.07	1.03	.04		.04
Eastern.....	4.49	.18	4.67	4.90	.23	1.07	.16	.65	.11
Total.....	3.73	.19	3.92	4.09	.17	1.03	.14		.14
1914									
Northwestern.....	3.69	.22	3.81	4.03	.22	1.03	.19	1.01	.20
Southwestern.....	3.62	.13	3.75	3.99	.24	1.04	.20	.01	.19
Eastern.....	4.12	.19	4.31	4.63	.32	1.12	.20	.06	.14
Total.....	3.65	.21	3.86	4.09	.23	1.04	.19		.19
1915									
Northwestern.....	5.33	.25	5.58	5.81	.23	1.01	.22	1.01	.23
Southwestern.....	4.65	.13	4.78	5.02	.24	.04	.25	.01	.27
Eastern.....	5.34	.16	5.50	5.72	.22		.22	.05	.17
Total.....	5.22	.22	5.44	5.67	.23		.23		.23
1916									
Northwestern.....	4.56	.24	4.80	5.09	.29	1.04	.25		.25
Southwestern.....	4.66	.14	4.80	5.01	.21	1.03	.18		.18
Eastern.....	5.26	.19	5.45	5.68	.23	1.04	.19	.03	.16
Total.....	4.65	.22	4.87	5.14	.27	1.04	.23		.23
1917									
Northwestern.....	7.95	.31	8.26	8.86	.60	1.02	.58	1.01	.59
Southwestern.....	7.09	.18	7.27	7.82	.55	.13	.68		.68
Eastern.....	7.86	.23	8.09	8.52	.43		.43	.06	.38
Total.....	7.79	.28	8.07	8.64	.57	.01	.58		.58
1918									
Northwestern.....	9.37	.25	9.62	10.06	.44	.06	.60	1.01	.61
Southwestern.....	9.66	.15	9.81	10.39	.58	.14	.72	1.01	.73
Eastern.....	9.98	.17	10.15	10.70	.55	.06	.61	.05	.66
Total.....	9.49	.23	9.72	10.19	.47	.08	.55		.55
1919									
Northwestern.....	10.07	.30	10.37	10.74	.37	1.06	.31	1.02	.33
Southwestern.....	9.39	.16	9.55	10.02	.47	1.05	.42	1.01	.43
Eastern.....	10.32	.24	10.56	11.13	.57	1.12	.44	.06	.39
Total.....	9.96	.27	10.23	10.64	.41	1.06	.35	1.01	.36
1920									
Northwestern.....	11.26	.42	11.68	12.15	.47	1.05	.42		.42
Southwestern.....	10.25	.23	10.48	11.08	.60	1.02	.58	1.01	.59
Eastern.....	11.20	.36	11.56	11.88	.32	1.11	.21	.06	.15
Total.....	11.05	.37	11.42	11.90	.49	1.05	.43		.43
1921									
Northwestern.....	8.76	.50	9.26	9.46	.20	1.12	.08	1.02	.10
Southwestern.....	8.12	.28	8.40	8.50	.10	1.16	1.06	1.01	1.05
Eastern.....	8.52	.35	8.87	9.04	.17	1.06	.11	.05	.06
Total.....	8.62	.44	9.06	9.24	.19	1.12	.06	1.01	.07

¹ Less interest paid plus income from outside investments.² Loss.³ Gain.

TABLE 11.—*Cost of sales, value of sales, operating profit, milling profit, and company profit per barrel, for 28 identical companies, by districts, 1913-1922—Continued*

District	Cost of flour sold			Value of flour sold	Operating profit	Other gains or losses	Milling profit	Less interest paid ¹	Company profit
	Cost of sales	Selling expense	Total						
1922									
Northwestern.....	6.21	.41	6.62	6.92	.30	1.01	.29	1.03	32
Southwestern.....	6.26	.25	6.51	6.80	.29	1.07	.22	1.01	23
Eastern.....	6.46	.33	6.79	7.17	.38	.08	.41	.06	35
Total.....	6.04	.37	6.41	6.71	.30	1.02	.28	1.02	.30
1913-1922									
Northwestern.....	6.93	.31	7.24	7.57	.33	1.03	.30	1.01	31
Southwestern.....	6.89	.18	7.07	7.41	.34	1.01	.33	1.01	34
Eastern.....	7.28	.23	7.51	7.85	.34	1.04	.30	.06	25
Total.....	6.97	.28	7.25	7.58	.33	1.03	.30	1.01	.31

¹ Loss.

WHEAT FLOUR MILLING INDUSTRY

TABLE 12.—Annual mill cost per barrel of wheat flour for 28 identical companies, by districts, 1913-1922

Year and group	Number of companies	Number of mills	Daily capacity (barrels)	Wheat ground (bushels)	Flour produced (barrels)	Wheat cost 1		Labor		General expense	
						Amount	Per barrel	Amount	Per barrel	Amount	Per barrel
1913											
Northwestern.....	10	43	125,700	113,646,281	28,712,508	\$99,230,893	\$3.86	\$2,352,348	\$0.09	\$1,693,221	\$0.07
Southwestern.....	12	21	30,300	19,085,438	4,433,075	17,850,707	4.02	441,714	.10	394,302	.09
Eastern.....	6	8	22,500	13,725,036	3,083,584	13,988,900	4.57	435,345	.14	539,983	.18
Total.....	28	71	178,500	147,357,655	33,209,167	131,070,500	3.95	3,329,407	.10	2,627,506	.08
1914											
Northwestern.....	10	42	125,700	114,543,275	28,111,317	99,562,011	3.81	2,698,718	.10	1,820,689	.07
Southwestern.....	12	21	30,300	19,022,501	4,209,865	16,271,860	3.87	458,633	.11	428,459	.10
Eastern.....	6	9	24,700	15,944,795	3,573,775	15,263,167	4.27	502,809	.14	663,995	.19
Total.....	28	72	180,700	149,512,572	33,894,957	131,067,038	3.87	3,598,220	.11	2,913,143	.09
1915											
Northwestern.....	10	42	125,700	107,023,758	23,744,990	133,730,817	5.63	2,465,649	.10	1,921,677	.08
Southwestern.....	12	21	30,300	23,616,665	5,232,123	25,914,681	4.95	524,786	.10	617,246	.10
Eastern.....	6	9	24,700	19,307,322	4,281,963	23,925,899	5.59	524,147	.12	714,728	.16
Total.....	28	72	180,700	149,947,776	33,259,096	183,571,397	5.52	3,534,582	.11	3,153,651	.10
1916											
Northwestern.....	10	42	125,700	132,897,698	29,409,073	143,658,163	4.88	2,950,682	.10	2,033,018	.07
Southwestern.....	12	21	30,300	25,302,154	6,510,043	27,294,299	4.95	561,215	.10	525,926	.10
Eastern.....	6	9	24,700	19,636,122	4,296,350	23,519,079	5.49	544,819	.13	784,266	.18
Total.....	28	72	180,700	177,835,874	39,205,466	194,471,641	4.96	4,068,716	.10	3,343,210	.09
1917											
Northwestern.....	10	43	125,700	111,268,934	24,068,033	208,493,796	8.67	3,243,321	.13	2,677,296	.11
Southwestern.....	12	21	30,300	26,114,025	6,761,831	44,114,837	7.66	641,215	.10	710,354	.12
Eastern.....	6	9	24,700	16,614,329	3,693,785	30,701,975	8.33	578,207	.16	860,360	.23
Total.....	28	72	180,700	153,997,288	33,503,649	283,310,708	8.46	4,461,734	.13	4,237,929	.13

WHEAT FLOUR MILLING INDUSTRY

1918	Northwestern.....	43	125,700	94,845,222	21,972,553	212,056,711	9.65	2,825,086	.17	2,430,294	.10	
	Southwestern.....	12	20,300	22,013,737	4,846,359	48,146,423	6.93	801,653	.17	901,335	.19	
	Eastern.....	6	24,700	15,367,935	3,430,631	35,159,938	10.25	622,264	.18	766,763	.23	
	Total.....	72	180,700	124,026,894	20,249,542	285,363,073	9.77	5,246,013	.17	5,098,311	.17	
1919	Northwestern.....	43	125,700	109,654,965	24,299,134	250,044,858	10.30	4,911,355	.20	2,691,349	.16	
	Southwestern.....	12	24,300	28,648,915	6,423,399	62,620,389	9.74	1,836,112	.21	1,353,236	.21	
	Eastern.....	6	24,300	16,734,327	3,771,229	39,946,530	10.60	900,512	.24	861,008	.23	
	Total.....	72	186,200	153,938,107	34,663,732	352,601,777	10.23	7,147,979	.21	5,905,593	.17	
1920	Northwestern.....	43	125,700	116,669,107	24,735,134	300,491,027	12.15	6,534,381	.26	5,139,121	.21	
	Southwestern.....	12	26,300	30,241,294	6,651,922	71,924,025	10.81	1,680,640	.35	1,707,061	.26	
	Eastern.....	6	24,300	15,230,970	3,353,901	39,143,379	11.67	1,164,833	.35	1,976,773	.29	
	Total.....	72	186,200	162,141,371	34,740,958	411,558,431	11.85	9,379,854	.27	7,822,974	.23	
1921	Northwestern.....	43	126,700	105,660,000	22,873,606	198,467,409	8.54	5,746,354	.25	4,451,673	.19	
	Southwestern.....	12	27,250	27,750,065	6,105,489	40,050,650	8.08	1,564,409	.26	1,602,191	.26	
	Eastern.....	6	24,300	13,860,946	3,077,084	25,431,505	8.26	847,920	.26	1,928,286	.30	
	Total.....	72	188,250	147,260,951	22,037,179	263,949,564	8.42	8,158,683	.25	6,982,155	.23	
1922	Northwestern.....	43	124,700	111,016,411	24,008,567	148,137,011	6.17	4,918,790	.20	4,453,810	.16	
	Southwestern.....	12	24,200	31,637,196	7,018,910	36,630,310	4.22	1,462,734	.21	1,880,851	.23	
	Eastern.....	6	24,200	14,928,940	3,268,580	20,779,706	6.30	775,268	.22	970,028	.20	
	Total.....	72	187,200	157,682,547	24,322,057	205,546,027	5.99	7,056,792	.20	7,013,889	.20	
	Total 10 years.....											
	Northwestern.....			1,117,945,541	248,983,915	1,700,872,696	7.25	39,575,864	.16	31,312,163	.13	
	Southwestern.....			56,193,966	309,827,281	7,112	9,471,773	.21	6,739,681	.17	6,056,269	.17
	Eastern.....			161,352,723	83,617,902	267,910,078	7.48	6,896,123	.19	6,056,269	.23	
	Grand total.....			1,835,840,395	338,906,803	2,458,610,055	7.25	55,943,190	.17	49,098,053	.14	

* Includes options and self-rising ingredients.

WHEAT FLOUR MILLING INDUSTRY

TABLE 12.—Annual mill cost per barrel of wheat flour for 28 identical companies, by districts, 1913-1922—Continued

Year and group	Depreciation		Packages		Other milling ex- pense		Gross mill costs		Feed credit		Net mill costs	
	Amount	Per barrel	Amount	Per barrel	Amount	Per barrel	Amount	Per barrel	Amount	Per barrel	Amount	Per barrel
1913												
Northwestern.....	\$278,050	\$0.01	\$6,775,141	\$0.26	\$1,881,071	\$0.07	\$112,310,724	\$4.36	\$15,773,535	\$0.61	\$96,537,189	\$3.76
Southwestern.....	40,436	.01	1,187,768	.27	480,773	.11	20,395,700	4.60	3,255,139	.73	17,140,561	3.87
Eastern.....	31,000	.01	960,119	.31	381,883	.12	16,337,230	5.33	2,615,009	.85	13,722,221	4.48
Total.....	349,486	.01	8,923,028	.27	2,743,727	.08	149,043,654	4.49	21,643,683	.65	127,399,971	3.84
1914												
Northwestern.....	284,522	.01	7,017,893	.27	1,881,447	.07	113,125,290	4.33	18,624,255	.71	94,501,035	3.62
Southwestern.....	87,279	.01	2,084,757	.53	416,849	.11	18,178,847	4.46	3,482,769	.83	15,266,188	3.93
Eastern.....	37,850	.01	1,187,097	.33	442,842	.12	18,096,860	5.06	3,286,416	.92	14,808,544	4.14
Total.....	318,221	.01	8,308,687	.27	2,800,989	.08	150,001,197	4.43	25,403,430	.75	124,597,767	3.68
1915												
Northwestern.....	198,735	.01	5,404,127	.28	1,727,869	.07	145,468,694	6.12	19,294,453	.80	126,284,241	5.32
Southwestern.....	45,689	.01	1,124,168	.28	379,692	.10	58,758,622	6.32	3,377,178	.92	15,381,291	4.46
Eastern.....	84,293	.01	1,195,636	.28	433,806	.10	28,828,548	6.28	3,960,913	.92	22,867,635	6.24
Total.....	288,227	.01	7,723,961	.28	2,716,046	.08	200,998,164	6.05	27,593,084	.83	173,485,080	5.22
1916												
Northwestern.....	338,846	.02	7,334,054	.25	2,158,524	.07	158,473,287	5.38	21,548,277	.72	136,925,010	4.67
Southwestern.....	81,028	.02	1,210,449	.22	649,711	.10	30,235,028	5.49	5,511,565	.82	25,723,463	4.67
Eastern.....	40,632	.01	1,221,727	.28	473,255	.11	26,585,968	6.20	3,661,601	.90	22,724,367	5.20
Total.....	461,126	.01	8,765,230	.25	3,185,490	.08	215,294,313	5.49	29,922,483	.76	185,371,820	4.78
1917												
Northwestern.....	323,624	.02	7,698,449	.32	2,443,468	.10	224,788,864	9.34	30,761,332	1.28	194,027,532	8.06
Southwestern.....	117,835	.02	1,628,068	.28	713,685	.12	47,924,196	8.31	6,657,434	1.15	41,266,762	7.16
Eastern.....	50,334	.01	1,321,541	.36	661,378	.15	84,063,794	8.24	4,841,213	1.31	24,222,581	7.98
Total.....	491,833	.01	10,556,056	.32	3,718,541	.11	308,776,854	9.16	42,259,979	1.26	284,516,875	7.90

WHEAT FLOUR MILLING INDUSTRY

1918												
Northwestern.....	262,847	.01	10,186,592	.46	2,696,579	.17	253,441,209	10.62	27,843,391	1.24	206,197,818	9.39
Southwestern.....	197,460	.04	2,422,903	.50	736,921	.16	53,228,794	10.98	6,533,303	1.35	46,663,491	9.63
Eastern.....	146,864	.04	1,878,259	.55	514,428	.15	39,060,565	11.39	4,910,722	1.43	34,179,842	9.09
Total.....	649,251	.02	14,487,813	.48	4,939,928	.16	325,769,568	10.77	38,688,417	1.38	267,071,151	9.69
1919												
Northwestern.....	289,226	.02	15,142,833	.62	2,933,769	.16	278,029,890	11.45	33,734,625	1.39	244,295,265	10.06
Southwestern.....	174,199	.03	2,731,949	.56	1,118,963	.17	70,335,960	10.94	9,662,098	1.53	60,473,762	9.41
Eastern.....	129,657	.03	2,337,027	.62	859,068	.15	44,783,752	11.87	5,919,965	1.57	38,863,787	10.30
Total.....	649,082	.02	21,311,809	.62	5,932,792	.16	393,149,502	11.41	49,516,618	1.44	343,632,864	9.97
1920												
Northwestern.....	290,637	.01	15,552,363	.63	4,060,846	.19	332,068,395	13.45	53,673,149	2.17	278,395,246	11.36
Southwestern.....	220,674	.03	2,895,649	.60	1,170,328	.18	80,698,597	12.13	12,124,124	1.62	68,574,473	10.31
Eastern.....	124,845	.04	2,637,559	.78	623,923	.19	44,671,313	13.32	7,004,262	2.09	37,667,051	11.35
Total.....	636,356	.02	22,185,571	.64	6,855,096	.18	458,038,305	13.18	72,807,535	2.09	384,230,450	11.09
1921												
Northwestern.....	451,517	.02	9,771,712	.43	4,513,865	.20	220,402,755	9.63	25,263,657	1.10	195,119,098	8.83
Southwestern.....	182,118	.04	3,095,865	.50	1,128,027	.19	56,632,978	9.27	7,167,178	1.17	49,465,802	9.40
Eastern.....	136,054	.05	1,476,413	.46	540,701	.18	29,352,859	9.55	3,568,397	1.16	25,814,262	8.39
Total.....	791,689	.02	14,343,708	.45	6,192,613	.19	306,418,592	9.55	36,024,250	1.13	270,398,362	8.43
1922												
Northwestern.....	454,252	.02	7,868,940	.31	4,036,881	.17	199,289,764	7.05	20,273,446	.84	149,014,318	6.21
Southwestern.....	268,104	.04	1,860,646	.26	1,147,963	.16	42,968,308	6.12	6,083,401	.87	36,877,907	4.23
Eastern.....	148,686	.05	1,263,843	.39	468,336	.15	34,432,929	7.41	3,282,353	.99	21,170,564	4.13
Total.....	899,022	.02	10,943,429	.31	5,670,342	.17	236,709,001	6.89	29,644,219	.86	207,062,789	6.03
Total 10 years:												
Northwestern.....	3,159,206	.01	92,154,664	.37	30,924,259	.13	1,967,999,872	8.05	260,124,170	1.08	1,721,872,702	6.97
Southwestern.....	1,392,413	.02	21,264,030	.26	8,122,763	.14	449,897,331	8.00	64,028,817	1.14	385,871,514	6.96
Eastern.....	993,864	.03	13,509,220	.43	5,018,454	.14	304,293,947	8.50	43,261,914	1.21	261,032,033	7.29
Grand total.....	5,445,563	.02	129,027,814	.36	44,965,466	.13	2,742,190,150	8.09	373,413,001	1.10	2,368,777,149	6.99

TABLE 13.—Monthly average market prices of hard winter wheat, first patent flour, per barrel, in cotton or jute sacks at Kansas City, with index numbers, 1913-1923

Month	PRICE PER BARREL										
	1913	1914	1915	1916	1917	1918	1919	1920	1921	1922	1923
January.....	\$3 92	\$3.95	\$6.25	\$5.75	\$8.83	\$10 10	\$10.11	\$14.08	\$9.24	\$6.62	\$6.40
February.....	3.94	3.95	7.02	5.74	8.38	10.25	10.30	12.64	8.95	7.32	6.39
March.....	3.88	3.98	6.78	5.13	9.30	10.31	10.71	13.00	8.69	7.44	6.44
April.....	3.99	4.00	6.80	5.20	11.91	10.31	11.94	13.52	7.74	7.56	6.61
May.....	4.03	4.00	6.68	5.08	14.44	10.38	12.99	14.52	8.22	7.50	6.53
June.....	4.15	3.98	5.81	4.82	12.84	10.38	12.00	13.88	8.29	7.11	6.08
July.....	4.10	3.58	5.58	5.14	11.95	10.63	11.11	13.45	7.45	6.99	5.54
August.....	4.07	4.33	5.54	6.90	12.41	10.24	10.70	12.40	6.99	6.22	5.75
September.....	4.19	5.37	4.91	7.40	10.73	10.15	10.98	12.54	7.30	6.11	6.05
October.....	4 01	5 08	4 91	8 08	10 50	10 14	11 56	11 08	6 99	6 39	8 22
November.....	3.95	4.98	4.98	9.07	10.32	10.21	12.07	9.28	6.54	6.47	6.00
December.....	3.95	5.19	5.18	8.03	10.00	10.12	13.52	9.19	6.56	6.51	5.91
Annual average.	4.02	4.37	5.87	6.37	10.97	10.27	11.50	12.47	7.78	6.85	6.16

INDEX NUMBERS											
January.....	98	96	155	143	220	251	251	350	230	165	159
February.....	98	98	175	143	208	255	256	314	223	182	159
March.....	97	99	169	128	231	256	266	323	216	185	160
April.....	99	100	169	129	296	256	297	336	163	189	164
May.....	100	100	166	126	359	268	323	361	204	187	162
June.....	103	99	145	120	319	268	299	345	206	177	151
July.....	102	89	139	128	297	264	276	355	185	174	136
August.....	101	108	138	172	309	256	266	308	174	155	143
September.....	104	134	122	184	267	252	273	312	182	152	159
October.....	100	126	122	201	281	252	288	276	174	159	155
November.....	98	124	124	226	237	254	300	231	163	161	149
December.....	98	129	129	300	249	252	336	229	163	162	147
Annual average.	100	109	146	158	273	255	286	310	193	170	153

TABLE 14.—Monthly average market price of hard spring wheat per 4½ bushels, at Minneapolis, 1913-1923

Month	PRICE PER 4½ BUSHEL ¹										
	1913	1914	1915	1916	1917	1918	1919	1920	1921	1922	1923
January.....	\$3.87	\$3.96	\$6.08	\$5.81	\$8.64	\$9.77	\$10.04	\$12.59	\$7.83	\$5.85	\$5.54
February.....	3.95	4.14	6.80	5.76	8.15	9.77	10.08	11.97	7.47	6.71	5.54
March.....	3.78	4.19	6.62	5.13	8.91	9.77	10.62	12.42	7.29	6.80	5.54
April.....	3.96	4.10	6.93	5.49	10.71	9.77	11.61	13.64	6.53	7.07	5.78
May.....	4.10	4.23	7.11	5.45	13.41	9.77	11.84	13.95	6.71	7.11	5.63
June.....	4.14	4.10	5.81	5.00	12.11	9.77	11.16	13.14	6.98	6.53	5.13
July.....	4.05	4.05	6.26	5.27	11.61	9.99	11.97	12.83	6.62	6.39	4.91
August.....	3.95	4.82	4.41	6.71	12.56	9.99	11.75	11.61	6.26	5.31	5.19
September.....	3.87	5.13	4.41	7.25	9.99	9.99	11.39	11.30	6.71	4.95	5.31
October.....	3.78	4.95	4.55	7.92	9.77	9.99	11.79	9.64	6.90	6.13	5.31
November.....	3.83	5.22	4.59	8.69	9.77	9.99	12.87	7.79	6.67	6.40	5.00
December.....	3.87	5.36	5.09	7.92	9.77	9.99	13.95	7.56	6.76	6.63	5.00
Annual average.	3.92	4.50	5.72	6.35	10.44	9.90	11.61	11.61	6.66	6.08	5.23

INDEX NUMBERS											
January.....	99	101	155	148	220	249	256	347	200	149	141
February.....	101	106	173	147	208	249	257	305	191	171	141
March.....	96	107	169	131	227	249	271	317	186	173	141
April.....	101	105	177	140	273	249	296	348	167	180	147
May.....	105	108	181	139	342	249	302	356	171	181	144
June.....	106	105	148	128	369	249	285	335	177	167	131
July.....	103	103	160	134	296	255	305	327	169	163	125
August.....	101	123	113	171	320	255	300	296	160	135	132
September.....	99	131	113	185	255	255	291	288	171	129	135
October.....	96	126	116	202	249	255	301	243	151	131	135
November.....	98	133	117	222	249	255	328	199	148	138	129
December.....	99	137	130	202	249	255	356	193	147	144	128
Annual average.	100	115	146	162	266	253	296	296	170	155	136

¹Wheat equivalent of a barrel of flour.

TABLE 15.—Retail price of bread (in cents) per 1-pound loaf, in 24 principal cities, 1919-1923

[Prices in effect on the 15th day of each month, compiled from reports of the United States Bureau of Labor Statistics]

Month	Boston	New York	Philadelphia	Baltimore	Washington	Richmond	Charleston, S. C.	Atlanta	Jacksonville	New Orleans	Houston	Memphis
1919												
January.....	9.1	10.0	9.4	9.7	10.1	10.0	10.0	10.0	10.0	9.2	9.1	10.0
February.....	9.1	10.0	9.4	9.7	10.1	10.0	10.0	10.0	10.0	9.2	8.8	10.0
March.....	9.2	10.0	9.4	9.6	10.1	10.0	10.0	9.5	10.0	9.2	8.9	10.0
April.....	9.2	10.0	9.4	9.6	10.1	10.0	10.0	10.0	10.0	9.1	8.9	10.0
May.....	9.5	10.0	9.4	9.6	10.1	10.4	10.0	10.0	10.0	9.2	8.9	10.0
June.....	9.5	10.0	9.4	9.6	10.1	10.9	10.0	10.0	10.0	9.2	8.9	10.0
July.....	9.5	10.0	9.4	9.6	10.1	10.9	10.0	10.0	10.0	9.2	8.9	10.0
August.....	9.6	10.0	9.4	9.6	10.1	10.9	10.0	10.0	10.0	9.1	8.8	10.0
September.....	9.7	10.0	9.4	9.6	10.1	10.9	10.0	10.0	10.0	9.1	8.9	10.0
October.....	9.8	10.0	9.4	9.6	10.1	10.6	10.0	10.0	10.0	9.2	9.2	10.0
November.....	9.7	10.0	9.4	9.6	10.1	11.1	10.0	10.0	10.0	9.2	9.2	10.0
December.....	9.5	10.0	9.4	9.6	10.1	10.9	10.0	10.0	10.0	9.1	9.2	10.0
Average.....	9.4	10.0	9.4	9.6	10.1	10.6	10.0	10.0	10.0	9.2	9.0	10.0
1920												
January.....	11.3	10.5	9.6	10.1	10.2	11.6	10.6	11.1	10.7	10.0	10.2	11.0
February.....	11.2	11.1	9.8	10.2	10.1	12.3	10.6	11.0	10.7	10.0	10.3	11.3
March.....	11.2	11.1	9.8	10.2	10.6	12.7	11.5	12.2	11.0	10.1	10.2	12.1
April.....	11.3	11.6	9.8	11.0	10.6	12.7	11.5	11.5	10.9	10.1	10.2	12.3
May.....	11.3	11.8	10.6	11.3	12.2	12.8	11.5	11.5	11.9	10.1	10.3	12.5
June.....	11.3	11.9	10.6	11.4	12.3	13.0	12.2	12.2	12.5	10.4	10.2	12.9
July.....	11.3	11.9	10.6	11.4	12.3	13.1	12.6	12.7	12.7	10.4	10.5	12.9
August.....	11.3	11.9	10.6	11.4	12.3	13.1	12.6	12.8	12.7	10.4	10.3	13.1
September.....	11.4	11.9	10.6	11.4	12.2	13.2	12.6	12.8	12.3	10.5	10.3	13.2
October.....	11.4	11.9	10.6	10.8	12.0	13.1	12.2	12.8	12.2	10.7	10.3	13.5
November.....	11.4	11.9	10.6	10.8	12.0	12.8	12.9	12.3	12.2	10.5	10.2	13.3
December.....	10.4	11.6	9.7	10.8	10.4	11.1	12.8	12.3	11.7	9.6	9.6	12.9
Average.....	11.2	11.7	10.2	10.9	11.4	12.6	12.4	12.1	11.8	10.2	10.2	12.6
1921												
January.....	10.5	11.0	9.6	10.8	10.5	11.1	11.6	12.3	11.5	9.7	9.1	12.1
February.....	10.5	10.7	9.6	10.8	10.5	11.1	11.6	12.2	11.5	9.7	9.1	11.3
March.....	10.5	10.8	9.6	10.4	10.6	11.1	11.6	11.9	11.3	9.5	9.0	11.3
April.....	10.0	10.6	9.6	9.9	10.5	10.8	11.6	11.5	10.4	9.3	8.9	10.1
May.....	9.9	9.9	9.0	9.2	10.5	10.7	11.4	11.1	10.4	8.5	8.9	10.1
June.....	9.9	10.0	9.0	9.2	10.3	10.7	11.3	11.2	10.4	8.3	8.7	10.3
July.....	9.9	10.1	8.7	9.2	10.2	10.7	11.1	10.9	10.3	8.2	8.7	10.1
August.....	9.9	10.2	8.7	9.2	10.2	10.7	10.9	10.9	10.3	8.2	8.6	10.3
September.....	9.9	10.1	8.7	8.5	10.2	10.7	10.8	10.9	10.4	8.1	8.5	10.3
October.....	9.9	10.1	8.7	8.6	10.2	10.7	10.8	10.9	10.4	8.1	8.5	10.3
November.....	9.9	10.0	8.7	8.6	8.1	10.6	10.8	9.9	10.4	8.1	8.5	9.7
December.....	9.4	9.9	8.7	8.6	7.9	10.6	10.3	10.0	10.4	8.1	8.4	9.6
Average.....	10.0	10.3	9.1	9.4	10.0	10.8	11.2	11.1	10.6	8.7	8.7	10.5
1922												
January.....	8.8	9.8	8.8	8.6	8.6	9.1	9.8	10.1	10.4	8.0	7.1	9.2
February.....	8.5	9.0	8.8	8.6	8.6	9.1	9.5	10.1	10.4	8.0	7.0	9.3
March.....	8.5	8.9	8.7	8.6	8.6	9.1	9.5	10.1	10.4	8.1	7.0	9.9
April.....	8.5	8.9	8.7	8.6	8.6	9.1	9.5	10.0	10.7	8.1	7.0	9.2
May.....	8.5	8.7	8.7	8.6	8.7	9.1	9.5	10.0	10.7	8.0	6.8	9.2
June.....	8.5	8.7	8.7	8.6	8.7	9.2	9.6	10.0	10.7	7.8	6.8	9.3
July.....	8.5	8.7	8.7	8.6	8.7	9.1	9.6	9.8	10.6	7.7	6.9	9.1
August.....	8.5	9.8	8.7	8.5	8.5	9.1	9.6	9.6	10.6	7.7	6.6	9.0
September.....	8.4	9.8	8.6	8.1	8.5	9.1	9.7	9.6	10.6	7.7	6.6	9.0
October.....	8.4	9.8	8.5	8.3	8.5	9.2	9.5	9.6	10.6	7.6	6.6	9.0
November.....	8.4	9.7	8.5	8.4	8.5	9.2	9.4	9.6	10.6	7.7	6.6	9.1
December.....	8.4	9.6	8.4	8.5	8.4	8.5	9.2	9.4	10.6	7.6	6.6	9.1
Average.....	8.5	9.5	8.7	8.5	8.6	9.1	9.6	9.9	10.6	7.9	6.8	9.1
1923												
January.....	8.4	9.7	8.5	8.4	8.2	9.1	9.5	9.1	10.6	7.7	7.2	9.1
February.....	8.4	9.7	8.5	8.4	8.2	9.1	9.5	9.1	10.6	7.7	7.2	9.0
March.....	8.4	9.6	8.4	8.4	8.2	9.2	9.5	9.1	10.2	7.7	7.2	9.0
April.....	8.4	9.6	8.4	8.4	8.2	9.2	10.2	9.2	10.3	7.7	7.2	9.0
May.....	8.4	9.6	8.4	8.5	8.4	9.2	10.2	9.2	10.3	7.7	7.2	9.2
June.....	8.4	9.6	8.4	8.7	9.0	8.8	10.2	9.2	10.3	7.6	7.1	8.9
July.....	8.4	9.6	8.4	8.8	9.0	8.7	10.3	9.2	10.3	7.6	7.1	8.9
August.....	8.4	9.6	8.4	8.7	9.0	8.7	10.2	9.1	10.3	7.6	7.1	8.9
September.....	8.4	9.6	8.4	8.8	9.0	8.6	10.2	9.1	10.3	7.6	7.1	9.2
October.....	8.4	9.6	8.4	8.8	9.0	8.6	10.2	9.1	10.3	7.6	7.1	9.1
November.....	8.4	9.6	8.4	8.9	9.0	8.6	10.2	9.1	10.3	7.6	7.1	9.0
December.....	8.4	9.6	8.4	8.9	9.0	8.6	10.2	9.1	10.3	7.6	7.1	9.0
Average.....	8.4	9.6	8.4	8.6	8.6	8.9	10.6	9.1	10.8	7.7	7.2	9.0

TABLE 15.—Retail price of bread (in cents) per 1-pound loaf, in 24 principal cities, 1919-1923—Continued.

Month	Kansas City	St. Louis	Indianapolis	Chicago	Minneapolis	Omaha	Denver	Salt Lake City	Los Angeles	San Francisco	Portland, Oreg.	Seattle
1919												
January	9.3	10.0	9.9	10.2	9.2	10.0	11.9	10.0	8.9	10.0	9.9	10.6
February	9.3	10.0	9.9	10.2	9.2	10.0	11.8	10.0	8.9	10.0	9.9	10.6
March	10.0	10.0	9.5	10.2	9.2	10.0	11.3	10.0	8.9	10.0	9.9	10.3
April	10.0	10.6	8.5	10.0	9.2	10.0	11.3	10.0	8.9	10.0	9.9	10.2
May	10.0	10.0	9.5	10.0	9.2	10.0	11.5	10.0	8.9	10.0	9.9	10.9
June	10.0	10.0	9.7	10.0	9.0	10.0	11.4	10.0	8.4	10.0	9.5	10.9
July	10.0	10.0	9.7	10.0	9.0	10.0	11.2	10.0	8.4	10.0	9.9	10.9
August	10.0	10.0	9.7	10.0	9.0	10.0	11.2	10.0	8.4	10.0	9.9	11.5
September	10.0	10.0	9.7	10.0	9.0	10.0	11.2	10.0	8.4	10.0	9.9	11.5
October	10.0	10.0	9.7	10.7	9.6	10.0	11.2	10.0	9.4	10.0	9.9	11.5
November	10.0	10.0	9.7	10.6	9.6	10.0	11.2	10.0	9.7	11.7	10.6	11.5
December	10.0	10.0	9.7	10.7	9.8	10.0	11.0	10.0	10.0	11.7	10.6	11.5
Average	9.9	10.0	9.7	10.2	9.5	10.0	11.4	10.0	9.2	10.2	10.0	11.0
1920												
January	11.6	11.4	9.7	10.6	10.6	11.8	11.8	12.1	9.8	10.9	10.5	11.5
February	12.2	11.7	10.7	11.6	10.5	12.0	11.7	12.1	9.6	10.9	10.5	11.7
March	12.1	11.7	10.7	11.6	10.4	12.1	11.8	12.2	9.6	10.9	10.5	11.6
April	12.4	11.8	10.7	11.6	10.4	12.1	12.0	12.2	9.6	10.9	10.5	11.6
May	12.4	12.4	11.6	12.3	10.4	12.2	11.9	12.4	9.9	10.9	10.5	11.6
June	12.8	12.7	11.6	12.4	11.1	12.4	12.1	12.5	10.8	10.9	11.4	11.5
July	13.2	12.8	11.6	12.4	11.1	12.2	12.2	12.6	10.6	10.9	11.2	11.5
August	13.4	13.1	11.6	12.4	11.1	12.2	12.2	12.6	10.6	10.9	11.2	11.5
September	13.0	12.1	11.6	12.4	11.1	12.1	12.2	12.6	10.6	10.9	11.2	11.5
October	12.6	12.1	11.6	12.4	11.1	11.6	12.1	12.4	10.6	10.9	11.2	11.5
November	12.1	12.0	11.6	12.4	10.3	11.5	11.4	12.2	9.7	10.9	10.4	11.4
December	11.9	11.4	10.1	11.5	10.3	11.5	10.7	11.8	9.7	10.1	10.2	10.1
Average	12.5	12.1	11.1	12.0	10.7	12.0	11.8	12.3	10.1	10.8	10.8	11.4
1921												
January	11.9	11.4	10.1	11.3	10.3	11.5	10.9	11.8	9.7	9.8	10.2	10.0
February	11.4	11.2	10.1	11.3	10.3	11.5	10.8	11.8	9.7	9.6	9.7	10.0
March	11.4	11.2	9.8	11.3	10.3	11.8	10.8	11.8	9.7	9.6	9.5	10.0
April	11.4	10.6	9.5	11.2	10.2	11.8	10.7	10.2	9.4	9.6	9.5	10.0
May	10.7	10.6	9.2	9.9	9.6	11.1	10.3	9.6	9.2	9.6	9.5	9.9
June	9.8	10.6	8.6	9.9	9.6	11.1	10.3	9.8	9.2	9.6	9.5	9.9
July	9.9	10.6	8.6	9.8	9.6	9.8	10.3	9.8	9.2	9.6	9.5	9.9
August	9.9	10.1	8.6	9.8	9.6	9.8	10.1	9.6	9.2	9.6	9.5	9.9
September	9.8	10.1	8.6	9.8	8.6	9.9	10.2	9.8	9.2	9.6	9.5	9.9
October	9.7	9.7	8.6	9.8	8.6	10.5	10.0	9.8	9.2	9.2	9.5	9.8
November	9.7	9.6	8.6	9.8	8.4	10.0	10.0	9.8	9.2	8.8	8.4	8.2
December	9.6	9.5	8.6	9.8	8.4	10.0	9.7	9.6	9.2	8.8	8.4	8.1
Average	10.4	10.4	9.1	10.3	9.5	10.7	10.3	10.3	9.3	9.4	9.4	9.6
1922												
January	9.7	9.4	8.6	9.9	8.4	10.0	8.3	8.6	8.0	8.5	8.4	7.5
February	8.4	9.6	8.6	8.9	8.4	9.8	8.2	8.4	8.0	8.5	8.4	8.1
March	6.9	9.6	8.1	9.7	8.4	9.8	8.2	8.4	8.0	8.5	8.2	8.2
April	8.1	9.3	8.1	9.7	8.8	9.8	8.2	8.4	8.0	8.5	8.2	8.9
May	7.7	9.4	8.1	9.7	8.9	9.8	8.2	8.4	8.1	8.5	8.4	8.9
June	7.8	9.2	8.1	9.7	9.0	9.8	8.2	8.5	9.1	8.5	8.4	8.9
July	7.8	9.3	8.0	9.7	9.0	9.8	8.4	8.4	9.0	8.5	8.4	8.9
August	7.9	9.0	7.3	9.7	9.0	9.9	8.4	8.5	9.0	8.5	8.4	8.9
September	7.9	9.0	7.3	9.7	9.0	9.8	8.3	8.5	9.0	9.1	8.4	8.9
October	7.9	8.9	7.8	9.7	9.0	9.8	8.2	8.4	9.0	9.0	8.4	8.6
November	7.9	8.9	7.8	9.7	9.0	9.8	8.2	8.4	9.0	9.0	8.4	8.6
December	7.9	8.9	7.3	8.7	8.0	8.8	8.2	8.4	8.8	9.0	8.4	8.6
Average	7.8	9.2	7.9	9.7	8.8	9.8	8.3	8.5	8.0	8.7	9.2	9.3
1923												
January	8.2	8.9	8.4	9.7	9.0	9.9	8.2	9.8	8.8	9.0	9.4	8.6
February	8.2	8.9	8.4	9.7	9.0	9.8	8.2	9.6	8.8	9.0	9.4	8.6
March	8.2	8.9	8.4	9.7	9.0	9.8	8.2	9.5	9.0	9.0	9.4	8.6
April	8.2	8.9	8.5	9.7	9.0	9.8	8.2	9.7	9.0	9.0	9.4	8.9
May	8.1	8.9	8.5	9.7	9.0	9.8	8.2	9.5	9.0	9.0	9.4	8.9
June	8.1	8.9	8.5	9.7	9.0	9.8	8.2	9.6	9.0	9.1	9.4	8.9
July	8.1	8.9	8.5	9.7	9.0	9.8	8.1	9.6	9.0	9.1	9.4	8.9
August	7.9	8.9	8.5	9.7	9.0	9.8	7.8	9.6	9.0	9.2	9.2	8.9
September	7.9	8.9	8.5	9.7	9.0	9.8	7.8	9.8	9.0	9.2	9.2	8.9
October	7.9	8.9	8.5	9.8	9.0	9.8	7.8	9.8	9.0	9.2	9.2	8.9
November	8.0	8.9	8.5	9.8	9.0	9.9	7.8	9.8	9.0	9.2	9.2	8.9
December	8.2	8.9	8.5	9.7	9.0	9.8	7.8	9.8	9.0	9.2	9.2	8.9
Average	8.1	8.9	8.5	9.7	9.0	9.8	8.0	9.6	9.0	9.1	9.2	8.6

EXHIBITS

EXHIBIT 1

MILLERS' NATIONAL FEDERATION FLOUR PACKAGE DIFFERENTIALS

(Effective December 16, 1922)

[Basis, 98-pound cotton]

Kind	Weight	Charge over bulk price for packing in buyer's sacks
Wood:		
\$0.55 over basis.....	<i>Pounds</i> 166	
\$1.40 over basis.....	98	
Jute:		
\$0 10 under basis.....	140	
Same as basis (2 to barrel).....	98	
Cotton:		
Basis (2 to barrel).....	98	
\$0 10 under basis (2 to barrel).....	98	
\$0 20 over basis (4 to barrel).....	49	\$0. 10
\$0 10 over basis (4 to barrel).....	48	. 10
\$0 40 over basis (8 to barrel).....	24½	. 10
\$0 30 over basis (8 to barrel).....	24	. 10
\$0 60 over basis (16 to barrel).....	12½	. 15
\$0 50 over basis (16 to barrel).....	12	. 15
\$0 90 over basis (20 to barrel).....	10	. 20
Do.....	9 8	. 20
\$0 90 over basis (24 to barrel).....	8	. 25
\$1 over basis (28 to barrel).....	7	. 30
\$1 over basis (32 to barrel).....	6	. 30
\$1.50 over basis (40 to barrel).....	5	. 40
Do.....	4 9	. 40
\$1 50 over basis (48 to barrel).....	4	. 45
\$1 70 over basis (56 to barrel).....	3½	. 50
\$1 80 over basis (64 to barrel).....	3	. 55
\$2.70 over basis (96 to barrel).....	2	. 70
Paper:		
Same as basis (4 to barrel).....	49	. 10
\$0 10 under basis (4 to barrel).....	48	. 10
\$0 10 over basis (8 to barrel).....	24½	. 15
Same as basis (8 to barrel).....	24	. 15
\$0 30 over basis (16 to barrel).....	12½	. 20
\$0 20 over basis (16 to barrel).....	12	. 20
\$0 60 over basis (20 to barrel).....	10	. 25
\$0 30 over basis (24 to barrel).....	8	. 30
\$0 50 over basis (28 to barrel).....	7	. 30
\$0 50 over basis (32 to barrel).....	6	. 35
\$0 90 over basis (40 to barrel).....	5	. 50
\$0 70 over basis (48 to barrel).....	4	. 50
\$1 over basis (56 to barrel).....	3½	. 55
\$1 over basis (64 to barrel).....	3	. 55
\$1.60 over basis (96 to barrel).....	2	. 80

Outside jute envelopes (1 to barrel), 20 cents per barrel additional.
 Outside jute envelopes (2 to barrel), 30 cents per barrel additional.
 Outside cotton envelopes (2 to barrel), 35 cents per barrel additional.
 Outside paper envelopes (4 to barrel), 30 cents per barrel additional.

All sales to be made basis 98-pound cotton.

A reduction of 25 cents per barrel from the half-cotton basing price shall be made where the flour is packed in buyer's 98-pound bags and a reduction of 15 cents per barrel from the 140-pound jute price where the flour is packed in buyer's 140-pound jute bags.

Seller or buyer may not have option of shipping flour in cotton or jute sacks where either may have been specified at time of sale, except as may be agreed to by buyer and seller at time of shipment.

EXHIBIT 2

STATE LAWS REQUIRING THE WEIGHT CONTENTS TO BE MARKED ON FLOUR AND FEED PACKAGES

- Alabama.*—Flour: Net contents must be stated on the labels of containers.¹
- Arizona.*—Flour: Weight must be stamped on package.¹
- Arkansas.*—Flour: True weight must be marked or stamped on package.¹
- California.*—Flour: Net weight must be plainly and conspicuously marked, branded, or otherwise indicated on the outside or top of package or on a label or tag attached thereto.¹
- Colorado.*—Flour and feed: Weight, if stated must be plainly and correctly marked on outside of package.³
- Connecticut.*—Flour: True net weight must be marked on package.¹
- Delaware.*—Flour: Correct and exact weight must be marked or printed prominently, distinctly, and conspicuously on bag or package.¹
- Florida.*—Flour: Weight must be plainly and conspicuously marked on the outside of the covering or container usually delivered to consumer. Feed: Packages must have a tag or label attached showing the net weight contents.
- Georgia.*—Flour: Net weight must be plainly marked on outside of package.¹
- Idaho.*—Flour and feed: No State regulations.³
- Illinois.*—Flour: Net weight must be plainly and conspicuously marked on outside of package.¹
- Indiana.*—Flour: Net weight must be stated on each package. Feed: Net weight must be shown on a tag or label affixed to package.
- Iowa.*—Flour: Same as Indiana. Feed: Net weight must be shown on package or on a tag attached thereto.
- Kansas.*—Flour: Same as Georgia. Feed: Same as Iowa.
- Kentucky.*—Flour: No State regulation.³ Feed: Net weight must be shown on package.
- Louisiana.*—Flour: Same as Arkansas.¹
- Maine.*—Flour: Weight must be plainly marked on package.¹
- Maryland.*—Flour: Weight contents must be plainly and conspicuously marked on outside of package. Feed: Same as Iowa.
- Massachusetts.*—Flour: Same as Illinois. Feed: Same as Iowa.
- Michigan.*—Flour: Correct weight must be plainly printed or stamped on face of label. Feed: Same as Iowa.
- Minnesota.*—Flour: No State regulation.³ Feed: Same as Iowa.
- Mississippi.*—Flour: Same as Maryland. Feed: Net weight must be stated on a tag or label, in a conspicuous place on outside of package, lot, or parcel.
- Missouri.*—Flour: Weight must be plainly labeled or stamped on package. Feed: Same as Kentucky.
- Montana.*—Flour and feed: No State regulation.³
- Nebraska.*—Flour: Correct weight of contents must be clearly printed on outside of package. Feed: Same as Iowa.
- Nevada.*—Flour: Correct net weight must be shown on label.¹
- New Hampshire.*—Flour: No State regulation.³ Feed: Net weight must be plainly and conspicuously stated on outside of package.
- New Jersey.*—Flour: Same as Illinois. Feed: Same as Iowa.
- New Mexico.*—Flour: True weight must be plainly marked, branded, or stenciled on outside of package.¹
- New York.*—Flour: Same as Indiana. Feed: Same as Iowa.
- North Carolina.*—Flour: Same as Indiana. Feed: Weight must be shown on package or on a tag attached thereto.
- North Dakota.*—Flour: Weight contents must be plainly and conspicuously marked on outside of container or on the covering of package usually delivered to the consumer. Feed: Same as Iowa.
- Ohio.*—Flour: Must have exact weight plainly marked on package. Feed: Same as Iowa.
- Oklahoma.*—Flour: Same as Maryland. Feed: Net weight must be shown on a tag affixed to each bag or package.
- Oregon.*—Flour: Same as Maryland. Feed: Same as Iowa.
- Pennsylvania.*—Flour: Same as Maryland. Feed: Same as Iowa.
- Rhode Island.*—Flour: Weight must be plainly and correctly marked on outside of package. Feed: Statement of the net weight must be plainly printed and affixed in a conspicuous place on outside of package.

South Carolina.—Flour: Net weight must be plainly marked or otherwise indicated on outside of package or on a label or tag attached thereto. Feed: Same as North Carolina.

South Dakota.—Flour and feed same as Illinois.

Tennessee.—Flour: Weight must be conspicuously, plainly, and correctly marked on outside of package. Feed: Net weight must be printed on or affixed to package.

Texas.—Flour and feed: Same as Illinois.

Utah.—Flour and feed: Same as Illinois.

Vermont.—Flour: Correct net weight must be plainly and conspicuously marked on outside of package. Feed: Same as Iowa.

Virginia.—Flour: Same as Vermont. Feed: Same as Tennessee.

Washington.—Flour: Same as Colorado.³ Feed: Net weight of package must be stated on a tag or label.

West Virginia.—Flour: Same as Illinois. Feed: Same as Iowa.

Wisconsin.—Flour: Actual weight must be plainly and conspicuously marked on outside of package. Feed: Same as Iowa.

Wyoming.—Flour and feed: Same as Indiana.

District of Columbia.—Flour and feed: No regulations.³

Regarding the term "food" as used in the Federal food and drugs act, section 6 of this act provides as follows:

"Sec. 6. * * * The term 'food,' as used herein, shall include all articles used for food, drink, confectionery, or condiment by man or other animals, whether simple, mixed, or compound."

EXHIBIT 3

[H. R. 3241, Sixty-eighth Congress, first session]

In the House of Representatives, December 13, 1923. Mr. Vestal introduced the following bill; which was referred to the Committee on Coinage, Weights, and Measures and ordered to be printed.

A BILL To establish the standard of weights and measures for the following wheat-mill, rye-mill, and corn-mill products, namely, flours, hominy, grits, and meals, and all commercial feeding stuffs, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the standard of weights for the following wheat-mill, rye-mill, and corn-mill products, namely, flours, hominy, grits, and meals, and all commercial feeding stuff, shall be one hundred pounds avoirdupois, and the standard measure for such commodities, when the same are packed for sale, shipped, sold, or offered for sale in packages of five pounds or over, shall be a package containing net avoirdupois weight one hundred pounds, or a multiple of one hundred pounds, or one of the following fractions thereof, five, ten, twenty-five, or fifty pounds; and, in addition, for wheat flour, rye flour, and corn flour only, one hundred and forty pounds; and for commercial feeding stuffs only, sixty or eighty pounds; each of which packages shall bear a plain, legible, and conspicuous statement of the net weight contained therein.

SEC. 2. That the standard packages for the following wheat-mill, rye-mill, and corn-mill products, namely, flours, hominy, grits, and meals, and all commercial feeding stuffs, when the same are packed, shipped, sold, or offered for sale in packages of five pounds or over, shall be those containing net avoirdupois, weight one hundred pounds, or multiples of one hundred pounds, or the following fractions thereof, five, ten, twenty-five, and fifty pounds; and, in addition, for wheat flour, rye flour, and corn flour only, one hundred and forty pounds; and for commercial feeding stuffs only, sixty and eighty pounds.

SEC. 3. That it shall be unlawful for any person, firm, corporation, or association to pack or cause to be packed for sale, to ship or offer for shipment, or

¹ A similar requirement applies also to packages for commercial feeding stuffs.

² No regulation other than the Federal food and drugs act, which applies to all packages of food shipped in interstate commerce. This act provides that all articles of food, or articles entering into the composition of food, if in package form, offered for interstate shipment or otherwise coming within the jurisdiction of the act, must, when offered for shipment, be plainly and conspicuously marked on the outside of the package in terms of weight, measure, or numerical count. Provided, however, that reasonable variations shall be permitted, and tolerances and also exemptions as to small packages shall be established by rules and regulations made in accordance with the provisions of the act.

to sell or offer for sale the following wheat-mill, rye-mill, or corn-mill products, namely, flours, hominy, grits, and meals, or any commercial feeding stuffs, in packages of five pounds or over, which, when in original unbroken package form, shall not be one of the standard measures established in section 2 hereof, and bear a plain, legible, and conspicuous statement of the net weight contained therein; and any person, firm, corporation, or association guilty of a violation of the provisions of this act shall be deemed guilty of a misdemeanor and be liable to a fine not exceeding \$500. By the term "original unbroken package form," as used in this act, is meant any form of original package or carton or other container made or prepared to contain products for sale in such original package or other container, and purporting to contain any specific weight or measure: *Provided*, That sale of irregular broken lots by actual weight shall not be unlawful.

SEC. 4. That the provisions of this act shall not apply to packages of the following wheat-mill, rye-mill, or corn-mill products, namely, flours, hominy, grits, or meals, or any commercial feeding stuffs, when intended for export to any foreign country, and packed according to the specifications or directions of the foreign purchaser, agent, or consignee; but if said wheat-mill, rye-mill, or corn-mill products, namely, flours, hominy, grits, or meals, or any commercial feeding stuffs shall, in fact, be sold or offered for sale for domestic use or consumption, then this exception shall not exempt said articles from the operation of any of the other provisions of this act: *Provided, however*, That when packages of said wheat-mill, rye-mill, or corn-mill products, namely, flours, hominy, grits, or meals, or any commercial feeding stuffs, originally intended for export, have been packed in the packages customarily used in any foreign country, and it becomes necessary to offer these for sale or to sell them for domestic use or consumption, then such export packages may be sold for domestic use or consumption by special contract, if approved by the Secretary of Agriculture.

SEC. 5. That rules and regulations necessary for the enforcement of this act not inconsistent with the provisions hereof, shall be made by the Secretary of Agriculture, and said rules and regulations shall include reasonable variations or tolerances which may be allowed.

SEC. 6. That it shall be the duty of each district attorney to whom satisfactory evidence of any violation of this act is presented to cause proper proceedings to be instituted and prosecuted in a United States court having jurisdiction of such offense.

SEC. 7. That this act shall not be construed as repealing the act of July 28, 1866 (chapter 301, Revised Statutes of the United States, sections 3569 and 3570), authorizing the use of the metric system, but such sections shall not be construed as allowing the packing, shipping, or offering for shipment, the sale or offering for sale of packages of any size other than those established as standards herein.

SEC. 8. That this act shall be in force and effect one year from and after the passage of this act.

68TH CONGRESS }
1st Session

HOUSE OF REPRESENTATIVES

{ DOCUMENT
No. 85

ANNUAL REPORT
OF THE
FEDERAL
TRADE COMMISSION
FOR THE
FISCAL YEAR ENDED JUNE 30, 1923

3



WASHINGTON
GOVERNMENT PRINTING OFFICE
1923

FEDERAL TRADE COMMISSION.

VICTOR MURDOCK, *Chairman.*

JOHN F. NUGENT.

HUSTON THOMPSON.

VERNON W. VAN FLEET.

NELSON B. GASKILL.

OTIS B. JOHNSON, *Secretary.*

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ANNUAL REPORT OF THE FEDERAL TRADE COMMISSION, FISCAL YEAR ENDED JUNE 30, 1923.

SUMMARY.

To the Senate and House of Representatives:

The Federal Trade Commission herewith submits to the Congress its annual report for the fiscal year July 1, 1922, to June 30, 1923. The commission, which was created by act of Congress approved September 26, 1914, was organized March 16, 1915, and at the close of the fiscal year reported upon concluded the eighth year of its existence. On June 30, 1923, the personnel of the commission consisted of Victor Murdock, of Kansas (chairman); John F. Nugent, of Idaho; Huston Thompson, of Colorado; Vernon W. Van Fleet, of Indiana; and Nelson B. Gaskill, of New Jersey.

Pursuant to the statutes the commission has been engaged during the year in the prevention of unfair methods of competition in domestic and foreign commerce, the elimination of practices which substantially lessen competition or tend to create monopoly, and in gathering and publishing facts for the information of the President, the Congress, and the public with respect to the economic phases of domestic industry and foreign trade. In addition the activities of associations engaged solely in export trade were supervised. Differently stated, the commission's work is to sustain those practices which support the competitive system, as opposed to monopoly, in furtherance of the fundamental object of Congress in the enactment of the Federal Trade Commission act, the Clayton Act, and the export trade act. The commission has sought to protect the public against those methods described by the Supreme Court in the Gratz case as (1) methods opposed to good morals because characterized by deception, bad faith, fraud, or oppression, and/or (2) methods regarded as against public policy because of dangerous tendency unduly to hinder competition or create monopoly.

The work of the commission for the year covered the entire scope of the trust problem and related subjects. It reached from the simplest form of unfair methods of competition on through all phases to the more complex question of trust dissolution. These activities touched the whole range of commerce—raw materials, manufacturing, wholesaling, retailing, exporting, manipulation of

markets, and as representing the public interest, consumption. The whole trust problem can be approached satisfactorily only by approaching it on the economic as well as the legal side. Activities in both these fields as disclosed in the report here given register an advance in an understanding of the matter.

The year was marked also in the commission's work by the increasing variety of the subjects handled and the growing intricacy of the legal and economic questions presented in many of the cases arising under the law. In this connection especial interest attaches to that division of the commission's work which is directed to carrying out the law against competition-lessening combinations arising from the acquisition of the share capital of one corporation by a competing corporation, which is prohibited specifically by the Clayton Act. The particular question presented to the commission is whether under existing law severance of competing corporations, united contrary to law, may be accomplished in fact rather than merely in form. Through proceedings in several cases before the commission this question reached the courts during the year. Among the cases in which the commission issued orders directing segregation and from which orders appeals to the courts were taken are those directed to (1) Armour & Co., meat packers, to divest itself of the share capital of E. H. Stanton Co.; (2) Swift & Co., meat packers, to divest itself of the share capital of Andalusia Packing Co. and the Moultrie Packing Co.; (3) the Aluminum Co. of America, to divest itself of the share capital of the Aluminum Rolling Mill Co. In another case, which has not reached the courts, the Thatcher Manufacturing Co. (milk bottles) was ordered to divest itself of the share capital of Essex Glass Co., Travis Glass Co., Lockport Glass Co., and Woodbury Glass Co.

While in all its divisions the commission, in those activities having to do with the preservation of competition and the prohibition of unfair methods of competition, dealt primarily with questions arising in trade in manufactured products, the year was marked by the increasing frequency with which these questions affected agriculture. The Department of Justice during the year petitioned the court for a revision of the decree in the dissolution suit against the International Harvester Co., substantially in accordance with the recommendations made in a report by the Federal Trade Commission. This proceeding is pending. The commission prosecuted in the courts motions to enforce its right of access to the records of exporters of grain and to records of manufacturers of tobacco needed in the preparation of reports directed by Congress. The right of such access was, in the circumstances appearing in these cases, denied, and appeals have been taken to the Supreme Court of the United States. Orders for the divestment of absorbed share capital of a corporation

by a competing corporation were made in several cases in the meat-packing industry. Appeals have been taken from these orders by the respondents. An order for divestment of share capital was directed by the commission to a large manufacturer of milk bottles. In connection with agricultural interests among the numerous formal complaints considered during the year were those against the Chamber of Commerce of Minneapolis, a grain market, and the Utah-Idaho Sugar Co. and Amalgamated Sugar Co., manufacturers of refined beet sugar. By direction of the Congress the commission made also reports of interest to the farmer on grain marketing, cotton marketing, the fertilizer industry, and calcium arsenate.

LEGAL WORK OF COMMISSION.

Under the laws which it administers the commission was called upon during the year to handle 2,273 separate legal matters in domestic and foreign trade, involving unfair competition, price discriminations, tying contracts, acquisitions of corporate stock, and interlocking directorates. It disposed of 1,352 such matters. This left on hand undisposed of at the close of the year 921 such matters. To a marked degree the 921 matters represent delay by reason of inadequacy of funds.

Details of the procedure of the commission in legal matters are given below under topic headings which carry the unfair competition and Clayton law cases from their inception through their several steps to decision in the Supreme Court of the United States, the end of the process in the final determination of existing law. These topics are (1) the applications for complaint, (2) the complaints, (3) the orders to cease and desist, and (4) the court decisions.

Applications for complaint.—This is the initial approach to the commission in an unfair competition or Clayton law case and is usually in the form of a letter from the general public through an individual or corporation calling the attention of the commission to some alleged illegal or harmful practice in foreign or domestic commerce. In bringing these matters to the commission no formalities or blank forms are required. A letter suffices to bring a matter to the Commission's attention if it is signed by the complaining party, contains the name and address of the party complained against, and a statement of the nature of the relief sought. It should also transmit all the evidence in the possession of the complainant, documentary or otherwise, to aid in the inquiry, which is always made preliminary to the issuance of complaint.

During the year there were before the commission 1,169 separate requests from the public in which the activity of the commission was asked. Of these, 646 were handled in an informal way by correspondence at small expense to the Government. In 416 instances the

papers were docketed as applications for complaint and 107 of these matters were undisposed of at the close of the fiscal year. To the number of 416 applications for complaints docketed during the year must be added 458, the number pending at the beginning of the year, making a total of 874 applications for complaint before the commission during the year. The commission disposed of 302 such applications during the year, 181 of which were dismissed after preliminary inquiry and 121 advanced to formal complaints. This left 572 applications for complaints undisposed of and on hand at the start of the fiscal year beginning July 1, 1923.

The applications for complaint which give some prima facie indication of violation of law are first examined for necessary jurisdictional elements—the public interest, unfair methods, and the interstate commerce feature; if these are present, and without them the commission can not proceed, jurisdiction is assumed and a thorough preliminary investigation, which usually requires field work, is undertaken. After the facts are gathered they are presented to a board of review, which prepares a report summarizing the evidence, reciting the law applicable, and containing a recommendation for commission action. The file is then assigned to a commissioner who reviews the entire record and presents the case to the full commission with recommendation either that a complaint issue or that the application be dismissed. A majority vote controls.

Complaints.—It is only after most careful scrutiny of a record that the commission issues its complaint. The commission must have, in the language of the statute, a reason to believe that the law has been violated before complaint issues. The complaint is by way of a citation and is the only statutory means to bring a party charged with violation of law properly before the commission. It requires an answer in 30 days and provides for a date and place of hearing.

Complaints to the number of 144 were issued during the year. In addition, 214 were on hand and undisposed of at the beginning of the year, making a total of 358 separate complaints demanding the attention of the commission in the fiscal year. The commission disposed of 126 of these complaints, 78 by orders to cease and desist and 48 by dismissal, leaving 232 on hand with which to start the year beginning July 1, 1923. The record indicates a variety of reasons for dismissing complaints. It is noted that seven were dismissed because the parties to whom complaints were directed had died or were out of business when the case came on for trial, nine were dismissed for the reason that the charges of the complaint were covered by controlling court decisions rendered after institution of proceedings by the commission, and the remainder were dismissed for other reasons, including failure of proof to sustain

the charges of the complaint, want of interstate commerce, and in one case, the Midvale-Republic-Inland Steel merger case, because the challenged merger was abandoned. Since its organization 1,043 complaints of unfair competition and/or violations of the Clayton Act have been issued by the commission.

That unfair methods of competition were used is the averment in a great majority of the 144 complaints issued this year; 137 complaints contained this averment alone. In 3 complaints the citation was for both unfair competition and violation of the Clayton Act. In 3 complaints price discrimination was averred in violation of section 2 of the Clayton Act. In 1 complaint tying contracts contrary to section 3 of the Clayton Act were averred, and 4 complaints averred the acquisition of stock of a competing concern in violation of section 7 of the Clayton Act.

Without enumerating all the various forms of unfair competition set out in the complaints it may be of interest to note that there were 58 cases of false and misleading advertising, 8 of misbranding, 3 for conspiracy to injure competitors, 3 of disparagement of a competitor's name or goods, 11 of passing off of a competitor's name or goods, 10 of price fixing, 31 of resale price maintenance, 2 of bribery of customers' employees, and 67 other cases involving misrepresentation, coercion, combination to effect monopoly price discrimination, and many other questioned practices.

The complaints issued this year were directed to 2,384 separate respondents, and involved a wide range of products and industries.

After complaint, answer by respondent, testimony or stipulation of facts in lieu thereof, briefs and oral argument before the full commission, the commission either dismisses the complainant or issues an order to cease and desist.

Orders to cease and desist.—The final expression of the commission in a legal case under the Federal Trade Commission act and Clayton Act is an order upon a respondent to cease and desist a particular practice or practices. During the year 78 such orders were issued against 211 respondents, the practices condemned including 26 cases of misbranding, 61 cases of false advertising, 8 cases of passing off of name and goods, 2 cases of conspiracies in restraint of trade, 1 case of commercial bribery, 2 cases of disparagement of competitor's goods, 2 cases of resale price maintenance, and 11 cases of misrepresentation of various kinds.

Of the orders issued this year 75 were grounded upon the Federal Trade Commission act alone, 2 were under both the Federal Trade Commission act and the Clayton Act, and 1 under section 7 of the Clayton Act alone. The parties to whom the orders were directed have in a great majority of cases accepted the orders and have filed

reports with the commission signifying their compliance with its terms. Of the 78 orders issued during the year appeals were taken to the circuit court in but two instances. These cases were (1) the Swift & Co. case, involving the acquisition of corporate stock of a competing concern in violation of section 7 of the Clayton Act, and (2) the Chicago Portrait Co. case, involving misrepresentation in the sale of portraits, held by the commission to be an unfair method of competition.

Orders were issued in nine cases directed to firms and individuals who were found to have followed the practice of falsely advertising in connection with the sale of stock in various oil companies. These were all cases of the character commonly known as blue-sky cases and in which the commission protected the public against promoters falsely advertising to induce the sale of stock. The record of the year discloses that misleading brands or labels is a frequent form of representation coming to the commission's attention. In the 27 cases of misbranding in which orders were issued, 20 orders involved the hosiery business alone and were directed to such branding as would convey the impression that the hosiery composed of a mixture of cotton and wool, or of cotton and silk, was pure wool or pure silk.

Appeal lies to the United States circuit courts either by the respondent to set aside the order of the commission or on behalf of the commission to enforce it. Since its organization the commission has issued 548 orders to cease and desist directed to 1,583 respondents. Appeal has been taken in 40 cases.

Court cases.—While the law administered by the commission has been subject to review by the courts in relatively few cases, a number of important decisions have been rendered which have materially affected the commission's work.

Among the helpful decisions may be mentioned the Sears-Roebuck Co. case, the first case of unfair competition to be taken to court for review of the commission's order, and in which the court sustained the commission's condemnation of false advertising, and in answer to the company's plea of discontinuance prior to the order the court confirmed the necessity for the order and said, "No assurance is in sight that petitioner (Sears-Roebuck Co.), if it could shake the respondent's (Federal Trade Commission) hand from its shoulder, would not continue its former course." The power of the commission to deal with misbranding of products in general and with similar deceptive practices was affirmed by the Supreme Court of the United States in the Winsted Hosiery Co. case. The same court in the Beechnut Co. case affirmed the commission's view with some qualification that cooperative schemes directed to the maintenance of resale prices were unlawful where the effect was to inter

ferre with the free and natural flow of commerce. In the case against the Aluminum Co. of America, the circuit court of appeals upheld the commission's order directing this company to divest itself of the stock of a competing company. On appeal the Supreme Court refused to review this decision. In several cases, namely, the National Harness Manufacturers' Association, the Western Sugar Refining Co. case, the Wholesale Grocers' Association, and Southern Hardware Jobbers' Association cases, the courts have affirmed the power of the commission over unfair practices by combined or concerted effort on the part of associations or other groups.

In another group of cases the courts have denied the power and authority of the commission to enforce the cessation of practices which had been found by the commission to be unfair methods of competition or to violate the provisions of the Clayton Act. The first denial of the power of the commission was in the Gratz case, wherein the Supreme Court of the United States, in defining the term "unfair methods of competition," stated that it was clearly inapplicable to practices never heretofore regarded as opposed to good morals or against public policy, and thereby tended to restrict the jurisdiction of the commission to precedents established under common law and judicial decisions. This would seem adversely to effect the ready development of the law of business practices under the commission's rulings as reviewed by the courts. In the same case a second denial is found when the court attached to the commission's procedure a rule of pleading comparable in its strictness to that governing a criminal indictment.

In a review of an order which the commission had issued, directing the Curtis Publishing Co. to discontinue certain contracts which the commission found after testimony to be tying contracts, contrary to the Clayton Act and the Federal Trade Commission act, the Supreme Court held that notwithstanding the findings of facts made by the commission were not disturbed by the circuit court of appeals, the circuit court or the Supreme Court could find additional facts upon their own motion and reverse the commission's order on such new findings. The law creating the commission states that the findings of the commission as to the facts, if supported by testimony, shall be conclusive. In the Mennen case, the commission issued its order prohibiting discrimination in net selling prices between purchasers of the Mennen products of the same grade, quality, and quantity, upon the basis of a classification of customers by the Mennen Co. as "jobbers," "wholesalers," or "retailers," or any classification which relates to the purchaser's form of organization. The circuit court set the order aside, saying that the Mennen Co. had a right to give one class of customers a preferential rate as against another class notwithstanding that both classes purchased in the

same amount and upon the same terms, and that discrimination in price by a manufacturer which only lessens competition between his customers and not between such manufacturer and his immediate competitors is not such price discrimination as is condemned by the Clayton Act. The Supreme Court refused to review the case.

On the economic side of the commission's work, which consists largely in the gathering of industrial facts and recording economic tendencies at the direction of the President and Congress, a serious interference has arisen by reason of injunctions in the Claire Furnace Co. case and the Maynard Coal Co. cases. The work which the commission undertook related to the gathering of reports respecting the production, prices, and costs of necessities of life and of commerce, in these two instances reports from the coal industry and the steel industry. This work was specifically appropriated for by Congress in the deficiency appropriation act of November 4, 1919. The right of the commission to require corporations to make reports in this regard will probably be passed upon by the Supreme Court of the United States during the coming fiscal year.

In two groups of cases, (1) American Tobacco Co. and P. Lorillard Co. (Inc.), involving tobacco products, and (2) Baltimore Grain Co., H. C. Jones Co. (Inc.), and Hammond-Snyder Co. (Inc.), involving grain, the commission petitioned the United States district courts at New York City and Baltimore, respectively, for writs of mandamus to compel these companies to permit access to records in connection with investigations being conducted by the commission at the direction of Congress or upon the commission's own motion. The petitions were denied. The commission has carried the cases on appeal to the Supreme Court of the United States.

During the fiscal year ending June 30, 1923, the commission had cases in the courts as follows:

In the Supreme Court of the United States—Curtis Publishing Co., Mishawaka Woolen Manufacturing Co., Aluminum Co. of America, Maloney Oil & Manufacturing Co., Gulf Refining Co., Sinclair Refining Co., Standard Oil Co. of New Jersey, Raymond Bros., Clark Co., Mennen Co., Fruit Growers' Express, American Tobacco Co., P. Lorillard Co. (Inc.), Hammond-Snyder Co. (Inc.), H. C. Jones Co. (Inc.), Baltimore Grain Co., Claire Furnace Co., et al.

In the United States Circuit Courts of Appeals—Mishawaka Woolen Manufacturing Co., Maloney Oil & Manufacturing Co., Gulf Refining Co., Standard Oil Co. of New Jersey, Guarantee Veterinary Co. et al., Armour & Co., S. E. J. Cox et al., Swift & Co., B. S. Pearsall Butter Co., L. B. Silver Co., Southern Hardware Jobbers Association, Mennen Co., Juvenile Shoe Co., Chicago Portrait Co.

In the United States district court—American Tobacco Co., P. Lorillard Co. (Inc.), Baltimore Grain Co., H. C. Jones Co. (Inc.), and Hammond-Snyder Co. (Inc.).

In the courts of the District of Columbia—Claire Furnace Co. et al. and Maynard Coal Co. et al. in the Court of Appeals. The Maynard Coal case was also in the Supreme Court of the District.

Summary of court cases to which the commission has been a party.—The cases to which the commission has been a party since its organization until June 30, 1923, may be grouped under three headings: (I) Those in which the commission's orders to cease and desist were sought to be set aside by the respondents, or in which the commission has sought to enforce them, and which involve section 5 of the Federal Trade Commission act, or section 2, 3, 7, or 8 of the Clayton Act; (II) those in which the commission's powers under section 6 of the organic act were called into question; (III) those in which it was sought by respondents to restrain the commission from issuing or proceeding with its complaints prior to the issuance of orders by the commission, etc. The results of these three classes of cases are summarized below.

I. Cases in which the commission's orders under section 5 of the Federal Trade Commission act or section 2, 3, 7, or 8 of the Clayton Act were (A) sought to be set aside by the respondents, or (B) enforced by the commission.—The great bulk of the cases fall within this group; are instituted in the Federal Circuit Courts of Appeals, and are as follows:

(A) CASES IN WHICH THE COMMISSION'S ORDERS WERE SOUGHT TO BE SET ASIDE BY RESPONDENTS.

- (1) Cases in which the commission was sustained (13):
 Sears, Roebuck & Co. v. Federal Trade Commission.
 National Harness Mfgs. Assn. v. Federal Trade Commission.
 Federal Trade Commission v. Winsted Hosiery Co.¹
 Western Sugar Refining Co. et al. v. Federal Trade Commission.
 Federal Trade Commission v. Beech-Nut Packing Co.¹
 Wholesale Grocers Assn. of El Paso v. Federal Trade Commission.
 Royal Baking Powder Co. v. Federal Trade Commission.
 Aluminum Co. of America v. Federal Trade Commission.²
 Mishawaka Woolen Mfg. Co. v. Federal Trade Commission.²
 Guarantee Veterinary Co. v. Federal Trade Commission.
 L. B. Silver Co. v. Federal Trade Commission.
 Juvenile Shoe Co. v. Federal Trade Commission.²
 Southern Hardware Jobbers Assn. v. Federal Trade Commission.

¹ Decisions by the Supreme Court of the United States reversing decisions by the United States Circuit Court of Appeals for the Second Circuit.

² Petition for writ of certiorari denied by Supreme Court.

- (2) Cases in which the commission was not sustained (10):
- New Jersey Asbestos Co. *v.* Federal Trade Commission.
 - Federal Trade Commission *v.* Warren Jones & Gratz.³
 - Ward Baking Co. *v.* Federal Trade Commission.
 - Federal Trade Commission *v.* Curtis Publishing Co.³
 - Kinney Rome Co. *v.* Federal Trade Commission.
 - Raymond Bros.—Clark Co. *v.* Federal Trade Commission.
 - Mennen Co. *v.* Federal Trade Commission.⁴
 - Texas Co. *v.* Federal Trade Commission.
 - Standard Oil Co. of N. Y. *v.* Federal Trade Commission.
 - Canfield Oil Co. *v.* Federal Trade Commission.
 - Thos. K. Brushart *v.* Federal Trade Commission.
 - White Star Oil Co. *v.* Federal Trade Commission.
 - Paragon Refining Co. *v.* Federal Trade Commission.
 - Columbus Oil Co. *v.* Federal Trade Commission.
 - Standard Oil Co. of Ohio *v.* Federal Trade Commission.
 - Federal Trade Commission *v.* Sinclair Refining Co.³
 - Federal Trade Commission *v.* Standard Oil Co. of N. J.³
 - Federal Trade Commission *v.* Gulf Refining Co.³
 - Federal Trade Commission *v.* Maloney Oil & Mfg. Co.³
 - D. A. Winslow & Co. *v.* Federal Trade Commission.⁴
 - Norden Ship Supply Co. *v.* Federal Trade Commission.⁴
 - Fruit Growers Express Co. *v.* Federal Trade Commission.⁵

(B) CASES IN WHICH THE COMMISSION HAS SOUGHT TO ENFORCE ITS ORDERS.

Thus far the commission has filed but one petition to enforce an order to cease and desist. This was against S. E. J. Cox et al. in the United States Circuit Court of Appeals for the Fifth Circuit. That court, on June 18, 1923, granted the commission's motion for a preliminary restraining order enjoining the respondents from a violation of the order until hearing on the merits.

In each of the above groups, where a case has been decided by both the Circuit Court of Appeals and the Supreme Court of the United States, the decision of the latter tribunal only has been taken into account.

In the list of cases in which the commission was not sustained it will be noted that 12 oil pump and tank cases have been grouped together. While these cases were brought in four circuits, there was only one question involved in the entire group, the complaints, orders, and findings being practically identical. They were consolidated for briefing and argument in the circuit courts, and those

³ Decisions by the Supreme Court of the United States affirming the judgments of the Circuit Courts of Appeals.

⁴ Petition for writ of certiorari denied by the Supreme Court of the United States.

⁵ The commission's petition for writ of certiorari was granted in this case, but the writ was afterwards dismissed upon motion of the commission, the question involved having become moot.

which reached the Supreme Court were decided in one opinion and should be regarded as one case. Two other cases, *D. A. Winslow & Co. v. Federal Trade Commission* and *Norden Ship Supply Co. v. Federal Trade Commission*, involved but one question, were argued together in the fourth circuit, and decided in one opinion.

On this basis, the commission has been sustained in 13 and not sustained in 10 cases involving violation of section 5 of the commission act or the named sections of the Clayton Act.

Three appeals from the commission's orders to cease and desist are now pending in the United States Circuit Court of Appeals, viz, *Armour & Co. v. Federal Trade Commission* (Commission's Docket 351), *Swift & Co. v. Federal Trade Commission* (Commission's Docket 453), and *Chicago Portrait Co. v. Federal Trade Commission* (Commission's Docket 840). They are all in the Seventh Circuit.

II. Cases in which the commission's powers under section 6 of the Federal Trade Commission act were called into question.—Eight cases have involved the commission's power to require reports or to compel access to corporate records for purposes of inspection, six cases being instituted by the commission by petitions for writs of mandamus and two being instituted by corporations for injunctions to restrain the commission from requiring reports. The issues in three of these are identical and in addition two others involve the same question. These five cases were decided in two opinions.

All of these cases were decided against the commission's contention in the lower courts, and all but one are now pending on appeal.

The cases in this group are as follows:

Federal Trade Commission v. Basic Products Co.

Maynard Coal Co. v. Federal Trade Commission.

Claire Furnace Co. et al. v. Federal Trade Commission.

Federal Trade Commission v. The American Tobacco Co.

Federal Trade Commission v. Lorillard Co.

Federal Trade Commission v. Baltimore Grain Co.

Federal Trade Commission v. H. C. Jones Co. (Inc.).

Federal Trade Commission v. Hammond, Snyder Co. (Inc.).

III. Cases where respondents have sought to restrain the commission from issuing or proceeding with its complaints, etc.—In this class of cases, four proceedings have been instituted, the titles of which are as follows:

Douglas Fir Exploitation & Export Co. et al. v. Federal Trade Commission.

Butterick Co. et al. v. Federal Trade Commission.

T. C. Hurst & Son v. Federal Trade Commission.

The Chamber of Commerce of Minneapolis et al. v. Federal Trade Commission.

All of these cases have been decided in favor of the commission.

ECONOMIC WORK OF COMMISSION.

The general economic work of the commission during the past fiscal year, as in previous years, has formed a vital part of its activities and one that is fundamental for the proper presentation of facts relating to the economical and statistical phases of industry to the President, the Congress, and the public. Such facts are fundamental not only with respect to the general problem of maintaining healthful competition in industry and restraining the encroachments of monopoly but are also useful in the fields of industrial organization and marketing methods and for constructive legislative effort. This branch of the work is carried forward under section 6 of the Federal Trade Commission act, which grants the commission power to gather information concerning any corporation engaged in commerce, except banks and common carriers, and also authorizes the commission, upon the direction of the President or either House of Congress, to investigate and report the facts relating to any alleged violation of the antitrust acts by any corporation. The power of the commission to require report under this section is now before the Supreme Court of the United States. Other duties of the commission in this field are to investigate and report to the Attorney General the manner in which final decrees of the United States courts to prevent violations of the antitrust acts are being carried out; upon application of the Attorney General to investigate and make recommendations for the readjustment of the business of any corporation alleged to be violating the antitrust acts; to classify corporations; and to investigate trade conditions in foreign countries.

Inquiries.—A total of 11 economic inquiries were carried forward during the year. These related to the bituminous-coal industry; export grain; foreign control in the petroleum industry; the cotton trade; house-furnishings industries; wheat-flour milling; pulp and paper industry; national wealth, debt, and income; a general study of the grain trade; petroleum industry of Wyoming and Montana; and costs and profits of southern pine-lumber manufacturers.

Six of these inquiries—grain exporting, foreign petroleum, house furnishings, cotton, wheat-flour milling, and national wealth—were initiated by resolutions of the United States Senate.

Reports were issued during the year covering a preliminary survey of the cotton trade, foreign ownership in the petroleum industry, household furniture, bituminous-coal mining, methods and operations of grain exporters, petroleum industry of Wyoming and Montana, and costs and profits of southern pine-lumber manufacturers. Statistics relative to newsprint supply were issued during the year but at the close of the year were discontinued.

Grain and cotton.—The reports regarding both the grain trade and the cotton trade, as well as the current work in the inquiries on these subjects, show the need not only of remedial reforms in the methods of marketing and handling agricultural products and of restraining injurious speculation therein but also the practicability of developing cooperative enterprise to the advantage of both the producer and the consumer.

Petroleum.—The report on foreign ownership in the petroleum industry was occasioned by the activity of the Royal Dutch-Shell group, a combination of British and Dutch industries in acquiring petroleum producing, transporting, refining, and marketing properties and equipment in the United States. The report describes the Royal Dutch-Shell group with special reference to its holdings in the United States, and particularly the absorption of the Union Oil Co. (Delaware); it relates the facts regarding the present ownership and control of the Union Oil Co. of California, and outlines the situation with respect to discrimination of foreign governments against citizens of the United States in the acquisition and development of petroleum-producing properties in foreign lands.

In a brief report on the petroleum trade in Wyoming and Montana, supplementing a previous extensive investigation into conditions in that region, the commission found the whole trade dominated by the Standard Oil interests, which, after perfecting their monopoly by absorbing the Midwest Refining Co., formed an alliance with the Sinclair interests, lessees of the Teapot Dome naval reserve, for the purchase of crude oil and the construction of a pipe line from Wyoming to Kansas City.

Coal.—In connection with the great public concern in the coal industry which marked the past year, the commission completed its preliminary report on investment and profit in soft-coal mining, an important report but not entirely complete because of the handicap of an injunction which prevented the requirement of the additional information needed. The principal conclusions of the report were (1) the need of more accurate and complete information regarding the ownership of bituminous coal deposits and coal mines, the true investment therein, and the true profits arising therefrom; (2) the need of ascertaining the profits of selling companies owned by or affiliated with mining companies, and also with other wholesalers or retailers in coal; (3) the need of establishing the coal industry in public confidence and protecting it by devising lines of Federal supervision and publicity so as to avoid periods of excessively high prices and of severe depressions.

While owing to the injunction in the Maynard Coal case the commission itself undertook no new coal work during the year, it did

give material aid to the United States Coal Commission, which was created by Congress to make a special study and report on the coal problem.

At the request of the Coal Commission and pursuant to law the Federal Trade Commission turned over to it the greater part of its force which had formerly been engaged on its coal inquiries. These employees were coal experts, economists, accountants, and statistical clerks, and formed a supervising force and nucleus for those sections of the Coal Commission's staff dealing with the costs and profits of coal-mining companies and coal dealers.

House furnishing.—The first report on house furnishings covered ordinary wooden household furniture. The report was in two sections, the first pertaining to investment, costs, prices, and profits, and the second to the organization and concentration of ownership of corporations and firms and to unfair practices and restraints of competition. This was the first report of the commission to trace a manufactured product from the producer to the consumer through the crest of the "peace boom" in 1920, and through the "buyers' strike" and business depression which followed. It showed that in 1920, of the consumers' dollar, about 13.3 cents went for retailers' profit, 8.3 cents for manufacturers' profit, 2.1 cents for freight, and the balance for manufacturers' and retailers' costs and expenses. In 1921, 6.9 cents went for retailers' profit, 4.2 cents for manufacturers' profits, 3.3 cents for freight, and the balance for manufacturing and retailing costs and expenses. The second part of the report on kitchen furnishings and domestic appliances is under way.

In various recent economic inquiries and in particular some on which reports have been issued during the fiscal year the commission has brought to public view the subtle restraints of trade through open price associations for which justification has been attempted on the ground of necessary information for a rational conduct of competitive trade.

In addition to the economic work as described above the commission, through its chief examiner, conducted three general investigations and issued reports of conditions in industry where questions as to violations of the antitrust laws are involved. These are:

Fertilizer.—Under a resolution of the Senate an inquiry was made as to whether the production or sale of fertilizer is controlled by an unlawful combination and whether dealers or manufacturers of the product had conspired to fix prices. The report to the Senate showed, among other interesting facts, that in 1921 the seven largest companies in the industry, i. e., American Agricultural Chemical Co., the Virginia-Carolina Chemical Co., the International Agricultural Corporation, F. S. Royster Guano Co., Armour Fertilizer Works, Swift & Co., and the Baugh Co., produced 65 per cent of the total

fertilizer used in the United States. The report also disclosed an increasing activity among farmers' cooperative agencies.

Calcium arsenate.—A resolution of the Senate directed an inquiry as to the alleged violation of the antitrust acts by the manufacturers and dealers in calcium arsenate. Report was submitted from which it was concluded that the main reasons for the marked increase in price were the increased demand for the product for use in combating the cotton-boll weevil and the inadequacy of the available supply of white arsenic, the chief ingredient of calcium arsenate.

Lumber.—At the request of the Attorney General a report was made summarizing the activities of trade associations composed of manufacturers of posts and poles. These associations have their headquarters at Spokane, Wash., and are as follows: Western Red Cedar Association, Lifetime Post Association, and the Western Red Cedar Men's Information Bureau. A similar report on the activities of the Northern Hemlock and Hardwood Manufacturers' Association was also submitted.

A complete investigation is being made by the chief examiner of the radio industry by virtue of House Resolution 548, adopted February 21, 1923. The data being collected is for the use of Congress in determining what further legislation, if any, is needed for the regulation of this industry. Some phases of the inquiry are quite technical since a large number of patents and contracts relating thereto are involved. Considerable work has already been done and will be completed in time for the commission to make its report to the next Congress when it convenes.

EXPORT TRADE ACTIVITIES.

Under the export trade act (Webb-Pomerene law) of April 10, 1918, the commission is given jurisdiction over combinations or "associations" organized for the purpose of, and solely engaged in, export trade from the United States to foreign nations. The sections of this act provide exemptions from the antitrust laws, provided such associations shall not restrain trade in the United States nor conspire to enhance prices or lessen competition within the United States.

Associations to the number of 123, with members approximating 1,500 throughout the United States, have filed papers with the commission under this act. The associations are engaged in the exports of raw materials and manufactured products of many kinds.

A substantial increase is noted in exports by associations during the past fiscal year. The revival of foreign trade is reflected in a renewed interest in the export trade act and operations under its provisions.

Eight new associations were organized during the year and a number of others are in process of formation. The new associations are: American Surface Abrasive Export Corporation, New York City; American Tire Manufacturers' Export Association, New York City; Delta Export Lumber Corporation, Memphis, Tenn.; Grain Products Export Association, New York City; Naval Stores Export Corporation, New Orleans, La.; Rubber Export Association, New York City; Sulphur Export Corporation, New York City; United States Maize Products Export Association (Inc.), Chicago, Ill.

In the interest of the foreign trade of the United States the commission has made inquiries in the matter of complaints filed by foreign concerns against American exporters and importers. During the year 114 such complaints were handled, 35 were finally disposed of, and 79 were pending at the close of the fiscal year. Various Government officers and trade organizations avail themselves of the investigatory powers granted the commission and refer complaints for inquiry. Cases were received during the year from the State, Commerce, and Treasury Departments, the Department of Agriculture, the Department of Justice, the chambers of commerce, and from foreign complainants direct. Ordinarily, however, complaint is made by the foreign concern to the office of the American consul and is referred back to the United States for investigation.

These complaints involve charges of nondelivery of goods ordered, nonpayment for goods received, shipments of defective or damaged goods or articles below sample, short-weight delivery, and various other matters concerning orders and shipments of goods to and from foreign countries.

The commission's inquiries serve to establish the facts of the complaint through which the parties may be able to adjust their differences. In many cases the facts developed serve to clear the American firms of responsibility. A number of complaints were handled as unfair methods of competition cases.

The commission feels that its report of facts in these disputes is in the interest of American business abroad. Litigation for small claims is too expensive to be practicable, yet the smallest claim may result in widest publicity to the discredit of American concerns in foreign countries. As stated in its last report, the commission is assured that the adjustment of even a small complaint goes far toward the establishment of confidence and good will in foreign markets.

At the request of the State Department the commission made a special inquiry concerning alleged tampering with Canadian grain passing in bond through the United States for shipment via United States ports to foreign countries. No evidence was found of deliberate tampering or mixing within the United States, but recom-

mendations were made for closer Federal supervision of Canadian grain shipped in bond through this country.

TRADE PRACTICE SUBMITTAL.

From time to time the commission is approached by groups of business men representing an entire industry and seeking the assistance of the commission in the elimination from their industry of practices found to be unfair and harmful but which the industry is unable by itself to eliminate. The commission has lent its assistance in these situations and has called the industry together in gatherings which have been termed "trade-practice submittals." These submittals have been held in the following industries: Ink, celluloid, knit goods, paper, oil, used typewriters, creamery, hosiery, guarantee against decline, macaroni, silverware, gold knives, watch cases.

At these submittals the objectionable practices are frankly discussed and resolutions usually adopted by the industry looking to their elimination. These resolutions are considered by the industry as binding upon it and are received by the commission as informative as to conditions in the particular industry and the views of the trade thereon.

During the past year, at the request of manufacturers of gold-mounted knives, representing a major portion of those engaged in the industry, a trade-practice submittal was held before Chairman Murdock in New York City and was attended by 24 members of the trade. The gathering was called to discuss practices having to do with the marking of knives mounted in gold.

The industry adopted a resolution which was intended, first, to define gold mounting and, second, to condemn any method in the construction of a gold-mounted knife by which it may be made to appear that more gold of an indicated karat fineness has been used than has been employed in fact.

The second trade-practice submittal held during the year was held before Chairman Murdock at Washington, D. C., and was at the instance of a number of manufacturers of gold-filled and gold-plated watchcases representing approximately 75 per cent of the industry. The submittal was held for the purpose of giving those engaged in the industry an opportunity to express their views in relation to the alleged unfairness of prevailing methods of branding their product with long-time guaranties, and otherwise, and the practicable methods of correcting any evils found to exist. The gathering was attended by all the principal manufacturers.

The principal office of the commission at Washington, D. C., is open each business day from 9 a. m. to 4.30 p. m. To expedite the

investigation and trial of cases and also in the interest of economy, the commission maintains branch offices at New York, Chicago, and San Francisco. At the close of the year the commission had 308 employees, of which number there were 31 lawyers employed in the trial of cases, 54 lawyers employed in the investigation of complaints, 30 economists, 25 accountants, and the remainder, 168, statistical, clerical, and administrative employees. Appropriation to the amount of \$974,480.32 was available to the commission during the year. The commission issued 14 publications during the year; these are listed on page 27 of the report.

ADMINISTRATIVE DIVISION.

The sections in this division are those generally adopted in all Government departments and establishments and are arranged to care for the management of the commission's activities. Changes in arrangements and functions are less liable to occur in this than in the other divisions of the commission where the character of the work is continually varying according to the demands made upon them through the several sources of direction that govern their scope and activities.

For these reasons there has not been any material change in the management, organization, and procedure of this division. All of its functions are largely governed by general statutes and orders applicable to all work of this character wheresoever situate in the Government service. Units in this division are:

Office of the secretary.—The secretary is the custodian of the minutes, of all confidential papers, and of the seal of the commission; he signs all orders of the commission in formal docket cases and intraoffice orders to all chiefs of divisions and employees. The clerks in this office attend to the writing up of minutes, preparation of answers to all inquiries from the general public and interested parties with reference to the status of formal and informal proceedings. They are also responsible for the service of all formal complaints and orders and for notices of assignments of trial to interested parties in formal proceedings. It is the duty of this office also to arrange for reporting of all formal proceedings before the commission. The secretary's office is also responsible for certification of copies of formal records to the different circuit courts of appeal, to the United States Supreme Court, and of such documents as are requested by the public or other departments of the Government.

Office of assistant secretary.—Administrative assistant to the secretary. Assumes duties and responsibilities of secretary during absence of said officer.

Disbursing office, having charge of the fiscal affairs.

Supplies and equipment section, in charge of building and quarters, purchase of supplies and equipment, supervision of the messenger, mechanical, and laboring forces.

Personnel section, in charge of all matters relating to appointments, promotions, demotions, transfers, changes in designation, and the relationship between this commission and the Civil Service Commission.

Mail and files section, where the receipt and distribution of the mail takes place and where all the papers and records of the commission except those of the docket section are finally receivable and cared for.

Publications section, in charge of all matters having connection with the Public Printer and the Superintendent of Documents. In this section are handled the distribution of publications, maintenance of mailing lists, multigraph, mimeograph, and photostat duplication work, and all of the clerical work necessary in keeping the records of this branch of the commission's activities.

During the fiscal year ended June 30, 1922, 4,735 copies of the commission's reports were sold by the Superintendent of Documents for \$1,108. The figures for the instant fiscal year are not available, but it is anticipated that they will far exceed the previous year.

Docket section is a section somewhat comparable to the office of a clerk of a court. All applications for the issuance of complaints pass through this section; it records and files all correspondence, exhibits, notices of assignments to attorneys, field and office reports, and all other material in connection with such applications. In its custody also are pleadings, exhibits, correspondence, and other material relating to formal complaints which have been served, and it maintains the current docket record for the inspection of the public, together with a proper supply of mimeographed copies of pleadings in the various cases before it for distribution to interested parties upon application. This section also indexes and files a large quantity of legal material of a general nature not directly connected with specific applications for complaints or formal complaints, and performs various miscellaneous services for the legal staff of the commission. In addition to the above, this section handles all the work involved in the direction of the official reporters for the commission (said work being done under contract), the receipt, care, and custody of the transcript of hearings, and the auditing of vouchers covering payment for reportorial services.

Stenographic section, from which is supplied to all of the force needed stenographic and typewriting assistance.

Library section.—The functions carried on in the library are under the direction of the administrative division.

The library has a collection of over 20,000 books, pamphlets, and bound periodicals, devoted largely to the subjects of law, economics, and industries. In addition are extensive files of clippings, leaflets, etc. The distinctive features of the economic collection are the files relating to corporation and trade association data and files of representative trade periodicals for the more important industries. There is a function peculiar to the commission's library in the character of the work that it performs, and that is in the material it gathers in the form of pamphlets, corporation reports, association records, current financial and statistical services, catalogues, trade lists, etc., which are not ordinarily found in libraries of even a technical character. The greater amount is furnished gratuitously and much of

it is of a confidential character. This material furnishes a valuable adjunct to the investigatory work and is adapted to furnish leads to examinations rather than complete and substantive information on the subject matter.

The bulk of the law collection consists of the various national and regional reporter systems and the more important reference encyclopedias and reference books that are commonly found in law libraries. The distinctive feature, however, is a file of records and briefs of antitrust cases, which were acquired without expenditure.

Care is exercised to limit the selection of books to supply only those needed constantly and immediately in the commission's work. The commission is far removed from other governmental law libraries and the library of the Supreme Court of the United States and must have available sufficient volumes to answer the ordinary requirements of the legal force. In all other instances use is made of the other libraries in Washington.

APPROPRIATIONS AND EXPENDITURES.

The appropriations of the commission for the fiscal year ended June 30, 1923, under the executive and sundry independent executive act approved February 13, 1922, amounted to \$955,600. In addition to this amount the commission had available the sum of \$18,880.32,¹ making a total amount available of \$974,480.32.

The expenditures of the commission for the fiscal year ended June 30, 1923, plus the outstanding liabilities as of that date, amounted to \$970,753.28, which left an unexpended appropriation balance of \$3,727.04. Of this amount, \$1,750.93, represented the unexpended balance of the appropriation provided for the payment of increase of compensation (bonus), and was available for no other purpose. The remainder, \$1,976.11, represents the unexpended balance of the commission's lump-sum appropriation.

The appropriations, including unexpended balances of appropriations for previous years and expenditures, are tabulated below:

	Amount available.	Amount expended.
Federal Trade Commission, 1923:		
Salaries, commissioners, secretary.....	\$33,000.00	\$55,000.00
Increase of compensation (bonus).....	50,600.00	44,849.07
All other authorized expenses.....	550,000.00	877,485.91
Total fiscal year, 1923.....	955,600.00	931,334.98
Unexpended balances:		
Federal Trade Commission—		
1922.....	88,509.71	45,008.33
1921.....	72,066.00	Cr. 977.71
1913-14.....	18,880.32	18,880.32
	1,135,046.12	994,845.92

¹ This amount represents the unexpended balance of the amount made available by the ruling of the Comptroller of the Treasury under the second paragraph of section 3 of the act creating the commission, said amount representing the unexpended balance of the appropriations for the Bureau of Corporations for the fiscal year 1913-14.

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It is estimated that the outstanding liabilities of the commission as of June 30, 1923, amount to \$20,537.98, payment of which will be made from the unexpended balance of the appropriations "Federal Trade Commission, 1923."

A detailed analysis of the expenditures of the commission is given in the following statement:

Detailed statement of the expenditures of the Federal Trade Commission for the fiscal year ended June 30, 1923.

ADMINISTRATIVE DIVISION.

Item.	Office.	Field.
Annual leave.....	\$14,034.26	.....
Sick leave.....	4,735.72	.....
General administration.....	74,924.57	\$579.93
Mail and files.....	10,849.20	.....
Disbursement and accounts.....	9,885.62	.....
Purchases and supplies.....	5,466.67	.....
Docket division.....	14,721.59	.....
Library.....	6,437.63	.....
Messengers.....	7,693.24	.....
Time excused by Executive or commission's order.....	415.11	.....
Economic supervision.....	62.67	.....
Legal supervision.....	14.99	.....
Medical attendant.....	1,151.77	.....
Printing and publications.....	10,997.76	.....
Stenographic.....	23,676.46	532.50
Appointment division.....	8,090.12	.....
Labor.....	2,652.84	1.00
Board of review.....	23.53	.....
Preliminary work on informal complaints.....	97.45	66.26
Informal complaints.....	65.25	190.57
Formal complaints.....	7.77	179.09
Court leave.....	2.99	.....
Export Grain Inquiry, Part 5, Statistical Investigation of Market Manipulations.....	88.98	1,221.48
Foreign oil control.....	3.29	.....
Supplies.....	7,478.16	.....
Communications.....	3,823.89	.....
Transportation of things.....	425.57	.....
Printing, etc.....	22,460.21	.....
Heat and light.....	129.28	.....
Rent.....	8,662.00	.....
Repairs.....	730.31	.....
Miscellaneous.....	352.30	.....
Equipment.....	8,562.45	.....
Total.....	248,727.84	2,740.83

ECONOMIC DIVISION.

Annual leave.....	\$25,461.75	.....
Sick leave.....	6,919.49	.....
General administration.....	362.51	.....
Time excused by Executive or commission's order.....	562.16	.....
Economic supervision.....	17,192.19	.....
Legal supervision.....	641.96	.....
Services rendered to Department of Justice.....	284.34	.....
Services rendered to Senate Committee on Manufactures—Crude oil and Petroleum products.....	100.32	.....
Services rendered to Department of Commerce.....	305.16	.....
Services rendered to Coal Commission.....	964.77	.....
Military leave.....	291.31	.....
Printing and publications.....	394.22	.....
Informal complaints.....	5,792.44	\$996.96
Formal complaints.....	9,049.58	2,313.90
Miscellaneous computing machine work.....	549.73	.....
Lumber.....	114.97	.....
Trading with the enemy.....	5.95	.....
Coal.....	701.93	.....
Steel.....	1,057.56	.....
Lumber.....	560.76	.....
Livestock and its products.....	71.25	.....
Grain and produce exchanges.....	14,827.50
Paper schedules.....	6,042.39

ADMINISTRATIVE DIVISION.

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Detailed statement of the expenditures, etc.—Continued.

ECONOMIC DIVISION—Continued.

Item.	Office.	Field.
Milk products.....	\$134.33	
Tobacco situation.....		Cr \$2.00
Export Grain Inquiry, Part 1, Prices, Costs, and Profits.....	5,105 28	227 61
Export Grain Inquiry, Part 2, Market Manipulations.....	520 33	288 16
Export Grain Inquiry, Part 3, Control and Interrelations.....	4,160 26	2,509 85
Export Grain Inquiry, Part 4, Methods of Foreign Buyers.....	4 53	16 28
Export Grain Inquiry, Part 5, Statistical Investigation of Market Manipulations.....	8,159 83	4,047 38
House Furnishings Goods Industry and Trade, Part 1, Competitive Conditions.....	6,652 37	1,004 22
House Furnishings Goods Industry and Trade, Part 2, Costs, Prices, and Profits.....	7,537.35	104.16
Second Section of the House Furnishings Goods Industry and Trade, "Kitchen Equipment," Part 1, Competitive Conditions.....	18,940 26	4,223.57
Second section of the House Furnishings Goods Industry and Trade, "Kitchen Equipment," Part 2, Costs, Prices, and Profits.....	24,557 01	1,401.49
Cotton Trade Inquiry, Part 1, Cotton Exchanges.....	24,739 73	7,407 29
Cotton Trade Inquiry, Part 2, Cotton Statistics.....	13,102 11	70.99
Cotton Trade Inquiry, Part 3, Cotton Manipulations.....	3,523 75	1,805.10
Foreign oil control.....	5,222 42	472.12
Fertilizers.....	14.68	
Flour milling.....	2,254.47	3,466.26
National Wealth Inquiry, National Wealth, Part 1.....	1,067.44	
National Wealth Inquiry, Part 2, National Income.....	289 78	
National Wealth Inquiry, Part 3, National Taxation.....	61 01	
Total.....	238,379.70	30,323 44

LEGAL DIVISION.

CHIEF COUNSEL.		
Annual leave.....	\$12,005 17	
Sick leave.....	3,541 34	
General administration.....	9 90	
Time excused by Executive or commission's order.....	272.18	
Special briefs.....	139.21	
Legal supervision.....	17,563.96	\$122.56
Study of procedure.....	49.03	
Stenographic.....	2.49	
Special for commissioners.....	67.17	
Board of review.....	435.46	
Preliminary work on informal complaints.....	19.80	
Informal complaints.....	4,638.68	378.60
Formal complaints.....	89,099.14	54,278.85
Petitions of mandamus.....	1,846.70	321.39
Preliminary work on formal complaints.....	132.53	
Injunction proceedings against the commission.....	27.23	
Court leave.....	4.71	
Grain products.....	21.13	
Export trade.....	35.48	
Export Grain Inquiry, Part 5, Statistical Investigation of Market Manipulations.....	76.87	
Second Section of the House Furnishings Goods Industry and Trade, "Kitchen Equipment," Part 1, Competitive Conditions.....	29.43	
Second Section of the House Furnishings Goods Industry and Trade, "Kitchen Equipment," Part 2, Costs, Prices, and Profits.....	7.07	
Cotton Trade Inquiry, Part 1, Cotton Exchanges.....	11.49	
Total.....	130,036.17	55,100.40
CHIEF EXAMINER.		
WASHINGTON (D. C.) OFFICE.		
Annual leave.....	6,759.04	
Sick leave.....	1,093.92	
Library.....	565.68	
Time excused by the Executive or commission's order.....	199.11	
Legal supervision.....	15,355.50	353.98
Services rendered to Federal Real Estate Board.....	37.94	
Services rendered to Departmental Contract Board.....	22.66	
Services rendered to Senate Committee on Manufactures—Crude oil and petroleum products.....	Cr. 1.63	
Corporation reports.....	9.31	
Study of procedure.....	61.91	
Labor.....		3.00
Special for the commissioners.....	5.66	
Board of review.....	2,112.62	
Preliminary work on informal complaints.....	8,006.99	2,515.07
Informal complaints.....	15,659.90	11,484.08
Formal complaints.....	32,177.72	17,396.84

Detailed statement of the expenditures, etc.—Continued.

LEGAL DIVISION—Continued.

Item.	Office.	Field.
CHIEF EXAMINER—Continued.		
WASHINGTON (D. C.) OFFICE—continued.		
Lumber.....	\$14.86	
Stock securities (blue sky).....	2,328.98	\$141.34
Trade practice submittal guaranteed against price decline.....		1.85
Export Grain Inquiry, Part 1, Prices, Costs, and Profits.....	28.47	
Cotton Trade Inquiry, Part 3, Cotton Manipulations.....		40.20
Fertilizers.....	1,764.52	1,081.29
Radio industry.....	7.92	
Total.....	86,202.08	33,019.60
NEW YORK BRANCH OFFICE.		
Annual leave.....	2,783.84	
Sick leave.....	638.80	
Legal supervision.....	4,554.41	603.20
Study of procedure.....	42.43	4.78
Stenographic.....	4,016.54	
Preliminary work on informal complaints.....	3,366.98	572.88
Informal complaints.....	10,063.92	3,483.09
Formal complaints.....	3,404.59	1,131.87
Radio industry.....	331.09	65.60
Total.....	29,202.60	5,861.40
CHICAGO BRANCH OFFICE.		
Annual leave.....	2,277.38	
Sick leave.....	269.81	
Time excused by the Executive or commission's order.....	8.28	
Legal supervision.....	3,299.74	393.56
Study of procedure.....	209.13	92.85
Stenographic.....	3,170.21	177.00
Preliminary work on informal complaints.....	2,614.73	342.91
Informal complaints.....	8,570.13	3,334.45
Formal complaints.....	5,390.15	2,124.07
Lumber.....	399.30	140.86
Export trade.....	19.82	
Radio industry.....	28.88	
Total.....	26,327.54	6,605.70
SAN FRANCISCO BRANCH OFFICE.		
Annual leave.....	560.16	
Sick leave.....	7.15	
Legal supervision.....	398.70	126.71
Stenographic.....	1,215.19	255.25
Preliminary work on informal complaints.....	1,692.01	512.96
Informal complaints.....	1,972.81	1,539.60
Formal complaints.....	835.62	609.39
Lumber.....	244.47	71.97
Stock securities (blue sky).....	15.59	
House Furnishing Goods Industry and Trade, part 1, Competitive Conditions.....		171.67
Total.....	6,931.70	3,287.55
SUMMARY, CHIEF EXAMINER.		
Washington office.....	86,202.08	33,019.60
New York branch office.....	29,202.60	5,861.40
Chicago branch office.....	26,327.54	6,605.70
San Francisco branch office.....	6,931.70	3,287.55
Total.....	148,663.92	48,774.25
BOARD OF REVIEW.		
Annual leave.....	1,834.23	
Sick leave.....	912.15	
Stenographic.....	55.06	
Board of Review.....	15,444.01	
Informal complaints.....	44.82	
Formal complaints.....	622.05	190.28
Total.....	18,912.12	190.28

Detailed statement of the expenditures, etc.—Continued.

LEGAL DIVISION—Continued.

Item.	Office.	Field.
CHIEF EXAMINER—Continued.		
EXPORT TRADE BRANCH.		
Annual leave.....	\$882 41	
Sick leave.....	187 93	
Time excused by Executive or commission's order.....	11 50	
Board of review.....	13 21	
Formal complaint.....	1,189 16	\$1,866.66
Trading with the enemy.....	8 26	
Export trade.....	8,469.80	1,016.61
Total.....	10,762.27	2,903.27
TRADING WITH THE ENEMY.		
Annual leave.....	451 88	
Sick leave.....	289 49	
Time excused by Executive or commission's order.....	13 53	
Formal complaint.....	24 57	
Court leave.....	45 98	
Trading with the enemy.....	3,202.71	270.48
Total.....	4,028.16	270.48

SUMMARY OF EXPENDITURES.

Item.	Office.	Field.	Total.
Administrative.....	\$248,727.84	\$2,740 83	\$251,468.67
Economic.....	238,379.70	30,323.44	268,703.14
Legal.....			
Chief counsel.....	130,036 17	55,100 40	185,136 57
Chief examiner.....	148,663.92	48,774.25	197,438.17
Board of review.....	18,912 12	190.26	19,102.38
Export trade branch.....	10,762.27	2,903 27	13,665 54
Trading with the enemy.....	4,028.16	270.48	4,298.64
Grand total.....	799,510.18	140,302.93	939,813.11

Adjustments.—The following adjustments are made to account for the difference between the cost and disbursements:

Total cost for the year ended June 30, 1923.....	\$939,813.11
Less transportation issued.....	48,226.95
New total.....	891,586.16
Plus transportation paid.....	45,404.81
New total.....	936,990.97
Allotted to the retirement fund.....	9,005.83
Increase of compensation (bonus).....	48,849.07
Disbursements for the year ended June 30, 1923.....	994,845.92

The appropriations for the Federal Trade Commission for the fiscal year ended June 30, 1923, were as follows:

For five commissioners, at \$10,000 each; secretary, \$5,000; in all, \$55,000.

For all other authorized expenditures of the Federal Trade Commission in performing the duties imposed by law or in pursuance of law, including personal and other services, supplies and equipment, law books, books of reference, periodicals, printing and binding, garage rental, traveling expenses in-

cluding actual expenses at not to exceed \$5 per day, or per diem in lieu of subsistence not to exceed \$4, newspapers, foreign postage, and witness fees and mileage in accordance with section 9 of the Federal Trade Commission act, \$850,000.

PERSONNEL.

On December 1, 1922, Vice Chairman Victor Murdock was elected chairman of the commission for the ensuing year, succeeding Chairman Nelson B. Gaskill. On the same date, Commissioner John F. Nugent was elected vice chairman for the ensuing year.

During the fiscal year ended June 30, 1923, 29 employees entered the service of the commission, making a total of 2,112 original appointments in the service of the commission since its creation. During the year, 39 employees left the commission's service, leaving the total number of employees at the close of June 30, 1923, 308, with a total basic salary of \$762,040. Of this number, 179 were under civil-service appointment and designation, and 129 held positions excepted from civil service rules and regulations.

At the close of the fiscal year the commission had 58 employees who have had United States military or naval service. The number of female employees at the close of June 30, 1923, was 100. For the same date the number of employees in the service coming under the provisions and benefits of the civil service retirement law was 178.

APPLICATIONS FOR COMPLAINTS AND FORMAL COMPLAINTS.

The following table shows in detail the receipt and disposition of applications for complaints, by months, for the fiscal year ended June 30, 1923, and by fiscal years from the organization of the commission to June 30, 1923:

Table showing receipt and disposition of applications for complaints and formal complaints, by fiscal years, from organization of the Commission to June 30, 1923.

Fiscal year.	Applications for complaints.				Formal complaints.				Cases appealed.
	Docketed.	Disposed of.			Served.	Disposed of.			
		Dis-missed	For-mals served.	Total.		Dis-missed	Orders to cease and desist	Total.	
Organization (Mar. 16, 1915) and prior thereto to June 30, 1915.....	112	8		8					
Ended June 30:									
1916.....	134	105	3	108	5				
1917.....	153	79	16	95	9				
1918.....	332	160	80	240	154	7	3	78	4
1919.....	535	301	125	426	135	13	71	84	4
1920.....	724	339	220	559	308	43	112	155	9
1921.....	426	357	157	514	177	37	118	155	17
1922.....	382	267	103	390	111	75	91	166	5
1923.....	416	181	121	302	144	87	82	169	5
Total.....	3,214	1,817	825	2,642	1,043	263	548	811	40

PUBLICATIONS ISSUED.

The following publications were issued by the Federal Trade Commission during the fiscal year ended June 30, 1923:

Annual Report of the Federal Trade Commission for the fiscal year ended June 30, 1922; November 22, 1922. 109 pp.

Calcium Arsenate Industry, June 23, 1923. 21 pp.

Preliminary Report on the Cotton Trade, February 28, 1923. 28 pp.

Decisions, Findings, and Orders of the Federal Trade Commission. Volume IV (July 1, 1921, to June 30, 1922), April 19, 1923. 651 pp.

Fertilizer Industry, March 15, 1923. 87 pp.

Foreign Ownership in the Petroleum Industry, March 28, 1923. 152 pp.

House Furnishings Industry, Volume I (Household Furniture), May 26, 1923. 484 pp.

Index-Digest of Federal Trade Commission Decisions, volumes 1, 2, 3, November 28, 1922. 233 pp.

Preliminary Report on Investment and Profits in Soft Coal Mining, July 6, 1922. 222 pp.

Methods and Operations of Grain Exporters, Volume I (Interrelations and Profits), October 21, 1922. 123 pp.

Petroleum Industry of Wyoming and Montana, August 25, 1922. 3 pp.

War Time Costs and Profits of Southern Pine Lumber Manufacturers, November 29, 1922. 94 pp.

Western Red Cedar Association, February 26, 1923. 22 pp.

Northern Hemlock and Hardwood Manufacturers' Association, May 7, 1923. 52 pp.

LEGAL DIVISION.

The legal division of the commission includes two branches, viz, the trial division, at the head of which is the chief counsel, who is also the legal advisor to the commission, and the examining and investigating division, at the head of which is the chief examiner. The latter division makes preliminary investigations of all practices complained of to the commission as being in violation of the acts which it is charged with enforcing. If as a result of such inquiry formal complaints are issued, the respondents are directed to make answer and show cause why an order to cease and desist from the use of the practices charged should not issue. After joinder of issue, testimony is taken before a trial examiner who hears the testimony and makes a preliminary report on the facts to the commission.

CHIEF COUNSEL.

The chief counsel directs the trial of all cases. When there is a review of the orders of the commission by the circuit courts of appeals, as provided by statute, the conduct of the cases is also in the hands of the chief counsel and his staff. If recourse be had to the Supreme Court of the United States, the chief counsel cooperates with the Solicitor General in the preparation of the cases.

During the year the commission disposed of 126 formal complaints. In all of these cases, in the absence of an admission of the facts and stipulation in lieu of testimony, trials were had at different places throughout the country and witnesses were examined and documentary evidence received in support of the charges stated in the complaint and on behalf of the parties against whom the complaint had been issued. The cases then came for final determination before the commission on brief and oral argument. Upon such determination orders to cease and desist were issued by the commission in 78 formal cases during the fiscal year, ending June 30, 1923.

Complete lists of the cases disposed of during the year under formal complaints and those still pending before the commission appear further on in this report under appropriate captions; but it is desired to make brief mention at this point of some of the more important or unusual cases or classes of cases contained in those lists.

CASES INVOLVING SECTION 7 OF THE CLAYTON ACT.

Proceedings under section 7 of the Clayton Act have increased in number during the year and have emphasized the importance of that section. In proceedings against Swift & Co., Western Meat Co., and

Thatcher Manufacturing Co. the formal complaints charged the acquisition of stock in other corporations in violation of section 7 of the Clayton Act, and final orders were issued in these cases during the year. Two of these complaints also charged unfair methods of competition under section 5 of the Federal Trade Commission act. The orders of the commission required each respondent to divest itself of the stock acquired and held contrary to section 7 and to cease and desist from the ownership, management, operation, and control of the assets, rights, property, and privileges resulting from such acquisition. A proceeding charging the Owens Bottle Co. with acquiring the stock of three corporations in violation of section 7 was partly tried and is nearing completion, and formal complaints have been issued against Standard Oil Co. of New Jersey, Illinois Glass Co., Hygrade Lamp Co., and International Shoe Co. charging each of them with acquiring stock in other corporations in violation of section 7 of the Clayton Act.

“PITTSBURGH PLUS” CASE.

A complaint was issued against the United States Steel Corporation, American Bridge Co., American Sheet & Tin Plate Co., Carnegie Steel Co., National Tube Co., American Steel & Wire Co., Illinois Steel Co., Minnesota Steel Co., Clairton Steel Co., Union Steel Co., the Lorain Steel Co., and the Tennessee Coal, Iron & Railroad Co., alleging that the respondents are discriminating in price between customers, contrary to both the Federal Trade Commission act and section 2 of the Clayton Act. The discrimination, it is averred in the complaint consists in the fact that customers everywhere are charged the Pittsburgh base price for steel products plus an amount equivalent to the rate of freight from Pittsburgh to destination, irrespective of the place of the actual manufacture of the steel. By way of illustration, it is alleged that for steel manufactured at Duluth the discrimination against a Duluth customer, as contrasted with sales to a Pittsburgh customer buying Pittsburgh steel, is \$13.20 per ton; that the discrimination against a La Porte, Ind., customer buying at Chicago, as contrasted with a Pittsburgh customer buying Pittsburgh steel, is \$3.30; and that the discrimination, in varying degrees, exists against steel buyers at all points outside Pittsburgh.¹ The practice is averred to have the following effects:

First. The substantial lessening of the competition of western and southern manufacturing buyers of steel in meeting eastern manufacturing buyers, and their elimination from important markets.

¹ There is a local variation in Birmingham, Ala., section which is not described herein for the sake of brevity.

Second. The substantial lessening of competition with respondents and a tendency toward monopoly for respondents in lines wherein they are competitors of their customers, on the ground that respondents do not pay the discriminatory price.

Third. The substantial lessening of competition among all producers of steel in the United States, on the ground that they charge the Pittsburgh base price plus any amount equivalent to the rates of freight to the point of delivery, irrespective of the location of the steel mill, and that without the maintenance of the said basing practice by respondents the other steel producers of the country would be unable to maintain the said prices.

Testimony in support of the complaint and for the defense has involved a most searching inquiry, not merely into competitive conditions surrounding steel makers but also into many lines of industry wherein steel is an important cost factor, in order to ascertain the effect of the practice upon the markets and the competitive powers of competing purchasers of steel throughout the country. Hearings have been held at Chicago, Pittsburgh, Milwaukee, Detroit, New York, Minneapolis, Duluth, Chattanooga, Birmingham, and Washington. The defense is to close shortly after the end of the fiscal year.

STEEL MERGER CASES.

During the latter part of the last year the commission issued a complaint against the Bethlehem Steel Corporation and the Lackawanna Steel Co., charging that the acquisition of the properties and assets of the latter by the former was in violation of section 5 of the Federal Trade Commission act; and a complaint against the Midvale Steel & Ordnance Co., Cambria Steel Co., Republic Iron & Steel Co., and Inland Steel Co., charging that the consolidation of these companies was also in violation of said section 5. This latter consolidation was abandoned shortly after issuance of the complaint, which was dismissed. A short time thereafter Bethlehem Steel Corporation and Bethlehem Steel Co. purchased the properties, assets, and businesses of Midvale Steel & Ordnance Co. and Cambria Steel Co. The commission thereupon, under date of January 26, 1923, issued a complaint against Bethlehem Steel Corporation, Bethlehem Steel Co., Bethlehem Steel Bridge Co., Lackawanna Steel Co., Lackawanna Bridge Works Corporation, Midvale Steel & Ordnance Co., and Cambria Steel Co. The complaint charges that the consolidation of these companies, the only large and thoroughly integrated steel companies east of Pittsburgh, will substantially lessen competition among the respondents, has a dangerous tendency unduly to hinder competition in the iron and steel industry, and is an unreasonable restraint upon competition amounting to a restraint of

trade in the iron and steel industry, particularly in the northeastern section of the United States. The commission after issuing this complaint dismissed the complaint first above mentioned. The case was pending at the close of the fiscal year.

MOTION-PICTURE CASES.

During the year the commission considered several questions of alleged unfair methods of competition in the motion-picture industry. These cases involved for the most part the distribution for exhibition of old or reissued motion-picture films under new names, without revealing to the exhibitors or to the public in any adequate manner, if at all, that such films had previously been given more or less widespread distribution under a different name. In three of such cases which were completed during the year the commission was of the opinion that the companies concerned were violating section 5 of the Federal Trade Commission act and issued orders to cease and desist. These companies were the American Film Co., Signet Films (Inc.), and the Eskay Harris Film Co.

By far the most important case dealing with the motion-picture industry remained uncompleted at the close of the year, notwithstanding the taking of testimony had consumed several weeks up to that time. The respondents are Famous Players-Lasky Corporation, Realart Pictures Corporation, the Stanley Co. of America, the Stanley Booking Corporation, Black New England Theaters (Inc.), Southern Enterprises, Saenger Amusement Co., and certain individual defendants, officers of said companies. These respondents include some of the largest and most powerful factors in the three branches of motion-picture industry, namely, the production, the distribution, and the exhibition of pictures. They are charged with a conspiracy to dominate and monopolize the industry in the United States, and with various specific acts looking toward the carrying into effect of the object of the conspiracy. Due to the importance of the industry and its diversified character, not only as to physical field of operations but also as to the necessarily different personnel and methods employed in the three separate branches above named, a vast amount of work has devolved upon the commission and its employees in the case. The chief counsel assumed personal charge of the conduct of the hearings, and it is anticipated that the completed record will be ready for disposition by the commission on or before the first of the calendar year.

THE BISCUIT CASES.

Following the usual preliminary investigations, the commission issued formal complaints against the two largest biscuit and cracker

manufacturers in the United States, the National Biscuit Co. and the Loose-Wiles Biscuit Co., charging them with violations of section 2 of the Clayton Act and section 5 of the Federal Trade Commission act. Such charges were based on the alleged practices of these companies in giving certain discounts based on total purchases over a given period of time, which discounts it is claimed operated unfairly to the advantage of chain-store systems as compared with individual grocers whose purchases are equal to those of the chain-store units similarly located. Testimony was taken during the last few weeks of the year, but final disposition of the case has not been made by the commission.

RESALE PRICE MAINTENANCE CASES.

The prosecution of the class of proceedings coming under the head of resale price maintenance, which had been suspended pending the action of the Supreme Court and resumed after the decision by that court in January, 1922, sustaining the order of the commission against the Beech Nut Packing Co., has been continued. This decision made further investigation appear necessary in many of the suspended cases and the issuance of new complaints where the fresh investigations warranted them. Many new applications based on allegations of resale price maintenance as constituting a violation of section 5 of the Federal Trade Commission act have been received and complaints have been issued in a number of cases during the present year. One of the most important of these cases previously suspended is in course of trial, namely, that against the Cream of Wheat Co. Other cases, in which complaints have been issued, are the following: National Lead Co., Twinplex Sales Co., McCord Manufacturing Co., Seth Thomas Clock Co., Goodall Worsted Co., Bowers Bros. et al., Hills Bros., Toledo Pipe Threading Machine Co., Armour & Co. In the case of the Standard Electric Manufacturing Co., an order to cease and desist was issued by the commission January 17, 1923. It is hoped to obtain a further definition of the law as to resale price maintenance as soon as cases where the order of the commission may be taken to the courts for review can be advanced.

In the case of the Music Publishers' Association of the United States, and its members, and the National Association of Sheet Music Dealers, and its members, the commission found that the respondents and each and all of them conspired together for the purpose of fixing and maintaining specific standard resale prices of musical publications in the various States of the United States by the members of the National Association of Sheet Music Dealers

and other dealers and publishers selling musical publications to the public, and that as a result of the conspiracy and the acts of the respondents done in pursuance thereof, the prices of musical publications to the public and to the music profession were enhanced generally throughout the United States. The respondents were ordered, among other things, to cease and desist from combining and conspiring, among themselves or with others, to fix or increase the prices of musical publications published or sold by them or any of them, and from combining and conspiring among themselves or with others to maintain standard or fixed resale prices for musical publications.

THE TOBACCO CASES.

The commission issued a number of complaints attacking price-fixing agreements made by tobacco jobbers in different localities in combination with tobacco-manufacturing companies. These complaints charge that groups of tobacco wholesalers, in most cases organized into associations, fixed through the means of agreements of their respective associations, uniform prices on tobacco products, and that the tobacco-manufacturing companies assisted the various groups of jobbers in carrying out their agreements by offering to discontinue selling to such members of associations who sold for prices less than the associations had agreed upon. The complaints allege also that in compliance with their promises of cooperation the tobacco-manufacturing companies did discontinue selling certain of their customers, because they had not observed the prices fixed by the associations of which they were members.

The tobacco-manufacturing companies proceeded against, in combination with such wholesalers, are the American Tobacco Co., Liggett & Myers Tobacco Co., P. Lorillard Co. (Inc.), Tobacco Products Corporation, Falk Tobacco Co., Scotten-Dillon Co., and Larus Bros. Co. The associations proceeded against are located in many of the principal cities of the country, notably Philadelphia, Cincinnati, Milwaukee, Chattanooga, Chicago, and Kansas City. Other associations embraced extensive territories in their membership, as, for instance, the Tri-State Association, whose members are located in New York, Ohio, and Pennsylvania; the Western Pennsylvania Association, whose membership is scattered throughout the western part of Pennsylvania; the Central Tobacco Jobbers' Association, whose members are scattered throughout central Pennsylvania; the Keystone Tobacco Jobbers' Association, whose membership is distributed throughout eastern Pennsylvania; the Ohio Wholesale Grocers' Association, whose members do business throughout Ohio, while in one complaint the wholesalers who are named as respond-

ents, comprise practically all of the wholesale tobacco dealers along the Pacific coast, as well as in Utah, Idaho, and Nevada.

Hearings were held during the year in 10 of these cases.

THE DOUGLAS FIR CASE.

This case has been pending during the entire fiscal year on formal complaint charging the Douglas Fir Exploitation & Export Co., whose principal places of business are Seattle, Wash.; Portland, Oreg.; and San Francisco, Calif., and 107 other corporations, partnerships, and individuals with a conspiracy to hinder and obstruct competition in the sale and distribution of certain classes of lumber in the United States. The charge also includes specific acts for the purpose of carrying the objects of the conspiracy into effect, such acts including among others price agreements, improper pressure upon competitors to compel them to join the conspiracy, and to comply with its plans. The respondents are alleged to control 85 per cent of the productive capacity of the class of lumber handled by them which is variously known as *Pseudotsuga taxifolia*. Oregon pine, red pine, yellow pine. Columbian pine, Puget Sound pine, and British Columbia pine, and articles and things manufactured therefrom.

A considerable volume of testimony was taken, but the trial of the case remained uncompleted at the close of the year. It will probably be reached for consideration by the commission on the completed record by the first of the calendar year.

BLUE SKY CASES.

Nine companies which were engaged, or pretended to be engaged, in the sinking of oil wells and the production of oil, together with certain individuals promoting them, were found by the commission to have been violating section 5 of the Federal Trade Commission act. These were all cases of the character commonly known as "blue sky" cases; and the objectionable practices consisted in the publication, advertisement, and circulation of false and misleading statements as to the character of the company organization, its assets, location of alleged lands or oil wells, past and present oil production of wells alleged to be owned by it, the amount of dividends previously paid, and other representations of a similar character, made for the purpose of inducing sales of the company stock.

The following concerns and also in every case individual defendants were found using these practices or some of them: Big Diamond Oil & Refining Co., the Lone Star Oil Co., the Guaranty Fund Oil Co., First National Oil Co., Imperial Production Co., the Non-

Derrick Drilling Machine Co. (Inc.), Royal Duke Oil Co., Old Dominion Oil Co. et al., and Melhuish & Co. The oil holdings and alleged holdings of these companies were in the Texas and Oklahoma oil fields, although two of the companies had their principal offices in Denver, Colo.

Orders to cease and desist were issued against all of said companies and such individual defendants as were found using practices charged in the complaints.

HOSIERY MISBRANDING CASES.

The misrepresentation of product in the form of false or misleading brands or labels is a frequent subject of consideration by the commission. It is interesting to note, however, that in the hosiery business alone 20 orders to cease and desist were issued during the past fiscal year against companies which were misbranding in such manner as to convey the impression that hosiery composed of a mixture of cotton and wool, or of cotton and silk, was pure wool or pure silk hosiery. Eight of said cases were against manufacturers of cotton and wool mixtures which were so branded or labeled as to create the impression that the product was pure wool; nine were against manufacturers of cotton and silk mixtures which were so branded as to give the impression of a pure silk product; and three were against distributors of such products manufactured by others. Said orders were directed against the following concerns: Sulloway Mills, Rockford Mitten & Hosiery Co., Nolde & Horst Co., George E. Boyden & Son, Hub Hosiery Mills, King's Palace, Kahn & Frank, Hancock Knitting Mills, Fidelity Knitting Mills, Alamance Hosiery Mills, Esco Hosiery Co. (Inc.), Pilling & Madeley, Rex Hosiery Co., Oscar Schmied, Thompson Bros., Moore & Fisher, Daum-Rogers-Spitzer Co., Simmons, Hatch & Whitten Co., Brown-Durrell Co., and Aristo Hosiery Co.

COURT CASES.

Application to the appropriate United States circuit court of appeals may be made on behalf of the commission to secure enforcement of its orders, or on behalf of any party against whom an order has been issued to secure a review of the order.

The following cases, in which petitions had been filed in the various circuit courts of appeal to review orders of the commission, were decided during the fiscal year:

L. B. Silver Co. v. Federal Trade Commission, 289 Fed. 985.

Guarantee Veterinary Co. v. Federal Trade Commission, 285 Fed. 853.

The Mennen Co. v. Federal Trade Commission, 283 Fed. 774.

Southern Hardware Jobbers Asso. v. Federal Trade Commission, 290 Fed. 773.

Mishawaka Woolen Manufacturing Co. v. Federal Trade Commission, 283 Fed. 1022.

Maloney Oil & Mfg. Co. v. Federal Trade Commission, 282 Fed. 81.

Gulf Refining Co. v. Federal Trade Commission, 282 Fed. 81.

Standard Oil Co. of New Jersey v. Federal Trade Commission, 282 Fed. 81.

Juvenile Shoe Co. v. Federal Trade Commission, 289 Fed. 57.

In the following cases petitions have been filed in the circuit court of appeals to review orders of the commission. These petitions were pending and undecided at the end of the fiscal year :

Armour & Co. v. Federal Trade Commission.

Swift & Co. v. Federal Trade Commission.

B. S. Pearsall Butter Co. v. Federal Trade Commission.

Chicago Portrait Co. v. Federal Trade Commission.

Applications within the year to the Supreme Court of the United States for writs of certiorari to review the decrees of the circuit courts of appeals in cases wherein orders of the commission had been reviewed were denied in two cases, those of the Mishawaka Woolen Manufacturing Co. and the Aluminum Co. of America, on the application of the parties proceeded against, and in one case, that of the Mennen Co., upon the application of the commission; and writs were granted in four other cases, those of the Maloney Oil & Manufacturing Co., Gulf Refining Co., Standard Oil Co. of New Jersey, and the Raymond Bros.-Clark Co. upon application of the commission.

In the following cases decisions were rendered by the Supreme Court of the United States during the year: Curtis Publishing Co., 260 U. S. 568; Maloney Oil & Manufacturing Co., 261 U. S. 463; the Gulf Refining Co., 261 U. S. 463; Sinclair Refining Co., 261 U. S. 463; and Standard Oil Co. of New Jersey, 261 U. S. 463. The Fruit Growers' Express case was dismissed by stipulation (261 U. S. 629.)

The commission within the year disposed of 126 complaints issued by it and in 78 of these matters orders were issued directing the parties proceeded against to cease and desist from the practices upon which the charges stated in the several complaints were based, and in 48 of such matters the complaints were dismissed upon various grounds. In only 2 of the cases disposed of by the commission within the year were petitions filed by the parties proceeded against to have the circuit court of appeals review the orders of the commission. There were 232 complaints pending and undetermined at the end of the year, some having been submitted to the commission on final hearing and others were in various stages of preparation for submission.

The opinion of the courts in the following cases decided within the year dealt with questions of the jurisdiction of the commission

and there are interpreted therein various provisions of the acts of Congress which prescribe the power and authority of the commission:

PETITION TO REVIEW ORDERS OF THE COMMISSION.

Southern Hardware Jobbers' Association et al. v. Federal Trade Commission, 290 Fed. 773 (C. C. A., Fifth Circuit), decided June 13, 1923.

The respondents in this case were the Southern Hardware Jobbers' Association, its officers and members. The association is composed of persons, partnerships, and corporations engaged in the business of buying and selling of hardware in wholesale quantities in certain Southern States. Membership in the association was restricted to dealers whose sales to merchants were not less than 75 per cent of the gross sales or not less than \$250,000 per year and who employed not less than three traveling salesmen, and had capital and surplus of not less than \$75,000. The membership was further restricted to dealers whose policy is to distribute goods through what they termed "regular channels of trade"—that is, from manufacturer to jobber or wholesaler, from jobber or wholesaler to retailer, and from retailer to consumer. It was deemed contrary to the policy of the association for a manufacturer of hardware to sell direct to the retailer on the same terms and conditions that it sells like goods in like quantity to what they termed "legitimate jobbers and wholesalers." To compel or induce manufacturers of hardware to conform to its policy the association, through its officers and members, announced that members of the association would not buy the products of any manufacturer who sold goods to buying agencies organized by retail dealers in hardware, upon the terms and at the prices made to so-called regular jobbers or wholesalers, and as a result of such threats to boycott, the manufacturers were deterred from selling to such agencies or to dealers who were not eligible to membership in the association by the fear that they would lose the patronage of the members of the association. An order to cease and desist from the practices charged in the complaint was issued by the commission, whereupon respondents petitioned the court to vacate and set aside the order of the commission. The petition was denied and the order of the commission in all respects affirmed. The following is quoted from the opinion of the court:

That evidence warranted the conclusion that what the petitioners did to thwart the success of the cooperative association and the American Purchasing Co. went beyond each of the petitioners asserting and seeking to enforce its or his individual views as to business policies or methods, and amounted to cooperation between them in furtherance of a common purpose to prevent hardware manufacturers selling, without price discrimination, to exclusively

retail dealers or organizations buying for such retailers on terms which effect a saving to retailers of all or part of the profit which regular wholesalers or jobbers retain, with the result of requiring such retailers to get hardware only through the self-styled legitimate wholesalers or jobbers. The existence of a combination in restraint of trade may be inferred from evidence of circumstances indicating concert of action to that end. (*American Column Co. v. United States*, 257 U. S. 377.) The success of the concerted action in which the petitioners participated meant the monopolizing of the wholesale hardware trade in an extensive territory by members of the jobbers' association and dealers conforming to the above mentioned policy, and also meant the exclusion of hardware retailers in that territory from sources of supply available to wholesalers unless they combined wholesaling and retailing in the particular way which was approved by the jobbers' association. We are of opinion that such concerted action involved restraint of interstate trade, and is a proper subject of a Federal Trade Commission order to cease and desist.

Juvenile Shoe Company (Inc.) v. Federal Trade Commission, 289 Fed. 57 (C. C. A., Ninth Circuit).

The Juvenile Shoe Co. (Inc.), a corporation organized under the laws of the State of California, is engaged at Los Angeles, Calif., in the business of selling children's shoes at wholesale; it was organized and began business in May, 1919. Prior to that date another corporation was organized under the laws of the State of Missouri with the name of Juvenile Shoe Corporation of America, which senior corporation was engaged in the business of manufacturing and selling children's shoes, and at the time of the organization of the Juvenile Shoe Co. (Inc.) had built up an extensive business in the State of California and States adjacent thereto. The junior corporation had shoes sold by it packed in cartons upon which were printed labels which resemble in size and general appearance the registered trade-mark of the senior corporation. The commission found that the corporate name of the junior corporation so closely resembled that of the senior corporation and the labels of the junior corporation so closely resembled the registered trade-mark of the senior corporation that the use of such name and labels by the junior corporation had the capacity and tendency to cause confusion in the trade and enabled dealers to sell the shoes of the junior corporation as and for those of the senior corporation. An order was issued requiring the junior corporation to cease and desist from the use of the word "Juvenile" as a part of its corporate name and to cease and desist from the use of tags and labels containing the word "Juvenile" upon the cartons of shoes sold by it. Upon application to the court to vacate the order of the commission, the order was in all respects affirmed. The following is quoted from the opinion of the court:

Injunction will lie against a corporation that by any artifice deceives the public into believing that its goods are those of another corporation having a

similar name, and this is true irrespective of any intent to mislead the public, and especially is it true where the corporations are engaged in the same business (citing cases).

Guarantee Veterinary Co. et al. v. Federal Trade Commission, 285 Fed. 853 (C. C. A., Second Circuit).

The Guarantee Veterinary Co. is engaged in the business of selling, under the brand name of "Sal-Tonik," salt in the form of blocks for the use of livestock. In its advertisements and advertising matter it claimed that the block salt sold by it contained 16 specified medicinal ingredients and had been adopted by the Quartermaster's Department of the United States. Analyses of samples of "Sal-Tonik" showed no trace of 10 of the 16 ingredients claimed for it in the advertisements, and the evidence disclosed, and the commission found, that the product had never been adopted for use by the Quartermaster's Department. An order to cease and desist from the use of advertisements containing the claims as stated, was issued, whereupon application was made to the court to vacate and set aside the order of the commission. One of the grounds relied upon to support the application to vacate the order of the commission was that for several months prior to the issuance of the complaint the company had voluntarily ceased to make the claim in its advertisements that its product had been adopted for use by the Quartermaster's Department. The order of the commission was in all respects sustained. The following is quoted from the opinion of the court:

In *Sears, Roebuck & Co. v. Federal Trade Commission, 258 Fed. 307, 310*, it was insisted as here that the injunctive order was improvidently issued because before the complaint was filed and hearing had, the petitioner had discontinued certain methods complained of. In that case, unlike this, the petitioner had stated in its answer that it had no intention of resuming them. The Circuit Court of Appeals for the Seventh Circuit, notwithstanding these facts, sustained the right of the commission to make the injunctive order, and said: "No assurance is in sight that petitioner, if it could shake respondent's hand from its shoulder, would not continue its former course."

The testimony shows conclusively that the petitioners had been publishing advertising matter containing false and misleading statements and had used an unfair method of commerce, and we think the commission was quite within its right in issuing the order in the form it did. In such cases the commission must exercise its discretion in view of all the circumstances.

The L. B. Silver Co. v. Federal Trade Commission, 289 Fed. 985 (C. C. A., Sixth Circuit), decided February 16, 1923.

The complaint in this case charged that the respondent, a corporation, made use of false and misleading advertising. The respondent is a breeder of hogs which it designates as "Ohio Improved Chester White Hogs" or "O. I. C." The advertisement

upon which the charges stated in the complaint were based contained, among other things, the claim that the O. I. C. hogs were a separate and distinct breed from the Chester white hogs and were superior thereto; that the O. I. C. hogs were not susceptible to cholera, pneumonia and other diseases and possessed a power to repel disease in a degree not possessed by other breeds, and that it had secured greatly reduced express rates on livestock shipped by it. An order directing respondent to cease and desist from the use of advertisements containing the claims set out in the complaint, was issued, whereupon respondent applied to the court to vacate and set aside the commission's order. The court affirmed that part of the order which required respondent to cease and desist from the use of advertising matter in which the claims were made that the hogs designated by respondent as O. I. C. hogs are not susceptible to cholera and other diseases but possess a power to resist diseases to a degree not possessed by hogs of other breeds, and that in the shipment of livestock respondent had secured from express companies rates of transportation lower than the rates granted to other shippers of livestock. That part of the order which required respondent to cease and desist from the use of the advertisements representing that the O. I. C. hogs are a breed separate and distinct from the Chester white was modified as shown by the following quotations from the opinion of the court:

The claim that the O. I. C. hog is a separate and distinct breed from the Chester white is neither palpably nor literally false, as were the brands and labels used by the Winsted Hosiery Co. On the contrary, the truth of this claim finds equal support in the testimony of expert and experienced breeders, as does the claim that it is false and unwarranted by the facts. Nor does the claim tend to lessen competition or create monopoly in violation of the anti-trust act. On the contrary, it places the O. I. C. hog in direct competition with the Chester white, while if the O. I. C. are required to be advertised and marketed as Chester whites the tendency of such requirement would be to destroy competition and create a monopoly in the breeding and marketing of Chester whites.

For the reasons above stated a majority of this court is of the opinion that the petitioner is not guilty of unfair methods of competition by advertising the O. I. C. hogs as a separate and distinct breed of hogs from the Chester white so long as it does not include in its advertisements the claim found to be untrue by the Federal Trade Commission that the foundation stock of the O. I. C. was crossed by a mammoth or large white English hog.

Mishawaka Woolen Manufacturing Co. v. Federal Trade Commission, 233 Fed. 1022 (C. C. A., Seventh Circuit) and 43 Sup. Ct. Rep. 247.

This case had been argued and submitted to the court prior to the decision of the United States Supreme Court in the case of the Federal Trade Commission *v. Beech Nut Packing Co.*, 257 U. S. 441. The court concluded that the condemned practices in this

case were substantially identical with those in the Beech Nut Packing Co. case and the findings and order of the commission were approved upon the authority of that case. Application was then made by the Mishawaka Co. to the Supreme Court of the United States for a writ of certiorari. In the brief for the Federal Trade Commission it was conceded that the order of the commission in the Mishawaka Co. case was broader than was warranted by the opinion of the court in the Beech Nut Packing Co. case. The writ was denied, the court assuming that the commission would modify its order to conform to the opinion of the court in the Beech Nut Packing Co. case and without prejudice to an application for that purpose by the Mishawaka Co. The commission thereupon modified its order.

Federal Trade Commission v. Curtis Publishing Co., 43 Sup. Ct. Rep. 831.

The complaint issued by the commission in this case contained two counts, one charging a violation of section 5 of the commission act and the other charging a violation of section 3 of the Clayton Act. The respondent is engaged in publishing and distributing to the public, throughout the several States of the United States, weekly and monthly periodicals. The charges stated in the complaint were based upon the practice of respondent of refusing to sell its publications to dealers who would not agree to refrain from selling and distributing the publications of competitors of respondent, and the making of contracts with numerous wholesale dealers to distribute its periodicals as agents and not to distribute the publications of competitors of respondent without permission of respondent, although in many instances such dealers, for a number of years, had been distributing the periodicals of other publishers, which periodicals competed with those of respondent, and upon entering into the contracts in question with respondent such dealers were compelled to and did discontinue the distribution of periodicals previously distributed by them, but which competed with those of respondent. The order issued by the commission directed the respondent to cease and desist from entering into and enforcing agreements with wholesale dealers, which agreements prohibited the wholesale dealer from distributing the magazines and newspapers of other publishers.

Upon petition for review to the circuit court of appeals the order of the commission was vacated and set aside and the case was taken to the Supreme Court on the petition of the commission for certiorari. It was held by the Supreme Court that the contracts in question, whereby wholesale dealers were prohibited from selling or distributing the publications of competitors of respondent, were

contracts of agency and not of sale on condition, so that they did not violate section 3 of the Clayton Act. It was further held that the employment of competent agents to devote their entire time to the development of their principal's business to the exclusion of all others where nothing else appears is not unfair competition within the provisions of section 5 of the commission act.

The Mennen Co., v. Federal Trade Commission, 288 Fed. 774 (C. C. A., Second Circuit), decided March 13, 1923.

The complaint in this case contains two counts, one charging a violation of section 2 of the Clayton Act and the other charging violation of section 5 of the Federal Trade Commission act, the charge in each count being based upon the same state of facts. The Mennen Co. is engaged in the business of manufacturing and marketing toilet products. In the course of selling its products it markets same according to a classification adopted by it as "wholesalers" and "retailers." It places in the class whom it calls "wholesalers" certain distributors designated in the trade as "old line wholesalers," and in the class whom it calls "retailers" it places, among ordinary retail dealer purchasers, certain distributors designated in the trade as "cooperative wholesalers." These "cooperative wholesalers" are corporations cooperative or mutual in form of organization, whose capital stock is held by retailers engaged in selling to the consuming public. Both the "old line wholesalers" and the "cooperative wholesalers" purchase exclusively from manufacturers and importers and sell exclusively to retail dealers, never selling to ultimate consumers. The Mennen Co. charges "old line wholesalers" less than it charges "cooperative wholesalers" who purchase like products in the same quantities. The commission found that there was no difference in the service rendered as between "old line wholesalers" and "cooperative wholesalers" and it also found that the discrimination in price eliminated competition between the "old line wholesalers" and the "cooperative wholesalers." The commission concluded upon its findings of fact in the case that the discrimination in price between the "old line wholesalers" and the "cooperative wholesalers" was in violation of section 2 of the Clayton Act and section 5 of the Federal Trade Commission act. (The commission's findings as to the facts, conclusion, and order to cease and desist were issued on March 3, 1922.)

The circuit court of appeals, on a review of the case, reversed the order of the commission, holding the discrimination in price not to be in violation of either statute. The court based its decision under the Clayton Act on the interpretation of section 2 of said act, holding the section applicable only to the elimination of competition

between the seller and his immediate competitors and not between purchasers. The court, in holding that the selling policy of the Mennen Co. did not constitute an unfair method of competition, determined that the "cooperative wholesalers" were not wholesalers but retailers, and applied the custom of manufacturers of discriminating in price between wholesalers and ordinary retailers selling to consumers. The Supreme Court denied a writ of certiorari to review the case. (43 Sup. Ct. R. 705, June 11, 1923.)

It is now the law of the case that—

(1) The Clayton Act does not render discrimination in price by a manufacturer unlawful although its effect is to lessen competition between purchasers but only if the effect be to lessen competition between a seller and his competitors, and

(2) Discrimination in price between purchasers (in the absence of ability or tendency to create a monopoly) is not in violation of section 5 of the Federal Trade Commission act, if the discrimination be between wholesalers and retailers, retailers including "cooperative" distributors engaged in functioning the same as "old line" distributors and performing identical services.

Federal Trade Commission v. Sinclair Refining Co., Federal Trade Commission v. Maloney Oil & Manufacturing Co., Federal Trade Commission v. Gulf Refining Co., Federal Trade Commission v. Standard Oil Co. of New Jersey (all reported in 261 U. S. 463).

The charges stated in the complaints issued by the commission in the above-entitled cases, which were argued and submitted together, were based upon the practice of respondents of leasing to retail dealers for a nominal rental underground tanks and pumps for use in distributing gasoline to the consuming public upon the condition that the equipment so leased would be used by lessees only in the distribution of the products of the respective lessors. In each of the complaints, in separate counts, the practice was made the basis of charges of unfair methods of competition in commerce in violation of section 5 of the commission act and a violation of section 3 of the Clayton Act. The commission had issued an order to cease and desist from the practice charged in the complaint in each of the cases, and upon petition for review to the circuit court of appeals the orders of the commission were vacated and set aside, and the cases having been brought to the Supreme Court by certiorari, the judgments of the lower court were affirmed. The Supreme Court held that the practices did not violate section 3 of the Clayton Act, where neither the leasing contract nor the circumstances of the business restricted the lessees' freedom to buy or deal in gasoline sold by other manufacturers, although the parties had no need of and never used more

than one pump and tank. It was further held that the practice was not an unfair method of competition within the provisions of section 5 of the commission act.

PETITIONS BY THE COMMISSION FOR WRITS OF MANDAMUS TO COMPEL ACCESS TO RECORDS OF CORPORATIONS IN CONNECTION WITH INVESTIGATIONS DIRECTED BY CONGRESS, DENIED.

During the fiscal year the commission applied, through the Attorney General of the United States, to the courts in several instances for writs of mandamus to compel access to books and records of corporations in connection with investigations directed by Congress, and in each instance the petition was denied.

In the first of these cases, those against the American Tobacco Co. and the P. Lorillard Co., the Senate had, by resolution, directed the commission to investigate conditions in the domestic and export tobacco trade, with particular reference to the market prices to producers of tobacco, the market prices for manufactured tobacco, and the export prices of leaf. Subsequently complaint was made to the commission that certain of the great tobacco manufacturing corporations were conspiring with associations of tobacco jobbers to fix the prices at which products of the manufacturers should be sold by the jobbers. Inquiry proceeded in both matters to the point where the facts gathered convinced the commission that an examination of the correspondence files of the large tobacco manufacturers would disclose evidence pertaining to both phases of the investigation; and an informal request for access to the records having been denied by the companies, a formal demand was served upon them for access to the correspondence files for a period of approximately one year and for the privilege of examining the contracts existing between the companies and the jobbers handling their products. The demand was denied, and the commission applied to the District Court for the Southern District of New York, through the Attorney General of the United States, for a writ of mandamus to compel compliance with the commission's demand. Subsequent to the service of the demand, but prior to the filing of the petition with the district court, the commission issued a formal complaint against the companies charging a conspiracy with jobbers to fix resale prices on products manufactured by the companies. The issuance of the complaint was recited in the petition for mandamus, and an examination of the files for the purpose of securing evidence in support thereof was in part made the basis of the petition. The petition was denied, the court holding: (a) That as the Senate resolution did not, in terms, direct an inquiry into alleged violation of the antitrust laws it did not confer any authority upon the commission; (b) that the power to conduct inqui-

ries conferred by section 6 (a) and (b) of the Trade Commission act authorizes the gathering of such information only as may be voluntarily supplied; (c) that the right to inspect documents to the extent demanded by the commission could be exercised only where there was some specific complaint of a violation of law, together with a showing of probable cause to believe that information would be found in the files, and where the materiality to the charge of an alleged violation of law of the particular correspondence and files demanded was made to appear; and (d) that to grant the inspection prayed for would amount to an unreasonable search and seizure within the prohibition of the fourth amendment to the Federal Constitution. (*Federal Trade Commission v. American Tobacco Co.*; *Federal Trade Commission v. P. Lorillard Co.*, 283 Fed. 999.)

The second group of cases arose out of an investigation by the commission pursuant to a Senate resolution (S. Res. 133, 67th Cong., 2d sess.) directing the commission to investigate the grain business, with particular reference to export business, with a view to ascertaining the causes of the decline in domestic prices of grain, whether the decline in export prices was due to conditions in the export market, and the reason for the spread of from 15 to 20 cents between the prices of cash wheat and of futures.

In connection with this investigation the commission, after informal requests had been denied, made formal demand for access to the books and records of three companies engaged in the export grain business in Baltimore, Md. The demand was refused and a petition for mandamus to compel the inspection was filed. The court denied the petition for the writ, holding (a) that the Senate resolution did not direct the commission to inquire respecting any alleged violation of the antitrust act, and therefore did not confer any authority upon the commission under section 6 (d) of the Trade Commission act; (b) that section 6 (a) and (b) of the Trade Commission act do not confer any authority to inspect the books and documents of corporations generally where there is no alleged violation of law but where a general investigation only is being made into conditions existing in the industry; (c) that any attempts by the courts to confer the authority to make such inspection in a general inquiry would be unconstitutional. (*Federal Trade Commission v. Baltimore Grain Co.*; *Federal Trade Commission v. H. C. Jones Co.*; *Federal Trade Commission v. Hammond, Snyder & Co.*, 284 Fed. 886.)

The cases against both the tobacco and grain companies have been taken to the Supreme Court by writ of error and are there pending. They will doubtless be reached for argument during the October term, 1923, of that court.

SUITS TO ENJOIN THE COMMISSION FROM PROCURING INFORMATION IN CONNECTION WITH INQUIRIES DIRECTED BY CONGRESS OR INSTITUTED UPON THE COMMISSION'S OWN MOTION.

Two suits instituted during the last fiscal year to enjoin the commission from in any manner requiring corporations to make reports respecting the production, prices, and cost of producing necessities of life and of commerce, or from proceeding, by mandamus or otherwise, as directed by the Trade Commission act, to compel the making of such reports, still remain undecided by the Supreme Court. These suits grew out of an investigation which was instituted by the commission on its own motion, but after suggestions and conference with a committee of Congress, the work being specially appropriated for by Congress in the deficiency appropriation act of November 4, 1919. Pursuant to resolution duly adopted, the commission sent questionnaires to practically all corporations engaged in the manufacture and in the sale in interstate commerce of finished and semifinished steel products, requiring them to make monthly reports showing the quantities of products manufactured, plant capacity, orders booked during the month, the cost of manufacturing, the prices at which sold in domestic and foreign commerce, and general income statement and balance sheet. The declared purpose of the inquiry was to publish the information acquired in totals so as to show existing conditions in the production and sale of steel products. Certain of the corporations declined to make the reports and joined in a suit in equity to restrain the commission from proceeding in any manner to compel its production or to impose any penalties for failure to produce the information. The Supreme Court of the District of Columbia, in which the suit was instituted, issued a permanent injunction enjoining the commission as prayed the ground of the decision being that the information sought was not information respecting interstate commerce, nor information with respect to matters so directly affecting such commerce that it could be required under the commerce clause of the Constitution. The case was appealed by the commission to the Court of Appeals of the District of Columbia, which affirmed the decree of the lower court. (*Claire Furnace Co. et al. v. Federal Trade Commission*, 285 Fed. 936.) This proceeding was sent to the Supreme Court of the United States March 21, 1923, where it is still pending.

At about the date when the steel companies were requested to file monthly reports, substantially similar questionnaires were sent to practically all corporations engaged in the production and sale in interstate commerce of bituminous coal. One of these companies declined to make the reports and applied to the Supreme Court of the

District of Columbia for an injunction. A permanent injunction practically identical with that issued in the steel cases was awarded. The case was taken by the commission by appeal to the Court of Appeals of the District of Columbia, and is there pending.

SUMMARY OF PROCEEDINGS UNDER SECTION 5 OF THE COMMISSION ACT.

The first formal complaint was issued by the commission on February 18, 1916; it charged unfair methods of competition in violation of section 5 of the Federal Trade Commission act; since that date violations of this act have been charged in 1,017 complaints; of these proceedings 548 have resulted in the issuance of orders to cease and desist from the use of the various methods of competition charged in the complaints. Some of these complaints also included an additional count charging the violation of some section of the Clayton Act; usually each count was based on the same state of facts.

SUMMARY OF PROCEEDINGS UNDER THE CLAYTON ACT.

Forty-two complaints issued by the commission have charged violations of section 2 of the Clayton Act and in seven of these proceedings orders to cease and desist from the violation of law charged in the respective complaints have been entered. Ninety-six complaints have been issued by the commission charging violation of section 3 of the Clayton Act, and in 38 of these proceedings orders were issued to cease and desist from the violation of law charged in these respective complaints. Twenty-nine complaints have charged violations of section 7 of the Clayton Act and three complaints have charged violation of section 8 of said act. In six proceedings under section 7 of the Clayton Act orders have been issued requiring respondent to divest itself of the stock held as charged in the complaint.

As hereinbefore noted, some of the complaints which charged violation of the Clayton Act also included a count charging the use of unfair methods of competition in interstate commerce in violation of section 5 of the commission act. In all there have been issued by the commission up to the end of the fiscal year 1,043 complaints; of these, 1,017 have been grounded on section 5 of the commission act, and 140 of such complaints contained a count based on section 5 of the commission act, together with a count under one of the sections of the Clayton Act.

At the close of the fiscal year there were pending in the various circuit courts of appeals four petitions to review the orders made by the commission, which orders directed the party proceeded against to cease and desist from the use of certain alleged unfair methods of

competition in violation of section 5 of the commission act or violation of sections 2 and 3 of the Clayton Act. In one of these cases the complaint contained a count based upon the said section 5, and also a count based on section 7 of the Clayton Act; in two of these cases the complaints were based upon section 7 of the Clayton Act, in one case upon section 3 of the Clayton Act, and in one case upon section 5 of the Federal Trade Commission act. One of these cases had been argued and submitted to the court prior to the close of the year, and the other three cases were awaiting argument.

PROCEEDINGS PENDING AND DISPOSED OF.

A review of the proceedings disposed of by the commission within the fiscal year and the proceedings pending before the commission at the close of the year will be found in Exhibits 16 and 17.

CHIEF EXAMINER.

All the former proceedings begun by the commission and all of the reports made to the Congress involving legal questions have as their basis investigations made by the investigators of the legal investigating division. Broadly stated, it is the function of this division to ascertain the facts and to make reports to the commission upon the facts and the law applicable thereto in all matters involving alleged violations of law; in other words, the investigations made by this division are the foundation of all the commission's corrective work.

The force consists of a chief examiner, 2 assistants, 3 attorneys in charge of branch offices, and about 40 investigators, most of whom have a legal education. There are besides 7 trial examiners attached to the division and 11 clerks and stenographers.

Besides directing the work generally, the chief examiner confers personally with parties to proceedings and conducts correspondence with applicants and others. He also directs the assignments of formal cases to the trial examiners. The attorneys in charge of branch offices direct the work in the territory attached to their offices.

It is of interest to set down here the charges on which applications for complaints received in the past fiscal year were based:

Adulteration.	Cumulative deferred rebates.
Appropriation of competitor's advertising values.	Destruction of mail-order catalogs.
Blacklisting.	Disparagement of competitor's business.
Bogus independents.	Enticement of employees.
Commercial bribery.	Export trade, unfair practices in.
Combination or conspiracy in restraint of trade.	False and misleading advertising.
	Fraudulent use of trade-mark.

Full line forcing.	Section 2, Clayton Act.
Interference with competitor's source of supply.	Section 3, Clayton Act.
Manipulation of market.	Section 7, Clayton Act.
Misbranding.	Selling below cost to put applicant out of business.
Misrepresentation.	Selling old for new.
Passing off of name and goods.	Slack-filled packages.
Price cutting.	Subsidizing salesmen.
Price fixing.	Threats and intimidations.
Sale of stock by misrepresentation ("blue sky" cases).	Use of false testimonials.
Resale price maintenance.	Violation of commission's order.
	Wrongful use of corporate name.

The largest number of applications had reference to false and misleading advertising and there was an increase of 23 per cent over the previous year; the next largest item was resale price maintenance, with an increase of 32 per cent; then misbranding, which increased 140 per cent; misrepresentation, with a small increase; interference with competitor's source of supply, and disparagement of competitor's business were about the same. In connection with applications involving the following alleged unfair practices, received in 1921-22, none were docketed in 1922-23:

Fraudulently securing patent.	Interference with competitor's customers.
Causing breach of competitor's contracts.	Obtaining audit of competitor's books under false pretenses.
Dumping.	Unfairly obtaining list of competitor's customers.
Falsely marking watch cases.	
Giving free goods.	
Guarantee against decline in prices.	

These facts will illustrate some of the tendencies in connection with applications received by the commission.

The following table gives a comprehensive view of the work received and completed by the division in the past four years:

	1919-20			1920-21			1921-22			1922-23			On hand.
	On hand.	Received.	Completed.	On hand.	Received.	Completed.	On hand.	Received.	Completed.	On hand.	Received.	Completed.	
Preliminary inquiries at headquarters.....	1 34	1 600	1 600	34	832	838	28	877	881	24	871	867	28
Investigations Docketed applications.....	203	724	527	400	461	603	258	361	388	231	436	434	211
Undocketed applications.....	39	155	167	27	233	220	48	412	375	185	451	490	137
Supplementary applications.....	15	127	130	12	86	77	21	190	178	35	206	213	28
Formal cases.....	(*)	(*)	(*)	7	105	98	14	115	110	19	72	83	8
Trial assignments.....	(*)	(*)	(*)	(*)	(*)	(*)	(*)	(*)	(*)	10	48	82	26
Trial examiner's cases.....	(*)	(*)	(*)	(*)	(*)	(*)	34	61	60	35	117	89	63
Total.....	291	1,606	1,424	480	1,717	1,836	403	2,016	1,890	539	2,201	2,230	301

* Estimated.

* No record.

From the foregoing it appears that there has been a steady increase in the matters taken up for investigation: In 1920-21, 7 per cent; in 1921-22, 17 per cent; and in 1922-23, 9 per cent over each preceding year. The matters disposed of show a similar increase, being in 1920-21, 23 per cent; in 1921-22, 3 per cent; and in 1922-23, 18 per cent. The average annual increases have been: Matters received, 12½ per cent, and those disposed of 19 per cent. This small gain in work completed as compared with the increase in investigations undertaken is reflected in a moderate reduction in 1922-23 of the annual "hang over," or total of cases left uncompleted at the close of each fiscal year. Prior to that year this item, as the table shows, had been increasing at a marked rate. On July 1, 1922, the commission had at headquarters 231 cases which had been on hand an average of 6 months and 13 days, and at branches 123 cases having an average age of 4 months and 8 days. These were the older matters, and the remaining 185 assignments were being taken care of promptly. A reduction was made during the year not only in the number of matters left on hand but also, to some extent, in their average age.

It is important that all investigations undertaken should be begun promptly and prosecuted with speed. To delay is oftentimes to deny justice in the class of cases with which the commission deals. Many complaints about delays in this investigating work have been received. The chief reasons for this situation are, first, the normal growth in the work already outlined, and, second, the inadequacy of the force of investigators which the commission has been able to employ. A force of between 40 and 50 examiners, however well trained and equipped, to make prompt and thorough investigation of all the cases of alleged unfair competition in the United States, besides considerable work under the Clayton Act and on special investigations by direction of the Congress, has proved inadequate.

The commission has used various means to meet this situation. It has increased the legal investigating force as far as its funds would permit, and urged the examiners to use all possible speed compatible with thoroughness; it has made important changes in its procedure, with a view to expediting the disposition of the cases; and by increased care in the examination of preliminary inquiries the proportion of these taken up for investigation has been decreased. This has been made possible by the fact that, as the established precedents grow in number and the field which they cover widens, it becomes possible to dispose of more applications with less investigation and consideration. Several court decisions have also been helpful in this respect.

The steady growth in the number of preliminary inquiries disposed of in this way is shown by the following table:

	1920-21	1921-22	1922-23
Preliminary inquiries docketed.....	Per cent. 54	Per cent. 39	Per cent. 30
Filled without docketing.....	46	61	70

In the report for last year attention was directed to the general investigation made by this division of conditions in various industries, where questions as to violations of law are involved. Considerable time during the past year was spent on work of this character and although not appreciably increasing the total number of assignments, is of importance. The investigations of this nature on which reports have been made are as follows:

Lumber.—As a result of the investigation of conditions in the lumber industry, which was begun in 1919 at the request of the Attorney General, a report was made to Congress and to the Attorney General on January 24, 1923, summarizing the activities of the trade associations composed of the manufacturers of posts and poles. These associations have their headquarters in Spokane, Wash., and are as follows: Western Red Cedar Association, Lifetime Post Association, and the Western Red Cedarmen's Information Bureau. A similar report, on the activities of the Northern Hemlock and Hardwood Manufacturers Association was also made to Congress and the Attorney General on May 7, 1923.

Fertilizer.—Under a resolution of the Senate, an inquiry was made as to whether the production or sale of fertilizer is controlled by an unlawful combination and whether dealers or manufacturers of the product had conspired to fix prices. An extensive investigation was made which showed that in 1921, the seven largest companies in the industry produced 65 per cent of the total fertilizer used in the United States. Competition in the sale of fertilizers appeared keen in both 1921 and 1922, and the large manufacturers were unable to maintain their list prices. Report was made to the Senate on March 3, 1923.

Calcium arsenate.—Pursuant to a resolution adopted by the Senate on January 23, 1923, an inquiry was made as to the alleged violation of the antitrust acts by the manufacturers and dealers in calcium arsenate. A report in which was incorporated the facts disclosed by the investigation as made on March 3, 1923. The report shows that in October, 1922, prices ranged from 10 to 12 cents per pound and in February, 1923, had increased to a range of 18 to 19 cents per pound. It was concluded that the main reasons for the marked increase in

price were the increased demand for the product for use in combating the cotton boll weevil and the inadequacy of the available supply of white arsenic; the chief ingredient of calcium arsenate.

In the work of the legal investigating division not only has the lapse of time since the commission was organized given scope for the improvement of the relations between those engaged in investigative work and the parties to such proceedings, but it has also brought a larger measure of understanding of the problems involved. The decisions of the courts as well have construed the laws relating to unfair competitions, so that greater directness and certainty are possible.

TRADE PRACTICE SUBMITTALS.

Gold-mounted knives.—A trade practice submittal on the branding of gold-mounted knives was held before Commissioner Victor Murdock, in New York City, May 2, 1922. Those participating in the meeting were:

- L. A. Moreau, Federal Trade Commission attorney.
- Fred G. Backus, secretary National Jewelers' Board of Trade, New York City.
- Charles B. Byron, president Chas. B. Byron Co., New York City.
- Edward T. Todd, factory manager Edward Todd & Co., New York City.
- Fred A. Pooley, manager export department J. R. Wood & Sons, New York City.
- Irving W. Broder, secretary Tomchin & Levinson (Inc.), New York City.
- Melville Miller, head of knife department Goldsmith, Stern & Co., New York City.
- Mortimer G. Foster, partner Goldsmith, Stern & Co., New York City.
- A. L. Woodland, treasurer Kent & Woodland Co., New York City.
- Harry C. Larter, partner Larter & Sons, New York City.
- J. F. Umpleby, bookkeeper Carter, Gough & Co., New York City.
- Abraham Shiman, president Shiman, Miller Manufacturing Co., New York City.
- Thomas F. Morgan, supervising inspector mayor's bureau of weights and measures, New York City.
- Julius C. Rauch, president Kollmar Rauch & Co., Irvington, N. J.
- F. J. Krementz, president Frank Krementz Co., Newark, N. J.
- John D. Battin, president Battin & Co., Newark, N. J.
- J. Koch, president Long & Koch Co. (Inc.), Newark, N. J.
- Henry C. Ward, vice president Durand & Co., Newark, N. J.
- A. G. Van Houten, representing C. Sydney Smith Co., Providence, R. I.
- C. J. Roche, vice president-treasurer the Bassett Jewelry Co., Providence, R. I.
- R. E. Walsh, sales manager Ostby & Barton Co., Providence, R. I.
- W. N. Dutemple, representative Jewelry & Cutlery Novelty Co., Attleboro, Mass.
- Edward I. McConnell, New York representative L. E. Freeman Co., Attleboro, Mass.
- George J. Bessinger, owner Geo. J. Bessinger & Co.
- Frisch Brothers (sold to Bessinger & Co.).
- Edward Todd, president Edward Todd & Co. (Inc.), New York City.
- G. H. Niemeyer, president National Jewelers' Board of Trade, New York City.

Morris L. Ernst, counsel to National Jewelers' Board of Trade, New York City.

W. A. Biglin, investigator National Jewelers' Board of Trade, New York City.
T. Edgar Wilson, editor the Jewelers' Circular, New York City.

As a result of the meeting the Trade Commission has issued the following statement:

At the instance of manufacturers of gold-mounted knives, representing a major proportion of those engaged in the industry, an invitation was issued to all manufacturers in this industry to attend a meeting in New York City, May 9, 1922, at which it was proposed to submit to the Federal Trade Commission certain trade practices with respect to the marking of knives mounted in gold. The meeting was attended by 24 representatives of the industry. Commissioner Murdock was present, explained the functions of the Federal Trade Commission, and received for transmittal to the commission the following resolution as a submittal of trade practices regarded as desirable by the industry:

1. In our opinion a gold-mounted knife consists of the following: (a) A gold sheet or shell; (b) The knife movement or skeleton consisting of scales, rivets, spring, and blades.

2. All parts, including the bale and the rivets, other than the gold shell or sheet, appearing or purporting to be gold, must be of the karat fineness marked on the gold.

3. A knife stamped with a mark indicating the karat fineness, such as 10K, 14K, or 18K, is improperly marked if, between the skeleton and the gold sheet, any metal composition is inserted by any method whatsoever, unless that inserted part is of the same karat fineness, to wit, 10K, 14K, or 18K.

4. We agree that all parts which appear to be gold must be of the karat fineness indicated. Furthermore we believe that the consumer has the right to assume that a base-metal sheet or other composition inserted under a gold sheet is gold of the karat mark on the gold if the gold sheet covers the edges of the inserted part.

5. Our decision is to the same effect even if the base metal sheet is affixed to the skeleton or movement instead of to the gold. A knife made of a gold sheet and a stiffening of base metal may well be a legitimate article of trade, but the mark indicating the karat fineness is improper unless the fineness of the gold and the stiffening or inserted part is up to the karat indicated.

The resolution is intended, first, to define a gold-mounted knife, and, second, to condemn any method in the construction of a gold-mounted knife by which it may be made to appear that more gold of an indicated karat fineness has been used than has been employed in fact.

In the first instance—that is, in the matter of definition—the commission has jurisdiction over brands or marks which may prove, after challenge, to be deceptive and unlawful. In the second instance—that is, in the matter of construction—if there is to be read into the resolutions an endeavor by the industry to standardize the product by methods of manufacture it should be said the commis-

sion is without jurisdiction to apply its law against departure from such standardization, in the absence of deceptive, misleading, and unlawful markings.

Each of the five paragraphs of which this resolution is comprised was considered separately, was subject to amendment, was debated and, after amendment in some instances, was adopted by a viva voce vote, confirmed by telling, the voting showing little division among those participating.

The pertinent facts developed in debate, which resulted in the adoption of the resolution, may be summarized as follows:

Paragraph 1: The definition in this paragraph may be taken as excluding, in the view of the industry, the use of the designation "gold knife" to describe knives that have a gold sheet or shell over the knife scales and as excluding, in view of the industry, the use of the designation "gold-mounted knife" to describe knives made with a shell of gold-filled stock or with an electroplated shell.

Paragraph 2. It is proposed by this expression to convey the opinion of the industry that the use of a solder in attaching a sheet or shell to the knife scales, unless of the karat fineness marked on the gold, is a means of deception, for the reason that a manufacturer by this practice can make it appear that a greater amount of gold of the quality indicated in the karat mark has been employed than has been used in fact.

Paragraph 3: The purpose of this expression of the industry is to condemn as deceptive the reenforcement of the sheet of gold of indicated fineness by attaching a metal sheet or composition not of the same karat fineness inside the gold sheet. The reason given by the industry for this condemnation is that the amount of gold of indicated fineness is thus made to appear to be greater than the amount that has actually been used.

Paragraph 4: This expression is directed against the practice of inserting between the sheet or shell of gold of indicated fineness and the scales of the knife any base metal or other composition, the edge of which is concealed. This practice is considered deceptive by the industry, for the reason that the quality of gold indicated is made to appear to be present in greater quantity than it is in fact.

Paragraph 5: By this expression the industry condemns as unfair, because of deception, the use of a stiffening base metal attached to the skeleton of the knife, if the base metal is covered with a sheet of gold definitely indicated to be of a certain karat fineness.

It will be seen that the principal affirmations of the industry are based on the belief that certain methods of construction in gold-mounted knives deceive the public into believing that a greater amount of gold of the fineness indicated has been used by manufacturers employing those methods than is present in the article. It

appears that some 90 per cent of the output of gold-mounted knives carry either on the bale or on the side of the knife a mark indicating the quality of gold used, as 10K, 14K, 18K.

While the views of the industry, as submitted, are valuable and informative, and as such will no doubt prove useful in event of consideration of a concrete case by the commission, the commission does not believe them conclusive of the questions raised in all particulars.

Considering the first paragraph of the resolution, it appears that the definition of the industry is comprehensive. Obviously a knife and its skeleton covered with a sheet of gold is a gold-mounted, not a gold, knife. It should also be remembered that a knife covered with rolled gold or electroplate gold can not, under the statute, carry the mark of karat fineness without the brand which identifies it as rolled gold or electroplate gold.

The question raised in the second paragraph of the resolution which has to do with the use of a solder presents a matter of some difficulty. The national stamping act limits the manufacturer in the use of solder in articles bearing the karat-fineness mark. The tolerance granted in the act is given at one-half of one karat of the indicated gold fineness, with an exception. This exception is in the case of watch cases and flat ware where the tolerance granted is three one-thousandths parts of the fineness indicated. Provision is made that in case of test for fineness a portion which does not contain any solder or alloy of inferior fineness shall be used and, further, that the actual fineness of the entire quantity of gold in any article, including all solder and alloy of inferior fineness, shall not be less by more than one karat of the fineness indicated. The second paragraph of the resolution as it reads disapproves the use of solder of a different karat fineness from that marked on the gold. The resolution stands as it was adopted. However, it appeared by vote that many in the industry are adverse to the use of any solder in a gold-mounted knife. It also appeared that a portion of the industry approves of the use of solder in attaching a sheet or shell to the knife skeleton if the gold fineness of the shell and solder together is not less than the mark indicated. The commission may well wait for further light upon this particular matter in connection with the terms and tolerances of the national stamping act, applicable herein. A further difficulty bearing upon alleged deception in this connection is the construction of a knife skeleton by a manufacturer who, by varying the thickness of the flat scales or by the use of convex scales, may make it possible for the completed knife, after the gold shell or sheet has been superimposed, to appear to carry more gold of the karat fineness indicated than has been used in fact. In view of the difficulties cited, judgment, so far as an expression on the second paragraph of the resolution is concerned, may well be reserved until the questions arise in an appli-

cation for the issuance of a complaint under the regular procedure of the commission.

In examining the third paragraph of the resolution, which condemns as deceptive the insertion of inferior composition between the shell and the knife skeleton, it is well to consider whether or not a manufacturer who reenforces the gold shell by soldering a strip of base metal inside the shell is not violating the national stamping act if he indicates the karat fineness of the shell and does not otherwise mark the article, as the act provides that certain forms of gold and a base metal combined shall be specially marked if karat fineness is indicated. If such a practice should prove to be unlawful, it would be, of course, unfair. Under this paragraph, as under paragraph 2, the question again arises as to the accomplishment of the same appearance, alleged here to be deceptive, by the use of a knife skeleton with convex scales or scales of a thickness which may make it appear that more gold of the karat fineness indicated has been used than has been used in fact. As in that instance, so in these, judgment should be reserved on the matter until further testimony is adduced in a proceeding in a concrete case before the commission.

Paragraph 4, which is an expression against the use as deceptive of a concealed inferior material under a gold sheet of indicated fineness, such inferior material not being attached to the gold sheet, should be considered in the light of the possibility of inserting a perforated or meshed strip of gold fineness equal to that indicated for the shell but reduced in weight. The element of alleged deception, as to the thickness of the gold, would still be present. Here also the question of accomplishing the same appearance by the shape and thickness of the knife scales arises, and judgment should be reserved on the expression in the paragraph.

Paragraph 5, advancing an expression of the industry that deception where the karat fineness is indicated follows where a base metal sheet is affixed to the skeleton, is subject to the same reservations as were applied to the previous paragraphs. As before, the knife scales, convex or of a thickness, would seem to accomplish the same deceptive appearance as to the amount of indicated gold which the industry condemns.

The questions which have been here advanced may best be resolved when they arise in connection with concrete cases before the commission, each case to be judged on the law and the facts as they are adduced in the particular case. The trade practice submittal herewith submitted is informative. It is not conclusive.

That is to say, the commission does not accept this declaration as conclusive upon it, and may, in the event that complaints are made to it by members of the industry and a concrete case comes before it, receive the declarations of the industry as herein set forth in weigh-

ing the question of whether an unfair method of competition has been practiced or upon new evidence or further information add to or take away from the definitions herein set forth by the industry.

Completeness of disclosure in representation, labels, and markings in any commodity, so far as it is practicable, seems desirable to the industry and the public. Unless the nature of the article clearly forbids, complete disclosure in articles made in part or in whole of gold would appear to involve not only a revelation of the karat fineness of the gold employed but the pennyweight as well, quantity as well as quality being designated, while gold-filled and gold-rolled stock to meet the requirements of complete disclosure would be marked as such with the karat fineness added and the proportion of gold to base metal indicated, due tolerance for mechanical and decorative purposes being granted. In the same way, when base metal upon which gold has been deposited by electrolysis or by fire gilding is used, the fact could be indicated.

January 22, 1923.

Gold-filled and gold-plated watchcases.—At the request of a number of manufacturers of gold-filled and gold-plated watchcases, representing approximately 75 per cent of the industry, a trade-practice submittal was held with the Federal Trade Commission on January 18, 1923, for the purpose of giving those engaged in the industry an opportunity to express their views in relation to the alleged unfairness of prevailing methods of branding their products, with long-time guarantees and otherwise, and to practicable methods of correcting any evils found to exist. The gathering was attended by all the principal manufacturers and was fairly representative of the industry. Commissioner Murdock conducted the submittal on behalf of the commission.

The purpose of the meeting and the powers of the commission were duly explained, and the representatives of the industry then organized by electing a chairman and secretary and the discussion proceeded. The facts which were developed are summarized in the following preamble and resolutions, which were unanimously adopted and subscribed to by all present:

Whereas, There now exists, and for years past has existed, among manufacturers and dealers in gold-filled and gold-plated watchcases throughout the United States the practice of guaranteeing such gold-filled and gold-plated watchcases to last or wear for a specified length of time, in most cases such guaranteeing being for a period of 20 and 25 years; and

Whereas, This practice has become so widespread that any manufacturer or maker desiring to compete in the markets of the United States has been and is compelled as a matter of self-protection to adopt and continue the practice; and

Whereas, The public has been defrauded and deceived because unscrupulous manufacturers and dealers have placed upon watchcases of an inferior quality

or watchcases made of brass with a thin plating of gold, long-time guaranties, and it being impossible for anyone to tell without destroying the case the amount of gold contained in the case, and it clearly appearing that said practice is not only detrimental to the purchasing public but has resulted in unfair methods of competition in interstate commerce among manufacturers and dealers;

Now, therefore, We, the undersigned manufacturers of not less than 75 per cent of all of the gold-filled or gold-plated watchcases manufactured in the United States, in open meeting condemn the practice of guaranteeing gold-filled or gold-plated watchcases to last or wear for specified lengths of time, and we hereby petition the Federal Trade Commission to bring its action against any person, firm, corporation, or association, being a manufacturer of or wholesaler or retail dealer in watchcases, made in whole or in part of an inferior metal, having deposited or plated thereon or brazed or otherwise affixed thereto, platings, coverings, or sheets composed of gold or of an alloy thereof, and which watchcases are known in the market as gold-filled, rolled gold plate, gold-plate, gold electro plate, or by any similar designation, or against any officer, manager, director, or agent of such firm, corporation, or association who imports into or causes to be imported into the United States for the purpose of selling or disposing of the same or deposits or causes to be deposited in the United States mails for transportation thereby or to deliver or cause to be delivered to any common carrier for transportation from one State, Territory, or possession of the United States or the District of Columbia in any other State, Territory, or possession of the United States or to said District, in interstate commerce or to transport or cause to be transported from one State, Territory, or possession of the United States or to said District in interstate commerce except any such cases wherein the destination marked upon the package containing same is some foreign country not a possession of or a dependency of the United States, outside of the United States any watchcase manufactured after the date when the order takes effect and have stamped, printed, engraved, or imprinted thereon or therein, or upon any tag, card, or label attached or applied thereto, or inclosed therewith or upon any box, package, cover, or wrapper to which such watchcase is incased or inclosed, the word "guaranteed" or the word "warranted," with or without other words or marks indicating the time or duration of wear, or any mark or marks designed or intended to indicate the length of time that such watchcases or the plate, covering, or sheet of gold or of its alloy in or on such watchcase will last or wear, or any word or words, mark or marks, indicating or importing or designed or intended to import time or duration; that every manufacturer and dealer as hereinbefore described shall mark conspicuously and indelibly on the inner surface of one of the lids or cap of any such watchcase the registered name or properly registered trade-mark of the maker or manufacturer thereof, and that when any such watchcases are stamped, branded, engraved, or imprinted with the words "gold filled," or words indicating that such watchcases are gold filled, such words shall be accompanied, in close proximity thereto, by some words or marks usually employed to indicate the fineness of gold, which words or marks shall be legibly stamped, branded, engraved, or imprinted upon such watchcase, in characters of the same size as those employed in said words "gold filled"; and the actual fineness of each and every portion of the sheets of gold or of its alloy which are soldered, brazed, or otherwise affixed to the inferior metal in such watchcases shall not be less by more than three one-thousandths part than the fineness indicated by the words or marks of fineness so stamped, branded, engraved, or imprinted upon such watchcases; provided further, that when any such watchcases are

stamped, branded, engraved, or imprinted with the words "gold-filled," or words indicating that such watchcases are gold-filled, they shall be constructed in accordance with the following specifications: the backs and caps of such cases shall be made of two sheets of gold or of any alloy thereof, soldered, brazed, or otherwise affixed respectively to the inner and outer surfaces of the sheet of inferior metal; the center, bezel, pendant crown, and bow shall be made of one sheet of gold or of an alloy thereof, soldered, brazed, or otherwise affixed to the outer surface of the sheet of inferior metal; the sheet of gold or of its alloy affixed to the outer surface of the backs, center, open-face, bezel pendant, crown, and bow shall not be less than three one-thousandths of one inch in thickness; the sheets of gold or of its alloy affixed to the inner surfaces of the backs, to the inner and outer surfaces of the caps, and to the outer surface of the hunting bezel, shall not be less than one one-thousandth of an inch in thickness. Whenever the thickness of the sheets of gold or of its alloy is stamped, branded, engraved, or imprinted in such watchcases, such mark shall only refer to the thickness of the sheets of gold or of its alloy so affixed to the outer surfaces of the backs, centers, open-face, bezel, pendant, crown, and bow, and in no instance shall the thickness of the gold or of its alloy in any of the parts so mentioned be less than the thickness indicated by the mark stamped, branded, engraved, or imprinted in such case. The mark indicating such thickness shall be expressed in decimals indicating thousandths of an inch. Provided, that in any test for the ascertainment of the thickness of such sheets of gold or of an alloy thereof, the part or parts to be measured shall be those where no gold has been added to or deducted from the thickness by any process designed or intended for the purpose of decoration or ornamentation.

DUEBER-HAMPDEN WATCH CO.,

A. M. DUEBER, *President.*

EMERSON WATCH CASE CO. (INC),

By SAUL SMIGROD, *President.*

JOSEPH FAHYS CO.,

GEORGE E. FAHYS, *President.*

THE KEYSTONE WATCH CASE CO.,

By JOHN G. MUELLER, *Secretary.*

JOHN W. SHERWOOD,

President Solidarity Watch Case Co.

WADSWORTH WATCH CASE CO.,

H. M. STEGEMAN, *Treasurer.*

After consideration of the whole matter, it is concluded:

I. That the Federal Trade Commission has reason to believe from the facts submitted to it by the manufacturers, subject to further inquiry in proceedings, as provided by section 5 of the Federal Trade Commission act:

(a) That the practice of placing time guaranties on gold-filled and gold-plated watches, for distribution and sale in interstate commerce, has led and leads to deception of the purchasing public.

(b) That the marking and/or calling of watch cases for distribution and sale in interstate commerce, as gold-filled, leads to deception of the purchasing public, in the absence of the following elements as a minimum:

(1) That they are marked in close proximity to the words "gold-filled" and as plainly as the words "gold-filled," with words or marks indicating the fineness of the gold which shall not be less by more than three one-thousandths part than the fineness indicated.

(2) That the backs and caps are made of two sheets of gold or an alloy thereof, affixed to the surfaces of a sheet of other metal.

(3) The center, bezel, pendant, crown, and bow are made of one sheet of gold or an alloy thereof, applied to the outer surface of a sheet of other metal.

II. That the commission received the following as the opinion of the trade on the subjects covered, and will take due notice thereof when proper to do so in any proceeding pending before it:

(a) That manufacturers and dealers should be required to place the maker's trade-mark "conspicuously and indelibly" on the inner surface of the lid or cap.

(b) The sheet of gold or of its alloy affixed to the outer surface of the backs, center, open-faced bezel, pendant, crown, and bow shall not be less than three one-thousandths of 1 inch in thickness; the sheets of gold or its alloy affixed to the inner surfaces of the backs, to the inner and outer surfaces of the caps, and to the outer surface of the hunting bezel, shall not be less than one one-thousandth of an inch in thickness.

(c) That whenever the thickness of the sheets of gold or its alloy in gold-filled watchcases is indicated, the mark indicating such thickness shall only refer to the thickness of the sheets of gold or its alloy so affixed to the outer surfaces of the backs, center, open face, bezel, pendant, crown, and bow, the mark accurately indicating such thickness which shall be expressed in decimals indicating thousandths of an inch, in tests to ascertain the thickness, measurements being taken at a point where no gold has been added or taken away for decoration or ornament.

By the commission: Commissioner Nugent dissenting.

OTIS B. JOHNSON, *Secretary*.

The following dissenting memorandum was filed by Commissioner Nugent:

I am in favor of requiring the manufacturers to place on each watch the number of pennyweights of gold used, in addition to the carat fineness, which does not indicate and is not intended to indicate to the mind of the consumer anything relative to the value of the gold used.

The long-time guaranty is a fake, and as it is used for the purpose of deceiving the general public, I am in accord with the proposal that manufacturers who resort to it should be proceeded against.

JOHN F. NUGENT, *Commissioner*.

ECONOMIC DIVISION.

The work of the Economic Division for the fiscal year ended June 30, 1923, comprised inquiries into various subjects, among which may be especially mentioned the profits of the bituminous coal industry, speculation and competitive conditions in the grain export business, foreign control in the petroleum industry, the methods and practices of the cotton trade, profits, prices, and price combinations in the house-furnishing industries, and the costs and profits of wheat-flour milling. These inquiries were made in response to demands for information regarding conditions complained of, and with a view generally to constructive remedial action.

Six of the inquiries, namely, those into grain exporting, the petroleum industry, the house-furnishings business, the cotton trade, wheat-flour milling, and an inquiry into the amount and distribution of national wealth and income, were initiated at the request of the United States Senate. A comprehensive inquiry into the grain trade, on which four volumes have already been published, had its origin in a request of the President. The coal work mentioned above, was undertaken by the commission on its own initiative.

In regard to the inquiry into the coal-mining industry, a more particular description is given below, but it may be noted briefly here that a report was compiled from data, previously acquired by the commission in the regular course of its work, showing the extent of investment in bituminous coal mining operations, the average amount of investment per ton of output, and how such data may be used to determine what the more or less familiar margins of profit in the prices of coal mean in terms of profit on investment. These data may be used not only for testing the results of margins obtained in past years, concerning which much has been published, but also give a useful practical basis of ascertaining what rate of profit current prices probably afford to the mine operators. There is also given below a statement of the extensive assistance rendered by this commission with respect to recent inquiries into the coal mining industry by the Senate and by the United States Coal Commission.

The assistance of the commission has been regularly called upon because its economic staff includes a unique group of expert economists and accountants familiar with the business problems of the coal industry. The constant contact of this commission with the varying but persistently recurring economic disorders in the coal

industry justifies its past activities in endeavoring to throw more light on the real conditions and their causes.

The inquiry into the methods and operations of grain exporters developed some very remarkable data on the operations of certain large speculators and grain merchants especially in the wheat-futures market. This information was sought with a view to ascertaining what effect such speculative operations had upon grain prices generally and whether there was any general combination among such speculators in these operations in the grain-futures market. The analysis of these statistical data indicated that, while these large speculators were apparently working quite independently in their operations and oftentimes on opposite sides of the market, the changes in prices corresponded quite generally to the preponderance of their transactions. In its examination of competitive conditions in the grain export trade, the commission discovered two regional agreements regarding the purchase price of grain in the country markets, one affecting chiefly the Gulf export trade in wheat and the other wheat purchases in the Pacific Northwest.

The inquiry into the extent of foreign ownership of the domestic petroleum industry, together with the extent to which reciprocity was accorded to American petroleum companies in foreign countries, originated in consequence of a rather marked development of the holdings of the so-called Royal Dutch-Shell petroleum group in this country, and brought out the fact that in a number of foreign countries American companies are, directly or indirectly, prevented from engaging in the petroleum industry.

In the household furniture inquiry the commission made a careful study, for this industry, of the remarkable economic experience of this country in the boom of 1919-20 and the period of price deflation and depression that immediately followed. The effects of price changes on profits and other operating results were carefully analyzed. The extent also to which artificial price agreements contributed, directly or indirectly, to the various price advances and later retarded the fall of prices when the general depression set in during the latter part of 1920 and during 1921, were also examined in considerable detail.

These and other matters covered by the work of the Economic Division during the fiscal year, and the constructive recommendations made by the commission, are discussed in more detail below.

METHODS AND OPERATIONS OF THE GRAIN EXPORTERS.

The commission was directed by Senate Resolution 133, Sixty-seventh Congress, second session, passed December 22, 1921, to make an inquiry into the various phases of the export grain business. The

demand for this inquiry was the result of an unprecedented decline in the price of the principal grains at a time when the quantities of certain cereals exported, particularly wheat and rye, were unusually large.

The first volume of this report, dealing chiefly with the interrelations and profits of grain exporters in 1920 and 1921, was transmitted to the United States Senate in manuscript on May 16, 1922, and was printed and ready for distribution early in the fiscal year. The second volume, which deals mainly with speculation, competition, and prices, was completed during the fiscal year. The inquiry concerning the effect of speculation upon grain prices was delayed by the refusal of 18 Chicago commission houses to permit an examination of their customers' futures trading accounts. Most of the concerns having large speculative customers were among those who did not grant access to those accounts. Fourteen of the 18 commission houses refusing to grant access were partnerships, to whose records the commission could lawfully obtain access only with their consent. Regarding the four corporations refusing access to the records of their customers' future trading accounts, it would have been futile to attempt to enforce an examination by legal procedure in time to be of service to the inquiry.

After many members of the Chicago Board of Trade had refused the commission's request for access to their customers' futures trading accounts the commission sought the cooperation of the officers of the Chicago Board of Trade, but they refused such cooperation, stating that the board had no power to compel its members to reveal their customers' business to the commission and that a mere recommendation of the board of directors would be disregarded by many members. In this connection it should be noted that 6 of the 15 directors of the Chicago Board of Trade were officials or partners of concerns refusing the commission's request for access to the records of their customers' future trading accounts.

Later, the commission secured, directly from the speculators themselves, considerable data concerning futures trading on the Chicago Board of Trade. None of the speculators whose futures trades were requested refused to furnish them.

Some of the outstanding facts developed in the second volume of the commission's report on methods and operations of grain exporters are summarized in the report as follows:

In order to ascertain what effect the operations of large speculators and cash grain dealers who hedged their mercantile transactions had on the prices of wheat, the commission secured the daily trades in wheat futures on the Chicago Board of Trade of 12 such speculators and 9 such hedgers for the period July 15, 1920, to May 31, 1922. A number of these traders, moreover, gave detailed testimony concerning their operations.

From the information thus obtained and from other pertinent data the commission concludes that while speculation frequently caused injurious aberrations in wheat prices, the extensive decline in prices of the contract grade of wheat at Chicago from an average of about \$2.85 per bushel on July 17, 1920, to a fraction over \$1 per bushel on September 14, 1922, was due mainly to other factors, including supply and demand, rather than to speculation or manipulation. Speculators and hedgers are especially able to run up prices during the delivery month, and, when this occurs, after their future interests are closed out, prices inevitably fall. In general, however, it appears that, although the frequent and temporary fluctuations in grain prices may be attributed largely to speculation, the relatively infrequent, but long-time fluctuations, may be attributed almost entirely to other causes including actual supply and demand conditions.

* * * * *

While the evidence is clear that speculation during this period resulted, in various instances, in producing artificial price changes in the wheat futures market, the speculators, whose trades were obtained, pursued quite diverse buying and selling policies, although their net position taken as a group indicates that they were usually on the profitable side in different turns of the market.

* * * * *

In view of the fact that futures prices have a substantial influence on cash prices (and this is insisted on by most of the proponents of futures trading) and the fact that artificial price conditions so often prevail in the futures market, it seems clear that, if this trading is permitted to continue, the Federal Government should regulate it, in order to prevent abuses.

* * * * *

The car-delivery rule, which permits delivery of grain on futures contracts in cars on track, instead of in regular elevators, is used only in emergencies on a vote of the board of directors of the Chicago Board of Trade, and it has been invoked only twice since its adoption in 1918. Its operation is intended to effect and naturally results in, an increase in the deliverable supply, and consequently in a decline in price. Moreover, demurrage charges and the difficulty of insuring or borrowing money on grain delivered on track are additional price-weakening influences which force prices to a lower level than would be the case if delivery were made in regular elevators. In May, 1922, especially, the invoking of the emergency car-delivery rule helped to break prices lower than would have otherwise been the case. Most of the wheat delivered on track in May, 1922, was delivered by the Armour Grain Co. and the J. Rosenbaum Grain Co.

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An examination of the correspondence files of the more important grain exporters, fobbers (i. e., merchants who sell free on board vessel at seaports), and elevator operators showed that in the sale of grain for export there was keen competition, but that in the purchase of wheat from the farmer and country elevator by exporters and fobbers there were two distinct price agreements in existence in 1921, one covering the purchase of wheat for export through the Gulf of Mexico ports and the other that for export from the Pacific Northwest.

* * * * *

The expenses of marketing grain were much higher in 1920 than for pre-war years, particularly for transportation and country marketing facilities. When grain prices declined these expenses necessarily became much more burdensome.

A large proportion of the grain elevator capacity used in the export trade is controlled by large grain merchants. Four of these merchants controlled about 22 per cent of the total capacity and 21 merchants controlled 43 per cent thereof.

The evidence in this inquiry supports that previously obtained with regard to the inadequacy of public elevator capacity and the necessity of lower storage rates to afford the grain producer and merchant necessary marketing facilities and to prevent price manipulations.

The recommendations of the commission based upon this study of the grain business were as follows:

1. That the Chicago Board of Trade be required to make public each day the total volume of futures operations in each option of each grain for the preceding day, and also the total volume of open trades in each option of each grain in existence at the close of the preceding day, so that the general public may have information as to the basis for the widely quoted prices of Chicago futures.

2. That all brokers and all commission men, or officers, or large stockholders of companies doing a brokerage or commission business in futures for customers, be prohibited from speculating in grain futures for their own account, in order to prevent abuses and risks arising from the same party acting at the same time as agent and as principal in trading on the exchange.

3. That the car-delivery rule and the settlement rule for defaulted futures contracts on the Chicago Board of Trade should be interpreted and applied by an impartial person or tribunal, because these rules involve complex questions of fact, requiring unprejudiced judgment, and because the present practice involves the discretion of the board of directors and the president, who may be called upon to decide questions affecting their respective interests or those of their customers.

4. That the Chicago Board of Trade be required to permit the delivery of grain on futures contracts at other important markets than Chicago, under proper safeguards and equitable terms, whenever necessary in order to prevent a squeeze or corner in the Chicago market.

5. Finally, the commission reiterates, in substance, a recommendation made in a previous report, namely, that the railroads might be encouraged to furnish, or the States or Federal Government might assume the duty of furnishing, adequate storage elevator capacity at convenient market points, especially at Chicago, free from control or operation by any grain dealer, broker, or commission house, in order to remove the artificial conditions frequently occurring there and with such storage charges and other conditions that the grain farmer or merchant would be able to store grain in competition with elevator merchandisers, while, by means of negotiable warehouse receipts obtained for such grain, the farmer would be aided in borrowing money to finance his crop until he was willing to sell.

FOREIGN OWNERSHIP IN THE PETROLEUM INDUSTRY.

On February 12, 1923, the commission submitted a report to the United States Senate on foreign ownership in the petroleum industry, made pursuant to Senate Resolution 311, Sixty-seventh Congress, second session, adopted June 29, 1922. The demand for such an inquiry was occasioned by the activity of the Royal Dutch-Shell group, a combination of British and Dutch interests, in acquiring petroleum producing, transporting, refining, and marketing properties and equipment in this country.

This report describes the organization, development, and present status of the Royal Dutch-Shell group, with special reference to its holdings in the United States, and particularly the absorption of the Union Oil Co. (Delaware); it relates the facts regarding the present ownership and control of the Union Oil Co. of California and outlines the situation with respect to discrimination of foreign governments against citizens of this country in the acquisition and development of petroleum-producing properties in foreign lands.

The more important facts developed in this report were as follows:

The Royal Dutch-Shell group, a combination of the Royal Dutch Co. and the Shell Transport & Trading Co., of London, has worldwide oil investments, including numerous refineries, an immense fleet of tank ships, and petroleum production in many lands, which in 1921 was no less than 11 per cent of the world output. This group in February, 1922, consummated a merger of the principal properties and investments of the Union Oil Co. (Delaware) with its chief American subsidiaries in a new company, the Shell Union Oil Corporation, which now controls over 240,950 acres of oil lands in the United States; has about 3.5 per cent of the total output of crude petroleum; owns extensive properties in refineries, pipe lines, tank cars, and marketing equipment; and is one of the largest companies in the domestic petroleum industry. The Union Oil Co. (Delaware) owned about 26 per cent of the stock of the Union Oil Co. of California, but, to prevent the Royal Dutch-Shell group from gaining control, certain stockholders of the Union of California organized an American-controlled holding company, which now owns more than half of its issued stock.

The most important instances of discrimination by foreign governments against citizens of this country are the exclusive policies of the Governments of Great Britain and the Netherlands in respect to the oil fields of India and the Dutch East Indies, and the 1920 San Remo agreement of Great Britain and France covering the undeveloped oil fields of Mesopotamia and of the British and French colonies. Denial of reciprocity of treatment to citizens of this country appears to exist with respect to the petroleum industry of Australia, British Borneo, certain African colonies, British Honduras, British Guiana, and Trinidad, France and French possessions, Italy, and the Netherlands and its dependencies.

Thus forced to modify its historic policy, Congress in 1920 enacted a mineral leasing law for public lands which forbids the acquisition of properties by the nationals of any foreign country that denies reciprocity to Americans, in consequence of which certain applications for petroleum leaseholds have been denied to the Royal Dutch-Shell group.

The commission drew the following conclusions:

What further efforts may be made by this combination to acquire privately owned petroleum lands or competing oil companies, it is, of course, impossible to predict, or how far antitrust laws may be effective to prevent them.

The supply of crude petroleum in this country is being rapidly depleted to meet the requirements of a growing domestic consumption and foreign trade. The sources of supply of the domestic industry are concentrated within its own borders and in Mexico, while those of its principal competitor are widely distributed throughout the whole world. It appears obvious that a nation having widely distributed supply and storage facilities and owning the means of distribution will have certain advantages in world trade against one having concentrated supply.

COAL.

Investment and profit in soft-coal mining.—The past year was one marked by great public concern in the coal industry. Early in the year the Federal Trade Commission completed its preliminary report on investment and profit in soft-coal mining, an important report, but not entirely satisfactory because completed under the handicap of an injunction which prevented the requirement of the additional information needed. While owing to this injunction in the Maynard Coal Co. case the commission itself undertook no new work during the year, it did give material aid to the United States Coal Commission, which was created by act of Congress of September 22, 1922, to make a special study and to report on the coal problem.

The Federal Trade Commission's examination of investment in soft-coal mining was its first study on any extended scale of the amount of funds invested in bituminous-mining enterprises. During the war and in the commission's coal bulletins issued in 1920 the cost of production per ton and the net margins of profit per ton were ascertained currently but the profits on investment were not determined. Hence it was not known, except in a very general way, whether a profit of a given number of cents per ton meant a high or low rate of return on the funds invested. While the results of this inquiry were discussed in the last annual report, the report was issued during this fiscal year and certain fundamental facts may be noted here.

Net margins of profit per ton had been determined and made public by the Trade Commission for a substantial proportion of the industry's production in 1916 and 1917 and for practically all of it in 1918. The National Coal Association's unrevised figures of net profit per ton for a substantial proportion of the tonnage had been made public for 1919, 1920 (nine months), and 1921. The value of the new report was that it arrived at the approximate average amount of funds invested per ton of coal produced for each of the important bituminous coal districts and thus for the first time fur-

nished a base for judging what these various net margins per ton signified in terms of rate of profit on the investment.

This approximate investment for 1,126 bituminous mining companies scattered throughout nearly all the mining districts of the country as a whole was found to average \$3.12 per ton of annual production. This investment includes borrowed funds.

The estimated average rate of return on the net investment, including borrowed funds, for all of the districts for the six-year period 1916-1921 was about 15 per cent and for 1918-1921 about 13 per cent. By years, the approximate rates were:

Year.	Per cent profit.
1916.....	8
1917.....	29
1918.....	18
1919.....	6
1920 (9 months).....	23
1921.....	3
Average, 1916-1921.....	15

These profits represent the net income before payment of Federal taxes thereon.

Briefly, the year 1916 showed pre-war conditions; the year 1917 was a panic-price period uncontrolled by war regulation until August, 1917; 1918 was a year of price control by the Fuel Administration; 1919, a year of subnormal demand; 1920, when there was a seller's market, had the highest bituminous coal prices in history, and 1921, a year of general business depression affecting this industry severely. For these six years the average return of approximately 15 per cent on the investment represented, therefore, the results both of fat years and lean.

In the third quarter of 1920 (July to September), when the coal panic of 1920 was at its height, the average unrevised net margin of the 466 operators reporting to the National Coal Association was \$1.15 per ton, or approximately 37 per cent on the investment. On the other hand, in December, 1921, 511 operators reporting to the association showed on the basis of unrevised figures a loss of 35 cents per ton or a loss of approximately 11 per cent on the investment.

The three chief coal producing States of the country are Pennsylvania, West Virginia, and Illinois. There were marked differences between them in investment per ton. In Pennsylvania the investment in soft coal averaged \$3.68 per ton of the annual production, in West Virginia \$4.12, and in Illinois \$1.67, less than half as high as in the two first-named States. The average investment in West Virginia was \$1 a ton higher than the general average of \$3.12 in 70 of the 74 mining districts of the country, while in Illinois the figure was nearly \$1.50 a ton less than the average for the country.

The information on which the report was based was that obtained before the injunction against the commission was secured, or that collected by the National Coal Association itself and made public without opportunity for governmental revision. Thus, while incomplete and only partially verified, the results may be taken as probably an understatement of the profits in the soft coal mining industry for this period.

The principal conclusions of the report were:

(1) The need of more accurate and more complete information regarding the ownership of bituminous coal deposits and coal mines, the true investment therein, and the true profits arising therefrom.

(2) The need of ascertaining the profits of selling companies owned by or affiliated with mining companies and also of other wholesalers or dealers in coal.

(3) The need of establishing the coal industry in public confidence and protecting it by devising means of Federal supervision and publicity so as to avoid periods of excessively high prices and of severe depression.

Aid to the United States Coal Commission.—At the urgent request of the United States Coal Commission the Federal Trade Commission turned over to it the greater part of its force which had formerly been engaged on its coal inquiries. This was done by granting extended leave without pay to a number of its coal experts, economists, accountants and clerks, who were thereupon employed by the Coal Commission and formed a directing force and nucleus for those sections of the Coal Commission's staff dealing with the costs and profits of coal mining companies and coal dealers.

While this release of a considerable number of its employees handicapped the work of the Economic Division in its other investigations, the Coal Commission's work was so urgent that the Federal Trade Commission felt obliged not to withhold the aid of the only body of experts in the Government service who are trained in the analysis and compilation of coal costs and profits. Some of them were transferred to this work in the fall of 1922 and the others in January 1923, the understanding being that they would return to the Federal Trade Commission's work in September, 1923, on the termination of the Coal Commission's existence.

All coal cost and financial records in the files of the Federal Trade Commission, which cover a period of several years prior to January 1, 1919, were also made available to the Coal Commission, in accordance with the provisions of the law creating it. The Coal Commission was thus enabled to confine to the period from 1919 on its work of gathering new cost data from operators, and for the earlier period used in its report the costs and margins which had been determined and published in substantially the same form in the reports of the Federal Trade Commission.

It is worthy of comment that the National Coal Association, which in 1920 secured an injunction against the Federal Trade Commission prohibiting it from requiring information on costs of production of coal, in 1923 publicly recommended to the United States Coal Commission that the bituminous coal operators should be called upon to submit to a governmental agency the facts as to their costs of production. This they proposed should be on a basis of voluntary cooperation, their preference being to report to the Department of Commerce or the Department of the Interior. If there was any force in the contention of the operators in enjoining the Federal Trade Commission that neither Congress nor any agency created by Congress could constitutionally require information on the cost of production of coal that force was still unchanged. Yet in less than two years this national association of coal operators had come to see that they could not safely flout public opinion by refusing to governmental agencies and to the public the basic facts about this industry. So it has come about also that the operators have furnished to the United States Coal Commission the very information which they refused to give to the Federal Trade Commission, and which they caused it to be enjoined from securing.

In connection with the services of the Federal Trade Commission experts in the work of the United States Coal Commission on the costs and profits of mining and dealing in coal, it is proper to point out further that while the Federal Trade Commission has been under the injunction referred to since the spring of 1920, it has been called upon to make its information and the services of its experts available to public agencies in two great crises in the coal trade which have developed since the time when the injunction was laid upon it. The coal troubles of 1922 and 1923 have not caused the public to forget the coal panic of the summer and fall of 1920 when prices of soft coal reached theretofore unheard of heights. At that time the "Calder Committee," the Select Committee of the United States Senate on Reconstruction and Production, under the chairmanship of Senator Calder, and the Senate Committee on Manufactures, under the chairmanship of Senator LaFollette, held extensive hearings and made vigorous efforts to probe the causes of the coal panic of that time, to determine the profits of operators, and to secure the passage of constructive legislation to prevent the recurrence of such price excesses in the coal trade. Both of these Senate committees called upon the Federal Trade Commission to make available to them the information obtained by it, which was done, and the services of a number of its experts and clerks familiar with the coal industry were utilized by the committees. Similar service rendered the United States Coal Commission, at its request, during the past year is therefore the Federal Trade Commission's second

response in the past two years to a call for aid in a matter on which it, itself, is still enjoined, in a large measure, from acting directly.

HOUSE FURNISHINGS.

During the fiscal year the commission continued its inquiry into the house-furnishings industry, which was undertaken pursuant to Senate Resolution 127, adopted January 4, 1922, directing the commission to inquire into factory, wholesale and retail price conditions in the principal branches of the house-furnishings goods industry since January 1920, and particularly to ascertain the organization and interrelations of corporations and firms engaged therein and whether there were unfair practices or methods of competition or restraints of trade, and to report as the various phases of the inquiry should be completed.

Household furniture.—The first report was published January 17, 1923, and covered ordinary wooden household furniture. The report was divided into two parts, the first pertaining to investment, costs, prices, and profits, and the second part to the organization and concentration of ownership of corporations and firms and to unfair practices and restraints of competition.

Financial returns were received from 299 manufacturing companies, 22 jobbers, and 560 retailers of furniture. The manufacturers made profits amounting to 28.2 per cent of their aggregate investment of over \$80,000,000 in 1920 and 8.4 per cent on an investment of over \$91,000,000 in 1921. The wholesalers profits were 32.7 per cent on an investment of approximately \$4,000,000 in 1920 and 4.2 per cent on over \$4,800,000 in 1921. The average profits of 424 specialized retail furniture stores were 22 per cent on an aggregate investment of nearly \$84,000,000 in 1920 and 8.4 per cent on an investment of nearly \$95,000,000 in 1921.

This was the first report of the commission to trace a manufactured product from the producer to the consumer through the crest of the "peace boom" in 1920 and through the "buyers strike" and business depression which followed. It is shown that in 1920, of the consumer's dollar about 13.3 cents went for retailer's profit, 8.3 cents for manufacturer's profit, 2.1 cents for freight and the balance for manufacturers' and retailers' costs and expenses. In 1921, 6.9 cents went for retailer's profit, 4.2 for manufacturer's profit, 3.3 cents for freight and the balance for manufacturing and retailing costs and expenses.

Further findings as to prices and profits were as follows:

Wholesale prices of household furniture in 1920 reached a higher peak than most commodities and subsequently declined more gradually and without approaching so near the pre-war level.

Furniture manufacturers, however, reduced their prices more in absolute amount than the decline in the prices of raw materials, relatively more than wages, and both absolutely and relatively more than they reduced their total cost.

Retailers also reduced prices, and by the early part of 1922 probably in as great proportion as the manufacturers, but reluctant to cut prices on large stocks of high priced furniture, their price reductions lagged about a half year behind.

* * * * *

Most retailing of furniture in 1920 and 1921 was on the installment plan and installment prices averaged probably at least 16 per cent above cash prices. Installment stores generally had higher operating expenses but made considerably higher profits on the investment than those doing primarily a cash business.

For the study of competitive conditions, schedule returns were obtained showing the organization and ownership of 378 manufacturing companies, 97 wholesalers, and 835 retail dealers, together with a considerable mass of letters, minutes of meetings, bulletins, and other documents obtained by agents of the commission through interviews and examination of the records and files of trade associations, examination of files of various large manufacturers, and from the trade press. In the conduct of the inquiry, the offices of 7 national and 9 smaller territorial manufacturers' associations, a national wholesalers' association, a national and 34 local and state retailers' associations were visited by agents of the commission.

The report shows that there was no significant concentration of control through intercorporate stock ownership of the furniture industry as a whole. There were, however, a few cases in each branch of the industry where small groups of companies were controlled by the same stockholders.

The report shows, on the other hand, that all branches of the industry were strongly organized into local and national trade associations and that manufacturers' associations by adopting and using, among other devices, minimum "selling value" (i. e. price) bulletins prepared by an expert and based on theoretical replacement costs plus 25 per cent for contingencies and profit, acted in concert to advance prices during the early part of 1920; to maintain prices, in conjunction with retail organizations, in the face of the general slump during the latter part of 1920; and to retard declines of prices in 1921.

In regard to association activities it was further found that:

Leading furniture manufacturers' associations have jointly employed an expert to price articles of furniture for their members on a theoretical cost basis which tended to uniformity of prices.

Various retail organizations have frequently interfered with the sale of furniture by manufacturers to consumers and to so-called "illegitimate" dealers by means of concerted complaints of members to offending manufacturers and by the publication of the Buyers Guide and Tattle Tales.

In the autumn of 1920 the leading manufacturers' associations, following a conference with the organized retailers who insisted that they should have time to dispose of their high-priced stocks, advised their members to defer making reductions in factory prices.

Although a movement for "truth in furniture" has recently been started, which includes many manufacturers and dealers, furniture, both as to materials and workmanship, is often misrepresented in a manner to deceive the public.

Kitchen furnishings and domestic appliances.—The commission selected kitchen furnishings and domestic appliances as the second division of the house-furnishings goods inquiry.

Field work on this subject was nearly completed during the fiscal year and included inquiry into the manufacture and distribution of stoves, sewing machines, vacuum cleaners, washing machines, refrigerators, brooms, and cooking utensils. Schedules requesting information on investment, prices, costs, and profits and on organization and ownership were sent to 1,286 manufacturers and over 2,500 wholesalers and retailers of these commodities. It was found difficult to secure sufficient usable replies to show representative results and representatives of the commission visited a number of concerns which had returned incomplete data. The commission's agents also visited the offices and examined the records of the principal associations, numbering about 35, in the various industries involved in the inquiry.

A large proportion of the mass of material secured was reviewed and digested, and drafts of reports were prepared for several important parts of the inquiry.

WYOMING PETROLEUM MONOPOLY.

Supplementing a previous elaborate report on the petroleum industry of Wyoming there was issued at the beginning of the fiscal year a very brief report on the petroleum trade in Wyoming and Montana, which discussed the selling prices of gasoline. The most important conclusion of the report was that the petroleum industry and trade in that region was dominated by Standard Oil interests, a local monopoly having been perfected in 1920 and 1921 through the acquisition of the formerly independent Midwest Refining Co. The even more recent acquisition from the Federal Government of the lease of the Teapot Dome Naval Reserve by the Sinclair interests, together with the alliance between these interests and the Standard of Indiana for the purpose of purchasing crude petroleum and the construction of a pipe line to Kansas City for marketing the oil constituted another effort to reintegrate monopoly in the petroleum industry. The commission found the existing law inadequate to meet the situation and suggested specific additional legislation of a form which would effect the abolition of the extensive community of interest among the Standard Oil companies, which resulted from

the defective requirements of the original decree dissolving the Standard Oil monopoly.

WAR-TIME COSTS AND PROFITS OF SOUTHERN PINE LUMBER COMPANIES.

During the war much valuable information regarding costs was secured from the lumber industry and compiled by the commission for the War Industries Board. In the spring of 1919 the commission secured reports containing balance sheets, sales realization, and profits for 1917 and 1918 from many manufacturers of southern pine lumber. Owing to extensive reductions in the office force this data could only be tabulated intermittently and it was not until the autumn of 1922 that the report on war-time costs and profits of southern pine lumber companies was printed and ready for distribution. Some of the outstanding facts developed in this report are summarized as follows:

The average rate of earnings on the entire business, as reported by 143 identical companies, was 9 per cent in 1917 and almost 8½ per cent in 1918. There was a wide variation in the reported rates of earnings for individual companies. In 1917 the reported rates of earnings ranged from a loss of almost 3 per cent to a profit of a little over 52 per cent, while in 1918 the range was from a loss of 13 per cent to a gain of nearly 52 per cent.

The revision of the returns of these 143 companies by the elimination of stumpage appreciation from investments and costs increased their average rate of earnings on total investment from about 9 per cent to about 12 per cent in 1917 and from almost 8½ per cent to about 11 per cent in 1918.

The total investment in the lumber business compared with the annual output varied greatly for different companies on account of differences in the supply of standing timber owned. Consequently companies owning a timber supply sufficient to last for short periods only generally received larger rates of return on their investment than those owning timber supplies sufficient to last a long time. In 1917, for example, the average revised rate of return on investment for 146 companies was a little less than 12 per cent, while the rates of return for companies grouped according to the period of timber supply were as follows: Five years or less, not quite 15 per cent; 6 to 10 years, a little over 12 per cent; 11 to 15 years, nearly 8 per cent; and over 15 years, 9½ per cent. In other words, the companies not burdened with a relatively large timber supply were more profitable.

There was a wide range in the reported costs, sales realization, and earnings per thousand feet for both years. In 1918, for example, individual costs, as reported by the 205 companies, ranged from

\$15.63 to \$37.12 per thousand feet; the average sales realization for different companies ranged from \$18.81 to \$36.28 per thousand feet; while the net earnings for individual manufacturers ranged from a loss of \$4.85 to a profit of \$13.79 per thousand feet.

The southern pine lumber industry was under increasingly strict governmental control of prices from July, 1917, to the end of 1918, and throughout this period the increase in prices practically paralleled increasing costs. Following the termination of governmental price control the prices of southern pine lumber advanced rapidly to unprecedented levels during the latter part of 1919 and early 1920. These high prices gave rise to a "buyers' strike" and a rapid decline in prices, which began in the spring of 1920 and continued through the middle of 1921, when the prices of many grades reached the price levels prevailing in the early months of 1917.

COTTON TRADE.

Preliminary report.—A Senate resolution of March 16, 1922 (No. 262), directed the commission to make inquiry into the causes of the depressed prices of cotton in the United States, giving particular attention to the operation of the cotton exchanges, whether trading on these was being carried on in a fair, just, and legal way, and whether present laws were operating equitably to the grower of cotton. The resolution requested that in the event that the commission found remedial legislation necessary that it inform the Senate thereof and submit such recommendation as it believed feasible.

In February, 1923, a preliminary report dealing chiefly with the causes of the decline in cotton prices was submitted to the Senate. It was found that "the most important factors in the sharp decline in prices in 1920-21 were the marked increase in supply and decrease in demand."

Pursuant to the resolution inquiry was also made into existing laws affecting the cotton trade, and the preliminary report discussed the operation of the cotton futures act of 1914, together with its subsequent amendments, and their influence upon future trading. Some consideration was given also to the character of the future contract in its relation to future prices and the bearing that such prices have on spot prices for cotton.

Other aspects of the cotton trade, particularly those relating to operations of exchanges, were reserved for a subsequent report.

Subsequent inquiry.—In January, 1923, the Senate adopted another resolution (No. 429) which makes special reference to alleged corporate violations of antitrust laws with respect to operations in cotton, the conduct of cotton exchanges, operations upon such exchanges by corporations, partnerships, and individuals.

The inquiry under this resolution was combined with the portions of the inquiry under the earlier resolution not covered in the preliminary report.

Much additional field work has been done in all the most important cotton markets since the second resolution was passed, and special consideration is being given to the study of the future exchanges, the contract which is sold thereon, the making of quotations, and their influence on prices in both spot and future markets.

WHEAT FLOUR MILLING.

Senate Resolution 212, Sixty-seventh Congress, second session, adopted January 18, 1922, directed this commission "to extend its investigation of commercial wheat flour milling from the date of the conclusion of its investigation of said industry included in its report to Congress on September 15, 1920, up to the close of the fiscal year ending June 30, 1921."

Owing to the lack of funds for economic inquiries and the pressure of other work already begun this inquiry could not be started until late in 1922. Although the funds available for field work were inadequate the milling industry generally cooperated with the commission, and data covering costs, investment, and profits were secured from a large number of flour mills in most of the important milling centers for the period 1919-1922. Reports were obtained from most of the mills included in the 1920 report, thus making it possible to present costs and profits for the period 1913-1922 for a representative group of companies. At the close of the fiscal year the compilation of the data covering costs, investments, prices, and profits was nearly completed, together with much other data pertinent to this inquiry.

GRAIN TRADE.

The work on Volumes IV and VI of the commission's report on the grain trade was substantially completed during the fiscal year.

Volume IV deals with the costs and profits of country and terminal elevator operations, concerning which certain data have already been published in a preliminary report.

Volume VI deals with the movement, variability, and relationships of cash and future grain prices, and subjects to statistical tests certain long current economic theories with reference to such prices.

A large amount of the work was also done during the year on Volume VII, which deals with the results of future trading. In this volume it is planned to formulate general conclusions on the subject of future trading in grain.

NATIONAL WEALTH, NATIONAL INCOME, AND TAXATION.

Senate Resolution 451, adopted February 28, 1923, directed the commission to make an inquiry into and to compile data concerning the total amount of the chief kinds of wealth in the United States, to ascertain the ownership thereof and the incumbrances thereon, including both public and private indebtedness, and to secure statistics for recent years covering the amount of the annual increase in the national wealth in different lines of economic activity and by different classes of the population; and also to obtain information regarding the amount of the income exempt from Federal taxation and to report on the various phases of the inquiry as soon as practicable. An amendment to this resolution instructed the commission to ascertain the aggregate taxes levied by States, counties, municipalities, and other local taxing bodies for the last completed fiscal year and for the corresponding fiscal year five years previous.

On account of the comprehensiveness of the subject matter of this Senate resolution and in order to expedite the work and enable the commission to report on certain phases at an early date the subject was divided into three parts, viz, national wealth, national income, and taxation. The work on all three parts is being carried on as rapidly as the limited personnel and funds available for such inquiries will permit.

PAPER STATISTICS.

The collection and compilation of statistics concerning the paper industry for monthly publication begun in 1917 was continued through the first 11 months of the fiscal year and then was brought to a close.

The statistics obtained from the paper industry itself related chiefly to the production, shipment, and stocks of paper and pulp by grades. The statistics obtained from publishers related chiefly to consumption, stocks, and prices of newsprint paper. The information so collected was compiled and published in monthly bulletins and in a yearly summary for the benefit of those engaged in the industry, the consumers, and the public. In addition to the data collected by the commission, there were also included in its current bulletins data on the imports and exports of paper compiled from the records of the Bureau of Foreign and Domestic Commerce, Department of Commerce.

While wide interest was manifested in these statistics, there was considerable difficulty in getting complete and prompt returns, as the reports were made entirely on a voluntary basis. Moreover, the heavy increase in the expense of the commission for its legal work made it seem necessary to reduce the amount of its allotment to

economic and statistical work. In view of this condition, the paper manufacturers, jobbers, and publishers furnishing statistical data, as well as all persons receiving the reports, were notified on June 22, 1923, that in accordance with the commission's resolution of June 11 the further collection, compilation, and publication of paper statistics would be discontinued as of July 1, 1923. When this decision was announced an effort was made by important representatives of the paper industry to induce some other branch of the Government to undertake this work. It was finally continued by a trade association.

COOPERATION WITH THE LEGAL DIVISION.

The legal work of the commission often involves fact-finding inquiries in which the assistance of the economists and accountants of the economic division is often required on a more or less extensive scale. Some of the more important instances are noted below:

Steel basing point case.—The proceeding against the United States Steel Corporation and its subsidiaries with regard to the practice of selling certain steel products on the basis of Pittsburgh prices plus freight to point of delivery, without regard to the actual place of manufacture or cost of transportation, continued to require throughout the fiscal year the services of several members of the economic division in compiling data and digesting testimony.

Bethlehem-Lackawanna-Midvale merger.—The merger of three of the largest independent steel companies, namely, the Bethlehem, Lackawanna, and Midvale steel companies, resulted in legal proceedings in the course of which the detail of an accountant was sought from the economic division in order to ascertain various facts regarding the business operations of these companies and the extent to which competition had been eliminated as a result of the merger.

Western creamery case.—In connection with a charge of unfair competition on the part of a large creamery company in the purchase of milk it became necessary to examine in detail the accounts of the company, which was done by a detail of accountants from the economic division.

Calcium arsenate inquiry.—An inquiry into alleged restraint of trade in the sale of calcium arsenate was assigned to the legal staff of the commission, but certain members of the economic division were also detailed to assist in this inquiry.

AID TO OTHER BRANCHES OF THE GOVERNMENT.

Several branches of the executive Government as well as a Senate committee have called on the commission for aid which has been sup-

plied by the economic division. Certain instances may be briefly mentioned.

Senate inquiry into the petroleum industry.—The Senate Committee on Manufactures made an extensive inquiry into the petroleum industry and called upon the commission for expert aid in connection with certain aspects of the inquiry. From the economic division one of the commission's expert petroleum accountants was selected to aid in preparing report forms for the petroleum refining and marketing companies regarding their investments and profits, and in supervising the tabulations and analyses tabulating and analyzing the information obtained.

Department of Commerce.—Owing to abnormal conditions in the coal trade in the summer of 1922 the Secretary of Commerce made certain investigations of the situation and suggestions to the mine operators in various mining districts as to what might be considered fair prices for coal. In this connection he requested and obtained the detail of several accountants of the economic division familiar with the industry to ascertain costs of production in certain districts and other data pertinent to this problem.

Department of Justice.—In proceedings in the Court of Claims certain big meat packers sought to recover from the Government on war contracts large sums over and above what the purchasing authorities regarded as legally and equitably due. Assistance was sought by the Department of Justice for the purpose of examining into these purchase transactions, which involved going into the accounts of the packers. An accountant of the economic division expert in the records of the meat-packing industry was selected for this work, which was represented to be indispensable for the successful conduct of the case.

United States Coal Commission.—The extensive assistance rendered by the commission to the United States Coal Commission has been described in some detail above. (See p. 69.)

EXPORT TRADE DIVISION.

Under the export trade act (Webb-Pomerene law) of April 10, 1918, the commission is given jurisdiction over combinations or "associations" organized for the purpose of and solely engaged in export trade from the United States to foreign nations.¹

Under the provisions of section 6 (h) of the Federal Trade Commission act of September 26, 1914, the commission is empowered—

To investigate, from time to time, trade conditions in and with foreign countries where associations, combinations, or practices of manufacturers, merchants, or traders, or other conditions, may affect the foreign trade of the United States, and to report to Congress thereon, with such recommendations as it deems advisable.²

PROVISIONS OF THE EXPORT TRADE ACT.

Section 1 of the act defines the terms "export trade," "trade within the United States," and "association," wherever used within the law. Export trade means "solely trade or commerce in goods, wares, or merchandise exported, or in the course of being exported from the United States or any Territory thereof to any foreign nation." The word "association" means "any corporation or combination, by contract or otherwise, of two or more persons, partnerships, or corporations."

Sections 2 and 3 of the act provide exemption from the antitrust laws, to "an association entered into for the sole purpose of engaging in export trade and actually engaged solely in such export trade, or an agreement made or act done in the course of export trade by such association," with the provision that such an association, agreement, or act shall not be in restraint of trade within the United States, or in restraint of the export trade of any domestic competitor, and the further prohibition of any agreement, understanding, conspiracy, or act which shall enhance or depress prices or substantially lessen competition within the United States, or otherwise restrain trade therein.

Section 4 extends the jurisdiction of the commission under the Federal Trade Commission act to include unfair methods of competition used in export trade against competitors engaged in export trade, even though the acts constituting such unfair methods are done without the territorial jurisdiction of the United States.

Section 5 provides for the filing of papers with the Federal Trade Commission and covers procedure in case of violation of the export trade act.

¹ See Exhibit No. 5.

² See Exhibit No. 1.

The commission has taken the position that the receipt and filing of such papers does not serve as a guaranty of approval, nor as a permit or license to operate under the law. During the debates in Congress before the passage of the act, an amendment was proposed providing that "before any association shall engage in business under this act it shall secure from the Federal Trade Commission a permit to engage in such business, and said commission is authorized to issue such permits and may, in its discretion, refuse a permit to any association, and may, after hearing, cancel any permit issued." Strong objection to such a clause was voiced at that time, on the ground that such autocratic power should not be vested in any commission of the Government; and the proposed amendment was not made a part of the law.³

OPERATION UNDER THE EXPORT TRADE ACT.

Associations which have filed papers with the commission are engaged in the exportation of raw materials and manufactured products of many sorts and kinds, including steel, copper, cement, phosphate, sulphur, rubber, lumber and wood products, locomotives, textile machinery, steel tires and wheels, naval stores, soda pulp, alkali, pipe fittings and valves, paper, paint, alcohol, tanning materials, webbing, abrasives, buttons, clothespins, and foodstuffs such as milk, meat, sugar, canned foods, and grain products.

Members of these associations number 600 and are scattered throughout all parts of the United States.

A substantial increase is noted in exports by associations during the past fiscal year. The revival of foreign trade is reflected in a renewed interest in the act and operation under its provisions. Eight new associations were organized during the year, and a number of others are in the process of formation.

CONCERNS FILING PAPERS IN CONNECTION WITH THE EXPORT TRADE ACT.

During the fiscal year, July 1, 1922, to June 30, 1923, the following concerns filed papers with the commission:

American Corn Products Export Association, 135 William Street, New York City.

American Locomotive Sales Corporation, 30 Church Street, New York City.

American Milk Products Corporation, 71 Hudson Street, New York City.

American Paper Exports, (Inc.), 136 Liberty Street, New York City.

American Pitch Pine Export Co., 522 Maison Blanche Annex, New Orleans,

La.

American Provisions Export Co., 226 West Adams Street, Chicago, Ill.

American Soda Pulp Export Association, 200 Fifth Avenue, New York City.

³ Congressional Record, June 13, 1917, vol. 55, pt. 4, p. 3578 fol.

American Surface Abrasives Export Corporation, room 1309, 82 Beaver Street, New York City.

American Tanning Materials Corporation, post-office box 857, Knoxville, Tenn.

American Textile Machinery Corporation, 24 Federal Street, Boston Mass.

American Tire Manufacturers' Export Association, 7 Dey Street, New York City.

American Webbing Manufacturers Export Corporation, 395 Broadway, New York City.

Associated Button Exporters of America, (Inc), 1182 Broadway, New York City.

Automatic Pearl Button Export Co. (Inc.), 301 Mulberry Avenue, Muscatine, Iowa.

Canned Foods Export Corporation, 1739 H. Street NW., Washington, D. C

Cement Export Company, (Inc.), care of Charles F. Conn, Pennsylvania Building, Philadelphia, Pa.

Chalmers (Harvey) & Son Export Corporation, rear 31 East Main Street, Amsterdam, N. Y.

Clandete Export Corporation, 300 East Twenty-second Street, New York City.

Copper Export Association (Inc.), 25 Broadway, New York City.

Davenport Pearl Button Export Co., 1231 West Fifth Street, Davenport, Iowa.

Delta Export Lumber Corporation, 1339 Bank of Commerce Building, Memphis, Tenn

Douglas Fir Exploitation & Export Co.,¹ 260 California Street, San Francisco, Calif

Export Clothes Pin Association of America (Inc), 90 West Broadway, New York City

Export Trade Association (Inc), 99 John Street, New York City.

Florida Hard Rock Phosphate Export Association, Savannah Bank & Trust Building Savannah, Ga.

Florida Pebble Phosphate Export Association, 2 Rector Street, New York City

General Alcohol Export Corporation, 60 Wall Street, New York City.

Goodyear Tire & Rubber Export Co., 1144 East Market Street, Akron, Ohio

Gram Products Export Association, 17 Battery Place, New York City.

Grand Rapids Furniture Export Association, 213 Lyon Street NW, Grand Rapids, Mich

Gulf Pitch Pine Export Association, 1212 Whitney Bank Building, New Orleans, La

Hawkeye Pearl Button Export Co, 601 East Second Street, Muscatine, Iowa

Locomotive Export Association, 30 Church Street, New York City.

McKee Button Export Co, 1000 Hershey Avenue, Muscatine, Iowa

Mississippi Valley Trading & Navigation Co, 920 Rialto Building, St Louis, Mo.

Naval Stores Export Corporation, 1425 Whitney Central Annex Building, New Orleans, La

Pan American Trading Co, 59 Pearl Street, New York City

Phosphate Export Association, 2 Rector Street, New York City

Phosphate Export Association & Florida Hard Rock Phosphate Export Association, 2 Rector Street, New York City.

¹ On May 3, 1922, the commission issued complaint, Docket 880, against the Douglas Fir Exploitation & Export Co.

Pioneer Pearl Button Export Corporation, 257 Mansion Street, Poughkeepsie, N. Y.

Pipe Fittings & Valve Export Association, Branford, Conn

Redwood Export Co., 260 California Street, San Francisco, Calif.

Rubber Export Association, 1790 Broadway, New York City.

Sugar Export Corporation, 113 Wall Street, New York City.

Sulphur Export Corporation, 19-21 Dover Green, Dover, Del.

United Paint & Varnish Export Co., 601 Canal Road, Cleveland, Ohio.

United States Alkali Export Association (Inc.), 25 Pine Street, New York City.

United States Button Export Co., 701 East Third Street, Muscatine, Iowa.

United States Handle Export Co., Piqua, Ohio.

United States Maize Products Export Association (Inc.), 332 South La Salle Street, Chicago, Ill.

United States Office Equipment Export Association, 134 Grand Street, New York City.

Walnut Export Sales Co (Inc), 616 South Michigan Avenue, Chicago, Ill.

Walworth International Co., 41 Whitehall Street, New York City.

Wisconsin Cannery Export Association, Manitowoc, Wis

Wood Pipe Export Co., White Building, Seattle, Wash.

INQUIRIES UNDER SECTION 6 (H) OF THE FEDERAL TRADE COMMISSION ACT.

Work of the office has continued along the line of investigation of trade conditions in and with foreign countries where associations, combinations, or practices of manufacturers, merchants, or traders, or other conditions, may affect the foreign trade of the United States.

Antitrust laws have recently been enacted or are under consideration in the following countries: Canada, the Union of South Africa, Argentina, Norway, France, and Germany. Some of this legislation has closely followed the Federal Trade Commission act and the Clayton Act of this country.

The Senate and House of Commons of Canada on June 13, 1923, enacted the combines investigation act, 1923 (13-14 George V). That act provides for the investigation of mergers, trusts, and monopolies; the relation resulting from the purchase, lease, or other acquisition by any person of any control over or interest in the whole or part of the business of any other person; any actual or tacit contract, agreement, arrangement, or combination which has or is designed to have the effect of (1) limiting facilities for transporting, producing, manufacturing, supplying, storing, or dealing; or (2) preventing, limiting, or lessening manufacture or production; or (3) fixing a common price or a resale price, or a common rental, or a common cost of storage or transportation; or (4) enhancing the price, rental, or cost of article, rental storage or transportation; or (5) preventing or lessening competition in, or substantially con-

trolling within any particular area or district or generally, production, manufacture, purchase, barter, sale, storage, transportation, insurance or supply; or (6) otherwise restraining or injuring trade or commerce.

If as a result of investigation under the Canadian act, the governor in council is satisfied that with regard to any article of commerce a combine exists at the expense of the public, he may admit such article free of duty or reduce the duty thereon so as to give the public the benefit of reasonable competition. If the owner or holder of a patent makes use of exclusive rights to unduly limit production or restrict or injure trade, such patent shall be liable to revocation. Violation of the act is made an indictable criminal offense. Every one who is a party or privy to or knowingly assists in the formation or operation of a combine as defined in the act is liable to a penalty not exceeding \$10,000 or to two years' imprisonment, or if a corporation to a penalty not exceeding \$25,000.

The Parliament of the Union of South Africa enacted the board of trade and industries act, 1923, on June 30, 1923. Under this act the board of trade and industries, created in 1921, is given, among others, the following powers:

To inquire and report to the Minister (of Mines and Industries) upon the nature, extent, and effect of agreements, arrangements, combinations, associations, and trusts connected with or affecting commerce, finance, manufacture, mining, trade, or transport in so far as they tend to the creation of monopolies or to the restraint of trade, and to submit to the minister recommendations as to any action necessary or advisable for preventing such creation of monopolies or restraint of trade.

The board may take evidence for the purpose of inquiring into any matter falling within its functions and duties and for this purpose may subpoena witnesses and require the production of any book, record, or document for examination of same.

Recommendations or reports by the board shall be laid upon the tables of both Houses of Parliament after its receipt by the minister.

Numerous inquiries have been made by the division during the past year in response to requests from Government departments, Congressional committees, trade associations, and individuals.

FOREIGN TRADE COMPLAINTS INVESTIGATED.

In the interest of foreign trade of the United States, this office has made inquiries in the matter of complaints filed by foreign concerns against American exporters and importers. Such inquiries fall generally within the jurisdiction of the commission under section 6(h) of the Federal Trade Commission act. In certain cases, however, features of unfair competition have developed and prosecution under section 5 of the Federal Trade Commission act has been necessary.

During the past fiscal year 114 complaints have been handled by the division, some of which are still pending.

Various Government offices and trade organizations avail themselves of the commission's investigatory power, and refer such complaints to the commission for inquiry. Cases have been received from the State, Commerce, and Treasury Departments, the Department of Agriculture, the Department of Justice, chambers of commerce, and occasionally from a complainant direct. Ordinarily, however, complaint is made by the foreign concern to the office of the American consul or trade commissioner in that country and is referred back to the United States for investigation.

Such cases involve charges of nondelivery of goods ordered, non-payment for goods received, shipment of defective or damaged goods or articles below sample, short-weight delivery, and various other complaints concerning orders and shipment of goods to and from foreign countries.

As example thereof, the following are cited:

A complainant in Cape Town, South Africa, purchased 5 barrels of linseed oil which upon receipt was found to be impure. Complaint was filed with the American consulate at Cape Town, and a test was made of the condition of the oil, which had evidently been shipped in a barrel that was not clean. The commission was asked to make inquiry in the matter, and found the respondent willing to accept the inspector's report as filed with the consulate. He offered an allowance of 15 per cent of the invoice value, which was accepted by the complainant and the dispute was therefore amicably settled by the parties thereto on the basis of the facts brought out by the commission's inquiry.

A complainant in the Philippine Islands ordered a motor for use in a boat, for which he sent the American company \$200 as first payment on the quoted price of \$745. The motor was never shipped and no refund made. Letters to the respondent were not answered. Complaint was filed with the American commercial attaché at Manila, and the commission was requested to make inquiry into the matter. It was found that the respondent had become bankrupt, his business was placed in the hands of a receiver, and he had then disappeared. Efforts to locate him were not successful.

A Mexican complainant purchased enamel ware to the amount of \$1,300, which upon delivery was found to be of poor grade, inferior to samples upon which the sale was made. Utensils were scarred, cracked, and on some pieces handles were missing. Complaint was made to the American Chamber of Commerce in Mexico, reported to the American trade commissioner in that country, and was referred to this office with a request for investigation. Upon the reports and samples furnished, the respondent exporter admitted

the inferiority of the goods and offered to pay half of the loss entailed if the manufacturer would assume the other half. This was acceptable to the manufacturer, and these payments were made through the Commerce Department.

A complainant in Australia purchased 106 cases of third-quality glass. When received the goods were found to be marked "fourth quality," very inferior, full of pockets and flaws, and utterly useless for window panes, for which they were intended. Forty-nine cases were received undamaged, but in 57 cases the glass was badly broken due to insufficient padding and packing. Complaint was filed with the American trade commissioner and was referred to this office with a request for an inquiry. The respondent accepted reports of inspection submitted by the trade commissioner, and made an allowance of nearly a thousand dollars in settlement of the claim.

In some instances the respondent company is found to be bankrupt or out of business; in others poor management or careless business methods are responsible. But in most cases the difficulty is due largely to the lack of good and sufficient proof as to the validity of the claim. The commission's inquiry serves to establish the facts of the complaint, through which the parties may be able to adjust their differences.

In a number of cases, the facts brought out by the commission serve to clear the American concern from the allegations of the complaint. For example, an Australian importer purchased from an American concern a consignment of salt salmon packed in barrels and shipped without refrigeration. The fish spoiled en route and a loss of several thousand dollars was claimed. It was found, however, that the Australian was well aware of the risk involved in shipping such goods without refrigeration and had expressed himself as willing to run the risk. Also, there was a substantial sum still unpaid on the consignment. In fact, both complainant and respondent had accepted risk and suffered loss in approximately equal proportions. Further claim was therefore not justified.

The commission's position and that of representatives of the State and Commerce Departments is that of an investigator of the facts involved by these disputes in the interest of American business abroad. Litigation for small claims is too expensive to be practicable. Yet the smallest claim may result in wide publicity toward the discredit of American concerns in foreign countries. As expressed in a recent report from an American consulate in South Africa, such complaints are "detrimental to the good will enjoyed by American manufacturers in South Africa" and elsewhere. Their adjustment is but one of the steps of the American Consular Service and other

Government offices in an effort to promote and encourage American trade.

In this connection it may be stated that in 1923 this division made a special inquiry at the request of the State Department concerning alleged tampering with Canadian grain passing in bond through the United States for shipment via United States ports to foreign countries. This inquiry grew out of complaints filed through State Department representatives in Canada and England, and involved investigation at ports of entry and exit, and inspection of grain elevators and railroad terminals. No evidence was found of deliberate tampering or mixing within the United States, but recommendations were made for closer Federal supervision of Canadian grain shipped in bond through this country, in order to forestall further complaint and the possible withdrawal of some of this business from United States ports. The matter is now under inquiry by the Canadian Board of Grain Commissioners and the London Corn Trade Association.

REPRESENTATION ON THE LIAISON COMMITTEE.

A representative of the commission attends the weekly conference of the liaison committee. Members of this committee represent all offices and departments of the Government that are concerned with foreign trade. Weekly discussion and reports serve to keep each office informed, to promote cooperation, and to prevent duplication of effort in the Government's foreign trade activities.

ENEMY TRADE DIVISION.

The authority vested in the commission by the act of October 6, 1917, together with the Executive order of October 12, 1917, to grant licenses to citizens of the United States or to corporations organized within the United States, to make, use, and vend any machine, manufacture, composition of matter, or design, or to use any process, trade-mark, print, label, or copyright, owned or controlled by an enemy or ally of enemy, was by the terms of the act specifically limited to the duration of the war, which, by the proclamation of peace, was declared to have officially ended on July 2, 1921. Therefore, in its administration of section 10 of the said act this commission issued no such licenses during the fiscal year ending June 30, 1923.

Subsection (f), section 10, of the said act of October 6, 1917, provides as follows:

(f) The owner of any patent, trade-mark, print, label, or copyright under which a license is granted hereunder may, after the end of the war and until the expiration of one year thereafter, file a bill in equity against the licensee in the district court of the United States for the district in which the said licensee resides, or, if a corporation, in which it has its principal place of business (to which suit the Treasurer of the United States shall be made a party), for recovery from the said licensee for all use and enjoyment of the said patented invention, trade-mark, print, label, or copyrighted matter: *Provided, however,* That whenever suit is brought, as above, notice shall be filed with the alien property custodian within thirty days after date of entry of suit: *Provided further,* That the licensee may make any and all defenses which would be available were no license granted. The court on due proceedings had may adjudge and decree to the said owner payment of a reasonable royalty. The amount of said judgment and decree, when final, shall be paid on order of the court to the owner of the patent from the fund deposited by the licensee, so far as such deposit will satisfy said judgment and decree; and the said payment shall be in full or partial satisfaction of said judgment and decree, as the facts may appear; and if, after payment of all such judgments and decrees, there shall remain any balance of said deposit, such balance shall be repaid to the licensee on order of the alien property custodian. If no suit is brought within one year after the end of the war, or no notice is filed as above required, then the licensee shall not be liable to make any further deposits, and all funds deposited by him shall be repaid to him on order of the alien property custodian. Upon entry of suit and notice filed as above required, or upon repayment of funds as above provided, the liability of the licensee to make further reports to the President shall cease.

If suit is brought as above provided, the court may, at any time, terminate the license, and may, in such event, issue an injunction to restrain the licensee from infringement thereafter, or the court, in case the licensee, prior to suit,

shall have made investment of capital based on possession of the license, may continue the license for such period and upon such terms and with such royalties as it shall find to be just and reasonable.

The time limit within which suits in equity might be instituted under the foregoing provision therefore terminated on July 2, 1922, and at the beginning of the fiscal year covered by this report there were pending in the courts a total of 131 suits, instituted as follows:

By enemy owners.....	47
By Chemical Foundation (Inc.).....	64
By other American corporations taking title through the custodian.....	4
By Allen Property Custodian.....	16

These suits involved, with few exceptions, every license issued by the commission. The few licenses not the subject of suit represent cases in which commercial production had never been reached, or in which the amount of royalty deposited was so insignificant as not to justify institution of suit thereagainst. The suit instituted by the Government against the Chemical Foundation (Inc.), for the return of the 4,500 patents assigned thereto by the Alien Property Custodian also involves some 60 of the licenses issued by the commission, being 58 covering patents, 1 trade-mark, and 1 copyright. This suit against the Chemical Foundation (Inc.) will be further referred to hereinafter.

During the fiscal year just ended, of an aggregate of 93 licenses issued by the commission 72 were outstanding and of full force and effect, being 57 covering patents, 2 trade-marks, and 13 copyrights; a total of 21 having been previously canceled and terminated, representing 19 under patents and 2 under trade-marks.

Since the licenses were granted in each instance for the life of the patent, trade-mark, or copyright under which issued, the 57 outstanding licenses obviously still remain of full force and effect under the supervision of the commission, and will continue so to remain pending judicial determination of the suits in equity instituted thereagainst, or in such instances as no suit in equity was instituted against the license, until the expiration of the respective patent, trade-mark, or copyright covered thereby.

The activities of the enemy trade division during the fiscal year just ended have been directed chiefly toward the furnishing of data for use in connection with the prosecution of the suits in equity heretofore referred to. It may be stated in this connection that upwards of five hundred copies (in many instances certified) of the licenses issued by the commission have been furnished to the various litigants, together with copies of such other information as was contained in the commission's files, and which was pertinent to the prosecution of such suits. The records of the enemy trade division touching the matter of royalties accrued under the various licenses have

been of great importance not only to the "owners" suing under subsection (f), section 10, but to the Alien Property Custodian and the Department of Justice, and, in addition, in connection with the Government's suit instituted against the Chemical Foundation (Inc.); the commission's figures being relied upon by all parties concerned and being in each instance accepted as the basis for stipulations to be entered into between the respective parties to the suits.

In connection with the suit against the Chemical Foundation (Inc.) for the return to the Government of the 4,500 patents assigned thereto by the Alien Property Custodian, some twelve hundred photostat copies were made at the Department of Justice, under the immediate and personal supervision of the chief of the enemy trade division; such copies embracing all the licenses issued by the commission, the patents covering which are involved in said suit, together with all royalty records appertaining thereto.

The original documents being introduced and proved in the district court at Wilmington, Del., by the chief of the enemy trade division as the representative of the commission, substitution was then made of the photostat copies, the same now forming a part of the record of said case. In addition to the various tabulations furnished the Government by the enemy trade division covering royalties earned by the patents assigned to the Chemical Foundation (Inc.), the enemy trade division in its cooperation with the Department of Justice has prepared and furnished an abstract from the file record of each license under which suit has been instituted, the data thus furnished being used by the Department of Justice in connection with the prosecution of the suit instituted thereagainst in the various district courts not only by the enemy owners of the licensed subject matter, but also by the American owners acquiring title through purchase from the Alien Property Custodian. Considerable data have also been furnished various committees of Congress in connection with certain patent investigations made during the course of the year.

While by the stipulations of subsection (f), section 10, licensee's liability to render further reports of royalty accruing under the license ended on July 2, 1922, or such earlier date as marked the institution of suit pursuant to the privilege conferred by said subsection, in many instances the licensee has voluntarily continued to transmit the usual report, proper attention being given thereto and the information contained therein duly transmitted to the Alien Property Custodian for the completion of his file and for what purpose it might subserve in connection with the equity suits now pending.

The royalty accrued under the commission's licenses, and the disposition of which is one of the important questions for judicial

determination in connection with the equity suits hereinbefore referred to, aggregates \$1,000,153.60 accrued as follows: Under patents, \$626,411.06; trade-marks, \$372,696.05; and copyrights, \$1,046.49. These figures do not include any amount accruing subsequent to July 2, 1922. When it is recalled that the amount paid in as royalty represents only from 2 to 5 per cent of gross sales, the vast volume of business done under the commission's licenses can be appreciated.

Subsection (c), section 10, clothed the commission with authority to determine the license fee to be charged in each case, which fee by the terms of the act might not exceed \$100 nor 1 per cent of the fund deposited as royalty under the license, the act containing no specific provisions, however, as to the time or manner of making any proper refund in such instances as the amount of royalty deposited did not justify the retention of the fee originally charged. The disposition of the fund thus created, aggregating some \$18,000 was the subject of recent conferences between this commission and the office of the Comptroller General of the United States, with the result that in view of the failure of the act to prescribe the time or manner of making refund as above referred to, and pending the determination of the suits in equity hereinbefore referred to, it was deemed advisable to allow this fund to remain intact pending future developments.

The bulk of correspondence handled by the enemy trade division during the fiscal year has been considerable. Numerous questions arose, various of which were submitted for the commission's decision as to rights and equities involved under the peculiar and unforeseen circumstances attending the particular case, the most recent being a copyright license issued to Joseph W. Herbert, covering a certain dramatic-musical production entitled "Der Seeräuber." The death of this licensee occurring before actual production was had under the license, and with no equities having been created apparently thereunder, the commission was of the opinion that the death of the licensee under the circumstances recited automatically terminated the license and that no rights thereunder accrued to his widow or legal representative.

In connection with the copyright license issued to San Carlo Grand Opera Co. covering the production of the dramatic-musical composition entitled "Salome," and in which the registrant and owner of the copyright failed to avail himself of the privilege of entering suit under subsection (f), section 10, registrant has recently sought to enjoin the San Carlo Grand Opera Co. from the continued exercise of the rights conferred by the license and in this connection addressed to the commission, through the Department of State, a communication from the chargé d'affaires ad interim of Austria, to which communication the commission responded that

since the license in question was apparently properly issued under the authority of the act of October 6, 1917, such license being for the life of the copyright involved, and since the registrant had failed to enter suit thereagainst within the statutory period prescribed by law, and the license had not been canceled or otherwise terminated as provided in the act, it was the opinion of the commission that the said license was still of full force and effect and no reason was apparent which would preclude the licensee from continuing to exercise the rights and enjoy the benefits conferred thereby.

The activities of the enemy trade division in its administration of section 10 of the said act of October 6, 1917, have practically reached a conclusion. The commission maintains its supervision over the outstanding licenses as hereinbefore stated, and it is anticipated that there will be more or less frequent demands for data during the prosecution of the numerous suits now pending in the various courts, and that the desultory correspondence from licensees and other interested parties will continue to reach this division for a more or less indefinite period of time, but the amount of active work remaining to be done is but negligible.

All of which is respectfully submitted.

VICTOR MURDOCK, *Chairman.*

JOHN F. NUGENT.

HUSTON THOMPSON.

VERNON W. VAN FLEET.

NELSON B. GASKILL.

EXHIBITS.

EXHIBIT 1.

FEDERAL TRADE COMMISSION ACT.

AN ACT To create a Federal Trade Commission, to define its powers and duties, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That a commission is hereby created and established, to be known as the Federal Trade Commission (hereinafter referred to as the commission), which shall be composed of five commissioners, who shall be appointed by the President, by and with the advice and consent of the Senate. Not more than three of the commissioners shall be members of the same political party. The first commissioners appointed shall continue in office for terms of three, four, five, six, and seven years, respectively, from the date of the taking effect of this act, the term of each to be designated by the President, but their successors shall be appointed for terms of seven years, except that any person chosen to fill a vacancy shall be appointed only for the unexpired term of the commissioner whom he shall succeed. The commission shall choose a chairman from its own membership. No commissioner shall engage in any other business, vocation, or employment. Any commissioner may be removed by the President for inefficiency, neglect of duty, or malfeasance in office. A vacancy in the commission shall not impair the right of the remaining commissioners to exercise all the powers of the commission.

The commission shall have an official seal, which shall be judicially noticed.

Sec. 2. That each commissioner shall receive a salary of \$10,000 a year, payable in the same manner as the salaries of the judges of the courts of the United States. The commission shall appoint a secretary, who shall receive a salary of \$5,000 a year, payable in like manner, and it shall have authority to employ and fix the compensation of such attorneys, special experts, examiners, clerks, and other employees as it may from time to time find necessary for the proper performance of its duties and as may be from time to time appropriated for by Congress.

With the exception of the secretary, a clerk to each commissioner, the attorneys, and such special experts and examiners as the commission may from time to time find necessary for the conduct of its work, all employees of the commission shall be a part of the classified civil service, and shall enter the service under such rules and regulations as may be prescribed by the commission and by the Civil Service Commission.

All of the expenses of the commission, including all necessary expenses for transportation incurred by the commissioners or by their employees under their orders in making any investigation, or upon official business in any other places than in the city of Washington, shall be allowed and paid on the presentation of itemized vouchers therefor approved by the commission.

Until otherwise provided by law, the commission may rent suitable offices for its use.

The Auditor for the State and Other Departments shall receive and examine all accounts of expenditures of the commission.

Sec. 3. That upon the organization of the commission and election of its chairman, the Bureau of Corporations and the offices of the commissioner and deputy commissioner of corporations shall cease to exist; and all pending investigations and proceedings of the Bureau of Corporations shall be continued by the commission.

All clerks and employees of the said bureau shall be transferred to and become clerks and employees of the commission at their present grades and

salaries. All records, papers, and property of the said bureau shall become records, papers, and property of the commission, and all unexpended funds and appropriations for the use and maintenance of the said bureau, including any allotment already made to it by the Secretary of Commerce from the contingent appropriation for the Department of Commerce for the fiscal year nineteen hundred and fifteen, or from the department printing fund for the fiscal year nineteen hundred and fifteen, shall become funds and appropriations available to be expended by the commission in the exercise of the powers, authority, and duties conferred on it by this act.

The principal office of the commission shall be in the city of Washington, but it may meet and exercise all its powers at any other place. The commission may, by one or more of its members, or by such examiners as it may designate, prosecute any inquiry necessary to its duties in any part of the United States.

Sec. 4. That the words defined in this section shall have the following meaning when found in this act, to wit:

"Commerce" means commerce among the several States or with foreign nations, or in any Territory of the United States or in the District of Columbia, or between any such Territory and another, or between any such Territory and any State or foreign nation, or between the District of Columbia and any State or Territory or foreign nation.

"Corporation" means any company or association, incorporated or unincorporated, which is organized to carry on business for profit and has shares of capital or capital stock, and any company or association, incorporated or unincorporated, without shares of capital or capital stock, except partnerships, which is organized to carry on business for its own profit or that of its members.

"Documentary evidence" means all documents, papers, and correspondence in existence at and after the passage of this act.

"Acts to regulate commerce" means the act entitled "An act to regulate commerce," approved February fourteenth, eighteen hundred and eighty-seven, and all acts amendatory thereof and supplementary thereto.

"Antitrust acts" means the act entitled "An act to protect trade and commerce against unlawful restraints and monopolies," approved July second, eighteen hundred and ninety; also the sections seventy-three to seventy-seven, inclusive, of an act entitled "An act to reduce taxation, to provide revenue for the Government, and for other purposes," approved August twenty-seventh, eighteen hundred and ninety-four; and also the act entitled "An act to amend sections seventy-three and seventy-six of the act of August twenty-seventh, eighteen hundred and ninety-four, entitled "An act to reduce taxation, to provide revenue for the Government, and for other purposes," approved February twelfth, nineteen hundred and thirteen.

Sec. 5. That unfair methods of competition in commerce are hereby declared unlawful.

The commission is hereby empowered and directed to prevent persons, partnerships, or corporations, except banks and common carriers subject to the acts to regulate commerce, from using unfair methods of competition in commerce.

Whenever the commission shall have reason to believe that any such person, partnership, or corporation has been or is using any unfair method of competition in commerce, and if it shall appear to the commission that a proceeding by it in respect thereof would be to the interest of the public, it shall issue and serve upon such person, partnership, or corporation a complaint stating its charges in that respect and containing a notice of a hearing upon a day and at a place therein fixed at least thirty days after the service of said complaint. The person, partnership, or corporation so complained of shall have the right to appear at the place and time so fixed and show cause why an order should not be entered by the commission requiring such person, partnership, or corporation to cease and desist from the violation of the law so charged in said complaint. Any person, partnership, or corporation may make application, and upon good cause shown may be allowed by the commission to intervene and appear in said proceeding by counsel or in person. The testimony in any such proceeding shall be reduced to writing and filed in the office of the commission. If upon such hearing the commission shall be of the opinion that the method of competition in question is prohibited by this act it shall make a report in writing in which it shall state its findings as to the facts and shall issue and cause to be served on such person, partnership, or corporation an order requiring such person, partnership, or corporation to cease and desist from using such method

of competition. Until a transcript of the record in such hearing shall have been filed in a circuit court of appeals of the United States, as hereinafter provided, the commission may at any time, upon such notice and in such manner as it shall deem proper, modify or set aside, in whole or in part, any report or any order made or issued by it under this section.

If such person, partnership, or corporation fails or neglects to obey such order of the commission while the same is in effect, the commission may apply to the circuit court of appeals of the United States, within any circuit where the method of competition in question was used or where such person, partnership, or corporation resides or carries on business, for the enforcement of its order, and shall certify and file with its application a transcript of the entire record in the proceeding, including all the testimony taken and the report and order of the commission. Upon such filing of the application and transcript the court shall cause notice thereof to be served upon such person, partnership, or corporation and thereupon shall have jurisdiction of the proceeding and of the question determined therein, and shall have power to make and enter upon the pleadings, testimony, and proceedings set forth in such transcript a decree affirming, modifying, or setting aside the order of the commission. The findings of the commission as to the facts, if supported by testimony, shall be conclusive. If either party shall apply to the court for leave to adduce additional evidence, and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the proceeding before the commission, the court may order such additional evidence to be taken before the commission and to be adduced upon the hearing in such manner and upon such terms and conditions as to the court may seem proper. The commission may modify its findings as to the facts, or make new findings, by reason of the additional evidence so taken, and it shall file such modified or new findings, which, if supported by testimony, shall be conclusive, and its recommendation, if any, for the modification or setting aside of its original order, with the return of such additional evidence. The judgment and decree of the court shall be final, except that the same shall be subject to review by the Supreme Court upon certiorari as provided in section two hundred and forty of the Judicial Code.

Any party required by such order of the commission to cease and desist from using such method of competition may obtain a review of such order in said circuit court of appeals by filing in the court a written petition praying that the order of the commission be set aside. A copy of such petition shall be forthwith served upon the commission, and thereupon the commission forthwith shall certify and file in the court a transcript of the record as hereinbefore provided. Upon the filing of the transcript the court shall have the same jurisdiction to affirm, set aside, or modify the order of the commission as in the case of an application by the commission for the enforcement of its order, and the findings of the commission as to the facts, if supported by testimony, shall in like manner be conclusive.

The jurisdiction of the circuit court of appeals of the United States to enforce, set aside, or modify orders of the commission shall be exclusive.

Such proceedings in the circuit court of appeals shall be given precedence over other cases pending therein, and shall be in every way expedited. No order of the commission or judgment of the court to enforce the same shall in any wise relieve or absolve any person, partnership, or corporation from any liability under the antitrust acts.

Complaints, orders, and other processes of the commission under this section may be served by anyone duly authorized by the commission, either (a) by delivering a copy thereof to the person to be served, or to a member of the partnership to be served, or to the president, secretary, or other executive officer or a director of the corporation to be served; or (b) by leaving a copy thereof at the principal office or place of business of such person, partnership, or corporation; or (c) by registering and mailing a copy thereof addressed to such person, partnership, or corporation at his or its principal office or place of business. The verified return by the person so serving said complaint, order, or other process setting forth the manner of said service shall be proof of the same, and the return post-office receipt for said complaint, order, or other process registered and mailed as aforesaid shall be proof of the service of the same.

SEC. 6. That the commission shall also have power—

(a) To gather and compile information concerning, and to investigate from time to time the organization, business, conduct, practices, and management of

any corporation engaged in commerce, excepting banks and common carriers subject to the act to regulate commerce, and its relation to other corporations and to individuals, associations, and partnerships.

(b) To require, by general or special orders corporations engaged in commerce, excepting banks, and common carriers subject to the act to regulate commerce, or any class of them, or any of them, respectively, to file with the commission in such form as the commission may prescribe annual or special, or both annual and special, reports or answers in writing to specific questions, furnishing to the commission such information as it may require as to the organization, business, conduct, practices, management, and relation to other corporations, partnerships, and individuals of the respective corporations filing such reports or answers in writing. Such reports and answers shall be made under oath, or otherwise, as the commission may prescribe, and shall be filed with the commission within such reasonable period as the commission may prescribe, unless additional time be granted in any case by the commission.

(c) Whenever a final decree has been entered against any defendant corporation in any suit brought by the United States to prevent and restrain any violation of the antitrust acts, to make investigation, upon its own initiative, of the manner in which the decree has been or is being carried out, and upon the application of the Attorney General it shall be its duty to make such investigation. It shall transmit to the Attorney General a report embodying its findings and recommendations as a result of any such investigation, and the report shall be made public in the discretion of the commission.

(d) Upon the direction of the President or either House of Congress to investigate and report the facts relating to any alleged violations of the antitrust acts by any corporation.

(e) Upon the application of the Attorney General to investigate and make recommendations for the readjustment of the business of any corporation alleged to be violating the antitrust acts in order that the corporation may thereafter maintain its organization, management, and conduct of business in accordance with law.

(f) To make public from time to time such portions of the information obtained by it hereunder, except trade secrets and names of customers, as it shall deem expedient in the public interest; and to make annual and special reports to the Congress and to submit therewith recommendations for additional legislation; and to provide for the publication of its reports and decisions in such form and manner as may be best adapted for public information and use.

(g) From time to time to classify corporations and to make rules and regulations for the purpose of carrying out the provisions of this act.

(h) To investigate, from time to time, trade conditions in and with foreign countries where associations, combinations, or practices of manufacturers, merchants, or traders, or other conditions, may affect the foreign trade of the United States, and to report to Congress thereon, with such recommendations as it deems advisable.

Sec. 7. That in any suit in equity brought by or under the direction of the Attorney General, as provided in the antitrust acts, the court may, upon the conclusion of the testimony therein, if it shall be then of opinion that the complainant is entitled to relief, refer said suit to the commission, as a master in chancery, to ascertain and report an appropriate form of decree therein. The commission shall proceed upon such notice to the parties and under such rules of procedure as the court may prescribe, and upon the coming in of such report such exceptions may be filed and such proceedings had in relation thereto as upon the report of a master in other equity causes, but the court may adopt or reject such report, in whole or in part, and enter such decree as to the nature of the case may in its judgment require.

Sec. 8. That the several departments and bureaus of the Government when directed by the President shall furnish the commission, upon its request, all records, papers, and information in their possession relating to any corporation subject to any of the provisions of this act, and shall detail from time to time such officials and employees to the commission as he may direct.

Sec. 9. That for the purpose of this act the commission, or its duly authorized agent or agents, shall at all reasonable times have access to, for the purposes of examination, and the right to copy any documentary evidence of any corporation being investigated or proceeded against; and the commission shall have power to require by subpoena the attendance and testimony of witnesses and the production of all such documentary evidence relating to any matter under investigation. Any member of the commission may sign subpoenas, and

members and examiners of the commission may administer oaths and affirmations, examine witnesses, and receive evidence.

Such attendance of witnesses, and the production of such documentary evidence, may be required from any place in the United States, at any designated place of hearing. And in case of disobedience to a subpoena the commission may invoke the aid of any court of the United States in requiring the attendance and testimony of witnesses and the production of documentary evidence.

Any of the district courts of the United States within the jurisdiction of which such inquiry is carried on may, in case of contumacy or refusal to obey a subpoena issued to any corporation or other person, issue an order requiring such corporation or other person to appear before the commission, or to produce documentary evidence if so ordered, or to give evidence touching the matter in question; and any failure to obey such order of the court may be punished by such court as a contempt thereof.

Upon the application of the Attorney General of the United States, at the request of the commission, the district courts of the United States shall have jurisdiction to issue writs of mandamus commanding any person or corporation to comply with the provisions of this act or any order of the commission made in pursuance thereof.

The commission may order testimony to be taken by deposition in any proceeding or investigation pending under this act at any stage of such proceeding or investigation. Such depositions may be taken before any person designated by the commission and having power to administer oaths. Such testimony shall be reduced to writing by the person taking the deposition or under his direction, and shall then be subscribed by the deponent. Any person may be compelled to appear and depose and to produce documentary evidence in the same manner as witnesses may be compelled to appear and testify and produce documentary evidence before the commission as hereinbefore provided.

Witnesses summoned before the commission shall be paid the same fees and mileage that are paid witnesses in the courts of the United States, and witnesses whose depositions are taken and the persons taking the same shall severally be entitled to the same fees as are paid for like services in the courts of the United States.

No person shall be excused from attending and testifying or from producing documentary evidence before the commission or in obedience to the subpoena of the commission on the ground or for the reason that the testimony or evidence, documentary or otherwise, required of him may tend to criminate him or subject him to a penalty or forfeiture. But no natural person shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he may testify, or produce evidence, documentary or otherwise, before the commission in obedience to a subpoena issued by it: *Provided*, That no natural person so testifying shall be exempt from prosecution and punishment for perjury committed in so testifying.

Sec. 10. That any person who shall neglect or refuse to attend and testify, or to answer any lawful inquiry, or to produce documentary evidence, if in his power to do so, in obedience to the subpoena or lawful requirement of the commission, shall be guilty of an offense and upon conviction thereof by a court of competent jurisdiction shall be punished by a fine of not less than \$1,000 nor more than \$5,000, or by imprisonment for not more than one year, or by both such fine and imprisonment.

Any person who shall willfully make, or cause to be made, any false entry or statement of fact in any report required to be made under this act, or who shall willfully make, or cause to be made, any false entry in any account, record, or memorandum kept by any corporation subject to this act, or who shall willfully neglect or fail to make, or to cause to be made, full, true, and correct entries in such accounts, records, or memoranda, of all facts and transactions appertaining to the business of such corporation, or who shall willfully remove out of the jurisdiction of the United States, or willfully mutilate, alter, or by any other means falsify any documentary evidence of such corporation, or who shall willfully refuse to submit to the commission or to any of its authorized agents, for the purpose of inspection and taking copies, any documentary evidence of such corporation in his possession or within his control, shall be deemed guilty of an offense against the United States, and shall be subject, upon conviction in any court of the United States of competent jurisdiction, to a fine of not less than \$1,000 nor more than \$5,000, or to imprisonment for a term of not more than three years, or to both such fine and imprisonment.

If any corporation required by this act to file any annual or special report shall fail so to do within the time fixed by the commission for filing the same, and such failure shall continue for thirty days after notice of such default, the corporation shall forfeit to the United States the sum of \$100 for each and every day of the continuance of such failure, which forfeiture shall be payable into the Treasury of the United States, and shall be recoverable in a civil suit in the name of the United States brought in the district where the corporation has its principal office or in any district in which it shall do business. It shall be the duty of the various district attorneys, under the direction of the Attorney General of the United States, to prosecute for the recovery of forfeitures. The costs and expenses of such prosecution shall be paid out of the appropriation for the expenses of the courts of the United States.

Any officer or employee of the commission who shall make public any information obtained by the commission without its authority, unless directed by a court, shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be punished by a fine not exceeding \$5,000, or by imprisonment not exceeding one year, or by fine and imprisonment, in the discretion of the court.

Sec. 11. Nothing contained in this act shall be construed to prevent or interfere with the enforcement of the provisions of the antitrust acts or the acts to regulate commerce, nor shall anything contained in the act be construed to alter, modify, or repeal the said antitrust acts or the acts to regulate commerce or any part or parts thereof.

Approved, September 26, 1914.

EXHIBIT 2.

PROVISIONS OF THE CLAYTON ACT WHICH CONCERN THE FEDERAL TRADE COMMISSION.

"Commerce," as used herein, means trade or commerce among the several States and with foreign nations, or between the District of Columbia or any Territory of the United States and any State, Territory, or foreign nation, or between any insular possessions or other places under the jurisdiction of the United States, or between any such possession or place and any State or Territory of the United States or the District of Columbia or any foreign nation, or within the District of Columbia or any Territory or any insular possession or other place under the jurisdiction of the United States: *Provided*, That nothing in this act contained shall apply to the Philippine Islands.

The word "person" or "persons" wherever used in this act shall be deemed to include corporations and associations existing under or authorized by the laws of either the United States, the laws of any of the Territories, the laws of any State, or the laws of any foreign country.

SEC. 2. That it shall be unlawful for any person engaged in commerce, in the course of such commerce, either directly or indirectly, to discriminate in price between different purchasers of commodities, which commodities are sold for use, consumption, or resale within the United States or any Territory thereof or the District of Columbia, or any insular possession or other place under the jurisdiction of the United States, where the effect of such discrimination may be to substantially lessen competition or tend to create a monopoly in any line of commerce: *Provided*, That nothing herein contained shall prevent discrimination in price between purchasers of commodities on account of differences in the grade, quality, or quantity of the commodity sold, or that makes only due allowance for difference in the cost of selling or transportation, or discrimination in price in the same or different communities made in good faith to meet competition: *And provided further*, That nothing herein contained shall prevent persons engaged in selling goods, wares, or merchandise in commerce from selecting their own customers in bona fide transactions and not in restraint of trade.

SEC. 3. That it shall be unlawful for any person engaged in commerce, in the course of such commerce, to lease or make a sale or contract for sale of goods, wares, merchandise, machinery, supplies, or other commodities, whether patented or unpatented, for use, consumption, or resale within the United States or any Territory thereof or the District of Columbia or any insular possession or other place under the jurisdiction of the United States, or fix a price charged therefor, or discount from, or rebate upon, such price, on the condition, agreement, or understanding that the lessee or purchaser thereof shall not use or deal in the goods, wares, merchandise, machinery, supplies, or other commodities of a competitor or competitors of the lessor or seller, where the effect of such lease, sale, or contract for sale or such condition, agreement, or understanding may be to substantially lessen competition or tend to create a monopoly in any line of commerce.

SEC. 7. That no corporation engaged in commerce shall acquire, directly or indirectly, the whole or any part of the stock or other share capital of another corporation engaged also in commerce, where the effect of such acquisition may be to substantially lessen competition between the corporation whose stock is so acquired and the corporation making the acquisition, or to restrain such commerce in any section or community, or tend to create a monopoly of any line of commerce.

No corporation shall acquire, directly or indirectly, the whole or any part of the stock or other share capital of two or more corporations engaged in commerce where the effect of such acquisition, or the use of such stock by the voting or granting of proxies or otherwise, may be to substantially lessen competition between such corporations, or any of them, whose stock or other share capital is

so acquired, or to restrain such commerce in any section or community, or tend to create a monopoly of any line of commerce.

This section shall not apply to corporations purchasing such stock solely for investment and not using the same by voting or otherwise to bring about, or in attempting to bring about, the substantial lessening of competition. Nor shall anything contained in this section prevent a corporation engaged in commerce from causing the formation of subsidiary corporations for the actual carrying on of their immediate lawful business, or the natural and legitimate branches or extensions thereof, or from owning and holding all or a part of the stock of such subsidiary corporations, when the effect of such formation is not to substantially lessen competition.

Nor shall anything herein contained be construed to prohibit any common carrier subject to the laws to regulate commerce from aiding in the construction of branches or short lines so located as to become feeders to the main line of the company so aiding in such construction or from acquiring or owning all or any part of the stock of such branch lines, nor to prevent any such common carrier from acquiring and owning all or any part of the stock of a branch or short line constructed by an independent company where there is no substantial competition between the company owning the branch line so constructed and the company owning the main line acquiring the property or an interest therein, nor to prevent such common carrier from extending any of its lines through the medium of the acquisition of stock or otherwise of any other such common carrier where there is no substantial competition between the company extending its lines and the company whose stock, property, or an interest therein is so acquired.

Nothing contained in this section shall be held to affect or impair any right heretofore legally acquired: *Provided*, That nothing in this section shall be held or construed to authorize or make lawful anything heretofore prohibited or made illegal by the antitrust laws, nor to exempt any person from the penal provisions thereof or the civil remedies therein provided.

Sec. 8. That from and after two years from the date of the approval of this act no person at the same time shall be a director in any two or more corporations, any one of which has capital, surplus, and undivided profits aggregating more than \$1,000,000, engaged in whole or in part in commerce, other than banks, banking associations, trust companies, and common carriers subject to the act to regulate commerce, approved February fourth, eighteen hundred and eighty-seven, if such corporations are or shall have been theretofore, by virtue of their business and location of operation, competitors, so that the elimination of competition by agreement between them would constitute a violation of any of the provisions of any of the antitrust laws. The eligibility of a director under the foregoing provisions shall be determined by the aggregate amount of the capital, surplus, and undivided profits, exclusive of dividends declared but not paid to stockholders, at the end of the fiscal year of said corporation next preceding the election of directors, and when a director has been elected in accordance with the provisions of this act it shall be lawful for him to continue as such for one year thereafter.

When any person elected or chosen as a director or officer or selected as an employee of any bank or other corporation subject to the provisions of this act is eligible at the time of his election or selection to act for such bank or other corporation in such capacity his eligibility to act in such capacity shall not be affected and he shall not become or be deemed amenable to any of the provisions hereof by reason of any change in the affairs of such bank or other corporation from whatsoever cause, whether specifically excepted by any of the provisions hereof or not, until the expiration of one year from the date of his election or employment.

Sec. 11. That authority to enforce compliance with sections two, three, seven, and eight of this act by the persons respectively subject thereto is hereby vested: In the Interstate Commerce Commission where applicable to common carriers, in the Federal Reserve Board where applicable to banks, banking associations, and trust companies, and in the Federal Trade Commission where applicable to all other character of commerce, to be exercised as follows:

Whenever the commission or board vested with jurisdiction thereof shall have reason to believe that any person is violating or has violated any of the provisions of sections two, three, seven, and eight of this act, it shall issue and serve upon such person a complaint stating its charges in that respect, and containing a notice of a hearing upon a day and at a place therein fixed at least thirty days after the service of said complaint. The person so complained

of shall have the right to appear at the place and time so fixed and show cause why an order should not be entered by the commission or board requiring such person to cease and desist from the violation of the law so charged in said complaint. Any person may make application, and upon good cause shown may be allowed by the commission or board to intervene and appear in said proceeding by counsel or in person. The testimony in any such proceeding shall be reduced to writing and filed in the office of the commission or board. If upon such hearing the commission or board, as the case may be, shall be of the opinion that any of the provisions of said sections have been or are being violated, it shall make a report in writing in which it shall state its findings as to the facts, and shall issue and cause to be served on such person an order requiring such person to cease and desist from such violations, and divest itself of the stock held or rid itself of the directors chosen contrary to the provisions of sections seven and eight of this act, if any there be, in the manner and within the time fixed by said order. Until a transcript of the record in such hearing shall have been filed in a circuit court of appeals of the United States, as hereinafter provided, the commission or board may at any time, upon such notice and in such manner as it shall deem proper, modify or set aside, in whole or in part, any report or any order made or issued by it under this section.

If such person fails or neglects to obey such order of the commission or board while the same is in effect, the commission or board may apply to the circuit court of appeals of the United States, within any circuit where the violation complained of was or is being committed or where such person resides or carries on business, for the enforcement of its order, and shall certify and file with its application a transcript of the entire record in the proceeding, including all the testimony taken and the report and order of the commission or board. Upon such filing of the application and transcript the court shall cause notice thereof to be served upon such person and thereupon shall have jurisdiction of the proceeding and of the question determined therein, and shall have power to make and enter upon the pleadings, testimony, and proceedings set forth in such manuscript a decree affirming, modifying, or setting aside the order of the commission or board. The findings of the commission or board as to the facts, if supported by testimony, shall be conclusive. If either party shall apply to the court for leave to adduce additional evidence and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the proceeding before the commission or board, the court may order such additional evidence to be taken before the commission or board and to be adduced upon the hearing in such manner and upon such terms and conditions as to the court may seem proper. The commission or board may modify its findings as to the facts, or make new findings, by reason of the additional evidence so taken, and it shall file such modified or new findings, which, if supported by testimony, shall be conclusive, and its recommendation, if any, for the modification or setting aside of its original order, with the return of such additional evidence. The judgment and decree of the court shall be final, except that the same shall be subject to review by the Supreme Court upon certiorari as provided in section two hundred and forty of the Judicial Code.

Any party required by such order of the commission or board to cease and desist from a violation charged may obtain a review of such order in said circuit court of appeals by filing in the court a written petition praying that the order of the commission or board be set aside. A copy of such petition shall be forthwith served upon the commission or board, and thereupon the commission or board forthwith shall certify and file in the court a transcript of the record as hereinbefore provided. Upon the filing of the transcript the court shall have the same jurisdiction to affirm, set aside, or modify the order of the commission or board as in the case of an application by the commission or board for the enforcement of its order, and the findings of the commission or board as to the facts, if supported by testimony, shall in like manner be conclusive.

The jurisdiction of the circuit court of appeals of the United States to enforce, set aside, or modify orders of the commission or board shall be exclusive.

Such proceedings in the circuit court of appeals shall be given precedence over other cases pending therein, and shall be in every way expedited. No order of the commission or board or the judgment of the court to enforce the same shall in anywise relieve or absolve any person from any liability under the antitrust acts.

Complaints, orders, and other processes of the commission or board under this section may be served by anyone duly authorized by the commission or

board, either (a) by delivering a copy thereof to the person to be served, or to a member of the partnership to be served, or to the president, secretary, or other executive officer or a director of the corporation to be served; or (b) by leaving a copy thereof at the principal office or place of business of such person; or (c) by registering and mailing a copy thereof addressed to such person at his principal office or place of business. The verified return by the person so serving said complaint, order, or other process setting forth the manner of said service shall be proof of the same, and the return post-office receipt for said complaint, order, or other process registered and mailed as aforesaid shall be proof of the service of the same.

Approved, October 15, 1914.

EXHIBIT 3.

RULES OF PRACTICE BEFORE THE FEDERAL TRADE COMMISSION.

I. SESSIONS.

The principal office of the commission at Washington, D. C., is open each business day from 9 a. m. to 4.30 p. m. The commission may meet and exercise all its powers at any other place, and may, by one or more of its members or by such examiners as it may designate, prosecute any inquiry necessary to its duties in any part of the United States.

Sessions of the commission for hearing contested proceedings will be held as ordered by the commission.

Sessions of the commission for the purpose of making orders and for the transaction of other business, unless otherwise ordered, will be held at the office of the commission at Washington, D. C., on each business day at 10.30 a. m. Three members of the commission shall constitute a quorum for the transaction of business.

All orders of the commission shall be signed by the secretary.

II. COMPLAINTS.

Any person, partnership, corporation, or association may apply to the commission to institute a proceeding in respect to any violation of law over which the commission has jurisdiction.

Such application shall be in writing, signed by or in behalf of the applicant, and shall contain a short and simple statement of the facts constituting the alleged violation of law and the name and address of the applicant and of the party complained of.

The commission shall investigate the matters complained of in such application, and if upon investigation the commission shall have reason to believe that there is a violation of law over which the commission has jurisdiction, the commission shall issue and serve upon the party complained of a complaint stating its charges and containing a notice of a hearing upon a day and at a place therein fixed, at least 40 days after the service of said complaint.

III. ANSWERS.

Within 30 days from the service of the complaint, unless such time be extended by order of the commission, the defendant shall file with the commission an answer to the complaint. Such answer shall contain a short and simple statement of the facts which constitute the ground of defense. It shall specifically admit or deny or explain each of the facts alleged in the complaint, unless the defendant is without knowledge, in which case he shall so state, such statement operating as a denial. Answers in typewriting must be on one side of the paper only, on paper not more than 8½ inches wide and not more than 11 inches long and weighing not less than 16 pounds to the ream, folio base, 17 by 22 inches, with left-hand margin not less than 1½ inches wide, or they may be printed in 10 or 12 point type on good unglazed paper 8 inches wide by 10½ inches long, with inside margins not less than 1 inch wide. Three copies of such answers must be furnished.

IV. SERVICE.

Complaints, orders, and other processes of the commission may be served by anyone duly authorized by the commission, either (a) by delivering a copy thereof to the person to be served or to a member of the partnership to be served, or to the president, secretary, or other executive officer, or a director of the corporation or association to be served; or (b) by leaving a copy thereof at

the principal office or place of business of such person, partnership, corporation, or association; or (c) by registering and mailing a copy thereof addressed to such person, partnership, corporation, or association at his or its principal office or place of business. The verified return by the person so serving said complaint, order, or other process, setting forth the manner of said service, shall be proof of the same, and the return post-office receipt for said complaint, order, or other process, registered and mailed as aforesaid, shall be proof of the service of the same.

V. INTERVENTION.

Any person, partnership, corporation, or association desiring to intervene in a contested proceeding shall make application in writing, setting out the grounds on which he or it claims to be interested. The commission may, by order, permit intervention by counsel or in person to such extent and upon such terms as it shall deem just.

Applications to intervene must be on one side of the paper only, on paper not more than 8½ inches wide and not more than 11 inches long, and weighing not less than 16 pounds to the ream, folio base, 17 by 22 inches, with left-hand margin not less than 1½ inches wide, or they may be printed in 10 or 12 point type on good unglazed paper 8 inches wide by 10½ inches long, with inside margins not less than 1 inch wide.

VI. CONTINUANCES AND EXTENSIONS OF TIME.

Continuances and extensions of time will be granted at the discretion of the commission.

VII. WITNESSES AND SUBPENAS.

Witnesses shall be examined orally, except that for good and exceptional cause for departing from the general rule the commission may permit their testimony to be taken by deposition.

Subpœnas requiring the attendance of witnesses from any place in the United States at any designated place of hearing may be issued by any member of the commission.

Subpœnas for the production of documentary evidence (unless directed to issue by a commissioner upon his own motion) will issue only upon application in writing, which must be verified and must specify, as near as may be, the documents desired and the facts to be proved by them.

Witnesses summoned before the commission shall be paid the same fees and mileage that are paid witnesses in the courts of the United States, and witnesses whose depositions are taken and the persons taking the same shall severally be entitled to the same fees as are paid for like services in the courts of the United States. Witness fees and mileage shall be paid by the party at whose instance the witnesses appear.

VIII. TIME FOR TAKING TESTIMONY.

Upon the joining of issue in a proceeding by the commission the examination of witnesses therein shall proceed with all reasonable diligence and with the least practicable delay. Not less than five days notice shall be given by the commission to counsel or parties of the time and place of examination of witnesses before the commission, a commissioner, or an examiner.

IX. OBJECTIONS TO EVIDENCE.

Objections to the evidence before the commission, a commissioner, or an examiner shall, in any proceeding, be in short form, stating the grounds of objections relied upon, and no transcript filed shall include argument or debate.

X. MOTIONS.

A motion in a proceeding by the commission shall briefly state the nature of the order applied for, and all affidavits, records, and other papers upon which the same is founded, except such as have been previously filed or served in the same proceeding, shall be filed with such motion and plainly referred to therein.

XI. HEARINGS ON INVESTIGATIONS.

When a matter for investigation is referred to a single commissioner for examination or report, such commissioner may conduct or hold conferences or hearings thereon, either alone or with other commissioners who may sit with him, and reasonable notice of the time and place of such hearings shall be given to parties in interest and posted.

The general counsel or one of his assistants, or such other attorney as shall be designated by the commission, shall attend and conduct such hearings, and such hearings may, in the discretion of the commissioner holding same, be public.

XII. HEARINGS BEFORE EXAMINERS.

When issue in the case is set for trial it shall be referred to an examiner for the taking of testimony. It shall be the duty of the examiner to complete the taking of testimony with all due dispatch, and he shall set the day and hour to which the taking of testimony may from time to time be adjourned. The taking of the testimony both for the commission and the respondent shall be completed within 30 days after the beginning of the same unless, for good cause shown, the commission shall extend the time. The examiner shall, within 10 days after the receipt of the stenographic report of the testimony, make his report on the facts, and shall forthwith serve copy of the same on the parties or their attorneys, who, within 10 days after the receipt of same, shall file in writing their exceptions, if any, and said exceptions shall specify the particular part or parts of the report to which exception is made, and said exceptions shall include any additional facts which either party may think proper. Seven copies of exceptions shall be filed for the use of the commission. Citations to the record shall be made in support of such exceptions. Where briefs are filed, the same shall contain a copy of such exceptions. Argument on the exceptions, if exceptions be filed, shall be had at the final argument on the merits.

XIII. DEPOSITIONS IN CONTESTED PROCEEDINGS.

The commission may order testimony to be taken by deposition in a contest proceeding.

Depositions may be taken before any person designated by the commission and having power to administer oaths.

Any party desiring to take the deposition of a witness shall make application in writing, setting out the reasons why such depositions should be taken, and stating the time when, the place where, and the name and post-office address of the person before whom it is desired the deposition be taken, the name and post-office address of the witness, and the subject matter or matters concerning which the witness is expected to testify. If good cause be shown, the commission will make and serve upon the parties or their attorneys an order wherein the commission shall name the witness whose deposition is to be taken, and specify the time when, the place where, and the person before whom the witness is to testify, but such time and place, and the person before whom the deposition is to be taken, so specified in the commission's order, may or may not be the same as those named in said application to the commission.

The testimony of the witness shall be reduced to writing by the officer before whom the deposition is taken, or under his direction, after which the deposition shall be subscribed by the witness and certified in usual form by the officer. After the deposition has been so certified it shall, together with a copy thereof made by such officer or under his direction, be forwarded by such officer under seal in an envelope addressed to the commission at its office in Washington, D. C. Upon receipt of the deposition and copy the commission shall file in the record in said proceeding such deposition and forward the copy to the defendant or the defendant's attorney.

Such deposition shall be typewritten on one side only of the paper, which shall be not more than 8½ inches wide and not more than 11 inches long and weighing not less than 16 pounds to the ream, folio base 17 by 22 inches with left-hand margin not less than 1½ inches wide.

No deposition shall be taken except after at least 6 days' notice to the parties, and where the deposition is taken in a foreign country such notice shall be at least 15 days.

No deposition shall be taken either before the proceeding is at issue or, unless under special circumstances and for good cause shown, within 10 days prior to the date of the hearing thereof assigned by the commission, and where the deposition is taken in a foreign country it shall not be taken after 30 days prior to such date of hearing.

XIV. DOCUMENTARY EVIDENCE.

Where relevant and material matter offered in evidence is embraced in a document containing other matter not material or relevant and not intended to be put in evidence, such document will not be filed, but a copy only of such relevant and material matter shall be filed.

XV. BRIEFS.

Unless otherwise ordered, briefs may be filed at the close of the testimony in each contested proceeding. If briefs are filed, the exceptions, if any, to the examiner's report must be incorporated in the briefs. The presiding commissioner or examiner shall fix the time within which brief shall be filed and service thereof shall be made upon the adverse parties.

All briefs must be filed with the secretary and be accompanied by proof of service upon the adverse parties. Twenty copies of each brief shall be furnished for the use of the commission, unless otherwise ordered.

Application for extension of time in which to file any brief shall be by petition in writing, stating the facts upon which the application rests, which must be filed with the commission at least 5 days before the time for filing the brief.

Every brief shall contain, in the order here stated—

(1) A concise abstract or statement of the case.

(2) A brief of the argument, exhibiting a clear statement of the points of fact or law to be discussed, with the reference to the pages of the record and the authorities relied upon in support of each point.

Every brief of more than 10 pages shall contain on its top flyleaves a subject index with page references, the subject index to be supplemented by a list of all cases referred to, alphabetically arranged, together with references to pages where the cases are cited.

Briefs must be printed in 10 or 12 point type on good unglazed paper 8 inches by 10½ inches, with inside margins not less than 1 inch wide and with double-leaded text and single-leaded citations.

Oral arguments will be had only as ordered by the commission.

XVI. ADDRESS OF THE COMMISSION.

All communications to the commission must be addressed to Federal Trade Commission, Washington, D. C., unless otherwise specially directed.

EXHIBIT 4.

EXTRACTS FROM THE TRADING WITH THE ENEMY ACT AND EXECUTIVE ORDER OF OCTOBER 12, 1917.

The act of Congress approved October 6, 1917, known as the trading with the enemy act, contains the following provisions:

SEC. 10.

* * * * *

(b) Any citizen of the United States, or any corporation organized within the United States, may, when duly authorized by the President, pay to an enemy or ally of enemy any tax, annuity, or fee which may be required by the laws of such enemy, or ally of enemy nation in relation to patents and trade-marks, prints, labels, and copyrights; and any such citizen or corporation may file and prosecute an application for letters patent or for registration of trade-mark, print, label, or copyright in the country of an enemy, or of an ally of enemy, after first submitting such application to the President and receiving license so to file and prosecute, and to pay the fees required by law and customary agents' fees, the maximum amount of which in each case shall be subject to the control of the President.

(c) Any citizen of the United States or any corporation organized within the United States desiring to manufacture, or cause to be manufactured, a machine, manufacture, composition of matter, or design, or to carry on, or to use any trade-mark, print, label, or cause to be carried on a process under any patent or copyrighted matter owned or controlled by an enemy or ally of enemy at any time during the existence of a state of war may apply to the President for a license; and the President is hereby authorized to grant such a license, nonexclusive or exclusive, as he shall deem best, provided he shall be of the opinion that such grant is for the public welfare, and that the applicant is able and intends in good faith to manufacture, or cause to be manufactured, the machine, manufacture, composition of matter, or design, or to carry on, or cause to be carried on, the process, or to use the trade-mark, print, label, or copyrighted matter. The President may prescribe the conditions of this license, including the fixing of prices of articles and products necessary to the health of the military and naval forces of the United States or the successful prosecution of the war, and the rules and regulations under which such license may be granted, and the fee which shall be charged therefor, not exceeding \$100, and not exceeding one per centum of the fund deposited as hereinafter provided. Such license shall be a complete defense to any suit at law or in equity instituted by the enemy or ally of enemy owners of the letters patent, trade-mark, print, label, or copyright, or otherwise, against the licensee for infringement or for damages, royalty, or other money award on account of anything done by the licensee under such license, except as provided in subsection (f) hereof.

(d) The licensee shall file with the President a full statement of the extent of the use and enjoyment of the license, and of the prices received in such form and at such stated periods (at least annually) as the President may prescribe; and the licensee shall pay at such times as may be required to the alien property custodian not to exceed five per centum of the gross sums received by the licensee from the sale of said inventions or use of the trade-mark, print, label, or copyrighted matter or, if the President shall so order, five per centum of the value of the use of such inventions, trade-marks, prints, labels, or copyrighted matter to the licensee as established by the President; and sums so paid shall be deposited by said alien property custodian forthwith in the Treasury of the United States as a trust fund for the said licensee and for the owner of the said patent, trade-mark, print, label, or copyright registration as hereinafter provided, to be paid from the Treasury upon order

of the court, as provided in subdivision (f) of this section, or upon the direction of the alien property custodian.

(e) Unless surrendered or terminated as provided in this act, any license granted hereunder shall continue during the term fixed in the license or in the absence of any such limitation during the term of the patent, trade-mark, print, label, or copyright registration under which it is granted. Upon violation by the licensee of any of the provisions of this act, or of the conditions of the license, the President may, after due notice and hearing, cancel any license granted by him.

(f) The owner of any patent, trade-mark, print, label, or copyright under which a license is granted hereunder may, after the end of the war and until the expiration of one year thereafter, file a bill in equity against the licensee in the district court of the United States for the district in which the said licensee resides, or, if a corporation, in which it has its principal place of business (to which suit the Treasurer of the United States shall be made a party), for recovery from the said licensee for all use and enjoyment of the said patented invention, trade-mark, print, label, or copyrighted matter: *Provided, however*, That whenever suit is brought, as above, notice shall be filed with the alien property custodian within thirty days after date of entry of suit: *Provided further*, That the licensee may make any and all defenses which would be available were no license granted. The court on due proceedings had may adjudged and decree to the said owner payment of a reasonable royalty. The amount of said judgment and decree, when final, shall be paid on order of the court to the owner of the patent from the fund deposited by the licensee, so far as such deposit will satisfy said judgment and decree; and the said payment shall be in full or partial satisfaction of said judgment and decree, as the facts may appear; and if, after payment of all such judgments and decrees, there shall remain any balance of said deposit, such balance shall be repaid to the licensee on order of the alien property custodian. If no suit is brought within one year after the end of the war, or no notice is filed as above required, then the licensee shall not be liable to make any further deposits, and all funds deposited by him shall be repaid to him on order of the alien property custodian. Upon entry of suit and notice filed as above required, or upon repayment of funds as above provided, the liability of the licensee to make further reports to the President shall cease.

If suit is brought as above provided, the court may, at any time, terminate the license, and may, in such event, issue an injunction to restrain the licensee from infringement thereafter, or the court, in case the licensee, prior to suit, shall have made investment of capital based on possession of the license, may continue the license for such period and upon such terms and with such royalties as it shall find to be just and reasonable.

(g) Any enemy, or ally of enemy, may institute and prosecute suits in equity against any person other than a licensee under this act to enjoin infringement of letters patent, trade-mark, print, label, and copyrights in the United States owned or controlled by said enemy or ally of enemy in the same manner and to the extent that he would be entitled so to do if the United States was not at war: *Provided*, That no final judgment or decree shall be entered in favor of such enemy or ally of enemy by any court except after thirty days' notice to the alien property custodian. Such notice shall be in writing and shall be served in the same manner as civil process of Federal courts.

(h) All powers of attorney heretofore or hereafter granted by an enemy or ally of enemy to any person within the United States, in so far as they may be requisite to the performance of acts authorized in subsections (a) and (g) of this section, shall be valid.

(i) Whenever the publication of an invention by the granting of a patent may, in the opinion of the President, be detrimental to the public safety or defense, or may assist the enemy or endanger the successful prosecution of the war, he may order that the invention be kept secret and withhold the grant of a patent until the end of the war: *Provided*, That the invention disclosed in the application for said patent may be held abandoned upon it being established before or by the Commissioner of Patents that, in violation of said order, said invention has been published or that an application for a patent therefor has been filed in any other country, by the inventor or his assigns or legal representatives, without the consent or approval of the commissioner or under a license of the President.

When an applicant whose patent is withheld as herein provided, and who faithfully obeys the order of the President above referred to shall tender his

invention to the Government of the United States for its use, he shall, if he ultimately receives a patent, have the right to sue for compensation in the Court of Claims, such right to compensation to begin from the date of the use of the invention by the Government.

By the Executive order of October 12, 1917, the power and authority to administer the above sections was vested in the Federal Trade Commission, as follows:

XVII. I further hereby vest in the Federal Trade Commission the power and authority to issue licenses under such terms and conditions as are not inconsistent with law or to withhold or refuse the same, to any citizen of the United States or any corporation organized within the United States to file and prosecute applications in the country of an enemy or ally of enemy for letters patent or for registration of trade-mark, print, label, or copyright, and to pay the fees required by law and the customary agents' fees, the maximum amount of which in each case shall be subject to the control of such commission; or to pay to any enemy or ally of enemy any tax, annuity, or fee which may be required by the laws of such enemy or ally of enemy nation in relation to patents, trade-marks, prints, labels, and copyrights.

XVIII. I hereby vest in the Federal Trade Commission the power and authority to issue, pursuant to the provisions of section 10 (c) of the trading with the enemy act, upon such terms and conditions as are not inconsistent with law, or to withhold or refuse a license to any citizen of the United States, or any corporation organized within the United States, to manufacture or cause to be manufactured a machine, manufacture, composition of matter, or design, or to carry on or cause to be carried on a process under any patent, or to use any trade-mark, print, label, or copyright matter owned or controlled by an enemy or ally of enemy, at any time during the present war; and also to fix the prices of articles and products manufactured under such licenses necessary to the health of the military and the naval forces of the United States, or the successful prosecution of the war; and to prescribe the fee which may be charged for such license, not exceeding \$100 and not exceeding 1 per cent of the fund deposited by the licensee with the alien property custodian as provided by law.

XIX. I hereby further vest in the said Federal Trade Commission the executive administration of the provisions of section 10 (d) of the trading with the enemy act, the power and authority to prescribe the form of, and time and manner of filing statements of the extent of the use and enjoyment of the license and of the prices received and the times at which the licensee shall make payments to the alien property custodian, and the amounts of said payments, in accordance with the trading with the enemy act.

XX. I further hereby vest in the Federal Trade Commission the power and authority, whenever in its opinion the publication of an invention or the granting of a patent may be detrimental to the public safety or defense, or may assist the enemy, or endanger the successful prosecution of the war, to order that the invention be kept secret and the grant of letters patent withheld until the end of the war.

XXI. The said Federal Trade Commission is hereby authorized to take all such measures as may be necessary or expedient to administer the powers hereby conferred.

By the Executive order of April 11, 1918, the power and authority vested in the Federal Trade Commission under section 10(b) of the trading with the enemy act and Section XVII of the Executive order of October 12, 1917, was revoked, as follows:

I hereby revoke the power and authority vested in the Federal Trade Commission by Section XVII of the Executive order of October 12, 1917, to issue licenses to any citizens of the United States or any corporation organized within the United States, to file or prosecute applications in the country of an enemy or ally of enemy for letters patent or for registration of trade-mark, print, label, or copyright, and to pay any fees or agents' fees in connection therewith, or to pay to any enemy or ally of enemy any tax, annuity, or fee in relation to patents, trade-marks, prints, labels, and copyrights, and no such license shall be granted until further order.

By the Executive order of November 25, 1919, there was revested in designated officers certain powers under the trading with the enemy act as follows:

By virtue of the power and authority vested in me by "An act to define, regulate, and punish trading with the enemy, and for other purposes," approved October 6, 1917, I hereby rescind, as of the 14th day of July, 1919, the Executive order of April 11, 1918, which revoked (1) the power and authority vested in the Secretary of the Treasury by Section XI of the Executive order of October 12, 1917, to issue licenses to send, take, or transmit out of the United States any letter or other writing, book, map, plan, or other paper, picture, or any telegram, cablegram, or wireless message, or other form of communication intended for or to be delivered, directly or indirectly, to an "enemy" or "ally of enemy," in any way relating to letters patent, or registration of trade-mark, print, label, or copyright, or to any application therefor, and (2) the power and authority vested in the Federal Trade Commission by Section XVII of the Executive order of October 12, 1917, to issue licenses to any citizens of the United States or any corporation organized within the United States, to file or prosecute applications in the country of an "enemy" or "ally of enemy" for letters patent or for registration of trade-mark, print, label, or copyright, and to pay any fees or agents' fees in connection therewith; or to pay to any "enemy" or "ally of enemy" any tax, annuity, or fee in relation to patents, trade-marks, prints, labels, and copyrights; and I do hereby order that on and after July 14, 1919, licenses to perform the acts hereinafter described may be issued under Sections XI and XVII of the Executive order of October 12, 1917, by the officials in whom the authority to issue such licenses was by said order vested; and I do hereby further order that any and all licenses issued on or after July 14, 1919, which, except for the above-mentioned order of April 11, 1918, would by their terms authorize any of the acts hereinabove described, are hereby confirmed and approved, and all such licenses shall be deemed to have full force and effect according to the terms thereof, in like manner as though said order of April 11, 1918, had been rescinded prior to July 14, 1919.

By virtue of the power and authority revested in the commission by the Executive order of November 25, 1919, above quoted, license is hereby granted to all citizens of the United States and all corporations organized within the United States, to file or prosecute applications in the country of an enemy or ally of enemy for letters patent or for registration of trade-mark, print, label, or copyright, and to pay any fees or agents' fees in connection therewith; or to pay to any enemy or ally of enemy any tax, annuity, or fee in relation to patents, trade-marks, prints, labels, and copyrights.

Dated November 29, 1919.

[SEAL.]

(Signed)

FEDERAL TRADE COMMISSION,
J. P. YODER, *Secretary*.

FORM OF LICENSE UNDER PATENT.

Patent licenses issued by the Federal Trade Commission under the provisions of the "Trading with the enemy act" will be in substantially the following form:

Patent No. _____, dated _____, to _____
_____ for _____

The Federal Trade Commission, under the authority of and in conformity with the "Trading with the enemy act," and of the Executive order of October 12, 1917, hereby licenses _____ to make, use, and vend within the United States the invention described in United States letters patent to _____
No. _____, dated _____ (copy annexed hereto),
for the period of _____ unless sooner terminated.

The licensee during the continuance of this license shall pay to the alien property custodian, semiannually, within 30 days after the 1st day of January and the 1st day of July, respectively, of each year, a royalty at the rate of _____ per cent of the gross sums received by the licensee from the sale of the invention so herein licensed (or _____ per cent of the value

of the use thereof to the licensee as established by the Federal Trade Commission).

The licensee shall, during the continuance of this license, keep proper accounts and separate books containing full particulars of:

(a) All articles made and sold under this license and of the prices charged and amounts received therefor;

(b) All items of cost incurred in the use of such invention and the manufacture and sale of articles made thereunder; and

(c) All other matters and things which in the opinion of the Federal Trade Commission may be material for the purpose of showing the amounts from time to time payable by the licensee concerning such royalty and what is a fair and reasonable price to the public for such article.

The licensee shall, within 10 days after each of the semiannual days aforesaid, deliver a sworn statement to the Federal Trade Commission in writing showing the aforesaid particulars.

The licensee shall, during the continuance of this license, give all such information as the Federal Trade Commission may consider to be material for the purpose of ascertaining the amount of royalty payable by the licensee under this license, the cost of the use of such invention, the cost of producing, and the price or prices charged by the licensee for the said article, and for that purpose shall, if requested by the Federal Trade Commission, permit such person or persons as shall be authorized in that behalf by the Federal Trade Commission at any time or times to enter upon and inspect any factory or place of business of the licensee in which the use of the said invention or the manufacture of the said article shall be carried on and all books, papers, and documents of such licensee relating to such use, manufacture, and sale.

If any payment under this license shall not be made within one month after the same shall have become due under the provisions herein contained (whether demand therefor shall have been made or not) or if the licensee shall, or shall attempt to, assign or part with the benefit of or grant any sublicense under this license, or shall make default in the performance or observance of any obligation on his part herein contained, or shall have violated any of the conditions of this license or any of the provisions of the statute under which it is granted, and if, after 10 days' notice in writing, shall have failed to comply with the aforesaid, then the Federal Trade Commission may, by notice in writing, and after a hearing, cancel and terminate this license as from the date of such notice, but without prejudice to and so as not in any manner to affect any liability hereunder on the part of the licensee which may then be subsisting or have accrued.

If in the opinion of the Federal Trade Commission the licensee has failed to use this license so as to satisfy the reasonable requirement of the public with regard to the subject matter thereof; or

If in the opinion of the Federal Trade Commission the licensee has failed to supply to the public the articles made under this license at reasonable prices; or

If in the opinion of the Federal Trade Commission the licensee has charged unreasonable or excessive prices for articles made under this license; or

If in the opinion of the Federal Trade Commission the articles made under this license are of unsatisfactory quality (and the licensee shall furnish to the Federal Trade Commission in the manner prescribed by it and when and as often as required, samples and specimens for inspection, analysis, and test); or

Circumstances have arisen which, in the opinion of the Federal Trade Commission, make it advisable that this license be canceled in whole or in part:

Then
The Federal Trade Commission may, in its absolute discretion, terminate and cancel this license in whole or in part, and, if canceled and terminated, the same shall be without prejudice to and so as not in any manner to affect any liability hereunder on the part of the licensee which may then be subsisting or have accrued.

Any sums which may at any time be payable by the licensee under the provisions of this license shall be a debt due from the licensee to the people of the United States, and shall be recovered in an appropriate action in the name of the people of the United States against the licensee.

Dated, _____, 19---

Accepted and agreed to.

Licensee.

A copy of the patent is to be attached.

If the licensee is not to be the actual manufacturer, the licensee will be held accountable to the Federal Trade Commission for the observance of the terms of his license by the actual manufacturer of the article, and the license will contain the following addendum, naming the actual manufacturer who shall sign:

-----, the manufacturer for -----
 -----, the licensee
 of the article herein licensed, separately agrees to keep separate books containing full particulars of all articles manufactured, and the cost thereof, sold to -----, the licensee, and the price or prices charged therefor, and his books and plant shall be open to inspection in the same manner as provided for the licensee. The licensee and the undersigned, during the continuance of the license, shall furnish or procure to be furnished all such information as the Federal Trade Commission may consider to be material for the purpose of ascertaining the amount of royalty payable by the licensee, the cost of producing or procuring the patented article, the price or prices charged for said article, and shall permit or procure permission to be given to such person or persons as shall be authorized in that behalf by the Federal Trade Commission at any time or times to enter upon and inspect any factory or place of business in which the manufacture of the patented article shall be carried on by the undersigned for the licensee, and all books, papers, and documents relating to such manufacture and sale.
 The undersigned, manufacturer, is not authorized to make, use, or vend the invention of the patent except for -----
 the licensee, and not further or otherwise, and the undersigned undertakes to observe and perform the terms and conditions of the license to -----
 -----, to which this is attached.
 Dated -----, 191---.
 Accepted and agreed to.

Manufacturer.

FORM OF LICENSE UNDER COPYRIGHT.

Copyright licenses issued by the Federal Trade Commission under the provisions of the "trading with the enemy act" will be in substantially the following form:

Copyright No. ----- dated ----- to ----- for the (book, etc., as the case may be; see copyright act of March 4, 1909, sec. 5, for classification) entitled (insert title of work).

The Federal Trade Commission, under the authority of and in conformity with the "trading with the enemy act" and of the Executive order of October 12, 1917, hereby licenses ----- to exercise within the United States all the rights created by the copyright laws of the United States of America, being the act of March 4, 1909, as amended, with respect to the subject matter of copyright to -----, No. -----, dated ----- for the (book, etc., as the case may be; see copyright act of March 4, 1909, sec. 5, for classification) entitled (insert title of work), a copy of which is annexed hereto, for the period of -----, unless sooner terminated.

The licensee, during the continuance of this license, shall pay to the Allen Property Custodian, semiannually, within 30 days after the 1st day of January, and the 1st day of July, respectively, of each year, a royalty at the rate of ----- per cent of the gross sums received by the licensee from the sale of the copyright work so herein licensed (or ----- per cent of the value of the use thereof to the licensee as established by the Federal Trade Commission).

The licensee shall, during the continuance of this license, keep proper accounts and separate books containing full particulars of--

- (a) All copies of said copyright work made and sold under this license and of the prices charged and amounts received therefor.
- (b) All items of cost incurred in the use of said copyright work and in the manufacture and sale of such copyright work, and
- (c) All other matters and things which, in the opinion of the Federal Trade Commission, may be material for the purpose of showing the amounts from

time to time payable by the licensee concerning such royalty, and what is a fair and reasonable price to the public for such copyright work.

The licensee shall, within 10 days after each of the semiannual days aforesaid, deliver a sworn statement to the Federal Trade Commission in writing showing the aforesaid particulars.

The licensee shall during the continuance of this license give all such information as the Federal Trade Commission may consider to be material for the purpose of ascertaining the amount of royalty payable by the licensee under this license, the cost of producing, and the price or prices charged by the licensee for the said copyright work, and for that purpose shall, if requested by the Federal Trade Commission, permit such person or persons as shall be authorized in that behalf by the Federal Trade Commission at any time or times to enter upon and inspect any factory or place of business of the licensee in which the use or manufacture of the said copyright work shall be carried on, and all books, papers, and documents of such licensee relating to such use, manufacture, and sale.

If any payment under this license shall not be made within one month after the same shall have become due under the provisions herein contained (whether demand therefor shall have been made or not), or if the licensee shall, or shall attempt, to assign or part with the benefits of or grant any sublicense under this license, or shall make default in the performance or observance of any obligation on his part herein contained, or shall have violated any of the conditions of this license or any of the provisions of the statute under which it is granted, and if after 10 days' notice, in writing, shall have failed to comply with the aforesaid, then the Federal Trade Commission may, by notice in writing, and after a hearing, cancel and terminate this license as from the date of such notice, but without prejudice to and so as not in any manner to affect any liability hereunder on the part of the licensee which may then be subsisting or have accrued.

If in the opinion of the Federal Trade Commission the licensee has failed to use this license so as to satisfy the reasonable requirement of the public with regard to the copyright work; or

If in the opinion of the Federal Trade Commission the licensee has failed to supply to the public the copyright work at reasonable prices; or

If in the opinion of the Federal Trade Commission the licensee has charged unreasonable or excessive prices for said copyright work; or

Circumstances have arisen which in the opinion of the Federal Trade Commission make it advisable that this license be canceled in whole or in part: Then

The Federal Trade Commission may, in its absolute discretion, terminate and cancel this license in whole or in part, and if canceled and terminated the same shall be without prejudice to and so as not in any manner to affect any liability hereunder on the part of the licensee which may then be subsisting or have accrued.

Any sums which may at any time be payable by the licensee under the provisions of this license shall be a debt due from the licensee to the people of the United States and shall be recovered in an appropriate action in the name of the people of the United States against the licensee.

Dated, _____, 191---

Accepted and agreed to.

Licensee.

If the licensee is not to be the actual manufacturer or producer of the copyright work, the licensee will be held accountable to the Federal Trade Commission for the observance of the terms of his license by the actual manufacturer or producer of the article, and the license will contain the following addendum, naming the actual manufacturer or producer of the article, who shall sign:

-----, the manufacturer for-----
-----, the licensee of the copyright work herein licensed, separately agrees to keep separate books containing full particulars of all of such copyright works manufactured and the cost thereof, sold to-----
-----, the licensee, and the price or prices charged therefor, and his books and plant shall be open to inspection in the same manner

as provided for the licensee. The licensee and the undersigned, during the continuance of the license, shall furnish or procure to be furnished all such information as the Federal Trade Commission may consider to be material for the purpose of ascertaining the amount of royalty payable by the licensee, the cost of producing or procuring the copyright work, the price or prices charged therefor, and shall permit or procure permission to be given to such person or persons as shall be authorized in that behalf by the Federal Trade Commission at any time or times to enter upon and inspect any factory or place of business in which the manufacture of the copyright work shall be carried on by the undersigned for the licensee and all books, papers, and documents relating to such manufacture and sale.

The undersigned, manufacturer, is not authorized to exercise any right conferred by the copyright statutes with respect to the copyright work here involved except for _____, the licensee, and not further or otherwise, and the undersigned undertakes to observe and perform the terms and conditions of the license to _____ to which this is attached.

Dated, _____, 191__.

Accepted and agreed to.

Manufacturer.

A surety company bond may be required of the licensee if, in the opinion of the Federal Trade Commission, it is necessary to safeguard the public interest.

FORM OF APPLICATION FOR LICENSE.

TRADING WITH THE ENEMY ACT.

To the FEDERAL TRADE COMMISSION:

Application of _____ for a license under patent to _____
 _____, date _____, No. _____.

(If under copyright, state title of work, name of copyright proprietor, and date of copyright registration.)

The undersigned, for the purpose of securing a license, represents to the Federal Trade Commission as follows:

(a) The undersigned is a citizen of the United States, residing at _____
 _____ Street, in the city of _____, State of _____
 _____, United States of America. (If a corporation, state under the laws of what State it is organized; the location of its corporate offices, its business offices, and plants or factories.)

(b) The undersigned is desirous of being licensed under the patent (or copyright) above named, which is owned or controlled by _____
 _____, a citizen or subject of _____. (State the enemy country or the ally of the enemy of which the patentee or copyright proprietor is a citizen or subject, or if a corporation where it is incorporated, and if the patent or copyright is not owned but is claimed to be controlled state fully the facts which establish the nature and origin of the enemy or ally of enemy control, whether it is by means of an agency, by contract, by stock ownership in corporations, or otherwise.)

(c) Attached hereto is a Patent Office copy of the letters patent and a certified abstract of its title from the Patent Office and a certified copy of the petition and all powers of attorney in the file of the application (or, in the case of a copyright, a specimen of the copyrighted work, and a certified copy of the copyright entries from the office of the Register of Copyrights).

(d) It is for the public welfare that the license applied for be granted because—(Here state briefly but completely and in nontechnical language the reason why it is for the public benefit that the license be granted and specifically the demand for the article prior to the war, the demand for the article at the present time, whether or not this demand is being met or can be met, prices obtained prior to the war and prices at the present time.)

(e) Applicant is able to make or cause to be made the patented or copyrighted article because—(Here state specifically the applicant's experience in the production of articles of the kind covered by the patent or copyright, his

technical equipment for manufacturing and selling such articles and his ability to do so, the estimated cost of manufacture and price proposed to be charged if the license is granted.)

(If the applicant does not intend to manufacture but to procure the manufacture of the article state specifically what arrangements have been made or proposed to this end and their terms and conditions. State the name and address of the manufacturer proposed to be employed and his technical equipment, etc., and attach copies of any contracts or proposals.)

(f) The license desired is exclusive or nonexclusive for the following reasons: (Here state reasons why, in the opinion of the applicant, the license should be exclusive or nonexclusive.)

(g) The license is desired—

- (1) For the term of the patent or copyright, (2) the duration of the war, or (3) any other period, stating reasons in each case.

(h) The application is also to contain the following: "The undersigned intends in good faith to manufacture or cause to be manufactured the article licensed and understands that the license, if granted, may not be assigned and may be canceled by the Federal Trade Commission, after due notice of hearing, upon violation by the undersigned of any of the provisions of the 'Trading with the enemy act or of any of the conditions of the license.'"

(Signed) _____, Applicant.

OATH FOR AN INDIVIDUAL.

STATE OF _____, County of _____, ss:

_____, being duly sworn, deposes and states that he is the same person whose name is signed to the foregoing statement; that he has read this statement and knows and understands its contents; and that it is true.

Subscribed and sworn to before me this _____ day of _____, 191____, Notary Public.

OATH FOR A CORPORATION.

STATE OF _____, County of _____, ss:

_____, being duly sworn, deposes and states that he is the _____ of _____, the corporation whose name is signed to the foregoing statement; that he is duly authorized to swear to such statement on behalf of such corporation; that he has read this statement and knows and understands its contents, and that it is true.

Subscribed and sworn to before me this _____ day of _____, 191____, Notary Public.

To: _____ (Date.) In re application for United States patent of _____ Ser. No. _____ Filed _____ For _____

GENTLEMEN: Inclosed is a duly certified copy of an order of the Federal Trade Commission with reference to the matter identified in the caption of this letter. Violation of this order entails a fine of not more than ten thousand dollars (\$10,000) or imprisonment of not more than ten (10) years, or both. You are directed to govern yourselves accordingly.

Very truly yours, FEDERAL TRADE COMMISSION, L. L. BEACKEN, Secretary.

(Signed)

UNITED STATES OF AMERICA,
FEDERAL TRADE COMMISSION,
(Date.)

IN THE MATTER OF ENJOINING PUBLICATION OF CERTAIN PATENTS AND SECRECY
OF INVENTIONS.

It appearing to the Federal Trade Commission that the publication of certain alleged inventions, for which applications for patents have been made in the United States Patent Office, and which are fully identified in a schedule filed with the Federal Trade Commission -----, said schedule being dated -----, and now in the files of the Federal Trade Commission, may be detrimental to the public safety or defense and may assist the enemy and endanger the successful prosecution of the war, and that said alleged inventions are in whole or in part known to the alleged inventors, assigns, if any, and their solicitors.

Therefore, in conformity with the provisions of the trading with the enemy act and of the Executive order of October 12, 1917—

It is ordered that, without the consent or approval of the Commissioner of Patents or license from the Federal Trade Commission, the said inventors, assigns, if any, and solicitors, and each thereof, and all others having knowledge of the said inventions or any thereof, keep the said inventions and each of them secret and refrain from publication or any disclosure thereof.

It is further ordered that a copy of this order be served upon the said inventors, assigns, if any, and solicitors by registered mail forthwith.

A true copy of the order this day entered.

FEDERAL TRADE COMMISSION.

Attest:
[SEAL.]

(Signed)

L. L. BRACKEN, *Secretary.*

EXHIBIT 5.

EXPORT TRADE ACT.

AN ACT To promote export trade, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the words "export trade" wherever used in this act mean solely trade or commerce in goods, wares, or merchandise exported, or in the course of being exported from the United States or any Territory thereof to any foreign nation; but the words "export trade" shall not be deemed to include the production, manufacture, or selling for consumption or for resale, within the United States or any Territory thereof, of such goods, wares, or merchandise, or any act in the course of such production, manufacture, or selling for consumption or for sale.

That the words "trade within the United States" wherever used in this act mean trade or commerce among the several States or in any Territory of the United States, or in the District of Columbia, or between any such Territory and another, or between any such Territory or Territories and any State or States or the District of Columbia, or between the District of Columbia and any State or States.

That the word "association" wherever used in this act means any corporation or combination, by contract or otherwise, of two or more persons, partnerships, or corporations.

Sec. 2. That nothing contained in the act entitled "An act to protect trade and commerce against unlawful restraints and monopolies," approved July second, eighteen hundred and ninety, shall be construed as declaring to be illegal an association entered into for the sole purpose of engaging in export trade and actually engaged solely in such export trade, or an agreement made or act done in the course of export trade by such association, provided such association, agreement, or act is not in restraint of trade within the United States, and is not in restraint of the export trade of any domestic competitor of such association: *And provided further,* That such association does not, either in the United States or elsewhere, enter into any agreement, understanding, or conspiracy, or do any act which artificially or intentionally enhances or depresses prices within the United States or commodities of the class exported by such association, or which substantially lessens competition within the United States or otherwise restrains trade therein.

Sec. 3. That nothing contained in section seven of the act entitled "An act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," approved October fifteenth, nineteen hundred and fourteen, shall be construed to forbid the acquisition or ownership by any corporation (of the whole or any part of the stock or other capital of any corporation) organized solely for the purpose of engaging in export trade, and actually engaged solely in such export trade unless the effect of such acquisition or ownership may be to restrain trade or substantially lessen competition within the United States.

Sec. 4. That the prohibition against "unfair methods of competition" and the remedies provided for enforcing said prohibition contained in the act entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," approved September twenty-sixth, nineteen hundred and fourteen, shall be construed as extending to unfair methods of competition used in export trade against competitors engaged in export trade, even though the acts constituting such unfair methods are done without the territorial jurisdiction of the United States.

Sec. 5. That every association now engaged solely in export trade, within sixty days after the passage of this act, and every association entered into hereafter which engages solely in export trade, within thirty days after its creation, shall file with the Federal Trade Commission a verified written state-

ment setting forth the location of its offices or places of business and the names and addresses of all its officers and of all of its stockholders or members, and if a corporation, a copy of its certificate or articles of incorporation and by-laws, and if unincorporated, a copy of its articles or contract of association, and on the first day of January of each year thereafter it shall make a like statement of the location of its offices or places of business and the names and addresses of all its officers and of all its stockholders or members and of all amendments to and changes in its articles or certificate of incorporation or in its articles or contract of association. It shall also furnish to the commission such information as the commission may require as to its organization, business, conduct, practices, management, and relation to other associations, corporations, partnerships, and individuals. Any association which shall fail so to do shall not have the benefit of the provisions of section two and section three of this act, and it shall also forfeit to the United States the sum of \$100 for each and every day of the continuance of such failure, which forfeiture shall be payable into the Treasury of the United States, and shall be recoverable in a civil suit in the name of the United States brought in the district where the association has its principal office, or in any district in which it shall do business. It shall be the duty of the various district attorneys, under the direction of the Attorney General of the United States, to prosecute for the recovery of the forfeiture. The costs and expenses of such prosecution shall be paid out of the appropriation for the expenses of the courts of the United States.

Whenever the Federal Trade Commission shall have reason to believe that an association or any agreement made or act done by such association is in restraint of trade within the United States or in restraint of the export trade of any domestic competitor of such association either in the United States or elsewhere has entered into any agreement, understanding, or conspiracy, or done any act which artificially or intentionally enhances or depresses prices within the United States of commodities of the class exported by such association, or which substantially lessens competition within the United States or otherwise restrains trade therein, it shall summon such association, its officers, and agents to appear before it, and thereafter conduct an investigation into the alleged violations of law. Upon investigation, if it shall conclude that the law has been violated, it may make to such association recommendations for the readjustment of its business, in order that it may thereafter maintain its organization and management and conduct its business in accordance with law. If such association fails to comply with the recommendations of the Federal Trade Commission, said commission shall refer its findings and recommendations to the Attorney General of the United States for such action thereon as he may deem proper.

For the purpose of enforcing these provisions the Federal Trade Commission shall have all the powers, so far as applicable, given it in "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

Approved, April 10, 1918.

EXHIBIT 6.

CURTIS CASE.

FEDERAL TRADE COMMISSION V. CURTIS PUBLISHING CO.

(Argued Nov 17, 1922. Decided Jan. 8, 1923.)

No. 86.

1. TRADE-MARKS AND TRADE-NAMES AND UNFAIR COMPETITION KEY No. 80½, NEW VOL., 8A KEY-NO. SERIES—WHETHER METHOD IS UNFAIR COMPETITION, OR AGREEMENT TENDS TO CREATE MONOPOLY, IS FOR THE COURT.

The ultimate determination of what constitutes unfair competition in interstate commerce, and whether the leases, sales agreements, or understandings substantially lessen competition or tend to create a monopoly, is for the court, and not for the Trade Commission.

2. TRADE-MARKS AND TRADE-NAMES AND UNFAIR COMPETITION KEY No. 80½, NEW VOL. 8A KEY-NO. SERIES—COURT NEED NOT REMAND TO COMMISSION FOR FURTHER FINDINGS, IF CIRCUMSTANCES SHOW JUSTICE REQUIRES DECISION.

Under the Federal Trade Commission act (Comp. St., par. 8836a-8836k), making the findings of fact supported by evidence conclusive, but granting jurisdiction to the Circuit Court of Appeals to make and enter, on the pleadings, testimony, and proceedings, a decree affirming, modifying, or setting aside an order of the commission, the court can examine the whole record, and ascertain whether there are material facts not reported by the commission, and if there is substantial evidence relating to such facts, from which different conclusion reasonably might be drawn, the matter should be remanded to the commission to make additional findings; but, if, from all the circumstances, it clearly appears that in the interest of justice the controversy should be decided without further delay, the court has full power to do so.

3. MONOPOLIES KEY No. 17(2)—CONTRACTS WITH DISTRIBUTORS HELD AGENCY AND NOT SALES AGREEMENTS.

Contracts between a publisher and a large number of distributors, some of whom had been wholesale dealers in magazines and others not, whereby the distributors agreed to requisition from the publisher the number of magazines required for their territory, title to remain in the publisher until sold, and to train and supervise boys who were to sell the magazines, are contracts of agency and not of sale on condition, so that they do not violate Clayton Act, paragraph 3 (Comp. St., par. 8335c), prohibiting lease or sale contracts which prohibit the lessee or buyer from handling the product of competitors, even though the contracts contained clauses prohibiting the distributors from handling other magazines, unless with the consent of the publisher.

4. TRADE-MARKS AND TRADE-NAMES AND UNFAIR COMPETITION KEY No. 80½, NEW VOL. 8A KEY-NO. SERIES—EMPLOYMENT OF EXCLUSIVE AGENTS IS NOT "UNFAIR COMPETITION."

The employment of competent agents obligated to devote their entire time and attention to developing the principal's business, to the exclusion of all others, where nothing else appears, is not unfair competition, within Federal Trade Commission act, par. 5 (Comp. St., par. 8336e).

(The syllabus is taken from 43 Sup. Ct. 210.)

On writ of certiorari to the United States Circuit Court of Appeals for the Third Circuit.

Complaint by the Federal Trade Commission against the Curtis Publishing Company. An order of the commission requiring the company to desist from

entering into certain contracts or enforcing certain provisions of outstanding contracts was set aside by the Circuit Court of Appeals (270 Fed. 881), and the commission brings certiorari. Affirmed.

Mr. Chief Justice Taft and Mr. Justice Brandeis, doubting.

Mr. Solicitor General Beck and Adrien F. Busick, both of Washington, D. C., for petitioner.

Mr. John G. Milburn, of New York City, for respondent.

Mr. Justice McReynolds delivered the opinion of the court:

The court below entered a decree setting aside an order of the Trade Commission, dated July 21, 1919, which directed respondent publishing company to cease and desist from entering into or enforcing agreements prohibiting wholesalers from selling or distributing the magazines or newspapers of other publishers 270 Fed. 881. And the cause is here by certiorari.

The commission issued an original complaint July 5, 1917, based mainly on a restrictive clause in existing contracts with so-called district agents. Thereafter respondent changed its agreement. An amended complaint followed, which amplified the original allegations and attacked the second contract and consequent conditions.

The first section of the amended complaint declares there is reason to believe that respondent has been and is using unfair methods of competition contrary to section 5, act of Congress approved September 26, 1914, c. 311, 38 Stat. 717,¹ and specifically charges: That respondent, a Pennsylvania corporation with principal place of business at Philadelphia, has long engaged in publishing, selling, and circulating weekly and monthly periodicals in interstate commerce. That with intent, purpose, and effect of suppressing competition in the publication, sale, and circulation of periodicals it now refuses and for some months past has refused to sell its publications to any dealer who will not agree to refrain from selling or distributing those of certain competitors to other dealers or distributors. That with the same intent, purpose, and effect it is making and for several months last past has made contracts with numerous wholesalers to distribute its periodicals as agents, and not to distribute those of other publishers without permission. That wholesalers so restricted are the principal and often the only medium for proper distribution of weekly and monthly periodicals in various localities throughout the United States, and many of the so-called agents formerly operated under contracts with respondent which abridged their liberty of resale.

Whenever the commission shall have reason to believe that any such person, partnership, or corporation has been or is using any unfair method of competition in commerce, and if it shall appear to the commission that a proceeding by it in respect thereof would be to the interest of the public, it shall issue and serve upon such person, partnership, or corporation a complaint stating its charges in that respect, and containing a notice of a hearing upon a day and at a place therein fixed at least thirty days after the service of said complaint. The person, partnership, or corporation so complained of shall have the right to appear at the place and time so fixed and show cause why an order should not be entered by the commission requiring such person, partnership, or corporation to cease and desist from the violation of the law so charged in said complaint. . . . If upon such hearing the commission shall be of the opinion that the method of competition in question is prohibited by this act, it shall make a report in writing in which it shall state its findings as to the facts, and shall issue and cause to be served on such person, partnership, or corporation an order requiring such person, partnership, or corporation to cease and desist from using such method of competition. . . .

If such person, partnership, or corporation fails or neglects to obey such order of the commission while the same is in effect, the commission may apply to the circuit court of appeals of the United States, within any circuit where the method of competition in question was used or where such person, partnership, or corporation resides or carries on business, for the enforcement of its order, and shall certify and file with its application a transcript of the entire record in the proceeding, including all the testimony taken and the report and order of the commission. Upon such filing of the application and transcript the court shall cause notice thereof to be served upon such person, partnership, or corporation and thereupon shall have jurisdiction of the proceeding and of the question determined therein, and shall have power to make and enter upon the pleadings, testimony, and proceedings set forth in such transcript a decree affirming, modifying, or setting aside the order of the commission. The findings of the commission as to the facts, if supported by testimony, shall be conclusive. If either party shall apply to the court for leave to adduce additional evidence, and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the proceeding before the commission, the court may order such additional evidence to be taken before the commission and to be adduced upon the hearing in such manner and upon such terms and conditions as to the court may seem proper.

Any party required by such order of the commission to cease and desist from using such method of competition may obtain a review of such order in said circuit court of

¹ Sec. 5. That unfair methods of competition in commerce are hereby declared unlawful. The commission is hereby empowered and directed to prevent persons, partnerships, or corporations, except banks, and common carriers subject to the acts to regulate commerce, from using unfair methods of competition in commerce.

appeals by filing in the court a written petition praying that the order of the commission be set aside. A copy of such petition shall be forthwith served upon the commission, and thereupon the commission forthwith shall certify and file in the court a transcript of the record as hereinbefore provided. Upon the filing of the transcript the court shall have the same jurisdiction to affirm, set aside, or modify the order of the commission as in the case of an application by the commission for the enforcement of its order, and the findings of the commission as to the facts, if supported by testimony, shall in like manner be conclusive.

The second section declares there is reason to believe respondent is violating section 3, act of Congress approved October 15, 1914—Clayton Act—c. 323, 38 Stat. 730,² and specifically charges: That respondent publishes, sells, and circulates weekly and monthly periodicals in interstate commerce. That for some months past, in such commerce, it has sold and is now selling and making contracts for the sale of its publications and periodicals for use and resale and is fixing the price charged on condition, agreement, or understanding that the purchaser shall not sell other publications or periodicals, thereby substantially lessening competition and tending to create a monopoly.

Respondent replied to the notice to show cause why it should not be required to desist "from the violations of law charged in this complaint." It denied unlawful conduct and claimed that the parties contracted with as agents were such in fact; that their services were necessary for the maintenance of the plan originated by it of distributing publications through schoolboys, who require special superintendence; and further, that such agents had lawfully agreed to abstain from other connections and devote their time and attention to superintending the boys and to the general upbuilding of sales. Copies of respondent's first and second agreements with distributors accompanied the answer. The first had then been superseded and largely discontinued.

The second contract provides that upon requisition respondent will consign its publications to the agent as he may require, retaining title until they are sold; that the agent will supply the demand of boys and dealers at specified prices; will use reasonable efforts and devote all necessary time to promoting sales of such publications; "that without the written consent of the publisher he will not display, deliver, or sell any copies of any one of said publications before the authorized publication date, as specified in the printed requisition blanks, or dispose of any copies of said publications in the territory of any other district agent or special agent of the publisher, or act as agent for or supply at wholesale rates any periodicals other than those published by the publisher, or directly or indirectly furnish to any other publisher or agent the names and addresses of the persons to whom the publisher's publications are sold or delivered"; that subject to the principal's direction and control the agent shall train, instruct, and supervise an adequate force of boys for distributing the publications; and that he will return unsold copies, their cover pages, or headings.

After taking such testimony—2,500 pages—the commission made a brief and rather vague report of two pages, containing findings and conclusions based on the second contract with dealers and without direct reference to the earlier one. The substance of the report follows.

"PARAGRAPH 1. Respondent, a Pennsylvania corporation with principal place of business at Philadelphia, is engaged in publishing, selling, and distributing weekly and monthly periodicals among the States.

"PAR. 2. That in the course of such commerce, the respondent has entered into contracts with certain persons, partnerships, or corporations to sell or distribute its magazines, by the terms of which contracts, such persons, partnerships, or corporations have agreed among other things, not to 'act as agent for or supply at wholesale rates any periodicals other than those published by the publisher'—the respondent herein—without the written consent of such publisher;

² Sec. 3. That it shall be unlawful for any person engaged in commerce, in the course of such commerce, to lease or make a sale or contract for sale of goods, wares, merchandise, machinery, supplies, or other commodities, whether patented or unpatented, for use, consumption, or resale within the United States or any Territory thereof or the District of Columbia or any insular possession or other place under the jurisdiction of the United States, or fix a price charged therefor, or discount from, or rebate upon, such price, on the condition, agreement, or understanding that the lessee or purchaser thereof shall not use or deal in the goods, wares, merchandise, machinery, supplies, or other commodities of a competitor or competitors of the lessor or seller, where the effect of such lease, sale, or contract for sale or such condition, agreement, or understanding may be to substantially lessen competition or tend to create a monopoly in any line of commerce.

Section 11 authorizes the Trade Commission to enforce section 3, with certain exceptions, and directs that this shall be done as prescribed by the act establishing the commission, supra, with like power of review in the courts.

³ These words are quoted from the second contract.

that of such persons, partnerships, or corporations approximately four hundred forty-seven (447), hereinafter referred to as 'dealers,' are and previous to entering into such contracts with respondent were regularly engaged in the business of wholesale dealers in newspapers or magazines, or both, and as such are as aforesaid engaged in the sale or distribution of magazines or newspapers, or both, and as such are as aforesaid engaged in the sale or distribution of magazines or newspapers, or both, of other publishers; that many of said four hundred forty-seven (447) dealers, and many others who have become such wholesale dealers since entering into such contracts, bound by said contract provisions as aforesaid, have requested respondent's permission to engage also in the sale or distribution of certain publications competing in the course of said commerce, with those of respondent, which permission as to said competing publications has been uniformly denied by respondent; that in enforcing said contract provision as to said dealers, and in denying them said permission, respondent has prevented and now prevents certain of its competitors from utilizing established channels for the general distribution or sale of magazines or newspapers, or both, of different and sundry publishers; that such established channels are in most instances the principal and most efficient, and in numerous cases, the only medium for the distribution of such publications in the various localities of the United States; that such method of competition so employed by respondent in the course of such commerce, as aforesaid, has proved and is unfair.

"PAR. 3. That in the course of such commerce, the respondent has made sales of its magazines to or entered into contracts for the sale of the same with certain persons, partnerships, or corporations, by the terms of which sales or contracts for such sales, such persons, partnerships, or corporations have agreed, among other things" (here follow, without material change, the words of paragraph 2 printed, supra, in italics; "that the effect of said contract provision has been, and is, to substantially lessen competition with respondent's magazines and tends to create for the respondent a monopoly in the business of publishing magazines of the character of those published by respondent.")

The commission concluded that the method of competition described in paragraph 2 of the report violates section 5, act of September 26, 1914, and that the acts and conduct specified in the third paragraph violate section 3, act of October 15, 1914. And it thereupon ordered: That the respondent cease and desist, while engaged in interstate commerce, from entering into any contracts, agreements, or understandings which forbid persons, partnerships, or corporations already engaged in the sale or distribution of magazines or newspapers, or both, of other publishers from acting as agents for, selling, or supplying to others at wholesale rates periodicals other than respondent's without its consent; from contracting with those already engaged in the sale or distribution of magazines or newspapers, or both, of other publishers, forbidding them from selling or distributing or continuing to sell or distribute the same; and from enforcing any provision of an outstanding contract whereby one now engaged in the sale or distribution of magazines or newspapers, or both, of other publishers is forbidden to sell or distribute the same without respondent's permission.

The statute provides (sec. 5) that when the commission's order is duly challenged it shall file a transcript of the record, and thereupon the court shall have jurisdiction of the proceedings and the question determined therein and shall have power to make and enter, upon the pleadings, testimony, and proceedings, a decree affirming, modifying, or setting aside the order; but the commission's findings as to the facts, if supported by evidence, shall be conclusive. The court is also empowered to order the taking of additional evidence for its consideration.

We have heretofore pointed out that the ultimate determination of what constitutes unfair competition is for the court, not the commission; and the same rule must apply when the charge is that leases, sales, agreements, or understandings substantially lessen competition or tend to create monopoly. *Federal Trade Commission v. Gratz*, 253 U. S. 421, 427.

Manifestly, the court must inquire whether the commission's findings of fact are supported by evidence. If so supported, they are conclusive. But as the statute grants jurisdiction to make and enter, upon the pleadings, testimony, and proceedings, a decree affirming, modifying or setting aside an order, the court must also have power to examine the whole record and ascertain for itself the issues presented and whether there are material facts not reported by the commission. If there be substantial evidence relating to such facts

from which different conclusions reasonably may be drawn, the matter may be and ordinarily, we think, should be remanded to the commission—the primary fact-finding body—with direction to make additional findings, but if from all the circumstances it clearly appears that in the interest of justice the controversy should be decided without further delay the court has full power under the statute so to do. The language of the statute is broad and confers power of review not found in the interstate commerce act. *Louisville and Nashville Railroad Company v. Behlmer*, 175 U. S. 648, 675, 676; *Interstate Commerce Commission v. Clyde Steamship Company*, 181 U. S. 29, 32; and *Interstate Commerce Commission v. Chicago, Burlington and Quincy Railroad Company*, 186 U. S. 320, 340, while helpful as to proper practice, do not determine the present problem.

Here we find a vague general complaint charging unfair methods of competition and also sales and contracts for sales on condition that the purchaser shall not deal in other publications. This is followed by an answer setting out the original agreement with dealers and also the substituted form. The findings of fact make no reference whatever to the first agreement, but do show that respondent had entered into the second (quoting its language) with "certain" (no number is given but there were 1,535) persons, partnerships, and corporations, approximately 447 of whom before making such contracts were wholesale dealers in newspapers and magazines. Further, that many of this 447, as well as other parties to such contracts, have been denied permission to distribute the periodicals of other publishers. And that in these ways the most efficient established channels of distribution have been closed to competitors, competition lessened, and a tendency to monopoly established.

The present record clearly discloses the development of respondent's business, how it originated, the plan of selling through school boys, the necessity for exclusive agents to train and superintend these boys and to devote their time and attention to promoting sales, and also contracts with 1,535 such agents. The commission's report suggests no objection as to 1,088 of these representatives who, prior to their contracts, had not been engaged in selling and distributing newspapers or periodicals for other publishers. There is no sufficient evidence to show that respondent intended to practice unfair methods or unduly to suppress competition or to acquire monopoly, unless this reasonably may be inferred from making and enforcing the second or substituted agreement with many important wholesale dealers throughout the country.

Judged by its terms, we think this contract is one of agency, not of sale upon condition, and the record reveals no surrounding circumstances sufficient to give it a different character. This, of course, disposes of the charges under the Clayton Act.

The engagement of competent agents obligated to devote their time and attention to developing the principal's business, to the exclusion of all others, where nothing else appears, has long been recognized as proper and unobjectionable practice. The evidence clearly shows that respondent's agency contracts were made without unlawful motives and in the orderly course of an expanding business. It does not necessarily follow because many agents had been general distributors, that their appointment and limitation amounted to unfair trade practice. And such practice can not reasonably be inferred from the other disclosed circumstances. Having regard to the undisputed facts, the reasons advanced to vindicate the general plan are sufficient.

Effective competition requires that traders have large freedom of action when conducting their own affairs. Success alone does not show reprehensible methods, although it may increase or render insuperable the difficulties which rivals must face. The mere selection of competent, successful, and exclusive representatives in the orderly course of development can give no just cause for complaint, and, when standing alone, certainly affords no ground for condemnation under the statute.

In the present cause the commission has not found all the material facts, but considering those which it has found and the necessary effect of the evidence, the order to desist is clearly wrong and should be set aside without further delay.

Affirmed.

Mr. Chief Justice Taft, doubting:

The sentence in the majority opinion, which makes me express doubt, is that discussing the duty of the court in reviewing the action of the Federal Trade

Commission when it finds that there are material facts not reported by the commission. The opinion says:

"If there be substantial evidence relating to such facts from which different conclusions reasonably may be drawn, the matter may be and ordinarily, we think, should be remanded to the commission—the primary fact-finding body—with directions to make additional findings, but if from all the circumstances, it clearly appears that in the interest of justice the controversy should be decided without delay, the court has full power under the statute so to do."

If this means that where it clearly appears that there is no substantial evidence to support additional findings necessary to justify the order of the commission complained of, the court need not remand the case for further findings, I concur in it. It is because it may bear the construction that the court has discretion to sum up the evidence pro and con on issues undecided by the commission and make itself the fact-finding body, that I venture with deference to question its wisdom and correctness. I agree that in the further discussion of the evidence, the reasoning of the opinion of the court would seem to justify the view that it does not find in the evidence sufficient to support additional findings by the commission justifying its order. I only register this doubt because I think it of high importance that we should scrupulously comply with the evident intention of Congress that the Federal Trade Commission be made the fact-finding body and that the court should in its rulings preserve the board's character as such and not interject its views of the facts where there is any conflict in the evidence.

I am authorized to say that Mr. Justice Brandeis concurs with me in this.

EXHIBIT 7.

MISHAWAKA CASE.

MISHAWAKA WOOLEN MANUFACTURING CO. V. FEDERAL TRADE COMMISSION.

Commission's order in 1 F. T. C. 506 requiring petitioner to cease and desist from using systems of price maintenance therein set forth, affirmed, upon the authority of Federal Trade Commission v. Beech-Nut Packing Co., 257 U. S. 441, and petition for writ of certiorari denied by the Supreme Court with the understanding that the Commission will modify its order so that the same may be no broader than said decision.

(Circuit Court of Appeals, Seventh Circuit. September 13, 1922.)¹

No. 2773.

Before Baker, Evans, and Page, Circuit Judges.

Per Curiam:

This is a proceeding to revise an order of the Federal Trade Commission. In its order the Commission found that the petitioner's methods of controlling prices in the retail trade were unfair.

Inasmuch as the record shows that the condemned practices were substantially identical with those involved in Federal Trade Commission v. Beech-Nut Packing Company, 257 U. S. 441, we approve the finding of the Commission upon the authority of that decision.

The petition is accordingly dismissed.

(Supreme Court of the United States. January 8, 1923.)²

No. 720.

Per Curiam:

The petition for a writ of certiorari to the United States Circuit Court of Appeals for the Seventh Circuit is denied. The Solicitor General, in his brief for the Federal Trade Commission, concedes that the order affirmed by the Circuit Court of Appeals is broader than the decision in Federal Trade Commission v. Beech-Nut Packing Co., 257 U. S. 441, 42 Sup. Ct. 150, 56 L. Ed. 314, 19 A. L. R. 882, which the Circuit Court of Appeals followed in dismissing the petition for the Woolen Manufacturing Co. The court denies the application for writ of certiorari herein, assuming that the Federal Trade Commission will modify its order accordingly, and without prejudice to an application for that purpose by the petitioner.

¹ Reported in 283 Fed. 1022. Appearances: Alexis C. Angell and Henry E. Bodman, of Detroit, Mich., for petitioner. Adrien F. Busick, of Washington, D. C., for respondent.

² Reported in — U. S. —, 43 Sup. Ct. 247. Appearances: Henry E. Bodman, of Detroit, Mich., for petitioner.

EXHIBIT 8.

GUARANTEE VETERINARY CO. ET AL.

United States Circuit Court of Appeals for the Second Circuit.

Guarantee Veterinary Company and George L. Owens, Petitioners, Against
Federal Trade Commission, Respondent.

Before Rogers and Manton, Circuit Judges, and Augustus N. Hand, District Judge.

Will H. Krause, counsel for petitioners.

W. H. Fuller, I. E. Lambert, for respondent.

Petition to revise an order of the Federal Trade Commission.

Petition of Guarantee Veterinary Co., a common-law trust, and George L. Owens individually for the review of the findings and order of the Federal Trade Commission commanding them to cease and desist from certain advertising alleged to be an unfair method of competition in commerce.

Rogers, Circuit Judge: This proceeding brings before us for review an order entered by the Federal Trade Commission directing the petitioners to desist from certain unfair methods of competition.

The Guarantee Veterinary Co. is an association in the form of a common-law trust, and has its principal office and place of business in the city of Chicago in the State of Illinois. George L. Owens is the controlling and managing trustee. They are engaged in the sale of salt in the form of blocks for the use of live stock under the brand name "Sal-Tonik" in the several States of the United States.

It appears that the Federal Trade Commission, proceeding under the act of September 26, 1914, commonly known as the Federal Trade Commission act (38 Stat. 717, c. 311), on September 2, 1919, issued a complaint against the petitioners in which it averred that they are engaged in interstate commerce in the sale of salt in the form of blocks for the use of live stock under the brand of "Sal-Tonik" in direct competition with other persons, copartnerships, and corporations also engaged in the sale of block salt for the use of live stock; that in connection with the sale of said "Sal-Tonik" blocks they had been publishing and distributing advertising matter containing false and misleading statements concerning the said "Sal-Tonik" blocks. And the complaint alleged that among the false and misleading statements which the petitioners put forth in their advertising matter were representations and implications to the effect that the "Sal-Tonik" blocks contained certain medicinal ingredients; that they operated a number of factories in various parts of the United States, the total product of one of which was purchased and thereby endorsed by the Quartermaster's Department of the United States Army, and that the petitioners owned and operated certain large and expensive machinery necessary for the manufacture of the said "Sal-Tonik" blocks; and that all of this was designed to and did mislead the purchasing public into the belief that the petitioners' product possessed certain unique and beneficial characteristics and tended to secure for the product an undue preference over the product of competitors.

The complaint was duly served upon the petitioners, who filed their answer thereto on October 11, 1919.

Notice of the taking of testimony was given, and testimony was taken on September 9, 1920, and on December 15, 1920. On June 8, 1921, the commission filed its finding as to facts and conclusion and on the same day entered the order to cease and desist.

On July 18, 1921, the petitioners filed their exceptions and on December 13, 1921, the commission filed modified findings and a modified order.

The commission has made the following findings of fact:

"One. That the respondent, the Guarantee Veterinary Co., is an association in the form of a trust, having its principal office and place of business in the city of Chicago, State of Illinois, of which the respondent, George L. Owens, is the controlling and managing trustee, and that the respondents are now and for more than two years last past have been engaged in the sale of salt in the form of blocks, for the use of livestock, under the brand name 'Sal-Tonik' in and among the several States of the United States and the District of Columbia, in direct competition with other persons, copartnerships, and corporations also engaged in the sale of block salt for the use of livestock.

"Two. That during the years 1918 and 1919 the respondents printed and caused to be circulated, in and throughout the various States of the United States, circulars in which it stated that its product, Sal-Tonik, contained the following ingredients: Sulphate of iron (redried), carbonized peat, charcoal, tobacco, quassia, sulphur, gentian pure salt, chloride of magnesia, Epsom salts, Glauber's salts, bicarbonate of soda, oxide of iron, mineralized humoides, American wormseed, Levant wormseed, capsicum (red pepper); when in truth and in fact respondent's product, Sal-Tonik, did not contain all of said ingredients, and did not contain carbonized peat, charcoal, tobacco, quassia, sulphur, gentian, mineralized humoides, American wormseed, Levant wormseed, or capsicum (red pepper).

"Three. That prior to the organization of the respondent, Guarantee Veterinary Co., in the year 1918, the respondent, George L. Owens, caused to be organized the Guarantee Swine Veterinary Co., a corporation organized under the laws of South Dakota, and the Guarantee Serum Co., a corporation organized under the laws of Iowa, in both of which corporations the respondent, George L. Owens, was the largest stockholder, and of which he was the controlling manager and president.

"Four. That said Guarantee Serum Co. was owned and operated by said Guarantee Swine Veterinary Co.; that later the word 'Swine' was dropped from the corporate name and the owning and operating company became the Guarantee Veterinary Co. (Inc.); that said Guarantee Veterinary Co. (Inc.) succeeded to all property, assets, and rights of both the said Guarantee Serum Co. and the said Guarantee Swine Veterinary Co., and that later the assets and rights of the said Guarantee Veterinary Co. (Inc.) were assigned or surrendered to the Guarantee Veterinary Co., a common-law trust; that George L. Owens was the principal stockholder and president of the Guarantee Serum Co., the Guarantee Swine Veterinary Co., and the Guarantee Veterinary Co. (Inc.), and is the controlling and managing trustee of the Guarantee Veterinary Co., a common-law trust; and that all of these corporations and the trust and George L. Owens, first as president and later as trustee, caused to be manufactured and sold, and are now causing to be manufactured and sold, in interstate commerce the article known and designated Sal-Tonik.

"Five. That during all the time of the existence of the said Guarantee Serum Co., the said Guarantee Swine Veterinary Co., the said Guarantee Veterinary Co. (Inc.), the said Guarantee Veterinary Co., a common-law trust, George L. Owens, as the principal stockholder and president of the first three named corporations and as trustee for the last named, a common-law trust, was advertising and representing or causing to be advertised and represented to customers and dealers in said Sal-Tonik that their product, Sal-Tonik, contained substantially the following ingredients: Sulphate of iron (redried), carbonized peat, charcoal, tobacco, quassia, sulphur, gentian, pure salt, chloride of magnesia, Epsom salts, Glauber's salts, bicarbonate of soda, oxide of iron, mineralized humoides, American wormseed, Levant wormseed, capsicum (red pepper); when in truth and in fact, respondent's product, Sal-Tonik, did not contain all of said ingredients, and did not contain carbonized peat, charcoal, tobacco, quassia, sulphur, gentian, mineralized humoides, American wormseed, Levant wormseed, or capsicum (red pepper).

"Six. That during the years 1918 and 1919, respondents advertised in the Cooperative Manager and Farmer (commission's Exhibit No. 10), a magazine published at Minneapolis, Minn., which had a general circulation through the medium of the mails and other distributing agencies in and throughout various States and Territories of the United States and the District of Columbia, and also by circulars prepared and printed by respondents which they caused to be circulated throughout various States and Territories of the United States and District of Columbia, the following:

"U. S. Government adopts Sal-Tonic.—The Quartermaster's Department of the U. S. Army has adopted Sal-Tonic and purchased our entire southern output for use in the U. S. Cavalry. * * *

"The U. S. Army used Sal-Tonic, as is shown by a letter which appears below, written by the assistant veterinarian of the U. S. Army at Camp Johnston. * * *

"CAMP JOSEPH E. JOHNSTON, FLA.,
"January 25, 1919.

"GUARANTEE VETERINARY COMPANY,
"Chicago, Illinois.

"To whom it may concern:

"While acting as 2d Lt., Vet. U. S. A., Auxiliary Remount Depot No. 333, Camp Joseph E. Johnston, Florida, I had the opportunity of recognizing the value of Sal-Tonic. Large numbers of animals were kept in corrals in this camp and naturally much sickness would be expected; however, I noticed that where the animals had access to Sal-Tonic they improved in flesh and vitality. There was a very small percentage of digestive disturbances, such as indigestion, colic, impactions, and diseases of systemic origin.

"Having recognized the value of Sal-Tonic I highly recommend it as an efficient medicinal salt of superior quality.

"(Signed) J. F. SWAIN,
"2d Lt., Vet. U. S. A., Auxiliary Remount
"Depot 333, Camp Joseph E. Johnston."

"That the Palestine Salt & Coal Co., of Palestine, Tex., made salt blocks for respondents, the respondents furnishing the medical ingredients and the Palestine Salt & Coal Co. furnishing the labor and salt. That the Quartermaster Department of the U. S. Army purchased in the month of December, 1917, 1,200 blocks of Sal-Tonic at Palestine, Tex., from the Palestine Salt & Coal Co., who were agents for the respondents, and that this one purchase was the only purchase of the respondent's product made by the United States Government.

"That the U. S. Government did not adopt Sal-Tonic.

"That Mr. J. F. Swain was not assistant veterinarian of the U. S. Army at Camp Johnston, and at the time the above letter was written he was not a 2d lieutenant in the U. S. Army, nor was he located at Camp Joseph E. Johnston, Fla."

After making the above findings as to the facts the commission made the following conclusion:

"That the methods of competition set forth in the foregoing findings as to the facts are, under the circumstances set forth, unfair methods of competition, in violation of the provisions of section 5 of an act of Congress, approved September 26, 1914, entitled 'An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes.'"

Thereupon it issued the following order:

"It is ordered, that the respondents, Guarantee Veterinary Co., and George L. Owens, trustee, their officers, agents, servants, and representatives, do cease and desist, directly or indirectly—

"From publishing or causing to be published or circulated throughout the various States of the United States, the Territories thereof, the District of Columbia, and foreign countries, advertisements, circular letters, or other printed matter whatsoever wherein it is falsely stated, set forth, or held out to the general public that the respondents' product, Sal-Tonic, contains carbonized peat, charcoal, tobacco, quassia, sulphur, gentian, mineralized humuldes, American wormseed, Levant wormseed, or capsicum (red pepper), or any other ingredients, medical or otherwise, if said Sal-Tonic does not then, in fact, contain each and all of the ingredients which are stated in the advertisement to enter into its composition.

"From publishing and circulating or causing to be published and circulated throughout the various States of the United States, the Territories thereof, the District of Columbia, and foreign countries, advertisements, circulars, folders, letters, or any other printed or written matter whatsoever, wherein it is falsely stated, set forth, or held out to the public:

"(1) That the United States Government, or any department, branch, or agency thereof, has adopted respondents' product, Sal-Tonic.

"(2) That respondents have sold their entire southern output to the United States Government or to any department, branch, or agency thereof.

"From using as an advertisement of their product, Sal-Tonik, a certain letter, dated January 25, 1919, and signed by J. F. Swain, purported to be at the time of signature a second lieutenant in the United States Army, at Camp Joseph E. Johnston, Fla.

"It is further ordered, that the respondents, the Guarantee Veterinary Co. and George L. Owens, trustee, shall within 60 days after the service upon them of a copy of this order, file with the commission a report in writing setting forth in detail the manner and form in which it has complied with the order to cease and desist hereinbefore set forth."

The Federal Trade Commission act, in section 5, provides that "The findings of the commission as to the facts, if supported by testimony, shall be conclusive." (38 Stat. 720.) We have, therefore, examined the transcript of record, which has been filed in this court, for the purpose of determining whether the testimony before the commission supports the findings.

It appears that the Guarantee Veterinary Co. admitted in its answer that it was engaged in interstate commerce. It, however, asserts that no proof was ever made that any Sal-Tonik claimed to have been analyzed, ever moved in interstate commerce, or that said blocks were made either for or by the Guarantee Veterinary Co., or George L. Owens, nor was it shown or proven that any competitors ever made or sold any medicated salt block, nor was it shown that George L. Owens individually was ever engaged in interstate commerce at any time.

The transcript of record shows that the petitioners prepared and sent out to prospective customers in various States in the latter part of the year 1918, and the earlier part of the year 1919, an advertising circular which stated that "Sal-Tonik contains the following ingredients:

"Sulphate of iron (redried), carbonized peat, charcoal, tobacco, quassia, sulphur, gentian, pure salt, chloride of magnesia, Epsom salts, Glauber's salts, bicarbonate of soda, oxide of iron, mineralized humoides, American wormseed, Levant wormseed, capsicum (red pepper)."

The statement contained in the circular sustains that part of Finding No. 1 as to the advertising circulars which the petitioners circulated setting forth the ingredients of the product Sal-Tonik.

It also appears from the transcript that three different analyses were made of the petitioners' product. The first in June, 1916, from a sample furnished by the petitioners; the second in February, 1919, from a sample purchased on the open market and was the product of petitioners; and the third in December, 1919, from a sample purchased on the open market which also was the product of petitioners. This last analysis was made by the acting chief chemist of the United States Department of Agriculture—an expert chemist in the Department of Agriculture who had studied and compared all three of these analyses testified that they did not show any of the following ingredients: Carbonized peat, charcoal, tobacco, quassia, sulphur, gentian, mineral humoides, American wormseed, Levant wormseed, capsicum (red pepper). He further testified that "Sal-Tonik" was just salt with its impurities and coloring matter.

The petitioners advertised in their circulars that sixteen ingredients entered into the manufacture of their blocks of "Sal-Tonik," and the chemical analyses proved show no trace of ten of them. This is an excerpt from the testimony:

"Question. Mr. Murray, is it not a fact that this product is merely salt with a little coloring matter?

"Answer. Essentially that; nearly all salt contains more or less impurities, and this is colored distinctly red by the iron oxide.

"Question. And that is about all this product is, just salt with its impurities and coloring matter?

"Answer. Essentially that; yes.

"Question. That is what the different analyses show?

"Answer. The impurities would be a little greater than you would get in first-class table salt. The Bureau of Chemistry's analysis shows two per cent of sodium sulphate. That is much more than you would get in good table salt."

The petitioners contend, however, that the "Sal-Tonik" blocks might contain all the ingredients as advertised, and yet all the ingredients might not appear in any of the different analyses which were introduced in evidence by the commission. This might be possible but is not probable. The three analyses which were introduced in evidence stand undisputed and uncontradicted. The petitioners might have submitted samples of their product for analysis and offered evidence to rebut that produced before the commission, but they did not choose to do so. The presumption is that the testimony

presented is true, no proof having been introduced to overcome it. There is no evidence to show that the specimens taken for analysis were not fair or typical ones, and the question whether the ingredients which were not detected upon the chemical analysis were in some other part of the block from which the specimens was not taken and failed to be detected on account of improper mixing is one of fact on which the decision of the commission should be followed.

The petitioners object to finding of fact No. 6. An examination of the transcript, however, satisfies us that the finding is supported by the testimony. It appears conclusively that Swain, the writer of the letter set forth in the finding, never was assistant veterinarian at Camp Joseph E. Johnston and that he had not been at the camp since December 11, 1918. That he had been discharged from the Army long before the letter of January 25, 1919, was written, and that he was not at that time connected with the Army in any way also is beyond question.

The circumstances connected with the purchase of "Sal-Tonik" by the Government are disclosed in a letter written to the Guarantee Veterinary Co. by the Palestine Salt & Coal Co. dated January 23, 1917, and which is in the transcript. The letter shows that the Palestine Salt & Coal Co. were themselves the manufacturers of a medicated block and had arranged to sell their own product to the United States Government at \$13.40 per ton; that on December 23, 1917, a Government inspector came to the Palestine plant to inspect their blocks. At that time 1,200 blocks which the Palestine Co. had manufactured for the Guarantee Veterinary Co. were on hand and the Palestine Co. wanted "to have them out of the way," and it was suggested by the latter that they could turn these blocks belonging to the Guarantee Veterinary Co. in on the contract which it, the Palestine Co., had with the Government, the blocks having been held so long in the Palestine's warehouse that they were being damaged. This was assented to and the 1,200 blocks were turned in by the Palestine Company on its contract. There is no evidence whatever that the United States Government ever bought any "Sal-Tonik" blocks other than those mentioned above. This was all the basis there was for the advertisement that "Sal-Tonik" had been adopted by the Quartermaster's Department of the United States Army, and that it had purchased the entire southern output for use in the United States Cavalry. The advertisement was unquestionably false and misleading. The United States Government never adopted the respondent's product, never bought any Sal-Tonik blocks other than those mentioned above and which were taken over by the Government to accommodate the Palestine Co. and to get them out of its warehouse and out of its way. And it does not appear that the respondent at any time ever had a contract of any kind with the Government of the United States. Our conclusion is that finding No. 6, like finding No. 2, is amply sustained by the evidence.

It is not necessary for us to comment upon the other findings of fact. It is enough to say that we have read all the testimony the commission had before it, and it amply sustains all the findings the commission made.

The commission's order among other things requires the petitioners to cease and desist from publishing and circulating any printed matter wherein it is falsely stated that the United States Government or any department, branch, or agency thereof has adopted respondent's product, Sal-Tonik. It appears that for several months before the complaint herein was filed against them the petitioners had voluntarily ceased to use the word "adopted" in their advertisements and circulars and inserted in lieu thereof the word "purchased." Because of this voluntary discontinuance of the word "adopted" prior to the filing of the complaint it is urged that this part of the order to cease and desist is unjustifiable and erroneous.

Mr. Kerr lays it down as a rule in regard to bills to restrain the violation of trade-marks that the owner of a trade-mark, where the mark has been illegally taken by another, is not bound to rely upon his assurance or promises not to repeat the illegal appropriation of the mark, but is entitled to the protection of the court by injunction. Kerr on Injunctions, 4th ed., 350.

Mr. Nims, in his work on *Unfair Competition*, sec. 372, states that the fact that defendant has ceased to commit infringing acts is no reason why an injunction should not issue.

In *Saxlehner v. Eisner*, 147 Fed. 189, 191, which was brought for an infringement of a trade-mark, it appeared that all use of the infringing bottles had ceased three weeks before the suit was brought. This court, speaking through Judge Lacombe, said: "In view of the past conduct of defendants, complain-

ant might fairly aver an apprehension that they would in some way continue the old infringement or concoct some new one, even though the company itself were enjoined. The circumstance that since that time they have not, in fact, infringed is not "controlling." The injunction granted below was sustained.

It is to be observed, however, that this is not a suit to restrain the infringement of a patent or a trade-mark or copyright, but that it is a proceeding under the Federal Trade Commission act. The language of the act therefore must be considered. Section 5 of the act declares that "whenever the commission shall have reason to believe that any such person, partnership [or corporation] has been or is using any unfair method of competition in commerce, and if it shall appear to the commission that a proceeding by it in respect thereof would be to the interest of the public, it shall issue and serve upon such person, partnership, or [corporation a] complaint * * *." In view of this language of the statute we are unable to say that the language of the order was used improvidently and was beyond the commission's authority.

In *Sears, Roebuck & Co. v. Federal Trade Commission*, 258 Fed. 307, 310, it was insisted, as here, that the injunctive order was improvidently issued because before the complaint was filed and hearing had, the petitioner had discontinued certain methods complained of. In that case, unlike this, the petitioner had stated in its answer that it had no intention of resuming them. The Circuit Court of Appeals for the Seventh Circuit, notwithstanding these facts, sustained the right of the commission to make the injunctive order, and said: "No assurance is in sight that petitioner, if it could shake respondent's hand from its shoulder, would not continue its former course.

The testimony shows conclusively that the petitioners had been publishing advertising matter containing false and misleading statements and had used an unfair method of commerce, and we think the commission was quite within its right in issuing the order in the form it did. In such cases the commission must exercise its discretion in view of all the circumstances.

Before bringing this opinion to its conclusion we perhaps should refer to the fact that one of the petitioners, George L. Owens, moved the commission to strike his name from the proceeding on the ground that he individually is not now and never was engaged in interstate commerce and never did any advertising of any kind individually. It is undoubtedly true that George L. Owens was not a necessary party to this proceeding. But the evidence shows that he is and has been since its organization the president or trustee and absolute manager of the Guarantee Veterinary Company. He has no right, therefore, to complain because he was made a party to the proceeding.

The order of the commission is affirmed.

EXHIBIT 9.

THE MENNEN CO. CASE.

United States Circuit Court of Appeals for the Second Circuit.

The Mennen Company, petitioner, against Federal Trade Commission,
respondent.

Before Rogers, Manton, and Mayer, circuit judges.

Gilbert H. Montague, for petitioner; Gilbert H. Montague, Joseph W. Goodwin, Charles Furnald Smith.

W. H. Fuller, chief counsel, Federal Trade Commission.

W. T. Kelley, attorney for respondent.

Felix H. Levy, for wholesale Dry Goods Association, National Hardware Association, National Supply & Machinery Dealers' Association, National Wholesale Jewelers' Association, National Floor Covering Association, and American Brush Manufacturers' Association, as amici curiæ.

This cause comes here on petition to review an order made on March 3, 1922, by the Federal Trade Commission.

The petitioner is a corporation organized under the laws of the State of New York, with its principal office and place of business in the city of Newark, in the State of New Jersey. It is engaged in the business of manufacturing and selling talcum powder, tooth paste, shaving soap, and various other toilet articles, causing the same to be transported to purchasers thereof from the State of New Jersey into various other States of the United States and foreign countries in direct competition with other persons and corporations similarly engaged. It is hereinafter referred to as the respondent.

The Federal Trade Commission on April 15, 1920, filed a complaint against the respondent and subsequently an amended complaint on January 27, 1921. It alleged that respondent had adopted a plan for the allowance of trade discounts in the marketing of its products; that in pursuance of such plan respondent has and continues to classify its customers into two groups according to a basis of selection adopted by it and has allowed and does allow to purchasers of the same quantity and quality of its products, different discount rates according to the classification of such purchasers by respondent. It is further alleged that this practice of varying discounts, irrespective of quantity and quality, tends unduly to hinder competition between distributors of respondent's products to retailers or directly to the consuming public. It is also alleged that by reason of the facts recited, the respondent is using an unfair method of competition in commerce, within the intent and meaning of section 5 of an act of Congress entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," approved September 26, 1914.

It is further alleged that the varying discount rates allowed by the respondent are a discrimination in price between purchasers of respondent's commodities for use, consumption, or resale within the United States and the District of Columbia, the effect of which may be to substantially lessen competition in the distribution of respondent's products or between distributors thereof.

It is further alleged that such discrimination is not founded in differences in the grade, quality, or quantity of the commodity sold and does not make only due allowance for difference in the cost of selling or transportation and is not made in good faith to meet competition; that the plan for classification of customers and the allowance of varying discount rates is not a selection of customers in bona fide transactions not in restraint of trade.

It is also alleged that the actions and doings of the said respondent referred to and recited are contrary to the intent and meaning of section 2 of an act of Congress entitled "An act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," approved October 15, 1914.

The respondent filed an answer denying the jurisdiction of the commission. It also denied the material allegations of the amended complaint and asked that it be dismissed. The motion to dismiss was overruled and denied.

Hearings were had and evidence was introduced, before an examiner of the commission, in support of the allegations of the amended complaint and on behalf of the respondent. Then the proceeding came on for final hearing and the commission having heard argument and considered the record made its findings as to the facts and its conclusions. Its conclusion was that the practices of respondent amounted to unfair methods of competition in interstate commerce and a violation of the acts of Congress hereinbefore mentioned. And an order to cease and desist was entered.

Rogers, Circuit Judge: The transactions complained of are transactions in interstate commerce and the acts with which the respondent is charged are done in the course of such commerce. The practices in which the respondent is engaged as charged in the complaint are admitted by it in its answer, but it denies that those practices tend unduly to hinder competition, or that they constitute an unfair method of competition in commerce, or amount to a restraint of trade.

Two acts of Congress are herein involved. The Federal Trade Commission act, being the act of September 23, 1914, 38 Stat. 717,724, which provides in section 5 "That unfair methods of competition in commerce (i. e., interstate commerce) are hereby declared unlawful," and the Clayton Act, being the act of October 15, 1914, which was passed to supplement existing laws against unlawful restraints and monopolies, 38 Stat. 730, provides in section 2 as follows:

"That it shall be unlawful for any person engaged in commerce, in the course of such commerce, either directly or indirectly to discriminate in price between different purchasers of commodities, which commodities are sold for use, consumption, or resale within the United States or any Territory thereof or the District of Columbia or any insular possession or other place under the jurisdiction of the United States, where the effect of such discrimination may be to substantially lessen competition or tend to create a monopoly in any line of commerce: *Provided*, That nothing herein contained shall prevent discrimination in price between purchasers of commodities on account of differences in the grade, quality, or quantity of the commodity sold, or that makes only due allowance for difference in the cost of selling or transportation, or discrimination in price in the same or different communities made in good faith to meet competition: *And provided further*, That nothing herein contained shall prevent persons engaged in selling goods, wares, or merchandise in commerce from selecting their own customers in bona fide transactions and not in restraint of trade."

The section of the Clayton Act provides in substance that it shall be unlawful for any person engaged in interstate or foreign commerce to discriminate in price between different purchasers of commodities in transactions within the United States or under its jurisdiction "where the effect of such discrimination may be to substantially lessen competition or tend to create a monopoly in any line of commerce."

Before considering the provision of section 2 of the Clayton Act we find it necessary to consider the Federal Trade Commission act which lies at the basis of this entire proceeding.

The Federal Trade Commission act having declared that "unfair methods of competition in commerce" unlawful, and created a Federal Trade Commission empowered and directed it to prevent persons, partnerships, or corporations except banks, and common carriers subject to the acts to regulate commerce, "from using unfair methods of competition in commerce." And unless a person, partnership, or corporation is engaged in using "unfair methods of competition the commission has no authority whatever to proceed under the act.

We are therefore confronted with the question as to what is meant by the words "unfair methods of competition in commerce" as used in the act. That question was before the Supreme Court in 1919 in *Federal Trade Commission v. Gratz*, 253 U. S. 421. That case went up from this court, 258 Fed. 314, and affirmed the conclusion at which we arrived. The defendants were partners and were engaged in selling ties and bagging for cotton bales. They sold principally to jobbers and dealers who resold the same to retailers, cotton ginners, and farmers. For more than a year they had refused to sell any such ties unless the prospective purchasers would also buy from them the bagging to be used with the number of ties proposed to be bought. This was held plainly

insufficient to show an unfair method of competition. In the opinion, which was written by Mr. Justice McReynolds, the court said:

"The words 'unfair method of competition' are not defined by the statute and their exact meaning is in dispute. It is for the courts, not the commission, ultimately to determine as matter of law what they include. They are clearly inapplicable to practices never heretofore regarded as opposed to good morals because characterized by deception, bad faith, fraud, or oppressing, or as against public policy because of their dangerous tendency unduly to hinder competition or create monopoly. The act was certainly not intended to fetter free and fair competition as commonly understood and practiced by honorable opponents in trade. * * *

"The complaint contains no intimation that Warren, Jones & Gratz did not properly obtain their ties and bagging as merchants usually do; the amount controlled by them is not stated; nor is it alleged that they held a monopoly of either ties or bagging or had ability, purpose or intent to acquire one. So far as appears, acting independently, they undertook to sell their lawfully acquired property in the ordinary course, without deception, misrepresentation, or oppression, and at fair prices, to purchasers willing to take it upon terms openly announced."

In this case, as in the Gratz case, the complaint contains no intimation that the Mennen Co. has any monopoly of the business of manufacturing and selling toilet articles, or that it has the ability or intent to acquire one. So far as appears the Mennen Co., acting independently, has undertaken to sell its own products in the ordinary course, without deception, misrepresentation, or oppression, and at fair prices, to purchasers willing to take them upon terms openly announced.

In this case, as in the Gratz case, nothing is alleged which would justify the conclusion that the public suffered injury or that competitors had reasonable ground for complaint. The allegation that its practice of varying discounts tended unduly to hinder competition between distributors of respondent's products to retailers or directly to the consuming public is a pleader's conclusion. The acts complained of in this case are not those which have heretofore been regarded as "opposed to good morals because characterized by deception, bad faith, fraud, or oppression, or as against public policy because of their dangerous tendency unduly to hinder competition or create monopoly." And as said in the Gratz case, "If real competition is to continue the right of the individual to exercise reasonable discretion in respect of his own business methods must be preserved."

The Clayton bill, as originally introduced, did not contain the words "where the effect of such discrimination may be to substantially lessen competition or tend to create a monopoly in any line of commerce," now found in section 2, but contained the words "with the purpose or intent thereby to destroy or wrongfully injure the business of a competitor of either such purchaser or seller."

The record filed in this court shows no contention by the commission that the practices complained of have lessened competition as between the Mennen Co. and its competitors, but it shows at the most that the practices have decreased competition among the Mennen Co.'s customers, or those desiring to become such. And it is said that if the phraseology above quoted as originally contained in the bill had been retained therein upon final passage instead of the phraseology, likewise above quoted, which was substituted therefor, there might be just ground for the claim that the Clayton Act prescribed practices which injure competition among the customers of the manufacturer, and not merely competition between such manufacturer and his competitors. But the elimination of the phraseology contained in the bill as originally reported and the substitution therefor of the phraseology in the form in which the bill was finally enacted strongly indicates that Congress did not have in contemplation the former character of competition but only the latter.

In the phraseology of the bill as originally reported the intention was unmistakably expressed that it was intended to protect by its prohibitions both kinds of competition, competition between the manufacturer and his competitors, as well as competition between the customers of the manufacturer. The act as reported prohibited acts "with the purpose or intent to thereby destroy or wrongfully injure the business of a competitor, of either such purchaser or seller."

We have recently had occasion to point out that in the case of an ambiguous or obscure statute the intent of Congress may be gathered from statements in

reports of committees having the legislation in charge in either House of Congress. U. S. ex rel. *Fazio v. Tod*, decided Nov. 13, 1922. And statements made on the floor of either House by the committee in charge of the bill in the course of its passage may in like manner be considered. See *Duplex Printing Press Co. v. Dearing*, 254 U. S. 443, 475.

It is a matter of common knowledge that prior to the enactment of the Clayton Act a practice had prevailed among large corporations of lowering the prices asked for their products in a particular locality in which their competitors were operating, for the purpose of driving a rival out of business. Such lowering of prices was maintained within the particular locality while the normal or higher prices were maintained in the rest of the country; and this practice was continued until the smaller rival was driven out of business, whereupon the prices in that locality would be put back to the normal level maintained in the rest of the country. The Clayton Act was aimed at that evil. This appears from the report of the Judiciary Committee of the House of Representatives from which we quote as follows:

"Section 2 of the bill is intended to prevent unfair discriminations. It is expressly designed with the view of correcting and forbidding a common and widespread unfair trade practice whereby certain great corporations and also certain smaller concerns which seek to secure a monopoly in trade and commerce by aping the methods of the great corporations, have heretofore endeavored to destroy competition and render unprofitable the business of competitors by selling their goods, wares, and merchandise at a less price in the particular communities where their rivals are engaged in business than at other places throughout the country. * * *

"The necessity for legislation to prevent unfair discriminations in prices with a view of destroying competition needs little argument to sustain the wisdom of it. In the past it has been a most common practice of great and powerful combinations engaged in commerce—notably the Standard Oil Co., the American Tobacco Co., and others of less notoriety, but of great influence—to lower prices of their commodities, oftentimes below the cost of production in certain communities and sections where they had competition, with the intent to destroy and make unprofitable the business of their competitors, and with the ultimate purpose in view of thereby acquiring a monopoly in the particular locality or section in which the discriminating price is made. * * *

"In seeking to enact section 2 into law we are not dealing with an imaginary evil or against ancient practices long since abandoned, but are attempting to deal with a real, existing, widespread, unfair and unjust trade practice that ought at once to be prohibited in so far as it is within the power of Congress to deal with the subject."

There is nothing in the report of the committee which shows that in reporting the bill the committee had in mind anything more than the suppression of the evil above referred to.

This substitution in the final stages of the Clayton bill of the clause to which we have referred plainly indicates the intent of Congress to exclude from the operation of the section mere competition among "purchasers" from the "seller" or "person" who allowed or withheld the discount and to include therein only competition between such "seller" or "person" and the latter's own competitors. It was the latter class of competition and not the former which had been "the common practice of great and powerful combinations engaged in commerce" to which the committee in its report referred. And there is nothing in the report of the Judiciary Committee of either House, or in anything said on the floor of either House by those in charge of the bill, which indicates or suggests any such interpretation which the commission in this case has placed upon the act.

What the Mennen Co. has done was to allow to "wholesalers" who purchased a fixed quantity of their products a certain rate of discounts while to the "retailers" who purchased the same quantities it denied the discount rates allowed to the "wholesalers." This does not indicate any purpose on the part of the Mennen Co. to create or maintain a monopoly. The company is engaged in an entirely private business and it has a right freely to exercise its own independent discretion as to whether it will sell to "wholesalers" only or whether it will sell to both "wholesalers" and "retailers," and if it decides to sell to both it has a right to determine whether or not it will sell to the "retailers" on the same terms it sells to the "wholesalers." It may announce in advance the circumstances—that is, the terms—under which it will sell or refuse to sell. In *United States v. Colgate & Co.*, 250 U. S. 300, 307, the Supreme Court declared that—

"In the absence of any purpose to create or maintain a monopoly, the act does not restrict the long-recognized right of trader or manufacturer engaged in an entirely private business freely to exercise his own independent discretion as to parties with whom he will deal. And, of course, he may announce in advance the circumstances under which he will refuse to sell. 'The trader or manufacturer, on the other hand, carries on an entirely private business, and may sell to whom he pleases.' *United States v. Trans. Miss. Freight Association*, 108 U. S. 290, 320. 'A retail dealer has the unquestioned right to stop dealing with a wholesaler for reasons sufficient to himself and may do so because he thinks such dealer is acting unfairly in trying to undermine his trade.'

In the Colgate case the court sustained the right of a manufacturer engaged in a private business to announce in advance the prices at which his goods may be resold and his right to refuse to deal with wholesalers or retailers who do not conform to such prices. As subsequently explained by the court, that case was decided upon the ground that the manufacturer had an undoubted right to specify resale prices and to refuse to deal with anyone who failed to maintain the same. It did not appear that the Colgate Co. had undertaken to enter into any agreements, express or implied, which undertook to obligate vendees to observe specified resale prices. And in the case now before the court it does not appear and is not alleged that the Mennen Co. ever undertook to fix the prices at which its products were to be resold by those who purchased from it.

In *Federal Trade Commission v. Beech-Nut Packing Co.*, 257 U. S. 441, the subject was gone into very fully and the Colgate case was explained and the reason for that decision was clearly stated and it was made evident that if the Colgate Co. had undertaken by agreements express or implied to obligate those to whom it sold its products to observe specified resale prices a different decision would have been rendered. In the Beech-Nut case the right to fix the prices at which the manufacturer will sell is again fully recognized. But the course which the Beech-Nut Co. had adopted was condemned because of the method it pursued to control the resale prices. The difficulty was that the manufacturer had adopted and was enforcing a system of fixing and maintaining certain specified standard prices at which its products should be resold by purchasers thereof with the purpose of eliminating competition in prices among all jobbers engaged in handling the products manufactured by the company. And the court after reviewing its previous decisions (250 U. S. 300, 252 U. S. 85, 256 U. S. 208) said:

"By these decisions it is settled that in prosecutions under the Sherman Act a trader is not guilty of violating its terms who simply refuses to sell to others, and he may withhold his goods from those who will not sell them at the prices which he fixes for their resale. He may not, consistently with the act, go beyond the exercise of this right, and by contracts or combinations, express or implied, unduly hinder or obstruct the free and natural flow of commerce in the channels of interstate trade."

In *Sears, Roebuck & Co. v. Federal Trade Commission*, 253 Fed. 307, 312, the Circuit Court of Appeals in the Seventh Circuit declared in speaking of the Federal Trade Commission act of September 26, 1914, 38 St. 719, c. 311:

"We find in the statute no intent on the part of Congress, even if it has the power, to restrain an owner of property from selling it at any price that is acceptable to him or from giving it away."

And in *Great Atlantic & Pacific Tea Co. v. Cream of Wheat Co.* 227 Fed. 46, 49, we declared in our opinion written by Judge Lacombe:

"Before the Sherman Act it was the law that a trader might reject the offer of a proposing buyer for any reason that appealed to him. It might be because he did not like the other's business methods, or because he had some personal difference with him, political, racial, or social. That was purely his own affair, with which nobody else had any concern. Neither the Sherman Act, nor any decision of the Supreme Court construing the same, nor the Clayton Act has changed the law in this particular. We have not yet reached the stage where the selection of a trader's customers is made for him by the Government."

In accordance with these opinions we have no doubt that the Mennen Co. had the right to refuse to sell to retailers at all, and if it chose to sell to them that it had the right to fix the price at which it would sell to them, and that it was under no obligation to sell to them at the same price it sold to the wholesalers. It did not discriminate as between retailers but sold to all retailers on one and the same scale of prices. And it did not discriminate as

between wholesalers but sold to all wholesalers on one and the same scale of prices. There is nothing unfair in declining to sell to retailers on the same scale of prices that it sold to wholesalers, even though the retailers bought or sought to buy the same quantity the wholesalers bought.

In conclusion it ought perhaps to be said that we have not been unmindful of the fact that the Mennen Co. in classifying purchasers into two groups, those of wholesalers and retailers, placed in the group of retailers a class of mutual or cooperative corporations which purchased in large quantities the Mennen products. These mutual or cooperative corporations, it is admitted, consist solely of the retailers in the same line of trade, the stock being held exclusively by retailers. The fact that these individuals, admitted by the counsel for the Federal Trade Commission to be retailers, see fit for their own convenience to organize themselves into a corporation which they constitute their agent for purchasing purposes does not change their character, or the character of their purchases, and convert them into wholesalers.

Whether a buyer is a wholesaler or not does not depend upon the quantity he buys. It is not the character of his buying but the character of his selling which marks him as a wholesaler as this court pointed out in *Great Atlantic & Pacific Tea Co. v. Cream of Wheat Co.*, supra. A wholesaler does not sell to the ultimate consumer but to a "jobber" or to a "retailer." The persons who constitute these mutual or cooperative concerns are buying for themselves to sell to the ultimate consumers, and not to other "jobbers" or to other "retailers." The nature of the transaction herein involved is not altered by the fact that they make their purchases through the agency of their corporation. For some purposes a corporation is distinct from the members who compose it. But that distinction is a fiction of the law and the courts disregard the fiction whenever the fiction is urged to an intent and purpose which is not within its reason and policy. And in such a case as this the fiction can not be invoked. The important fact is that members of the corporation are all retailers who buy for themselves to sell to the ultimate consumer. The Mennen Co. is within its rights in classifying them as retailers.

The facts established by the testimony are not sufficient to constitute a violation either of the Federal Trade Commission act or of the Clayton Act, and they do not support the commission's conclusions of law. The Mennen Co. is not shown to have practiced "unfair methods of competition in commerce."

The order to cease and desist is reversed.

EXHIBIT 10.

L. B. SILVER CO. CASE.

No. 3648. United States Circuit Court of Appeals, Sixth Circuit.

The L. B. Silver Company, petitioner, v. The Federal Trade Commission of America, respondent. Petition to revise. Submitted December 5, 1922. Decided February 16, 1923.

Before Knappen, Denison, and Donahue, circuit judges.

In March, 1920, the Federal Trade Commission issued a complaint against The L. B. Silver Co., a corporation, charging the respondent with using unfair methods of competition in interstate commerce in violation of the provisions of section 5 of the act of Congress approved September 26, 1914, creating the Federal Trade Commission. (Compiled Statutes, 8336a et seq.)

The complaint alleged in substance that the respondent had made and was continuing to make false representations to the public that it is a breeder and shipper of thoroughbred hogs; that the Ohio Improved Chesters or famous O. I. C. hogs is a breed of hogs separate and distinct from the Chester White hogs and superior thereto; that it advertised Chester White hogs for sale at a price less than that for which it would sell O. I. C. hogs and would either fill orders for Chester White with inferior animals of the hogs bred by it, or notify its customers that it had no Chester White hogs; that the O. I. C. hog is not susceptible to cholera, pneumonia, and other diseases and possesses a power to repel disease in a degree unknown to other breeds; that it had secured greatly reduced express rates on livestock and had advertised that two of the O. I. C. breed of hogs weighed 2,806 pounds, in such a way as to mislead prospective purchasers into believing that two O. I. C. hogs weighing that amount were then or recently had been in existence.

The amended answer alleged in substance that the petitioner is a breeder of Ohio Improved Chester White hogs, familiarly known to the trade as O. I. C. hogs, that the O. I. C. hogs are a separate and distinct breed from the Chester Whites and superior thereto; that since December 1, 1918, it has voluntarily and permanently discontinued all advertising to the effect that it would sell Chester White hogs at a price less than that for which it would sell O. I. C. or at any other price and denied that it had represented the O. I. C. breed was not susceptible to cholera and other diseases, but that it had in good faith represented that it is less susceptible to disease than other breeds, but that it would not guarantee its hogs to be immune therefrom; that it had never represented that its hogs are not subject to pneumonia, but that it did represent that there had been no cholera, foot and mouth or other contagious disease in petitioner's locality for over 50 years and that during that period of time it had never lost a pig from cholera or any other contagious disease, and that these representations are true.

The amended answer further avers that since the first day of January, 1918, the petitioner voluntarily and permanently discontinued all representations as to reduced or special express rates and admits that it advertised that two of petitioner's breed of hogs weighed 2,806 pounds, but denies that such representations were so made as to mislead a prospective purchaser, and that if they were ever so used as to be in the present tense such advertising had been voluntarily discontinued many years ago.

Upon the issue so joined The Federal Trade Commission made separate findings of fact and made and entered a modified order that the respondent, its officers, directors, agents, and employees cease and desist from representing, in interstate commerce, to the public, by circulars, pamphlets, catalogues, trade journals, periodicals, newspapers, or otherwise:

1. That the so-called Ohio Improved Chesters, or O. I. C.s, or Famous O. I. C.s, are a breed of hogs separate and distinct from the Chester White breed of hogs.

2. That it has no Chester White pigs when in fact it has Chester White pigs, though called by it O. I. C. pigs; or that it has Chester White pigs and O. I. C. pigs, as if the latter were a different and more valuable breed, when in fact they are one and the same breed; or that it has no Chester White pigs with which to fill orders for Chester White pigs, at its quoted prices or otherwise, when in fact it has Chester White pigs, though called by it O. I. C. pigs; or that it has discontinued to breed Chester White pigs, when in fact it is continuing to breed them, though designated by it O. I. C. pigs.

3. That the so-called O. I. C. pigs, as a breed, or otherwise, are not liable to cholera, foot-and-mouth disease, tuberculosis, and other contagious diseases; that there has been no cholera, foot-and-mouth disease, tuberculosis, nor other contagious diseases in respondent's locality; that the O. I. C. pigs possess a power to resist disease in a degree unknown to other breeds; that in localities where contagious diseases have swept off the dark and black hogs the O. I. C.s were unaffected; from in any way representing to the public that the O. I. C. pigs are more resistant to disease than are other breeds of hogs.

4. That in the shipment of livestock the respondent enjoys or has enjoyed, either or both, from express companies rates of transportation lower than the rates granted to other shippers of livestock by the said express companies.

5. That two of its hogs weigh 2,808 pounds; that such hogs are in existence; that their progeny is for sale by the respondent.

Donahue, Circuit Judge: The petitioner is a corporation and the successor in business of the partnership of L. B. Silver & Son, which partnership was the immediate successor in business of L. B. Silver, who for many years was a successful breeder of cattle, horses, and hogs. In 1863, in Ohio, L. B. Silver undertook to improve the Chester White hog that had originated in Pennsylvania.

It is claimed by the petitioner that L. B. Silver, in his initial effort to improve the Chester White hogs, crossed that stock with a mammoth or large white English hog. This, however, is disputed. Silver is dead. There was at that time no herdbook for either the O. I. C. of the Chester White hogs, and for that reason this disputed question is not susceptible of direct proof, but must rest on tradition only. But this tradition finds some support not only in the testimony of witnesses to whom L. B. Silver made this statement but also in a pamphlet written and distributed by him in 1870, in which appears the following statement:

"In-and-in breeding is recommended by some, but our observation goes to show that it should not be practiced to any great extent, as its tendency is to weaken the constitution of the future animal."

The claim that he crossed the Chester White stock with a mammoth or large white English hog is entirely consistent with this advice to other breeders contained in this pamphlet, entitled "Hints to Stock Breeders." However that may be, the commission found that from the very beginning of L. B. Silver's business and down to the present time the respondent and its predecessor in business never used boars of any breed other than the pure Chester White, and for the purpose of this case that finding of fact by the commission will be accepted as final and conclusive.

Regardless, however, of whether L. B. Silver originally crossed this stock with a mammoth or large white English hog, there is no conflict in the evidence that by careful selection and systematic mating he did accomplish a substantial improvement in the original stock, and that the result of his efforts was a valuable contribution to progress in swine breeding.

In 1870 L. B. Silver issued the pamphlet, Hints to Stock Breeders, to which reference has heretofore been made. In this pamphlet he made public and definite claim that the hogs bred by him were a distinct breed from the Chester White, which he had named Ohio Improved Chester White breed, now known as the Ohio Improved Chester, or O. I. C. It further appears from the evidence that L. B. Silver, his successors in business, including this petitioner and many other O. I. C. breeders for a half century prior to the filing of this complaint, have openly, notoriously, and persistently made the claim that the Ohio Improved Chesters are a separate and distinct breed of hogs from the Chester White, and no action was taken by anyone interested therein to challenge the truth of this claim until 1916, and again in 1918, when complaints were made to the postal authorities. Each of these complaints failed in the accomplishment of its purpose.

While these claims, no matter how long made, can not change the facts, nevertheless they are of importance in determining the question of unfair methods of competition in this respect.

It further appears from the evidence that other breeders, either inspired by Silver's success or acting upon their own initiative, have developed what is known as the Modern Chester White, which is also a decided improvement over the foundation stock. While it is conceded that the present O. I. C. hog is superior to and has many marked characteristics, with power to transmit the same, that distinguishes it from the Chester White as it existed in Pennsylvania and New York in 1863, nevertheless it is insisted that the comparison should now be made between the Modern Chester White instead of with the original stock. The further claim is made that the O. I. C. hog has no characteristics that distinguishes it from the Modern Chester White. Upon this question there is a serious conflict in the evidence.

There is also a sharp and irreconcilable conflict in the expert opinion evidence touching the question as to what constitutes a distinct and separate breed, but disregarding the claim of the petitioner that L. B. Silver crossed Chester Whites with a mammoth or large white English hog, there is practically no substantial conflict in the evidence tending to establish the facts from which these breeders and experts reach different conclusions. One group of experts and breeders are of the opinion that there can not be a distinct breed originated where the blood line goes back to the old foundation stock; that while different strains or types may be developed in this way, it is nevertheless the same breed. Another group of breeders and experts are of the opinion that a distinct breed may be originated through selection and in-and-in breeding. Each of the individual members of these groups that have testified in this case or whose books on livestock breeding have been admitted in evidence, though differing in opinion based on the same state of facts, appears to be entirely honest, sincere, and equally firm in the belief that his conclusion is the right one.

The situation presented by this conflict of opinion among experts and breeders is fully discussed and its effect determined by the Supreme Court in the case of American School of Magnetic Healing v. McAnnulty, 187 U. S. 94. In *Bruce v. U. S.*, 202 Fed. 98, the Court of Appeals held that it was error for the trial court to refuse to charge that " * * * If the jury found that whether the substance was remedial in character when exhibited as part of the treatment of morphinism was merely a matter of opinion among medical men, defendants must be acquitted of the charge of using the mails for fraudulent purposes." It was also held by this court in the case of *Harrison v. U. S.*, 200 Fed. 662, 665, that a scheme to defraud "Can not be found in any mere expression of honest opinion."

As heretofore stated, in the early years of Mr. Silver's activities as a breeder of swine there was no herdbook for either the Chester White or the Ohio Improved Chester White. When a herdbook known as the "National Chester White Swine Record" was established Mr. Silver recorded his hogs in its book, but at the same time insisted that his doing so should not be regarded as a surrender of his claim to a distinct breed. Later, when the International Ohio Improved Chester Breeders' Association was organized, Mr. Silver recorded his hogs in its book. In 1897, after this organization ceased to function, an organization known as the O. I. C. Swine Breeders was formed and established a herdbook, in which was eligible to registry only swine that could trace its origin to the L. B. Silver herd. At the time this complaint was filed there were registered in this herdbook about 950,000 hogs, tracing their ancestry to the Silver herd, and but 90,000 hogs registered in the herdbooks of the three Chester White associations. There is also evidence tending to prove that there are about 20,000 O. I. C. breeders, all of whom claim and advertise that it is a separate and distinct breed.

It further appears from the evidence that the O. I. C. hogs were classed as a separate breed of hogs by many stock journals and publications of like nature, including scientific books on stock breeding. While it is true that some of these editors and authors relied upon the claims and representations made by Silver and his successors, yet others made independent investigation of the facts upon which they based their conclusions.

There is also substantial evidence in this record tending to prove that there is no sharp distinction between the term "breed" and "strain" as used by geneticists, and that these terms are used indiscriminately by a great many breeders, so that, in so far as concerns the disposition of this case, it is not of controlling importance whether the one group of experts are correct in their opinion that the O. I. C.s are but a strain of the Chester White or the other group are correct in the opinion that it is a distinct and separate breed.

Aside from these considerations, it is apparent from the evidence in this case that this controversy does not vitally concern the general purchasing public. On the contrary, it is a controversy largely between rival breeders of hogs, or more particularly between rival hog breeders' associations having and maintaining herdbooks. If the O. I. C. hogs were inferior to the Chester Whites and not of their breed, and the petitioner advertised them as Chester Whites, such practice would, no doubt, constitute unfair competition as against Chester White breeders; but it is admitted that not only are the O. I. C. hogs superior to the Chester White hogs of 1863, but that they are the equal of the modern Chester Whites. That being true, it necessarily follows that neither the general public as consumers nor the small part of the public engaged in the breeding of swine, and particularly in the breeding of O. I. C. and Chester White swine, can be misled to their prejudice by this claim of the petitioner nor induced thereby to purchase a hog inferior to the modern Chester White. Whether the O. I. C. should or should not be classed or designated as a different and distinct breed and whether they are or are not superior to the modern Chester Whites is a question that each breeder will decide for himself, and he will not change his individual opinion upon this subject no matter what this court or scientific experts on breeding may determine to be technically essential to the origination of a new and distinct breed. There is evidence in this record tending to prove that breeders pay little or no attention to scholastic experts, who are designated by them as "book men," dependent upon breeders having actual experience for the data upon which they base their conclusions.

For the purpose of this case it may be conceded that the conclusion reached by the Federal Trade Commission from the facts found by it that the O. I. C. and Chester White hogs are one and the same breed is a finding of fact within the meaning of section 5 of the Federal Trade Commission act, and as such equally conclusive as other findings of fact made by that commission. But in view of the fact that there is a substantial conflict of opinion upon this subject, as evidenced by the testimony not only of scientific men but also by the testimony of practical and experienced breeders of swine, it does not necessarily follow from this finding that the assertion of an honest opinion upon this subject, either by way of advertisement or otherwise, by any one breeder or any number of breeders constitutes unfair methods of competition where the facts upon which such opinion is based are generally known to that part of the public concerned in the controversy, even if it should appear from a scientific standpoint that such opinion is not technically correct.

The statute does not define the term "unfair methods of competition." Therefore the question is one for the ultimate determination of the courts, as are the phrases "unsound mind," "undue influence," "unfair use," "due process of law," found in many other statutes. Federal Trade Commission v. Gratz, 253 U. S. 421, 427; Sears, Roebuck & Co. v. Federal Trade Commission, 253 Fed. 307, 311. In determining the meaning of "unfair methods of competition" within the meaning of the Federal Trade Commission act a court must give due consideration to the public policy declared in the Sherman Act. Federal Trade Commission v. Beechnut Packing Co., 257 U. S. 441, 453, and cases there cited.

In the case of the Federal Trade Commission v. Winsted Hosiery Co., decided by the Supreme Court April 24, 1922, the Winsted Hosiery Co. placed upon the cartons in which its underwear was sold the brands or labels, "Natural merino," "Gray wool," "Natural wool," "Natural worsted," or "Anstralian wool," but none of this underwear was all wool, and much of it contained as little as 10 per cent.

The Supreme Court held that these brands and labels are literally false, and all except the label "Merino" palpably so; that all are calculated to deceive and do in fact deceive a substantial portion of the purchasing public, and therefore the proceeding to stop the practice was in the interest of the public. The court further found that the practice of using these brands and labels also constituted an unfair method of competition as against manufacturers of all-wool and knit underwear and as against those manufacturers of mixed wool and cotton underwear who brand their products truthfully.

Section 5 of the Federal Trade Commission act authorizes the filing of a complaint when such proceedings would be to the interest of the public. Whether the Federal Trade Commission has jurisdiction to determine complaints as to unfair methods of competition where the general public, the

ent engaged in the manufacture and sale of said devices and their equipments who do not deal in refined oil and gasoline, and therefore do not sell or lease said devices and their equipments for a nominal consideration on a condition or understanding that their products only are to be used therein; that the said numerous competitors who were unable to enter into such lease agreements or understandings, as aforesaid, have lost numerous customers in the sale of refined oil and gasoline to respondent because of the business practices of respondent hereinbefore set forth. That the said numerous other competitors of respondent who manufacture and sell said devices and their equipments, but do not sell refined oil and gasoline, as aforesaid, have lost numerous customers and prospective customers for the purchase of their devices and equipments because of the said business practices of respondent, as hereinbefore set forth."

To show violation of the Clayton Act the complaint alleged—

"PAR. 3. That the respondent, for four years last past, in the conduct of its business as aforesaid, has leased and made contracts for the lease and is now leasing and making contracts for the lease of said devices and their equipments to be used within the United States, and has fixed and is now fixing the price charged therefor on the condition, agreement, or understanding that the lessees thereof shall not purchase or deal in the products of a competitor or competitors of respondent; and that the effect of such leases or contracts for lease, and conditions, agreements, or understandings, may be and is to substantially lessen competition and tend to create a monopoly in the territories and localities where such contracts are operative."

Respondent answered and evidence was taken. In October, 1919, the commission announced its report, findings, and conclusions, the substance of which follows:

"1. That the respondent is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Maine, with its principal business office located at the city of Chicago, in the State of Illinois, and is now and has been engaged in the business of purchasing and selling refined oil and gasoline, hereinafter referred to as products, and is largely engaged in refining crude petroleum, and that it is now and has been since January 25, 1917, in connection with the aforementioned business, engaged in the leasing and loaning, but not in the manufacture, of oil pumps, storage tanks, and containers and their equipment, hereinafter referred to as devices, in various States of the United States, but not in the District of Columbia, in competition with numerous other persons, firms, corporations, and copartnerships similarly engaged; that prior to the 25th day of January, 1917, the corporate name of respondent was the Cudahy Refining Co.

"2. That the respondent, in the conduct of its business, as aforesaid and as hereinafter more particularly described, extensively refines petroleum and its products and purchases refined oil and gasoline, all hereinafter referred to as 'products,' and also purchases all pumps, storage tanks, or containers, hereinafter referred to as 'devices,' the said devices being used to contain said products, the said products and devices then being handled and stored in the various States of the United States and transported in interstate commerce; that the aforesaid products are sold and the aforesaid devices are leased or loaned by respondent to various persons, firms, corporations, and copartnerships; that in the conduct of its business of purchasing and selling such products and selling, leasing, or loaning such devices the same are constantly moved from one State to another by respondent, and there is conducted by respondent a constant current of trade in such products and devices between various States of the United States; that there are numerous competitors of respondent who in the conduct of their business in competition with respondent purchase similar products and purchase and manufacture similar devices, the said devices being used to contain said products, the said products and devices then being handled and stored in the various States of the United States and transported in interstate commerce; that the aforesaid products are sold and the aforesaid devices sold, leased, or loaned by such competitor of respondent to various persons, firms, corporations, and copartnerships; that in the conduct of their business, as aforesaid, competitors of respondent constantly move such products and devices from one State to another, and there is conducted by said competitors a constant current of trade in such products and devices between the various States of the United States; that respondent has conducted its said business in a similar manner to that above described since January 25, 1917.

"3. That respondent now leases and loans and has for the period of its business existence leased and loaned devices and equipment for storing and handling its products, and that the monetary considerations received by respondent do not represent reasonable returns upon the investment in such devices and equipment; and also that such leases and loans of said devices and equipment are made for monetary considerations below the cost of purchasing and vending the same when the business of leasing or loaning said devices and equipment and the returns received thereon are considered separate and apart from the general business and sales policy of the respondent; that respondent's form of contract with the users of such devices and equipment provides in substance that the devices and equipment shall be used for the sole purpose of storing and handling gasoline supplied by respondent; and that the uniform contract used by respondent for leasing such devices and equipment is in form, tenor, and substance as follows." (The ordinary form of contract (printed in the margin) is here set out. It recites the customer's desire to install certain equipment and, among other things, provides that this shall be used only for storing and handling gasoline supplied by the lessor; that if put to any other use the lessee's right therein shall terminate; and that upon termination of the lease, by whatever means effected, the lessee may purchase the equipment for a specific sum.)

"4. That the contracts mentioned in the preceding paragraph also provide that such equipments shall be used by the lessee only for the purpose of holding and storing the respondent's petroleum products; that a small proportion of such lessees handle similar products of respondent's competitors; and that only a small proportion of such lessees as handle similar products of respondent's competitors require or use more than a single pump outfit in the conduct of their said business; that the practice of leasing such devices requires a large capital investment; that many competitors of respondent do not possess sufficient capital and are not able to purchase and lease devices as respondent does as aforesaid, partly by reason of which such competitors have lost numerous customers to respondent; that the effect of the

EQUIPMENT CONTRACT.

This agreement, made and entered into this _____ of _____, 19____, between Sinclair Refining Co., of _____, party of the first part, and _____, of the city of _____, State of _____, party of the second part, witnesseth:

Whereas party of the second part is now being supplied with gasoline by the party of the first part and desires to install on his premises situated at _____ the following equipment for the better storing and handling of such gasoline: _____

Now, therefore, in consideration of the premises and of the sum of \$1 by the party of the second part to the party of the first part (the receipt of which is hereby acknowledged) the above-named parties do hereby agree as follows:

1. The above-described equipment shall be used by the party of the second part for the sole purpose of storing and handling the gasoline supplied by the party of the first part.

2. The party of the second part agrees, at his own cost, to maintain said equipment in good condition and repair so long as he shall continue to use the same.

3. The party of the second part agrees that he will not encumber or remove said equipment, or do or suffer to be done anything whereby said equipment or any part thereof may be seized, taken on execution, attached, destroyed, or injured, or by which the title of the party of the first part thereto may in any way be altered, destroyed, or prejudiced.

4. In the event party of the second part should at any time use said equipment for any other purpose than the storing and handling of gasoline supplied by the party of the first part, or should cease for _____ days to handle gasoline secured from the party of the first part, the right or license of the party of the second part to said equipment shall at once terminate, and thereupon party of the first part shall have the right to enter upon said premises and remove said equipment and every part thereof.

5. The party of the second part shall indemnify and save harmless the party of the first part of and from any liability for loss, damage, injury, or other casualty to persons or property caused or occasioned by any leakage, fire, or explosion of gasoline stored in said tank or drawn through said pump.

6. This agreement shall terminate forthwith upon the sale or other disposition of said premises by party of the second part, and in any event upon the expiration _____ months from the date hereof; and in the event that by mutual consent said equipment remains in the possession of the party of the second part at the expiration of said period it is agreed that the same shall be used by party of the second part subject to all of the terms and conditions of this agreement, and such may be terminated at any time after the expiration of _____ months from the date hereof by the party of the first part giving 10 days' notice to that effect. Upon the termination of this license, by whatever means effected, the party of the first part shall have the right to enter upon said premises and remove the said equipment and each and every part thereof; provided, however, that the party of the second part shall have the right and option at such time to purchase said equipment by paying therefor the sum of _____.

This contract is executed in triplicate, and it is agreed that the contract held by the party of the first part is to be considered the original and to be the binding agreement in case the duplicate varies from it in any particular.

In witness whereof the parties hereto have caused this agreement to be executed the day and year first above written.

practice of leasing by contract such equipments, where such contracts contain the said provision restricting the use of the same to the storage and handling of respondent's products as aforesaid, may be to substantially lessen competition and tend to create for the respondent a monopoly in the business of selling petroleum products.

"*Conclusions.*—That the methods of competition and the business practices set forth in the foregoing findings as to the facts are, under the circumstances set forth therein, unfair methods of competition, in interstate commerce, in violation of the provisions of section 5 of an act of Congress approved September 26, 1914, entitled 'An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes' and are in violation of section 3 of an act of Congress approved October 15, 1914, entitled 'An act to supplement existing laws against unlawful restraints and monopolies, and for other purposes.'"

Thereupon the commission ordered that respondent cease and desist from—

"1. Directly or indirectly leasing pumps or tanks or both and their equipments for storing and handling petroleum products in the furtherance of its petroleum business, at a rental which will not yield to it a reasonable profit on the cost of the same after making due allowance for depreciation and other items usually considered when leasing property for the purpose of obtaining a reasonable profit therefrom, and from doing any matter or thing which would have the same unlawful effect as that resulting from the practice herein prohibited and by reason of which this order is made.

"2. Entering into contracts or agreements with dealers of its petroleum products or from continuing to operate under any contract or agreement already entered into whereby such dealers agree or have an understanding that as a consideration for the leasing to them of such pumps and tanks and their equipments the same shall be used only for storing or handling the products of respondent, and from doing anything having the same unlawful effect as that resulting from the practice herein prohibited and by reason of which this order is made."

The Clayton Act provides:

"Sec. 3. That it shall be unlawful for any person engaged in commerce, in the course of such commerce, to lease or make a sale or contract for sale of goods, wares, merchandise, machinery, supplies or other commodities, whether patented or unpatented, for use, consumption, or resale within the United States or any territory thereof or the District of Columbia or any insular possession or other place under the jurisdiction of the United States, or fix a price charged therefor, or discount from, or rebate upon, such price, on the condition, agreement, or understanding that the lessee or purchaser thereof shall not use or deal in the goods, wares, merchandise, machinery, supplies, or other commodities of a competitor or competitors of the lessor or seller, where the effect of such lease, sale, or contract for sale or such condition, agreement or understanding may be to substantially lessen competition or tend to create a monopoly in any line of commerce."

Respondent's written contract does not undertake to limit the lessee's right to use or deal in the goods of a competitor of the lessor, but leaves him free to follow his own judgment. It is not properly described by the complaint and is not within the letter of the Clayton Act. But counsel for the commission insist that inasmuch as lessees generally—except garage men in the larger places—will not encumber themselves with more than one equipment, the practical effect of the restrictive covenant is to confine most dealers to the products of their lessors; and we are asked to hold that, read in the light of these facts, the contract falls within the condemnation of the statute. *Standard Fashion Co. v. Magrane-Houston Co.*, 258 U. S. 346, and *United Shoe Machinery Corporation v. United States*, 253 U. S. 451, are relied upon.

In the *Standard Fashion Co.* case the purchaser expressly agreed not to sell or permit sale of any other make of patterns on its premises. It had a retail store in Boston and sales elsewhere were not within contemplation of the parties. This court construed the contract as embodying an undertaking not to sell other patterns. In *United Shoe Machinery Corporation v. United States*, when speaking of certain "tying" restrictions, this court said:

"While the clauses enjoined do not contain specific agreements not to use the machinery of a competitor of the lessor, the practical effect of these drastic provisions is to prevent such use. We can entertain no doubt that such provisions as were enjoined are embraced in the broad terms of the Clayton Act which cover all conditions, agreements, or misunderstandings of this

nature. That such restrictive and tying agreements must necessarily lessen competition and tend to monopoly is, we believe, equally apparent. When it is considered that the United Co. occupies a dominating position in supplying shoe machinery of the classes involved, these covenants signed by the lessee and binding upon him effectually prevent him from acquiring the machinery of a competitor of the lessor except at the risk of forfeiting the right to use the machines furnished by the United Co., which may be absolutely essential to the prosecution and success of his business. This system of 'tying' restrictions is quite as effective as express covenants could be and practically compels the use of the machinery of the lessor except upon risks which manufacturers will not willingly incur."

There is no covenant in the present contract which obligates the lessee not to sell the goods of another, and its language can not be so construed. Neither the findings nor the evidence show circumstances similar to those surrounding the "tying" covenants of the Shoe Machinery Co. Many competitors seek to sell excellent brands of gasoline and no one of them is essential to the retail business. The lessee is free to buy wherever he chooses; he may freely accept and use as many pumps as he wishes and may discontinue any or all of them. He may carry on business as his judgment dictates and his means permit, save only that he can not use the lessor's equipment for dispensing another's brand. By investing a comparatively small sum, he can buy an outfit and use it without hindrance. He can have respondent's gasoline with the pump or without the pump, and many competitors seek to supply his needs.

The cases relied upon are not controlling.

Is the challenged practice an unfair method of competition within the meaning of section 5 of the Federal Trade Commission act?² Reviewing the circumstances, four circuit courts of appeals have answered no. And we can find no sufficient reason for a contrary conclusion. Certainly the practice is not opposed to good morals because characterized by deception, bad faith, fraud, or oppression. (*Federal Trade Commission v. Gratz*, 253 U. S. 421, 427.) It has been openly adopted by many competing concerns. Some dealers regard it as the best practical method of preserving the integrity of their brands and securing wide distribution. Some think it is undesirable. The devices are not expensive—\$300 to \$500—can be purchased readily of makers and, while convenient, they are not essential. The contract, open and fair upon its face, provides an unconstrained recipient with free receptacle and pump for storing, dispensing, advertising, and protecting the lessor's brand. The stuff is highly inflammable and the method of handling it is important to the refiner. He is also vitally interested in putting his brand within easy reach of consumers with ample assurance of its genuineness. No purpose or power to acquire unlawful monopoly has been disclosed, and the record does not show that the probable effect of the practice will be unduly to lessen competition. Upon the contrary, it appears to have promoted the public convenience by inducing many small dealers to enter the business and put gasoline on sale at the crossroads.

The powers of the commission are limited by the statutes. It has no general authority to compel competitors to a common level, to interfere with ordinary business methods, or to prescribe arbitrary standards for those engaged in the conflict for advantage called competition. The great purpose of both statutes was to advance the public interest by securing fair opportunity for the play of the contending forces ordinarily engendered by an honest desire for gain. And to this end it is essential that those who adventure their time, skill, and capital should have large freedom of action in the conduct of their own affairs.

The suggestion that the assailed practice is unfair because of its effect upon the sale of pumps by their makers is sterile and requires no serious discussion.

The judgments below must be affirmed.

A true copy.

Test:

Clerk, Supreme Court, United States.

² Sec. 5. That unfair methods of competition in commerce are hereby declared unlawful. The commission is hereby empowered and directed to prevent persons, partnerships, or corporations, except banks and common carriers subject to the acts to regulate commerce, from using unfair methods of competition in commerce.

EXHIBIT 12.

SOUTHERN HARDWARE JOBBERS' ASSOCIATION ET AL.

In the United States Circuit Court of Appeals for the Fifth Circuit.

No. 3887. Southern Hardware Jobbers' Association et al., petitioners, v. Federal Trade Commission, respondent.

Petition to review order of Federal Trade Commission, sitting at Washington, D. C.

Peter O. Knight (Peter O. Knight, C. Fred Thompson, and A. G. Turner on the brief) for petitioners.

W. H. Fuller, chief counsel, Adrien F. Bus'ck, and Charles Melvin Neff (W. H. Fuller, chief counsel, and Charles Melvin Neff, trial counsel, on the brief) for respondent.

Before Walker, Bryan, and King, circuit judges.

Walker, circuit judge: The Southern Hardware Jobbers' Association, a voluntary, unincorporated association (herein called the jobbers' association), four business corporations, and two individuals, George E. King and John Donnan, filed their petition in this court praying the review and setting aside of an order to cease and desist made against them by the respondent, the Federal Trade Commission. The proceeding which resulted in that order was commenced by a complaint made against the petitioners by the respondent. That complaint contained allegations to the following effect: The members of the Jobbers' association, about 350 in number, are persons, partnerships, and corporations engaged in the business of buying and selling hardware in wholesale quantities throughout certain Southern States of the United States, said King being its president, said Donnan its secretary, and said business corporations being members thereof and engaged in the business of buying and selling hardware in wholesale quantities in Atlanta, Ga.; they buy hardware in various States of the United States and cause same to be transported in interstate commerce and are fairly representative of the entire membership. Within a year prior to the filing of the complaint certain retail dealers in hardware in Georgia and adjacent States organized under the laws of Delaware a corporation called the Merchants' Cooperative Association (herein referred to as the cooperative association), for the purpose of purchasing in wholesale quantities through the instrumentality of that corporation all hardware and supplies dealt in by such retail dealers. The profits arising from the business of that corporation were to be distributed between its stockholders and other retailers for whom it purchased, a retailer to get the whole or a part of the profit made on each sale to it by that corporation. At the outset that corporation undertook to purchase supplies for the retailers for whom it was to purchase through W. A. Ray Hardware Co., of Pensacola, Fla., a member of the jobbers' association, under an arrangement which provided for that company receiving as compensation 5 per cent of the cost price of supplies so purchased.

Another corporation, the American Purchasing Co., was organized under the laws of Delaware for the purpose of acting as purchasing agent for the cooperative association and other domestic and foreign purchasers. The parties named as defendants in the complaint mentioned have conspired and confederated together with themselves and with other persons, and particularly with other members of the jobbers' association, to prevent the cooperative association and American Purchasing Co. from obtaining from manufacturers and other usual sources from which purchasers of hardware in wholesale quantities must obtain supplies, either directly or through the assistance of said W. A. Ray Hardware Co., and have, by boycott and threats of boycott and other unlawful means, induced manufacturers and others to refuse to sell their products to the cooperative association and the American Purchasing

Co., and such manufacturers and their brokers were informed by petitioners herein that if they sold their products to the cooperative association and the American Purchasing Co. the members of the jobbers' association would not thereafter buy the products of such manufacturers, by means whereof manufacturers of hardware generally were intimidated to the extent that they thereafter refused to sell their products to the cooperative association and the American Purchasing Co. The machinery of the jobbers' association was employed by its officers and members in bringing about and making effective said boycott. After petitioners herein had answered that complaint and after the introduction of evidence and a hearing by the commission, it made its findings as to the facts and stated its conclusion. It made findings in accord with the allegations of the complaint as to the nature and composition of the jobbers' association, as to the relations to it of the defendant individuals and corporations, as to the nature of the business engaged in by the latter, as to the organization and purpose of the cooperative association and the American Purchasing Co., and as to purchases made through the W. A. Hay Hardware Co. The commission found, among other things, to the following effect: When the complaint was filed and when the findings were made the jobbers' association comprised about 90 per cent of all those doing a jobbing or a wholesale business in hardware in that portion of the United States bounded by the Potomac River on the north, the Rio Grande on the south, the Atlantic Ocean on the east, and the western boundary of Oklahoma on the west; about 90 per cent of its members were and are engaged in selling hardware at retail as well as at wholesale, and are competitors of exclusively retail dealers in hardware in the territory mentioned, including their own customers who are retailers. For a firm or corporation to be eligible to membership in the jobbers' association a by-law provides that its sales to merchants shall be not less than 75 per cent of its gross sales of not less than \$250,000 a year, that it has not less than three salesmen constantly on the road, and that it has capital, or capital and surplus, of not less than \$75,000. The membership of the jobbers' association is further restricted to those wholesalers whose policy it is to distribute goods through so-called regular channels of trade; that is, from manufacturer to jobber or wholesaler, from jobber or wholesaler to retailer, and from retailer to consumer; it being contrary to that policy for a hardware manufacturer to sell direct to a retailer on the same terms and conditions that it sells like goods and quantities to so-called legitimate jobbers and wholesalers; such policy requiring that, in the case of a sale by a manufacturer to a retailer price differentials be charged to protect the so-called legitimate jobber or wholesaler in his method of distribution. The purpose of the jobbers' association and its members is to dominate the wholesale and jobbing trade in hardware in the territory mentioned and to hinder competition in such trade arising from the operation of jobbers or wholesalers who do not conform to the plan of distribution approved by the jobbers' association. It is the policy of members of the jobbers' association to refuse to buy from hardware manufacturers who sell to customers who do not conform to the distribution policy approved by the jobbers' association. To promote that policy said association conducts a system of espionage upon the business of the wholesale and jobbing trade in said territory.

In many instances the members and officers of the jobbers' association, including petitioners, have notified hardware manufacturers that named jobbers or wholesalers, including the cooperative association and the American Purchasing Co., do not conform to the method of distribution approved by the jobbers' association, whereby the manufacturers so notified are made to understand that they have the choice between getting the custom of the members of the jobbers' association or selling to jobbers or wholesalers who do not conform to the practice approved by the jobbers' association. Close relations have been and are maintained between the officers and members of the jobbers' association and the officers and members of the American Hardware Manufacturers' Association, which includes the principal manufacturers of hardware in the United States. The officers and members of the jobbers' association made known to the officers and members of the Hardware Manufacturers' Association that the former disapproved of sales of hardware to jobbers or wholesalers who do not conform to the policy approved by the jobbers' association on the same terms and conditions as are accorded to jobbers and wholesalers who conform to that policy. The jobbers' association furnished to the Hardware Manufacturers

Association and its members lists of so-called regular jobbers and wholesalers in the territory mentioned and notified them that named jobbers or wholesalers in that territory, including the cooperative association and the American Purchasing Co., did not conform to the policy approved by the jobbers' association. By such means manufacturers of hardware were warned by petitioners not to trade or deal with objectionable wholesalers or jobbers on the same terms accorded to so-called regular jobbers or wholesalers on pain of losing the trade or patronage of members of the jobbers' association. In the territory mentioned there are many retailers whose requirements of hardware were and are sufficiently large to make it practicable and profitable for manufacturers to sell direct to them and on the same terms and conditions as they accord to members of the jobbers' association. Hardware manufacturers are deterred from selling to such dealers on the same terms that are accorded to members of the jobbers' association by the fear of losing the patronage of members of that association. By means of recited action participated in by petitioners, manufacturers of hardware, by threats of loss of the patronage of so-called regular jobbers or wholesalers if they sold to the cooperative association or the American Purchasing Co. on the same terms accorded to members of the jobbers' association, were induced to refuse to deal with or to sell to the cooperative association and the American Purchasing Co., in interstate commerce, on the same terms which are accorded to members of the jobbers' association and to wholesalers and jobbers who conform to the policy of distribution approved by the jobbers' association. The stated conclusion of the commission was that the acts, agreements, understanding, policies, and practices of the petitioners, and each and all of them, are unfair methods of competition in interstate commerce and constitute a violation of the Federal Trade Commission act (38 Stat. 719). By the order complained of the petitioners were to forever cease and desist from—

1. Combining and conspiring among themselves or with others, directly or indirectly, to induce, persuade, or compel, and from inducing, persuading, or compelling, manufacturers, importers, or producers, their agents or brokers, to refuse to sell to the American Purchasing Co. or the Merchants' Cooperative Association because of any plan of organization or method of transacting business adopted by said company.

2. Combining and conspiring among themselves and with others to give and from giving, directly or indirectly, verbal, written, or other notices or communications to manufacturers, importers, and producers, their agents or brokers, that business concerns not members of the Southern Hardware Jobbers' Association and not in harmony with the plans and policies of the said association and not conforming to the tests and standards set up by the said association for membership therein are not entitled to purchase and obtain goods, wares, and merchandise upon the same terms and conditions usually accorded by said manufacturers, importers, and producers to the members of the Southern Hardware Jobbers' Association.

3. Combining or conspiring together among themselves or with others, and from using any scheme or device or means whatsoever to accomplish that result, directly or indirectly, to hinder, obstruct, or prevent manufacturers, producers, or importers, their brokers or agents, from dealing with the American Purchasing Co. or the Merchants' Cooperative Association or others engaged in similar business, upon as favorable terms and conditions usually accorded by the said manufacturers, producers, or importers to the members of the said Southern Hardware Jobbers' Association.

4. Hindering, obstructing, or preventing, directly or indirectly, any manufacturer, producer, or importer, or broker or agent thereof, from selling and shipping, either or both, in interstate commerce, to the American Purchasing Co. or to others engaged in similar business.

5. Combining and conspiring together among themselves or with others, and from using any scheme or device or means whatsoever to accomplish that result, directly or indirectly, to hinder, obstruct, or prevent the American Purchasing Co. or the Merchants' Cooperative Association, or others engaged in similar business, from freely purchasing and obtaining, in interstate commerce, the goods, wares, and merchandise usually handled by the said company or association in the course of their business, or from freely competing in interstate commerce with the members of the Southern Hardware Jobbers' Association, Beck & Gregg Hardware Co., the Dinkins-Davidson Hardware Co., King Hardware Co., George E. King, or others engaged in similar business.

6. Combining and conspiring, directly or indirectly, among themselves or with others, to establish and to continue maintaining any tests or standards for de-

termining whether said American Purchasing Co. or Merchants' Cooperative Association, or others engaged in similar business, shall be permitted to purchase goods, wares, and merchandise in interstate commerce upon the same terms and conditions as the members of the said Southern Hardware Jobbers' Association.

7. Combining and conspiring, directly or indirectly, among themselves or with others, to publish or to distribute, and from publishing or distributing to manufacturers, importers, and producers, their agents or their brokers, engaged in selling goods, wares, and merchandise, especially hardware, among the various States, lists of the members of the Southern Hardware Jobbers' Association for the purpose and with the intent of influencing said manufacturers, importers, producers, their agents and their brokers, to refrain from making sales of such commodities to others than those named in such lists in the territory covered by the said association.

8. Combining and conspiring among themselves, or with others, to induce, coerce, and compel manufacturers, importers, and producers, or their agents or their brokers, directly or indirectly, to refuse to sell goods, wares, and merchandise to the American Purchasing Co., or to the Merchants' Cooperative Association, either or both, or to others engaged in the same business, upon the same terms and conditions usually offered and given by the said manufacturers, importers, and producers, their agents or their brokers, to the members of the Southern Hardware Jobbers' Association.

9. Carrying on between and among themselves, or with others, communications written or verbal, having the purpose, tendency, or the effect of inducing, coercing, or compelling manufacturers, importers, or producers of goods, wares, and merchandise, especially hardware, their agents or their brokers, directly or indirectly, to refuse to deal with or sell to the American Purchasing Co., or to the Merchants' Cooperative Association, or others engaged in similar business upon the same terms and conditions usually accorded by said manufacturers, importers, and producers to the members of the Southern Hardware Jobbers' Association.

10. Combining or conspiring among themselves, or with others, to compel, or to attempt to compel, the American Purchasing Co., or the Merchants' Cooperative Association, or others engaged in a similar business, to purchase the goods, wares, and merchandise required for their business from or through any competitor of said purchasing company or said cooperative association, or from others similarly engaged.

11. Combining or conspiring among themselves or with others to boycott or to threaten to boycott, or to threaten with loss of patronage or custom, any manufacturer, importer, or producer, or his agent or broker, engaged in interstate commerce, for selling or agreeing to sell to the American Purchasing Co., or the Merchants' Cooperative Association, or others engaged in similar business, on the same terms and conditions accorded by such manufacturer, importer, or producer, or his agent or broker, to members of the Southern Hardware Jobbers' Association.

Evidence adduced warranted the conclusion that a main purpose of the jobbers' association, its officers and members, was to promote the policy of distributing hardware from manufacturer to wholesaler or jobber, from wholesaler or jobber to retailer, and from retailer to customer, only in the way they approved. It is consistent with that policy for a wholesaler or jobber to be also a retailer if he has in his business a specified amount of capital, if a specified per cent of his gross sales of not less than a specified amount a year is to dealers, and if he keeps constantly on the road not less than a specified number of salesmen. It is contrary to that policy for a retailer, unless he is also a wholesaler or jobber who complies with the just mentioned requirements, to have such relations with a wholesaler or jobber or interest in the business of a wholesaler or jobber as results in the retailer receiving the whole or a part of the profits realized by the wholesaler or jobber on sales made by him to the retailer. The plan of doing business adopted and attempted to be put into effect by those who promoted and organized the cooperative association and the American Purchasing Co. was not in harmony with the policy of the jobbers' association, as it was a feature of that plan of business that a retailer who gets hardware through the concerns mentioned shares in the profits realized by such concerns on sales made by them to the retailer, though such retailer does no wholesale business. It was part of the plan of the promoters and organizers of the cooperative association and the American Purchasing Co. to supply hardware to only such retailers as were willing and able to pay

cash for the hardware they bought. A result of a hardware manufacturer conforming to the policy approved by the jobbers' association is that one who is solely a retailer can not buy hardware directly or indirectly, or in cooperation with other such retailers from such manufacturer on the same terms as are accorded to retailers who are members of the jobbers' association, though such retailer buys in what, as between the manufacturers and jobbers or wholesalers, are recognized as wholesale quantities. A consequence of the success of the policy approved by the jobbers' association is to impair the ability of jobbers or wholesalers who share with dealers who are exclusively retailers, to whom they sell, the profits realized on such sales, to compete with jobbers or wholesalers who retain the profits realized on sales made by them to such retailers, as jobbers or wholesalers so sharing their profits with buyers who sell only at retail can not buy hardware from the manufacturer at jobbers' prices and terms. Another consequence of the success of the policy mentioned is to give to retailers who are also such jobbers or wholesalers as are eligible to membership in the jobbers' association a substantial advantage over dealers who sell only at retail, thereby restraining or hindering competition by the last mentioned dealers. Whatever influences manufacturers of hardware to refuse to sell their products to dealers who are obnoxious to the jobbers' association on the same terms as are allowed to members of that association and those who conform to its policy tends to restrain trade by obstructing or preventing it with such obnoxious dealers. There was evidence of conduct by each of the petitioners which was intended to induce, and was effective in inducing, manufacturers not to sell to the cooperative association or of buying for it on the same terms which were accorded to members of the jobbers' association. If that conduct was in pursuance of an agreement or understanding, express or implied, to which petitioners were parties, thereby to hinder or obstruct the free and natural flow of commerce in interstate trade it constituted an "unfair method of competition" within the Federal Trade Commission act. *Federal Trade Commission v. Beech Nut Co.*, 257 U. S. 441, 453; *Wholesale Grocers Association v. Federal Trade Commission*, 277 Fed. 637.

It was permissible to consider the conduct of the petitioners in the light of the fact that it was disclosed that they had in common the purpose to put into effect the above-mentioned policy of the jobbers' association. The doing by them of like acts to induce manufacturers to conform to that policy was, under the circumstances, indicative of the existence of an agreement or understanding between them to cooperate in furtherance of that policy. From the evidence as to the relations between the jobbers' association, its officers and members, and hardware manufacturers and their organization, it well might be inferred that manufacturers, in conforming to the jobbers' association policy, were influenced by the desire to retain the custom and good will of the large body of wholesale buyers banded together in the jobbers' association, and that such manufacturers or many of them were induced or coerced by the united opposition of the members of the jobbers' association not to sell hardware in wholesale quantities and at jobbers' prices and terms to dealers such as the cooperative association, which was prepared to buy in large quantities and sought no credit for goods bought. The circumstances attending the furnishing to hardware manufacturers or their association of lists of members of the jobbers' association and the giving of notice to such manufacturers that named dealers were irregular or not entitled to be treated as legitimate wholesalers were such that it could properly be inferred that those acts were intended to have, and had, the effect of warnings to the manufacturers against selling on usual wholesale terms to dealers who were not members of the jobbers' association or who were so charged with noncompliance with the policy of that association. There was evidence tending to prove that the petitioners combined and cooperated to keep manufacturers, willing to do so, from selling their products at wholesale prices and terms to the cooperative association and the American Purchasing Co., and to obstruct and prevent those concerns from competing as jobbers or wholesalers in territory sought to be appropriated by the jobbers' association and dealers conforming to the method of doing business which was approved by that association. That evidence warranted the conclusion that what the petitioners did to thwart the success of the cooperative association and the American Purchasing Co. went beyond each of the petitioners asserting and seeking to enforce its or his individual views as to business policies or methods, and amounted to cooperation between them in furtherance of a common purpose to prevent hardware manufacturers selling without price discrimination to exclusively retail

dealers or organizations buying for such retailers on terms which effect a saving to retailers of all or part of the profit which regular wholesalers or jobbers retain, with the result of requiring such retailers to get hardware only through the self-styled legitimate wholesalers or jobbers. The existence of a combination in restraint of trade may be inferred from evidence of circumstances indicating concert of action to that end. *American Column Co. v. United States*, 257 U. S. 377. The success of the concerted action in which the petitioners participated meant the monopolizing of the wholesale hardware trade in an extensive territory by members of the jobbers' association and dealers conforming to the above-mentioned policy, and also meant the exclusion of hardware retailers in that territory from sources of supply available to wholesalers unless they combined wholesaling and retailing in the particular way which was approved by the jobbers' association. We are of opinion that such concerted action involved restraint of interstate trade, and is a proper subject of a Federal Trade Commission order to cease and desist.

As affecting the kind of interstate trade undertaken to be carried on by the cooperative association and the American Purchasing Co., none of the things enumerated in the order complained of includes conduct which the petitioners are entitled to persist in. The doing or continuing to do by the petitioners of the things enumerated in the order to cease and desist is incompatible with the discontinuance of the practices condemned by the commission. Under the circumstances, the doing of the forbidden things would be concerted action tending to restrain competition in interstate trade. That being so, we do not think that that order is too broad.

We conclude that the petition should be denied, and it is so ordered.

(Original filed June 13, 1923.)

EXHIBIT 13.

JUVENILE SHOE CO. (INC.).

In the United States Circuit Court of Appeals for the Ninth Circuit.

Juvenile Shoe Company, Incorporated, petitioner, v. Federal Trade Commission, respondent. No. 3927.

Before Gilbert and Rudkin, circuit judges, and Dietrich, district judge.

The petitioner seeks to review the order entered against it by the respondent commanding it to desist from certain methods of competition in commerce. The respondent's complaint alleged that the petitioner was organized on May 26, 1919, at Los Angeles, Calif., to sell children's shoes exclusively at wholesale in California and in adjacent States; that the Juvenile Shoe Corporation of America was organized in Missouri on June 8, 1918, to manufacture and sell children's shoes exclusively throughout the United States in interstate commerce in competition with others similarly engaged; that it has built up an extensive business in the sale of its product in California and adjacent States; and that its shoes are of greater value and of superior quality and sell for higher prices than the petitioner's shoes; that the petitioner's corporate name so nearly resembles the corporate name of said Juvenile Shoe Corporation, and its trade name or design so nearly resembles the registered trade-mark of the Juvenile Shoe Corporation that it causes confusion in the trade and thereby induces purchasers of children's shoes to believe that the shoes offered for sale by the petitioner are the shoes manufactured by the Juvenile Shoe Corporation; that the trade-mark of the latter corporation is "Juvenile Shoe System," used by it since January 1, 1919, and registered November 30, 1920; that since January 1, 1919, the Juvenile Shoe Corporation used its trade-mark displayed as a wax seal, and this seal was employed by it by means of a label placed on the cartons in which the shoes were sold and by tags attached directly to the shoes and by means of a design on the soles of the shoes; that the petitioner put upon the boxes in which its shoes are packed a circular label containing the face of a child surrounded by the words "Juvenile Shoe Company, Inc." which so resembled the trade-mark of the Missouri corporation as to be likely to cause confusion in the trade and deceive purchasers.

The answer of the petitioner admitted that the shoes sold by the Missouri corporation were of superior quality to those sold by itself. Upon the pleadings and the proof the respondent made findings and held that the petitioner had violated the provisions of section 5 of the act of Congress approved September 26, 1914, creating the Federal Trade Commission and defining its powers and duties, and it ordered that the petitioner, its officers, directors, agents, and employees cease and desist (1) from using as a part of its corporate name the word "Juvenile" or any word or combination of words likely to be confused with the name of the Juvenile Shoe Corporation of America; (2) from using or permitting to be used in its behalf the word "Juvenile" on its marks, labels, tags, or other devices upon or in connection with the sale of shoes for infants, children, and misses; and (3) from directly or indirectly suggesting by the use of a word, mark, or label or otherwise that the goods of the petitioner are the goods of the Juvenile Shoe Corporation of America.

Gilbert, circuit judge, after stating the case:

The record fully justifies the order of the Federal Trade Commission enjoining the use of the petitioner's corporate name. The petitioner went into the business of manufacturing and selling children's shoes and took a name so similar to a senior corporation that was engaged in precisely the same business and in the same field that confusion of the two corporations in the public mind was inevitable. The names "Juvenile Shoe Corporation" and "Juvenile Shoe Company, Inc." are practically identical. The reported cases in which injunction has been sustained against the use of a corporate name afford few in-

stances of names so similar and so likely to create confusion as those which these two corporations used. In assuming its name, a corporation acts at its peril, *American Order Scottish Clans v. Merrill*, 151 Mass. 553; *Metropolitan Tel. Co. v. Metropolitan Tel. Co.*, 141 N. Y. S. 598. Injunction will lie against a corporation that by any artifice deceives the public into believing that its goods are those of another corporation having a similar name, and this is true irrespective of any intent to mislead the public, and especially is it true where the corporations are engaged in the same business. *General Film Co. of Mo. v. General Film Co. of Me.*, 237 Fed. 64; *Nat. Circle Daughters of Isabella v. Nat. Order D. I.*, 270 Fed. 723.

Nor are we convinced that this court should modify that portion of the order here under review which forbids the petitioner to use the word "Juvenile" on its marks, labels, and tags in connection with the sale of children's shoes and from suggesting by word, mark, label, or otherwise that its goods are the goods of the Juvenile Shoe Corporation. The Federal Trade Commission found as a fact that the use of the word "Juvenile" as it was employed by the petitioner caused confusion and led purchasers to believe that the petitioner's goods were those of the Juvenile Shoe Corporation. It is not asserted that the Juvenile Shoe Corporation has the exclusive right to the word "Juvenile" as applied to shoes, but we think it has a proprietary and exclusive right to the good will which it has created by its dealing and its advertising with the purchasing public as well as by the superior quality of its shoes, and that the use of the word "Juvenile" by the petitioner on its shoes, has, as the Trade Commission finds, tended to create the false impression that the goods sold by the petitioner were the goods of the Juvenile Shoe Corporation, and while it may be that the word "Juvenile" is not susceptible of appropriation as a trademark, the right to its use as a trade name may still be protected against the unfair competition which might result from the use of the same trade name by another corporation, where both are engaged in the same trade, dealing in the same class of goods and in actual competition with one another. *Pillsbury-Washburn Flour Mills Co. v. Eagle*, 86 Fed. 608; *Strauss v. Notaseme Co.*, 240 U. S. 179; *G. W. Cole Co. v. American Cement and Oil Co.*, 130 Fed. 703; *N. K. Fairbank Co. v. Luckel King and Cake Soap Co.*, 102 Fed. 327; *Stark v. Stark Bros. Nurseries and Orchards Co.*, 257 Fed. 9.

It is contended that since the petitioner has ceased the use of a label on the cartons in which its shoes are packed and sold, an order to cease placing such labels on the cartons is not warranted. But it does not follow that the order should be dissolved. The Juvenile Shoe Corporation is not bound to accept the fact of the disuse of the labels as proof that the use will not be resumed in the future, and the mere fact that the petitioner has ceased such use is no reason why injunction should not issue. *Sears, Roebuck & Co. v. Federal Trade Commission*, 258 Fed. 307; *Saxlehner v. Elsner*, 147 Fed. 189.

The order of the Federal Trade Commissioner is affirmed.

(Indorsed: Opinion filed May 14, 1923. F. D. Monckton, clerk, by Paul P O'Brein, deputy clerk.)

EXHIBIT 14.

P. LORILLARD CO. CASE.

United States District Court, Southern District of New York.

The Federal Trade Commission, petitioner, against P. Lorillard Co., respondent;
Federal Trade Commission, petitioner, against American Tobacco Co. (Inc.),
respondent.

William Hayward, Esq., United States attorney, attorney for petitioner;
W. H. Fuller, Esq., chief counsel for Federal Trade Commission; William D.
Guthrie, Esq., William B. Bell, Esq., Bernard Hershkopf, Esq., of counsel for
respondent, P. Lorillard Co.; John Walsh, Esq., Junius Parker, Esq., Jonathan
H. Holmes, Esq., of counsel for respondent, American Tobacco Co. (Inc.).

These cases were argued together and will be considered in one opinion.

The petitioner in each of the above-named proceedings was granted an alternative writ of mandamus commanding the respondent to show cause why a peremptory writ should not issue directing that immediately it forthwith deliver into the possession of the Federal Trade Commission the accounts, books, records, documents, memoranda, papers, and correspondence of the respondent for inspection and examination and for the purpose of making copies thereof. The petition upon which the alternative writ was granted sets forth that on the 16th of September, 1921, a complaint was filed with the Federal Trade Commission against the respondent. The complaint alleged that the respondent in the conduct of its interstate commerce was indulging in practices which were in violation of the provisions of the act of Congress of September 26, 1914 (38 Stat. 717), in that the respondent was using certain methods of business practices resulting in unfair competition, and that it was regulating and fixing, or attempting to regulate and fix, the prices at which the commodities sold by it should be resold by those to whom it had sold them, and was cooperating, aiding, and abetting others to successfully formulate and carry out a scheme or combination pursuant to which the resale prices of respondent's commodities should be fixed and maintained by those to whom respondent had previously sold its products or commodities. Further, that the Senate of the Congress of the United States by a resolution directed the Federal Trade Commission to investigate the tobacco situation in the United States as to the domestic and export trade, with particular reference as to the market price to producers of tobacco and the market price for manufacturing tobacco and the price of leaf tobacco exported, and to report to the Senate as soon as possible the result of such investigation. Petitioner then sets forth that at various times between September 29, 1921, and November 5, 1921, authorized agents of the petitioner in its behalf demanded of the respondent to produce and furnish to them at respondent's offices certain specified documentary evidence or written data, correspondence, and other paper writings which were then and there in the possession, custody, and control of the respondent, so that copies thereof or parts thereof might be made. And the respondent, complying with the demands and pursuant to its duty, under the provisions of the Federal trade act, did produce for inspection and examination of petitioner's agents certain of the data commanded, but in violation of provisions of the Federal trade act it refused to produce for inspection and examination "certain documentary evidence, records, correspondence, and writings herein specified which were then and there in respondent's possession, custody, and control, and it refused to permit copies thereof to be made by petitioner." And it set forth that it is necessary in the prosecution of its duty that such inspection and examination be granted to the petitioner's agents and that it is hindered in the performance of its duty and in the exercise of its power by the refusal of the respondent to grant such examination and inspection. Its prayer for relief is that "all papers and telegrams received by the American Tobacco Co. (P. Lorillard Co.) from all of its jobber customers located in different points throughout the United States and also copies

of all letters and telegrams sent by the American Tobacco Co. (P. Lorillard Co.) to such jobbers during the period of January 1, 1921, to December 31, 1921, inclusive," be turned over for examination and inspection. Each respondent resists the application for a peremptory writ, contending that the Federal Trade Commission is asserting authority which it does not possess in seeking to make an unlimited and unrestricted inspection, with the right to copy all of the correspondence with its jobber customers. That the Senate resolution directing the Federal Trade Commission to make the investigation referred to grants no authority for unlimited and unrestricted search, with the right to copy the correspondence. It further contends that sections 5, 6, and 9 of the Federal Trade Commission act give no such authority of unlimited and unrestricted search and examination, and it is said that any such construction or interpretation of the Federal Trade Commission act would be in contravention of the fourth amendment of the Constitution, guaranteeing the right of the people to be secure in their papers and effects against unreasonable searches and seizures and that no warrant shall issue but upon probable cause supported by oath or affirmation. Thus the question is presented whether Congress can delegate visitatorial powers under the commerce clause of the Constitution over private corporations engaged in interstate commerce to the extent of granting unlimited and unrestricted examination and inspection, with the right to copy.

By the act of Congress of September 26, 1914, the Federal Trade Commission was created a body corporate. Its purposes were defined by the statute creating it and its duties and powers and administration are referred to in sections 5, 6, and 9. It is provided by section 9 of the act that, "for the purposes of this act, the commission, or its duly authorized agent or agents, shall at all reasonable times have access to, for the purpose of examination, and the right to copy any documentary evidence of any corporation being investigated or proceeded against"; and section 6 of the act provides "That the commission shall also have power, (a) to gather and compile information concerning, and to investigate from time to time the organization, business, conduct, practices, and management of any corporation engaged in commerce, excepting banks and common carriers subject to the act to regulate commerce, and its relation to other corporations and to individuals, associations, and partnerships."

The Constitution provides (Art. 1, sec. 8, cl. 3) that Congress shall have power to regulate commerce with foreign nations and among the several States.

Each respondent is conceded to be a private corporation engaged in selling tobacco and its products and is engaged in interstate and intrastate commerce. This investigation was commenced "for the purpose of ascertaining the facts relating to respondent's business." The business of each of the respondents is very extensive, its letters, papers, and other documents making it a business of thousands of letters per month. The affidavits submitted by the respondents set forth a mass of correspondence and other documentary evidence which, if the petitioner prevails in its alleged right to "full and complete access to any and all documentary evidence in the possession and control of the respondent," would, it is alleged, handicap the respondent in its business and entail considerable expense and difficulties. Much of the correspondence relates to transactions bearing upon intrastate commerce only. As to such of the correspondence as bears upon intrastate commerce, the petitioner is not entitled to examination, inspection, or copying any part thereof. The commerce clause of the Constitution granting power to the Congress to legislate as to the commerce permits only of legislation which has to do with interstate commerce. The Federal trade act forbids unfair practices in reference to the commerce of an interstate character only. (*Ward Packing Co. v. Federal Trade Comm.*, 264 Fed. 330.) The commerce clause of the Constitution vested in the Congress "a full and complete power to regulate commerce among the several States for the strong arm of the National Government may be put forth to brush away all obstacles to interstate commerce." (*In re Deb*, 153 U. S. 564.) And "Constitutional privileges do not change, but their operation extends to new matters as modes of business and the habits of life of the peoples vary with each succeeding generation. The power is the same, but it operates to-day upon modes of interstate commerce unknown to the fathers and will operate with equal force upon any new modes of such commerce which the future may develop." (*Gibbons v. Ogden*, 22 U. S. 1.) The power of Congress to legislate embraces not only to regulate and control that which is wholly interstate, but also that which even though intrastate affects the free flow of interstate

commerce. (Minn. Rate Cases, 230 U. S. 352.) To regulate is the power to enact legislation directly affecting interstate commerce. (United States v. Adair, 152 Fed. 737.) The Constitution having granted to the Congress plenary power to regulate or control commerce among the States, Congress may delegate such duties to investigate and learn conditions to a permanent administrative body.

The validity of the Interstate Commerce Commission act granting to that commission the power to investigate facts relating to interstate transportation was considered in *Interstate Commerce Commission v. Brimson* (154 U. S. 447). It has been held that the visitorial power of the Federal Government provided for in the act over private corporations must be restricted to activities of an interstate-commerce character. (*Hale v. Henkel*, 201 U. S. 43; *Interstate Commerce Comm. v. Goodrich Co.*, 224 U. S. 194; *United States v. Basic Products Co.*, 260 Fed. 472.) We must presume that the Congress did not intend by this legislation to invade the field reserved under the Constitution to the several States by interfering with transactions in intrastate commerce. "The statute must be construed, if fairly possible, so as to avoid not only the conclusion that it is unconstitutional but also grave doubts upon that score." (*United States v. Jim Fuey Moy*, 241 U. S. 394; see also *United States v. D. & H. Co.*, 213 U. S. 366.)

The resolution of the Senate provided that "the Federal Trade Commission be, and is hereby, directed to investigate the tobacco situation in the United States as to the domestic and export trade, with particular reference to the market price to producers for tobacco and the market price for manufactured tobacco and the price of leaf tobacco exported, and report to the Senate as soon as possible the result of such investigation." This resolution has not the mandatory effect of statutory enactment with reference to the commerce clause of the Constitution, and the present application for the writ must rest by reason of the command of section 9 of the Federal Trade Commission act, wherein jurisdiction is granted to the district courts of the United States "to issue writs of mandamus commanding any person or corporation to comply with the provisions of this act or any order of the commission made in pursuance thereof." The resolution of the Senate does not come within the terms of the authority conferred by the statute in question. Under section 6 power is conferred upon the commission "upon the direction of the President or either House of Congress to investigate and report the facts relating to any alleged violations of the antitrust acts by any corporation," but the language of this statute makes it necessary for one of the Houses of Congress to adopt a resolution for a direction to investigate, and reporting such investigation must be for alleged violation of the antitrust acts. The quotation from the resolution of the Senate fails to indicate that it is founded upon any violation or alleged violation of the antitrust law. It does not indicate that the Senate intended that any antitrust law violation should be investigated by the commission. If so, an apt expression to that effect could have been used. It can not, therefore, be concluded that it was intended in the language used to investigate any violations of the antitrust acts by any corporation. In any case the power of the Federal Trade Commission can not be broader than what Congress did or could delegate. The analogy of the cases arising under the powers of the Interstate Commerce Commission with that of the Federal Trade Commission's powers is pertinent. This was referred to in *Beechnut Packing Co. v. Federal Trade Comm.* (264 Fed. 885). A comparison of the statutes particularly setting forth the procedure under the two acts shows the similarity. In each any person may be compelled to appear and depose and produce documentary evidence in the same manner as witnesses may be compelled to appear and testify and produce documentary evidence before the commission. Both commissions are required to make findings and proceedings before them and the findings must be based upon the testimony given.

In the *Harriman* case (211 U. S. 417), Justice Holmes said:

"The commission * * * is given power to require the testimony of witnesses 'for the purpose of this act.' The argument for the commission is that the purposes of the act embraces all the duties that the act imposes and the powers that it gives the commission; that one of the purposes is that the commission shall keep itself informed as to the manner and method in which the business of carriers is conducted, as required by section 12; that another is that it shall recommend additional legislation * * * and that for either of these general objects it may call on Congress to require anyone whom it may point out to attend and testify if he would avoid the penalties for contempt.

"We are of the opinion, on the contrary, that the purposes of the act for which the commission may exact evidence embraces only complaints for violation of the act, and investigations by the commission upon matters that might have been made the object of the complaint. As we have already implied, the main purpose of the act was to regulate the interstate commerce business of carriers, and the secondary purpose, that for which the commission was established, was to enforce the regulations enacted. These, in our opinion, are the purposes referred to; in other words, the power to require testimony is limited, as it usually is in English-speaking countries, at least, to the only cases where the sacrifice of privacy is necessary—those where the investigations concern a specific breach of the law.

"If we felt more hesitation than we do, we still feel bound to construe the statute not merely so as to sustain its constitutionality, but so as to avoid a succession of constitutional doubts, so far as candor permits."

The Interstate Commerce Commission deals with quasi public corporations. But the phrase of the Federal Trade Commission act considered, in view of the language in the Harriman case, would indicate that the right to procure information in its investigations under the provisions of section 6 would not grant the unlimited search and inspection of correspondence with the right to copy the same in the absence of some specific complaint which would point out the materiality to that complaint of the particular correspondence and papers sought to be obtained.

Reading sections 5, 6, and 9, I do not think that Congress intended at the time of the enactment of this law to go beyond the well-recognized principles of limitations with reference to searches and seizures guarded against by the fourth amendment of the Constitution. It is better to deduce the intention that information should only be extracted by the procedure long established in the courts in conformity with the constitutional guaranty against unlawful and unreasonable searches and seizures and the right of people to be secure in their papers and effects therefrom. The fourth amendment provides:

"The right of the people to be secure in their * * * papers and effects, against unreasonable searches and seizures, shall not be violated and no warrants shall issue but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."

This command of the Constitution, properly interpreted, is a prohibition against Congress granting powers to the commission for unlimited searches and seizures of letters and documents. The act makes plain the duty of the commission to gather, compile, and publish for use in its proceedings what may be voluntarily offered or submitted in response to request or demand. It may also make investigation independently, but the exercise of visitatorial power over private corporations must keep within the restrictions of the fourth amendment. "Neither branch of the legislative department, still less any merely administrative body established by the Congress, possesses or can be vested with a general power of making inquiry into the private affairs of a citizen." (*Interstate Commerce Comm. v. Brimson*, 154 U. S. 478.)

As was said by Mr. Justice Brewer in *In re Pacific Ry. Comm.* (32 Fed. 241):

"There is no doubt that Congress may authorize a commission to obtain information upon any subject which in its judgment it may be important to possess * * *. But in its inquiries it is controlled by the same guards against the invasion of private rights which limit the investigations of private parties into similar matters."

It is the duty of the court to so construe the act as to save the statute from constitutional infirmity. (*Knights Templar Indemnity Co. v. Jarman*, 187 U. S. 197; *U. S. v. D. & H. Co.*, 213 U. S. 407; *Harriman v. Interstate Commerce Comm.*, 211 U. S. 401.)

Section 6 (b) grants to the commission the right to require corporations coming within its jurisdiction to make reports concerning their affairs and thus to furnish to the commission such information as it may require. And subdivision (a) of section 6 calls upon the corporations in question to report upon specific matters as provided in subdivision (b). If the corporations fail in reporting or are false, the commission is entitled, upon properly showing the probable cause, to demand due disclosures and access to the inspection of any specific, necessary, and relevant papers, excluding such papers as may be privileged. In other words, there must appear to be some reasonable cause for a search, such as a definite complaint charging a specific wrong, and thus presenting an inquiry which would have reasonable and readily ascertainable limits.

Such a construction of subdivisions (a) and (b) of section 5 would effectuate the intent of Congress and the procedure can be kept within constitutional limits. (*United States v. L. & N. R. R.*, 238 U. S. 318; *Veeder v. United States*, 252 Fed. 414.) Such a construction would seem to be in accord with the discussions in the Senate when this legislation was enacted. (See 51 Congressional Record, part 13, 63d Cong., 2d sess., pp. 12747, 12800, 12806-12811, 12918, 12927.) It was not intended to grant an unlimited power of inquisition or an unlimited right of access to books and papers of private parties not engaged in any public service or a search without basis of some facts tending to establish a charge of wrongdoing.

It is now well established that a corporation is entitled to invoke the guaranties of the fourth amendment against unreasonable searches and seizures in as full a measure as would a person or partnership. (*Silverthorne Lumber Co. v. United States*, 251 U. S. 385; *Coastwise Lumber Co. v. United States*, 259 Fed. 847.)

In the papers submitted on this application there is no show of the existence of probable cause. The relief prayed for is in general terms and includes all papers and telegrams received by each respondent from its jobber customers located in different points throughout the United States and copies of all letters and telegrams sent by each respondent to such jobbers during the period from January 1, 1921, to December 31, 1921, inclusive. Such general demands made in other warrants of law, such as a subpoena duces tecum, have been condemned as not giving a reasonably accurate description of the papers wanted, either by date, title, substance, or subject to which they relate. (*Ex Parte Brown*, 72 Mo. 83; *Carson v. Hawley*, 82 Minn. 204.)

In *Boyd v. United States* (116 U. S. 616), the court quoted with approval Judge Camden's language in *Entick v. Carrington and Three Other King's Messengers* (19 Howell's State Trials, 1029), wherein he said:

"Papers are the owner's goods and chattels; they are his dearest property; and are so far from enduring a seizure that they will hardly bear an inspection; and though the eye can not by the laws of England be guilty of a trespass, yet where private papers are removed and carried away, the secret nature of those goods will be an aggravation of the trespass, and demand more considerable damages in that respect. Where is the written law that gives any magistrate such a power? I can safely answer, there is none; and, therefore, it is too much for us, without such authority, to pronounce a practice legal which would be subversive of all the comforts of society."

To grant the relief prayed for by the petitioner would be to permit of an unreasonable search and seizure of papers in violation of the fourth amendment. It was not the intention of Congress to grant such unlimited examination and inspection by the legislature in question, nor, indeed, did Congress have authority to do so under the commerce clause of the Constitution. It would be unreasonable and unjust to accede to the demands of the petitioner and the application for the peremptory writ of mandamus against the respondents, *American Tobacco Co.* and *P. Lorillard Co.*, is denied.

Manton, United States judge.

Dated October 3, 1922.

EXHIBIT 15.

BALTIMORE GRAIN CO. ET AL.

In the District Court of the United States for the District of Maryland.

Federal Trade Commission v. The Baltimore Grain Co.; Federal Trade Commission v. H. C. Jones Co. (Inc.); Federal Trade Commission v. Hammond, Snyder Co. (Inc.).

Rose, district judge:

In these cases the Federal Trade Commission seeks a mandamus to compel the respondents, each a corporation, the first two of Maryland and the last of Delaware, and each of them engaged in foreign and interstate as well as intrastate trade in grain, to permit the petitioners' agents to examine, inspect, and copy respondents' books of account, records, documents, correspondence, and paper writings relating to or bearing upon their business in interstate commerce, and all letters and telegrams passing between the respondents and the latter's jobber customers throughout the United States during the calendar year 1921. The petitions say that the commission, on its own motion, determined to gather and compile information concerning, and to investigate from time to time the organization, business, conduct, practice, and management of the respondents and to investigate and determine the facts of the relation of each of them to other corporations, individuals, associations, and partnerships. The petition further represents that the commission is also acting in compliance with resolution No. 133 of the Senate of the United States, passed December 22, 1921, directing it to investigate the margins between farm and export prices; the freight and other costs of handling; the profits or losses of the principal exporting firms and corporations and their subsidiary or allied companies and firms; all the facts concerning market manipulations, if any, in connection with large export transactions or otherwise; the organization, ownership, control, interrelationship, foreign subsidiaries, agents, or connections of the concerns engaged in the export of grain, including the extent of their control of the facilities used by them, the organization, methods of operation, and agents used by farm buyers of grain in this country, and other data affecting the demand for a foreign disposition movement and use of American exported grain and report its findings and recommendations thereon as promptly as the various phases of the work are concluded.

In the case of the Federal Trade Commission v. P. Lorillard Co., Judge Mantou, sitting in the District Court for the Southern District of New York, has recently elaborately reviewed the statutes and authorities defining or limiting the power of the Federal Trade Commission to compel private corporations to submit their papers to its examination. In that case the petition of the commission, which was denied, set forth facts legally indistinguishable from those alleged in the one at bar.

Here, as there, the resolution of the Senate conferred upon the commission no authority not already given by law.

United States v. Louisville & Nashville R. R., 236 U. S. 329: The Federal Trade Commission act does empower the commission, upon the direction of the President or either House of Congress, "to investigate and report the facts relating to any alleged violation of the antitrust acts by any corporation." The resolution cited in the instant case does not suggest any breach of these acts. The question here is whether the statute creating the commission entitles it to the inspection for which it asks, and if so, whether the act in that respect is valid.

Paragraph A of section 6 of the statute authorizes the commission "to gather and compile information concerning, and to investigate from time to time, the organization, business, conduct, practices, and management of any corporation engaged in commerce * * * and its relation to other corporations and to individuals, associations, and partnerships."

Paragraph H provides that the commission may upon its own motion "investigate from time to time trade conditions in and with foreign countries where associations, combinations, or practices of manufacturers, merchants, or traders, or other conditions may affect the foreign trade of the United States, and to report to Congress thereon * * *."

Section 9 declares "that for the purpose of this act the commission, or its duly authorized agent or agents, shall at all reasonable times have access to, for the purposes of examination and the right to copy, any documentary evidence of any corporation being investigated or proceeded against * * *."

The measure originated in the House of Representatives, and the committee which reported it was familiar with what the Supreme Court had said in *Harriman v. Interstate Commerce Commission*, 211 U. S. 243, and it said that in order that the proposed trade commission "may have powers of subpoena and production of books and papers, the language" of the bill "has been expressly made broad enough to permit a full exercise of that power in connection with any kind of investigation which may be undertaken." (Report of Committee on Interstate and Foreign Commerce, No. 533, 63d Cong., 2d sess.)

The Senate Committee on Interstate Commerce, while recognizing that in "the conduct of such special investigations as the commission may deem necessary, it is indispensable that it should have extensive powers of inquiry with the right to subpoena witnesses and require the production of books and papers," concluded that those conferred upon it were practically the same as were then possessed by the *Interstate Commerce Commission* and by the Bureau of Corporations. (Report Senate Committee on Interstate Commerce, No. 507, 63d Cong., 2d sess.)

The legislative history of the act may suggest that Congress did not intend that the powers of the commission to investigate should be confined to cases in which a complaint had been made, or might have been, but there is no reason to suppose that Congress thought that in other respects it was giving any authority which the *Interstate Commerce Commission* did not possess.

The precise question here to be decided is whether the statute confers upon the commission the right to inspect and copy the papers of any private corporation engaged in interstate or foreign commerce whenever, in the judgment of the commission, such inspection may furnish information of value to an inquiry it is making as to some economic or commercial problem and when it has no reason to believe that any violation of law has been committed. There can be no question of the timeliness of an investigation into the causes of the marked difference between the prices received by the grain grower and those paid by the ultimate consumer. Many of the farmers have long been convinced that in some way they were victimized by the railroads and the middlemen. The feeling of resentment has become so strong among them that in some of the wheat-growing States it has forced a realignment of political parties and has resulted in the demand for many laws and the enactment of a number of them as to the wisdom of which there is still grave difference of opinion.

The problems involved are of unusual perplexity. The causes of the evil most complained of are still obscure to many. Congress and the people need all the light they can get. The more thorough the inquiry the more valuable its results should be, provided the investigators do not gather so much material that they will be unable to see the woods for the trees.

That is one side of the question. There is another. The respondents in these cases are private corporations, by which various individuals more conveniently carry on that trade of corn merchants which antedates the beginning of recorded history. They have and exercise no franchises other than that of being corporations. They are not engaged in rendering public service, except in the sense that such service is rendered by everyone who follows any useful calling. To them the demand that they shall be compelled to let strangers, officials though they be, go through not only their books of account but their correspondence files as well seems outrageous. In their belief the gain to the public from anything which such an inquiry can probably or possibly reveal seems slight as compared with the annoyance and sense of wrong it will cause them. If they are right, the search and seizure asked for would be unreasonable, and therefore forbidden. The prohibition of unreasonable and the sanction of reasonable search and seizure is simply a practical compromise between two conflicting rights.

For upward of a century and a half there has been no doubt that general warrants are forbidden. No official can be given authority to rummage through the papers of an individual without the latter's consent in the hope that something or other may be discovered useful for some public purpose. A corpora-

tion's rights as against the sovereign which created it or permits it to do business within its borders are not, it is true, the same as those of a natural person. It is the creature of the State. He is not. The State may exclude it, while he may freely come in. As a condition of obtaining a charter, or under some circumstances of retaining it or doing business under it, it is probable the State might reserve a right to an unlimited inspection of all corporations' books and papers. But that question is not here presented. As was said in *Silverthorne Lumber Co. v. United States* (251 U. S. at 392), "The rights of a corporation against unlawful search and seizure are to be protected even if the same result might have been achieved in a lawful way." It is not necessary for the purposes of the instant case to inquire whether the United States may exercise over a corporation engaged in interstate or foreign commerce all the powers which are possessed by the State which chartered it. Even if it may, the wording of the statute, broad and general as in some respect it is, does not suggest that Congress intended to strike down as respects private corporations engaged in interstate commerce all the limitations which for 150 years or more had protected private papers from searches under general warrants. Nor is there anything in the legislative history of the act to suggest that the legislators supposed that they were taking so radical a step, or that they were raising a constitutional question of serious and far-reaching character. Unquestionably some of them wanted to authorize the compulsory examination of the papers of a corporation, although no complaint of a specific violation of law was pending against it or was in contemplation. Very possibly that much could be done, some of the things which were said in *Harriman v. Interstate Commerce Commerce Commission*, supra, to the contrary notwithstanding; *Smith v. Interstate Commerce Commission* (245 U. S. 44). But so far as concerns nonpublic service corporations, at least, the inquiry in which the commission is engaged, whatever it is, must be more or less definite and restricted in its character, so that the activities of its minor agents, to whom in practice the actual searching must necessarily be confined, can be kept within some bounds. Very possibly, to sustain any right of inspection and searching, it must also appear that there is some reasonable proportion between the public value of the information likely to be obtained and the private annoyance and irritation it will occasion.

With these general principles in mind, it will be noted that the act gives the commission power "to investigate the organization, business, conduct, practices, and management of any corporation engaged in" (interstate or foreign) "commerce and its relation to other corporations, and to individuals, associations, and partnerships," and that the right of access to papers and books is limited to those of a corporation being investigated or proceeded against. That much of a restriction the statute itself imposes. Whether it may, to that extent, authorize the examination of a private corporation's papers need not be here considered. These corporations are not being proceeded against. Are they, in the sense of the statute, being "investigated"? The investigation which the commission has in hand, and for which it is here seeking information, is, strictly speaking, not of them or of the scores or, perhaps, hundreds of other corporations whose papers it wishes to inspect, but of the conditions affecting one of the most important branches of our national trade. To make such an investigation scientifically complete, it may well be desirable to find out precisely how not only the corporations engaged in it conduct their business, but to obtain the same fullness of information concerning the individuals or firms concerned in it, but the portions of the statute with which we are now dealing give no authority to inspect papers of any natural person. Is there not a fair presumption that the investigation mentioned in the statute was one of another character than the one now being carried on, and that it was to be an inquiry into the way the particular corporation itself conducted its business, having as its substantial object the ascertainment of facts concerning that corporation, and as its ultimate end the possibility that in some way such corporate body might be required to mend its ways? If that be not the true construction of the act, and if it really means that whenever the commission thinks best to make an inquiry into the way in which some great department of commerce is carried on, it may send its employees into the office of every private corporation which does an interstate business in that line and empower them to go through the company's books, correspondence, and other papers. I am satisfied it goes beyond any power which Congress can confer, in this way at least.

It follows that the petitions for writs of mandamus must be denied.

United States of America, District of Maryland, to wit:

I, Arthur L. Spamer, clerk of the District Court of the United States for the District of Maryland, do hereby certify that the foregoing is a true copy of the opinion of the court, which was filed on the 20th day of November, 1922, in the therein entitled cases of Federal Trade Commission *v.* the Baltimore Grain Co.; Federal Trade Commission *v.* H. C. Jones Co. (Inc.); Federal Trade Commission *v.* Hammond, Snyder Co. (Inc.), No. 301 equity, in said district court.

In testimony whereof I hereunto set my hand and affix the seal of the said district court this 21st day of November, 1922.

[SEAL.]

ARTHUR L. SPAMER, *Clerk.*

EXHIBIT 16.

PROCEEDINGS PENDING JUNE 30, 1923.

Complaint No. 82.—Federal Trade Commission v. Photo-Engravers' Club of Chicago. Charge: Adopting a standard scale of uniform prices at which the members sell their products, with the intent of stifling and suppressing competition in the manufacture and sale of photoengravings, the respondent having entered into an agreement with the Chicago Photo-Engravers' Union No. 5, I. P. E. U., by the terms of which the respondent's members employ only union labor in their manufacturing plants and the members of the union do not accept employment from any manufacturing photoengraver not a member of the respondent club. In furtherance of such agreement the union has adopted a rule whereby union labor is to cease working in photoengraving plants which do not maintain such standard scale of prices, and has initiated a series of fines and threats to withdraw labor, thereby compelling members to maintain such prices against their will, all in alleged violation of section 5 of the Federal Trade Commission act. Status: In course of trial. (Consolidated with Doc. 928.)

Complaint No. 123.—Federal Trade Commission v. American Can Co. Charge: Price discrimination and price fixing on condition that the purchasers shall not use or deal in the products of competitors, the effect of which is to substantially lessen competition and to tend to create a monopoly in the tin-can business in alleged violation of sections 2 and 3 of the Clayton Act; stifling and suppressing competition in the manufacture and sale of tin cans by attempting to induce customers to enter into long-term contracts by giving certain customers more favorable terms than others in reference to allowances for leaky cans and storage privileges, by rebating if prices are lowered, and by other discriminations, in alleged violation of section 5 of the Federal Trade Commission act. Status: Awaiting examiner's findings.

Complaint No. 157.—Federal Trade Commission v. Saenger Amusement Co. Charge: Stifling and suppressing competition in the purchase and sale, lease, and exhibition of moving-picture films by forcing exchanges to accept its terms on threat to cause exhibitors to refuse to handle otherwise; causing contracts between exhibitors and exchanges to be broken by divers means and methods, including prior exhibition of films in neighboring theaters after "first exhibition" had been advertised by the other; threatening withdrawal of patronage if exchanges continued to supply exchanges; threatening curtailing supply unless exhibitors dealt with respondent; inducing employees of competitors to leave their employment, all in alleged violation of section 5 of the Federal Trade Commission act. Status: On suspense pending close of docket 835.

Complaint No. 163.—Federal Trade Commission v. Armour & Co. Charge: Stifling and suppressing competition in the manufacture and sale of dairy products by concealing its control of and affiliation with Beyer Bros. Co., a creamery company, while directing the efforts and business of said company; discriminating in prices paid for butterfat or cream; and by purchasing and offering to purchase butterfats or cream in certain localities at prices unwarranted by trade conditions and so high as to be prohibitive to small competitors, in alleged violation of section 5 of the Federal Trade Commission act. Status: At issue.

Complaint No. 168.—Federal Trade Commission v. The National Wholesale Druggists' Association et al. Charge: Engaging in a combination or conspiracy among themselves with the intent, purpose, and effect of discouraging, stifling, and suppressing competition in the wholesale drug trade and of unfairly hampering and obstructing certain of their competitors by inducing or compelling manufacturers to refuse to recognize competitors as jobbers, and as entitled to the benefits such competitors as jobbers would receive by means of oral and written notices to manufacturers to the effect that certain competitors not eligible to membership in the association were not entitled to recognition as

jobbers; the appointment of committees to confer with manufacturers to the end that they adopt sales methods in harmony with the policies of the association, written and oral notices by the secretary of the association to manufacturers to the effect that competitors are selling below the manufacturers' established resale price, or that such competitors are persistent price cutters; the compilation and distribution among manufacturers and wholesalers of lists of so-called legitimate jobbers, and by bringing influence to bear on various local associations of drug jobbers and wholesalers to adopt policies in harmony with the policies of the association, in alleged violation of section 5 of the Federal Trade Commission act. Status: At issue.

Complaint No. 266.—Federal Trade Commission v. Pictorial Review Co. Charge: Using unfair methods of competition in the sale of paper dress patterns, consisting of selling patterns to dealers under a contract permitting the dealer to return all unsold patterns on the termination of contract at three-fourths of the cost thereof, upon the condition that during the continuance of such contracts they have sold no patterns except those manufactured by respondent, or shall have sold such patterns at the prices fixed by respondent, in alleged violation of section 5 of the Federal Trade Commission act; selling and making contracts for sale of its paper dress patterns on the condition, agreement, or understanding that the purchasers thereof shall not use or deal in the patterns of competitors, the effect of which is to substantially lessen competition or tend to create a monopoly in violation of section 3 of the Clayton Act. Status: On suspense, awaiting the outcome of the Butterlick Co. case. (Doc. 594.)

Complaint No. 303.—Federal Trade Commission v. Utah-Idaho Sugar Co., Amalgamated Sugar Co., E. R. Wooley, A. P. Cooper, and E. F. Cullen. Charge: Using unfair methods of competition in connection with the manufacture and sale of beet sugar, consisting in the circulation of false and misleading reports concerning the business, methods, and financial standing of competitors and the inability of competitors to produce sugar, due to the alleged fact that all the producing territory is controlled by respondent; making long-term contracts with growers in territories where competitors were intending to erect factories; causing railroads to delay building tracks and other facilities for competitors, and causing banks to withhold credit; spying upon the private and business affairs of competitors; establishing factories and buying up supplies in territories about to be occupied by competitors; preventing manufacturers of machinery from supplying competitors; secretly paying others to institute litigation against competitors and furnishing money to secret agents for the purpose of acquiring the controlling interest in the business of competitors, in alleged violation of section 5 of the Federal Trade Commission act. Status: This proceeding is now before the commission for final determination.

Complaint No. 424.—Federal Trade Commission v. Lautz Bros. & Co. Charge: Using unfair methods of competition in the sale of soap and washing powders by guaranteeing its jobbers in the wholesale grocery trade against the decline in price of goods purchased and not resold by such customers at the time of any subsequent decline in the respondent's list price thereof; and in the event of decline in price of goods giving to such jobbers rebates equal to the difference between the purchase price of such products as were undisposed of and respondent's lower list price therefor subsequently made, with the effect of obtaining for respondent an unfair and undue advantage over competitors who do not follow this practice; relieving respondent's jobbers from risk of loss and encouraging such jobbers to hold in stock excessively large quantities of respondent's product for the purpose of realizing a speculative profit thereby and deterring respondent from reducing list prices of its product in accordance with reductions in cost of manufacturing, in alleged violation of section 5 of the Federal Trade Commission act. Status: Pending before commission.

Complaint No. 425.—Federal Trade Commission v. Fels & Co. Charge: Using unfair methods of competition in the sale of soap and soap powders. (Ante, complaint No. 424.) Status: (Ante, complaint No. 424.)

Complaint No. 426.—Federal Trade Commission v. The Globe Soap Co. Charge: Using unfair methods of competition in the sale of soap, soap powders, and other cleansing compounds. (Ante, complaint No. 424.) Status: (Ante, complaint No. 424.)

Complaint No. 427.—Federal Trade Commission v. B. T. Babbitt (Inc.). Charge: Using unfair methods of competition in the sale of soap, soap powders, and other cleansing compounds. (Ante, complaint No. 424.) Status: (Ante, complaint No. 424.)

Complaint No. 428.—Federal Trade Commission v. Curtice Bros. Co. Charge: Using unfair methods of competition in the sale of canned food products. (Ante, complaint No. 424.) Status: At issue.

Complaint No. 429.—Federal Trade Commission v. Joseph Campbell Co. Charge: Using unfair methods of competition in the sale of canned soups. (Ante, complaint No. 424.) Status: At issue.

Complaint No. 446.—Federal Trade Commission v. Van Camp Packing Co. and Van Camp Products Co. Charge: Using unfair methods of competition in the sale of canned food products. (Ante, complaint No. 424.) Status: At issue.

Complaint No. 449.—Federal Trade Commission v. Wilson & Co. (Inc.). Charge: That the respondent purchased all the property of the Morton Gregson Co., a Nebraska corporation, theretofore engaged in the same line of business as respondent and in active competition with it, and thereafter organized under the laws of the State of Delaware a subsidiary corporation called the "Morton Gregson Co.," which proceeded to take over the property thus purchased and to operate the business of the said Nebraska corporation, with the effect of eliminating competition previously existing between Morton Gregson Co., the Nebraska corporation, and the respondent, in alleged violation of section 5 of the Federal Trade Commission act and section 7 of the Clayton Act. Status: Awaiting answer to third amended complaint.

Complaint No. 450.—Federal Trade Commission v. Wilson & Co. (Inc.). Charge: That the respondent acquired the whole of the common or voting stock of the Paul O. Reyman Co., a corporation, the effect of such acquisition being to enable respondent to completely dominate the business and policy of said Paul O. Reyman Co., to restrain competition between said respondent and said Paul O. Reyman Co., and to tend to create a monopoly in the sale of meats and like products, in alleged violation of section 5 of the Federal Trade Commission act and section 7 of the Clayton Act. Status: Awaiting examiner's findings.

Complaint No. 451.—Federal Trade Commission v. The Cudahy Packing Co. Charge: That respondent acquired 55 per cent of the shares of capital stock of the Nagle Packing Co., a competitor; 95 per cent of the capital stock of the D. E. Wood Butter Co., a competitor; and that a subsidiary corporation, the Dow Cheese Co., purchased the business and good will of a competitor, the A. C. Dow Co., with the effect that respondent has dominated the business of the Nagle Packing Co. and the D. E. Wood Butter Co., and has eliminated competition theretofore existing between the three above-mentioned companies and the respondent, in alleged violation of section 5 of the Federal Trade Commission act and section 7 of the Clayton Act. Status: Dismissed in part and in course of trial as to remainder.

Complaint No. 452.—Federal Trade Commission v. Morris & Co. Charge: That the respondent acquired approximately 75 per cent of the capital stock of the Crescent City Stock Yard & Slaughter House Co., a competitor; that it acquired stock in the Bluefield Produce & Provision Co.; that it acquired the whole of the capital stock of the Holland Butterline Co., and held the same out to the public as wholly independent and without connection with respondent; that it acquired 68 per cent of the common stock of the Providence Churning Co., a competitor, and organized a corporation to take over and succeed to the business and property of said Providence Churning Co.; that it acquired one-half of the entire capital stock of the Eskerson Co., a competitor; that it acquired one-half of the capital stock of the Jacob Marty Co., a competitor; that it acquired one-half of the capital stock of the C. A. Straubel Co., a competitor; and acquired \$64,300 of the capital stock of the Sherman, White Co., whose entire stock was \$123,700; and that the result of such acquisition is the domination by respondent of some of the above-mentioned companies, the elimination of competition theretofore existing between the above-mentioned companies and the respondent, and the creation of conditions which tend to create a monopoly, in alleged violation of section 5 of the Federal Trade Commission act and section 7 of the Clayton Act. Status: In course of trial.

Complaint No. 454.—Federal Trade Commission v. Swift & Co., and United Dressed Beef Co. Charge: That the respondent caused its subsidiary, United Dressed Beef Co., to acquire all of the capital stock of J. J. Harrington & Co. (Inc.), which acquisition resulted in the control by Swift & Co. of the business theretofore conducted and controlled by said J. J. Harrington & Co. (Inc.), elimination of competition between respondents, Swift & Co. and United Dressed Beef Co. and J. J. Harrington & Co. (Inc.), and a tendency to create for respondent, Swift & Co., a monopoly in alleged violation of section 5 of the

Federal Trade Commission act and section 7 of the Clayton Act. Status: Awaiting examiner's findings.

Complaint No. 455.—Federal Trade Commission *v.* Armour & Co. Charge: That respondent acquired three-fifths of the capital stock of Harold L. Brown Co. (Inc.), a competitor, which company had previously acquired the capital stock and business of Beyer Bros. Commission Co., and also the capital stock and business of Beyer Bros. Co.; that it acquired as vendee and pledgee a controlling amount of the capital stock of the Eau Claire Creamery Co.; that it acquired through its agents 503 of the 1,000 shares of the capital stock of the Loudon Packing Co., an Ohio corporation, which corporation transferred all its business and property to the Loudon Packing Co., a Delaware corporation, in consideration of all of the stock of the Delaware corporation, consisting of 1,000 shares, 503 of which are held by agents of respondent in trust for respondent; that it acquired one-half of the capital stock of the A. S. Kintmoth Produce Co.; that it acquired the entire capital stock of the Pacific Creamery, which company the respondent held out and advertised as wholly independent without connection with respondent; and acquired 501 shares of the capital stock of Smith, Richardson & Conroy, a Florida corporation, and that the result of such acquisitions by respondent is the domination by respondent of the business of some of the above-mentioned companies, the elimination of competition between the above-mentioned companies, and the creation of conditions which tend to create a monopoly, in alleged violation of section 5 of the Federal Trade Commission act and section 7 of the Clayton Act. Status: Commission's testimony in chief completed.

Complaint No. 457.—Federal Trade Commission *v.* Western Meat Co. and Nevada Packing Co. Charge: That respondents have violated section 5 of the Federal Trade Commission act and section 8 of the Clayton Act by having F. L. Washburn, a director of both the Western Meat Co. and the Nevada Packing Co. (between which companies competition existed), and illegally acquiring, by the Western Meat Co., the capital stock of the Nevada Packing Co., which acquisition suspended between respondents competition which theretofore existed between them and tended to create a monopoly. Status: Held pending action of respondent in docket 456, in which case the commission entered its order to divest stock on February 2, 1923.

Complaint No. 459.—Federal Trade Commission *v.* United Typothetæ of America, Benjamin P. Moulton, Arthur E. Southworth, Charles L. Kingsley, George H. Gardner, E. H. James, Fred W. Gage, and Joseph A. Borden. Charge: Using unfair methods of competition by inaugurating a campaign known as the "three-year plan" for the purpose of collecting assessments from manufacturers and merchants who sell paper, printing presses, type, ink, and other supplies to employing printers and other associations allied to the printing industry, the money to be used mainly for the purpose of inducing employing printers to use a uniform system of cost accounting and a standard price list compiled by the respondent; using coercive methods to obtain subscriptions to the "three-year-plan" fund; adopting through its "trade-matter committee" a practice of attempting to control the matter of terms on which manufacturers of printing presses, etc., sell their output to printing establishments, and attempting to have such manufacturers refuse to place any of their presses, etc., in any printing establishment until a cash payment equal to 25 per cent of the amount of the total purchase price be paid; urging printers to adopt a "standard cost system" and "standard price list," for the purpose of establishing a uniform scale of prices throughout the printing industry, in alleged violation of section 5 of the Federal Trade Commission act. Status: Before commission for final determination.

Complaint No. 472.—Federal Trade Commission *v.* Pioneer Paper Co. Charge: Using unfair methods of competition by falsely advertising its products as "rubber," and using the terms "one ply," "two ply," and "three ply," to designate and describe the different degrees of thickness of its product, when the different degrees of thickness consist of but one layer or ply, with the effect of misleading and deceiving the public, and giving the respondent's product an undue preference over products of competitors who do not use such methods, in alleged violation of section 5 of the Federal Trade Commission act. Status of dockets 472 to 490, inclusive: Stipulations have been signed in 12 of these cases. Docket 485 is in course of trial. Stipulations in the six remaining cases will be executed after docket 485 is tried. All were formerly on suspense awaiting decision in the Winsted case.

Complaint No. 473.—Federal Trade Commission *v.* Western Elasterite Roofing Co. Charge: (Ante, complaint No. 472.) Status: (Ante, complaint No. 472.)

Complaint No. 474.—Federal Trade Commission *v.* Sifo Products Co. Charge: (Ante, complaint No. 472.) Status: (Ante, complaint No. 472.)

Complaint No. 475.—Federal Trade Commission *v.* Oertell Roofing Manufacturing Co. Charge: (Ante, complaint No. 472.) Status: (Ante, complaint No. 472.)

Complaint No. 476.—Federal Trade Commission *v.* Stowell Manufacturing Co. Charge: (Ante, complaint No. 472.) Status: (Ante, complaint No. 472.)

Complaint No. 477.—Federal Trade Commission *v.* Beckman-Dawson Co. Charge: (Ante, complaint No. 472.) Status: (Ante, complaint No. 472.)

Complaint No. 478.—Federal Trade Commission *v.* Durable Roofing Manufacturing Co. Charge: (Ante, complaint No. 472.) Status: (Ante, complaint No. 472.)

Complaint No. 479.—Federal Trade Commission *v.* McHenry-Millhouse Manufacturing Co. Charge: (Ante, complaint No. 472.) Status: (Ante, complaint No. 472.)

Complaint No. 480.—Federal Trade Commission *v.* International Roofing Manufacturing Co. Charge: (Ante, complaint No. 472.) Status: (Ante, complaint No. 472.)

Complaint No. 481.—Federal Trade Commission *v.* Amalgamated Roofing Co. Charge: (Ante, complaint No. 472.) Status: (Ante, complaint No. 472.)

Complaint No. 482.—Federal Trade Commission *v.* The Chatfield Manufacturing Co. Charge: (Ante, complaint No. 472.) Status: (Ante, complaint No. 472.)

Complaint No. 483.—Federal Trade Commission *v.* H. W. Johns-Manville Co. Charge: (Ante, complaint No. 472.) Status: (Ante, complaint No. 472.)

Complaint No. 484.—Federal Trade Commission *v.* Keystone Roofing Manufacturing Co. Charge: (Ante, complaint No. 472.) Status: (Ante, complaint No. 472.)

Complaint No. 485.—Federal Trade Commission *v.* The Barrett Co. Charge: (Ante, complaint No. 472.) Status: (Ante, complaint No. 472.)

Complaint No. 486.—Federal Trade Commission *v.* Patent Vulcanite Roofing Co. Charge: (Ante, complaint No. 472.) Status: (Ante, complaint No. 472.)

Complaint No. 487.—Federal Trade Commission *v.* Philip Carey Manufacturing Co. Charge: (Ante, complaint No. 472.) Status: (Ante, complaint No. 472.)

Complaint No. 488.—Federal Trade Commission *v.* H. F. Watson Co. Charge: (Ante, complaint No. 472.) Status: (Ante, complaint No. 472.)

Complaint No. 489.—Federal Trade Commission *v.* The Paraffine Companies. Charge: (Ante, complaint No. 472.) Status: (Ante, complaint No. 472.)

Complaint No. 490.—Federal Trade Commission *v.* Sylvester L. Weaver, trading as the Weaver Roof Co. Charge: (Ante, complaint No. 472.) Status: (Ante, complaint No. 472.)

Complaint No. 522.—Federal Trade Commission *v.* Rub-No-More Co. Charge: Using unfair competition in the sale of soaps. Status: (Ante, complaint No. 424.)

Complaint No. 531.—Federal Trade Commission *v.* Armour & Co. Charge. Organizing apparently independent companies for the purpose of taking over the business and property of the Lookout Refining Co. and the Chattanooga Oxygen Gas Co. and the Harris Tannery Co., competitors of respondent, the capital stock of the independent companies being held by officers and employees or agents of respondents with the purpose or effect of restraining and eliminating competition and tending to create a monopoly, in alleged violation of section 5 of the Federal Trade Commission act and section 7 of the Clayton Act. Status: At issue.

Complaint No. 540.—Federal Trade Commission *v.* Royal Baking Powder Co. Charge: Using unfair methods of competition by unfairly representing and charging that its competitors' products contain alum, to wit, sodium aluminum sulphate (SaS), and are harmful, unhealthful, deleterious, and dangerous to users and consumers of such baking powders, in alleged violation of section 5 of the Federal Trade Commission act. Status: Preparing for trial.

Complaint No. 549.—Federal Trade Commission *v.* Cement Securities Co. Charge: Using unfair methods of competition by purchasing the whole of the stock and share capital of the Oklahoma Portland Cement Co., a competitor; purchasing and acquiring \$392,300 of preferred stock of a total of \$400,000, and \$195,750 of the common stock of a total of \$199,750 of the United States Portland Cement Co.; and purchasing and acquiring all of the preferred stock of the Nebraska Cement Co., in alleged violation of section 5 of the Federal Trade

Commission act and section 7 of the Clayton Act. Status: Suspended, pending action by the Department of Justice.

Complaint No. 551.—Federal Trade Commission v. Armour & Co. Charge: Using unfair methods of competition by adopting and maintaining a practice of offering, giving, and allowing certain benefits and advantages to purchasers in the way of free advertising, services of specialty salesmen, and payment of dealers' license fee, on the condition that such purchasers agree to purchase all or a large percentage of their supplies of butterine and oleomargarine from the respondent, in alleged violation of section 5 of the Federal Trade Commission act; and entering into contracts with a large number of purchasers of its said products at prices, in quantities, and for periods therein specified upon the condition, agreement, or understanding in the case of each contract that the purchaser named therein shall purchase all or a large percentage of the oleomargarine and butterine needed by said purchaser of the respondent. In alleged violation of section 3 of the Clayton act. Status: On suspense pending final decision of courts in docket 550. (Federal Trade Commission v. B. S. Pearsall Butter Co. now awaiting decision by the Circuit Court of Appeals for the Seventh Circuit.)

Complaint No. 552.—Federal Trade Commission v. Swift & Co. Charge: (Ante, complaint No. 551.) Status: (Ante, complaint No. 551.)

Complaint No. 553.—Federal Trade Commission v. Downey-Farrel Co. Charge: (Ante, complaint No. 551.) Status: (Ante, complaint No. 551.)

Complaint No. 554.—Federal Trade Commission v. Wm. J. Moxley (Inc.). Charge: (Ante, complaint No. 551.) Status: (Ante, complaint No. 551.)

Complaint No. 555.—Federal Trade Commission v. The Ed. S. Vall Butterine Co. Charge: (Ante, complaint No. 551.) Status: (Ante, complaint No. 551.)

Complaint No. 559.—Federal Trade Commission v. Troco Nut Butter Co. Charge: (Ante, complaint No. 551.) Status: (Ante, complaint No. 551.)

Complaint No. 560.—Federal Trade Commission v. Friedman Manufacturing Co. Charge: (Ante, complaint No. 551.) Status: (Ante, complaint No. 551.)

Complaint No. 573.—Federal Trade Commission v. Owens Bottle Co. Charge: That respondents have violated section 3 of the Clayton Act by entering into licensing agreements for the use of its glass-blowing machines with the principal manufacturers in the United States of glass bottles, jars, and other glass products, upon the express condition, agreement, and understanding in each licensing agreement that the licensee named therein shall not use respondent's machine in connection with the machine or devices of competitors, with the effect of excluding and debarring competitors of respondent from securing sales of their machines or devices in commerce and lessening competition therein; that respondent has violated section 7 of the Clayton Act by acquiring 4,836 shares of the capital stock of the Whitney Glass Works, a competitor; the whole of the capital stock of the American Bottle Co., a competitor; and the whole of the capital stock of the Graham Glass Co., with the effect of eliminating competition in sections and communities theretofore served by said companies; and that respondents have violated section 8 of said Clayton Act by having L. S. Stoehr a director of both the American Bottle Co. and the Graham Glass Co. since respondent acquired the capital stock of said companies. Status: Additional testimony to be taken about July 23, 1923.

Complaint No. 578.—Federal Trade Commission v. Swift & Co., Libby, McNeill & Libby (of Illinois) and Libby, McNeill & Libby (Ltd.) (of Honolulu). Charge: That the respondent, Libby, McNeill & Libby, in effect a subsidiary of the respondent, Swift & Co., acquired all of the share capital of the Thomas Pineapple Co.; the share, capital, property, and business of the Honolulu Pineapple Co.; Kahaluu Pineapple & Range Co. (Ltd.); and Koolau Fruit Co. (Ltd.), with the effect of substantially lessening competition in the sale of pineapples in the Territory of Hawaii and creating a condition which tended to create for respondents a monopoly in the growing and sale of pineapples, in alleged violation of section 7 of the Clayton Act and section 5 of the Federal Trade Commission act. Status: On suspense pending court decisions in dockets Nos. 351 and 453, being the commission's proceedings against Armour & Co. and Swift & Co., respectively, both of which are on appeal in the United States Circuit Court of Appeals for the seventh circuit.

Complaint No. 591.—Federal Trade Commission v. One-piece Bifocal Lens Co., a corporation. Charge: Using unfair methods of competition by adopting an elaborate system of licensing and price fixing by which respondent's product is manufactured in part by certain licensee manufacturers to a specified degree of utility, and thereupon sold by such manufacturing licensee to other finishing

or retailing licensees who complete the product and sell and distribute the same, the price or prices thereof being at all stages in the progress of the article prescribed and rigidly maintained by the express terms and conditions of its licensing agreements and by the refusal of respondent to sell to those who do not maintain such resale prices, in alleged violation of section 5 of the Federal Trade Commission act; and by agreements with certain of its so-called licensees, upon the agreement or understanding that such licensee shall not use or deal in the product of a competitor or competitors of respondent with the effect of substantially lessening competition or tending to create a monopoly, in alleged violation of section 3 of the Clayton Act. Status: Awaiting examiner's findings.

Complaint No. 594.—Federal Trade Commission v. Butterick Co., Federal Publishing Co., Standard Fashion Co., Butterick Publishing Co., New Idea Pattern Co., and Designer Publishing Co. Charges: Using unfair methods of competition by entering into contracts with approximately 20,000 retail dry goods dealers whereby its paper dress patterns are to be resold at certain prices fixed and established by respondents, and refusing to sell to those who do not maintain such resale prices, in alleged violation of section 5 of the Federal Trade Commission act; and entering into contracts whereby its dealers are prohibited from dealing in patterns manufactured by competitors of respondents, and enforcing such contracts by refusal to sell to such dealers who do not maintain such agreements and by threats of suits and institution of suits for damages, in alleged violation of section 3 of the Clayton Act. Status: This proceeding is now before the commission for final determination.

Complaint No. 626.—Federal Trade Commission v. Gulf Ship Chandlery Co. Charge: Unfair methods of competition in that the respondent, engaged in the sale of ship chandlery, etc. has given valuable gifts, cash commissions, and gratuities to captains and other officers of ships to induce them to purchase ship chandlery and supplies from the respondent, in alleged violation of section 5 of the Federal Trade Commission act. Status: Suspended because of the action of the Supreme Court of the United States in denying petitions for writs of certiorari in the Winslow and Norden cases. (Dockets 458 and 614.)

Complaint No. 648.—Federal Trade Commission v. Alabama Dry Dock & Ship Building Co. (Inc). Charge: Unfair methods of competition in that the respondent, engaged in the business of repairing ships and furnishing repair parts, has given to captains and other officers and employees of vessels valuable gifts, cash commissions, and gratuities as an inducement to have the ships operated by them for the owners thereof repaired by the respondent. In alleged violation of section 5 of the Federal Trade Commission act. Status: (Ante, complaint No. 626.)

Complaint No. 694.—Federal Trade Commission v. The Chamber of Commerce of Minneapolis; the officers, board of directors, and members of the Chamber of Commerce of Minneapolis; Manager Publishing Co.; John H. Adams; and John F. Fleming. Charges: Using unfair methods of competition by engaging in a confederation and conspiracy to annoy and embarrass and destroy the business of the Equity Cooperative Exchange, a competitor of the respondent chamber of commerce and its members in the selling, buying, and distribution of grain, by (a) the publication of false and misleading statements concerning the said cooperative exchange, particularly in the publications of the respondent publishing company; (b) the instigation and preparation for trial of certain litigation; (c) refusal to make available to said cooperative exchange and its members the telegraphic market quotation service supplied by the respondents; (d) the boycott of and persistent refusal to buy grain from the said cooperative exchange; (e) the suppression of competition among members of the respondent chamber of commerce and discrimination against nonmembers; and (f) by the means of contracts binding country shippers to ship all or a greater part of their grain to the respondent chamber of commerce members, in alleged violation of section 5 of the Federal Trade Commission act. Status: Before commission for final determination.

Complaint No. 705.—Federal Trade Commission v. S. Davidson Co., D. R. Davidson, S. Davidson, and M. A. Davidson. Charge: Using unfair methods of competition in the sale of ship chandlery by giving expensive gifts and large sums of money in the form of cash commissions to officers and employees of ships to induce them to purchase ship-chandlery supplies from the respondent, in alleged violation of section 5 of the Federal Trade Commission act. Status: (Ante, complaint No. 626.)

Complaint No. 726.—Federal Trade Commission *v.* Constantine Calevas, Joseph Garcia, and E. A. Piller, partners, styling themselves Garcia, Piller & Co., and Calevas Bros. Charge: Using unfair methods of competition in the sale of ship chandlery, including stewards' supplies, deck, engine, and cabin supplies, by giving to captains and other officers of vessels valuable gifts, cash commissions, and gratuities to induce them to purchase supplies from the respondents, in alleged violation of section 5 of the Federal Trade Commission act. Status: (Ante, complaint No. 626.)

Complaint No. 723.—Federal Trade Commission *v.* American Safety Razor Corporation. Charge: Using unfair methods of competition by the use of advertising matter containing false and misleading statements concerning the quality of material and workmanship entering into shaving brushes sold by it and by placing deceptive labels on the containers of such brushes with the effect of misleading and deceiving the purchasing public. In alleged violation of section 5 of the Federal Trade Commission act. Status: Ready for oral argument.

Complaint No. 740.—Federal Trade Commission *v.* Prichard & Constance (Inc.). Charge: Using unfair methods of competition in the manufacture of cosmetics and toilet articles by adopting and maintaining a system of fixing the resale price of its products and refusing to sell until prospective customers have given written assurance that the resale prices fixed by respondent will be maintained, in alleged violation of section 5 of the Federal Trade Commission act. Status: Before commission for final determination.

Complaint No. 742.—Federal Trade Commission *v.* F. B. Dunn, R. T. Harris, L. G. Wright, T. E. Lester, S. H. Miles, George F. Burton, F. L. McCoy, and J. H. Darby. Charge: Using unfair methods of competition in the sale of the capital stock of the Congressional Oil Co. by the use of said company as a device for the disposition of certain oil leases at exclusive and fictitious prices; by published false and misleading statements relative to the company's property, earnings, and prospects, and by deceiving the purchasing public by numerous fraudulent schemes of promotion, in alleged violation of section 5 of the Federal Trade Commission act. Status: Awaiting briefs.

Complaint No. 745.—Federal Trade Commission *v.* Austin, Nichols & Co. (Inc.) (Virginia). Charge: That Austin, Nichols & Co. (Inc.) entered into an agreement with Wilson & Co. (Inc.) for the acquisition of the Wilson & Co. (Whiteland, Ind.) vegetable-canning plant and control of the Fame Canning Co. and Wilson Fisheries Co. in anticipation of a consent decree resulting from the prosecution of a suit in equity brought by the Attorney General of the United States, by which decree Wilson & Co. (Inc.) were perpetually enjoined from engaging in business unrelated to the meat-packing industry. The respondent, incorporated to effect the consolidation of all the properties, now holds control thereof, and is charged with the suppressing of competition, tending to create a monopoly in the grocery and food-product business, in alleged violation of section 7 of the Clayton Act. Status: Further testimony to be taken.

Complaint No. 746.—Federal Trade Commission *v.* W. J. Chapman. Charge: Using unfair methods of competition by offering and giving to captains of vessels cash gratuities to induce them to purchase ship chandlery, steward's supplies, deck, engine, and cabin supplies from the respondent, in alleged violation of section 5 of the Federal Trade Commission act. Status: (Ante, complaint No. 626.)

Complaint No. 760.—Federal Trade Commission *v.* United States Steel Corporation, American Bridge Co., American Sheet & Tin Plate Co., Carnegie Steel Co., National Tube Co., American Steel & Wire Co., Illinois Steel Co., Minnesota Steel Co., Clairton Steel Co., Union Steel Co., the Lorain Steel Co., and the Tennessee Coal, Iron & Railroad Co. Charge: Using unfair methods of competition and discrimination in prices, in that the United States Steel Corporation and its subsidiaries in fixing the price of steel which is made and used in such centers as Chicago, Duluth, and Birmingham upon the price f. o. b. mill at Pittsburgh, plus the freight rates from Pittsburgh to such centers, operates as a discrimination in price in favor of Pittsburgh fabricators as against fabricators in Chicago, Duluth, and Birmingham districts, in violation of section 2 of the Clayton Act and section 5 of the Federal Trade Commission act. Status: Testimony being taken.

Complaint No. 767.—Federal Trade Commission *v.* Wichita-Engle Oil Co., E. U. Engle, C. T. Engle, and W. S. Pratt. Charge: Using unfair methods of

competition in the sale of the capital stock of the respondent company by the use of false and misleading statements respecting the location, owners, productivity, and value of respondent's oil interests, with the effect of misleading and deceiving the purchasing public, in alleged violation of section 5 of the Federal Trade Commission act. Status: Before commission for final determination.

Complaint No. 775.—Federal Trade Commission *v.* Swift & Co., National Leather Co. Charge: That the respondent Swift & Co. by reason of its acquisition of a controlling interest in England, Walton & Co. (Inc.) and its subsidiaries and the subsequent organization by Swift & Co. of respondent National Leather Co. and the transfer thereto of the Swift & Co. interest in England, Walton & Co., and in numerous other corporations engaged in tanning and the manufacture and sale of leather and by-products, the corporate stock of which had been acquired by Swift & Co., has been for the purpose and effect of substantially lessening competition and of creating a combination in restraint of trade in the manufacture and sale of leather, in alleged violation of section 5 of the Federal Trade Commission act and section 7 of the Clayton Act. Status: At issue.

Complaint No. 776.—Federal Trade Commission *v.* Armstrong Paint & Varnish Works, United States Roofing Paper & Paint Factories (Inc.), and Abe Hochman and Harry Goldfish, partners doing business under the trade name of Army & Navy Stores. Charge: Using unfair methods of competition by offering for sale paints, varnishes, and roofing paper, labeled "U. S." with a reproduction of a picture of Uncle Sam, with the purpose and effect of misleading the purchasing public into the belief that the goods were made for the Army or Navy, or according to Government specifications, and by labeling its product in such manner as to indicate they were manufactured by the respondent United States Roofing Paper & Paint Factories (Inc.) and by the use of numerous false and misleading statements by the respondent, Hochman and Goldfish, as to the value and quality of the paints, varnishes, and roofing paper offered for sale, with the effect of misleading and deceiving the purchasing public, in alleged violation of section 5 of the Federal Trade Commission act. Status: Awaiting respondent's brief.

Complaint No. 778.—Federal Trade Commission *v.* Tide Water Oil Co., and Tide Water Oil Sales Corporation. Charge: That the respondents, by maintaining a system of rebates and discounts based and graduated on the separate purchases of their petroleum products by dealers during a definite period and on purchases of carload lots thereof, thereby causing the purchasers to confine their purchases to the respondents, have indulged in the practice which tends to substantially lessen competition and create a monopoly in alleged violation of section 5 of the Federal Trade Commission act and section 2 of the Clayton Act. Status: At issue.

Complaint No. 785.—Federal Trade Commission *v.* J. H. Crites, John G. Dee, W. J. Ross, M. W. McQuaid, and M. L. Chandler. Charge: Using unfair methods of competition in the sale of share stock of the O-tex Production Co., by the use of numerous false and misleading statements as to the said company's drilling operations and the productivity of its properties, to the effect of misleading and deceiving the purchasing public, in alleged violation of section 5 of the Federal Trade Commission act. Status: Awaiting examiner's findings.

Complaint No. 786.—Federal Trade Commission *v.* Kelly Dry Dock & Ship Building Co. (Inc.). Charge: Using unfair methods of competition by offering and giving to officers and other employees of vessels, without the knowledge and consent of their employers, cash commissions and gratuities as an inducement to have their vessels repaired and repair parts furnished by the respondent, in alleged violation of section 5 of the Federal Trade Commission act. Status: (Ante, complaint No. 626.)

Complaint No. 793.—Federal Trade Commission *v.* the Q. R. S. Music Co. Charge: Unfair competition in the manufacture and sale of rolls for player pianos, in establishing and announcing fixed resale prices and stating that it will refuse to sell, and in fact has refused to sell, to those who fail to maintain such prices, in alleged violation of section 5 of the Federal Trade Commission act; further, because of contracts entered into with dealers under the terms of which such dealers to the extent of their trade in player rolls are to handle respondent's products only, the effect is to substantially lessen competi-

tion and tend to create a monopoly, in alleged violation of section 3 of the Clayton Act. Status: Awaiting examiner's findings.

Complaint No. 798.—Federal Trade Commission *v.* Osa J. Smythe and S. W. Levy, partners, styling themselves Smythe & Levy. Charge: Unfair methods of competition in that the respondent, engaged in the sale of ship chandlery, has given cash commissions and gratuities of various kinds to captains, officers, and employees of ships to induce them to purchase ship chandlery supplies from the respondents, all in alleged violation of section 5 of the Federal Trade Commission act. Status: This proceeding is now before the commission for final determination.

Complaint No. 801.—Federal Trade Commission *v.* Adolphe Schwobe (Inc.). Charge: Unfair methods of competition in taking advantage of the American practice of grading watches by the number of jewels in the movement, by importing Swiss lever watch movements of a low grade but containing 15 to 23 jewels, and after casing said movements, selling the watches to retailers with the number of jewels conspicuously marked on the works or dial or both, thereby enabling said retailers to deceive the purchasing public as to the value and quality of said watches and injuring the manufacturers of and dealers in Swiss and American-made watches, in alleged violation of section 5 of the Federal Trade Commission act. Status: Negotiations for stipulation proceeding.

Complaint No. 804.—Federal Trade Commission *v.* Maritime Co. (Inc.). Charge: Unfair methods of competition in offering and giving to captains, engineers, and other officers of vessels, without the knowledge of their employers, as an inducement to have their vessels cleaned, painted, and repaired by the respondent, lavish entertainment, including automobile, dinner, and theater parties, lodging accommodations, and for other forms of entertainment, are in alleged violation of section 5 of the Federal Trade Commission act. Status: (Ante, complaint 626.)

Complaint No. 807.—Federal Trade Commission *v.* Athol Manufacturing Co. Charge: The respondent, which is engaged in the manufacture of "Atholeather," a cotton fabric product finished so as to resemble genuine leather, indicates by the use of the name of "Atholeather" that its product consists of or contains leather, thereby tending to confuse the purchasing public, in alleged violation of section 5 of the Federal Trade Commission act. Status: At issue.

Complaint No. 821.—Federal Trade Commission *v.* Liberty Iron & Wire Company (Inc.). Charge: Unfair methods of competition in offering and giving to captains, engineers, and other officers of vessels, without the knowledge of their employers, as an inducement to have their vessels repaired and repair parts furnished by the respondent, money and lavish entertainment including automobile parties, dinner and theater parties, lodging accommodations, and forms of amusement, in alleged violation of section 5 of the Federal Trade Commission act. Status: (Ante, complaint No. 626.)

Complaint No. 825.—Federal Trade Commission *v.* J. Berman and B. Brenner, partners, styling themselves Berman & Brenner. Charge: Unfair methods of competition in that the respondents, engaged in New York, N. Y., in the manufacture and sale of clothing for men and boys, label their clothes to indicate Rochester, N. Y., manufacture, thereby misleading the purchasing public into the belief that the respondents' clothing is of the quality produced in Rochester and under Rochester manufacturing conditions, as extensively advertised by the chamber of commerce and other business associations of that city, in alleged violation of section 5 of the Federal Trade Commission act. Status: Suspended pending disposition of other similar cases.

Complaint No. 826.—Federal Trade Commission *v.* Phillip Moskowitz, trading under the name and style of Rochester Clothing Co. Charge: Unfair methods of competition in that the respondent, engaged in New York, N. Y., in the manufacture and sale of clothing for men and boys, labels his clothes "Trade-Mark, Rochester Clothing Co., for particular men," with the abbreviation "Co." inconspicuously placed, thereby misleading the purchasing public into the belief that the respondent's clothing is of the quality produced in Rochester and under Rochester manufacturing conditions as extensively advertised by the chamber of commerce and other business associations of that city, in alleged violation of section 5 of the Federal Trade Commission act. Status: This proceeding is now before the commission for final determination.

Complaint No. 827.—Federal Trade Commission *v.* Samuel Blum. Charge: Unfair methods of competition in that the respondent, engaged in New York, N. Y., in the manufacture and sale of clothing for men and boys, labels his

clothes to indicate Rochester, N. Y., manufacture, thereby misleading the purchasing public into the belief that the respondent's clothing is of the quality produced in Rochester and under Rochester manufacturing conditions, as extensively advertised by the chamber of commerce and other business associations of that city, in alleged violation of section 5 of the Federal Trade Commission act. Status: This proceeding is now before the commission for final determination.

Complaint No. 828.—Federal Trade Commission *v.* A. D. Davis Packing Co. Charge: Unfair methods of competition in offering and giving to officers and employes of vessels without the knowledge of their employers, as an inducement to have their vessels provisioned by respondent, lavish entertainment, in alleged violation of section 5 of the Federal Trade Commission act. Status: (Ante, complaint No. 626.)

Complaint No. 833.—Federal Trade Commission *v.* John J. Morrill and Louis Halvarson, partners styling themselves A. H. McLeod and Co. Charge: The respondents have offered and given cash commissions and gratuities to captains, engineers, and other officers or employes of vessels without the knowledge of their employers to induce the purchase of sails, rigging, and canvas equipment from respondent, in alleged violation of section 5 of the Federal Trade Commission act. Status: This proceeding is now before the commission for final determination.

Complaint No. 835.—Federal Trade Commission *v.* Famous Players-Lasky Corporation, the Stanley Co. of America, Stanley Booking Corporation, Black New England Theaters (Inc.), Southern Enterprises (Inc.), Saenger Amusement Co., Adolphe Zukor, Jesse L. Lasky, Jules Mastbaum, Alfred S. Blank, Stephen A. Lynch, Ernest V. Richards, jr. Charge: Unfair methods of competition in that the respondents Famous Players-Lasky Corporation, Adolphe Zukor, and Jesse L. Lasky have combined and conspired to secure control of and monopolize the motion-picture industry, and to restrain, restrict, and suppress competition in the distribution of motion-picture films by (a) acquisition of all the corporate stock of Bosworth (Inc.), Jesse L. Lasky Feature Play Co. (Inc.), Famous Players Film Co., and by coercion, Paramount Pictures Corporation; (b) affiliation with certain independent producers; (c) the creation and exploitation of the Realart Pictures Corporation which the respondents held out to the general public as wholly independent and not affiliated with or controlled by said respondents; (d) acquiring, with the aid of the other respondents, the control of numerous theater corporations operating motion-picture theaters throughout the United States; and (e) building or acquiring numerous theaters for the exhibition of respondents' motion pictures, exclusively, all in alleged violation of section 5 of the Federal Trade Commission act, and, as to respondents Famous Players-Lasky Corporation, Adolphe Zukor, and Jesse L. Lasky, in alleged violation of section 7 of the Clayton Act. Status: In course of trial.

Complaint No. 836.—Federal Trade Commission *v.* National Biscuit Co. Charge: Unfair methods of competition in that the respondent, engaged in the manufacture and sale of biscuits, crackers, and other bakery products, in allowing discounts based on aggregate monthly orders, refuses to grant as high a rate of discount on the pooled orders of two or more retail store owners as on the orders of owners of so-called chain stores, thereby giving the owners of chains of retail stores an undue advantage in competing with owners operating but one retail store, the said discrimination in price tending to lessen competition and create a monopoly, in alleged violation of section 5 of the Federal Trade Commission act and section 2 of the Clayton Act. Status: Awaiting examiner's findings.

Complaint No. 837.—Federal Trade Commission *v.* Loose-Wiles Biscuit Co. Charge: Unfair methods of competition in that the respondent, engaged in the manufacture and sale of biscuits, crackers, and other bakery products, in allowing discounts based on aggregate monthly orders, refuses to grant as high a rate of discount on the pooled orders of two or more retail store owners as on the orders of owners of so-called chain stores, thereby giving the owners of chains of retail stores an undue advantage in competing with owners operating but one retail store, the said discrimination in price tending to lessen competition and create a monopoly, in alleged violation of section 5 of the Federal Trade Commission act and section 2 of the Clayton Act. Status: At issue on amended complaint and answer.

Complaint No. 842.—Federal Trade Commission *v.* Berkeley Machine Works (Inc.). Charge: Unfair methods of competition in that cash commissions, gratuities, and lavish entertainment, including automobile parties, dinner and theater parties, lodging accommodations, and other forms of entertainment and

amusement are offered and given to officers, agents, and employees of vessels, without the knowledge or consent of their employers, to induce them to have their vessels repaired by the respondent, in alleged violation of section 5 of the Federal Trade Commission act. Status: (Ante, complaint No. 626.)

Complaint No. 852.—Federal Trade Commission *v.* the Procter & Gamble Co. and the Procter & Gamble Distributing Co. Charge: Unfair methods of competition in that the respondents, certain of whose soaps and washing powders contain no naphtha, falsely designate said products as naphtha soap and naphtha washing powders, and further advertise their soap as of the highest grade because it is white and because it contains naphtha, which loosens the dirt, whereas said soap contains no naphtha, and the fact that it is white adds nothing to its cleansing value, thereby misleading and deceiving the purchasing public, in alleged violation of section 5 of the Federal Trade Commission act. Status: In course of trial.

Complaint No. 856.—Federal Trade Commission *v.* George F. Barton, Rockwood Brown, Charles N. Edwards, Claude A. Hargis, and R. W. Watts. Charge: The respondents are the officers and promoters of the Consolidated Royalty & Leasing Syndicate, an unincorporated association. They are charged with making and publishing numerous false and misleading statements relative to the organization, business, and prospects of the association, as a means of deceiving the purchasing public and furthering the sale of the share stock of the said Consolidated Royalty & Leasing Syndicate, all in alleged violation of section 5 of the Federal Trade Commission act. Status: Awaiting respondent's brief.

Complaint No. 857.—Federal Trade Commission *v.* S. F. Shepard, Rockwood Brown, A. L. Todd, R. Allyn Lewis, R. J. Wiswell, D. M. Leopold, H. P. Hanson, E. H. Eshleman, F. L. Moorman, and E. H. McArthur. Charge: The respondents are trustees for or associated in the promotion of the Burkley Oil Co., Burk Crest Oil Co., Burk Bethel Oil Co., Gypsy Burk Oil Co., Burk Imperial Oil Co., and Burk Consolidated Oil Co. Unfair methods of competition are charged in that the respondents, to further the sale of the share stock of said unincorporated associations, issued and published numerous false and misleading statements and concealed or withheld other material information relative to the organization, business, and properties of the said companies, thereby deceiving and misleading the purchasing public, in alleged violation of section 5 of the Federal Trade Commission act. Status: Awaiting respondent's brief.

Complaint No. 862.—Federal Trade Commission *v.* Crofts & Reed Co., Polonia Soap Co. Charge: Unfair methods of competition in that the respondent Crofts & Reed Co., controlled by the respondent Polonia Soap Co., brands and mislabels its products to promote the belief that olive oil, poroxido, palm oil, witch-hazel, buttermilk, medicines, or drugs are contained in the soaps so designated, when in fact its soaps contain no such ingredients, in alleged violation of section 5 of the Federal Trade Commission act. Status: Awaiting respondent's brief.

Complaint No. 863.—Federal Trade Commission *v.* Central Railway Signal Co. Charge: Unfair methods of competition in that the respondent, which is a manufacturer of certain compounds, features, and parts for railway signal fuses, brought suit in equity against the Unexcelled Manufacturing Co. (Inc.) for alleged infringement of patents and notified a number of railway companies who were the principal purchasers of said fuses of the pendency of said suit, stating that other fuses on the market were infringements also, and making mention of a right to recover damages from the users of any such alleged infringing fuses, all of which was calculated to bring and had the tendency of bringing all railway signal fuses other than those manufactured by the respondent into suspicion among the railway companies, in alleged violation of section 5 of the Federal Trade Commission act. Status: Negotiations for stipulation proceeding.

Complaint No. 865.—Federal Trade Commission *v.* Henry H. Hoffman, R. C. Russell, J. H. Cain, R. V. Wilson, B. Baernstein, the Ranger-Burkburnett Oil Co., the Ranger-Comanche Oil Co., and the Union National Oil Co. Charge: The respondent individuals are promoters of the respondent corporation. Unfair methods of competition are charged in that they, in order to further the sale of the share stock of the said corporations, issued and published numerous false and misleading statements and concealed or withheld other material information relative to the organization, business, and properties of the said corporations, thereby deceiving and misleading the purchasing public, in alleged

violation of section 5 of the Federal Trade Commission act. Status: Awaiting respondent's brief.

Complaint No. 868.—Federal Trade Commission *v.* Calumet Baking Powder Co. Charge: Unfair methods of competition in that the respondent, for the purpose of furthering the sale of its baking powders, adopted the practice of publishing anonymously adverse, disparaging, and derogatory opinions, statements, and comments as to the wholesomeness of self-rising flours, the use of which does not involve the addition of baking powder, such statements being not founded in fact, all for the purpose of deceiving the purchasing public, in alleged violation of section 5 of the Federal Trade Commission act. Status: Negotiations for stipulation proceeding.

Complaint No. 871.—Federal Trade Commission *v.* A. W. Perryman, doing business under the name and style Perryman Investment Co.; A. W. Perryman, F. P. Penfield, C. S. Thomas, individually and as trustees and officers of the Houston Oil & Refining Co., a trust; W. L. Diehl, individually and as second vice president of the Houston Oil & Refining Co., a trust; and William M. Huff, individually and as third vice president of the Houston Oil & Refining Co., a trust. Charge: The respondents are the promoters of the Houston Oil & Refining Co., a Texas trust. Unfair methods of competition are charged in that the respondents, for the purpose of furthering the sale of the share stock of the said oil company, issued and published numerous false and misleading statements and concealed or withheld other material information relative to the organization, business, property, and prospects of said corporation, thereby deceiving the purchasing public, in alleged violation of section 5 of the Federal Trade Commission act. Status: Awaiting briefs.

Complaint No. 873.—Federal Trade Commission *v.* Hewitt Brothers Soap Co. Charge: Unfair methods of competition in that the respondent advertises, brands, and labels its soap as "white naphtha," stating that it is made by a new process and of a combination of naphtha, coconut oil, and other cleansing ingredients, when, in fact, the said soap contains no naphtha, but contains instead a petroleum distillate other than naphtha, originally only to the extent of 1 per cent or less of the whole constituent ingredients, and substantially all lost by volatilization or evaporation before such soap reaches the ultimate consumer, thereby misleading and deceiving the purchasing public, in alleged violation of section 5 of the Federal Trade Commission act. Status: At issue.

Complaint No. 875.—Federal Trade Commission *v.* Lexington Manufacturing Co., Middlesburg Mills, Millwood Corporation. Charge: The respondents Lexington Manufacturing Co. and Middlesburg Mills are engaged in the manufacture of cotton bedticking and other cotton products and are controlled by the respondent Millwood Corporation, a holding company. Unfair methods of competition are charged in that some of the respondent's bedtickings of various grades and qualities are labeled "A. C. A." in simulation of a symbol used for many years by the Amoskeag Manufacturing Co. as a designation for its best quality special-process bedticking, which because of its quality and adaptability to purpose is popular and in great demand in the trade, the said practice by the respondents tending to mislead and deceive the purchasing public into the belief that tickings manufactured by respondent manufacturers are identical with those of the Amoskeag Manufacturing Co., in alleged violation of section 5 of the Federal Trade Commission act. Status: Before commission for final determination.

Complaint No. 876.—Federal Trade Commission *v.* Lawrence S. Mayers and Chauncey H. Mayers, partners, doing business under the firm name and style of Geneva Watch Co. Charge: The respondents, wholesale dealers in watches, the movements of which they import from places in Switzerland other than Geneva, have adopted the trade name "Geneva Watch Co." for their watch business, have procured the United States registration of the trade-mark "Geneva," and stamp it on the dials of their watches with the addition of the word "Swiss," to simulate the standard method of designating high-grade Geneva watches, and advertise the said watches as "Geneva" watches manufactured by the "Geneva Watch Co." and offered at the lowest manufacturer's prices, all for the purpose of creating the mistaken belief that they are engaged in the manufacture of watches in the Swiss city of Geneva, well known as the place of origin of the highest grade of Swiss watches, that their watches are manufactured in said city, and that they are sold direct to the trade at manufacturer's prices, and thereby induce the trade and consuming public to purchase respondents' watches in preference to competitors' watches of like quality, which are not falsely designated "Geneva," and in many instances in

preference to competitors' watches actually made in the city of Geneva, in alleged violation of section 5 of the Federal Trade Commission act. Status: Ready for oral argument.

Complaint No. 880.—Federal Trade Commission *v.* Douglas Fir Exploitation & Export Co. (Inc.) and 107 others. Charge: The complaint sets forth that, although the respondent Douglas Fir Exploitation & Export Co., a domestic corporation of the State of Washington, engaged in the manufacture and sale of lumber in interstate and foreign commerce, has filed papers with the Federal Trade Commission under the Webb Export Trade Associations Act, by reason of its policy and plan of business it is not such an association within the meaning of said act. The 107 other respondents are stockholders and officers of the respondent company and are themselves engaged in the lumber business, representing about 85 per cent of the productive capacity of all American manufacturers, vendors, shippers, and dealers in Oregon pine, red fir, yellow fir, Columbian pine, Puget Sound pine, and British Columbia pine and the products thereof. Respondents are charged with having fixed the prices and terms at which they have agreed to sell their lumber and by various and divers means conspiring to hinder and obstruct competition in the sale and distribution of said lumber and lumber products, all in alleged violation of section 5 of the Federal Trade Commission act. Status: Commission's case closed.

Complaint No. 881.—Federal Trade Commission *v.* Citrus Soap Co. Charge: The respondent, engaged in the manufacture and sale of washing powders, soaps, and similar products, has adopted and employs a system for the maintenance and enforcement of uniform prices fixed by it for the resale of its products to retail dealers, refusing to sell to wholesale dealers who fail to observe and maintain said resale prices and requiring its vendees not to sell to other wholesalers except at resale prices fixed by respondent, in alleged violation of section 5 of the Federal Trade Commission act. Status: Ready for trial.

Complaint No. 883.—Federal Trade Commission *v.* Alfred Peats Co. Charge: The respondent, engaged in the sale of paints and painters' supplies, advertises and asserts that its "Clover Leaf Paint" consists of the purest grades of white lead, zinc, linseed oil, Japan drier, and is of an exceptional high grade, which has never failed to give the best satisfaction, when in fact the said paint consists largely of adulterants and fillers, mineral spirits, and substitutes for pure linseed oil, in alleged violation of section 5 of the Federal Trade Commission act. Status: At issue.

Complaint No. 884.—Federal Trade Commission *v.* Henry Bosch Co. Charge: Unfair methods of competition in that the respondent, engaged in the sale of paints and painters' supplies, falsely advertises and asserts that as to its "Henry Bosch Co.'s Prepared Paint" every ounce of lead, zinc, oil, and Japan drier is of the highest grade and that it is impossible to produce any better paint, when in fact adulterants and fillers are substituted for white lead and zinc oxide and the volatile ingredient consists of mineral spirit, in alleged violation of section 5 of the Federal Trade Commission act. Status: At issue.

Complaint No. 886.—Wholesale Tobacco Cigar Dealers' Association of Philadelphia, its officers, directors, and members, the American Tobacco Co. and P. Lorillard Co. respondents. Charge: That the association and its members agreed upon a schedule of fixed prices for tobacco products at which the members should resell to their dealer customers, and that they adopted a system for the maintenance and enforcement of such prices by the members of the association and by all other wholesale dealers selling in the association's territory, the respondent manufacturers cooperating and conspiring with the association and its members and participating in said price-maintenance system by agreeing to refuse to sell and by refusing to sell offending dealers further supplies of their products, all in alleged violation of section 5 of the Federal Trade Commission act. Status: Hearings were held in Philadelphia, New York, and Washington, beginning October 16, 1922, and concluding December 19, 1922. The examiner's report was filed on April 12, 1923, to which exceptions have been filed by certain other respondents; final arguments will be heard October 10, 1923.

Complaint No. 887.—Federal Trade Commission *v.* Oppenheim, Oberndorf & Co. (Inc.), doing business under the trade name and style Sealpax Co. Charge: The respondent, in the sale of its "Sealpax" underwear, maintains a schedule of uniform resale prices and refuses to sell said underwear to wholesale dealers who fail to observe and maintain said resale prices and otherwise endeavors to enforce its fixed prices for the resale of its product, in alleged violation of section 5 of the Federal Trade Commission act. Status: Ready for briefs.

Complaint No. 890.—Federal Trade Commission *v.* Cream of Wheat Co. Charge: Unfair methods of competition in that the respondent, engaged in the manufacture and sale of a cereal-food product known as "Cream of Wheat," has maintained and enforced a schedule of uniform prices for the resale of said product, refusing to sell to price cutters and otherwise enforcing said system of price maintenance, in alleged violation of section 5 of the Federal Trade Commission act. Status: In course of trial.

Complaint No. 892.—Federal Trade Commission *v.* V. Vivaudou (Inc.). Charge: The respondent, engaged in the manufacture and sale of toilet articles, adopted and maintains a schedule of uniform prices for the resale of its products, threatening to refuse to sell and refusing to sell said products to those dealers who persist in selling below the resale prices fixed by the respondent and otherwise enforcing said system of price maintenance, in alleged violation of section 5 of the Federal Trade Commission act. Status: Negotiations for stipulation proceeding.

Complaint No. 893.—Federal Trade Commission *v.* St. Louis Wholesale Grocers' Association, its officers and members. Charge: The respondent association is an unincorporated trade association composed of wholesale grocers and jobbers of groceries and food products. Unfair methods of competition are charged in that said association, acting on behalf of its members and in cooperation with them, has adopted and carried out a plan of coercing and attempting to coerce manufacturers to guarantee against decline in price, publishing classified lists of manufacturers that the said members may give preference when making purchases to those manufacturers who have agreed to guarantee against decline in price and thereby tend to restrict, diminish, and obstruct the business of manufacturers of food products who do not so guarantee in alleged violation of section 5 of the Federal Trade Commission act. Status: Ready for submittal to the commission.

Complaint No. 894.—Federal Trade Commission *v.* Wisconsin Wholesale Grocers' Association, its officers, directors, and members. Charge: The respondent association is an unincorporated trade association composed of wholesale grocers and jobbers of groceries and food products. Unfair methods of competition are charged in that the said association, acting on behalf of its members and in cooperation with them, has adopted and carried out a plan of coercing and attempting to coerce manufacturers to guarantee against decline in price, publishing classified lists of manufacturers that the said members may give preference when making purchases to those manufacturers who have agreed to guarantee against decline in price and thereby tend to restrict, diminish, and obstruct the business of manufacturers of food products who do not so guarantee, in alleged violation of section 5 of the Federal Trade Commission act. Status: Ready for briefs.

Complaint No. 898.—Federal Trade Commission *v.* United States Products Co. Charge: Unfair methods of competition in that respondent, engaged in the manufacture and sale of an abrasive bearing-fitting compound named by it "Kwik-Ak-Shun," having done no more than to file with the commission a petition praying that the commission institute such proceedings in the premises as might seem proper against the M. K. T. Products Co., a competitor, nevertheless notified the trade, through advertisements, that it had commenced proceedings for unfair competition against the M. K. T. Products Co. before the commission to enjoin the same, which notification had the capacity and tendency of misleading and deceiving the trade into the belief that respondent had instituted competent legal proceedings before the Federal Trade Commission wherein the rights and liabilities of respondent and the M. K. T. Products Co. in the premises would be legally adjudicated and determined and the legality or illegality of the things done by the M. T. K. Products Co. complained against be fixed and determined in alleged violation of section 5 of the Federal Trade Commission act. Status: In course of trial.

Complaint No. 899.—Federal Trade Commission *v.* Joyce-Fruit Co. The respondent, engaged in the sale of dry goods, clothing, hardware, and groceries at wholesale and retail, offered a prize of \$10 worth of merchandise to the person producing the largest number of current mail-order catalogues, thereby procuring many catalogues of the National Cloak & Suit Co. and other mail-order house competitors, which catalogues it retained for the purpose of unduly hindering the business of its mail-order house competitors which sell merchandise principally by means of catalogues in the hands of customers and prospective customers in alleged violation of section 5 of the Federal Trade Commission act. Status: At issue.

Complaint No. 900.—Commission v. National Lead Co. Charge: Unfair methods of competition are charged in that the respondent, engaged in the manufacture of white lead, red lead, litharge, and other products used in the painting trade, has adopted and enforced a system of fixing and maintaining standard prices for the resale of its products by dealers, in alleged violation of section 5 of the Federal Trade Commission act. Status: Ready for argument.

Complaint No. 902.—The Chicago Tobacco Jobbers' Association, its officers and members, and the American Tobacco Co., respondents. Charge: The charge is unfair competition in that the association and its members agreed upon a schedule of fixed prices at which the members should resell tobacco products to their customers and that the American Tobacco Co. entered into an agreement with the association and its members to assist them in maintaining the prices fixed and agreed upon, all in alleged violation of section 5 of the Federal Trade Commission act. Status: Hearings were held in Chicago on May 9, 10, 11, and 12, 1923. After the report of the trial examiner has been made, the case will be set down for final argument.

Complaint No. 904.—Commission v. Lease Motor Co. (Inc.) and Acoma Motors Co. (Inc.) Charge: The respondent Lease Motor Co. is engaged in the business of repairing Ford motor cars and trucks and in assembling, producing, and rebuilding "Mohawk" trucks, and its subsidiary, respondent Acoma Motors Co., (Inc.), acts as its sales agent. Unfair methods of competition in commerce are charged in that the respondents falsely advertise and represent their assembled trucks as new "Mohawk" trucks made in New York and describe the chassis thereof as the Mohawk chassis when in truth and in fact such trucks are not made in New York, the chassis thereof is a Ford chassis, and old, used, worn, and second-hand parts enter into said product, in alleged violation of section 5 of the Federal Trade Commission act. Status: Awaiting answer.

Complaint No. 906.—Cincinnati Tobacco Jobbers' Association, its officers and members, and the American Tobacco Co., respondents. Charge: The charge is unfair competition in that the association and its members agreed with the American Tobacco Co. upon a schedule of prices at which they should thereafter resell the tobacco products of that company, and that the American Tobacco Co. cooperated with the respondent association and its members in enforcing the maintenance of such fixed schedule of prices, all in alleged violation of section 5 of the Federal Trade Commission act. Status: Hearings were held in Cincinnati on November 8, 9, and 10, 1922, and in Washington on November 28 and 29, 1922. The examiner's report not yet completed nor final arguments made.

Complaint No. 907.—Cincinnati Tobacco Jobbers' Association, its officers and members, and the Liggett & Myers Tobacco Co., respondents. Charge: The charge is unfair competition in that the association and its members agreed with the Liggett & Myers Tobacco Co. upon a schedule of prices at which they should thereafter resell the tobacco products of that company, and that the Liggett & Myers Tobacco Co. cooperated with the respondent association and its members in enforcing the maintenance of such fixed schedule of prices, all in alleged violation of section 5 of the Federal Trade Commission act. Status: Hearings were held November 15, 1922, at Cincinnati, and November 27, 1922, at Washington. After the report of the trial examiner has been made the case will be set down for final argument.

Complaint No. 908.—Cincinnati Tobacco Jobbers' Association, its officers and members, and the Tobacco Products Corporation and Falk Tobacco Co., respondents. Charge: The charge is unfair competition in that the association and its members agreed with the Tobacco Products Corporation and Falk Tobacco Co. upon a schedule of prices at which they should thereafter resell the tobacco products of these companies, and that the Tobacco Products Corporation and Falk Tobacco Co. cooperated with the respondent association and its members in enforcing the maintenance of such fixed schedule of prices, all in alleged violation of section 5 of the Federal Trade Commission act. Status: Hearings were held in Cincinnati on November 8, 9, and 10, and in Washington on November 27, 1922. Examiner's report, exceptions thereto, and briefs filed.

Complaint No. 909.—Cincinnati Tobacco Jobbers' Association, its officers and members, and the P. Lorillard Co., respondents. Charge: The charge is unfair competition in that the association and its members agreed with the P. Lorillard Co. upon a schedule of prices at which they should thereafter resell the tobacco products of that company, and that the P. Lorillard Co. co-

operated with the respondent association and its members in enforcing the maintenance of such fixed schedule of prices, all in alleged violation of section 5 of the Federal Trade Commission act. Status: Testimony was taken in Cincinnati November 13 and 14, 1922, and in Washington, D. C., December 14 and 15, 1922. The trial examiner's report was filed May 28, 1923. Briefs have been filed and final argument is fixed for October 11, 1923.

Complaint No. 911.—Milwaukee Tobacco Jobbers' Association and P. Lorillard Co. (Inc.), respondents. Charge: The charge is unfair competition in that the association and its members agreed upon a schedule of fixed prices at which the members should resell tobacco products to their dealer customers and that the P. Lorillard Co. (Inc.) entered into an agreement with the association and its members to assist them in maintaining the prices fixed and agreed upon, all in alleged violation of section 5 of the Federal Trade Commission act. Status: Hearings were held in Milwaukee on January 30 and 31, 1923, and in Washington on April 10, 1923. After the report of the trial examiner has been made, the case will be set down for final argument.

Complaint No. 912.—Milwaukee Tobacco Jobbers' Association and the American Tobacco Co., respondents. Charge: The charge is unfair competition in that the association and its members agreed upon a schedule of fixed prices at which the members should resell tobacco products to their dealer customers and that the American Tobacco Co. entered into an agreement with the association and its members to assist them in maintaining the prices fixed and agreed upon, all in alleged violation of section 5 of the Federal Trade Commission act. Status: Hearings were held in Milwaukee January 24 to January 29, 1923. After the report of the trial examiner has been made, the case will be set down for final argument.

Complaint No. 913.—Commission v. Films Distributors League (Inc.), Eastern Feature Film Co., Favorite Players Film Corporation, Lande Film Distributing Corporation (of Ohio), Lande Film Distributing Corporation (of Delaware), Supreme Photo Play Corporation, Favorite Film Co., Friedman Film Corporation, Alexander Film Corporation, Supreme Film Co., Quality Film Corporation, Leo G. Garner, doing business under the trade name and style Reliance Film Exchange, M. Brown, doing business under the trade name and style Capital Film Exchange, William Alexander, Maurice Fleckles, Herman Riskin. Charge: The respondents, distributors of motion-picture films are members of the respondent Films Distributors League (Inc.). Unfair methods of competition in commerce are charged in that the respondents at the time of the production of the photo play entitled "The Three Musketeers" by the Douglas Fairbanks interests, with the purpose of trading on the popularity of said Douglas Fairbanks and on the demand created by advance advertising of his production, reissued the photo play "D'Artagnan," produced by the Triangle Film Corporation in 1915, after changing the name to "The Three Musketeers," advertised said reissue under its new title without designating it as a reissue and in some instances by displaying in inconspicuous type a statement to the effect that the respondent's photo play was formerly entitled "D'Artagnan," or was an adaptation or recreation of D'Artagnan, and in that the respondents to further the deception that the said reissue was the Fairbanks production supplied for exhibition with the reissue other photo plays in which said Douglas Fairbanks did enact the leading rôle, all for the purpose of misleading and deceiving the public, in alleged violation of section 5 of the Federal Trade Commission act. Status: At issue.

Complaint No. 914.—Commission v. Twinplex Sales Co., a corporation, and Mrs. H. S. Gardner, H. S. Gardner, Jr., and Charles H. Gardner, individually and as copartners doing business under the trade name and style of Twinplex Sales Co., H. S. Gardner, individually and as trustee of said business for said copartners, and J. Bryant Reinhart and Thomas L. Fouke, individually and as employees and agents of said partnership. Charge: Unfair methods of competition in commerce are charged in that the respondents have fixed standard prices for the resale of their razor-stropping devices known as "Twinplex" stroppers, and employ cooperative means in the maintenance of said resale prices, listing dealers who fail to maintain the same, and refusing to further supply such offending dealers, thus tending to suppress competition, in alleged violation of section 5 of the Federal Trade Commission act. Status: Preparing for trial.

Complaint No. 915.—Commission v. Cutler-Hammer Manufacturing Co. Charge: Unfair methods of competition in commerce are charged in that the respondent practices discrimination in prices in the sale of its electric con-

trollers by granting a greater rate of discount from the list price to those of its vendees who accept the respondent's "sole use contract" whereby the vendee agrees to purchase the respondent's controllers only, the effect of said practice being to substantially lessen competition and to create a monopoly. In alleged violation of section 2 and section 3 of the Clayton Act. Status: Negotiations for stipulation proceeding.

Complaint No. 916.—Trigg, Dobbs & Co. and others. Charge: The respondents, Chattanooga Wholesale Tobacco Dealers, are charged with unfair competition in that they entered into an agreement, understanding, and conspiracy by which they fixed a schedule of prices at which they would thereafter resell to their dealer customers, all in alleged violation of section 5 of the Federal Trade Commission act. Status: Hearings were held in Chattanooga April 25, 26, 27, and 28, 1923. After the report of the trial examiner has been made the case will be set down for final argument.

Complaint No. 917.—The American Tobacco Co., Trigg, Dobbs & Co. and others, respondents. Charge: That the American Tobacco Co. and the other respondents, Chattanooga Wholesale Grocers and Wholesale Tobacco Dealers, entered into a combination, conspiracy, and understanding by which they fixed resale prices on American Tobacco Co.'s products, and that the American Tobacco Co. agreed with the other respondents to refuse to continue selling to such of the respondents as would resell its products at prices lower than those agreed upon, all in alleged violation of section 5 of the Federal Trade Commission act. Status: Hearings were held in Chattanooga April 25, 26, 27, and 28, 1923, and in New York May 4, 1923. After the report of the trial examiner has been made the case will be set down for final argument.

Complaint No. 918.—Commission v. Superior Woolen Mills. Charge: Unfair methods of competition in commerce are charged in that the respondent, engaged in retail business, falsely advertises that clothing is sold by it directly from the weaver to the wearer, and indicated by the display of its corporate name that it operates woolen mills and manufactures in its mills the materials used by it in the manufacture of the suits and garments sold by it, all for the purpose of misleading and deceiving the purchasing public, in alleged violation of section 5 of the Federal Trade Commission act. Status: In course of trial.

Complaint No. 920.—Commission v. Atlantic Comb Works. Charge: Unfair methods of competition in commerce are charged in that the respondent in the sale of its toilet articles, composed of nitrated cellulose or pyroxyn plastic, known commercially as "celluloid," "pyroxylin," "fibrelloid," "viscoloid," etc., advertises said products as "white ivory," thereby misleading and deceiving the purchasing public as to the quality and value of said articles, in alleged violation of section 5 of the Federal Trade Commission act. Status: In course of trial.

Complaint No. 922.—Commission v. Michigan Wholesale Grocers' Association, its officers, executive committee, and members. Charge: Unfair methods of competition in commerce are charged in that respondents have adopted and carried out a policy and plan of coercing manufacturers to guarantee the respondent members against decline in price of commodities dealt in and to make their purchases from manufacturers so guaranteeing, thereby tending to restrict, diminish, and obstruct the sales and business of manufacturers of food products who do not guarantee against price decline, in alleged violation of section 5 of the Federal Trade Commission act. Status: At issue.

Complaint No. 924.—Federal Trade Commission v. The Don-O-Lac Co. (Inc.). Charge: Using unfair methods of competition by falsely advertising and misrepresenting as "American Shellac" a product which is not shellac as commercially known and which contains no shellac gum. Status: This proceeding is now before the commission for final determination.

Complaint No. 925.—Commission v. Mid-American Oil & Refining Co. and J. H. Crites. Charge: The respondent individual is the promoter of respondent Mid-American Oil & Refining Co., a Texas trust. Unfair methods of competition in commerce are charged in that respondents, with the aid of certain subsidiaries known as Mid-American Syndicate, Mid-American Mexia Syndicate, and Mid-American Stevens County Syndicate, published numerous false and misleading statements and representations relative to the organization, business, property, and prospects of respondent company and said syndicates, to further the sale of the share stock of the respondent, and thereby deceived the purchasing public, in alleged violation of section 5 of the Federal Trade Commission act. Status: Awaiting briefs.

Complaint No. 927.—Commission v. Corn Products Refining Co. Charge: Unfair methods of competition in commerce are charged in that the respond-

ent's practice of guaranteeing against decline in price, aided and abetted by its great financial resources, its domination of the markets for glucose and table sirups, and its control of market price of said commodities is a potential weapon for the ruin and elimination of respondent's competitors and has a dangerous tendency unduly to hinder competition in the table-sirup industry, and to create a monopoly thereof in the hands of the respondent, in alleged violation of section 5 of the Federal Trade Commission act. Status: Preparing for trial.

Complaint No. 928 (in consolidation with 82).—Commission v. the American Photo-Engravers' Association and others, and the International Photo-Engravers' Union of North America, and others. Charge: Unfair methods of competition in commerce are charged in that the respondents conspired and agreed to adopt and maintain a scale of uniform prices for the sale of all photo-engraving products. The respondent, International Photo-Engravers' Union of North America and its local organizations threatened to call strikes or withdraw union employees from photo-engraving establishments that would not maintain said uniform scale of prices, it being understood between the respondents that the members of the respondent association would employ none but members of respondent union's local organization, thereby and with the aid of other methods of enforcement of said agreement, regulating, controlling, and suppressing competition between manufacturers of photo-engraving products, making possible the establishment and maintenance of enhanced prices of such products, and hindering free competition, in alleged violation of section 5 of the Federal Trade Commission act. Status: In the course of trial.

Complaint No. 930.—Commission v. Right-Way Royalty Syndicate, E. L. Chapman, H. F. Mitchell, and A. J. Chapman. Charge: Respondent syndicate is an unincorporated Texas trust. The respondent individuals are trustees, officers, organizers, and promoters, and constitute the board of trustees of said respondent syndicate. Unfair methods of competition are charged in that the respondents, to further the sale of syndicate securities have made and are still making numerous false, misleading, and deceptive statements concerning the business, management, operations, property, prospects, etc. of said syndicate, in violation of section 5 of the Federal Trade Commission act. Status: Awaiting briefs.

Complaint No. 931.—Commission v. Occidental Oil Corporation and T. F. Smith, president; W. R. Charles, vice president; and L. J. Robling, secretary-treasurer. Charge: Unfair methods of competition in commerce are charged in that the individual respondents in their efforts to sell the shares of stock in the respondent corporation make use of statements concerning the properties, assets, oil production, and prospects thereof, in letters, circulars, maps, and other literature that are false and misleading, in alleged violation of section 5 of the Federal Trade Commission act. Status: Awaiting briefs.

Complaint No. 932.—Commission v. Dispatch Petroleum Co., Porter Oakes, and James T. Chiles. Charge: Respondent company is a Texas joint-stock association and respondent individuals are promoters thereof. Unfair methods of competition in commerce are charged in that respondents, to further the sales of the share stock of said company, made numerous false and misleading statements and concealed essential facts as to the properties, prospects, and earnings of said company, in alleged violation of section 5 of the Federal Trade Commission act. Status: Awaiting examiner's findings.

Complaint No. 933.—Commission v. Texas-Atlantic Oil Co., G. P. Edgell, J. B. Sikes, V. C. Nelson, R. J. Leavitt, and W. Lincoln Wilson. Charge: The respondent company is a Texas trust and the respondent individuals are the promoters, officers, and agents thereof. Unfair methods of competition are charged in that the respondents, to further the sale of the share stock of said company, made numerous false and misleading statements and concealed essential facts as to the properties, prospects, and earnings of said company, in alleged violation of section 5 of the Federal Trade Commission act. Status: Awaiting examiner's findings.

Complaint No. 934.—Commission v. Pacific States Paper Trade Association, its officers and members; Seattle-Tacoma Paper Trade Conference, its officers and members; Spokane Paper Dealers, its officers and members; Portland Paper Trade Association, its officers and members; Paper Trade Conference of San Francisco, its officers and members; Los Angeles Wholesale Paper Jobbers' Association, its officers and members; J. Y. C. Kellogg, individually and as secretary of the Seattle-Tacoma Paper Trade Conference; Chriss A. Bell, individually and as secretary of the Portland Paper Trade Association; B. N. Coff-

man, individually and as secretary of the Pacific States Paper Trade Association; J. R. Coffman, individually and as secretary of the Los Angeles Wholesale Paper Jobbers' Association; W. B. Gilbert, individually and as secretary of the Spokane Paper Dealers; Zellerbach Paper Co.; Blake, Moffitt & Towne; American Paper Co.; J. W. Fales Paper Co.; Mutual Paper Co.; Washington Pulp & Paper Corporation; Paper Warehouse Co. (Inc.); the Seattle Paper Co.; Standard Paper Co.; Tacoma Paper & Stationery Co.; John W. Graham & Co.; B. G. Ewing Paper Co.; American Type Founders Co.; Blake-McFall Paper Co.; J. W. P. McFall, an individual doing business under the trade name J. W. P. McFall Paper Co.; Endicott Paper Co.; R. L. Brackett and Charles L. Frazier, partners doing business under the name and style Crescent Paper Co.; Bonestell & Co.; Pacific Coast Paper Co.; Union Paper Co.; Richardson Case Paper Co.; Eastman Gibbons Paper Co.; Delmas Paper Co.; San Jose Paper Co.; Pioneer Paper Co.; R. L. Craig Co.; Spokane Paper & Stationery Co.; Rogers Paper Co.; Sierra Paper Co.; Standard Woodenware Co. Charge: Arbitrary designation as to "legitimate" or "illegitimate" dealers and the same adjective applied to the channels through which their trade flows are among the factors involved in this complaint. The association, through its members comprising a number of "local associations," the complaint states, embraces practically all the wholesale dealers in paper and paper products throughout the States of Oregon, Washington, and California. Other States affected in great part by the activities of the association are Idaho, Nevada, Arizona, Montana, New Mexico, and the Territory of Alaska. Avertments by the commission are to the effect that by concerted agreement adherence of members of local associations to the maintenance of enforced schedule prices is consummated. It is further alleged that to the end that such schedule prices may be maintained and price competition eliminated throughout the Pacific States, the members notify their local associations and the Pacific States Paper Trade Association of infractions of the agreement to maintain standard prices, and these various associations bring pressure to bear upon the offending member to cease such practice. It is charged that the alleged acts and things done by respondents and by each of them have a dangerous tendency unduly to hinder competition and to create a monopoly, and constitute unfair competition within the meaning of section 5 of the Federal Trade Commission act. Status: Set for final argument November 14, 1923.

Complaint No. 937.—Commission *v.* McCord Manufacturing Co. (Inc.). Charge: It is charged that unfair methods of competition in commerce in the manufacture and sale of automotive equipment, including motor gaskets for use on cylinder heads, manifolds, etc., have been engaged in by respondent by endeavoring to accomplish the maintenance of standard resale prices by divers cooperative means and by favoring distributors who do maintain such prices and discriminating against distributors who fail to maintain such prices, in alleged violation of section 5 of the Federal Trade Commission act. Status: Ready for trial.

Complaint No. 940.—Commission *v.* Scotch Woolen Mills. Charge: Respondents are engaged in the manufacture of men's clothing and the sale thereof in interstate commerce to retail dealers doing business under the name of Scotch Woolen Mills, in many of which respondent or its stockholders have a beneficial interest. The respondent does not own nor is it interested in any woolen mills. Unfair methods of competition in commerce are alleged in that the use of the name Scotch Woolen Mills, when in fact the respondent has no such mills, tends to mislead and deceive the purchasing public to believe that purchases from the respondent are from the manufacturer of the cloth, in alleged violation of section 5 of the Federal Trade Commission act. Status: In course of trial.

Complaint No. 941.—Commission *v.* Keeler Bros. & Co., a corporation; the Columbia Securities Co., a corporation; the National Finance Co., a corporation; George Keeler and Frank Keeler. Charges: Unfair methods of competition are charged in that the respondents, engaged in the purchase and sale of municipal, county, and school bonds, procured bonds, apparently valid, but in which had been fraudulently embodied provisions and terms which indicated increased commercial value, using in connection with the sale thereof false and misleading histories of the bonds, failing to disclose to purchasers and prospective purchasers the real facts of the issues, and thereby misleading the purchasing public to believe that the bonds sold by the respondents were valid obligations of the municipalities by which they had been executed, issued as by law provided in conformity with elections duly called and held, and that

said purchasers would involve no risk of repudiation or expense of litigation to confirm validity or to enforce collection, in alleged violation of section 5 of the Federal Trade Commission act. Status: Awaiting examiner's findings.

Complaint No. 943.—*Commission v. Abbott E. Kay and R. T. Nelson*, as individuals and as copartners, doing business under the name of Aaban Radium Co. Charge: Unfair methods of competition in commerce are charged in that respondent, while engaged in the manufacture and sale of a product purporting to contain radium, but which in fact contains no radium, advertise radium content and thereby tend to mislead and deceive the purchasing public in alleged violation of section 5 of the Federal Trade Commission act. Status: Awaiting examiner's findings.

Complaint No. 945.—*Commission v. Ajax Rope Co. (Inc.)*. Charge: Unfair methods of competition in commerce are charged in that the respondent, engaged in the purchase and sale of rope, cable, and twine, advertises as the "maker" of said products and states that it operates "mammoth rope factories" when in fact the respondent does not own, operate, or control any factory engaged in the manufacture of rope, cable, or twine, and by its advertising tends to mislead the trade and purchasing public, in alleged violation of section 5 of the Federal Trade Commission act. Status: Negotiation for stipulation proceeding.

Complaint No. 947.—*Commission v. Waldes & Co. (Inc.)*. Charge: The complaint relates that Waldes & Co., of Pargue, Czechoslovakia, sold about 80 per cent of the snap fasteners that were marketed in the United States at the time of the outbreak of the World War, at which time the importation of products from Austria was discontinued by the American trade. During the World War many American corporations were organized for and began the manufacture and sale of snap fasteners in the United States. Unfair methods of competition are charged in that the respondent, organized under the laws of the State of New York in 1919, and engaged in the manufacture and sale of snap fasteners, under the brands "Kohinoor," "Revol," etc., established by its predecessor, Waldes & Co., of Prague, adopted and put into effect the practices of (a) exchanging its products for competitors' snap fasteners found on the shelves of jobbers and department stores, (b) subsequently selling at extremely low prices the snap fasteners so acquired, thereby demoralizing the market and causing many customers of its competitors to discontinue purchasing snap fasteners from said competitors, and (c) underselling its competitors by the sale of its products at less than the cost of production, all for purpose and with the intent of driving the American manufacturer of snap fasteners from the competitive field and to create a monopoly in the manufacture and sale of dress snap fasteners such as was formerly enjoyed by Waldes & Co., of Prague, in alleged violation of section 5 of the Federal Trade Commission act. Status: At issue.

Complaint No. 949.—*Commission v. Seth Thomas Clock Co.* Charge: Unfair methods of competition are charged in that respondent, engaged in the manufacture and sale in interstate commerce of clocks, employs a system of fixing and maintaining standard prices for the resale of its products, refuses to sell to jobbers, wholesalers, and retailers who fail to maintain said prices, and employs other cooperative means of insuring the observance of its retail price system, thus tending to obstruct commerce and freedom of competition, in alleged violation of section 5 of the Federal Trade Commission act. Status: In course of trial.

Complaint No. 950.—*Commission v. Dr. Herman Heuser*. Charge: Unfair methods of competition in commerce are charged in that the respondent, licensor of patent rights for a process of manufacture of nonalcoholic beverages, caused a letter of warning to be sent to licensees of the Baltimore Process Co., holder of a similar patent of prior date, advising them that the process they were using was an infringement of certain patents owned by the respondent, and, for purposes of intimidation and without intention of bringing suit, threatening legal action unless said licensees discontinued the use of the process owned by the Baltimore Process Co., thereby tending to intimidate and coerce said licensees to discontinue the use of the Baltimore process in favor of respondent's process, in alleged violation of section 5 of the Federal Trade Commission act. Status: Awaiting examiner's findings.

Complaint No. 951.—*Commission v. Pennsylvania, New Jersey, and Delaware Wholesale Grocers' Association*, its officers, members of executive committee, and members. Charge: Unfair methods of competition are charged in that the respondents adopted a plan of hampering, obstructing, and preventing the Proc-

ter & Gamble Distributing Co., engaged in sale direct to the retail trade, from selling soap, soap products, and cooking fats to the members of the respondent association and wholesale grocers, and sought to coerce wholesalers to refrain from dealing in the products of said Procter & Gamble Distributing Co., in alleged violation of section 5 of the Federal Trade Commission act. Status: In course of trial.

Complaint No. 952.—Commission *v.* Pennsylvania, New Jersey, and Delaware Wholesale Grocers' Association, its officers, members of executive committee, and members. Charge: Unfair methods of competition in commerce are charged in that the respondents have adopted and carried out a policy and plan of coercing manufacturers to guarantee the respondent members against decline in price of commodities dealt in and to make their purchases from manufacturers so guaranteeing, thereby tending to restrict, diminish, and obstruct the sales and business of manufacturers who do not guarantee against decline in price, in alleged violation of section 5 of the Federal Trade Commission act. Status: In course of trial.

Complaint No. 954.—Commission *v.* Jacob Hochman and Samuel Levine, as individuals and trading under the name and style of Hochman & Levine. Charge: Unfair methods of competition are charged in that the respondents label, brand, and sell shirts manufactured by them as "English broadcloth," when in fact said shirts are manufactured from cotton cloth manufactured in the United States of a quality inferior to that of the widely advertised English broadcloth imported from England, in alleged violation of section 5 of the Federal Trade Commission act. Status: In course of trial.

Complaint No. 956.—Commission *v.* Oakleed Oil Co., Mark Kleeden, and Julia K. Threlkeld. Charge: Unfair methods of competition in commerce are charged in the sale of the share stock of respondent company in that the respondents have misrepresented the business, management, properties, and prospects of the said respondent oil company for the purpose of misleading and deceiving the purchasing public, in alleged violation of section 5 of the Federal Trade Commission act. Status: Suspended pending investigation by the Post Office Department.

Complaint No. 957.—Commission *v.* the Ohio Wholesale Grocers' Association Co., a corporation, and its stock-holding members. Charge: Unfair methods of competition in commerce are charged in that respondents have adopted and carried out the policy and plan of coercing manufacturers to guarantee the respondent members against decline in price of commodities dealt in and to make their purchases from manufacturers so guaranteeing, in alleged violation of section 5 of the Federal Trade Commission act. Status: At issue.

Complaint No. 958.—Commission *v.* Ohio Dairy Co. Charge: Unfair methods of competition in commerce are charged in that respondent's practice of paying, temporarily, unduly high prices at selected competitive points, while at the same time paying lower prices at other points for the same grade, quality, and quantity of cream and butterfat for the purpose of controlling or suppressing competition, tends to compel its competitors to cease buying at such points and artificially restrains competition in alleged violation of section 5 of the Federal Trade Commission act. Status: At issue.

Complaint No. 959.—Commission *v.* Hygienic Laboratories. Charge: Unfair methods of competition in commerce are charged in that the respondent's "free trial" offer for its hair color restorer "Kolor-Bak" does in fact involve the payment of the regular price for the said restorer, and in that the respondent avoids fulfillment of its money-back guarantee by claiming that the preparation has not been used according to instructions, in alleged violation of section 5 of the Federal Trade Commission act. Status: At issue.

Complaint No. 960.—Commission *v.* Texas-Mexia Drilling Syndicate, B. M. Hatfield, Sterling Syndicate, J. D. Johnson, Old Timers Oil Pool, Albert S. Leach, Co-operative Oil Interests, and C. R. Farmer. Charge: Unfair methods of competition in the sale of the share stock of the respondent syndicates and interests, are charged, in that the respondents have misrepresented the business, management, properties, and prospects of said respondent syndicates and interests for the purpose of misleading and deceiving the purchasing public, in alleged violation of section 5 of the Federal Trade Commission act. Status: Suspended pending criminal prosecution by the United States.

Complaint No. 961.—Federal Trade Commission *v.* M. F. Skidmore and Elmer L. Skidmore, partners, doing business under the names and styles of "Skidmore Pen Co.," "William Bolles Dollar Pen Co.," and "Toledo Gold Filler Fountain Pen Co." Charge: Unfair methods of competition in commerce are

charged in that the respondents manufacture fountain pens to resemble the product of the Conklin Pen Co. and by simulating the brands and trade names of said Conklin pens tend to deceive and mislead the purchasing public into the belief that pens manufactured by respondents are Conklin pens, in alleged violation of section 5 of the Federal Trade Commission act. Status: Awaiting findings of trial examiner.

Complaint No. 962.—Federal Trade Commission v. Bethlehem Steel Corporation, Bethlehem Steel Co., Bethlehem Steel Bridge Corporation, Lackawanna Steel Co., Lackawanna Bridge Works Corporation, Midvale Steel & Ordnance Co., Cambria Steel Co. Charge: The respondent, the Bethlehem Steel Corporation, on or about October 25, 1922, acquired the properties, assets, and businesses of the Lackawanna Steel Co. and its subsidiaries and is now acquiring and has acquired the properties, assets, and businesses of the respondents, Midvale Steel & Ordnance Co. and Cambria Steel Co. Unfair methods of competition in commerce are charged in that the respondents by uniting under a common ownership and management and thereby effecting control of the iron and steel products originating in their respective territories tend to substantially lessen potential and actual competition, contrary to the public policy expressed in section 7 of the Clayton Act and in alleged violation of section 5 of the Federal Trade Commission act, to unduly hinder competition in the iron and steel industries in said territory and unreasonably restrict competition so as to restrain trade contrary to the public policy expressed in sections 1 and 3 of the Sherman Act and in alleged violation of section 5 of the Federal Trade Commission act. Status: Preparing for trial.

Complaint No. 963.—Federal Trade Commission v. Roller Oil & Refining Co. (Inc.), H. C. Roller, C. F. Gibbons, Percle C. Wille, E. H. Doud. Charge: Unfair methods of competition are charged in the sale of share stock of the respondent corporation in that the respondents have misrepresented the business, management, properties, and prospects of said corporation for the purpose of misleading and deceiving the purchasing public, in alleged violation of section 5 of the Federal Trade Commission act. Status: Awaiting examiner's report.

Complaint No. 964.—Federal Trade Commission v. Standard Oil Co. of New Jersey. Charge: Unfair methods of competition are charged in that the respondent acquired one-half or more of the stock or share capital of the Humble Oil & Refining Co., the effect of such acquisition being to substantially lessen competition between the said Humble Oil & Refining Co. and the respondent and its subsidiary, the Standard Oil Co. of Louisiana, to restrain commerce in those sections in which said companies are engaged in commerce and to create a monopoly in alleged violation of section 7 of the Clayton Act. Status: Preparing for trial.

Complaint No. 965.—Federal Trade Commission v. Turner & Porter (Inc.). Charge: Unfair methods of competition in commerce are charged in that the respondent, engaged in the manufacture and sale of stationery, designates and advertises as "Relief-Engraving" its process of printing which resembles, in appearance, to some extent, an impression made from engraved plates but is not "engraving" as commonly understood by the purchasing public, and in that respondent falsely represents that the words "Relief-Engraving" have been registered in the United States Patent Office as the trade-mark, all for the purpose of misleading and deceiving the purchasing public in alleged violation of section 5 of the Federal Trade Commission act. Status: Testimony to be taken July 17.

Complaint No. 966.—Federal Trade Commission v. J. B. Harris-Mexia Trust, J. B. Harris-Mexia Trust No. 2, and J. B. Harris. Charge: Unfair methods of competition in commerce are charged in the sale of stock of respondent trusts in that the respondents have misrepresented the business, management, properties, and prospects of the said respondent trusts for the purpose of misleading and deceiving the purchasing public in alleged violation of section 5 of the Federal Trade Commission act. Status: Awaiting briefs.

Complaint No. 967.—Tobacco Products Corporation and Midwest Tobacco Jobbers' Association, respondents. Charge: That the respondent association and the Tobacco Products Corporation entered into an agreement, understanding, and conspiracy by which they fixed the price at which the members of the respondent association should resell the products of the Tobacco Products Corporation, and that the Tobacco Products Corporation agreed to assist in the carrying out of the conspiracy by discontinuing the sale of its products to such members of the association as would sell such products at prices less than those fixed by the conspiracy, all in alleged violation of section 5 of the Federal Trade Commission act. Status: Complaint issued February 24, 1923.

Complaint No. 968.—Scotten-Dillon Co. and Midwest Tobacco Jobbers' Association, respondents. Charge: That the respondent Association and Scotten-Dillon Co. entered into an agreement, understanding, and conspiracy by which they fixed the price at which the members of the respondent association should resell the products of Scotten-Dillon Co., and that Scotten-Dillon Co. agreed to assist in the carrying out of the conspiracy by discontinuing the sale of its products to such members of the association as would sell such products at prices less than those fixed by the conspiracy, all in alleged violation of section 5 of the Federal Trade Commission act. Status: Complaint issued February 24, 1923.

Complaint No. 969.—The American Tobacco Co. and Midwest Tobacco Jobbers' Association, respondents. Charge: That the respondent association and the American Tobacco Co. entered into an agreement, understanding, and conspiracy by which they fixed the price at which the members of the respondent association should resell the products of the American Tobacco Co., and that the American Tobacco Co. agreed to assist in the carrying out of the conspiracy by discontinuing the sale of its products to such members of the association as would sell such products at prices less than those fixed by the conspiracy, all in alleged violation of section 5 of the Federal Trade Commission act. Status: Complaint issued February 24, 1923.

Complaint No. 970.—Federal Trade Commission *v.* Wasatch Woolen Mills, a corporation. Charge: Unfair methods of competition in commerce are charged in that the respondent, engaged in the purchase and sale of "woolen goods made to order" and having no mills or factories of its own, indicates by the use of its corporate name that it is a manufacturer owning or operating woolen mills and that its customers thereby save the profits of the middleman, thus misleading and deceiving the purchasing public, in alleged violation of section 5 of the Federal Trade Commission act. Status: Awaiting examiner's findings.

Complaint No. 971.—Federal Trade Commission *v.* Salt Lake Cooperative Woolen Mills, a corporation. Charge: Unfair methods of competition in commerce are charged in that the respondent, engaged in the purchase and sale of "woolen goods made to order," and having no mills or factories of its own, indicates by the use of its corporate name that it is a manufacturer owning or operating woolen mills and that its customers thereby save the profits of the middleman, thus misleading and deceiving the purchasing public, in alleged violation of section 5 of the Federal Trade Commission act. Status: Awaiting examiner's findings.

Complaint No. 972.—Federal Trade Commission *v.* Jenkins Knitting Co., a corporation. Charge: Unfair methods of competition in commerce are charged in that the respondent, having no mills or factories of its own but engaged in the purchase and sale of knit goods, indicate by the use of its corporate name that it is a manufacturer owning and operating woolen mills and that its customers therefore save the profits of the middleman, thus misleading and deceiving the purchasing public, in alleged violation of section 5 of the Federal Trade Commission act. Status: Awaiting examiner's findings.

Complaint No. 973.—Federal Trade Commission *v.* B. Raff & Sons. Charge: Unfair methods of competition are charged in that the respondent in jobbing pyroxyliny or celluloid combs, toilet sets, etc., advertises said articles as "Parisian Ivory," "White Ivory," or "Reed Ivory," thereby misleading and deceiving the purchasing public, in alleged violation of section 5 of the Federal Trade Commission act. Status: Awaiting answer.

Complaint No. 974.—Federal Trade Commission *v.* Brooks Oil Co. and E. A. Benedict. Charge: Unfair methods of competition in commerce are charged in that the respondents, cooperating in the sale of house paint, have falsely represented, advertised, and labeled said product as "U. S. Quality Paint," the said paint in fact being a low-grade product not made for nor used by the United States Government and not made according to any Government specification or requirements, in alleged violation of section 5 of the Federal Trade Commission act. Status: To be tried July 16.

Complaint No. 975.—Edward Frohlich, trading under the name and style of Frohlich Glass Co., and E. A. Benedict. Charge: Unfair methods of competition in commerce are charged in that the respondents, cooperating in the sale of house paint, have falsely represented, advertised, and labeled said product as "U. S. Quality Paint," the said paint in fact being a low-grade product not made for nor used by the United States Government and not made according to

any Government specification or requirements in alleged violation of section 5 of the Federal Trade Commission act. Status: To be tried July 16.

Complaint No. 976.—Federal Trade Commission v. Goodall Worsted Co. and Albert Rohaut. Charge: Unfair methods of competition in commerce are charged in that the respondent corporation, a manufacturer of Palm Beach cloth, and its sales agent, the respondent Rohaut, fixed uniform and minimum prices below which clothing manufactured from Palm Beach cloth should not be sold to jobbers and dealers and enforce said standard prices by the use of a license agreement with the manufacturers of Palm Beach clothing by refusing to sell such cloth to manufacturers who fail to observe and maintain said resale prices, thereby tending to unduly restrain the natural flow of commerce and freedom of competition in alleged violation of section 5 of the Federal Trade Commission act. Status: At issue.

Complaint No. 977.—Federal Trade Commission v. Eastman Kodak Co., Allied Laboratories Association (Inc.), the Burton Holmes Lectures (Inc.), the Craftsmen Film Laboratory (Inc.), Kinoto Co. of America (Inc.), Erbograp Co., Cromlow Film Laboratories (Inc.), Pallsades Film Laboratories (Inc.), Claremont Film Laboratory (Inc.), Film Developing Corporation, Evans Film Manufacturing Co. (Inc.), Republic Laboratories (Inc.), Lyman H. Howe Film Co., Rex Laboratory (Inc.), Tremont Film Laboratories (Inc.), Mark Dintenfass, George Eastman, Jules E. Brulatour. Charge: The complaint alleges that the Eastman interests, in an endeavor to monopolize the manufacture and sale of cinematograph film in the United States, caused the respondent Brulatour to establish and operate laboratories for the production of positive print motion-picture films (without disclosing the true ownership) for the purpose of coercing competing laboratories to refrain from purchasing foreign cinematograph film, such coercion being effected by underselling, discrimination in price and terms of credit or delay in or refusal to make delivery; and that subsequently the Eastman interests assumed title to said laboratories and by threat of operation thereof induced the respondent association and its members to join in a conspiracy by which the association members agreed to confine their purchases to film manufactured in the United States, the Eastman Co. agreeing to close its manufacturing laboratories and to refrain from further competition with members of the association, but threatening to reopen and operate its laboratories if the association members again purchased or used imported film, and the respondent members thereupon confined their purchases to Eastman film, falsely announcing that film produced by manufacturers other than Eastman can not be used to good advantage. Unfair methods of competition are charged in that the practices above described have resulted in the monopoly of the cinematograph-film business in the United States by the Eastman Co. and restricted competition and fixed prices in the sale of positive prints to the producers of motion-picture film in alleged violation of section 5 of the Federal Trade Commission act. Status: Awaiting some answers.

Complaint No. 978.—Federal Trade Commission v. Western Woolen Mills Co., a corporation. Charge: Unfair methods of competition are charged in that the respondent, engaged in the purchase and sale of woolen goods and having no mills of its own, indicates by the use of its corporate name that it is a manufacturer owning or operating woolen mills and that its customers therefore save the profits of the middleman, thus misleading and deceiving the purchasing public, in alleged violation of section 5 of the Federal Trade Commission act. Status: Awaiting examiner's findings.

Complaint No. 979.—Federal Trade Commission v. Abraham Cohen, trading under the name and style of Puritan Products Co. (Inc.). Charge: Unfair methods of competition in commerce are charged in that the respondent, engaged in the manufacture and sale of "Magnolia" salad and cooking oil simulate the trade name, containers, and labels used by the Corn Products Refining Co. in the sale of its favorably known Mazola salad and cooking oil made of corn oil, thereby misleading and deceiving the purchasing public in alleged violation of section 5 of the Federal Trade Commission act. Status: Awaiting answer.

Complaint No. 980.—Federal Trade Commission v. Victor K. Kissal and Paul Kokalis, copartners doing business under the name of Kissal & Kokalis. Charge: Unfair methods of competition are charged in that the respondents, operating a beverage stock in the District of Columbia, have simulated the white store front and distinctive sign well known to the people of the District of Columbia as originally adopted by and associated with a chain of retail

stores known as Dikeman's Orange Beverage Stores, thereby tending to mislead and deceive the consuming public in alleged violation of section 5 of the Federal Trade Commission act. Status: At issue.

Complaint No. 982.—Federal Trade Commission v. E. O. Wakefield, Mrs. E. O. Wakefield, A. J. Plume, and William Plume, copartners, doing business under the firm name of Murray Knitting Co. Charge: Unfair methods of competition in commerce are charged in that the respondents, engaged in the purchase and sale of knit goods and having no mills or factories of their own, indicate by the general use and prominent display of the firm name under which they do business that they are manufacturers and that their customers therefore save the profits of the middleman, thereby misleading and deceiving the purchasing public in alleged violation of section 5 of the Federal Trade Commission act. Status: Awaiting examiner's findings.

Complaint No. 983.—Federal Trade Commission v. Morris Errera. Charge: Unfair methods of competition in commerce are charged in that respondent, operating a beverage store in the District of Columbia, has simulated the white store front and distinctive signs well known to the people of the District of Columbia as originally adopted by and associated with a chain of retail stores known as Dikeman's Orange Beverage Stores and thereby tends to mislead and deceive the consuming public in alleged violation of section 5 of the Federal Trade Commission act. Status: At issue.

Complaint No. 984.—The American Tobacco Co. and the Tobacco Jobbers' Association of Western Pennsylvania, its officers and members, respondents. Charge: That the respondent association and the American Tobacco Co. entered into a conspiracy, agreement, and understanding, by which they fixed resale prices of tobacco products of the American Tobacco Co. handled by the members of the respondent association, and that the American Tobacco Co. agreed to assist in the accomplishment of the conspiracy by agreeing to discontinue selling to such members of the association as would sell the products of the American Tobacco Co. at prices less than those fixed by the conspiracy, all in alleged violation of section 5 of the Federal Trade Commission act. Status: Complaint was issued March 8, 1923, and answers were filed on April 27, 1923.

Complaint No. 985.—P. Lorillard Co. (Inc.), and the Tobacco Jobbers' Association of Western Pennsylvania, its officers and members, respondents. Charge: That the respondent association and the P. Lorillard Co. (Inc.) entered into a conspiracy, agreement, and understanding, by which they fixed resale prices of tobacco products of the P. Lorillard Co. handled by the members of the respondent association, and that the P. Lorillard Co. (Inc.) agreed to assist in the accomplishment of the conspiracy by agreeing to discontinue selling to such members of the association as would sell the products of the P. Lorillard Co. (Inc.) at prices less than those fixed by the conspiracy, all in alleged violation of section 5 of the Federal Trade Commission act. Status: Complaint was issued March 8, 1923, and answers were filed on April 27, 1923.

Complaint No. 986.—Federal Trade Commission v. Broadway Knitting Co., a corporation. Charge: Unfair methods of competition in commerce are charged in that the respondent, engaged in the purchase and sale of knit goods and "woolen goods made to order" and having no mills or factories of its own indicates by the use of its corporate name that it is a manufacturer and that its customers therefore save the profits of the middleman, thereby misleading and deceiving the purchasing public, in alleged violation of section 5 of the Federal Trade Commission act. Status: Awaiting examiner's findings.

Complaint No. 987.—Federal Trade Commission v. The American Tobacco Co., a corporation; Tri-State Tobacco Jobbers' Conference, an unincorporated organization, its officers, T. W. Mahany, president, William J. Stern, secretary and manager, S. D. Ostrow, treasurer, their successors, and its members. Charge: Unfair methods of competition in commerce are charged in that respondents conspired and agreed to fix uniform prices for the sale and resale of cigars, cigarettes, and other tobacco products, thereby tending to restrict competition and restrain the natural flow of commerce in alleged violation of section 5 of the Federal Trade Commission act. Status: At issue.

Complaint No. 988.—Federal Trade Commission v. Paramount Royalty Syndicate and Lea R. Ellis. Charge: Unfair methods of competition in commerce are charged in the sale of securities of respondent syndicate in that the respondents have misrepresented the organization, business, management, properties, and prospects of said respondent syndicate for the purpose of misleading

and deceiving the purchasing public, in alleged violation of section 5 of the Federal Trade Commission act. Status: At issue.

Complaint No. 990.—Federal Trade Commission *v.* Missouri-Kansas Wholesale Grocers' Association, Peet Bros. Manufacturing Co., the Rub-No-More Co. Charge: The complaint charges unfair methods of competition in that the respondents adopted a plan of hampering, obstructing, and preventing the Procter & Gamble Distributing Co., which quotes equal prices to wholesalers and retailers, from selling soaps, soap products, and cooking fats to the members of the respondent association and wholesale grocers, and sought to coerce wholesalers into refraining from dealing in the said products of the Procter & Gamble Distributing Co., in alleged violation of section 5 of the Federal Trade Commission act. Status: Testimony ready to begin July 17.

Complaint No. 991.—Federal Trade Commission *v.* Iowa-Nebraska-Minnesota Wholesale Grocers' Association, its officers, members of executive committee, and all of its members; Slocum-Bergren Co.; Gowan-Lenning-Brown Co.; Peet Bros. Manufacturing Co.; Jas. S. Kirk & Co.; and Cudahy Packing Co. Charge: The complaint charges unfair methods of competition in that the respondents adopted a plan of hampering, obstructing, and preventing the Procter & Gamble Distributing Co., which quotes equal prices to wholesalers and retailers, from selling soaps, soap products, and cooking fats to the members of the respondent association and wholesale grocers, and sought to coerce wholesalers into refraining from dealing in the said products of the Procter & Gamble Distributing Co., in alleged violation of section 5 of the Federal Trade Commission act. Status: Awaiting some answers.

Complaint No. 992.—Federal Trade Commission *v.* The Ohio Wholesale Grocers' Association Co., a corporation, and its stockholding members, and Peet Bros. Manufacturing Co., a corporation. Charge: Unfair methods of competition are charged in that the respondents adopted a plan of hampering, obstructing, and preventing the Procter & Gamble Distributing Co., which quotes equal prices to wholesalers and retailers, from selling soap, soap products, and cooking fats to the members of the respondent association and wholesale grocers, and sought to coerce wholesalers to refrain from dealing in the products of said Procter & Gamble Distributing Co., in alleged violation of section 5 of the Federal Trade Commission act. Status: Awaiting some answers.

Complaint No. 993.—Federal Trade Commission *v.* Bowers Bros. (Inc.), Lipscomb-Russell Co., W. K. Livingston, and J. K. Livingston, a partnership trading under the name of Livingston & Co.; J. E. Talmadge, jr., C. J. Talmadge, J. Y. Talmadge, and the executors of J. E. Talmadge, sr., a partnership trading under the name of Talmadge Bros. & Co. Charge: Unfair methods of competition are charged in that the respondents cooperate to maintain and enforce standard resale prices established for the resale of coffees roasted by respondent, Bowers Bros. (Inc.); refuse to sell to price cutters and prevent certain wholesalers and jobbers from obtaining said products, thereby suppressing and preventing all price competition, in alleged violation of section 5 of the Federal Trade Commission act. Status: At issue.

Complaint No. 994.—Federal Trade Commission *v.* Standard Education Society. Charge: The complaint relates that the respondent offers its "Standard Reference Work" free of charge in conjunction with a 10 years' subscription for its "Standard Loose-Leaf Extension Service" at \$49, payable within one year in monthly installments. Unfair methods of competition are charged in that the respondent's representation that the sum of \$49 is for the so-called extension service is false and misleading, as such sum is greatly in excess of the cost of the service and is sufficient to compensate the respondent for the set of books delivered "free," and in that the respondent misrepresents the value of the said books and extension service and induces individuals to accept said books on approval but prevents the purchasers from exercising their option of returning the books to the respondent at its expense; misrepresents the quality of its book bindings; makes false and misleading representation as to honorary membership in the "Standard Education Society" offered as an inducement to purchase respondent's books; claims that other books offered in connection with its "Standard Reference Work" are given free and without charge, whereas the price obtained is so far in excess of the usual selling price of the Standard Reference Work as to constitute a fair price for all of the books delivered to the customers; falsely advertises that the Standard Reference Work has been "officially adopted by 24 States," and circulates commendations of its publications subsequent to their withdrawal and abrogation by the persons signing them, all in alleged violation of section 5 of the Federal Trade Commission act. Status: Awaiting answer to amended complaint.

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Complaint No. 995.—Federal Trade Commission v. King-Ferree Co. (Inc.). Charge: Unfair methods of competition are charged in that the respondent, a manufacturer of cigars at Greensboro, N. C., by labeling and advertising its said product as "Vantampa" cigars, tends to mislead and deceive the purchasing public to believe said cigars are Tampa cigars manufactured from the Havana tobacco used in the Tampa district, in alleged violation of section 5 of the Federal Trade Commission act. Status: Before commission for final decision.

Complaint No. 997.—Federal Trade Commission v. Prosperity & Co. (Inc.). Charge: Complaint herein charges unfair methods of competition in that the respondent, for the purpose of inducing its competitors' customers to wrongfully and unlawfully breach their contracts with said competitors and thereupon install and use respondent's garment-pressing machines in substitution for those of its competitors, allows as part payment of the purchase price for its own machines such sums as have been paid on contracts for the purchase of competing machines and furnishes the services of attorneys to defend suits brought by competitors for the purchase price for competing machines originally installed in alleged violation of section 5 of the Federal Trade Commission act. Status: Before commission for final determination.

Complaint No. 998.—Federal Trade Commission v. Mrs. E. M. Henning, Joseph M. Henning, C. Wesley Henning, and William E. Henning, individuals, trading under the name and style of Phillips Genuine Sausage Co. Charge: Unfair methods of competition are charged in that the respondents, engaged in the sale of pork sausage, simulate the trade name and label of the Joseph Phillips Co., a long-established and favorably known manufacturer of "Phillips Original All-Pork Sausage," in alleged violation of section 5 of the Federal Trade Commission act. Status: Awaiting examiner's findings.

Complaint No. 999.—Federal Trade Commission v. Royal Dutch Co. of Texas. Charge: Unfair methods of competition are charged in that respondent, originally organized as the "Pennsylvania Dutch Oil Co.," changed its name in simulation of that of the internationally known Royal Dutch Co., thereby tending to mislead prospective purchasers of its corporate stock to believe that the said respondent is affiliated with the Royal Dutch-Shell group of corporations, in alleged violation of section 5 of the Federal Trade Commission act. Status: At issue.

Complaint No. 1000.—Federal Trade Commission v. The Charles H. Elliott Co. Charge: Unfair methods of competition are charged in that the respondent, engaged in the manufacture of jewelry, stationery, printing and engraving products suitable for use by schools, colleges, universities, and the student organizations thereof, offers and gives, without the knowledge and consent of the student organization, valuable gratuities to the students authorized to purchase said products as an inducement to buy respondent's products; offers and gives substantial and unwarranted reductions in price and valuable gratuities to induce said students to cancel contracts entered into with competitors of said respondent, and circulates false, misleading, and disparaging statements concerning its competitors, in alleged violation of section 5 of the Federal Trade Commission act. Status: Testimony to be taken July 9, 1923.

Complaint No. 1002.—Federal Trade Commission v. A. Morrison and L. Morrison, partners, trading as Morrison Fountain Pen Co. Charge: Unfair methods of competition are charged in that the respondents, engaged in the sale and manufacture of fountain pens and pencils, label their products with false and fictitious resale prices far in excess of the usual retail prices for the purpose of misleading and deceiving the purchasing public as to the true value and usual selling price of said articles, in alleged violation of section 5 of the Federal Trade Commission act. Status: Testimony to be taken in July.

Complaint No. 1003.—Federal Trade Commission v. Consolidated Woolen Mills Co. Charge: Unfair methods of competition are charged in that the respondent, engaged in knitting garments from yarns purchased from woolen mills and in purchasing from the manufacturers thereof blankets, robes and mackinaws for sale by it, indicates by the use of its corporate name that it is a manufacturer of woollens, thereby causing the public to believe that purchases from the respondent are direct from the manufacturers of such yarn, cloth, and garments and that the profits of the middleman are thus saved to the purchaser, in alleged violation of section 5 of the Federal Trade Commission act. Status: Awaiting examiner's findings.

Complaint No. 1004.—Federal Trade Commission v. Harry Lederer & Bros. (Inc.). Charge: Unfair methods of competition are charged in that pens and

pen points manufactured by the respondent from metals other than gold are inscribed or stamped in small and indistinct letters and figures: "Premo 141 Warranted," the said figures being used with the intent and purpose of deceiving the purchasing public by reason of their resemblance to the "14K" mark on articles made of gold, in alleged violation of section 5 of the Federal Trade Commission act. Status: Testimony to be taken in July.

Complaint No. 1005.—Federal Trade Commission *v.* Greenhalgh Mills, a corporation, J. Braumhall, J. W. Byrd, W. C. Baylies, Robert Amory, Charles Crehore, and B. F. Meffert, copartners, trading under the name and style of Amory, Brown & Co. Charge: Unfair methods of competition are charged in that the respondents, manufacturers and sales agents of cotton fabrics, caused certain of said cottons to be labeled "De Luxe Pongee," the said name having the capacity and tendency to mislead the trade and purchasing public to believe that the fabric so labeled is a silk fabric such as that commonly known and designated "Pongee," in alleged violation of section 5 of the Federal Trade Commission act. Status: Awaiting examiner's findings.

Complaint No. 1006.—Federal Trade Commission *v.* Hill Bros. Charge: Unfair methods of competition are charged in that the respondents adopted and maintained a system of standard prices for the resale of certain brands of their roasted coffee, refusing to sell to dealers failing to observe the minimum resale prices and employing various cooperative means for the enforcement of the price list, thereby hindering and suppressing all price competition and tending to obstruct the natural flow of commerce, in alleged violation of section 5 of the Federal Trade Commission act. Status: At issue.

Complaint No. 1007.—Federal Trade Commission *v.* Canada Dry Ginger Ale (Inc.) and Canada Dry Sales Corporation. Charge: Unfair methods of competition are charged in that the respondents, engaged in the manufacture of ginger ale in the United States and the sale thereof, have adopted and used labels simulating in color, design, wording, and general arrangement the well-known labels of the J. J. McLaughlin (Ltd.), manufacturers of Canadian ginger ale formerly sold in the United States by the respondent Canada Dry Sales Corporation, thereby misleading and deceiving the purchasing public in alleged violation of section 5 of the Federal Trade Commission act. Status: In course of trial.

Complaint No. 1008.—Federal Trade Commission *v.* S. A. Samuels, L. E. Samuels, L. H. Samuels, Harry H. Samuels, doing business under the name and style of Cocoa Products Co. Charge: Unfair methods of competition are charged in that the respondents, engaged in the manufacture and sale of cocoa and chocolate preparations, changed, altered, and falsified orders obtained by respondents' salesmen for presentation to and to be filled by jobbers from stock to be purchased from respondents so that said orders represented larger purchases than the actual orders obtained from the retailers, thereby causing retail dealers to refuse to accept the respondents' products from the jobbers, to the detriment and loss of said jobbers, in alleged violation of section 5 of the Federal Trade Commission act. Status: Testimony taken June 20, 1923.

Complaint No. 1009.—Federal Trade Commission *v.* Illinois Glass Co. Charge: Unfair methods of competition are charged in that the respondent, engaged in the manufacture and sale of glass bottles, entered into and carried out an agreement by the effect of which the respondent acquired the entire assets and capital stock of the Cumberland Glass Manufacturing Co., the More Jonas Glass Co., and the Minotola Glass Co., thereby tending to substantially lessen competition, restrain commerce, and create a monopoly, in alleged violation of section 5 of the Federal Trade Commission act and section 7 of the Clayton Act. Status: At issue.

Complaint No. 1010.—Federal Trade Commission *v.* Pittsburgh Coal Co. of Wisconsin, Northwestern Fuel Co., Reiss Coal Co., Clarkson Coal & Dock Co., M. A. Hanna Coal & Dock Co., Carnegie Dock & Fuel Co., Berwind Fuel Co., Northern Coal & Dock Co., Great Lakes Coal & Dock Co., Pittsburgh & Ashland Coal & Dock Co., Northwestern Coal Dock Operators Association, its officers, directors, and members. Charge: Unfair methods of competition are charged in that the respondent companies, the largest distributors of anthracite and bituminous coal in the northwest territory, which comprises the States of Minnesota, Wisconsin, North Dakota, South Dakota, and parts of Iowa and Nebraska, entered into an agreement and conspiracy among themselves, through the respondent association and with others, to restrict, restrain, and suppress competition in the sale of coal by (a) abolishing com-

missions to jobbers; (b) refraining from soliciting certain municipal business, recognizing such business as the prospect of the local retail dealer; (c) restricting certain contracts with retail dealers to cover public-utility business; (d) adopting uniform grading and cost-accounting methods for the standardization of coal sizes and costs; (e) refusing to sell to certain dealers not equipped with sheds and scales; (f) agreeing to uniform methods of accounting with retail dealers; (g) adopting uniform contracts with retail dealers and large consumers, prohibiting the diversion of coal except as authorized by the contract; (h) circulating lists of retailers to whom the respondents refuse to sell; (i) providing for the standardization and maintenance of uniform selling prices; (j) discriminating in price between the city of Duluth and the cities of St. Paul and Minneapolis; (k) selling at less than cost; (l) discriminating in price between wagon dealers and retail dealers equipped with yards and sheds; (m) arbitrarily reducing the price of coal to compel competitors to join the respondent association, all in alleged violation of section 5 of the Federal Trade Commission act and section 2 of the Clayton Act. Status: In the course of trial.

Complaint No. 1011.—Federal Trade Commission *v.* J. Mallender, trading under the unincorporated names and styles of "M. Rider & Co.," "Queen City Salvage Co.," "Army Goods Headquarters," "Army-Navy Store," and "Army Goods Store." Charge: Unfair methods of competition are charged in that the respondent, engaged in the purchase and sale of men's work and dress clothing, surplus Army and Navy property, paints, and other goods, falsely represents certain of his wares as purchased from the United States Army or Navy, or made in accordance with specifications of the United States Government and of high quality, thereby tending to mislead and deceive the purchasing public, in alleged violation of section 5 of the Federal Trade Commission act. Status: At issue.

Complaint No. 1012.—Ohio Wholesale Grocers' Association, Cleveland Tobacco Jobbers, and P. Lorillard Co. (Inc.), respondents. Charge: The charge is unfair competition in that the Ohio Wholesale Grocers' Association and a group of Cleveland, Ohio, tobacco jobbers, and P. Lorillard Co. (Inc.), entered into a conspiracy, agreement, and understanding, by which they fixed the prices at which the products of P. Lorillard Co. (Inc.), should be resold by the jobber respondents, and that P. Lorillard Co. (Inc.) agreed with the other respondents to assist in the carrying out of the conspiracy alleged, by refusing to sell to such of the respondents as would resell its products at prices less than those fixed by the conspiracy. All in alleged violation of section 5 of the Federal Trade Commission act. Status: The complaint issued April 26, 1923, and answers were filed in June, 1923.

Complaint No. 1013.—Ohio Wholesale Grocers' Association, Cleveland Tobacco Jobbers, and American Tobacco Co., respondents. Charge: The charge is unfair competition in that the Ohio Wholesale Grocers' Association and a group of Cleveland, Ohio, tobacco jobbers and the American Tobacco Co. entered into a conspiracy, agreement, and understanding, by which they fixed the prices at which the products of the American Tobacco Co. should be resold by the jobber respondents, and that the American Tobacco Co. agreed with the other respondents to assist in the carrying out of the conspiracy alleged, by refusing to sell to such of the respondents as would resell its products at prices less than those fixed by the conspiracy. All in alleged violation of section 5 of the Federal Trade Commission act. Status: The complaint issued April 26, 1923, and answers were filed in June, 1923.

Complaint No. 1014.—Federal Trade Commission *v.* Ralph E. Dings and Lyon S. Schuster, a partnership doing business under the name and style of Dings & Schuster. Charge: Unfair methods of competition are charged in that the respondents, engaged in the manufacture and sale of paints, varnishes, shellac, and shellac substitutes, label as "white shellac" a product composed of shellac gum and a large quantity of shellac gum substitutes, such as rosin and similar ingredients, without distinguishing it from their similarly labeled product which is composed solely of shellac gum dissolved in alcohol, thereby tending to mislead and deceive the purchasing public, in alleged violation of section 5 of the Federal Trade Commission act. Status: At issue.

Complaint No. 1015.—Federal Trade Commission *v.* William R. Warner & Co. (Inc.). Charge: Unfair methods of competition are charged in that the respondent, having established two scales of prices for its patent medicines, pharmaceuticals, and drug specialties designated, respectively, as jobbers' prices and retailers' prices, makes a regular practice of selling its products at said

jobbers' prices to certain selected wholesalers and retailers; at the same time and irrespective of quantity purchased charges the higher retailers' prices to other wholesalers and retailers, thereby discriminating between its two classes of customers and giving preferred wholesalers and retailers an unfair advantage over competitors, who are compelled to purchase the respondent's goods of the same quality and quantity at higher prices and on less advantageous terms, tending to hinder and lessen competition, in alleged violation of section 5 of the Federal Trade Commission act and section 2 of the Clayton Act. Status: Awaiting answer.

Complaint No. 1016.—Federal Trade Commission v. Edwin E. Ellis Co. (Inc.) Charge: Unfair methods of competition are charged in that the respondent, engaged in the printing and selling of stationery, designates and advertises as "Process engraving" its method of printing in simulation of impressions made from engraved plates, thereby tending to mislead and deceive the purchasing public into the erroneous belief that the respondent's products are in fact "engraved," in alleged violation of section 5 of the Federal Trade Commission act. Status: At issue.

Complaint No. 1017.—Federal Trade Commission v. Process Engraving Co. Charge: Unfair methods of competition are charged in that the respondent, engaged in the printing and selling of stationery, designates and advertises as "Process engraving" its method of printing in simulation of impressions made from engraved plates, thereby tending to mislead and deceive the purchasing public into the erroneous belief that the respondent's products are in fact "engraved," in alleged violation of section 5 of the Federal Trade Commission act. Status: At issue.

Complaint No. 1018.—Federal Trade Commission v. Toledo Pipe Threading Machine Co. Charge: Unfair methods of competition are charged in that the respondent, engaged in the manufacture of pipe-threading, boring and cutting tools, and similar products, employs a system or policy whereby it has established and maintained standard prices for the resale of its products by jobbers and other distributors, refusing to sell its products to price cutters and employing other cooperative means for the enforcement of said resale prices, thereby tending to obstruct the free and natural flow of commerce and freedom of competition, in alleged violation of section 5 of the Federal Trade Commission act. Status: Awaiting answer.

Complaint No. 1019.—Federal Trade Commission v. The Standard Register Co. Charge: Unfair methods of competition are charged in that the respondent, engaged in the manufacture and sale of manifolded or autographic registers and supplies therefor, publishes numerous false, misleading, disparaging, and unfair representations concerning its competitor, the Egly Register Co., falsely asserting that a court decision in favor of the respondent has had the effect of cancelling all orders placed with said Egly Co.; threatening to bring and instituting suit for alleged infringement of patents, said suit and threat of litigation being not in good faith but for the purpose of intimidating the said Egly Co. and its customers; falsely representing its register as superior in quality; and circulating statements to the effect that the Egly Co. is more than six months in arrears with its orders, all for the purpose of injuring its competitor and in alleged violation of section 5 of the Federal Trade Commission act. Status: At issue.

Complaint No. 1020.—Federal Trade Commission v. The Armand Co. Charge: Unfair methods of competition are charged in that the respondent, engaged in the manufacture and sale of toilet preparations, employs a system of fixing and establishing certain specified standard prices for the resale of its products by jobbers, wholesalers, and retailers, refusing to sell to price cutters and employing other cooperative means for the enforcement of said system of resale prices, thereby tending to obstruct the natural flow of commerce and freedom of competition, in alleged violation of section 5 of the Federal Trade Commission act. Status: Awaiting answer.

Complaint No. 1021.—Federal Trade Commission v. Hygrade Lamp Co. Charge: Unfair methods of competition are charged in that the respondent, engaged in the manufacture and sale of tungsten lamps, adopted and enforces a policy of requiring its jobbers to enter into an exclusive agreement whereby said jobbers agree to restrict their purchases to the respondent and to limit their Hygrade Lamp business to said jobber's exclusive territory, which is clearly defined in the agreement, all in consideration of respondent's agreement to sell exclusively to said jobber in said exclusive territory, thereby hindering and suppressing competition in the jobbing of electric lamps, in alleged violation of section 5 of the Federal Trade Commission act. Status: Awaiting answer.

Complaint No. 1022.—Federal Trade Commission v. Hygrade Lamp Co. Charge: Unfair methods of competition are charged in that the respondent, by the acquisition of the capital stock of the Lux Manufacturing Co., a competitor, tends to lessen competition and restrain commerce in the territory served by the Lux Co., in alleged violation of section 7 of the Clayton Act. Status: At issue.

Complaint No. 1023.—Federal Trade Commission v. International Shoe Co. Charge: It is charged that the respondent, by acquiring substantially all of the capital stock of the W. H. McElwain Co., theretofore engaged in the manufacture and sale of shoes in competition with the respondent, tends to lessen competition, restrain commerce, and create a monopoly, in alleged violation of section 7 of the Clayton Act. Status: Awaiting answer.

Complaint No. 1024.—Federal Trade Commission v. Charles E. Cormier Rice Milling Co. (Inc.). Charge: Unfair methods of competition are charged in that the respondent, engaged in buying and selling rice and having no rice mills of its own, indicates by the use of the word "milling" as a part of its corporate name that it is a miller of rice and that its customers therefore save the profits of all intermediate dealers, thereby tending to mislead and deceive the purchasing public, in alleged violation of section 5 of the Federal Trade Commission act. Status: At issue.

Complaint No. 1025.—Federal Trade Commission v. Charles Tager, an individual trading under the name of Regat Sales Co. Charge: Unfair methods of competition are charged in that the respondent, by resorting to false, misleading, and deceptive representations as to the Markwell Manufacturing Co. and the Botts Marking Ink Co., distributors of Acme tacking machines and staples, persuades and induces customers and prospective customers who were using Acme tacking machines and staples to discontinue the use of said Acme machines in exchange for the respondent's Regat tacking machines, and to purchase large supplies of Regat staples, thus preventing said competitors from selling staples to their customers, in alleged violation of section 5 of the Federal Trade Commission act. Status: Taking of testimony to begin July 17, 1923.

Complaint No. 1026.—Federal Trade Commission v. M. Kaplin, trading as Butterfly Shop. Charge: Unfair methods of competition are charged in that the respondent, engaged in the sale of wearing apparel at retail, falsely represents as "silk" certain hosiery and other articles manufactured from materials or fabrics other than silk but resembling silk in appearance and texture, thereby misleading and deceiving the purchasing public, in alleged violation of section 5 of the Federal Trade Commission act. Status: Taking of testimony to begin July 6, 1923.

Complaint No. 1027.—Federal Trade Commission v. Panama Rice Milling Co. Charge: Unfair methods of competition are charged in that the respondent, engaged in the buying and selling of rice and having no rice mills of its own, indicates by the use of the word "milling" as a part of its corporate name that it is a miller of rice and that its customers therefore save the profits of all intermediate dealers, thereby tending to mislead and deceive the purchasing public, in alleged violation of section 5 of the Federal Trade Commission act. Status: Awaiting answer.

Complaint No. 1028.—Federal Trade Commission v. Guaranty Royalties Co., W. F. Rogers, W. L. Hughes, and A. C. Loughrey. Charge: Unfair methods of competition are charged in the sale of the stock of the respondent joint-stock association in that the respondents have made numerous false, misleading, and deceptive statements concerning the organization, management, properties, production, earnings, and prospects of the respondent company for the purpose of inducing the public to purchase said stock, in alleged violation of section 5 of the Federal Trade Commission act. Status: Awaiting answer.

Complaint No. 1029.—American Tobacco Co., Bauswitz Cigar Co., of Phoenix, Ariz., and others; all of whom are Phoenix, Ariz., tobacco jobbers, respondents. Charge: The charge is unfair competition in that the American Tobacco Co. and the other respondents entered into an understanding by which they fixed the prices at which respondent jobbers should resell the products of the American Tobacco Co., and that the American Tobacco Co. promised the other respondents its cooperation in the enforcement of the alleged conspiracy by agreeing to discontinue selling such of the jobber respondents as would resell its products at prices less than those fixed by the conspiracy. All in alleged violation of section 5 of the Federal Trade Commission act. Status: The complaint issued May 28, 1923, and the hearing day named in the complaint is July 17, 1923.

Complaint No. 1030.—Liggett & Myers Tobacco Co., Bauswitz Cigar Co., of Phoenix, Ariz., and others, all of whom are Phoenix, Ariz., tobacco jobbers, respondents. Charge: The charge is unfair competition in that the Liggett & Myers Tobacco Co. and the other respondents entered into an understanding by which they fixed the prices at which respondent jobbers should resell the products of the Liggett & Myers Tobacco Co., and that the Liggett & Myers Tobacco Co. promised the other respondents its cooperation in the enforcement of the alleged conspiracy by agreeing to discontinue selling such of the jobber respondents as would resell its products at prices less than those fixed by the conspiracy. All in alleged violation of section 5 of the Federal Trade Commission act. Status: The complaint issued May 28, 1923, and the hearing day named in the complaint is July 17, 1923.

Complaint No. 1031.—P. Lorillard Co. (Inc.), Bauswitz Cigar Co., of Phoenix, Ariz., and others, all of whom are Phoenix, Ariz., tobacco jobbers, respondents. Charge: The charge is unfair competition in that the P. Lorillard Co. (Inc.) and the other respondents entered into an understanding by which they fixed the prices at which respondent jobbers should resell the products of the P. Lorillard Co. (Inc.) and that the P. Lorillard Co. (Inc.) promised the other respondents its cooperation in the enforcement of the alleged conspiracy by agreeing to discontinue selling such of the jobber respondents as would resell its products at prices less than those fixed by the conspiracy. All in alleged violation of section 5 of the Federal Trade Commission act. Status: The complaint issued May 28, 1923, and the hearing day named in the complaint is July 17, 1923.

Complaint No. 1032.—The American Tobacco Co., Conference of Wholesale Tobacco Dealers of Oregon, and others, respondents. Charge: The respondents joined in its complaint with the American Tobacco Co., groups of tobacco jobbers, and wholesale grocers located in numerous localities along the Pacific coast. The charge is that each group and the American Tobacco Co. conspired to fix resale prices on American Tobacco Co.'s products sold by the members of such groups, and that each of the groups agreed with each and every one of the other groups and with the American Tobacco Co. to adhere to the prices fixed by the American Tobacco Co., and each of such of the other groups, and that the American Tobacco Co. offered each of the groups to assist in the conspiracies by refusing to continue selling to such jobber as would resell its products at prices less than those fixed by the conspiracies aforesaid, all in alleged violation of the Federal Trade Commission act. Status: The complaint issued May 31, 1923, and the hearing day named in it is July 20, 1923.

Complaint No. 1033.—Liggett & Myers Tobacco Co., Conference of Wholesale Tobacco Dealers of Oregon, and others, respondents. Charge: The respondents joined in its complaint with the Liggett & Myers Tobacco Co. and groups of tobacco jobbers and wholesale grocers located in numerous localities along the Pacific coast. The charge is that each group and the Liggett & Myers Tobacco Co. conspired to fix resale prices on Liggett & Myers Tobacco Co.'s products sold by the members of such groups and that each of the groups agreed with each and every one of the other groups and with the Liggett & Myers Tobacco Co. to adhere to the prices fixed by the Liggett & Myers Tobacco Co. and each of such of the other groups, and that the Liggett & Myers Tobacco Co. offered each of the groups to assist in the conspiracies by refusing to continue selling to such jobber as would resell its products at prices less than those fixed by the conspiracies aforesaid, all in alleged violation of the Federal Trade Commission act. Status: The complaint issued May 31, 1923, and the hearing day named in it is July 20, 1923.

Complaint No. 1034.—Liggett & Myers, Keystone Tobacco Jobbers' Association, its officers and members, and the Central Pennsylvania Tobacco Jobbers' Association, its officers and members, respondents. Charge: The charge is unfair competition in that Liggett & Myers Tobacco Co. and the Keystone Tobacco Jobbers' Association by conspiracy fixed prices at which the members of that association should resell the products of the Liggett & Myers Tobacco Co.; that the Central Pennsylvania Tobacco Jobbers' Association entered into a similar conspiracy with the Liggett & Myers Tobacco Co.; that each association agreed to abide by the prices of the other association when its members sold into territory of the members of such other associations and that the Liggett & Myers Tobacco Co. agreed with both of the associations to assist in the carrying out of the several conspiracies by discontinuing to sell such members of the associations as would sell its products at prices less than those fixed by the conspiracies aforesaid. Status: The complaint issued June 6, 1923, and the hearing day named in the complaint is July 26, 1923.

Complaint No. 1035.—Larus Bros. Co., Keystone Tobacco Jobbers' Association, its officers and members, and the Central Pennsylvania Tobacco Jobbers' Association, its officers and members, respondents. Charge: The charge is unfair competition in that Larus Bros. Co. and the Keystone Tobacco Jobbers' Association, by conspiracy, fixed prices at which the members of that association should resell the products of Larus Bros. Co.; that the Central Pennsylvania Tobacco Jobbers' Association entered into a similar conspiracy with Larus Bros. Co.; that each association agreed to abide by the prices of the other association when its members sold into territory of the members of such other association, and that Larus Bros. Co. agreed with both of the associations to assist in the carrying out of the several conspiracies by discontinuing to sell such members of the associations as would sell its products at prices less than those fixed by the conspiracies aforesaid. Status: The complaint issued June 6, 1923, and the hearing day named in the complaint is July 26, 1923.

Complaint No. 1036.—Federal Trade Commission *v.* The American Tobacco Co., a corporation; Keystone Tobacco Merchants' Association, an unincorporated organization, its officers, J. C. Lindner, president; E. A. Stroud, vice president; I. Finkelstein, treasurer; W. F. Smulyan, secretary; their successors, and its members; Central Tobacco Jobbers' Association of Pennsylvania, an unincorporated organization, its officers, G. H. Stallman, president; Jacob L. Hauer, vice president; W. Clyde Shissler, secretary and treasurer; their successors, and its members. Charge: Unfair methods of competition are charged in that the respondents conspired and agreed to fix uniform prices for the sale and resale of cigars, cigarettes, and other tobacco products, the respondent, the American Tobacco Co., refusing to sell its products to those who did not maintain said standard resale prices or resold said products to price-cutting subjobbers and retailers, all for the purpose and with the effect of restricting competition and restraining the natural flow of commerce in alleged violation of section 5 of the Federal Trade Commission act. Status: Awaiting some answers.

Complaint No. 1037.—Federal Trade Commission *v.* P. Lorillard Co. (Inc.), a corporation; Keystone Tobacco Merchants' Association, an unincorporated organization; its officers, J. C. Lindner, president; E. A. Stroud, vice president; I. Finkelstein, treasurer; W. F. Smulyan, secretary; their successors and its members; Central Tobacco Jobbers' Association of Pennsylvania, an unincorporated organization, its officers, G. H. Stallman, president; Jacob L. Hauer, vice president; W. Clyde Shissler, secretary and treasurer; their successors and its members. Charge: Unfair methods of competition are charged in that the respondents conspired and agreed to fix uniform prices for the sale and resale of cigars, cigarettes, and other tobacco products, the respondent, P. Lorillard Co. (Inc.), refusing to sell its products to those who did not maintain said standard resale prices or resold products to price-cutting subjobbers and retailers, all for the purpose and with the effect of restricting competition and restraining the natural flow of commerce in violation of section 5 of the Federal Trade Commission act. Status: Awaiting some answers.

Complaint No. 1038.—Federal Trade Commission *v.* Standard Oil Co. of Kentucky, a corporation, F. T. Hurner, Gulf Refining Co., a corporation, F. D. Jones, the Texas Co., a corporation, H. G. Thompson, Tampa Automobile Dealers' Association, its officers, directors, and members, Tampa Retail Gasoline Dealers' Association, its officers, directors, and members. Charge: Unfair methods of competition are charged in that the respondent associations and their members conspired and agreed to fix prices and margins of profit for the sale of gasoline and for the enforcement of said prices solicited and obtained the cooperation of the respondent oil companies and their local agents, the individual respondents, the last-named group of respondents refusing to sell and deliver gasoline on usual and customary terms and conditions to those gasoline dealers who would not enter into and abide by the agreement fixing prices and margins of profit, all of which tends to reduce and divert the natural flow of commerce and to suppress and restrict the freedom of competition, in alleged violation of section 5 of the Federal Trade Commission act. Status: Awaiting some answers.

Complaint No. 1039.—Federal Trade Commission *v.* American Electric Heater Co. Charge: Unfair methods of competition are charged in that the respondent, engaged in the manufacture and sale of electrical appliances, established certain specified wholesale and retail prices at which its "American Beauty" iron should be sold by dealers, refusing to sell to price cutters and employing other cooperative means for the enforcement of its standard resale prices, thereby

hindering and suppressing competition and obstructing the free and natural flow of commerce, in alleged violation of section 5 of the Federal Trade Commission act. Status: Awaiting answer.

Complaint No. 1040.—Federal Trade Commission v. F. M. Stamper Co. Charge: Unfair methods of competition are charged in that the respondent, engaged in the purchase and sale of poultry, eggs, and cream, has adopted and maintains the practice of paying higher prices for poultry and eggs at one of its buying stations than it pays for such produce at other buying stations, thereby compelling competing buyers to discontinue purchasing produce in the territory in which higher prices are paid by the respondent and tending to substantially lessen competition and create a monopoly in said territory, in alleged violation of section 5 of the Federal Trade Commission act. Status: Awaiting answer.

Complaint No. 1041.—Federal Trade Commission v. Mountain Grove Creamery, Ice & Electric Co. Charge: Unfair methods of competition are charged in that the respondent has caused its butter to be put up in packages or cartons containing from 1 to 2 ounces less than the recognized standard weight of 16 ounces or 1 pound, the true weight being marked on the container, however, each carton containing separately wrapped, unmarked units of slightly less than the standard and customary size and weight, and in imitation thereof, the tendency being to enable and encourage retailers to commit a fraud on the ultimate purchasers of the separately wrapped unmarked units, in alleged violation of section 5 of the Federal Trade Commission act. Status: Awaiting answer.

Complaint No. 1042.—Federal Trade Commission v. The Wichita Creamery Co. Charge: Unfair methods of competition are charged in that the respondent has caused its butter to be put up in packages or cartons containing 1 ounce less than the recognized standard weight of 16 ounces or 1 pound, the true weight being marked on the container, however, each carton containing separately wrapped unmarked units of slightly less than the standard and customary size and weight, and in imitation thereof, the tendency being to enable and encourage retailers to commit a fraud on the ultimate purchasers of the separately wrapped unmarked units, in alleged violation of section 5 of the Federal Trade Commission act. Status: Awaiting answer.

Complaint No. 1043.—Federal Trade Commission v. The Meriden Creamery Co. Charge: Unfair methods of competition are charged in that the respondent has caused its butter to be put up in packages or cartons containing 1 ounce less than the recognized standard weight of 16 ounces or 1 pound, the true weight being marked on the container however, each carton containing separately wrapped, unmarked units of slightly less than the standard and customary size and weight, and in imitation thereof, the tendency being to enable and encourage retailers to commit a fraud on the ultimate purchasers of the separately wrapped, unmarked units, in alleged violation of section 5 of the Federal Trade Commission act. Status: Awaiting answer.

EXHIBIT 17.

PROCEEDINGS DISPOSED OF DURING YEAR ENDED JUNE 30, 1923.

1. ORDERS TO CEASE AND DESIST.

Complaint No. 293.—Federal Trade Commission *v.* Non-Derrick Drilling Machine Co. (Inc.). Charge: Unfair methods of competition in connection with the sale of its corporate stock, consisting of publishing, advertising, and circulating extravagant, false and misleading statements, promises, and predictions concerning the business, organization, assets, capital stock, financial standing, and prospective profits of respondent, and concealing from the public material facts relating to and affecting the plans, organization, business, and capital stock of the respondent, and making, publishing, and circulating false statements regarding the existence, character, strength, efficiency, and operation of a drilling device or apparatus for the manufacture of which the respondent was ostensibly organized, and also falsely stating, representing, and advertising that it is engaged in business as a drilling contractor, whereas its activities have been confined solely to the sale of its capital stock, in alleged violation of section 5 of the Federal Trade Commission act. Disposition: After hearing the commission entered its order directing the respondent to cease and desist from the practices alleged in the complaint.

Complaint No. 400.—Federal Trade Commission *v.* The Music Publishers' Association of the United States, National Association of Sheet Music Dealers, Thomas F. Delaney, individually and as president; E. Grant Ege, individually and as vice president; J. M. Priaulx, individually and as secretary and treasurer of the National Association of Sheet Music Dealers; Walter Fischer, J. Elmer Harvey, Charles W. Homeyer, William J. Kearney, Edward P. Little, Holmes T. Maddox, L. W. Miller, Harold Orth, Gustav Schirmer, S. Ernest Philpitt, Paul A. Schmitt, Clayton F. Summy, Charles H. Willis, W. H. Witt, Harvey J. Wood, individually and as directors of the National Association of Sheet Music Dealers, and all members of said association. Charge: Using unfair methods of competition by conspiring with the intent and effect of stifling competition in the business of selling musical publications, and fixing and maintaining standard resale prices; and by agreeing upon policies of increase in price, and upon uniform rates and schedules of prices of certain classes of musical publications, with the result that the prices of such publications were increased and enhanced, in alleged violation of section 5 of the Federal Trade Commission act. Disposition: After hearing the commission entered its order directing the respondents to cease and desist from the practices alleged in the complaint.

Complaint No. 453.—Federal Trade Commission *v.* Swift & Co. Charge: That respondent purchased 956 shares of the capital stock of the Moultrie Packing Co., a competitor, causing the same to be transferred on the books of the company to officers and employees of the respondent, who, at a stockholders' meeting of said company, were elected as directors and stockholders for the transfer of property of the said company to respondent; that it purchased all the capital stock of the Andalusia Packing Co., a competitor, and acquired the business of the company by a procedure similar to that employed in acquiring the Moultrie Packing Co.; and acquired one-half of the capital stock of the England, Walton Co. (Inc.), a competitor, securing control of the remaining stock of said company by receiving said stock as security for money loaned to Mulford & Bryan to purchase it; and that the result of such acquisitions is the elimination of competition theretofore existing between the above-mentioned companies and the respondent and the creation of conditions which tend to create a monopoly, in alleged violation of section 5 of the Federal Trade Commission act and section 7 of the Clayton Act. Disposition: After hearing the commission entered its order directing the respondent to cease and desist from the practices alleged in the complaint.

Complaint No. 456.—Federal Trade Commission *v.* Western Meat Co. Charge: That respondent acquired all of the capital stock of the Nevada Packing Co., which acquisition resulted in the elimination of competition theretofore existing between respondent and said Nevada Packing Co. and the creation of a monopoly in meat and its by-products in communities adjacent to Reno, Nev., in violation of section 5 of the Federal Trade Commission act and section 7 of the Clayton Act. Disposition: After hearing the commission entered its order directing the respondent to cease and desist from the charges alleged in the complaint.

Complaint No. 583.—Federal Trade Commission *v.* John Bene & Sons (Inc.). Charge: Using unfair methods of competition by circulating false and misleading statements regarding an analysis made by it of samples of one of its competitor's goods to the effect that such products were harmful, dangerous, and of no benefit. In alleged violation of section 5 of the Federal Trade Commission act. Disposition: After hearing the commission entered its order directing the respondent to cease and desist from the practices alleged in the complaint.

Complaint No. 588.—Federal Trade Commission *v.* Esco Hosiery Co. (Inc.). Charge: Using unfair methods of competition by labeling, advertising, stamping, and branding on packages containing hosiery bought and sold by it representations that the hose contained in said packages are silk, when in truth and in fact the material in said hose is not all silk, but only a portion of such material is silk, the remaining portion being composed for the most part of cotton and wool, with the effect of misleading and deceiving the trade and general public, in alleged violation of section 5 of the Federal Trade Commission act. Disposition: After hearing the commission entered its order directing the respondent to cease and desist from the practices alleged in the complaint.

Complaint No. 676.—Federal Trade Commission *v.* Harry Friedman, trading under the name and style of Rex Hosiery Co. Charge: Using unfair methods of competition in the wholesale sale of hosiery by labeling hosiery with the words "American silk," when such hosiery in fact contains no genuine silk. In alleged violation of section 5 of the Federal Trade Commission act. Disposition: After hearing the commission entered its order directing the respondent to cease and desist from the practices alleged in the complaint.

Complaint No. 677.—Federal Trade Commission *v.* W. A. Shoffner and L. I. Young, partners, styling themselves the Alamance Hosiery Mills. Charge: Using unfair methods of competition in the manufacture and sale of hosiery labeled as "American silk," when such hosiery contains no genuine silk, in alleged violation of section 5 of the Federal Trade Commission act. Disposition: After hearing the commission entered its order directing the respondent to cease and desist from the practices alleged in the complaint.

Complaint No. 678.—Federal Trade Commission *v.* Brown Durrell Co. Charge: Using unfair methods of competition in the wholesale distribution of hosiery and underwear by falsely labeling it "Worsted," "Fine wool," "Merino," "All wool," "Natural wool," or "Cashmere," when such hosiery and underwear is made of mixed cotton and wool, with the effect of deceiving the purchasing public, in alleged violation of section 5 of the Federal Trade Commission act. Disposition: After hearing the commission entered its order directing the respondent to cease and desist from the practices alleged in the complaint.

Complaint No. 679.—Federal Trade Commission *v.* Nolde & Horst Co. Charge: Using unfair methods of competition in the manufacture and sale of hosiery by labeling hosiery made of mixed cotton and wool in approximately equal parts as "Worsted," "Fine wool," "Merino," "All wool," "Natural wool," or "Cashmere," with the effect of misleading and deceiving the purchasing public, in alleged violation of section 5 of the Federal Trade Commission act. Disposition: After hearing the commission entered its order directing the respondent to cease and desist from the practices alleged in the complaint.

Complaint No. 680.—Federal Trade Commission *v.* Hancock Knitting Mills. Charge: Using unfair methods of competition in the manufacture and sale of hosiery by labeling hosiery made wholly of cotton or of cotton and wool in approximately equal parts, as "Silk lisle," "Best silk lisle," or "Oriental silk," or "Men's cashmere half hose," with the effect of misleading and deceiving the purchasing public, in alleged violation of section 5 of the Federal Trade Commission act. Disposition: After hearing the commission entered its order

directing the respondent to cease and desist from the practices alleged in the complaint.

Complaint No. 681.—Federal Trade Commission v. Fidelity Knitting Mills. Charge: Using unfair methods of competition in the manufacture and sale of hosiery by labeling hosiery made wholly of cotton or of cotton and wool in approximately equal parts, as "Silk lisle," or "Cashmere," with the effect of misleading and deceiving the purchasing public, in alleged violation of section 5 of the Federal Trade Commission act. Disposition: After hearing the commission entered its order directing the respondent to cease and desist from the practices alleged in the complaint.

Complaint No. 682.—Federal Trade Commission v. Joseph Kahn, Jacob Frank, and Jerome Frank, partners, styling themselves Kahn & Frank. Charge: Using unfair methods of competition in the wholesale distribution of hosiery by labeling hosiery containing no genuine silk as "Ladies' silk boot hose," "Ladies' art silk hose," etc., with the effect of misleading and deceiving the purchasing public, in alleged violation of section 5 of the Federal Trade Commission act. Disposition: After hearing the commission entered its order directing the respondent to cease and desist from the practices alleged in the complaint.

Complaint No. 683.—Federal Trade Commission v. J. Reed Thompson, Andrew N. Thompson, George L. Thompson, and A. Walter Thompson, partners, styling themselves Thompson Bros. Charge: Using unfair methods of competition in the manufacture and sale of hosiery by labeling hosiery containing no genuine silk as "Ladies' silk boot hose," "Ladies' art silk hose," etc., with the effect of misleading and deceiving the purchasing public, in alleged violation of section 5 of the Federal Trade Commission act. Disposition: After hearing the commission entered its order directing the respondent to cease and desist from the practices alleged in the complaint.

Complaint No. 684.—Federal Trade Commission v. Charles Daum, Thomas J. Rogers, and Harry Spritzer, partners, styling themselves the Daum, Rogers, Spritzer Co. Charge: Using unfair methods of competition in the wholesale distribution of hosiery made of cotton and silk, cotton and wool, or silk fiber and wool, as "Men's silk half hose," "Cashmere hose," or "Silk and wool," with the effect of misleading and deceiving the purchasing public, in alleged violation of section 5 of the Federal Trade Commission act. Disposition: After hearing the commission entered its order directing the respondent to cease and desist from the practices alleged in the complaint.

Complaint No. 685.—Federal Trade Commission v. Aristo Hosiery Co. Charge: Using unfair methods of competition in the manufacture and sale of hosiery by labeling hosiery made of mixed cotton and wool as "Worsted ribbed hose," "Worsted fashioned hose," "Wool fashioned hose," "Women's black cashmere hose," "Black cashmere," "Fashioned cashmere hose," "Women's black wool hose, fashioned," "Ladies' high-grade cashmere," with the effect of misleading and deceiving the purchasing public, in alleged violation of section 5 of the Federal Trade Commission act. Disposition: After hearing the commission entered its order directing the respondent to cease and desist from the practices alleged in the complaint.

Complaint No. 686.—Federal Trade Commission v. Rockford Mitten & Hosiery Co. Charge: Using unfair methods of competition in the manufacture and sale of hosiery made of mixed cotton and wool by labeling it "Worsted ribbed hose," "Worsted fashioned hose," "Wool fashioned hose," "Women's black cashmere hose," "Black cashmere," "Fashioned cashmere hose," "Women's black wool hose, fashioned," "Ladies' high-grade cashmere," with the effect of misleading and deceiving the purchasing public, in alleged violation of section 5 of the Federal Trade Commission act. Disposition: After hearing the commission entered its order directing the respondent to cease and desist from the practices alleged in the complaint.

Complaint No. 687.—Federal Trade Commission v. John T. Moore, Clarence G. Fisher, Edward J. Murphy, and W. H. Mathews, partners, styling themselves Moore & Fisher. Charge: Using unfair methods of competition in the wholesale distribution of hosiery made of mixed cotton and silk by labeling it as "World's best pure thread silk" or "Silk plated," and by placing on hosiery containing no genuine silk the label "Silk lisle," and by labeling hosiery made of mixed cotton and wool as "Cashmere," with the effect of misleading and deceiving the purchasing public, in alleged violation of section 5 of the Federal Trade Commission act. Disposition: After hearing the commission entered its

order directing the respondent to cease and desist from the practices alleged in the complaint.

Complaint No. 689.—Federal Trade Commission *v.* Everett F. Boyden, trading under the name and style of George E. Boyden & Son. Charge: Using unfair methods of competition by selling hosiery made of cotton and wool in approximately equal parts as "Cashmere," with the effect of misleading and deceiving the purchasing public, in alleged violation of section 5 of the Federal Trade Commission act. Disposition: After hearing the commission entered its order directing the respondent to cease and desist from the practices alleged in the complaint.

Complaint No. 698.—Federal Trade Commission *v.* Pilling & Madeley. Charge: Using unfair methods of competition in the wholesale distribution of hosiery by labeling hosiery containing no genuine silk as "Gordon silk hose," "Women's two-tone silk hose," or "Pure thread silk hose," with the effect of misleading and deceiving the purchasing public, in alleged violation of section 5 of the Federal Trade Commission act. Disposition: After hearing the commission entered its order directing the respondent to cease and desist from the practices alleged in the complaint.

Complaint No. 699.—Federal Trade Commission *v.* Oscar Schmied. Charge: Using unfair methods of competition in the wholesale distribution of hosiery by labeling hosiery made of cotton and silk as "Ladies' silk hose," "Men's silk half hose," "Silk hose," or "Silk half hose," with the effect of misleading and deceiving the purchasing public, in alleged violation of section 5 of the Federal Trade Commission act. Disposition: After hearing the commission entered its order directing the respondent to cease and desist from the practices alleged in the complaint.

Complaint No. 716.—Federal Trade Commission *v.* Simon Adelson, trading under the name and style of United States Refining Co. Charge: Using unfair methods of competition in the manufacture and sale of paints and other products by using false advertising matter and deceptive labels to lead the purchasing public into the erroneous belief that his product is ground in pure linseed oil or is pure white lead and is procured from or manufactured by the United States Government, in alleged violation of section 5 of the Federal Trade Commission act. Disposition: After hearing the commission entered its order directing the respondent to cease and desist from the practices alleged in the complaint.

Complaint No. 734.—Federal Trade Commission *v.* International Paint & Oil Co. Charge: Using unfair methods of competition by labeling as "Turpentine" its coal-tar distillate, which is capable of being used for some of the purposes for which turpentine can be used, which labeling so closely simulates the word "turpentine" that the purchasing public is deceived and misled to believe that the respondent's product is turpentine or similar thereto, in alleged violation of section 5 of the Federal Trade Commission act. Disposition: After hearing the commission entered its order directing the respondent to cease and desist from the practices alleged in the complaint.

Complaint No. 736.—Federal Trade Commission *v.* Suloway Mills. Charge: Using unfair methods of competition by the use of false and deceptive labels on hosiery made of wool and other material in approximately equal proportions, which create the belief that its hosiery so manufactured is composed entirely of wool in alleged violation of section 5 of the Federal Trade Commission act. Disposition: After hearing the commission entered its order directing the respondent to cease and desist from the practices alleged in the complaint.

Complaint No. 738.—Federal Trade Commission *v.* Thatcher Manufacturing Co. Charge: Using unfair methods of competition by acquiring from the Owens Bottling Machine Co. the exclusive right to manufacture and sell milk bottles produced by the first automatic bottle-making machine. Subsequently another bottle-making machine was invented and licensed by the Hartford Fairmont Co.; and that the respondent, by taking over the control of the Hartford Fairmont Co. and its licensees, tends to eliminate competition and create a monopoly in the manufacture and sale of milk bottles, in alleged violation of section 5 of the Federal Trade Commission act and section 7 of the Clayton Act. Disposition: After hearing the commission entered its order directing the respondent to cease and desist from the practices alleged in the complaint.

Complaint No. 741.—Federal Trade Commission *v.* Eskay Harris Feature Film Co. Charge: Using unfair methods of competition by the adoption of

the title "Black Beauty" for a film reconstructed by it from an old film entitled "Your Obedient Servant," with the purpose and effect of appropriating the value created by the advertising campaign of the Vitagraph Co for its bona fide production "Black Beauty," and by falsely claiming the control of the motion-picture rights and title of "Black Beauty" and threatening to prosecute any infringement, in alleged violation of section 5 of the Federal Trade Commission act. Disposition: After hearing the commission entered its order directing the respondent to cease and desist from the practices alleged in the complaint.

Complaint No. 747.—Federal Trade Commission v. The Standard Electric Manufacturing Co. Charge: That the respondent, with the purpose and effect of lessening competition and creating a monopoly in the manufacture and sale of electrical appliances, enters into tying contracts with dealers whereby they, in consideration of a 10 per cent rebate, agreed to refrain from dealing in the products of competitors of the respondent, and that the respondent refuses to sell its appliances to dealers who fail to maintain its standard resale prices, all in alleged violation of section 5 of the Federal Trade Commission act. Disposition: After hearing the commission entered its order directing the respondent to cease and desist from the practices alleged in the complaint.

Complaint No. 770.—Federal Trade Commission v. Simons, Hatch & Whitten Co. Charge: Using unfair methods of competition in the wholesale distribution of hosiery by labeling and advertising hosiery made of animal or vegetable fiber product containing no silk as "Pure silk," by labeling a cotton product as "Silk lisle," and by labeling a cotton and wool product as "Cashmere" or "Wool," with the effect of misleading and deceiving the purchasing public, in alleged violation of section 5 of the Federal Trade Commission act. Disposition: After hearing, the commission entered its order directing the respondent to cease and desist from the practices alleged in the complaint.

Complaint No. 771.—Federal Trade Commission v. Louis Philippe (Inc.), and Park & Tilford. Charge: Using unfair methods of competition in the manufacture and sale of a face cream, known as "Creme angelus," containing no lemon juice, by falsely labeling and advertising it as a French product made with and compounded from real lemons, with the effect of misleading and deceiving the purchasing public and hindering competitors from marketing similar toilet preparations which do contain the juice of lemons, in alleged violation of section 5 of the Federal Trade Commission act. Disposition: After hearing, the commission entered its order directing the respondent to cease and desist from the practices alleged in the complaint.

Complaint No. 774.—Federal Trade Commission v. Pinene Manufacturing Co. (Inc.). Charge: Using unfair methods of competition by falsely advertising its product "Pinene" as equal to turpentine and a chemically correct substitute therefor, whereas said product is in fact the petroleum distillate with a small portion of turpentine, with the effect of misleading and deceiving the purchasing public, and by further misleading the purchasing public by the use of the name "Pinene," the respondent's product containing little, if any, pinene, in alleged violation of section 5 of the Federal Trade Commission act. Disposition: After hearing, the commission entered its order directing the respondent to cease and desist from the practices alleged in the complaint.

Complaint No. 789.—Federal Trade Commission v. Royal Duke Oil Co. Charge: Unfair methods of competition in connection with the sale of stock, in that false and deceptive statements were made in advertisements, such as claiming ownership in land where a contingent leasehold interest only existed, and describing certain tracts, covered by leases as being proven acreage although no oil had been produced, and drilling had been abandoned by respondent, in alleged violation of section 5 of the Federal Trade Commission act. Disposition: After hearing, the commission entered its order directing the respondent to cease and desist from the practices alleged in the complaint.

Complaint No. 790.—Federal Trade Commission v. Charles Goodman, trading under the name and style of Eagle Safety Razor Co. Charge: Unfair competition in the marketing of safety razors and shaving outfits in printing false, fictitious, and misleading prices on the containers, knowing that those to whom he sells will retail the merchandise at much lower prices, thus tending to deceive the consumer into believing that his purchase is at a greatly reduced price, in alleged violation of section 5 of the Federal Trade Commission act. Disposition: After hearing the commission entered its order directing the respondent to cease and desist from the practices alleged in the complaint.

Complaint No. 792.—Federal Trade Commission v. Caravel Co. (Inc.) Charge: Unfair competition, tending to discredit American apple growers and other American exporters, in selling abroad as and at the price of "Oregon Newtown Pippins" a superior apple for export purposes, the admittedly inferior "California Newtown Pippins," in alleged violation of section 5 of the Federal Trade Commission act and section 4 of the Webb Act. Disposition: An order was entered requiring the respondent to cease and desist from the practices complained of.

Complaint No. 795.—Federal Trade Commission v. Big Diamond Oil & Refining Co., P. M. Faver, J. F. Dofflemyer, B. F. King, and O. E. Houston. Charge: Unfair methods of competition in the sale of the capital stock of the respondent oil company in publishing false and misleading statements, thereby deceiving the purchasing public with respect to the location, ownership, productivity, and value of respondents' oil interests, in alleged violation of section 5 of the Federal Trade Commission act. Disposition: After hearing the commission entered its order directing the respondent to cease and desist from the practices alleged in the complaint.

Complaint No. 796.—Federal Trade Commission v. Lone Star Oil Co., Joe L. Stetman, Mrs. H. S. Lawson, C. H. Langdon, C. A. Bradley, J. D. Hawk, George F. Barton, J. B. Braidwood, and George B. Komp. Charge: Unfair methods of competition in the sale of the corporate stock of the respondent, Lone Star Oil Co., in circulating false and misleading statements with respect to the extent of its operations and the value of its stock, and, further, the said stock was treasury stock of the Lone Star Oil Co., and the proceeds of sale were to be used for the development of its properties, whereas said stock was the property of the respondent, C. A. Bradley, and no part of said proceeds was turned into the treasury of the Lone Star Oil Co., all in alleged violation of section 5 of the Federal Trade Commission act. Disposition: After hearing the commission entered its order directing the respondent to cease and desist from the practices alleged in the complaint.

Complaint No. 799.—Federal Trade Commission v. Phillip King, Harry King, and Joseph King, partners, doing business under the name and style of King's Palace. Charge: Unfair method of competition in advertising cotton blankets as "wool-finished blankets," mercerized cotton tablecloths as "mercerized satin damask tablecloths," and hosiery composed partly of wool and partly of cotton as "men's wool sport socks," thereby deceiving and misleading the purchasing public as to the quality and value of the commodities thus offered for sale, in alleged violation of section 5 of the Federal Trade Commission act. Disposition: After hearing the commission entered its order directing the respondent to cease and desist from the practices alleged in the complaint.

Complaint No. 834.—Federal Trade Commission v. Meyer J. Loeb, doing business under the name and style of Loeb & Co., and P. Hutner, doing business under the name and style P. Hutner & Co. Charge: A material known as "Salt's Peco plush" and used in the manufacture of coats is well known to the trade and purchasing public as of high quality. The respondent Hutner is charged with having furnished the respondent Loeb with certain coats of inferior material and "Salt's Peco plush" labels therefor, the said respondents thereupon advertising these coats as made of "Salt's Peco plush," and so misrepresenting them to the purchasing public, in alleged violation of section 5 of the Federal Trade Commission act. Disposition: After hearing the commission entered its order directing the respondent to cease and desist from the practices alleged in the complaint.

Complaint No. 840.—Federal Trade Commission v. Chicago Portrait Co. Charge: Unfair methods of competition in that the respondent, engaged in making portraits from photographs, obtains orders for such portraits by means of drawings for so-called "lucky envelopes," or by giving trade checks for one-half the pretended purchase price, by which the prospective purchaser is misled to believe that he is obtaining said portraits at prices substantially below their usual selling prices, and in that the respondent misrepresents its portraits to be hand paintings and induces the purchasing public to sign a contract for the reproduction of photographs, falsely representing said contract as a receipt for the photographs obtained from the customer, whereas said contract contains numerous provisions of a binding nature on the customer, which are not explained to or understood by said customer, and which serve to nullify verbal agreements made and false impressions created by respondent's salesmen as to the value of the portraits, the furnishing of frame and glass, etc. in

alleged violation of section 5 of the Federal Trade Commission act. Disposition: After hearing the commission entered its order directing the respondent to cease and desist from the practices alleged in the complaint.

Complaint No. 841.—Federal Trade Commission *v.* The Chamber of Commerce of Missoula, its officers, directors, and members, and the Northwest Theaters Co. Charge: Unfair methods of competition in that the respondents conspired to hinder or prevent the sale of goods by mail-order houses situated without the State of Montana by providing for the acceptance of catalogues of mail-order houses in lieu of the usual price of admission to the respondent theater company's playhouse, and offering prizes for certain of such catalogues, all such catalogues being destroyed subsequent to the receipt and pursuant to said conspiracy, in alleged violation of section 5 of the Federal Trade Commission act. Disposition: After hearing the commission entered its order directing the respondent to cease and desist from the practices alleged in the complaint.

Complaint No. 845.—Federal Trade Commission *v.* Melvin Behrend and Leopold Behrend, copartners, doing business under the firm name and style of Behrend's. Charge: Unfair methods of competition in advertising their comfortables to the public as "Silkoline covered comforts" and their blankets as "Superior wool finish," thereby misleading the purchasing public to believe that their comfortables are covered with material made of silk, when in fact they are made of highly mercerized cotton, and that their blankets are made of wool, when in fact they contain no wool whatsoever, in alleged violation of section 5 of the Federal Trade Commission act. Disposition: After hearing the commission entered its order directing the respondent to cease and desist from the practices alleged in the complaint.

Complaint No. 849.—Federal Trade Commission *v.* Morrison & Co. Charge: Unfair methods of competition in labeling certain razors of inferior quality with fictitious and excessive resale prices to mislead and deceive the purchasing public with regard to the grade or quality of said razors in alleged violation of section 5 of the Federal Trade Commission act. Disposition: After hearing the commission entered its order directing the respondent to cease and desist from the practice alleged in the complaint.

Complaint No. 851.—Federal Trade Commission *v.* C. H. Parker Co. Charge: Unfair methods of competition in that the respondent falsely advertises as "Navy architectural spar and interior varnish," a varnish which was in fact rejected by the Navy Department because the product had not been made in conformity with the Government specifications, in alleged violation of section 5 of the Federal Trade Commission act. Disposition: After hearing the commission entered its order directing the respondent to cease and desist from the practices alleged in the complaint.

Complaint No. 853.—Federal Trade Commission *v.* Budd Tailoring Co. Charge: The respondent has adopted a plan of selling \$30 suits of clothing or overcoats to be paid for by the customer in 60 weekly payments of 50 cents, each payable in advance, with the understanding that such customers will be grouped into clubs of 60 customers each and that the name of 1 customer will be drawn from each club every week, either by lot or for services rendered in securing additional customers, the customers so selected to be given the clothing ordered without payment other than the weekly installments previously paid. Unfair methods of competition are charged in that the said sales methods constitute a lottery and in that customers are deceived and misled as to the value and quality of the clothing to be furnished thereunder, in alleged violation of section 5 of the Federal Trade Commission act. Disposition: After hearing the commission entered its order directing the respondent to cease and desist from the practices alleged in the complaint.

Complaint No. 858.—Federal Trade Commission *v.* B. H. Stinemetz & Son Co. Charge: The respondent, an old and established mercantile house, advertised a special sale or series of sales in terms, inducing the belief on the part of the purchasing public that high-grade goods in regular stocks would be sold at unusual reductions from market value, whereas inferior goods were purchased and mingled with the regular stock goods, all subjected to a fictitious mark up before establishing mark-down or sale prices, to the deception of the public and the injury of competitors, in alleged violation of section 5 of the Federal Trade Commission act. Disposition: After hearing the commission entered its order directing the respondent to cease and desist from the practices alleged in the complaint.

Complaint No. 859.—Federal Trade Commission *v.* P. E. Ennis, doing business under the name and style of Pure Silk Hosiery Mills. Charge: Unfair methods of competition in that the respondent, a former agent of the "Reel Silk

Hosiery Mills" and now engaged in the sale of hosiery, simulates the trade name of his former employers and their method of doing business and falsely represents that he, as the "Pure Silk Hosiery Mills," actually manufactures his hosiery in his own mills, when, in fact, such mills exist in trade name only, thereby misleading and deceiving the purchasing public, in alleged violation of section 5 of the Federal Trade Commission act. Disposition: After hearing the commission entered its order directing the respondent to cease and desist from the practices alleged in the complaint.

Complaint No. 861.—Federal Trade Commission *v.* Old Dominion Oil Co., Great Western Oil Co., Bethlehem Oil Co., Metropolitan Oil Co., O. L. Pardue, A. B. Pardue, J. H. West, J. L. Stout, H. J. Gingles, W. B. Young, and J. D. Towner. Charge: The respondent individuals are the promoters of the respondent corporations. Unfair methods of competition are charged in that they, to further the sale of the corporate stock of the said corporations, issued and published numerous false statements and concealed or withheld other material information relative to the organization, business, and properties of said corporations, thereby deceiving and misleading the purchasing public, in alleged violation of section 5 of the Federal Trade Commission act. Disposition: After hearing the commission entered its order directing the respondents to cease and desist from the practices alleged in the complaint.

Complaint No. 864.—Federal Trade Commission *v.* The Guaranty Fund Oil Co., E. M. Thomasson, N. V. S. Mallory, John G. Menke, individually and as trustees and officers of the Guaranty Fund Oil Co. Charge: Unfair methods of competition in that the respondents, to further the sale of the shares of beneficial interest in the properties of the respondent company, an unincorporated voluntary association, issued and published numerous false and misleading statements relative to the organization, business, and properties of said association, thereby deceiving and misleading the purchasing public, in alleged violation of section 5 of the Federal Trade Commission act. Disposition: After hearing the commission entered its order directing the respondents to cease and desist from the practices alleged in the complaint.

Complaint No. 866.—Federal Trade Commission *v.* R. C. Russell, L. C. Hamblet, R. D. Hamblet, Mrs. M. H. Merrill, and First National Oil Co. Charge: The respondent individuals are the promoters of the respondent oil company, a Texas corporation. Unfair methods of competition are charged in that they, in order to further the sale of the share stock of the corporation, issued and published numerous false and misleading statements and concealed or withheld other information relative to the organization, business, property, and prospects of said corporation, thereby deceiving the purchasing public, in alleged violation of section 5 of the Federal Trade Commission act. Disposition: After hearing the commission entered its order directing the respondents to cease and desist from the practices alleged in the complaint.

Complaint No. 867.—Federal Trade Commission *v.* Imperial Production Co., J. T. Craig, S. F. Tubbs, and J. B. Bright. Charge: The respondent individuals are the promoters of the respondent Imperial Production Co., a Texas trust. Unfair methods of competition are charged in that they, in order to further the sale of the share stock of the company, issued and published numerous false and misleading statements and concealed or withheld other material information relative to the organizations, business, property, and products of said company, thereby deceiving the purchasing public, in alleged violation of section 5 of the Federal Trade Commission act. Disposition: After hearing the commission entered its order directing the respondents to cease and desist from the practices alleged in the complaint.

Complaint No. 872.—Federal Trade Commission *v.* William F. Melhuish, jr., and Henry Clay Silver, doing business under the firm name and style of Melhuish & Co., T. A. Edmonds, Y. E. Hildreth, W. E. Weathers, J. W. Mastin, and the Edmonds Oil & Refining Corporation. Charge: The respondent individuals are promoters of the respondent Edmonds Oil & Refining Corporation, incorporated under the laws of the State of Louisiana. In order to further the sale of the share stock of said corporation they issued and published numerous false and misleading statements relative to the organization, business, properties, and products of said corporation to deceive and mislead the purchasing public, in alleged violation of section 5 of the Federal Trade Commission act. Disposition: After hearing, the commission entered its order directing the respondent to cease and desist from the practices alleged in the complaint.

Complaint No. 874.—Federal Trade Commission *v.* Morris Klein, doing business under the name and style of Racine Tire Sales Co. Charge: Unfair methods of competition, in that the respondent, engaged in the business of

rebuilding and repairing second hand and used automobile tires, solicits, by means of advertising and circulars, mail orders for said tires without disclosing, unless in small type, the fact that the said tires are second hand or used tires rebuilt and repaired by the respondent, and in that the respondent simulates the name of the Racine Rubber Co., a well-established and favorably known manufacturer of tires, and simulates its trade name "Multi-Mile Cord" by advertising his tires as "Multi-Cord," thereby tending to deceive and mislead the purchasing public, all in alleged violation of section 5 of the Federal Trade Commission act. Disposition: After hearing an order was entered requiring the respondent to cease and desist from the practices complained of.

Complaint No. 877.—Federal Trade Commission *v.* Sam Silverman, Jacob Silverman, and Henry Greenblatt, partners, doing business under the name and style of Warewell Co. Charge: Unfair methods of competition in that the respondents, engaged in the publication and sale of books (at times as the Famous Authors Association or Classics Publishing Co.), under the pretense of securing advice from an advertising agency connected with the Little Leather Library Corporation, a favorably known publisher of a collection of thirty pocket editions known as the "Little Leather Library," generally advertised at a price of \$2.98 per set, obtained confidential information and data concerning the publication and sale of the said Little Leather Library and thereupon caused to be published a set of 30 similar volumes containing the same selections published in the said Little Leather Library, closely simulating the latter in materials, form, and advertising copy, all to mislead and deceive the purchasing public to believe that the respondents' set of books is the well-advertised "Little Leather Library," in alleged violation of section 5 of the Federal Trade Commission act. Disposition: After hearing, the commission entered its order directing the respondent to cease and desist from the practices alleged in the complaint.

Complaint No. 878.—Federal Trade Commission *v.* Dudley D. Gessler. Charge: The respondent, engaged in the sale of dyes, dyestuffs, and chemicals used in connection with said dyes, trading under his own name and at times under the trade name and style of the Keystone Chemical Co., offers and gives cash commissions and gratuities to superintendents, foremen, and other employees of textile mills and like industries without the knowledge of their employers to induce said employees to purchase the respondent's commodities in preference to those of its competitors, in alleged violation of section 5 of the Federal Trade Commission act. Disposition: After hearing, the commission entered its order directing the respondent to cease and desist from the practices alleged in the complaint.

Complaint No. 879.—Federal Trade Commission *v.* Bellas Hess & Co. Charge: The respondent, a mail-order house, purchased and advertised in its catalogues the coats manufactured by the Salts Textile Manufacturing Co. under the trade name "Salts Peco Seal Plush" and also purchased and advertised on the same pages in said catalogues, at lower prices and as "Iceland Seal Plush," similar coats manufactured from a plush having a cotton pile which is much inferior in value to the fur fabric with silk pile generally known as "seal plush," and by false and misleading statements concerning the origin, nature, quality, and values of these cotton plush coats tended to mislead and deceive the purchasing public to believe that its "Iceland Seal Plush" coats are of the quality of genuine "seal plush" and so induced the public to purchase cotton plush coats in preference to seal plush coats and in preference to cotton plush coats sold by its competitors without the use of misleading names and statements, in alleged violation of section 5 of the Federal Trade Commission act. Disposition: After hearing, the commission entered its order directing the respondent to cease and desist from the practices alleged in the complaint.

Complaint No. 882.—Federal Trade Commission *v.* Keaton Tire & Rubber Co. Charge: The respondent is the general distributing agent for the products of a number of manufacturers of demountable rims and demountable rim parts for automobile wheels, which it designates as "standard" parts, and is engaged in the sale thereof in competition with the like products of the Thompson-Neaylon Manufacturing Co. Unfair methods of competition are charged in that the respondent has inaugurated and carried on a campaign of disparagement against said Thompson-Neaylon Manufacturing Co. and its parts, characterizing it and similar competitors as pirates and their parts as counterfeit parts, and physically removing the said company's parts and display boards from the trade, substituting therefor the respondent's display boards on which are published "warnings" which suggest that parts such as those made by the Thomp-

son-Neaylon Co. are illegal duplications of standard parts and that the use of such rim parts is dangerous and destroys the rim factory's guarantee on the entire rim equipment, and, with the cooperation of its branch houses and dealers, otherwise aims to discredit the Thompson-Neaylon parts with the trade and public, all in alleged violation of section 5 of the Federal Trade Commission act. Disposition: After hearing the commission entered its order directing the respondent to cease and desist from the practices alleged in the complaint.

Complaint No. 885.—Federal Trade Commission v. L. C. Orrell & Co. Charge: Unfair methods of competition in that the respondent, engaged in the sale of paints and painters' supplies, falsely advertises and asserts that its "Painter's pure paint" contains pure lead, pure zinc oxide, pure raw linseed oil, pure turpentine, and Japan drier; that its paint is the best and cheapest for the painter in use; is equaled by few other paints but surpassed by none; and that the user is guaranteed 100 per cent quality, service, and value, when in fact the said paint contains no turpentine whatsoever in alleged violation of section 5 of the Federal Trade Commission act. Disposition: After hearing the commission entered its order directing the respondent to cease and desist from the practices alleged in the complaint.

Complaint No. 888.—Federal Trade Commission v. Amalgamated Tire Stores Corporation. Charge: Unfair methods of competition in that the respondent, dealing in tires secured by it largely from distressed stocks, the stocks of bankrupt or of financially embarrassed concerns, and from the surplus tire stocks of the United States Army, falsely advertised its tires as "firsts" and "fresh" when in fact many of the tires so advertised and offered for sale were "seconds" and were not "fresh," but were more than one year old and deteriorated through age or other causes, thereby tending to mislead and deceive the purchasing public in alleged violation of section 5 of the Federal Trade Commission act. Disposition: After hearing the commission entered its order directing the respondent to cease and desist from the practices alleged in the complaint.

Complaint No. 889.—Federal Trade Commission v. Hub Hostery Mills. Charge: The respondent, by labeling or branding its infants' hose as "Infants' Australian ribbed merino hose," misleads the purchasing public into the belief that its hostery is made of wool of the merino sheep or of other fine Australian quality, when in fact said hosiery is composed partly of wool and partly of cotton in alleged violation of section 5 of the Federal Trade Commission act. Disposition: After hearing the commission entered its order directing the respondent to cease and desist from the practices alleged in the complaint.

Complaint No. 896.—Federal Trade Commission v. Williams Soap Co. (Indianapolis). Charge: The respondent makes numerous false and misleading statements in its catalogues, advertising matter, and labels concerning the origin, nature, quality, and value of its soaps, falsely asserting or implying that certain of its soaps are medicated or contain antiseptics or are especially prepared for the treatment of skin diseases, using fictitious names to indicate manufacture and indorsement by a national association of physicians, and in that it labels certain of its soaps with fictitious resale prices greater than the actual selling price to mislead the public to believe that purchases of its soaps are at prices substantially less than the fair retail value, all in alleged violation of section 5 of the Federal Trade Commission act. Disposition: After hearing, an order was entered requiring the respondent to cease and desist from the practices complained of.

Complaint No. 901.—Federal Trade Commission v. Fox Film Corporation. Charge: Unfair methods of competition in that respondent selected several photoplays which it had produced previously and which had been exhibited throughout the United States, gave such photoplays new names different from those under which said plays had been theretofore exhibited to the public, correspondingly changed the films, and supplied said films with new advertising matter to exhibitors without disclosing the fact that said films were reissues, thereby tending to mislead exhibitors and, through them, the public into the belief that said reissues were new releases, in violation of section 5 of the Federal Trade Commission act. Disposition: After hearing the commission entered its order directing the respondent to cease and desist from the practices alleged in the complaint.

Complaint No. 903.—Federal Trade Commission v. American Film Corporation. Charge: Unfair methods of competition in that respondent selected photoplays which it had previously produced and which had been exhibited throughout the United States, gave said photoplays new names different from

those under which the said photoplays had heretofore been exhibited to the public, correspondingly changed the film, adding thereto an inconsequential amount of new or additional matter, and supplied said films with new advertising matter to exhibitors without disclosing the fact that said films were reissues, thereby tending to mislead exhibitors and, through them, the public, and to discredit the stars who acted the leading rôles in such issues and the current productions in which said stars were appearing before the public at the time respondent's reissues were being exhibited, in alleged violation of section 5 of the Federal Trade Commission act. Disposition: After hearing the commission entered its order directing the respondent to cease and desist from the practices alleged in the complaint.

Complaint No. 910.—Federal Trade Commission *v.* Penn Lubric Oil Co. Charges: Unfair methods of competition are charged in that respondent has used various forms of advertising which have been and are calculated to deceive the purchasing public into the belief that the respondent's lubricating oils are pure Pennsylvania oils of the highest grade found in the State of Pennsylvania when in fact its lubricants consist of a compound of Pennsylvania oil and of inferior and cheaper oil, in alleged violation of section 5 of the Federal Trade Commission act. Disposition: After hearing the commission entered its order directing the respondent to cease and desist from the practices alleged in the complaint.

Complaint No. 919.—Federal Trade Commission *v.* Clifford Smith, doing business under the name and style of Clifford Smith Co. Charges: That respondent used unfair methods of competition while engaged in the sale of paints, oils, varnishes, turpentine, and allied products by advertising and selling as "Argentine turpentine," a commodity which was and is not turpentine, and was and is, in fact, a mixture of mineral oil and destructively distilled wood turpentine, and the use of said trade name tends and tended to mislead and deceive the trade and consuming public as to the quality and value of its product, in alleged violation of section 5 of the Federal Trade Commission act. Disposition: After hearing the commission entered its order directing the respondent to cease and desist from the practices alleged in the complaint.

Complaint No. 921.—Federal Trade Commission *v.* Premier Electric Co. Charges: Using unfair methods of competition in commerce is charged in that respondent, in advertising its telephone instruments, fails to disclose that said instruments contain old, used, or second-hand parts, the use of which permits it to sell its products at prices substantially below those fixed by competitors for similar articles made of new parts, thereby deceiving the purchasing public, in violation of section 5 of the Federal Trade Commission act. Disposition: After hearing the commission entered its order directing the respondent to cease and desist from the practices alleged in the complaint.

Complaint No. 923.—Federal Trade Commission *v.* Hoffman Machinery Corporation and its officers. Charge: Unfair methods of competition are charged in that the respondents engaged in the manufacture and sale of machines for pressing garments, in which business they have a substantial monopoly, causing their salesmen and other employees to spy upon the salesmen and other employees of their competitors for the purpose of securing the names of such competitors' customers and attempting to induce such customers to breach their contracts with competitive manufacturers and install the respondents' garment-pressing machines in place of like machines purchased from said competitors by (a) allowing as part payment of its purchase price an amount equal to that paid on the contract for the purchase of such competing machines; (b) furnishing the services of attorneys to defend suits brought by competitors against such customers; (c) furnishing legal advice as to the way in which customers may rescind or evade contracts with competitors; and (d) framing letters to be addressed to competitors for the purpose of rescinding contracts, all in alleged violation of section 5 of the Federal Trade Commission act. Disposition: After hearing the commission entered its order directing respondents to cease and desist from the practices alleged in the complaint.

Complaint No. 926.—Federal Trade Commission *v.* Jack Bernstein, doing business as United Woolen Mills of Washington. Charge: Unfair methods of competition are charged in that respondent, engaged in the manufacture and sale of men's clothing, had adopted the trade name "United Woolen Mills of Washington," thereby indicating to the purchasing public that he owns and operates mills which manufacture woollens from which his clothing is made, when in fact respondent neither owns, operates, nor has any interest in any mill manufacturing woolen cloth, and in that respondent's trade name simu-

lated the corporate name of the nationally known United Woolen Mills, a West Virginia corporation, thereby misleading and deceiving the general purchasing public, in alleged violation of section 5 of the Federal Trade Commission act. Disposition: After hearing the commission entered its order directing the respondent to cease and desist from the practices alleged in the complaint.

Complaint No. 929.—Federal Trade Commission v. John McQuade & Co. (Inc.). Charges: Unfair methods of competition are charged, in that the respondent engaged in the manufacture and sale of paints, zincs, lead compositions, and similar products, misrepresenting the quality of its products by using false, deceptive, and misleading labels calculated and designed to deceive the trade and general public, in alleged violation of section 5 of the Federal Trade Commission act. Disposition: After hearing, the commission entered its order directing the respondent to cease and desist from the practices alleged in the complaint.

Complaint No. 935.—Federal Trade Commission v. T. S. Southgate, trading under the name and style of T. S. Southgate & Co. and Lexington Grocery Co. and Taylor Bros & Co. (Inc.), trading under the name and style of Southern Salt Co. Charges: Respondents are charged with unfair methods of competition, in that they advertise and sell their ground rock salt as "common fine" and as the highest grade of salt obtainable, without disclosing the fact that said salt was imported from Germany and is rock salt, there being numerous manufacturers of salt in the United States who manufacture salt by an evaporation process and advertise their product as "common fine salt"; also there being numerous salt manufacturers who manufacture salt from rock salt which is especially imported and is indicated to be an inferior grade and quality, and advertise their product as rock salt. Disposition: After hearing the commission entered its order directing the respondent to cease and desist from the practices alleged in the complaint.

Complaint No. 936.—Federal Trade Commission v. Signet Films (Inc.) Charge: Respondent is charged with unfair methods of competition, for the reason that it supplies motion-picture films by reissuing old photoplays under new titles without properly informing the public of such changes, in alleged violation of section 5 of the Federal Trade Commission act. Disposition: After hearing, the commission entered its order directing the respondent to cease and desist from the practices alleged in the complaint.

Complaint No. 938.—Federal Trade Commission v. American Turpentine Co., trading under the name and style of North American Fibre Products Co. Charge: Respondent is engaged in unfair methods of competition in commerce in that it purchases and sells paints, varnishes, and roofing material which it labels and advertises to indicate as being manufactured by the North American Fibre Co. and having factories located throughout the United States, when in fact it does not own nor operate any factory, thereby misleading and deceiving the purchasing public in alleged violation of section 5 of the Federal Trade Commission act. Disposition: After hearing the commission entered its order directing the respondent to cease and desist from the practices alleged in the complaint.

Complaint No. 942.—Federal Trade Commission v. Sizz Chemical Co., W. C. Milks, president and trustee; E. M. Hall, vice president and trustee; F. G. Schlueter, secretary-treasurer and trustee; Edwin Gotsch, trustee; C. C. Cummings, trustee. Charge: Unfair methods of competition in commerce are charged in that respondents, engaged in the manufacture and sale in commerce of a cleansing compound known as "Sizz," represent their product as free from alkali and as possessing remarkable cleansing power, and give certain demonstrations of this cleansing power which representations and demonstrations are false and misleading and tend to deceive the prospective purchasers of said product in alleged violation of section 5 of the Federal Trade Commission act. Disposition: After hearing the commission entered its order directing the respondent to cease and desist from the practices alleged in the complaint.

Complaint No. 944.—Federal Trade Commission v. Fred A. Maltby and Clarence W. Maltby, as individuals and as partners. Charge: Unfair methods of competition are charged in that the respondents, engaged in the operation of taxicabs for hire, adopted and advertised under the names of Yellow Bell Taxicab, Yellow Ford Taxi Co., and Black and White Taxi Co., in simulation of the trade name of their competitors and to secure listing in the telephone directory immediately preceding or following the listing of said competitors, thereby diverting from said competitors a portion of the good will and patronage which would have accrued to them, and in that the said respondents list and adver-

tise under some 50 additional names used by taxicab companies throughout the United States to prevent such other taxicab companies from operating under or using any of said names in the city of Washington and the District of Columbia, in alleged violation of section 5 of the Federal Trade Commission act. Disposition: After hearing the commission entered its order directing the respondents to cease and desist from the practices alleged in the complaint.

Complaint No. 946.—Federal Trade Commission *v.* Henry Lederer & Bros. (Inc.). Charge: Respondent is charged with unfair methods of competition in that while engaged in the manufacture and sale of fountain pens and pencils it labels its product with false and fictitious resale price marks which are far in excess of the actual value of selling price, and thereby misleads the purchasing public as to the quality of said product, in alleged violation of section 5 of the Federal Trade Commission act. Disposition: After hearing the commission entered its order directing the respondents to cease and desist from the practices alleged in the complaint.

Complaint No. 948.—Federal Trade Commission *v.* Eli Hyman and Louis Zaslav, partners, doing business under the name and style of Hyman and Zaslav. Charge: Unfair methods of competition are charged in that the respondents, jobbers of toilet articles, silverware, and novelties, purchase such toilet articles composed of nitrated cellulose grained to imitate Ivory and label and brand said articles as French Ivory, thereby tending to mislead and deceive the purchasing public as to the quality of said articles, in alleged violation of section 5 of the Federal Trade Commission act. Disposition: After hearing the commission entered its order directing the respondents to cease and desist from the practices alleged in the complaint.

Complaint No. 955.—Federal Trade Commission *v.* John T. Bailey, trading under the name and style of United Fibre Works. Charge: Respondent is charged with unfair methods of competition in that while he engaged in the purchase and sale of manila rope and acted as sales agent and manufacturer of oakum, cotton, hemp, and jute twine, he falsely represented himself to be a manufacturer with mills in various cities, and to be the successor of the John T. Bailey Cordage Co., which company was until recently a large and long-established cordage and in that he advertises and represents "certain Government rope" manufactured during the World War, shipped to Europe, and later reshipped to the United States as being first grade and best quality, when in fact it has deteriorated by reason of its age and for other causes, all for the purpose of misleading and deceiving the public, in alleged violation of section 5 of the Federal Trade Commission act. Disposition: After hearing the commission entered its order directing the respondents to cease and desist from the practices alleged in the complaint.

Complaint No. 981.—Federal Trade Commission *v.* the Holsman Co. Charge: Unfair methods of competition are charged in that the respondent falsely advertises as "French Ivory" its toilet articles composed in whole or in part of nitrated cellulose or pyroxylin plastic, commonly known as "celluloid," "pyralin," "fibrelloid," etc., for the purpose of misleading and deceiving the purchasing public, in alleged violation of section 5 of the Federal Trade Commission act. Disposition: After hearing the commission entered its order directing the respondent to cease and desist from the practices alleged in the complaint.

Complaint No. 996.—Federal Trade Commission *v.* Kraus & Co. (Inc.) and Herman T. Weeks. Charge: Complaint herein charges unfair methods of competition in commerce in that the respondent Kraus & Co. engaged in the manufacture of cigars in Baltimore, Md., and its selling agent, respondent Weeks, caused said product to be labeled "Tampa," and thereby tending to mislead and deceive the purchasing public into the belief that said cigars are Tampa cigars manufactured from Habana tobacco used in the Tampa district, in alleged violation of section 5 of the Federal Trade Commission act. Disposition: After hearing the commission issued its order directing the respondent to cease and desist from the practices alleged in the complaint.

Complaint No. 1001.—Federal Trade Commission *v.* G. F. Hemler. Charge: Unfair methods of competition are charged in that the respondent, a manufacturer of cigars at McSherrystown, Pa., by labeling and advertising the said product as "Tampa, Florida" and "All Havana Hand Made," tends to mislead and deceive the purchasing public into the belief that said cigars are Tampa cigars manufactured from the Habana tobacco used in the Tampa district, in alleged violation of section 5 of the Federal Trade Commission act. Disposition: After hearing the commission issued its order directing the respondent to cease and desist from the practices alleged in the complaint.

2. CASES DISMISSED.

Complaint No. 40.—Federal Trade Commission v. The Colorado Milling & Elevator Co. Charge: Attempting to eliminate competition by fixing resale prices and by refusing to sell to those who will not agree to maintain such prices, in alleged violation of section 5 of the Federal Trade Commission act. Disposition: Dismissed July 20, 1922.

Complaint No. 131.—Commission v. Atlantic Refining Co. Charge: Falsely representing the product of certain of their competitors to be unsatisfactory, defective, and further representing that such would not operate and was being sold at such exorbitant prices, thereby inducing competitors' customers to cancel orders, selling and lending pumps, etc., without adequate consideration and threatening to sell oil direct by retail unless dealers used the Gilbert & Baker product, and holding itself out to be the agent of its competitors as well as of the Gilbert & Barker Manufacturing Co. Disposition: Dismissed by reason of decision of the Supreme Court of the United States, October term, 1922, Federal Trade Commission v. Sinclair Refining Co., etc.

Complaint No. 207.—Commission v. the Cleveland Macaroni Co. Charge: Respondent sought to obtain preference for the sale of its products, to wit, macaroni, noodles, and kindred products, by the adoption and use of a plan of rewards to salesmen of wholesalers, graduated in value according to quantities sold by such salesmen to the retail dealers. Disposition: Dismissed, respondent having been adjudicated a bankrupt and being now out of business.

Complaint No. 215.—Commission v. Minerals Separation (Ltd.), Mineral Separation American Syndicate (Ltd.), Minerals Separation American Syndicate (1913), (Ltd.), Beer, Sondheimer & Co., Beer, Sondheimer & Co. (Inc.), Minerals Separation North American Corporation, Benno Eikan, Otto Frohnknecht, and Harry Falck. Charge: The selling, leasing, and licensing of apparatus, processes, paraphernalia, supplies, accessories, data, etc., used in the separation and concentration of ores by flotation, by entering into and enforcing and attempting to enter into and enforce agreements by which respondents attempt, and undertake to prevent inventors, manufacturers, vendors, lessors, licensors, and users (independent concerns) of apparatus, etc., not covered by patent or patent rights controlled by respondents, from selling, leasing, licensing, or using the independent commodities without permission, to permit no independent concern to manufacture and sell independent commodities except on payment of exorbitant commission, to compel mine operators, metallurgists, etc., not in respondent's employ, to withhold all information relating to apparatus, etc., from defendant in the event of patent litigation instigated by respondent, and to exact exorbitant royalties and to discriminate in such royalties, and to compel acceptance of respondents' patent claims without dispute or objection, and by falsely and maliciously disparaging independent commodities and concerns, asserting exclusive rights, etc. Disposition: Dismissed because of lack of appearance of interstate commerce.

Complaint No. 227.—Commission v. Helvetia Milk Condensing Co. Charge: Injuring and harassing competitors, destroying the trade of competitors and suppressing and stifling competition in the sale of evaporated milk by guaranteeing its customers against a decline in price of goods purchased and not resold at the time of such subsequent decline, and agreeing to refund the difference and by actually making such refund. Disposition: Dismissed without prejudice, Commissioners Nugent and Thompson dissenting.

Complaint No. 303.—Commission v. the Ohio Cities Gas Co., Columbus, Ohio. Charge: Unfair methods of competition in the business of purchasing and selling refined oil and gasoline, and the leasing and loaning of oil pumps, storage tanks, and containers, and their equipment, is charged by virtue of selling and loaning such pumps, tanks, etc., below cost, with the understanding that dealers shall not retail gasoline of competitors from such tanks thus furnished. Disposition: Dismissed by reason of Supreme Court decision in the gasoline pump cases. (See ante, 131.)

Complaint No. 324.—Commission v. the Factory Oil Co., Akron, Ohio. Charge: (Ibid above, 303.) Disposition: Dismissed, Supreme Court decision. (See ante, 131.)

Complaint No. 339.—Commission v. The Pictorial Review Co. and Oklahoma Publishing Co. Charge: Hampering and embarrassing competitors and obtaining an unfair and undue advantage by compilation of a list of news dealers throughout Oklahoma handling magazines of competitor without disclosing to the dealers the purpose for which it was sought. Disposition: Dismissed without prejudice.

Complaint No. 372.—Commission *v.* Standard Oil Co. of Kentucky. Charge: Unfair methods of competition in the business of purchasing and selling refined oil and gasoline by virtue of selling, leasing, and loaning oil pumps, storage tanks or containers, and their equipments, below cost, with the understanding that dealers shall not place in such devices the refined oil or gasoline of competitors. Disposition: Dismissed by decision of the Supreme Court. (See ante, 131.)

Complaint No. 395.—Commission *v.* Ida Davis, doing business under the trade name of David Davis Sons. Charge: That respondent is knowingly and deceptively engaged in loading, doping, and saturating sponges with foreign matter, thereby falsifying the weight of said sponges, creating a fictitious price, defrauding and misleading customers, and causing prejudice and injury to competitors. Disposition: Dismissed without prejudice.

Complaint No. 468.—Commission *v.* H. A. Metz & Co. (Inc.). Charge: That respondent has been offering, loaning, and giving sums of money to employees of customers and prospective customers of dyestuffs and chemicals sold and offered for sale by him as an inducement to influence such employees to purchase from respondent and refrain from dealing with respondent's competitors. Disposition: Dismissed without prejudice.

Complaint No. 499.—Commission *v.* the Bayer Co. (Inc.). Charge: Respondent has been publishing false and misleading advertisements to the effect that the word "aspirin" is only properly applied to designate the product of respondent; that respondent's product is the only genuine, unadulterated, and safe drug product manufactured and sold as aspirin; and that the products manufactured and sold by competitors as and for aspirin are spurious and adulterated and composed of other materials, such as talcum powder and the like. Disposition: Dismissed.

Complaint No. 504.—Commission *v.* F. Hecht, Louis Friedheim, and T. I. Glynn, partners, styling themselves F. Hecht & Co., and T. I. Glynn Leather Co. (Inc.). Charge: Respondent sold to foreign countries an inferior grade of leather known as "kips," and an inferior grade of sheepskin, said leathers being billed as "calf" and "cabretta," respectively, and not conforming in value, quality, or grade to the samples by which same were sold. Disposition: Dismissed for failure of proof.

Complaint No. 515.—Federal Trade Commission *v.* The Haller & Merz Co. Charge: (Ante, complaint No. 468.) Disposition: Dismissed October 21, 1922.

Complaint No. 517.—Commission *v.* the Franklin Import & Export Co. (Inc.). Charge: Respondent has offered and given to employees of customers and prospective customers and competitors' customers of respondent's dyestuffs and chemicals, sums of money as an inducement to influence their said employers to purchase from respondent and refrain from dealing with competitors of respondent. Disposition: Dismissed.

Complaint No. 520.—Commission *v.* Procter & Gamble Distributing Co. Charge: Respondents make a practice of giving guaranties and assurances against price decline in the list price of its soap and of giving rebates to compensate its customers for such decline, thereby obtaining an unfair advantage over competitors, encouraging jobbers to hold excessive stocks for the purpose of realizing a speculative profit to the injury of the public and deterring respondent from reducing list prices in accordance with the reduction in cost. Disposition: Dismissed.

Complaint No. 525.—Commission *v.* New York Color & Chemical Co. Charge: Respondent has been offering and giving to employees of customers and prospective customers sums of money and other gratuities as an inducement to influence their employers to deal with respondent and purchase the dyestuffs and chemicals sold and offered for sale by him and to refrain from dealing with competitors of respondent. Disposition: Dismissed.

Complaint No. 526.—Commission *v.* Louis Rosenthal, doing business under the name and style of United Chemical & Color Co. Charge: (Ibid above.) Disposition: Dismissed.

Complaint No. 528.—Commission *v.* Arkansas Distributing Co. Charge: (Ibid above.) Disposition: Dismissed.

Complaint No. 529.—Commission *v.* Max B. Kaesche, doing business under the name and style of F. Breddt & Co. Charge: (Ibid above.) Disposition: Dismissed.

Complaint No. 544.—Commission *v.* Valvoline Oil Co. Charge: (See ante 131.) Disposition: Dismissed. (See ante 131.)

Complaint No. 545.—Commission *v.* Irving Abraham, doing business under the name and style of Abraham Bros. Charge: Offering to give employees of cus-

tomers, without the knowledge and consent of their employers, sums of money as an inducement to influence such employers to purchase paints, varnishes, and kindred products from respondents and refrain from dealing with respondent's competitors. Disposition: Dismissed.

Complaint No. 556.—*Commission v. The G. H. Hammond Co.* Charge: Respondent allows its customers advantages, such as free advertising services of specialty salesmen and payment of dealers' license fees, only on condition they agree to purchase all or a large percentage of their butterine and oleomargarine from respondent, and enters into contracts to that effect, tending to lessen competition and create a monopoly, in violation of section 5 of the Federal Trade Commission act and section 3 of the Clayton Act. Disposition: Dismissed.

Complaint No. 557.—*Commission v. Morris & Co.* Charge: (Same as 556.) Disposition: Dismissed.

Complaint No. 558.—*Federal Trade Commission v. Wilson & Co.* Charge: Using unfair methods of competition by adopting and maintaining a practice of offering, giving, and allowing certain benefits and advantages to purchasers in the way of free advertising, services of specialty salesmen, and payment of dealers' license fee, on the condition that such purchasers agree to purchase all or a large percentage of their supplies of butterine and oleomargarine from the respondent, in alleged violation of section 5 of the Federal Trade Commission act; and entering into contracts with a large number of purchasers of its said products at prices, in quantities, and for periods therein specified upon the condition, agreement, or understanding in the case of each contract that the purchaser named therein shall purchase all or a large percentage of the oleomargarine and butterine needed by said purchaser of the respondent, in alleged violation of section 3 of the Clayton Act. Disposition: Dismissed November 4, 1922.

Complaint No. 587.—*Commission v. Tide Water Oil Co., Tide Water Oil Sales Corporation, Tide Water Oil Co. of Massachusetts.* Charge: (See ante 131.) Disposition: Dismissed. (See ante 131.)

Complaint No. 624.—*Commission v. Autographic Register Co.* Charge: Respondent enters into written contracts with users and lessees of its autographic registers, such contracts containing the express provision that such lessees will use on such registers only the supplies furnished by respondent, which provision prevents such lessees from purchasing from competitors of respondent any supplies to be used upon or in connection with the registers leased by respondent. Disposition: Dismissed.

Complaint No. 662.—*Commission v. Deep Wells Oil Co., George B. Mechem & Co., and George B. Mechem.* Charge: That the stock of respondent oil company, issued in exchange for oil and gas leases, which same were in part non-existent, and for an agreement to drill certain test wells, which agreement was not carried out by respondent Mechem, the principal stockholder, was sold by respondent George B. Mechem & Co. by means of false and misleading statements concerning its business and property. Disposition: Dismissed for failure of proof.

Complaint No. 688.—*Commission v. Reber Manufacturing Co.* Charge: Respondent falsely labels so as to deceive the purchasing public, the hose manufactured and sold by it, such labels bearing the words "World's best pure thread silk" or "Silk plated" being placed on the hosiery which is made of mixed cotton and silk, while hosiery which contains no genuine silk is labeled "Silk lisle" and that made of mixed cotton and wool is branded "Cashmere." Disposition: Dismissed for the reason that respondent is not now engaged in business.

Complaint No. 695.—*Commission v. Associated Oil Co. (Inc.), Adey-Johnston Co. (Inc.), E. A. Adey, Jr., S. B. Coleman, and R. V. Johnston.* Charge: Respondents are charged in the sale of the corporate stock of respondent Associated Oil Co. (Inc.) by the respondent, Adey-Johnston Co. (Inc.), and the respondent individual stockholders, officers, and directors of each of said corporations, with numerous false and misleading statements concerning the business and property of the respondent oil company which were issued and published to deceive the purchasing public and that the sale of the corporate stock was continued after the properties of the company were proven of no value. Disposition: Dismissed.

Complaint No. 697.—*Commission v. New York Hosiery Works.* Charge: Respondent, engaged in the sale of hosiery at wholesale, places his labels bearing the words "Ladies' silk hose," "Men's silk half hose," "Silk hose," "Silk half hose," or "Pure silk," on hosiery made of cotton and silk, thereby misleading

and deceiving the public. Disposition: Dismissed for the reason that respondent is not now engaged in business.

Complaint No. 710.—Commission *v.* Tide Water Oil Co. and Tide Water Oil Sales Corporation. Charge: That in the advertising of their lubricating oils respondents published a facsimile copy of a letter from the Bethman Motor Co. to the Tide Water Oil Co. containing a statement to the effect that Henry Ford & Son (Inc.) recommended for exclusive use in Fordson tractors the respondents' heavy special Veedol oil, which statement was known to the respondents to be false and was calculated to mislead the purchasing public and owners of Fordson tractors. Disposition: Dismissed.

Complaint No. 727.—Commission *v.* Austin Bond, doing business under the trade name and style of Bond Bros. & Co., New York. Charge: Respondent, engaged in the business of buying, packing, and selling overissued or unused newspapers, has simulated and appropriated the trade name, trade-mark, and code address of the long-established and favorably known Bond Bros. & Co., engaged in export and import of overissued and unused newspapers. Disposition: Dismissed.

Complaint No. 761.—Commission *v.* The Prest-O-Lite Co. (Inc.). Charge: Respondent sells its acetylene gas in metal containers on which is etched a notice to the effect that the device is sold and licensed for sale and use only while filled by the respondent and when sold for not less than the fixed price, the cylinder being exchangeable in the Prest-O-Lite system only when filled and issued by the respondent. Unfair methods of competition and a tendency to create a monopoly in the sale of acetylene gas are charged in that, as the respondent sells its metal cylinders containing acetylene gas and passes title to the purchasers thereof, said notices are false and misleading; that respondent refuses to refill cylinders not of its issue or which have been issued by it but were filled by a competitor of respondent; that respondent maintains for its products a fixed resale price and eliminates all competition as to price between dealers in its products by refusing to supply dealers who resell its products at less than the price indicated. Disposition: Dismissed.

Complaint No. 794.—Commission *v.* Big Bear Oil Co. Charge: Respondents are charged with unfair methods of competition in the sale of capital stock of the respondent oil company, in that numerous false and misleading statements have been published to deceive the purchasing public with respect to the location, productivity, and value of respondent's oil interests. Disposition: Dismissed for failure of proof.

Complaint No. 800.—Commission *v.* Herbert W. Brand, Harry C. Oppenheimer, and Edwin W. Brand, partners, doing business under the name and style of Brand & Oppenheimer. Charge: Respondents engaged in the manufacture and sale of cotton lining material, advertise and label their products as "Silkette," thereby deceiving and misleading the public into the belief that their linings are partly or wholly composed of silk. Disposition: Dismissed without prejudice.

Complaint No. 820.—Commission *v.* The Carnick Bros. Co. Charge: Respondents purchasing steel and iron specialties which are unmerchantable or of inferior grade, quality, and size, and mixed with old and rusty wares bought "as is," sells these goods for export and misrepresents them to be of certain specified grades, qualities, and sizes, underbidding competitors who sell similar goods but of a character and quality as represented, with the tendency of bringing the character of certain exports of the United States into disrepute. Disposition: Dismissed, respondent having gone out of business.

Complaint No. 831.—Commission *v.* The Excelsior Shoe Co. Charge: Respondents, through the unauthorized use of the names, designations, and emblems of the well-known Boy Scouts of America, advertises, pictures, and labels its shoes as "Boy Scout" shoes, and indicates the approval of the Boy Scouts of America as part of the regulation Boy Scout uniform, thereby misleading the purchasing public to believe that the respondent's shoes are of superior quality, that the respondent enjoys the exclusive right to sell shoes under the said name, and that the boys buying respondent's shoes, having acquired medals furnished by the respondent, are eligible to membership in the Boy Scout troops. Disposition: Dismissed.

Complaint 838.—Commission *v.* Gypsum Industries' Association, its officers, committees, and members. Charge: Respondents conspired to hinder competition in the sale and distribution of gypsum products manufactured by members of the association by limiting the territory in which such products may be sold by customers of its members and by prohibiting sales to dealers who deal with

customers without their territory, thereby restricting the sale of such products by mail order, or otherwise, for delivery at points other than those at which the authorized dealer maintains a retail establishment. Disposition: Dismissed, "It appearing that on January 3, 1923, the District Court of the United States for the Southern District of New York entered a decree in an action then pending therein in which the United States of America was complainant and Gypsum Industries' Association et al. were defendants, by which decree the issues in the above-entitled proceeding were adjudicated and disposed of.

Complaint No. 850.—Commission v. Goheen Manufacturing Co. Charge: Respondent, in selling its especially prepared paint for galvanized iron and labeled "Galvanum," has circulated letters which contain false and misleading statement that: "It is the standard of the United States Government," when in fact the Government of the United States has never adopted said Galvanum as a standard for any purpose. Disposition: Dismissed, respondent having been adjudicated a bankrupt and being now out of business.

Complaint No. 869.—Commission v. Baltimore & Philadelphia Steamboat Co. Charge: Respondent, engaged in the transportation by water of freight and passengers between Baltimore and Philadelphia, has made it a practice to cut the price of transportation below cost to compel a competitor, the Marine Transport Corporation, to withdraw and discontinue its business that the previously existing monopoly held by the respondent may be restored to it. Disposition: Dismissed.

Complaint No. 891.—Commission v. Bethlehem Steel Corporation and Lackawanna Steel Co. Charge: Respondents, by entering into an agreement to combine or consolidate their respective properties, businesses, and interests into a common enterprise whereby the properties, assets, and business of respondent Lackawanna Steel Co. as well as those of its subsidiary Lackawanna Bridge Works Corporation and Lackawanna Steel Co., another subsidiary, are to be acquired by said Bethlehem Steel Corporation, itself in control of a number of subsidiary corporations, will thereby effect a combination which will control a substantial percentage of the production of certain steel and iron products in the United States, and especially in the State of Ohio and all territory north of the Potomac River and east of said State, which said merger or consolidation will have a dangerous tendency to hinder and lessen competition and restrain trade and commerce, the agreement constituting an attempt to monopolize certain interstate trade and commerce. Disposition: Dismissed without prejudice.

Complaint No. 895.—Commission v. Otto Eisenlohr & Bros. (inc.). Charge: Respondent, engaged in the manufacture and sale of cigars and other tobacco products, has adopted and maintained a schedule of uniform resale prices for its products, threatening to refuse to sell to price cutters and otherwise enforcing said system of resale price maintenance. Disposition: Dismissed, Commissioner Nugent dissenting.

Complaint No. 897.—Commission v. M. T. K. Products Co. and Trust (J. A. Menard, John E. Burkheimer, B. G. Raymond, H. P. Vogt, R. G. Townsend, and their successors, trustees under said trust); M. T. K. Sales Corporation; Beckley-Ralston Co. Charge: The company and trust is engaged in the manufacture and sale of an abrasive bearing-fitting compound named "Timesaver"; the Sales Corporation and the Beckley-Ralston Co. are distributors of "Timesaver." It is charged that respondents have caused notices and advertising matter to be sent to the trade generally to the effect that "Timesaver" was a patented article, that similar articles (not specified however) infringing the patent were on the market, that the policy would be to protect their patent against all infringements and that legal proceedings would be vigorously pressed against dealers in and users of such infringing compounds, all of which has the capacity and tendency to bring all other similar products into suspicion to the harm of the manufacturers thereof and the dealers therein, none of whom has been especially charged and placed on notice. Disposition: Dismissed for the reason that the charges of the complaint were not supported by the proof.

Complaint No. 905.—Commission v. Midvale Steel & Ordnance Co., Republic Iron & Steel Co., and Inland Steel Co. Charge: Respondents, Midvale Steel & Ordnance Co. and Inland Steel Co., have agreed to consolidate their respective properties, businesses, and interests into a common enterprise and to acquire the properties, assets, and business of the Republic Iron & Steel Co., thereby tending to suppress and eliminate all competition which has heretofore existed between them and to effect control of a large proportion of the iron and steel

commodities business in the United States and particularly the States of Pennsylvania, Ohio, West Virginia, Kentucky, Indiana, Michigan, and Illinois; that said consolidation and merger has a dangerous tendency to unduly restrain trade and commerce and to create a monopoly. Disposition: Dismissed without prejudice, the merger having been abandoned.

Complaint No. 939.—Commission *v.* Braden's California Products (Inc.) and A. Claude Braden. Charge: Respondent Braden, a former stockholder of the Braden Preserving Co., in organizing the said respondent, Braden's California Products (Inc.), simulated the name of said Braden Preserving Co., well known to the purchasing public by reason of its advertising, and that the respondent corporation in the sale of its products, packed by various packers and labeled by it, features its name to enable it to pass off said products as and for the jams, preserves, and marmalades packed by the Braden Preserving Co. (Inc.), which misled and deceived the general purchasing public. Disposition: Dismissed.

Complaint No. 953.—Commission *v.* C. C. Cannan. Charge: That to further the sale of stock, shares, and units of beneficial interest of oil companies and syndicates promoted by him respondent made numerous false and misleading statements concerning the value of the securities offered and the business, prospects, management, and earnings of the various companies. Disposition: Dismissed.

Complaint No. 989.—Commission *v.* Paul E. Peck and Richard K. Peck, co-partners, doing business under the name of P. E. Peck & Son. Charge: Respondents, engaged in the sale of steamship supplies, offer and give sums of money and other things of value to employees and representatives of steamship owners, without the knowledge or consent of such owners, as an inducement to said employees and representatives to purchase their supplies from respondent. Disposition: Dismissed for the reason that the respondent had been adjudicated bankrupt and said respondent Paul E. Peck is now deceased and said partnership is itself no longer doing business.

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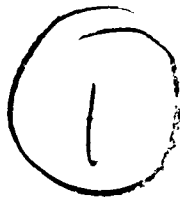
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ANNUAL REPORT
OF THE
FEDERAL
TRADE COMMISSION
FOR THE
FISCAL YEAR ENDED JUNE 30, 1924



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1924

FEDERAL TRADE COMMISSION

HUSTON THOMPSON, *Chairman.*

VERNON W. VAN FLEET.

NELSON B. GASKILL.

JOHN F. NUGENT.

CHARLES W. HUNT.

OTIS B. JOHNSON, *Secretary.*

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ANNUAL REPORT OF THE FEDERAL TRADE COMMISSION FOR THE FISCAL YEAR ENDED JUNE 30, 1924

INTRODUCTION

To the Senate and House of Representatives:

Pursuant to statute the Federal Trade Commission herewith submits to the Congress its annual report for the fiscal year July 1, 1923, to June 30, 1924. The commission, which was created by an act of Congress approved September 26, 1914, was organized March 16, 1915. The present is the tenth annual report to Congress.

On June 30, 1924, the commission consisted of Huston Thompson, of Colorado, chairman; Vernon W. Van Fleet, of Indiana, vice chairman; Nelson B. Gaskill, of New Jersey; John F. Nugent, of Idaho; and Charles W. Hunt, of Iowa. Mr. Hunt entered upon duty on June 16, 1924, to succeed Victor Murdock, of Kansas, who resigned as of January 31, 1924.

Of the work accomplished during the year special mention is made of: (1) The order to cease and desist issued against the United States Steel Corporation and its subsidiaries requiring discontinuance of the Pittsburgh plus basing point for steel; (2) Report to the President on the Gasoline Situation in 1924; (3) Report to the House of Representatives on the Radio Industry; (4) Report to the Senate on the Cotton Trade, and dealing chiefly with the operations of cotton exchanges and marketing conditions.

The commission here reports its administration of the Federal Trade Commission act, approved September 26, 1914 (38 Stat. 717); delegated sections of the Clayton Act, approved October 15, 1914 (38 Stat. 730); and the export trade act, approved April 10, 1918 (40 Stat. 516).

The work goes steadily forward. The law of unfair competition is being developed with resulting clarity in the channels of trade, valuable and pertinent facts relating to economic subjects and business matters are being gathered and published, and the export trade act having to do with associations engaged solely in export trade is being administered.

Most pressing is the increasing demand upon the energies of the commission in the field of unfair competition. To this demand relief to the utmost is afforded, but the figures tell the story of efforts only partially effective because of lack of men and money. And the calendar of cases undisposed of at the end of the year does not diminish. A 10-years' view of the deception, bad faith, fraud, and oppression

of which the business world and the public complain teaches that the certain and speedy challenge of this commission to such practices is the effective remedy. But the commission must report a docket of cases grown old and age necessitates reinvestigation by reason of changed conditions or customs and the unknown whereabouts of witnesses, some of whom may be dead. Therefore a case grown old not only adds costs not contemplated, but, more serious, the remedy is postponed or fails.

Coming to the economic duties, two precedents are recorded. First, a deficiency was asked through appropriate agencies, and second, an inquiry respecting flour and bread under a Senate resolution could not be commenced because funds were not available, and the Senate was so informed.

The request for deficiency appropriation was submitted in order to respond to the call of the President of the United States for an "immediate" inquiry into the gasoline situation. The deficiency was refused, but the inquiry was made by delaying current work, and the report submitted.

The inquiry into the production and distribution of flour and bread, called for by the Senate resolution, while considerably delayed, is now under way. Otherwise the economic work and likewise the work connected with the export trade associations has been normal.

Briefly, the commission has been engaged during the year, as heretofore, in the prevention of unfair methods of competition in domestic and foreign commerce, in the elimination of practices which substantially lessen competition or tend to create monopoly, and in gathering and publishing facts for the information of the President, the Congress, and the public with respect to the economic phases of domestic industry and foreign trade. Differently stated, the commission's duty is to sustain those practices which support the competitive system, as opposed to monopoly, in furtherance of the fundamental object of Congress in the enactment of the Federal Trade Commission Act and the Clayton Act. The commission has sought to protect the public against those methods described by the Supreme Court in the Gratz case as (1) methods opposed to good morals because characterized by deception, bad faith, fraud, or oppression, and / or (2) methods regarded as against public policy because of dangerous tendency unduly to hinder competition or create monopoly.

The work for the year covered the entire scope of the trust problem and related subjects. It reached from the simplest form of unfair methods of competition on through all phases to the more complex question of trust dissolution. These activities touched the whole range of commerce—raw materials, manufacturing, wholesaling, retailing, exporting, manipulation of markets—and, as representing the public interest, consumption. The whole trust problem

can be approached satisfactorily only by approaching it on the economic as well as the legal side. Activities in both these fields as disclosed in the report here given register an advance in an understanding of the matter.

While in all its divisions the commission in those activities having to do with the preservation of competition and the prohibition of unfair methods of competition dealt primarily with questions arising in trade in manufactured products, it may also be noted that many of these matters affected agricultural interests. During the year the commission made reports for Congress and the same were published on the cotton trade; flour-milling industry; costs, profits, and margins in the handling of grain; stove industry; and taxation and tax-exempt income. At the request of the President there was submitted to him a special report on gasoline prices. A comprehensive report on the radio industry was also prepared for the House of Representatives and published.

Among the legal proceedings under way during the year were cases relating to food, fuel, clothing and shelter, etc., i. e., steel (Pittsburgh plus), radio, farm implements, grain, groceries, coal, furniture, food products, lumber, soaps, silverware, silks, woolens, photo-engraving, typothetae, tobacco, paper and stationery, motion pictures, etc.

The legal proceedings of the commission make frequent and extensive demands on the economic staff for expert assistance from economists and accountants and also for statistical and clerical service. During the fiscal year under report professional assistance was rendered especially in connection with the Pittsburgh Basing Point case, the Bethlehem-Midvale-Lackawanna steel merger, and the cases relating to anthracite premium prices and quantity discounts on corn products. Clerical assistance was given in various other cases. In this connection 17 members of the economic staff were engaged on legal work during the fiscal year.

Aid to other branches of the Government was rendered by detailing expert accountants to the Senate Committee on Public Lands and Surveys in connection with the Teapot Dome investigation conducted by that committee. In addition, a number of statistical experts and clerks familiar with the coal industry problems were temporarily assigned to the United States Coal Commission in connection with that commission's inquiry into costs, prices, and profits of coal-mining operators.

For the administration of the acts of Congress committed to its care, the commission has been organized into four major divisions—i. e., administrative, legal, economic, and export trade—and the work of the year is reported under those captions in the order given.

ADMINISTRATIVE DIVISION

This division conducts the business affairs of the commission. It is made up of several units such as are usually found in Government establishments, the functions of the units being governed largely by general statutes. These units are personnel, fiscal affairs, publications, docket, mail and files, supplies, stenographic, and library.

The units are under the direct supervision of the assistant secretary of the commission. The character of work of each is indicated by its designation.

PERSONNEL

Under the rule of the commission providing for the rotation of the office of chairman, Commissioner John F. Nugent was chosen chairman for the year beginning December 1, 1923. Commissioner Nugent waived the chairmanship, and Commissioner Huston Thompson, the next in order of seniority, was chosen chairman. Commissioner Vernon W. Van Fleet was chosen vice chairman for the same period.

Commissioner Victor Murdock, of Kansas, resigned, effective January 31, 1924, and to fill the unexpired portion of his term, ending September 25, 1925, the President, on May 26, 1924, sent to the Senate the nomination of Mr. Charles W. Hunt, of Iowa. This nomination was confirmed by the Senate on May 31, 1924, and Mr. Hunt took the oath of office and entered upon duty on June 16, 1924.

On June 30, 1924, there were 309 employees on the pay roll, with a total basic salary of \$742,240 and a bonus of \$49,660, a grand total of \$791,900. Of these employees, 181 were under the civil service and 128 held positions excepted by law from the civil-service regulations. Of the total of 309 employees, 160 were administrative employees, clerks, etc.; 90 were lawyers; 30, economists; and 29, accountants. The average salary of all employees on June 30, 1924, including bonus, was \$2,562.78. The average salary for administrative employees was \$1,747.50; for lawyers, \$3,697.22; for economists, \$3,425.00; for accountants, \$2,675.17. There were 100 women employees.

During the year ended June 30, 1924, 40 employees, or 13 per cent, left the service of the commission and 31 appointments of a permanent character were made. The number of employees coming under the provisions of the civil service retirement law was 178.

As of July 1, 1924, the Personnel Classification Board classified the employees. Nine suffered salary reductions in total amount of

\$2,080. The Personnel Classification Board did not increase the allocation or salary of any employee over the allocation given by the commission, but decreased the allocation of 78 employees. However, the rates of salaries paid by the commission to certain employees were adjusted to accord with the salary rates provided in the classification act. This adjustment under the law operated to grant nominal salary increases to 115 employees, a total of \$14,580, with a total net increase in the salary roll as a result of reclassification of \$12,500. This represented an increase of 1.58 per cent in the employees' salary roll. A number of appeals from the board's allocation were filed both by the commission in behalf of its employees and by the employees individually. The commission protested the board's allocation of economists and accountants to the clerical, administrative, and fiscal service. These the commission held belonged in the professional and scientific service. The commission also protested the relatively low allocation given by the board to its legal staff. In all, appeals were filed by about one-third of the employees. A number of appeals have been granted and from time to time changes in the allocations of employees are being made by the Classification Board. These will be shown in the next annual report.

At the time of the commission's organization, March 16, 1915, the personnel consisted of 144 persons, these being carried over from the Bureau of Corporations of the Department of Commerce. The total number on the rolls on the date of declaration of war against Germany, April 6, 1917, was 198, and the number in the service at the time of the signing of the armistice, November 11, 1918, was 691. The high-water mark, so far as number of employees is concerned, was on December 9, 1918, when there were 710 employees in the service.

The turnover in the force in the short period of the history of the commission has been exceptionally high. There have been 2,158 original appointments in a little more than nine years, and of this number 1,844 have left the service. This means that the commission has had six times as many employees come and go as it now has on its rolls.

A statement of the personnel, including commissioners at the end of each fiscal year since the organization of the commission, is given below:

June 30, 1915.....	143	June 30, 1920.....	418
June 30, 1916.....	224	June 30, 1921.....	315
June 30, 1917.....	211	June 30, 1922.....	318
June 30, 1918.....	663	June 30, 1923.....	308
June 30, 1919.....	376	June 30, 1924.....	314

This table shows a war-time personnel promptly cut in half after the armistice and a stationary personnel for the past four years.

FISCAL AFFAIRS

Appropriations available to the commission for the fiscal year ended June 30, 1924, under the executive and sundry civil act, approved February 13, 1924, amounted to \$1,010,000. This includes an item of \$50,000 for salaries of commissioners and \$20,000 for printing and binding, leaving \$940,000 for the general work of the commission.

Expenditures for the year plus outstanding liabilities amounted to \$979,440.18, which left an unexpended balance of \$30,559.72. Of this amount, \$8,563.78 represented the unexpended balance of the appropriation provided for the payment of increase of compensation (bonus); \$3,750, unexpended balance of salaries for commissioners and secretary (statutory); and \$580.75, unexpended balance of appropriation for printing and binding. The remainder, \$17,665.19, represents the unexpended balance of the lump sum appropriation.

The appropriation, including unexpended balances of appropriation for previous years, and expenditures, are tabulated below.

Appropriations and expenditures

	Amount available	Amount expended
Federal Trade Commission, 1924		
Salaries, commissioners, secretary	\$55,000 00	\$51,270 00
Increase of compensation (bonus)	55,000 00	46,436 22
Printing and binding	20,000 00	15,411 35
All other authorized expenses	880,000 00	842,911 89
Total fiscal year 1924	1,010,000 00	956,049 46
Unexpended balances		
Federal Trade Commission—		
1923	22,514 09	20,659 89
1922	42,601 38	1 30
		Cr 44
	1,075,415 47	976,719 81

It is estimated that the outstanding liabilities of the commission as of June 30, 1924, amount to \$23,390.72, payment of which will be made from the unexpended balance of the appropriations, "Federal Trade Commission," 1924.

A detailed analysis of the costs of the commission is given in the following statement:

Statement of costs of the Federal Trade Commission for the fiscal year ended June 30, 1924

	Office	Field	Total
Administrative	\$235,972.70	\$727.38	\$236,700.08
Economic	195,516.22	11,981.81	207,498.03
Legal			
Chief counsel	164,245.40	59,735.71	223,981.11
Chief examiner	171,149.30	45,301.91	216,451.21
Board of review	20,045.91	904.99	20,950.81
Export trade	11,060.05	2,303.02	13,363.07
Trading with the enemy	2,019.05		2,019.05
Grand total	800,008.63	120,954.73	920,963.36

ADMINISTRATIVE DIVISION

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Detailed statement of costs of the Federal Trade Commission for the fiscal year ended June 30, 1924

Item	Office	Field
Annual leave.....	\$22,975 03	
Applications for complaints.....	64,711 76	\$18,068 06
Board of review.....	18,910 74	
Bread inquiry.....	2,200 81	
Briefs.....	248 66	
California oil.....	4 55	
Clayton Act, section 7, general investigation.....		157 68
Clayton Act, section 8, general investigation.....		3 22
Coal-trade inquiry.....	7,965 97	704 74
Communications.....	3,899 15	
Complaints, formal.....	154,289 39	77,089 09
Computing machine work.....	1,215 24	
Corporation reports.....	8 13	
Cotton-trade inquiry.....	31,027 32	4,108 55
Court leave.....	68	
Decline in wheat prices.....	10 23	
Docket section.....	15,098 29	
Economic supervision.....	14,951 49	
Equipment.....	4,243 81	
Export grain inquiry.....	415 82	Cr. 50
Export trade.....	9,568 03	2,303 02
Fiscal affairs.....	9,774 89	
Flour milling.....	9,908 47	Cr. 50
Gasoline inquiry.....	20,402 28	5,019 61
General administration, commissioners', etc.....	71,326 98	506 22
Grain and produce exchanges.....	9,643 12	129 33
Heat and light.....	104 17	
House-furnishings investigation.....	19,977 82	816 74
Injunction proceedings against the commission.....	12 25	
Labor.....	2,652 66	
Legal supervision.....	47,937 47	847 48
Library section.....	7,240 32	
Lumber.....	8 24	
Mail and files section.....	9,968 97	
Medical attendant.....	1,281 38	
Messengers.....	7,891 51	
Military leave.....	623 37	
Miscellaneous economic.....	279 65	
Miscellaneous legal.....	4 96	
National-wealth inquiry.....	54,955 86	3,983 79
Paper schedules.....	63 41	
Personnel section.....	8,038 01	
Petitions for mandamus.....	2,025 95	
Preliminary inquiries.....	18,847 69	3,885 53
Preliminary work on formal complaints.....	10 89	
Printing and binding.....	15,451 35	
Publications section.....	12,456 90	
Purchases and supplies section.....	4,782 39	
Radio industry.....	1,412 31	636 00
Rents.....	9,847 98	
Repairs.....	110 07	
Services rendered to Coal Commission.....	305 00	
Services rendered to Department of Justice.....	311 00	57 48
Services rendered to Federal Real Estate Board.....	3 01	
Services rendered to Reclassification Commission.....	385 20	
Services rendered to Senate Committee on Public Lands and Surveys.....	1 42	40
Sick leave.....	16,447 92	
Special briefs.....	250 45	
Special legal work for the commissioners.....	873 41	215 93
Steel.....	659 36	
Stenographic section.....	30,915 60	1,297 05
Stock securities (blue sky).....		92 30
Study of procedure.....	1,194 88	28 77
Supplies.....	9,585 10	
Time excused by Executive or commission's order.....	8,109 94	
Tobacco situation.....	104 60	
Trade practice submittal.....	210 98	
Trading with the enemy.....	1,683 32	
Transportation of things.....	198 65	
	800,008 63	130,954 73
Total office expenses.....		808,008 63
Total cost.....		920,963 36

Adjustments.—The following adjustments are made to account for the difference between the costs and expenditures:

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Total cost for the year ended June 30, 1924-----	\$920,963.36
Less transportation paid-----	40,198.05
New total-----	880,765.31
Plus transportation paid-----	42,143.78
New total-----	922,909.09
Allotted to the retirement fund-----	7,365.50
Increase of compensation (bonus)-----	46,436.22
Expenditures for the year ended June 30, 1924-----	976,710.81

Appropriations available to the commission since its organization, and the expenditures for the same period, together with the unexpended balances, are shown in the following table:

Year	Appropriations	Expenditures	Balance
1915-----	\$184,016.23	\$90,442.05	\$93,574.18
1916-----	430,964.08	379,927.41	51,036.67
1917-----	567,025.92	472,501.20	94,524.72
1918-----	1,608,865.92	1,452,187.32	156,678.60
1919-----	1,753,530.75	1,529,331.95	231,198.80
1920-----	1,395,708.82	1,120,336.32	185,372.50
1921-----	1,032,005.67	938,664.69	93,340.98
1922-----	1,026,150.54	956,632.01	69,518.53
1923-----	974,480.32	970,768.41	3,711.91
1924-----	1,010,000.00	979,240.18	30,559.72

PUBLICATIONS

The following publications were issued during the fiscal year ending June 30, 1924:

Annual Report for the Fiscal Year ended June 30, 1923; November 20, 1923; 218 pages.

Methods and Operations of Grain Exporters, Volume II, Speculation, Competition, and Prices; June 18, 1923; 264 pages.

House Furnishings Industry, Volume II, Stoves; October 1, 1923; 187 pages.

Grain Trade, Volume IV, Middlemen's Profits and Margins, September 26, 1923; 215 pages.

Radio Industry, December 1, 1923; 347 pages.

Decisions, Findings and Orders of the Federal Trade Commission, Volume V (May 22, 1922, to February 13, 1923); June 12, 1924; 628 pages.

Rules of Practice, Amended, February 1, 1924; 11 pages.

Cotton Trade, Part I, May 5, 1924; 280 pages (printed as Senate Document 100).

Wheat Flour Milling, May 16, 1924; 143 pages (printed as Senate Document 130).

Taxation and Tax-exempt Incomes, June 4, 1924; 157 pages (printed as Senate Document 148).

War-Time Costs and Profits of Steel.

Copies of these publications may be purchased from the Superintendent of Documents, Washington, D. C., for nominal sums. During the fiscal year ended June 30, 1923, 4,718 copies of reports of the commission were sold by the Superintendent of Documents for \$1,265.65. The figures for the fiscal year 1924 are not yet available.

ADMINISTRATIVE DIVISION

DOCKET

This section is somewhat comparable to the office of a clerk of court. In this section are kept the documents and records pertaining to the legal work of the commission. These records are reported under the caption, "Legal work," on page 20.

LIBRARY

The library has a collection of over 20,000 books, pamphlets, and bound periodicals, devoted largely to the subjects of law, economics, and industries. In addition are extensive files of clippings, leaflets, etc. The distinctive features of the economic collection are the files relating to corporation and trade association data and files of trade periodicals for the more important industries. There is a function peculiar to the commission's library in the character of the work it performs, and that is in the material it gathers in the form of pamphlets, corporation reports, association records, current financial and statistical services, catalogues, trade lists, etc., which are not ordinarily found in libraries of even a technical character. The greater amount is furnished gratuitously. This material furnishes a valuable adjunct to the investigatory work and is adapted to furnish leads to examinations rather than to complete and substantive information on the subject matter.

The bulk of the law collection consists of the various national and regional reporter systems and the more important reference encyclopedias and reference books that are commonly found in law libraries. The distinctive feature, however, is a file of records and briefs of antitrust cases, which were acquired without expenditure.

Care is exercised to limit the selection of books to supply only those needed constantly and immediately in the commission's work. The commission is far removed from other governmental law libraries and the library of the Supreme Court of the United States and must have available sufficient volumes to answer the ordinary requirements of the legal and economic force. In all other instances use is made of the other libraries in Washington, including the Library of Congress.

QUARTERS

The commission is housed in one of the temporary war structures at Twentieth and D Streets NW. To facilitate trial and investigatory work, and in the interest of economy, small branch offices are maintained at New York City, Chicago, and San Francisco. All communications should be addressed to the commission at Washington, D. C.

LEGAL DIVISION

Under this caption is reported the work relating to the prevention of unfair methods of competition prohibited by section 5 of the Federal Trade Commission act and cases of price discrimination, tying contracts, corporate-stock acquisitions, and interlocking directorates arising under sections 2, 3, 7, and 8, respectively, of the Clayton Act.

To make clear the duties of the commission in this regard, pertinent portions of the acts are quoted. It will be noted that the function of the commission is remedial, not punitive, and that no power is given to impose any penalty. The commission prevents the unfair act to protect the public, not to punish the doer of the act.

FEDERAL TRADE COMMISSION ACT

Section 5, in part, reads:

That unfair methods of competition in commerce are hereby declared unlawful.

The commission is hereby empowered and directed to prevent persons, partnerships, or corporations, except banks, and common carriers subject to the acts to regulate commerce, from using unfair methods of competition in commerce.

Whenever the commission shall have reason to believe that any such person, partnership, or corporation has been or is using any unfair method of competition in commerce, and if it shall appear to the commission that a proceeding by it in respect thereof would be to the interest of the public, it shall issue and serve upon such person, partnership, or corporation a complaint stating its charges in that respect, and containing a notice of a hearing upon a day and at a place therein fixed at least 30 days after the service of said complaint. The person, partnership, or corporation so complained of shall have the right to appear at the place and time so fixed and show cause why an order should not be entered by the commission requiring such person, partnership, or corporation to cease and desist from the violation of the law so charged in said complaint. * * * If upon such hearing the commission shall be of the opinion that the method of competition in question is prohibited by this act, it shall make a report in writing, in which it shall state its findings as to the facts, and shall issue and cause to be served on such person, partnership, or corporation an order requiring such person, partnership, or corporation to cease and desist from using such method of competition.

If such person, partnership, or corporation fails or neglects to obey such order of the commission while the same is in effect, the commission may apply to the circuit court of appeals of the United States for the enforcement of its

LEGAL DIVISION

order * * *. The court shall have power to make and enter a decree affirming, modifying, or setting aside the order of the commission. The findings of the commission as to the facts, if supported by testimony, shall be conclusive. The judgment and decree of the court shall be final, except that the same shall be subject to review by the Supreme Court upon certiorari as provided in section 240 of the Judicial Code.

Any party required by such order of the commission to cease and desist from using such method of competition may obtain a review of such order in said circuit court of appeals by filing in the court a written petition praying that the order of the commission be set aside.

The jurisdiction of the circuit court of appeals of the United States to enforce, set aside, or modify orders of the commission shall be exclusive.

Such proceedings in the circuit court of appeals shall be given precedence over other cases pending therein, and shall be in every way expedited. No order of the commission or judgment of the court to enforce the same shall in any wise relieve or absolve any person, partnership, or corporation from any liability under the antitrust acts.

CLAYTON ACT

Section 2—Price discriminations:

That it shall be unlawful for any person engaged in commerce, in the course of such commerce, either directly or indirectly to discriminate in price between different purchasers of commodities, which commodities are sold for use, consumption, or resale within the United States or any Territory thereof or the District of Columbia or any insular possession or other place under the jurisdiction of the United States, where the effect of such discrimination may be to substantially lessen competition or tend to create a monopoly in any line of commerce: *Provided*, That nothing herein contained shall prevent discrimination in price between purchasers of commodities on account of differences in the grade, quality, or quantity of the commodity sold, or that makes only due allowance for difference in the cost of selling or transportation, or discrimination in price in the same or different communities made in good faith to meet competition: *And provided further*, That nothing herein contained shall prevent persons engaged in selling goods, wares, or merchandise in commerce from selecting their own customers in bona fide transactions and not in restraint of trade.

Section 3—Tying contracts:

That it shall be unlawful for any person engaged in commerce, in the course of such commerce, to lease or make a sale or contract for sale of goods, wares, merchandise, machinery, supplies, or other commodities, whether patented or unpatented, for use, consumption, or resale within the United States or any Territory thereof or the District of Columbia or any insular possession or other place under the jurisdiction of the United States, or fix a price charged therefor, or discount from, or rebate upon, such price, on the condition, agreement, or understanding that the lessee or purchaser thereof shall not use or deal in the goods, wares, merchandise, machinery, supplies, or other commodities of a competitor or competitors of the lessor or seller, where the effect of such lease, sale, or contract for sale or such condition, agreement, or understanding may be to substantially lessen competition or tend to create a monopoly in any line of commerce.

Section 7—Corporate stock acquisitions:

That no corporation engaged in commerce shall acquire, directly or indirectly, the whole or any part of the stock or other share capital of another corporation engaged also in commerce, where the effect of such acquisition may be to substantially lessen competition between the corporation whose stock is so acquired and the corporation making the acquisition, or to restrain such commerce in any section or community, or tend to create a monopoly of any line of commerce.

No corporation shall acquire, directly or indirectly, the whole or any part of the stock or other share capital of two or more corporations engaged in commerce where the effect of such acquisition, or the use of such stock by the voting or granting of proxies or otherwise, may be to substantially lessen competition between such corporations, or any of them, whose stock or other share capital is so acquired, or to restrain such commerce in any section or community, or tend to create a monopoly of any line of commerce.

This section shall not apply to corporations purchasing such stock solely for investment and not using the same by voting or otherwise to bring about, or in attempting to bring about, the substantial lessening of competition. Nor shall anything contained in this section prevent a corporation engaged in commerce from causing the formation of subsidiary corporations for the actual carrying on of their immediate lawful business, or the natural and legitimate branches or extensions thereof, or from owning and holding all or a part of the stock of such subsidiary corporations, when the effect of such formation is not to substantially lessen competition.

Nothing contained in this section shall be held to affect or impair any right heretofore legally acquired: *Provided*, That nothing in this section shall be held or construed to authorize or make lawful anything heretofore prohibited or made illegal by the antitrust laws nor to exempt any person from the penal provisions thereof or the civil remedies therein provided.

Section 8.—Interlocking directorates:

That from and after two years from the date of the approval of this act no person at the same time shall be a director in any two or more corporations, any one of which has capital, surplus, and undivided profits aggregating more than \$1,000,000, engaged in whole or in part in commerce, other than banks, banking associations, trust companies, and common carriers subject to the act to regulate commerce, approved February fourth, eighteen hundred and eighty-seven, if such corporations are or shall have been theretofore, by virtue of their business and location of operation, competitors, so that the elimination of competition by agreement between them would constitute a violation of any of the provisions of any of the antitrust laws. The eligibility of a director under the foregoing provision shall be determined by the aggregate amount of the capital, surplus, and undivided profits, exclusive of dividends declared but not paid to stockholders, at the end of the fiscal year of said corporation next preceding the election of directors, and when a director has been elected in accordance with the provisions of this act it shall be lawful for him to continue as such for one year thereafter.

When any person elected or chosen as a director or officer or selected as an employee of any bank or other corporation subject to the provisions of this act is eligible at the time of his election or selection to act for such bank or other corporation in such capacity his eligibility to act in such capacity shall not be affected and he shall not become or be deemed amenable to any of the provisions hereof by reason of any change in the affairs of such bank or other

corporation from whatsoever cause, whether specifically excepted by any of the provisions hereof or not, until the expiration of one year from the date of his election or employment.

The legal division consists of the chief counsel and staff and the chief examiner and staff. The chief counsel is the legal adviser to the commission and is charged with the conduct of the trial of cases before the commission and in the courts. The chief examiner conducts the preliminary investigations and ascertains the facts in all matters involving alleged violations of laws enforceable by the commission, and reports the facts and the laws applicable thereto. This includes special legal inquiries in response to presidential and congressional action. The chief examiner also supervises the corps of examiners, who act in a capacity somewhat similar to that of masters in chancery, representing the commission in the taking of testimony, the examination of witnesses, and the submission of evidence under complaints.

SUMMARY

To measure the legal work is difficult. Many cases present simple facts representing types, such as misbranding, with respect to which the law is established (Winsted Hosiery case in the Supreme Court) and readily applied. In other groups—for instance, guaranty against decline and price maintenance—the facts are obtained only after extended inquiry. In still other groups, such as those of corporate stock acquisition, the facts may be uncontested but the application of the law uncertain. Each group presents its several problems and requires different treatment. One attorney, during the course of a year, may handle a number of cases of false advertising or misbranding, while one case involving monopoly, trade restraint, or lessening of competition may require the entire services of not only two or more trial lawyers but also a corps of experts, accountants, and statistical clerks for a period of one, two, or perhaps three years. In other words, a case may be disposed of upon a stipulation of fact set forth on a few typed pages, while another case, such as the steel basing point case, might require the taking of 20,000 pages of testimony and the receipt and consideration of approximately 60,000 pages of exhibits. The foregoing applies to complaint cases handled by the chief counsel. With some variation the situation with respect to informal matters handled by the chief examiner is identical.

This report can best reflect the character and volume of the legal work performed by a simple method of arithmetical expression supplemented by the recitation of typical cases. It can be said that under the laws which it administers the commission was called upon during the year to handle 3,111 separate legal matters relating in

large part to unfair competition in foreign and domestic trade. It disposed of 2,048 of such matters. This left on hand undisposed of at the end of the fiscal year 1,063 legal matters.

While the figures for 1924 are not comparable in every respect with those of 1923, the 1924 figures correctly register an increase in legal matters handled, disposed of, and left on hand at the close of that year. Of controlling interest, however, is the fact that there was an increase of 17 per cent in the number of individual legal matters on hand on June 30, 1924, in excess of the number on hand June 30, 1923. Thus, in legal work the commission is not only unable to handle the current receipts, but during the year fell considerably behind. The reason is an insufficient staff. That the work was diligently pressed is shown by a substantial increase in the number of matters disposed of, notwithstanding there was no increase in the staff. To conduct the legal work the commission is limited to a staff of 87 lawyers, of whom 35 were attached to the chief counsel's office and 52 attached to the chief examiner's office.

A summary of the legal record for the year reads:

Preliminary inquiries.—One hundred and eighty-one preliminary inquiries were on hand at the beginning of the year; 1,584 were received during the year, making a total of 1,765 on hand. Of these, 1,531 were disposed of and 234 undisposed of at the close of the year.

Applications for complaints.—There were 572 applications for complaint pending at the beginning of the year; 377 were docketed during the year, and there were 5 recessions of previous action, making a total of 954 for disposition during the year. Of these, 389 were disposed of, 143 by the docketing of complaints and 246 by dismissal of the application, leaving 565 pending at the close of the year.

Complaints.—Two hundred and thirty-two complaints were on hand at the beginning of the year; 154 were issued during the year, and there were 6 recessions of previous action, making a total of 392 on hand during the year. Of these, 128 were disposed of by the issuance of 92 orders to cease and desist and by the dismissal of 36 complaints. This left on hand 264 complaints undisposed of at the end of the year.

Court cases.—Thirteen cases were in the courts at the beginning of the fiscal year, and 19 were taken to the courts during the year, making a total of 32. Of these, 10 were disposed of, leaving 22 on hand at the end of the year.

Tabular statement.—Statistics for the present year and for the entire history of the commission are inserted on pages 62, 63, and 64.

Since its organization in 1915 to date, the commission has received 9,249 preliminary inquiries, docketed 3,591 applications for complaints, issued 1,197 complaints, and 635 orders to cease and desist, and dismissed 298 complaints. Fifty-five of these orders to cease and desist have been taken to courts.

METHODS OF COMPETITION CONDEMNED

Among the unfair methods of competition and Clayton law violations condemned by the commission and prohibited by orders to cease and desist may be mentioned the following:

Misbranding of fabrics and other commodities respecting the materials or ingredients of which they are composed, their quality, origin, or source.

Adulteration of commodities, misrepresenting them as pure or selling them under such names and circumstances that the purchaser would be misled into believing them to be pure.

Bribery of buyers or other employees of customers and prospective customers to secure new customers or induce continuation of patronage.

Making unduly large contributions of money to associations of customers.

Procuring the business or trade secrets of competitors by espionage, by bribing their employees, or by similar means.

Procuring breach of competitors' contracts for the sale of products by misrepresentation or by other means.

Inducing employees of competitors to violate their contracts or enticing away employees of competitors in such numbers or under such circumstances as to hamper or embarrass them in business.

Making false or disparaging statements respecting competitors' products, their business, financial credit, etc.

The use of false or misleading advertisements.

Making vague and indefinite threats of patent-infringement suits against the trade generally, the threats being couched in such general language as not to convey a clear idea of the rights alleged to be infringed, but nevertheless causing uneasiness and fear in the trade.

Widespread threats to the trade of suits for patent infringement arising from the sale of alleged infringing products of competitors, such threats not being made in good faith but for the purpose of intimidating the trade.

False claims to patent, trade-mark, or other rights or misrepresenting the scope thereof.

Intimidation for the purpose of accomplishing enforced dealing by falsely charging disloyalty to the Government.

Tampering with and misadjusting the machines sold by competitors for the purpose of discrediting them with purchaser.

Trade boycotts or combinations of traders to prevent certain wholesale or retail dealers or certain classes of such dealers from procuring goods or goods at the same terms accorded to the boycotters or conspirators, or to coerce the trade policy of their competitors or of manufacturers from whom they buy.

Passing off of products, facilities, or business of one manufacturer or dealer for those of another by imitation of product, dress of goods, or by simulation or appropriation of advertising or of corporate or trade names, or of places of business, and passing off by a manufacturer of an inferior product for a superior product theretofore made, advertised, and sold by him.

Unauthorized appropriation of the results of a competitor's ingenuity, labor, and expense, thereby avoiding costs otherwise necessarily involved in production.

Preventing competitors from procuring advertising space in newspapers or periodicals by misrepresenting their standing or other misrepresentation calculated to prejudice advertising mediums against them.

Misrepresentation in the sale of stock of corporations.

Selling rebuilt machines of various descriptions, rebuilt automobile tires, and old motion-picture films slightly changed and re-named as and for new products.

Harassing competitors by requests not in good faith, for estimates on bills of goods, for catalogues, etc.

Giving away of goods in large quantities to hamper and embarrass small competitors, and selling goods at cost to accomplish the same purpose.

Sales of goods at cost, coupled with statements misleading the public into the belief that they are sold at a profit.

Bidding up the prices of raw materials to a point where the business is unprofitable for the purpose of driving out financially weaker competitors.

The use by monopolistic concerns of concealed subsidiaries for carrying on their business, such concerns being held out as not connected with the controlling company.

Intentional appropriation or converting to one's own use of raw materials of competitors by diverting shipments.

Giving and offering to give premiums of unequal value, the particular premiums received to be determined by lot or chance, thus in effect setting up a lottery.

Any and all schemes for compelling wholesalers and retailers to maintain resale prices on products fixed by the manufacturer.

Combinations of competitors to enhance prices, maintain prices, bring about substantial uniformity in prices, or to divide territory or business, or to put a competitor out of business.

Acquiring stock of another corporation or corporations where the effect may be to substantially lessen competition, restrain commerce, or tend to create a monopoly.

Various schemes to create the impression in the mind of the prospective customer that he is being offered an opportunity to make a purchase under unusually favorable conditions, when such is not the case, such as—

(1) Sales plans in which the seller's usual price is falsely represented as a special reduced price made available on some pretext, for a limited time or to a limited class only.

(2) The use of the "free" goods or service device to create the false impression that something is actually being thrown in without charge when as a matter of fact fully covered by the amount exacted in the transaction taken as a whole.

(3) Sales of goods in combination lots only with abnormally low figures assigned to staples the prices of which are well known, and correspondingly highly compensating prices assigned to staples the cost of which is not well known.

(4) Sale of ordinary commercial merchandise at usual prices and profits, as pretended Government war surplus offered at a bargain.

(5) Use of misleading trade names calculated to create the impression that a dealer is a manufacturer, selling directly to the consumer, with corresponding savings.

(6) Plans ostensibly based on chance, or services to be rendered by the prospective customer, whereby he may be able to secure goods contracted for at particularly low prices, or without completing all the payments undertaken by him, when as a matter of fact such plans are not carried out as represented and are a mere lure to secure his business.

(7) Use of pretended exaggerated retail prices in connection with, or upon the containers of, commodities intended to be sold as bargains at lower figures.

(8) Falsely claiming forced sale of stock, with resulting forced price concessions, when as a matter of fact there is mingled with the customary stock inferior goods, and other methods are employed so that as a matter of fact no such concessions are in fact accorded.

Seeking to cut off and hamper competitors in marketing their products through destroying or removing their sales display and advertising mediums.

Discriminating in price.

Subsidizing public officials or employees through employing them or their relatives under such circumstances as to enlist their interests in situations in which they will be called upon by virtue of their official position, to act officially.

Suggesting to prospective customers the use of specific, unfair, and dishonorable practices directed at competitors of the seller.

Imitating standard containers customarily associated in the mind of the general purchasing public with standard weights of the product therein contained, to sell to said public such commodity in weights less than the aforementioned standard units.

Concealing business identity in connection with the marketing of one's product.

Misrepresenting in various ways the advantages to the prospective customer of dealing with the seller; such as—

(1) Seller's alleged advantages of location or size.

(2) False claims of being the authorized distributor of some concern.

(3) Alleged endorsement of the concern or product by the government or by nationally known businesses.

(4) False claim by a dealer in domestic products of being an importer, or by a dealer of being a manufacturer, or by a manufacturer of some product of being also the manufacturer of the raw material entering into said product.

(5) False claim of "no extra charge for credit."

(6) Of being manufacturers' representative and outlet for surplus stock sold at a sacrifice, etc.

Tying or exclusive contracts, leases or dealings, in which, in consideration of the granting of certain rebates or refunds to the customer, or the right to use certain patented equipment, etc., the customer binds himself to deal only in the products of the seller or lessor.

Showing and selling prospective customers articles not conforming to those advertised, in response to inquiries, without so stating.

Direct misrepresentation of the composition, nature or qualities of the product offered and sold.

Use by business concerns associated as trade organizations or otherwise, of methods which result in the observance of uniform prices for the products dealt in by them, with consequent restraint or elimination of competition; such as use of various kinds of so-called standard cost systems, price lists or guides, etc.

Securing business through undertakings not carried out and through dishonest and oppressive devices calculated to entrap and coerce the customer or prospective customer, such as—

(1) Securing prospective customer's signature by deceit to a contract and promissory note represented as simply an order on approval, securing agents to distribute the seller's products through promising to refund the money paid by them should the product prove unsatisfactory, and through other undertakings not carried out.

(2) Securing business by advertising a "free-trial" offer proposition, when as a matter of fact only a "money-back" opportunity is offered the prospective customer, etc.

Giving products misleading names so as to give them a value to the purchasing public or to a part thereof which they would not otherwise possess, such as—

(1) Names implying falsely that the particular products so named were made for the Government, or in accordance with its specifications, and of corresponding quality, or are connected with it in some way, or in some way have been passed upon, inspected, underwritten, or indorsed by it.

(2) That they are composed in whole or in part of ingredients or materials, respectively contained only to a limited extent or not at all.

(3) That they were made in or came from some locality famous for the quality of such products.

(4) That they were made by some well and favorably known process, when as a matter of fact only made in imitation of and by a substitute for such process.

(5) That they have been inspected, passed, or approved after meeting the tests of some official organization charged with the duty of making such tests expertly and disinterestedly or giving such approval.

(6) That they were made under conditions or circumstances considered of importance by a substantial fraction of the general purchasing public, etc.

Interfering with established methods of securing supplies in different businesses in order to hamper or obstruct competitors in securing their supplies.

SPECIAL LEGAL INQUIRIES

The chief examiner conducted two special legal inquiries during the year, as follows:

Gasoline.—At the direction of the President, a report on the gasoline situation in 1924, which covered economic and legal phases, was prepared jointly by the chief examiner and the chief economist. The chief examiner's investigation had reference to monopoly, prices, and competitive conditions in the marketing of gasoline. The gasoline report is more fully covered under the caption of "Economic work," page 79.

Radio.—Pursuant to House Resolution 548, Sixty-seventh Congress, fourth session, adopted March 3, 1924, an inquiry was conducted and report submitted to the House of Representatives under date of December 1, 1923, with respect to the radio industry. The report covered (a) the ownership of patents covering radio ap-

paratus; (b) contracts, leases, or agreements respecting the sale or use of radio apparatus; (c) contracts, leases, or agreements with respect to radio communication; and (d) the organization, practices, etc., of the most important companies in the industry.

The investigation showed that the Radio Corporation of America is the most important factor in that industry. It has entered into cross-licensing agreements with various companies which own or control practically all patents covering radio devices considered of importance to the art. These companies include the General Electric Co., Westinghouse Electric & Manufacturing Co., the American Telephone & Telegraph Co., the United Fruit Co., and the Radio Engineering Co. of New York. It was also developed that the Radio Corporation of America is the dominant factor in the communication field. With respect to international communication, it has secured a monopoly by virtue of traffic agreements entered into with various foreign governments and radio concerns. Agreements of this character have been made with Marconi's Wireless Telegraph Co. (Ltd.) covering the British possessions, and the Governments of Norway, Germany, France, Poland, Sweden, the Netherlands, Japan, and China.

PROCEDURE AND STATISTICS ON LEGAL WORK

Responsive to many inquiries, it has been thought well to set forth details of the procedure upon legal matters. This is done in connection with statistics under topic headings which carry the unfair competition and Clayton law cases from their inception, through their several steps, to decision in the Supreme Court of the United States, the end of the process in the final determination of existing law. These topic headings are (1) preliminary inquiries, (2) applications for complaints, (3) complaints, including orders to cease and desist, and (4) court cases.

PRELIMINARY INQUIRIES

These are handled by the chief examiner and his staff. The preliminary inquiry is the initial approach to the commission in an unfair competition or Clayton law case, and is usually in the form of a letter from the general public, through an individual or corporation, calling attention to some alleged illegal or harmful practice in foreign or domestic commerce. In bringing these matters to the commission no formalities or blank forms are required. A letter suffices if it is signed by the complaining party and contains the name and address of the party complained against and a statement of the

nature of the relief sought. It should also transmit all the evidence in the possession of the complaining party, documentary or otherwise, to aid in the inquiry. Upon its receipt the preliminary inquiry is immediately referred to the chief examiner, who causes the same to be examined for certain necessary jurisdictional elements—the public interest, unfair competition, and the interstate-commerce feature. The examination of the papers submitted by the applicant is supplemented when necessary by correspondence. At this stage the inquiry is regarded as confidential, to which no publicity attaches. If the jurisdictional elements are present, and without them the commission can not proceed, and the matter fails of disposition by conferences and correspondence with the chief examiner, the preliminary inquiry is docketed as an application for the issuance of a complaint.

During the year here reported upon the commission was called upon to handle 1,765 preliminary inquiries, this number being made up of 181 on hand at the beginning of the fiscal year and 1,584 received during the year. Of this number, 1,209 were disposed of to the satisfaction of the parties upon summary review by the chief examiner, at small cost to the Government, and 322 by the docketing of applications for complaints. This left 234 on hand undisposed of at the end of the year.

The following table gives a record of the work on preliminary inquiries during the entire history of the commission, from 1915 until 1924, inclusive.

Preliminary inquiries	1915	1916	1917	1918	1919	1920	1921	1922	1923	1924	Total
Pending at beginning of year		4	12	32	19	29	61	68	182	181	568
Requests for action from public.....	119	265	462	611	843	1,136	1,070	1,256	1,818	1,584	8,661
Total for disposition.....	119	269	474	643	862	1,165	1,131	1,326	1,495	1,765	9,249
Dismissed on summary review.....	3	123	269	292	298	351	500	731	931	1,209	4,727
Docketed as applications for complaint.....	112	134	183	332	535	724	563	413	383	322	3,671
Total disposed of.....	115	267	442	624	833	1,075	1,063	1,144	1,314	1,531	8,396
Pending at end of year.....	4	12	32	19	29	61	68	182	181	234	822

The table shows a steady increase of from 119 in 1915 to 1,584 in 1924, or an increase of 1,241 per cent in 10 years.

The commission has used various means to meet the increase in preliminary inquiries received, and has increased the force at the command of the chief examiner as far as its funds would permit. It has made changes in procedure with a view to expediting the disposition of the inquiries, and in this way has reduced the proportion of preliminary inquiries which are docketed as applications for complaints.

The reduced proportion referred to has been possible by the fact that, as the established precedents grow in number and the field

which they cover widens, it becomes possible to dispose of more inquiries with less investigation and consideration. Court decisions have also been helpful in this respect. If it is possible to do so, the inquiries are handled without docketing as applications for complaints.

APPLICATIONS FOR COMPLAINTS

If, upon examination, a preliminary inquiry is found to contain the necessary jurisdictional elements, it is docketed as an application for the issuance of a complaint, and this is the second stage in the development of a case. An application for complaint presents some prima facie indication of violation of law, that is to say, the record before the chief examiner in a given preliminary inquiry can not be disposed of by simple correspondence or reference to precedent or court decision, and requires complete investigation to ascertain facts to be presented to the commission for its determination as to whether or not a complaint should issue. The application for complaint, like the preliminary inquiry, is handled by the chief examiner and is held confidential.

The chief examiner assigns each application for complaint to an attorney, whose duty it is to gather the facts. The first step in the investigation is to present to the party complained against a complete statement of matter, without identifying the applicant, and to request the party complained against to submit such statements, evidence, and documents in defense or explanation of his position as he may desire to be brought to the attention of the commission. The investigating attorney makes such investigation as the nature of the particular case may require to develop the facts, and thereafter summarizes his investigation in a final report which is submitted, with the record, to the chief examiner, with a recommendation either (1) that the application for complaint be dismissed or (2) that formal complaint issue.

The chief examiner passes upon the investigating attorney's reports and indorses thereon his approval or disapproval and in event complaint is recommended refers the entire file to the board of review. If the recommendation of the investigating attorney is for dismissal, the file goes direct to the commissioner in charge.

The board of review, a sitting board composed of three members, reviews the record and prepares a report, summarizing the evidence, reciting the law applicable thereto, and submitting a recommendation for commission action.

The file is then assigned to a commissioner, who reviews the entire record and presents the case to the full commission with his recom-

LEGAL DIVISION

mentation either that a complaint issue or that the application for complaint be dismissed. A majority vote controls.

During the year here reported upon the commission was called upon to handle 954 applications for complaint. Of this number 572 were carried over from the previous year, 377 were docketed during the year, and 5 were rescissions of previous action. Of this total number of 954 the commission disposed of 389 during the year. Of these 246 were dismissed after investigation for the reason that the facts developed did not call for the exercise of the remedial powers granted to the commission. One hundred and forty-three applications for complaints developed facts based upon which complaints issued. These figures indicate that the commission was able to dispose of but 41 per cent of the applications for complaints which it was called upon to handle during the year. In other words, 954 were on hand during the year, and at the close of the year 565 had not been disposed of. At this rate the commission is about two years behind in this particular phase of its work. On June 30, 1924, there were 215 applications for complaints which had been on hand for an average period of over nine months.

The following table gives a record of the work on applications for complaints during the entire history of the commission, from 1915 until 1924, inclusive :

Applications for complaint	1915	1916	1917	1918	1919	1920	1921	1922	1923	1924	Total
Pending at beginning of year.....	0	104	130	188	280	389	554	466	458	572	3,141
Applications docketed.....	112	134	153	332	535	724	426	382	416	377	3,591
Total for disposition.....	112	238	283	520	815	1,113	980	848	874	949	6,732
Applications dismissed.....	8	106	79	183	301	339	357	237	181	246	2,063
Dismissals rescinded.....	0	0	0	0	0	0	0	0	0	5	5
Net dismissals.....	8	106	79	183	301	339	357	237	181	241	2,058
Applications to formal complaint.....	0	3	16	80	125	220	157	103	121	143	968
Total disposed of.....	8	109	95	240	426	559	514	390	302	384	3,026
Pending at end of year.....	104	130	188	280	389	554	466	458	572	565	3,706

Like the preliminary inquiry, the application for complaint docket has steadily increased from 112 in 1915 to 377 in 1924, an increase of 237 per cent.

As the specific charges in applications for complaints for alleged unfair competition and Clayton Act violations may be of interest, a table has been prepared showing the principal charges alleged in applications for complaints docketed during the fiscal year 1923 and the fiscal year 1924, together with a statement of the increases and decreases in the larger items. The table follows:

Charge	1923	1924	In-crease	De-crease
Appropriation of values created by competitor's expenditure.....	9	4		5
Bogus independents.....	6	0		6
Boycott.....	4	0		4
Bribery.....	3	3		
Combination or conspiracy in restraint of trade.....	16	19	3	
Disparagement of competitor's goods or business.....	12	8		4
Enticement of competitor's employees.....	4	2		2
Espionage.....	1	4	3	
False and misleading advertising.....	149	201	52	
Full-line forcing.....	5	0		5
Interference with competitor's source of supply or business.....	21	14		7
Misbranding.....	68	120	52	
Misrepresentation.....	41	110	69	
Passing off of name and goods.....	48	60	12	
Price cutting.....	2	2		
Price fixing.....	15	12		3
Resale price maintenance.....	66	27		39
Sec 2, Clayton Act (price discrimination).....	38	3		35
Sec 3, Clayton Act (tying and exclusive contracts).....	12	6		6
Subsidizing salesmen.....	3	0		3
Sec. 7, Clayton Act (corporate mergers).....	9	10	1	
Threats and intimidation.....	6	4		2
Violation of commission's order.....	5	0		5
Miscellaneous.....	33	20		10

From this it appears that the largest item in both years was false and misleading advertising, which showed an increase in 1923-24 over the previous year of 35 per cent; then misbranding, which increased 76½ per cent; then passing off of name and goods, with an increase of 25 per cent; misrepresentation, which increased 168 per cent; and combination in restraint of trade, on which there was a small increase. The more important items showing a decrease were: Disparagement of competitor's goods or business, interference with competitor's source of supply or business, price fixing, resale-price maintenance, price discrimination, and tying and exclusive contracts.

COMPLAINTS, INCLUDING ORDERS TO CEASE AND DESIST

The complaint is the third stage in the development of an unfair competition or Clayton Act case. It is only after the most careful scrutiny of a record that the commission issues a complaint. The commission must have, in the language of the statute, a reason to believe that the law has been violated before complaint issues. The complaint is the specified statutory means provided to bring a party charged with violation of law properly before the commission. Unlike the preliminary inquiries and the application for complaint, the complaint is a public record, and with the issuance of a complaint the formal docket is set up, which is open for public inspection. The record prior to complaint is confidential.

A complaint is issued in the name of the commission in the public interest. It names a respondent and charges a violation of law, with a statement of the charges. It contains notice of a hearing. Thirty days are allowed the respondent within which to make

answer. The party first complaining to the commission is not a party to the complaint when issued by the commission. Nor does the complaint seek to adjust matters between parties. It is to prevent unfair methods of competition for the protection of the public.

Upon the issuance of a complaint, the case is referred to the chief counsel, who is charged with the trial and the submission of the matter to the commission thereafter. After answer is filed and upon due notice to all parties respondent the case is set down for the taking of testimony before a trial examiner. After the taking of testimony and the submission of evidence on behalf of the commission in support of its complaint, and on behalf of the respondent, the trial examiner prepares a report of the facts for the information of the commission, counsel for the commission, and counsel for the respondent. Exceptions to the trial examiner's report may be made by either counsel for the commission or counsel for the respondent. The next step is the filing of briefs, and thereafter the case comes on for final argument before the full commission upon the complaint, the answer, the testimony and exhibits, the examiner's reports, exceptions thereto, and briefs by opposing counsel. The case is heard and taken under advisement, and thereafter the commission reaches a decision either sustaining the charges in the complaint or dismissing the complaint. If the complaint be sustained, an order is issued requiring the respondent to cease and desist from the practices proven under the complaint. If the complaint be dismissed, an order of dismissal is issued. The above procedure is the one followed in contested cases. In other cases an admission of the matters alleged in the complaint may be made by respondent and a stipulation in lieu of testimony entered into between the commission and the respondent, upon which the commission makes its findings of facts, which are the basis of an order to cease and desist. The stipulation, of course, obviates the necessity for the taking of testimony and the briefing and argument of the case, unless the respondent desires to be heard upon the law alone.

Complaints to the number of 154 were issued by the commission during the year. In addition to these there were 232 complaints on hand and undisposed of at the beginning of the year. To this must be added 6 rescissions of previous action, making a total of 392 separate complaints requiring the attention of the commission in the fiscal year. During the same period the commission disposed of 128 complaints, 92 by the issuance of orders to cease and desist and 36 by dismissal, leaving a total of 264 complaints on hand with which to start the fiscal year beginning July 1, 1924. During the year the dismissal of one complaint and five orders to cease and desist were rescinded.

DISMISSAL OF COMPLAINTS

Up to June 30, 1924, the commission had dismissed 298 formal complaints. While the reason for the dismissal of a specific complaint is seldom given in the order of dismissal, a review of dismissed cases may be given in a summarized form, as follows:

Controlling court decisions.....	71
Dismissed without prejudice.....	42
Respondent out of business.....	29
Discontinuance of practice.....	19
Practice as used by respondent not unfair.....	38
Insufficient public interest.....	11
Lack of interstate commerce.....	23
Disposed of by civil litigation.....	7
Faulty pleadings.....	2
Lack of proof.....	42
Miscellaneous.....	14

Seventy-one cases are listed as being dismissed because of controlling decisions. Of this number, 39 were cases held in abeyance until the decision of the Supreme Court in the Beech-Nut Packing Co. case. There was reason to believe that the respondents in these cases were guilty, but the respondents contended that, as the decision of the Supreme Court constituted in reality new law on the subject, they should be given an opportunity to conform their practices in accordance with that court's decision. Complying with this request, these cases were dismissed after the Beech-Nut case, with notice that the commission would cause new investigations to be instituted to ascertain whether the respondents conducted their business in line with the Beech-Nut decision.

Those complaints dismissed without prejudice were cases in which it was generally found that because of the age of the case or the fact that the practice was not employed extensively or had been discontinued, it was thought best to dismiss without prejudice with the right to renew the action in the event the respondent continued the acts complained of. Twenty-nine cases were dismissed because when order issued the respondents either could not be found or had gone out of business. In this class of cases evidence was usually available to sustain the charges of the complaint. In 19 cases the complaints were dismissed because the practice condemned had been discontinued and in 11 cases because of insufficient public interest. These were the less important cases and were dismissed because of the age of the cases and the lack of funds with which to reinvestigate the more or less minor matters involved for the purpose of ascertaining conditions prevailing at the time of dismissal, and it was decided that to proceed further would not be in the public interest. Twenty-three cases have been dismissed for lack of interstate com-

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merce, because it could not be proved that the acts complained of were done in interstate commerce, thus leaving the commission without jurisdiction. Those disposed of because of civil litigation are cases in which the respondent had already been proceeded against in the courts prior to the commission reaching these cases, but not prior to the institution of the commission's case. In these seven cases the respondents were successfully proceeded against in the courts.

The foregoing indicates that only a small percentage of complaints has been dismissed because the respondents were not found guilty of the practices as charged. In some of those cases noted as being dismissed for lack of proof the commission was unable to proceed with trial within a reasonable time after the original investigation. Later, when these cases were taken up for trial, it was found that the facts disclosed by the original investigation could not be substantiated, oftentimes by reason of the disappearance of witnesses. The number listed as being dismissed for lack of proof are those in which public announcement was made of the fact.

The following table gives a record of the work on complaints, including orders to cease and desist, during the entire history of the commission, from 1915 until 1924, inclusive:

Complaints	1915	1916	1917	1918	1919	1920	1921	1922	1923	1924	Total
Pending at beginning of year.....	0	5	10	85	133	287	312	257	232	232	1,321
Complaints issued.....	5	9	154	136	308	177	111	144	154	154	1,197
Total for disposition.....	5	14	164	220	441	464	423	401	386	386	2,518
Complaints dismissed.....	0	1	7	13	44	37	75	87	36	36	300
Dismissals rescinded.....	0	0	0	0	0	1	0	0	0	0	1
Net dismissals.....	0	1	7	13	44	36	75	87	35	35	298
Orders to cease and desist.....	0	3	72	74	110	116	91	82	92	92	640
Orders to cease and desist rescinded.....	0	0	0	0	0	0	0	0	0	0	5
Net orders to cease and desist.....	0	3	72	74	110	116	91	82	87	87	635
Total disposed of.....	0	4	79	87	154	152	166	166	169	122	933
Pending at end of year.....	5	10	85	133	287	312	257	232	264	264	1,585

For the 10-year period this table shows an increase in complaints issued from 5 in 1915 to 154 in 1924. It shows an increase in orders to cease and desist in the same period from 0 in 1915 to 92 in 1924.

A complete list of complaints disposed of during the year is found on page 149 and a list of pending cases on page 195.

A large majority of the 154 complaints issued during the year charged unfair methods of competition, as this charge was made in 150 complaints. Violations of the Clayton Act were charged as follows: In 6 complaints price discrimination was the charge, in violation of section 2; in 2 complaints tying contracts were charged contrary to section 3; 1 complaint charged acquisition of stock of a competing concern, in violation of section 7; and 1 complaint alleged interlocking directorates, contrary to section 8 of the Clayton

Act. In certain of these cases the respondents were also charged with unfair methods of competition in violation of section 5 of the Federal Trade Commission act. The complaints charging violation of section 2 of the Clayton Act—price discrimination—were against the Joseph P. Manning Co., International Ice Cream Co. (Inc.), Quaker Oats Co., Ralston Co., M. C. Peters Mills Co., and Larrowe Milling Co. The complaint against the last-named company was dismissed shortly after the close of the fiscal year. The charge of violation of section 3 of the Clayton Act—tying contracts—was contained in complaints against Nucoa Butter Co. et al., M. C. Peters Mills Co., and Philip Carey Manufacturing Co. et al. Under section 7 of the Clayton Act, complaint was issued against the Holly Sugar Corporation. The complaints which charged interlocking directorates, contrary to section 8 of the Clayton Act, were against Holly Sugar Corporation et al.

Without attempting to enumerate all the various forms of unfair methods of competition set out in all the complaints issued during the year, it may be of interest to note that there were allegations in these complaints as follows: Price fixing, combination to effect monopoly, restriction of competition, false and misleading advertising, misrepresentation, misbranding, passing off of goods and names, conspiracies, espionage, bribery, lottery, boycott, cutting off competitors' supplies, simulation of trade-marks, enticing of competitors' employees, fraud in export trade, intimidation, resale price maintenance, etc.

TYPICAL COMPLAINTS

Typical complaints issued during the year and still pending are described below:

Attention is especially invited to the fact that these complaints are pending, and consequently the commission has reached no determination as to whether or not the law has been violated. The allegations of the complaints set forth the commission's reason to believe that the law has been violated. As provided by law, the respondents have opportunity to make answer and introduce evidence in denial of the allegations. In most of the cases the respondents have already filed their answers denying the allegations of the complaints. The cases will only be determined after evidence has been taken and argument made to the commission.

Monopoly—Radio.—Monopoly in radio apparatus and communication is charged in the complaint directed against the Radio Corporation of America, General Electric Co., American Telephone & Telegraph Co., Western Electric Co. (Inc.), Westinghouse Electric

& Manufacturing Co., International Radio Telegraph Co., United Fruit Co., and Wireless Specialty Apparatus Co. The complaint charges: "The respondents have combined and conspired for the purpose and with the effect of restraining competition and creating a monopoly in the manufacture, purchase, and sale in interstate commerce of radio devices and apparatus and other electrical devices and apparatus and in domestic and transoceanic radio communication and broadcasting."

Conspiracy—Farm machinery.—A conspiracy between associations of retail dealers in farm equipment and manufacturers of farm equipment is charged in a complaint directed to the Eastern Federation Farm Machinery Dealers, its officers and members, and others, a total of over 500 respondents, including the International Harvester Co., Emerson-Brantingham Co., Moline Plow Co. (Inc.), and Oliver Chilled Plow Works. Unfair methods of competition are charged in that the respondents entered into an unlawful agreement, understanding, and conspiracy to fix and maintain prices at which agricultural implements and farm machinery should be sold in certain territories. Refusal to sell, purchase from, or otherwise deal with other than members of the federation is also alleged.

Price fixing—Tobacco.—The American Tobacco Co. and the P. Lorillard Co. are named as respondents in separate complaints issued by the commission during the fiscal year. In each complaint there is also named the New England Tobacco Conference, its officers and members. In these complaints the commission charges the respondents with entering into an agreement, combination, and understanding to fix uniform discounts or prices at which the products of the American Tobacco Co. and the P. Lorillard Co. shall be sold. It is further alleged that the two tobacco companies agreed with each and every one of the groups composing the New England Tobacco Conference to discontinue and refuse to sell its products to certain members of such groups and to competitors of members of the conference. The complaints state that the alleged acts and things done by respondents are all to the prejudice of the public and of respondents' competitors and constitute unfair methods of competition.

Price maintenance—Groceries.—The North Dakota Wholesale Grocers' Association and its officers and members are named in a complaint issued by the commission charging unfair methods of competition in the fixing of uniform prices in cooperation with each other. The complaint recites various methods which it is alleged were used by the association and its members to carry out its scheme of uniform standard price fixing and its plan of confining the distribution of groceries and allied products to what the association

regards as regular and legitimate channels of trade; that is, from manufacturer to wholesaler and from wholesaler to retailer.

Price fixing—Coal.—In the complaint of unfair competition directed to the California Retail Fuel Dealers' Association et al., the charge is made that competition in the distribution and sale of coal in the State of California has been unduly obstructed and hindered and consumers of that State have been deprived of the advantages in price and otherwise which they would have obtained from the natural flow of commerce in coal under the conditions of free competition. The complaint charges that uniform prices were fixed by these respondents in cooperation with one another; that the distribution through channels other than those determined upon by the association was prevented; that cooperative purchasing associations were prevented from obtaining coal at wholesale under any conditions, and hence the sale or distribution in interstate commerce was obstructed. It is charged that boycott, threats of boycott, and other methods of intimidation and coercion were used to compel vendors to refuse and refrain from supplying purchasers and dealers with coal.

Misbranding—Soap.—J. S. Kirk & Co., of Chicago, are charged with misbranding certain of their soap products. The company is a manufacturer of soap and allied products, and uses the following brand names on seven separate kinds of soap offered by it for sale to the public—"Kirk's Cocoa Hard Water Castile," "Bengal Castile," "Kirk's Cocoa Strip Castile," "Peerless Cocoa Castile," "Cocoa Castile," "Crown Castile," and "Floating Castile." The soaps so branded, the complaint alleges, do not contain any olive oil, as is the case with genuine castile soap, but are made up with substitute oils and fats at a substantially lower cost.

Misbranding—Silver plate.—Sheffield plate figures in complaints issued against several silver plating concerns. The complaint against the Cosmopolitan Silver Co. is typical. This company, according to the complaint, manufactures quantities of silver-plated ware upon which it causes to be stamped or impressed the words "Sheffield," "Sheffield Plate," and other similar designations containing the word "Sheffield." Silver-plated ware so marked by the respondent, the complaint states, is not manufactured in Sheffield, England, and is not of a quality superior to silver-plated ware not so stamped or marked. The practice, it is asserted, is confusing and misleading and creates an undue preference for the firm's product to the detriment of competitors who refrain from marking or stamping their products with such terms or similar designations.

False advertising—Furniture.—To use slogans—for instance, "Direct from factory to you"—is questioned as an unfair method

of competition in complaint issued against the Factory-to-You Furniture Store and a number of other furniture dealers who do not manufacture but purchase the furniture in which they deal from manufacturers and resell to the consuming public. This group of cases also contains allegations of misbranding woods used in manufacturing the furniture sold.

Stifling competition—Stationery.—That the National Association of Stationers & Manufacturers of the United States had engaged in discouraging, stifling, and suppressing competition in interstate commerce in the wholesale and retail trade in stationery goods, is charged in a complaint issued by the commission April 8, 1924. Other allegations are that the association has unfairly hampered and obstructed competitors engaged in the stationery business; that it has enhanced prices; that price competition on staple items has been largely eliminated, and that prices to the consumer on such staple items have been greatly and unreasonably advanced.

Among the more important of the 232 complaints carried over from the previous year and in course of trial during the present year may be listed the following:

The photo-engravers' case—The Photo-Engravers' Club of Chicago.—Complaint against was issued March 13, 1918. On November 8, 1922, the commission issued a complaint against the American Photo-Engravers' Association and others, and these two complaints are being heard jointly by the commission. The complaints charge unfair methods of competition in that the respondents conspired and agreed to adopt and maintain a scale of uniform prices for the sale of all photo-engraving products, the respondent unions and their local organizations threatening to call strikes or withdraw union employees from photo-engraving establishments that would not maintain the uniform scale. Further hearings of the commission for the purpose of receiving testimony in these cases are set for the fall of 1924.

Austin, Nichols & Co. (Inc.)—Groceries.—A case still in course of trial is that growing out of a complaint issued against Austin, Nichols & Co. (Inc.), charging the corporation with entering into an agreement with Wilson & Co. (Inc.) for the acquisition of the Wilson & Co., Whiteland, Ind., canning plant and control of the Fame Canning Co. and Wilson Fisheries Co., in anticipation of a consent decree resulting from the prosecution of a suit in equity brought by the Attorney General of the United States by which decree Wilson & Co. (Inc.) were perpetually enjoined from engaging in business unrelated to the meat-packing industry. The respondent is charged with substantially lessening competition be-

tween the corporations here mentioned tending to create a monopoly in the grocery and food-product business.

Motion picture.—Stretching now into its second year is the case involving a large portion of the motion-picture industry. The commission's case has been brought against the Famous Players-Lasky Corporation, Realart Pictures, the Stanley Co. of America, Stanley Booking Corporation, Black New England Theaters (Inc.), Southern Enterprises (Inc.), Saenger Amusement Co., Adolphe Zukor, Jesse L. Lasky, Jules Mastbaum, Alfred S. Black, Stephen A. Lynch, and Ernest V. Richards, jr. The complaint charges that the respondents have conspired together to secure control of and monopolize the motion-picture industry. The means employed, the commission charges, have been (a) acquisition of all the corporate stock of Bosworth (Inc.), Jesse L. Lasky Feature Play Co. (Inc.), Famous Players Film Co., and Paramount Pictures Corporation; (b) affiliation with certain independent producers; (c) the creation and exploitation of the Realart Pictures Corporation, which the respondents held out to the general public as wholly independent and not affiliated with or controlled by the respondents; (d) acquiring the control of numerous theater corporations operating motion-picture theaters throughout the United States; (e) building or acquiring or attempting to acquire by means of coercion or intimidation numerous theaters for the exhibition of respondents' motion pictures exclusively; (f) coercing independent exhibitors to book respondents' films. Hearings in this case for receiving testimony are set down as late as November, 1924.

Cream of Wheat.—Awaiting briefs is the case against the Cream of Wheat Co., the complaint in which the commission issued toward the close of the fiscal year ending June 30, 1922. A great deal of testimony has been taken and the commission's brief, entailing the digest of the testimony, will be filed early in the fiscal year 1924-25. The complaint recites that the Cream of Wheat Co. has maintained prices and enforced a schedule of uniform prices for the resale of its cereal food product known as "Cream of Wheat."

Bethlehem-Lackawanna steel merger.—The Bethlehem Steel Corporation on or about October 25, 1922, acquired the properties, assets, and businesses of the Lackawanna Steel Co. and its subsidiaries and is acquiring or has acquired the properties, businesses, and assets of the respondents Midvale Steel & Ordnance Co. and Cambria Steel Co., is the gist of a complaint issued by the commission against the Bethlehem Steel Corporation and others. Unfair methods of competition are charged in that the respondents by uniting under common ownership and management, and thereby effecting control of the sale and shipment of a substantially large portion of the iron and steel products originating in their respective territories, tend to

substantially lessen potential and actual competition. This case is still in course of trial.

Pittsburgh Coal Co. of Wisconsin.—In its case against the Pittsburgh Coal Co. of Wisconsin and others the commission has received all the testimony on behalf of the commission and the respondents, the trial examiner has made his report to the commission, and the commission now awaits the briefs of the case before setting it down for final argument. Unfair methods of competition are charged in that the respondent companies, the largest distributors of anthracite and bituminous coal in the northwest territory, which comprises the States of Minnesota, Wisconsin, North Dakota, South Dakota, and parts of Iowa and Nebraska, entered into an agreement and conspiracy among themselves through the respondent association and with others to restrict, restrain, and suppress competition in the sale of coal by (a) abolishing commissions to jobbers; (b) refraining from soliciting certain municipal business, recognizing such business as the prospect of the local retail dealer; (c) restricting certain contracts with retail dealers to cover public utility business; (d) adopting uniform grading and cost-accounting methods for the standardization of coal sizes and costs; (e) refusing to sell to certain dealers not equipped with sheds and scales; (f) agreeing to uniform methods of accounting with retail dealers; (g) adopting uniform contracts with retail dealers and large consumers, prohibiting the diversion of coal except as authorized by the contract; (h) circulating lists of retailers to whom the respondents refuse to sell; (i) providing for the standardization and maintenance of uniform selling prices; (j) discriminating in price between the city of Duluth and the cities of St. Paul and Minneapolis; (k) selling at less than cost; (l) discriminating in price between wagon dealers and retail dealers equipped with yards and sheds; (m) arbitrarily reducing the price of coal to compel competitors to join the respondent association.

A large amount of testimony has been taken in this case and the evidence closed. In a short time the case will be presented to the commission for final determination.

Corn Products Refining Co.—Table sirup.—Table sirups, such as Karo and other brands in common use, are involved in a case pending before the commission. Sirups are made by blending glucose with other products. The glucose, together with starch, corn, sugar, corn oil, gluten feeds, and derivatives and combinations thereof, are made from maize and Indian corn and are collectively called corn products.

These and other related facts were developed in a preliminary inquiry conducted by the commission upon the subject of guaranty against decline in price in the corn-products industry. This inquiry

caused the commission to issue a complaint against the respondent charging that price guaranties on table sirups, as effected by the Corn Products Refining Co., New York City, constitute unfair methods of competition. The Corn Products Refining Co. manufactures and sells both glucose and table sirups.

ORDERS TO CEASE AND DESIST

The final expression of the commission in a case is an order upon the respondent to cease and desist a particular practice or practices charged in the complaint. As shown by the table on page 27, the commission during the year here reported upon issued 92 separate orders to cease and desist. All of the 92 orders covered violations of section 5 of the Federal Trade Commission act relating to unfair methods of competition. In two of these violations of section 2 of the Clayton Act—price discriminations—were enjoined, and in one order violation of section 3 of the Clayton Act—tying contracts—was enjoined. As in past years, the respondents upon whom the orders were issued have in a great majority of cases accepted the orders and filed reports with the commission signifying their compliance with the terms of the orders.

Orders to cease and desist were issued during the year as follows:

Orders to cease and desist during fiscal year 1924

Respondent	Location	Product
Aaban Radium Co.	Chicago, Ill.	Medicines
Ajax Rope Co (Inc.)	New York, N. Y.	Rope
Allied Golf Co.	Chicago, Ill.	Golf balls
Amalgamated Roofing Co.	do.	Roofing material.
American Turpentine Co.	Cleveland, Ohio.	Paints, varnishes.
Armstrong Paint & Varnish Works et al.	Chicago, Ill.	Do.
Atlantic Comb Works.	New York, N. Y.	Toilet articles.
Baer Bros.	do.	Varnishes
Barrett Co.	do.	Roofing material.
Barton, George F., et al.	Fort Worth, Tex.	Securities.
Beckman-Dawson Co.	Chicago, Ill.	Roofing material
Blum, Samuel.	New York, N. Y.	Men's clothing
Broadway Knitting Co.	Salt Lake City, Utah.	Knitted and woolen goods.
Brown-Phelps Hosiery Co.	Philadelphia, Pa.	Hosiery.
Butterick Co. et al.	New York, N. Y.	Dress patterns
Carey Manufacturing Co., Philip.	Cincinnati, Ohio.	Roofing material.
Casoff, L. F.	Brooklyn, N. Y.	Varnishes.
Chamber of Commerce of Minneapolis et al.	Minneapolis, Minn.	Grain.
Chatfield Manufacturing Co.	Cincinnati, Ohio.	Roofing material
Cincinnati Wholesale Tobacco Association et al.	do.	Tobacco products.
Crofts & Reed Co. et al.	Chicago, Ill.	Soaps.
Dellinger, C. N., et al.	Red Lion, Pa.	Cigars
Dings & Schuster.	Long Island City, N. Y.	Varnishes
Dixie Tailors.	Washington, D. C.	Men's clothing.
Don-O-Lac Co. (Inc.)	Rochester, N. Y.	Varnishes.
Dunn, F. B., et al.	Los Angeles, Calif.	Securities.
Durable Pure Silk Fashioned Hosiery (Inc.)	Newark, N. J.	Hosiery.
Durable Roofing Manufacturing Co.	Portland, Oreg.	Roofing material.
Eastman Kodak Co. et al.	Rochester, N. Y.	Films (moving pic- tures).
Erera, Morris.	Washington, D. C.	Beverages.
Frohlich Glass Co. et al.	Detroit, Mich.	Paints.
Geneva Watch Co.	New York, N. Y.	Watches.
Greenberg, Joseph, et al.	Philadelphia, Pa.	Overalls, trousers
Greenhalgh Mills et al.	Pawtucket, B. I.	Cotton goods.

Orders to cease and desist during fiscal year 1924—Continued

Respondent	Location	Product
Heuser, Dr. Herman et al.	Chicago, Ill.	Beverages
Hochman & Levine	New York, N. Y.	Shirts.
Hygienic Laboratories	Chicago, Ill.	Hair dye
International Roofing Manufacturing Co.	do	Roofing material.
Johns-Manville Co., H. W.	New York, N. Y.	Do
Jenkins Knitting Co.	Provo, Utah.	Knitted and woolen goods.
Kaplan, M.	Washington, D. C.	Hosiery.
Keystone Roofing Manufacturing Co.	York, Pa.	Roofing material.
King-Ferree Co. (Inc.)	Greensboro, N. C.	Cigars.
Kissel & Kokalis	Washington, D. C.	Beverages.
Lederer & Bros. (Inc.), Henry	Providence, R. I.	Pens, pen points.
Lexington Manufacturing Co. et al.	Lexington, S. C.	Bed ticking.
Loose-Wiles Biscuit Co.	Kansas City, Mo.	Bakery products.
Mallender, H.	Cincinnati, Ohio.	Paints, clothing.
McHenry-Millhouse Manufacturing Co.	South Bend, Ind.	Roofing material.
Meriden Creamery Co.	Kansas City, Mo.	Butter.
Morrison Fountain Pen Co.	New York, N. Y.	Fountain pens.
Mountain Grove Creamery, Ice & Electric Co.	Mountain Grove, Mo.	Butter.
Murray Knitting Co.	Salt Lake City, Utah.	Knitted and woolen goods
National Biscuit Co.	New York, N. Y.	Bakery products.
Occidental Oil Corporation et al.	Washington, D. C.	Cigars.
Oertel Roofing Manufacturing Co.	East St. Louis, Ill.	Roofing material.
Pacific States Paper Trade Association et al.	San Francisco, Calif.	do
Paraffine Cos. (Inc.)	do	Roofing material
Peruvian Rubber Cement Co.	New York, N. Y.	Millinery glue
Philadelphia Blanket Co. (Inc.)	Philadelphia, Pa.	Blankets.
Phillips Genuine Sausage Co.	Washington, D. C.	Sausage
Pioneer Paper Co.	Los Angeles, Calif.	Roofing material.
Pritohard & Constance (Inc.)	New York, N. Y.	Toilet preparations.
Process Engraving Co.	Chicago, Ill.	Stationery.
Prosperity Co. (Inc.)	Syracuse, N. Y.	Garment pressing machines
Q. R. S. Music Co.	Chicago, Ill.	Player rolls, music.
Raff & Sons, B.	New York, N. Y.	Toilet articles
Reed & Co., C.	Baltimore, Md.	Coffee, tea
Rochester Clothing Co.	New York, N. Y.	Men's clothing
St. Louis Wholesale Grocers Association et al.	St. Louis, Mo.	Groceries
Salt Lake Cooperative Woolen Mills.	Salt Lake City, Utah.	Knitted and woolen goods.
Schmidt, William	New York, N. Y.	Stationery.
Sealpax Co.	Baltimore, Md.	Underwear.
Sif's Products Co.	St. Paul, Minn.	Roofing material
Spier-Simmons & Co. (Inc.)	New York, N. Y.	Textile finishing materials.
Standard Education Society	Chicago, Ill.	Books
Stowell Manufacturing Co.	Jersey City, N. J.	Roofing materials.
Technical Color & Chemical Works.	New York, N. Y.	Paints, varnishes.
Texas-Atlantic Oil Co., et al.	Fort Worth, Tex.	Securities.
Turner & Porter (Inc.)	Buffalo, N. Y.	Stationery
United States Products Co.	Pittsburgh, Pa.	Bearing compound
United Typothetae of America et al.	Chicago, Ill.	Printing, publishing
Utah-Idaho Sugar Co. et al.	Salt Lake City, Utah.	Sugar
Vivadou (Inc.), V.	New York, N. Y.	Toilet preparations.
Wasatch Woolen Mills.	Salt Lake City, Utah.	Knit and woolen goods.
Watson Co., H. F.	Erie, Pa.	Roofing material.
Weaver, Sylvester L.	Los Angeles, Calif.	Do.
Western Elastite Roofing Co.	Denver, Colo.	Do.
Western Woolen Mills Co.	Salt Lake City, Utah.	Knit and woolen goods.
Wholesale Tobacco & Cigar Dealers Association of Philadelphia et al.	Philadelphia, Pa.	Tobacco products.
Wichita Creamery Co.	Wichita, Kans.	Butter
Wisconsin Wholesale Grocers Association et al.	Milwaukee, Wis.	Groceries.

Appeal lies to the United States Circuit Courts of Appeal, either by the commission to enforce its order or by the respondent to set the order aside. The foregoing table sets out that since its organization the commission has issued 635 orders to cease and desist and that appeals have been taken in 55 cases.

TYPICAL ORDERS

A number of typical cases have been selected to indicate the nature of the orders to cease and desist issued during the year or immediately following the close of the year. These cases are described below:

United States Steel Corporation—Pittsburgh Plus case.—This case was initiated in April, 1921, and the order to cease and desist was issued July 21, 1924. The cost in money was \$88,945.33. Twenty-eight employees were engaged from time to time on the case.

During the war in 1917 the War Industries Board announced a list of prices to be paid for steel as agreed upon by that board and representatives of the steel industry. Theretofore the prices of steel by the mills of the Chicago and other districts outside of Pittsburgh had been quoted f. o. b. Pittsburgh, although such steel was not manufactured at Pittsburgh. The result was that when a steel user in Chicago, for instance, purchased steel from a Chicago mill he paid a price f. o. b. Pittsburgh plus an amount equivalent to what the freight charge would have been on such steel if the same had been shipped from Pittsburgh to Chicago. Hence the name "Pittsburgh plus." In other words, the Chicago steel user had to pay a higher price for his steel than a Pittsburgh competitor paid by the amount of the freight rate between the two points. The same was true as to every other point outside of Pittsburgh except as to certain products of the southern steel mills. When the War Industries Board announced in 1917 a list of prices as above mentioned it quoted them as to certain steel products f. o. b. Chicago as well as f. o. b. Pittsburgh, but the board nine months later, through the solicitation of certain steel manufacturers, eliminated the f. o. b. Chicago prices and reinstated the f. o. b. Pittsburgh prices as to those products. The steel users of Chicago and other districts outside of Pittsburgh were therefore again subjected to great discriminations which operated against them and in favor of the Pittsburgh steel users.

Thereafter freight rates were increased and the discriminations against the western steel users increased accordingly. Every time the freight rates increased the discriminations against the western and southern steel users and in favor of their Pittsburgh district competitors increased by the same amounts. In July of 1919 the freight rate on steel between Pittsburgh and Chicago had reached \$5.40 per ton, which was, therefore, the amount by which the Chicago price on steel exceeded the Pittsburgh price. An organization known as the Western Association of Rolled Steel Consumers, composed of steel users who utilized steel in the manufacture of their products, protested to the Steel Corporation. This resulted in a conference between the representatives of the association, repre-

representatives of the United States Steel Corporation and its subsidiaries, and the commission to discuss the question as to whether or not the commission should assume jurisdiction over the controversy. The commission suggested that the Western Association file a formal application for complaint against the Pittsburgh plus practice. The application was accordingly filed and a hearing had thereon, beginning December 2 and ending December 6, 1919. A large number of steel manufacturers, steel users, and public and civic organizations were represented at the hearing. The commission, after duly considering the matter, voted against the issuance of such complaint. Thereafter, during the summer of 1920, the commission received a number of petitions asking for a rehearing in the matter, the same Western Association of Rolled Steel Consumers which had filed the original application being one of the petitioners.

On September 18, 1920, the commission granted the petitions, and thereafter, on November 15, 1920, hearings lasting four days were again had on the original application of the Western Association of Rolled Steel Consumers. The commission, after having again taken the matter under advisement, decided to issue its complaint against the United States Steel Corporation and its subsidiaries, and accordingly on April 26, 1921, such complaint was issued. Between January 30, 1922, and March 7, 1924, hearings were in progress almost continuously before an examiner of the commission, and evidence was introduced by the attorneys for the commission and respondents, respectively, at Pittsburgh, Detroit, Chicago, Milwaukee, Minneapolis, Duluth, Birmingham, Chattanooga, Washington, and New York. A large number of witnesses were drawn from a great many outside points to testify at such hearings. Over 18,000 pages of testimony were taken, and over 7,500 exhibits were filed in the case. The examiner's findings in general supported the allegations of the commission's complaint and the contentions of the attorneys for the commission. Briefs were filed by the attorneys for the commission and the respondents, respectively, and by an attorney retained by the States of Illinois, Iowa, Minnesota, and Wisconsin, acting on behalf of themselves and 26 other States of the Union which had formed an organization known as "The Associated States Opposing Pittsburgh Plus."

A brief was also filed by the joint committee of the civic organizations of Duluth, Minn. On June 16 and 17 oral arguments by attorneys for the commission and respondents, respectively, and by the attorney representing the States above mentioned were made before the commission. Thereafter and on July 21, 1924, the commission ordered the United States Steel Corporation and certain of its subsidiaries to cease and desist from thereafter, first, quoting or selling certain steel products at Pittsburgh plus prices as above defined:

second, quoting or selling such steel products upon any other basing point than that where the products are manufactured or from which they are shipped; third, selling or contracting to sell or invoicing such products without clearly indicating in such sales or upon such contracts or invoices how much is charged for such steel products f. o. b. the producing mill or shipping point and how much is charged for actual freight, if any, from the producing or shipping point to destination; and, fourth, from discriminating in the price of their products between different purchasers thereof in violation of law. The order further recited that the use by the respondents of the Pittsburgh plus system was considered by the commission as a violation of its order.

On September 16, 1924, the United States Steel Corporation and its said subsidiaries filed with the commission a report stating among other things that they would conform to the commission's order as far as practicable and that they had, throughout their various organizations, abandoned the Pittsburgh plus system as defined in the commission's order and would not thereafter make use of the same.

The effects of the discriminatory prices under the Pittsburgh plus system were shown to have restricted very materially the territory in which certain western and southern steel users could compete with their Pittsburgh district competitors and to have permitted the Pittsburgh district steel users to compete to equal advantage in all parts of the United States as in Pittsburgh. It gave such subsidiaries of the Steel Corporation as the American Bridge Co., with its plants at Chicago and elsewhere, a great advantage over its competitors which had to pay Pittsburgh plus. At Chicago, for instance, the American Bridge Co. could bid on a job at cost in competition with an independent competitor, and still the Steel Corporation would get a profit over three times as great as the ordinary profit in a large structural steel job. This was due to the fact that the steel furnished the American Bridge Co. came from the Illinois Steel Co., another subsidiary of the Steel Corporation at Chicago. Assuming the American Bridge Co. paid Pittsburgh plus prices for its steel from its sister subsidiary, it could still bid on a job in competition with an independent structural steel company in Chicago at the latter's cost, and the Steel Corporation through the Illinois Steel Co. would not only get the normal profit on the steel, but would also get the Pittsburgh plus profit on the steel, amounting to \$7.60 per ton. This advantage to the American Bridge Co. was reflected in the proportions to which the Chicago plants alone of that company had attained. They aggregated in capacity 20 times that of their nearest independent competitor and nearly 30 times that of their next nearest independent competitors.

The evidence in the case, supported by the testimony of three eminent economists, showed that if the steel mills sold their steel under the free operation of supply and demand, prices would be made f. o. b. the different mills, and such prices to all the customers from any one mill would be the same f. o. b. that mill. This was not the situation under the Pittsburgh plus system, where the delivered prices to the different customers of each mill varied according to the amount of the freight rate from Pittsburgh to such customers instead of according to the actual freight rate from the producing mill to such customers.

A compliance with the order of the commission should tend to decentralize the steel industry and to avoid the great amount of cross freights in shipping steel from one steel center into the territory of another, which has proved so costly to the public. It should also produce other effects beneficial to the public interest, among which may be mentioned: First, the sale of steel at low-cost-producing centers at prices commensurate with the cost of production. The reverse of this was the condition under the Pittsburgh plus system. Second, the placing of the competitors of the American Bridge Co. and other like subsidiaries of the Steel Corporation who must buy their steel from others, more nearly on an equal basis with such subsidiaries. Third, the saving to western and southern steel users of the extra prices charged for steel under the Pittsburgh plus system. Fourth, the saving to the consuming public of much more than Pittsburgh plus, such as notably in the case of the farmers; in such case the Pittsburgh plus paid by the agricultural implement makers was reflected in the ultimate selling price of such implements to the farms by an increase of more than double the amount of Pittsburgh plus. Fifth, the material cutting down of the overhead expense of the western and southern steel users which had been occasioned by the extra prices paid by them for steel under the Pittsburgh plus system. Sixth, the use of waterways in shipping steel in order that eastern steel producers may enlarge their markets by cheaper transportation. Under the Pittsburgh plus system the Pittsburgh district steel producers were not interested in cutting down transportation charges from Pittsburgh which would have enabled them to effect a saving to the public. Seventh, the enlargement of the territory in which the western and southern steel users can compete with their Pittsburgh district competitors, a territory which had been unnaturally and materially restricted under the Pittsburgh plus system. Eighth, the natural growth of steel-producing centers at points of low-cost production and increasing demand. Under the Pittsburgh plus system the growth of the Pittsburgh district steel center had been continuously, unnaturally, and materially encouraged, while that of the western and southern steel centers had been like-

wise discouraged. Ninth, a compliance with the commission's order, while not of itself a preventative of restraint in price competition, should measurably encourage such competition. At the same time it should have the effect of eliminating the burdensome discriminations in steel prices which existed under the Pittsburgh plus system.

Minneapolis Chamber of Commerce.—During the fiscal year the commission issued its order against the Chamber of Commerce of Minneapolis, its officers, directors, and members, and the Managers' Publishing Co., John H. Adams and John F. Fleming, requiring them to cease and desist from the use of the methods of unfair competition charged in the complaint. An appeal was taken from the commission's order, and the case is now before the circuit court of appeals for review.

The complaint charged respondents with engaging in a confederation or conspiracy to maintain a monopoly of the grain trade at Minneapolis and the immediate surrounding territory, carried out in an effort to destroy the business of competitors, the chamber and its organization being used as a medium through which the unfair methods of competition alleged were accomplished by its members in violation of section 5 of the Federal Trade Commission act.

The order issued by the commission requires all respondents to cease and desist from combining and conspiring among themselves or with others to interfere with or injure or destroy the business of competitors by—

Publishing false or misleading statements concerning the financial standing or business methods of competitors, and from—

Instituting vexatious or unfounded suits at law or in equity with the purpose of obstructing the business or injuring the credit and reputation of competitors.

The order further requires certain respondents to cease and desist from—

Combining and conspiring among themselves or with others to induce or compel any member of said chamber, their agents or employees, to refuse to buy from, sell to, or otherwise deal with certain competitors because of the patronage dividend plan of doing business.

Hindering, obstructing, or preventing any telegraph company or other distributing agent from furnishing continuous or periodical price quotations of grain to the St. Paul Grain Exchange or its members.

Passing or enforcing any rule or regulation, custom, or usage that prevents members of respondent chamber from conducting their business according to the cooperative method of marketing grain or according to the patronage dividend plan.

Denying to any duly accredited representatives of any organization or association of farmers, grain growers, or shippers admission to membership in said respondent chamber because of the plan or purpose on the part of such organization or association to pay or propose to pay patronage dividends or to operate according to the cooperative plan of marketing grain.

Passing or enforcing any rule or regulation, usage, or custom to compel shippers of grain to Minneapolis, Minn., from country points or from St. Paul, Minn., to pay commission or other charges unless and until like commissions and charges are paid by shippers of grain to Minneapolis from Omaha, Nebr., or from Kansas City, Mo., or other such favored markets.

Passing or enforcing any rule or regulation, custom, or usage that prohibits members of respondent chamber when buying grain on track at country points from paying therefor more than the market price of similar grain prevailing at that time in the exchange room of the respondent chamber less freight commissions and other charges.

Promulgating, interpreting, or enforcing any rule, custom, regulation, or usage in such a manner as to require any member of respondent chamber to pay to the farmer or country shipper or other person a price for grain limited to a price equal to or identical with the Minneapolis market price or otherwise limit the exercise of free will and individual, independent judgment of any such member as to the price which he shall pay to farmers, country shippers, or others for grain on track at country points

The importance of this decision was immediately recognized, and in the United States Senate the findings and order of the commission were ordered printed as a Senate document.

Eastman Kodak Co., et al.—The respondents were ordered to cease and desist from conspiring and combining, agreeing, and cooperating among themselves to hinder and restrain competition in the manufacture and sale of positive raw cinematograph film stock by the methods complained of, and it was ordered, for the purpose of preventing the maintenance and extension of the monopoly of the Eastman Kodak Co. in the manufacture and sale of such film stock, that that company should sell and convey with all due diligence the three laboratories (the Patagon, G. M., and San Jacq) to disinterested parties. The order was appealed and this case is pending before the Circuit Court of Appeals.

It was found as a fact by the commission that these three laboratories have a combined capacity for manufacturing prints of motion-picture films greater than the combined capacity of all other laboratories engaged in a similar business east of Chicago.

As a result of a proposal made to them by the Eastman Kodak Co., the respondent members of the Allied Laboratories' Association entered into an agreement among themselves to use in their laboratories "American made raw film stock exclusively," and agreed to an inspection of their books and laboratories by the Eastman Kodak Co. for the purpose of ascertaining if there had been any violation of the agreement.

The agreement of the other respondents to use "American made raw film stock exclusively" practically meant to use the raw film stock produced by the Eastman Kodak Co., as from 1915 to 1919 it manufactured and sold about 90 per cent of the positive raw cinematograph film stock used in the United States; from 1919 to about

March, 1920, it manufactured and sold approximately 94 per cent of all the positive raw cinematograph film stock used in the United States and manufactured and sold approximately 96 per cent of all the positive raw cinematograph film stock produced in the United States. Between about March, 1920, and September, 1921, however, due to competition chiefly by importers of film made in foreign countries, the sales of such film by the Eastman Kodak Co. decreased to approximately 81 per cent of the total of such film consumed in the United States, although it still sold approximately 96 per cent of the total sales of American manufactured film.

The agreement entered into by the members of the Allied Laboratories' Association on September 9, 1921, at the proposal of the Eastman Kodak Co. tended to stop the purchase and importation of foreign-made film and divert the same to the Eastman Kodak Co., and on September 14, 1921, that company wrote to the respondent members of the association that it would not operate the three laboratories (the Paragon, G. M., and San Jacq) commercially so long as the members adhered to their agreement of September 9, 1921.

The commission found that the ownership by the Eastman Kodak Co. of the above three laboratories and the maintenance of the laboratories in condition for immediate use for the manufacture of such films in competition with the respondent members of the association constitute a threat, and had, and continued to have, the effect of inducing and coercing manufacturers of positive prints of motion-picture films to produce and use only the positive film stock manufactured by the Eastman Kodak Co., and of obstructing and eliminating competition in the manufacture and sale of such film in interstate and foreign commerce and of maintaining a monopoly already obtained by the Eastman Kodak Co.

United Typothetæ of America.—On September 25, 1919, the commission directed a complaint against the United Typothetæ of America et al., charging unfair methods of competition by reason of the campaign known as the "Three year plan," the object of which was to collect assessments from manufacturers and merchants selling paper, printing presses, type, ink, and other supplies purchased by employing printers, this money to be applied to alleged educational purposes, but mostly to induce employing printers to use a uniform system of cost accounting and a standard price list calculated to establish a uniform scale of prices throughout the printing industry.

The order to cease and desist reads as follows:

That the respondents cease and desist, directly or indirectly,—

1. From conducting its system of education in principles and methods of cost accounting in such way as to suggest any uniform percentage to be included

in selling price as profit or otherwise by members or others using such system of cost accounting.

2. From requiring or receiving members and others using respondent's uniform cost accounting system, identified and itemized statements of production costs for the purpose of calculating average, normal or standard costs of production and from publishing them to members and the trade generally as a "Standard price list" or "Standard guide" or association cost or price list under any other name.

3. From compiling and publishing for use by members and others in the same trade, average, normal or standard production costs with instructions or suggestions for the translation of such standard costs into selling prices under the name of "Standard price list" or "Standard guide" or any other name.

It is further ordered, That the respondents shall within 60 days after the service upon them of a copy of this order, file with the commission a report in writing setting forth in detail the manner and form in which they have complied with the order to cease and desist hereinbefore set forth.

Roofing-material cases.—Seventeen manufacturers of felt-base roofing materials were ordered to discontinue the use of misleading designations in connection with the advertisement and sale of their products. The same methods of misrepresentation were found to have been practiced by all of the companies. The commission took exception to employing or using the word "rubber" alone or in combination with any other word or words in connection with the sale of roofing material not composed of rubber, and employing or using in connection with the sale of roofing material not composed of two or more plies, layers, or thicknesses the words "two ply" or "three ply" alone or in combination with other words or terms.

Pacific States Paper Trade Association.—Findings of the commission on which is based its order to cease and desist directed to the Pacific States Paper Trade Association and various local associations of wholesale dealers in paper and paper products, located in the Pacific coast territory, contain eight conclusions of unfair practices on the part of those associations. The order to cease and desist is confined to those eight conclusions. Briefly, these methods are that the respondents sought to control the distribution of paper in the Pacific coast territory and control prices therein. Again, it is found that the boycott, coercion, etc., were resorted to. This case is pending before the Circuit Court of Appeals upon petition of the association for a review of the order.

Encyclopedia.—The "Standard Reference Work" and loose-leaf service designated as "The Standard Blue Sheet Extension Service," an output of the Standard Education Society of Chicago, were the grounds for an order directing the society to cease and desist from representing to customers or prospective customers that the usual prices which it receives or has received for any book, set

of books, or any publication are greater than the prices at which they are offered to such customers or prospective customers, when such is not the fact; representing that any book offered for sale by it is bound in "rich maroon levant" or other leather when such is not the fact; offering to its prospective customers honorary membership in the Standard Education Society; advertising a publication designated as "Standard Reference Work" as being officially adopted by 24 States or any State.

Underwear.—An attempt to maintain the resale prices of underwear is disapproved by the commission in its order to cease and desist directed to Oppenheim, Obendorf & Co. (Inc.), manufacturers of Sealpax underwear. The commission charged the respondents with maintaining resale prices of its goods and entered its order to cease and desist from the practices complained of. The respondent appealed and the matter is still pending.

Process engraving.—"Process engraving," "Engraved by our process," or the word "Engraving" in connection with any printed material in which engraved plates or dies have not been used is prohibited by the commission in its order to cease and desist directed to the Process Engraving Co. of Chicago. The complaint against the Process Engraving Co. is a key complaint in numerous such cases of printing designated as engraving. The Process Engraving Co. is engaged in the business of printing and selling stationery for social and business purposes. The commission found that its advertised and designated process engraving was not produced in the manner generally understood by the trade and public as engraving; that is, from engraved plates. The respondent's product is manufactured by being printed upon an ordinary press, similar to the Gordon press, and while the ink is still wet there is applied thereto a powdered chemical substance which is subjected to heat so that the ink and powder will fuse and produce upon the surface of the paper raised letters closely resembling, to the nonexpert eye, the effects produced by true engraving.

COURT CASES

The pages immediately following set forth a brief description of each case in the courts during the year. It will be noted that in all there were 29 court cases, 5 in the Supreme Court, 22 in the circuit courts, and two in the courts of the District of Columbia.

SUPREME COURT CASES

Juvenile Shoe Co.—certiorari.
 Claire Furnace Co. et al.—injunction.
 Tobacco cases—mandamus:
 American Tobacco Co.
 P. Lorillard Co.

Grain cases—mandamus.
 Baltimore Grain Co.
 H. C. Jones Co. (Inc.).
 Hammond Snyder Co. (Inc.).
 Raymond Bros.-Clarke Co.—certiorari.

Details respecting each of the foregoing cases follow.

Juvenile Shoe Co.—Simulation of name and trade-mark.—In the complaint issued by the commission in this case it was charged that the Juvenile Shoe Co. had simulated the name, trade-mark, labels, tags, and stamping of the Juvenile Shoe Corporation, a previously incorporated manufacturer of children's shoes of superior quality and selling for higher prices than the product of the Juvenile Shoe Co.

The commission found that this was a violation of section 5 of its organic act, and in due course entered its order to cease and desist. The company appealed to the Circuit Court of Appeals for the Ninth Circuit, and that court affirmed the commission's order in every particular.

The following excerpt from its opinion is of interest:

The record fully justifies the order of the Federal Trade Commission enjoining the use of the petitioner's corporate name. The petitioner went into the business of manufacturing and selling children's shoes and took a name so similar to a senior corporation that was engaged in precisely the same business and in the same field that confusion of the two corporations in the public mind was inevitable.

The Juvenile Shoe Co. applied to the Supreme Court of the United States for a writ of certiorari to review the decision of the Court of Appeals, but this was denied, the denial having the effect of affirming the decision of the lower court.

The Claire Furnace Co. case—Investigation instituted by the commission upon its own motion, but after suggestions and conference with the Committee on Appropriations of the House of Representatives.—The facts relative to this case are as follows: The commission sent questionnaires to practically all corporations engaged in the manufacture and in the sale in interstate commerce of finished and semifinished steel products, requiring them to make monthly reports showing the quantities of products manufactured, plant capacity, orders booked during the month, the cost of manufacturing, the prices at which sold in domestic and foreign commerce, and general income statement and balance sheet. The declared purpose of the inquiry was to publish the information acquired in totals, so as to show existing conditions in the production and sale of steel products. Certain of the corporations declined to make the reports, and joined in a suit in equity to restrain the commission from proceeding in any manner to compel the production of the information or to impose any penalties for failure to produce it.

The Supreme Court of the District of Columbia, in which the suit was instituted, issued a permanent injunction enjoining the commission, the ground being that the information sought was not information respecting interstate commerce, nor information with respect to matters so directly affecting such commerce that it could be required under the commerce clause of the Constitution.

The commission appealed the case to the Court of Appeals of the District of Columbia, which affirmed the decree of the lower court. The commission then took the case to the Supreme Court of the United States, where it was argued on December 6, 1923. It was awaiting decision at the close of the fiscal year.

Tobacco cases—American Tobacco Co. and P. Lorillard Co. (Inc.).—The commission's cases against the American Tobacco Co. (Inc.) and the P. Lorillard Co. during this fiscal year were productive of much interest and information. The commission had pending hearings arising from seven complaints against the two tobacco companies. In the course of preparing these cases the commission made formal demand on the two tobacco companies to produce "all letters and telegrams received by the American Tobacco Co. from all of its jobber customers located at different points throughout the United States, and also copies of all letters and telegrams sent by the American Tobacco Co. to such jobbers during the period of January 1, 1921, to December 31, 1921, inclusive." The two tobacco companies refused to obey the commission's notice and demand to inspect records, and the commission petitioned the district court, through the Attorney General of the United States, to issue a writ of mandamus directing that immediately the accounts, books, records, documents, memoranda, papers, and correspondence of the respondent be delivered into the possession of the commission for inspection and examination and for the purpose of making copies.

In denying the writ prayed for by the commission, the court said:

To grant the relief prayed for by the petitioner would be to permit of an unreasonable search and seizure of papers in violation of the fourth amendment. It was not the intention of Congress to grant such unlimited examination and inspection by the legislation in question nor, indeed, did Congress have authority to do so under the commerce clause of the Constitution. It would be unreasonable and unjust to accede to the demands of the petitioner, and the application for the peremptory writ of mandamus * * * is denied. (283 Fed. 999.)

The commission, believing the question one of importance, took an appeal from the decision of the United States District Court for the Southern District of New York to the Supreme Court of the United States. Here, also, the judgments of the district court were affirmed.

The decision of the Supreme Court throws an interesting light on the subpœna duces tecum:

The right of access given by the statute is to documentary evidence—not to all documents, but to such documents as are evidence. The analogies of the

law do not allow the party wanting evidence to call for all documents in order to see if they do not contain it. Some ground must be shown for supposing that the documents called for do contain it.

The commission's petition for rehearing was also denied by the Supreme Court.

The Grain cases—Investigations under authority conferred by Senate resolution.—The companies involved in these cases were Hammond, Snyder & Co., the Baltimore Grain Co., and the H. C. Jones Co. The commission sought, in the District Court of the United States for the District of Maryland, writs of mandamus to compel the corporations, each of which was engaged in foreign and interstate as well as intrastate trade in grain, to permit the authorized agents of the commission to examine, inspect, and copy their books of account, records, documents, correspondence, and papers relating to or bearing on their business in interstate commerce.

In taking this action the commission was acting in compliance with a resolution of the Senate of the United States directing it to investigate the margins between farm and export prices, the freight and other costs of handling, the profits and losses of the principal exporting firms and corporations, the facts concerning market manipulations, if any, in connection with large export transactions or otherwise, as well as the organization, ownership, control, interrelationship, foreign subsidiaries, etc.

The district court denied the petitions for writs of mandamus. Judge Rose, who delivered the opinion, said during the course thereof:

If it—the Federal Trade Commission act—really means that whenever the commission thinks best to make an inquiry into the way in which some great department of commerce is carried on, it may send its employees into the office of every private corporation which does an interstate business in that line and empower them to go through the company's books, correspondence, and other papers, I am satisfied it goes beyond any power which Congress can confer, in this way at least.

As in the tobacco cases, the commission regarded the principle involved in this group of cases too important not to be passed upon by the Supreme Court of the United States, and it therefore prosecuted an appeal to that tribunal, where the cases are not awaiting argument.

Raymond Bros.-Clark Co.—Chain store buying.—A jobber's individual refusal merely to purchase from a wholesaler dealing with a chain store operator is not an unfair method of competition, whatever may be the incidental result, is the gist of an opinion of the Supreme Court of the United States affirming an order of the Circuit Court of Appeals, Eighth Circuit, reversing an order of the commission directed to Raymond Bros.-Clark Co., charging

unfair methods of competition in that the respondent, engaged in the wholesale grocery business, sought to coerce the T. A. Snider Preserve Co. to refuse to recognize its competitor, the Basket Stores Co., as jobbers entitled to jobber prices and so cut off this company's supplies. Under date of February 23, 1921, the commission directed the respondent to cease and desist from using such practices. Raymond Bros.-Clark Co. appealed, and in May, 1922, the United States Circuit Court of Appeals set aside the order. The case was then taken to the Supreme Court of the United States on writ of certiorari, and on January 7, 1924, the Supreme Court affirmed the Circuit Court of Appeal's decision, saying in part:

A different case would of course be presented if the Raymond Co. had combined and agreed with other wholesale dealers that none would trade with any manufacturer who sold to other wholesale dealers competing with themselves, or to retail dealers, competing with their customers. An act lawful when done by one may become wrongful when done by many acting in concert taking on the form of a conspiracy which may be prohibited if the result be hurtful to the public or to the individual against whom the concerted action is directed.

* * * * *

We conclude that the Raymond Co. in threatening to withdraw its trade from the Snider Co. exercised its lawful right, and that its conduct did not constitute an unfair method of competition within the meaning of the act.

UNITED STATES CIRCUIT COURT OF APPEALS

Fox Film Corporation.
 United Typotheta of America et al.
 S. E. J. Cox et al.
 Aluminum Co. of America.
 Thatcher Manufacturing Co.
 Swift & Co.
 Armour & Co.
 Chicago Portrait Co.
 Western Meat Co.
 Chamber of Commerce of Minneapolis et al.
 The Butterick Co. et al.
 Occidental Oil Corporation.
 Pacific States Paper Trade Association et al.
 American Tobacco Co. et al.
 Utah-Idaho Sugar Co. et al.
 Q R S Music Co.
 Sealpax Co.
 Dr. Herman Heuser.
 Pearsall Butter Co.
 John Bene & Sons (Inc.).
 National Biscuit Co. and Loose-Wiles Biscuit Co.

A brief description of the foregoing cases follows.

The Fox Film Corporation case.—During 1916 and 1917 the Fox Film Corporation, hereinafter referred to as the respondent, re-

leased, among others, three motion pictures, entitled, respectively, "The Love Thief," "The Silent Lie," and "The Yankee Way," these pictures being extensively exploited and distributed throughout the United States. They were known at the time as feature pictures, with five reels, and were designed for the principal parts of regular motion-picture programs.

During the season 1919-20 the respondent reissued the old picture of "The Love Thief" as "The She Tiger," "The Silent Lie" as "Camille of the Yukon," and "The Yankee Way" as "Sink or Swim." These old pictures with the new titles were furnished to exhibitors throughout the country in connection with leases providing for the respondent's so-called program series of pictures. All other pictures furnished under such program contracts to exhibitors were new pictures. The respondent furnished the exhibitors with billposters and other advertising matter, and did not in any way disclose that these pictures were reissues. The exhibitors believed the pictures to be new ones, and their patrons attended the exhibitions under the same mistaken belief.

The commission's order to cease and desist, which was issued June 6, 1923, commanded the respondent to cease and desist from directly or indirectly advertising, selling or leasing, or offering to sell or lease, reissued motion-picture photoplays under titles other than those under which such photoplays were originally issued and exhibited, unless the former titles of such photoplays and the fact that they theretofore had been exhibited under such former titles be clearly, definitely, distinctly, and unmistakably stated and set forth, both in the photoplay itself and in any and all advertising matter used in connection therewith, in letters and type equal in size and prominence to those used in displaying the new titles.

The Fox Film Corporation took exception to the commission's order, and on August 16, 1923, filed, in the United States Circuit Court of Appeals for the Second Circuit, its petition asking that the order in question be reversed and set aside. The Court of Appeals, however, upheld the contentions of the commission in every particular.

During the course of its opinion the court made the following significant comments:

While the findings of the commission embraced but three pictures where the unfair methods were practiced, that is sufficient to support the order to desist. It is now well recognized that the act refers specifically to unfair methods of competition. This does not mean the general practice of the offender must be unfair in competition. General practice may involve many methods, each conceived and to be applied for its particular desired result. One act that constitutes an unfair practice may of itself be offensive to the act. * * * To violate the Sherman Act it is necessary to find that the

practice has grown to such proportions and strength that the business and practice is obnoxious as a trust or monopoly and restrains trade.

* * * * *

The Federal trade act was intended to reach such unfair business methods when the antitrust law could not do so. * * * It is by stopping its use before it becomes a general practice that the effect of an unfair method in suppressing competition is destroyed and competitors protected.

Case against the United Typothetae of America and others.—The complaint in this proceeding charged unfair competition in violation of section 5 of the Federal Trade Commission act. See also page 42.

The commission after extensive hearings issued its order to cease and desist in August, 1923; and the United Typothetae in the following October filed its petition for review in the Circuit Court of Appeals sitting at Chicago. The petition was later withdrawn, leaving the order outstanding against the respondents.

Misrepresentation in the sale of oil securities—*The proceeding against S. E. J. Cox et al.*—This case presents another instance of false, misleading, and unfair statements circulated and other facts suppressed relating to the Prudential Trust & Securities Co., the Prudential Oil & Refining Co., and the General Oil Co., all of Houston, Tex., with the intention of misleading and deceiving the public.

As indicated in a prior annual report, the commission entered its order to cease and desist in this proceeding on June 24, 1922. There being evidence of flagrant violations of the order, the commission, under the authority conferred by section 5 of its organic act, applied to the Circuit Court of Appeals for the Fifth Circuit for enforcement thereof. That court under date of June 18, 1923, granted a motion for a preliminary order for enforcement of the commission's order. By the terms of this order S. E. J. Cox, his agents, servants, and employees, were ordered to forthwith cease and desist from directly or indirectly, individually or through his wife, Mrs. N. E. Cox, or otherwise:

Publishing, circulating, or distributing, or causing to be published, circulated, or distributed, any magazine, newspaper, pamphlet, circular, letter, advertisement, or any other printed or written matter whatsoever in connection with the sale or offering for sale in interstate commerce of stock or securities wherein is printed or set forth any false or misleading statements or representations to the effect that the property or operation of any corporation, association, or partnership is in proven oil territory, or any other false or misleading statements or representations concerning the promotion, organization, character, history, resources, assets, oil production, earnings, income, dividends, progress, or prospect of any corporation, association, or partnership.

Under date of October 6, 1923, the court granted the commission's motion to strike the answer of the respondents from the files of the case. Further proceedings are being held in abeyance, due to the

fact that the respondent Cox is serving a penitentiary sentence for fraudulent use of the mails.

The aluminum case.—Reference to this proceeding has been made in previous annual reports of the commission, but inasmuch as it was still in course of litigation during the fiscal year 1924, a brief résumé of its salient features will be given in this report, with particular reference to the developments since the previous annual report.

The commission's order, which was issued March 9, 1921, directed the Aluminum Co. of America to divest itself of all its stockholdings in the Aluminum Rolling Mills Co., another corporation. A violation of section 7 of the Clayton Act was charged. The Aluminum Co. appealed to the Circuit Court of Appeals for the Third Circuit to have the commission's order reversed and set aside. That court, however, affirmed the order in question in these words:

We have to do only with the "effect" of the transaction, and with its effect only as it may "substantially lessen competition * * * or restrain commerce, * * * or tend to create a monopoly." As we are not called upon to determine whether the Aluminum Co. is a monopoly within the definition of the antitrust law, we limit our decision to the question whether, within the policy of the Clayton Act, the transaction comes within the definition of the section. In this we are of opinion that it does, and that its effect upon actual competition as well as in destroying potential competition in a way later to make actual competition impossible was substantially to lessen competition between the corporation whose stock was acquired and the corporation making the acquisition; and second, that, without regard to whether its effect was substantially to lessen competition between these two corporations, the stock acquisition did, in effect, "tend to create a monopoly."

After this decision, the Aluminum Co. filed with the Court of Appeals a petition for a rehearing and modification of the decree. This was denied. It then attempted to carry the matter to the Supreme Court of the United States by certiorari; in this, too, it was unsuccessful.

All of the above happened prior to the beginning of the present fiscal year.

In September, 1923, the commission filed with the Court of Appeals a petition for modification of the order already entered. Briefly, the reason was this: The Aluminum Rolling Mills Co. was indebted to the Aluminum Co. of America in the sum of approximately \$600,000 upon four promissory notes, representing the unpaid balance due the Aluminum Co. for aluminum ingots and pig aluminum purchased during the operation of the plant. The Rolling Mills Co. was insolvent. The Aluminum Co. proposed to bring suit on the notes, and, after judgment, levy on the plant and bid at the sheriff's sale. As the indebtedness was greater than the value of the plant, the Aluminum Co. would inevitably acquire the plant for its indebtedness.

In the light of these facts, the commission, conceiving the proposed action of the Aluminum Co. to be violative in principle of all that had been done, filed its petition for modification of the order, as stated above. The commission contended that the decree should extend to and enjoin the Aluminum Co. from acquiring any of the physical assets of the Rolling Mills Co. The commission grounded its petition for modification upon the contention that the alleged indebtedness claimed by the Aluminum Co. as against the Rolling Mills Co. was created in violation of law, that it was entirely fictitious, and, in fact, nothing more than book indebtedness.

After further testimony and briefs and arguments, the Court of Appeals refused to modify the decree previously entered, saying, in these words:

Grounding our decision solely on the inability of the Federal Trade Commission to establish fraud in the indebtedness on which the Aluminum Co. proposes to seek recovery at law in another court, we are constrained to deny its petition to amend the decree previously entered.

The Thatcher Manufacturing Co. case—Another instance of an alleged violation of section 7 of the Clayton Act.—The Thatcher Co. acquired from the Owens Bottle Machine Co. the exclusive right to manufacture and sell milk bottles produced by the first automatic bottle-making machine. Subsequently, another bottle-making machine was invented and licensed by the Hartford-Fairmont Co. It is charged that the respondent, by taking over the control of the Hartford-Fairmont Co. and its licensees, tended to eliminate competition and to create a monopoly in the manufacture and sale of milk bottles, in alleged violation of section 5 of the Federal Trade Commission act and section 7 of the Clayton Act.

The commission, after hearings, entered its order for the divestiture of stock. The Thatcher Co., having given notice of its intention not to abide by the decision of the commission, the latter, on March 31, 1924, filed, in the Court of Appeals for the Third Circuit (Philadelphia), its application for enforcement of its order.

The status at the close of the year was that the case was awaiting briefs and oral argument. The case will probably be reached comparatively early in the October term, 1924.

The Swift case—Acquisition of stock in violation of section 7 of the Clayton Act.—The commission, in instituting its proceeding against Swift & Co., charged that the respondent, by taking over the Moultrie Packing Co. and the Andalusia Packing Co. in the name of its employees, and acquiring a controlling interest in England, Walton & Co. (Inc.), had materially lessened competition and tended to create a monopoly in the interstate sale of meats and the products and by-products arising out of the slaughtering of livestock and

in the business of conducting tanneries and the production of various kinds of leather.

After consideration, the commission directed Swift & Co. to divest itself of the capital stock of the Moultrie and Andalusia companies, "including all the fruits of such acquisitions." The portion of the complaint relating to England, Walter & Co. was severed and formed the basis of another proceeding.

Swift & Co. took exception to the commission's order and appealed it to the United States Circuit Court of Appeals for the Seventh Circuit. Briefs were filed and the case argued, and at the close of the fiscal year it was awaiting decision by the court.

The Armour case—A further instance of stock acquisition in violation of the Clayton Act.—The commission's complaint in this case was of a similar nature to its proceeding against Swift & Co., in that it charged the respondent, Armour & Co., with violation of section 7 of the Clayton Act in acquiring a large part of the capital stock of the E. H. Stanton Co. of Spokane, Wash.

Prior to the acquisition of its stock by Armour & Co., the Stanton concern was engaged in a similar line of business in active competition with the acquiring company. As usual in such cases, the commission charged that the effect of the acquisition of stock was to substantially lessen competition between the two companies and to tend to create a monopoly in the purchase of cattle and livestock, and in the sale of meat and meat products.

In its order, the commission directed the Armour Co. to divest itself of all the capital stock and properties of the Stanton Co.

The Armour Co. appealed from the order, and filed its petition for review with the Circuit Court of Appeals at Chicago. Subsequently, the case was reopened, by order of the court, for the taking of additional testimony; and at the close of the fiscal year it was awaiting argument before the commission on the additional evidence submitted.

The Chicago Portrait Co. case—Misrepresentation in the sale of portraits made from photographs.—The Chicago Portrait Co. was engaged in the business of enlarging photographs into portraits. During the course of this business it obtained orders for such portraits by means of drawings for so-called "lucky envelopes," or by giving trade checks for one-half the pretended purchase price, thereby deceiving the prospective purchaser into believing that he was obtaining the portraits in question at prices substantially below their usual selling prices. Furthermore, the respondent misrepresented its portraits to be hand paintings. Another allegation of the complaint was that the company induced the purchasing public to

sign contracts for the reproduction of photographs, falsely representing the contracts to be receipts for the photographs obtained from the customers, whereas, as a matter of fact, the contracts in question contained numerous provisions of a binding nature on the customer, which were neither explained to nor understood by the customers, and which served to nullify verbal agreements previously made.

The commission entered its order, and the Chicago Portrait Co. filed its petition for review with the Court of Appeals. The case has been argued, but not yet decided by the court.

The Western Meat Co. case.—Another instance of stock acquisition in violation of section 7 of the Clayton Act.—As indicated by its name, this is another packing-house proceeding. The charge is similar to that in the Swift and Armour cases, referred to elsewhere in this report, namely, the alleged violation of section 7 of the Clayton Act—the company acquired in this instance being the Nevada Packing Co.—and the consequent lessening of competition and tendency to create a monopoly in the sale, in interstate commerce, of meats and the products and by-products arising out of the slaughtering of livestock.

The commission ordered the respondent to divest itself of the stock and properties of the Nevada Packing Co. and the respondent, in turn, filed its petition for review with the United States Circuit Court of Appeals for the Ninth Circuit (the concerns in question being engaged in business on the Pacific coast). The case was argued on May 15, 1924, and decided September 2, 1924, the commission's contentions being upheld in every particular. During the course of its opinion, which was in the main a discussion of the facts involved, the court said:

The findings of the commission are clear cut and, if sustained by the evidence, establish without doubt, in our opinion, that the acquisition and continued control and ownership of the capital stock of the Nevada Packing Co. by the petitioner constituted a very clear violation of section 7 of the act of October 15, 1914, generally known as the Clayton Act. * * * That language is too plain, we think, to admit of any sort of doubt that three things are thereby expressly condemned and prohibited, namely, the acquiring by any corporation engaged in commerce, directly or indirectly, the whole or any part of the stock or other share capital of another corporation engaged also in commerce, where the effect of such acquisition may be to substantially lessen competition between the corporation whose stock was acquired and the corporation making the acquisition, or to restrain such commerce in any section or community, or tend to create a monopoly of any line of commerce. * * *

Surely nothing more is needed to show that the true purpose of the purchase by the Western Meat Co. of the stock of the Nevada Packing Co. was the elimination of the competition of the latter company and the expansion of that business by the Western Meat Co., hereby strengthening its hold. * * * That the direct result of the transaction was the complete elimination of the

theretofore competition existing on the part of the Nevada Packing Co. and the strengthening of the hold of the Western Meat Co. on the meat packing business of Nevada and adjoining States is, in our opinion, further shown by other evidence not necessary to detail.

The proceeding against the Chamber of Commerce of Minneapolis and others.—One of the most important of the commission's proceedings, and one of particular interest to the farming industry, is its case against the Chamber of Commerce of Minneapolis and affiliated interests. See also page 40.

The commission entered its order in December last, and the case is now pending, on the respondent's petition for review, in the Court of Appeals for the Eighth Circuit.

The Butterick case—Exclusive dealing contracts in the sale of dress patterns.—The companies proceeded against by the commission in this proceeding were the Butterick Co., the Federal Publishing Co., Standard Fashion Co., Butterick Publishing Co., New Idea Pattern Co., and the Designer Publishing Co. It was charged that these respondents, a consolidation of paper dress-pattern manufacturers and publishers of periodicals advertising and illustrating such patterns, adopted unfair methods in competing with other producers of such patterns by entering into contracts with about 20,000 retail dry goods dealers, binding the said retailers to maintain fixed resale prices and prohibiting them from dealing in patterns manufactured by their competitors. Incidentally, the respondents refused to sell to dealers who declined to enter into such contracts or be bound thereby and threatened and instituted suits for damages if such contracts were broken. The contention of the commission was that such methods tended to lessen competition and to create a monopoly, all in alleged violation of section 5 of the Federal Trade Commission Act and section 3 of the Clayton Act.

The respondents first endeavored in the Supreme Court of the District of Columbia to obtain an order restraining the commission from proceeding with the trial of the case; this was refused. An appeal was then taken to the Court of Appeals of the District, with the same result.

The case then proceeded to trial, and after consideration an order to cease and desist was issued.

In October, 1923, the respondents appealed the case to the Circuit Court of Appeals for the Second Circuit, and at the close of the fiscal year the case was still pending in that court.

The Occidental Oil Corporation case—Misrepresentation in the sale of oil stock.—The respondent in this case was incorporated under the laws of the State of Delaware, with a capitalization of

some \$500,000.00, with the avowed purpose of drilling oil wells on various leases owned by the corporation in the State of Texas.

The commission issued its order commanding the Occidental Oil Corporation, its incorporators, and their agents—

to cease and desist from directly or indirectly making any false or misleading statements or representation concerning the resources, operations, production, profits, earnings, disbursements, dividends, progress, or prospects of the respondent Occidental Oil Corporation, or of any other corporation, association, or partnership, in connection with the sale or offering for sale in interstate commerce of the stock or other security of the respondent Occidental Oil Corporation, or of any other corporation, association, or partnerships.

The respondent filed its petition for review in the United States Circuit Court of Appeals for the Third Circuit (Philadelphia), and at the close of the fiscal year the case was in that court awaiting briefs and arguments.

Subsequently the petition to review was dismissed because of failure of the Oil Corporation to provide for costs of printing the record.

The proceeding against the Pacific States Paper Trade Association and others—Price fixing in paper products on the Pacific coast.—The complaint by the commission in this case involved, besides the Pacific States Paper Trade Association, other associations operating in Pacific coast territory, as follows:

Seattle-Tacoma Paper Trade Conference.

Spokane Paper Dealers.

Portland Paper Trade Association.

Paper Trade Conference of San Francisco.

Los Angeles Wholesale Paper Jobbers' Association.

The respondents named in this complaint embraced practically all the wholesale dealers in paper and paper products throughout the States of Oregon, Washington, and California. Other States affected in great part by the activities of the respondents were Idaho, Nevada, Arizona, Montana, New Mexico, and the Territory of Alaska.

The commission charged that, by concerted agreement, adherence of members of local associations to the maintenance of enforced scheduled prices was consummated, all of which had a dangerous tendency unduly to hinder competition and to create a monopoly.

The respondents appealed from the commission's order, as a result of which the case is now pending in the Court of Appeals for the Ninth Circuit.

Resale price maintenance in tobacco products—The proceeding against The American Tobacco Co. and The Wholesale Tobacco & Cigar Dealers' Association of Philadelphia and others.—The com-

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mission's order in this case, which, as indicated by the name of the association involved, was directed against practically all of the wholesale tobacco dealers in and about Philadelphia, directed these dealers to—

cease and desist from fixing, enforcing, and maintaining and from enforcing and maintaining by combination, agreement, or understanding among themselves, or with or among any of them, or with any other wholesaler of cigarettes or other tobacco products, resale prices for cigarettes or other tobacco products dealt in by such respondents, or any of them, or by any other wholesaler of cigarettes or other tobacco products.

The American Tobacco Co., which also appeared as one of the respondents in this proceeding, was commanded to cease and desist—

from assisting and from agreeing to assist any of its dealer-customers in maintaining and enforcing in the resale of cigarettes and other tobacco products manufactured by the said The American Tobacco Co., resale prices for such cigarettes and other tobacco products, fixed by any such dealer-customer by agreement, understanding, or combination with any other dealer-customer of said The American Tobacco Co.

The American Tobacco Co. was the only one of the respondents to appeal from the order, and it filed its petition for review in the Court of Appeals sitting at New York City (the Second Circuit).

The case was pending in that court at the conclusion of the fiscal year. Briefs are yet to be filed, and it is expected the matter will be reached for argument at the October term of court.

The Utah-Idaho Sugar Co. case—Suppression of competition in the manufacture and sale of beet sugar.—The respondents in this case, namely, the Utah-Idaho Co., the Amalgamated Sugar Co., E. R. Wooley, A. P. Cooper, and E. F. Cullen, were charged by the commission with stifling and suppressing competition in the purchase of sugar beets and in the manufacture and sale of refined beet sugar, by means of a combination or conspiracy involving, among others, the following unfair trade practices:

1. The circulation of false, misleading, and unfair reports as to competitors and prospective customers (a) concerning financial standing and responsibility; (b) that they would be unable to secure sugar-beet seed, or the beets, or to pay for those they did purchase; (c) that their contemplated factories would not be built, etc.

2. The circulation of false reports to the effect that respondents (a) occupied all the productive territory in which their competitors contemplated operating; (b) had contracts for all the beets to be grown, etc.

The commission, after very extensive hearings, dismissed the complaint as to the respondent E. F. Cullen, and entered its order to cease and desist against the other respondents. The respondents filed

their petitions for review in the Court of Appeals for the Eighth Circuit, where the case was pending at the close of the fiscal year.

Resale price maintenance in the sale of music rolls—The Q. R. S. Music Co. case.—After the commission had issued its complaint and testimony had been taken before a trial examiner, and after final argument, the commission issued its order in this proceeding directing the Q. R. S. Music Co., an Illinois corporation, with its principal place of business in the city of Chicago, to cease and desist from carrying into effect a policy of fixing and maintaining uniform prices at which the articles manufactured by it shall be resold by its distributors and dealers, by—

1. Entering into contracts, agreements, and understandings with distributors or dealers requiring or providing for the maintenance of specified resale prices on products manufactured by respondent.

2. Attaching any condition, express or implied, to purchases made by distributors or dealers to the effect that such distributors or dealers shall maintain resale prices specified by respondent.

3. Requesting dealers to report competitors who do not observe the resale price suggested by respondent, or acting on reports so obtained by refusing or threatening to refuse sales to dealers so reported.

4. Requesting or employing salesmen or agents to assist in such policy by reporting dealers who do not observe the suggested resale price, or acting on reports so obtained by refusing or threatening to refuse sales to dealers so reported.

5. Requiring from dealers previously cut off promises or assurances of the maintenance of respondent's resale prices as a condition of reinstatement.

6. Utilizing any other equivalent cooperative means of accomplishing the maintenance of uniform resale prices fixed by the respondent.

The respondent availed itself of its statutory right and filed in the United States Circuit Court of Appeals for the Seventh Circuit its petition for review of the commission's order.

At the close of the fiscal year the case was awaiting briefing and argument.

Resale price maintenance in the sale of underwear—The Sealpax case.—The respondent in this case—Oppenheim, Oberndorf & Co. (Inc.), doing business under the trade name and style of the Sealpax Co., was charged by the commission's complaint, in the sale of its "Sealpax" underwear, with maintaining a schedule of uniform resale prices and refusing to sell underwear to wholesale dealers failing to observe and maintain such prices, and otherwise endeavoring to enforce its fixed prices for the resale of its products.

The commission's order to cease was entered in April, 1924, and on June 11th the Sealpax Co. filed its petition for review with the Circuit Court of Appeals for the Fourth Circuit (Richmond, Va.).

At the close of the fiscal year, the cause was awaiting the filing of the transcript of testimony and pleadings by the commission, after

which it will be briefed and argued before the court. It will hardly be reached before late in the October term.

The Doctor Herman Heuser case.—The case involved letters of warning sent out in connection with a patented process for the manufacture of nonalcoholic beverages. The order issued by the commission was appealed and the matter is pending in the Circuit Court of Appeals for the Seventh Circuit.

The Pearsall Butter Co. case—Exclusive dealing contracts—Oleomargarine.—The B. S. Pearsall Butter Co., the respondent in the commission's action in this proceeding, complained of the commission's order directing it to cease and desist from directly or indirectly using formal or informal contracts or understandings to the effect that purchasers or dealers in respondent's margarine products should not deal in the goods, wares, merchandise, supplies, or other commodities of a competitor or competitors of respondent or in competing commodities. The commission charged that the Pearsall Co.'s practices were in violation of section 3 of the Clayton Act.

The company filed its petition for review of the commission's order with the Circuit Court of Appeals for the Seventh Circuit (Chicago), and that court reversed the order. The court, in its opinion, said:

The record in the case at bar discloses no facts or circumstances which would justify the conclusion that there was here shown more than "the mere possibility of the consequences described." We find nothing from which it might be deduced that the agreement here "would under the circumstances disclosed possibly lessen competition or create an actual tendency to monopoly."

This case was representative of a number of others involving the same general principle; and as a result of the decision of the court of appeals, these other proceedings were dismissed by the commission.

The John Bene & Sons case—Disparagement of competitor's product—Public interest.—John Bene & Sons (Inc.), the respondent in the commission's proceeding, was charged with unfair competitive methods in that it procured samples of a competitor's goods and caused the same to be analyzed by a chemist, thereafter circulating reports of the analysis, which reports, as well as letters written to the trade with respect thereto by the respondent, contained false and misleading statements and representations to the effect that the competitor's product contained lime and that its use on the human body would be attended by great danger; that it was a weak solution of bleaching powder known as a disinfectant and lost its effectiveness in about 72 hours.

The commission entered its order in due course, and the respondent took the case to the Circuit Court of Appeals sitting at New York

City. That court reversed the order, in the course of its decision using the following language:

As a conclusion of law we hold that there being no proof of a public interest herein, or of its being to the interest of the public that this proceeding should have been begun or the order complained of made, said order must be reversed; and it is reversed accordingly.

The commission subsequently filed a petition for rehearing; this was denied.

The National Biscuit Co.—The Loose-Wiles Biscuit Co.—Refusal to accord to pools of retailers same discounts allowed to the chain stores.—Both of these nationally known companies, leaders in the manufacture and sale of biscuits, crackers, and other bakery products, in allowing discounts based on aggregate monthly orders, refused to grant as high a rate of discount on the pooled orders of two or more retail store owners as on the orders of owners of the so-called chain stores. This practice, of course, gave the owners of chains of retail stores an advantage in competing with the ordinary retailers, and the commission's complaint charged that this discrimination in price tended to lessen competition and to create a monopoly, in alleged violation of section 5 of the Federal Trade Commission act and section 2 of the Clayton Act.

After extensive hearings in all parts of the country, the commission entered its orders to cease and desist against both concerns in January, 1924. Both companies applied to the Circuit Court of Appeals sitting at New York City (the Second Circuit), which, after hearing the arguments of both sides, as well as those of interested associations allowed to intervene as amici curiae, reversed the commission's orders. Excerpts from the opinion of the court which are of interest and importance are the following:

We conclude that the sales policy of the petitioners as to their discount plan as well as the refusal to sell cooperative or pooling buyers, is fair in all respects as to all its competitors and customers. This policy obviously does not affect the public interest nor deprive it of anything it desires. It is a practice which is recognized by manufacturers of bakery products and is inoffensive to good business morals. It was error to direct the petitioners to sell to individual grocers who pooled their orders of purchase or who bought on a cooperative basis * * *. There is no discrimination between the large buyer, such as the owner of a chain store, and the grocer owning but one store.

The commission regarded the principle involved in these cases as of such importance that it decided to apply to the Supreme Court of the United States for a writ of certiorari to review the decision of the Court of Appeals, and at the close of the fiscal year it was engaged in perfecting such appeal.

Shortly after the close of the year, in October, 1924, the Supreme Court refused a writ of certiorari applied for by the commission.

COURTS OF THE DISTRICT OF COLUMBIA

Maynard Coal Co. et al.
Shade Shop.

A brief description of the foregoing cases follows:

The Maynard Coal Co. case.—At about the same time that the steel companies were asked by the commission to file monthly reports (this is also discussed in the section relating to the Claire Furnace Co. case), substantially similar questionnaires were sent to practically all corporations engaged in the production and sale in interstate commerce of bituminous coal.

One of these companies, the Maynard Coal Co., declined to make the reports in question, and applied to the Supreme Court of the District of Columbia for an injunction. A permanent injunction practically identical with that issued in the Claire Furnace case was awarded.

The case was taken by the commission to the Court of Appeals for the District of Columbia, where it was argued on January 9 and 10, 1924.

On May 10 last the Court of Appeals directed a reargument. Up to the close of the fiscal year the case had not been reached. It will probably be argued again, however, in the early part of the October term.

The Shade Shop case—Appropriation and simulation of trade name.—This is a District of Columbia case. Alfred Klesner, doing business under the name and style of "Shade Shop, Hooper & Klesner," was charged by the commission with a violation of section 5 of the Federal Trade Commission act, in that he had appropriated and simulated the trade name "The Shade Shop" adopted by one W. Stokes Sammons, in connection with his business of manufacturing and selling window shades. Sammons had been engaged exclusively in this business since 1901.

The commission's order prohibited Klesner, his servants, agents, and employees, from—

Using the words "Shade Shop" standing alone or in conjunction with other words as an identification of the business conducted by him, in any manner of advertisement, signs, stationery, telephone, or business directories, trade lists or otherwise.

The respondent having given no indication of an intention to comply with the order, the commission, on May 13, 1924, filed, in the Court of Appeals for the District of Columbia, its petition for enforcement thereof. It was pending in that court at the close of the fiscal year and will be reached during the October term of court.

Legal work of the commission, by fiscal years

	1915	1916	1917	1918	1919	1920	1921	1922	1923	1924
PRELIMINARY INQUIRIES										
Pending at beginning of year.....	0	4	12	32	19	29	61	69	182	181
Requests for action from public.....	119	265	462	611	843	1,107	1,070	1,258	1,313	1,584
Total for disposition.....	119	269	474	643	862	1,136	1,131	1,326	1,495	1,765
Dismissed on summary review.....	3	123	289	292	298	351	500	731	931	1,269
Docketed as applications for complaint.....	112	134	153	332	635	724	663	413	383	342
Total disposition during year.....	115	257	552	624	833	1,075	1,063	1,144	1,314	1,531
Requests for action to end of year.....	119	364	646	1,457	2,800	3,407	4,477	5,735	7,049	8,632
Dismissed on summary review to end of year.....	3	126	415	707	1,005	1,356	1,856	2,687	3,518	4,727
Docketed as applications for complaint to end of year.....	112	246	399	731	1,266	1,990	2,553	2,906	3,349	3,671
Total disposition to end of year.....	115	372	814	1,438	2,271	3,346	4,409	5,533	6,867	8,398
Pending at end of year.....	4	12	32	19	29	61	69	182	181	234
APPLICATIONS FOR COMPLAINT										
Pending at beginning of year.....	0	104	130	188	280	389	554	466	458	672
Docketed during year.....	112	134	153	332	635	724	426	382	416	377
Previous dismissals rescinded.....	0	0	0	0	0	0	0	0	0	5
Total for disposition.....	112	238	283	520	815	1,113	980	848	874	954
Dismissed during year.....	8	105	79	160	301	339	357	287	181	246
To complaints during year.....	0	3	16	80	125	220	157	103	121	143
Total disposition during year.....	8	108	95	240	426	569	514	390	302	389
Total docketed to end of year.....	112	246	399	731	1,266	1,990	2,416	2,798	3,214	3,591
Dismissed to end of year.....	8	113	192	352	653	992	1,349	1,636	1,817	2,063
Previous dismissals rescinded.....	0	0	0	0	0	0	0	0	0	5
Net dismissals to end of year.....	8	113	192	352	653	992	1,349	1,636	1,817	2,058
To complaints to end of year.....	0	3	19	89	224	444	601	704	825	968
Total net disposition to end of year.....	8	116	211	451	877	1,436	1,950	2,340	2,642	3,026
Pending at end of year.....	104	130	188	280	389	554	466	458	572	665
COMPLAINTS										
Pending at beginning of year.....	0	0	5	10	85	133	287	312	257	232
Docketed during year.....	0	5	9	154	135	308	177	111	144	154
Previous dismissals rescinded.....	0	0	0	0	0	0	0	0	0	1
Previous orders to cease and desist rescinded.....	0	0	0	0	0	0	0	0	0	5
Total for disposition.....	0	5	14	164	220	441	465	423	401	392
Dismissed during year.....	0	0	1	7	13	44	37	75	87	36
Orders to cease and desist entered during year.....	0	0	2	72	74	110	116	91	82	92
Total disposition during year.....	0	0	4	79	87	154	159	166	169	128
Docketed to end of year.....	0	5	14	168	303	611	789	899	1,043	1,197
Dismissed to end of year.....	0	0	1	6	21	65	102	177	264	300
Previous dismissals rescinded.....	0	0	0	0	0	0	0	0	0	2
Net dismissals to end of year.....	0	0	1	6	21	65	101	177	264	298
Orders to cease and desist to end of year.....	0	0	3	75	149	259	375	466	548	640
Previous orders to cease and desist rescinded.....	0	0	0	0	0	0	0	0	0	5
Net orders to cease and desist to end of year.....	0	0	3	75	149	259	375	466	548	635
Total net disposition to end of year.....	0	0	4	83	170	324	476	643	812	933
Pending at end of year.....	0	5	10	85	133	287	312	257	232	264

Table showing court proceedings upon orders to cease and desist

Orders to cease and desist	1919	1920	1921	1922	1923	1924	Total
PETITIONS FOR REVIEW—LOWER COURTS							
Pending at beginning of year	0	2	8	12	8	4	34
Appealed during year	4	9	17	5	5	15	55
Total for disposition	4	11	25	17	13	19	89
Decisions for commission	1	0	1	4	5	1	12
Decisions against commission	1	3	11	5	4	4	28
Petitions withdrawn by commission	0	0	0	0	0	0	0
Petitions withdrawn by others	0	0	1	0	0	0	1
Total disposition during year	2	3	13	9	9	5	41
Pending at end of year	2	8	12	8	4	14	48
PETITIONS FOR REVIEW—SUPREME COURT OF THE UNITED STATES							
Pending at beginning of year		0	1	3	3	1	8
Appealed by commission		2	2	4	6	0	13
Appealed by others		0	0	0	2	1	3
Total for disposition		2	3	7	10	2	24
Decisions for commission		0	0	2	0	0	2
Decisions against commission		1	0	0	5	1	7
Petitions withdrawn by commission		0	0	0	1	0	1
Petitions withdrawn by others		0	0	0	0	0	0
Writ denied commission		0	0	2	1	0	3
Writ denied others		0	0	0	2	1	3
Total disposition during year		1	0	4	9	2	16
Pending at end of year		1	3	3	1	0	8
PETITIONS FOR ENFORCEMENT—LOWER COURTS							
Pending at beginning of year					0	1	1
Appealed during year					1	2	3
Total for disposition					1	3	4
Decisions for commission					0	0	0
Decisions against commission					0	0	0
Total disposition during year					0	0	0
Pending at end of year					1	3	4
PETITIONS FOR MODIFICATION—LOWER COURTS							
Pending at beginning of year						0	0
Appealed during year						1	1
Total for disposition						1	1
Decisions for commission						0	0
Decisions against commission						1	1
Total disposition during year						1	1
Pending at end of year						0	0

Miscellaneous court proceedings, mandamus, injunction, etc.

	1920	1921	1922	1923	1924	Total
APPEALS TO LOWER COURTS						
Pending at beginning of year	0	2	3	4	1	10
Appealed by commission	1	0	3	4	0	8
Appealed by others	2	2	3	0	0	7
Total for disposition	3	4	9	8	1	25
Decisions for commission	0	1	3	0	0	4
Decisions against commission	1	0	1	7	0	9
Petitions withdrawn by commission	0	0	0	0	0	0
Petitions withdrawn by others	0	0	1	0	0	1
Total disposed of	1	1	5	7	0	14
Pending at end of year	2	3	4	1	1	11
APPEALS TO SUPREME COURT OF THE UNITED STATES						
Pending at beginning of year				0	6	6
Appealed by commission				6	0	6
Appealed by others				0	0	0
Total for disposition				6	6	12
Decisions for commission				0	0	0
Decisions against commission				0	2	2
Petitions withdrawn by commission				0	0	0
Petitions withdrawn by others				0	0	0
Total disposed of				0	2	2
Pending at end of year				6	4	10

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Table showing disposition by percentages, preliminary inquiries, applications for complaints, complaints and appeals taken for fiscal years 1915-1924

	1915	1916	1917	1918	1919	1920	1921	1922	1923	1924	Total
Preliminary inquiries disposed of.....	115	257	442	624	833	1,075	1,063	1,144	1,314	1,531	8,398
Dismissed on summary review (per cent).....	3	48	65	47	36	33	47	64	70	78	56
Docketed (per cent).....	97	52	35	53	64	67	53	36	30	22	44
Applications for complaint disposed of.....	8	108	95	240	426	559	514	390	302	384	3,026
Dismissed (per cent).....	100	97	83	87	71	61	69	74	60	63	68
Formal complaints issued (per cent).....	0	3	17	33	29	39	31	26	40	37	32
Formal complaints disposed of.....		0	4	79	87	154	152	166	109	122	933
Dismissed (per cent).....		0	25	9	15	28	23	45	81	28	32
Orders to cease and desist issued (per cent).....		0	75	91	85	72	77	55	49	72	68
Appeals taken from commission's orders (per cent).....					5	8	15	5	6	17	

NOTES

On the basis of the figures for 1924, the probabilities are:

When a preliminary inquiry is received—

 That the matter will be docketed..... 22 out of 100.

 That it will be filed without action..... 78 out of 100.

When an application has been docketed—

 That a formal complaint will issue..... 37 out of 100.

 That the proceeding will be dismissed without action..... 63 out of 100.

When a formal complaint has issued—

 That an order to cease and desist will follow..... 72 out of 100.

 That the proceeding will be dismissed..... 28 out of 100.

When a preliminary inquiry is received—

 The chances that a formal complaint will issue are 37 per cent of 22 per cent of 100 or..... 8 out of 100.

 That it will not..... 92 out of 100.

 That an order to cease and desist will issue (72 per cent of 37 per cent of 22 per cent)..... 0.0586 per cent.

TRADE-PRACTICE SUBMITTALS

From time to time the commission is approached by groups of business men representing an entire industry and seeking assistance in the elimination from their industry of practices found to be unfair and harmful but which the industry is unable by itself to eliminate. Upon request of a substantial portion of a given industry, the commission has lent its assistance in these situations and has called the industry together in gatherings which have been termed "Trade-practice submittals." Submittals have been held in the following industries: Ink, celluloid, knit goods, paper, oil, used typewriters, creamery, hosiery, guaranty against decline, macaroni, silverware, gold knives, watchcases, subscription book publishers and music publishers, and band instruments. A pamphlet on Submittals has been prepared.

At these submittals the objectionable practices are frankly discussed and resolutions usually adopted by the industry looking to their elimination. These resolutions are considered by an industry as binding upon it and are received by the commission as informative as to conditions in the particular industry and the views of the trade thereon in the event the commission is called upon to proceed to complaint upon any practice condemned by an industry.

During the year two trade-practice submittals were held, one before Vice Chairman Vernon W. Van Fleet at the request of the Music Publishers' Association of the United States, and the other before Commissioner John F. Nugent at the request of the Subscription Book Publishers' Association. The book publishers' meeting was represented by 31 concerns in the industry, and in the case of the music publishers 95 per cent of the industry was represented. Shortly after the close of the fiscal year manufacturers of band instruments conducted a submittal before Mr. Van Fleet.

The music publishers at their meeting passed a resolution having to do with the fictitious marking of prices on sheet music, one of those present expressing this practice to be "out of date and no longer serves any useful purpose, and no doubt opens up a way to the unscrupulous to charge a higher price to unsuspecting persons than is contemplated by the publisher."

Fourteen resolutions were approved at the meeting of the Book Publishers' Association trade-practice submittal by which the opinion

of the trade might be registered. These in the main were of the ethical conduct of the business.

Toward the close of the year the commission authorized Chairman Huston Thompson to conduct a submittal with furniture manufacturers, at their request, for the purpose of drawing up a set of resolutions involving (1) the wood content and finish to be advertised and designated; (2) to clearly indicate the relation of jobbers, wholesalers, retailers or commission men to producers; and (3) to advertise and indicate the true place of origin of all furniture. At this submittal it is expected that many of the furniture associations, including the National Furniture Association, will be represented. Lumbermen furnishing materials are also expected to attend.

Commissioner Nelson B. Gaskill was authorized at the request of manufacturers of mending cotton to hold a trade practice submittal for the purpose of considering the best method of labeling and marking mending cotton which is sold to the general purchasing public. This will involve the manner in which the number of yards and the ply of the cotton shall be stated on manufacturers' labels.

Commissioner Charles W. Hunt has also been authorized to conduct a submittal requested by members of the industry engaged in manufacturing engraved and embossed effects, to be held in the near future. At this meeting endeavor will be made to determine a proper designation for stationery and other printed matter which is produced by the use of a chemical in powdered form which is applied to type print while the ink is still wet. The chemical adheres to the wet ink, and in passing through a baking process the heat causes it to fuse and present a raised-letter effect which may be said to resemble in appearance the impression made from engraved plates or steel dies, known as "engraving."

The Music Publishers Association of the United States submittal was held at New York on October 2, 1923, for the purpose of giving those engaged in the industry an opportunity to express their views regarding the practice of marking musical publications at fictitious prices. The submittal was attended by publishers representing 95 per cent of the total output of standard sheet music. There were also present a few publishers of popular music. The following attended the submittal:

Fred Kraft—Edward Schuberth & Co., New York City.

Otto Jordan—Harms (Inc.), New York City.

W. M. Bacon—White-Smith Music Publishing Co., Boston.

W. M. Gamble—Gamble Hinged Music Co., Chicago.

John Hanna—Enoch & Sons, New York City.

M. Keane—Boosey & Co., New York City.
C. C. Church—C. C. Church & Co., Hartford, Conn.
M. E. Tompkins—G. Schirmer (Inc.), New York City.
H. W. Gray—H. W. Gray & Co, New York City.
E. F. Bitner—Leo Feist (Inc.), New York City.
Harold W. Robinson—B. F. Wood Music Co., Boston.
C. A. Woodman—Oliver Ditson & Co., Boston.
H. H. Crosby—Arthur P. Schmidt Co., Boston.
Clayton F. Summy—Clayton F. Summy Co., Chicago.
G. Fischer—J. Fischer & Bro., New York City.
W. Deane Preston, Jr.—B. F. Wood Music Co., Boston.
W. H. Witt—W. H. Witt Music Co., Pittsburgh.
E. O. Mills—chairman Music Publishers' Protective Association.
W. L. Coghill—John Church Co., New York City.
H. Engel—Richmond-Robbins (Inc.), New York City.
Ben Bornstein—Ager, Yellen & Bornstein, New York City.
J. M. Prialx—Charles H. Ditson Co., New York City.
E. T. Paull—E. T. Paull Music Co., New York City.
W. A. Walling—Evans Music Co., New York City and Boston.
R. L. Huntzinger—R. L. Huntzinger, New York City.
T. J. Donlan—National Association of Sheet Music Dealers, New York City.
Joseph M. Skilton—G. Schirmer (Inc.), New York City.
Alfred L. Smith—Music Publishers' Association of the United States.
Theodore Presser—Theodore Presser Co., Philadelphia.
W. Kretschner—Carl Fischer, New York City.

From the facts developed at the submittal it appeared that for many years it has been the practice of the publishers to print sheet music at prices approximately one-third higher than the actual retail selling price.

The practice arose from the custom of granting to music teachers a discount, usually one-third, from the price printed on the publication, which was to compensate teachers for their time in selecting the music, etc. After a while teachers had their pupils request the discount, and in a few years the public was getting the same discount, so that to-day the actual retail price of much of the music sold is substantially less than the printed price on the publication. As one of the publishers present expressed it, "the printing of a price on music from which to figure a discount is out of date and no longer serves any useful purpose, and no doubt opens up a way to the unscrupulous to charge a higher price to unsuspecting persons than is contemplated by the publisher. It appears that the elimination of this practice has been the subject of discussion by the industry for some time. The music dealers and popular music publishers present also favored the discontinuance of the practice.

After discussing the subject and the details incidental to making a change in the practice the publishers of standard sheet music unanimously adopted the following resolution:

We believe the proper way of marking prices on music is to use the price at which it is expected the music will sell for at retail under conditions of normal competition.

The Federal Trade Commission approves the resolution as set out above and believes that it expresses the views of the entire industry. The trade has been requested to fix a date at which the change shall be put in operation.

The Subscription Book Publishers' Association submittal was held by book publishers selling books by subscription in Washington on May 20 and 21, 1924. The following concerns were represented:

The Grolier Society, New York City.
 University Society (Inc.), New York City.
 The National Home and School Association, Chicago, Ill.
 Bufton Publishing Co., Kansas City, Mo.
 Subscription Book Publishers' Association, Chicago, Ill.
 E. E. Compton & Co., Chicago, Ill.
 P. E. Collier Son & Co., New York City.
 Thomas Nelson & Sons, New York City.
 Wm. H. Wise & Co., New York City.
 Doubleday, Page & Co., Garden City, N. Y.
 W. F. Quarrie & Co., Kansas City, Mo.
 Williams & Wilkins Co., Baltimore, Md.
 The Encyclopedia Britannica (Inc.), New York City.
 National Association of Book Publishers, New York City.
 The S. A. Mullikin Co., Cincinnati, Ohio.
 Austin Jenkins Co., Washington, D. C.
 Nelson Doubleday (Inc.), Garden City, N. Y.
 The Midland Press, Chicago, Ill.
 Parke, Austin & Lipscomb (Inc.), New York City.
 The John C. Winston Co., Philadelphia, Pa.
 Dodd, Mead & Co. (Inc.), New York City.
 Historical Publishing Co., Philadelphia, Pa.
 John Rudin & Co. (Inc.), Chicago, Ill.
 The Western Distributing Co., Chicago, Ill.
 Standard Education Society, Chicago, Ill.
 Review of Reviews Corporation, New York City.
 Rand McNally & Co., Chicago, Ill.
 Educators' Association, New York City.
 The S. L. Weedon Co., Cleveland, Ohio.
 The Bureau of National Literature (Inc.), New York City.
 American Educational Society Publishers, St. Louis, Mo.

Thirty-one concerns were represented at the meeting and it was there stated that they do more than the majority of the volume of said business of the country. Many other concerns expressed an interest in the meeting but were unable to be represented.

After a preliminary discussion of various practices, the representatives of the concerns mentioned were requested to and did organize for the purpose of adopting resolutions by which the

opinion of the trade might be registered and the following resolutions, which have been certified by the chairman and secretary of the meeting, were adopted:

1. *Resolved*, That we disapprove any editorial policy whereby the listing of any name as editor or contributing editor tends to practice deception on the public.

2. *Resolved*, That as to all books, the use of only the last date of copyright, and eliminating all previous copyright dates, is condemned.

3. *Resolved*, That books bound in substitutes for leather should not be represented as being bound in levant or in any way which tends to carry the inference that leather bindings are used.

4. *Resolved*, That the same or essentially the same set of books should not be sold simultaneously under different titles; that books should never be sold under a title that will mislead as to contents, or under a title which tends to confusion with some previously published work.

5. *Resolved*, That the marking-up of the price of books and the use of the so-called "raised" contract be condemned; that representing that the price asked is below the usual price, or that the price will soon be increased, when such is not the fact, be also condemned.

6. *Resolved*, That when so-called extension revision or continuation service is offered, the contract made with the purchaser shall state precisely what the service is, that such service is sold at a price distinct and apart from the books which it is designed to keep up to date, that the books shall be sold at a stipulated price, and the service shall be sold at a stipulated price; that in case such service is sold to continue over a period of years the service shall actually be furnished as promised to such subscriber without the use of coupons or other form of request.

7. *Resolved*, That the practice of representing that a certain number of books have been set aside for advertising purposes, to be given free, when such is not the fact, is condemned; and that the practice of representing that a certain number of selected persons in each community have been designated to secure a book or a set of books, or any form of service, free, when such is not the fact, is clearly misrepresentation, and is condemned.

8. *Resolved*, That the offering of membership in societies, clubs, and other organizations, which in fact do not exist, in connection with the sale of books be condemned; that a service devoted to the answering of inquiries, if offered, be represented only as such and not as something offered by some organization, separate and apart from the concern selling the books when such organization does not exist, in fact, and actually renders no such service, and the names of well-known authors, editors, or authorities should not be used in connection with such offers unless they, in fact, actually are to answer or supervise the answering of the inquiries.

9. *Resolved*, That the practice of securing agents by misleading or dishonest promises or guarantees, and enticing away the agents of competitors by such means be condemned, but nothing in this resolution shall be construed in any way limiting the free choice of agents to select their own employers.

10. *Resolved*, That the practice of giving with services or sets premiums of books, service or other objects of value, shall not be abused by sales representations of which the effect is to deceive the purchasers as to the relative values of the set or service as compared with the premium accompanying it.

11. *Resolved*, That no publisher shall be a party to or assist in the organization of so-called independent agents or dealers to sell his books by methods here condemned, and which he as a publisher professes himself not to use; nor shall a publisher sell his books to so-called independent agents or dealers or agents when he knows they are to use unfair or dishonest means to distribute the books to the public. No publisher shall be a party to doing indirectly what he professes not to do directly.

12. *Resolved*, That it shall be an unfair practice to take a name which so closely resembles the name of an already existing firm as to tend to cause confusion and mislead the public.

13. *Resolved*, That all testimonials should be genuine and apply to the book or books actually offered; that generally the complete testimonial should be given; and that in cases where only a part is used, such part should fairly state the name of the writer, and in no case shall words, phrases, or sentences be taken from a testimonial and be used for selling purposes which when taken from their context have a different meaning from that intended by the writer; that public bodies, libraries, or associations should not be advertised or represented as commending a set of books unless advised as to the use of such commendation, and unless the fact is that the public body, library, or association as such and not merely some individual has commended the work and that no testimonial from any source whatsoever which has been obtained by purchase, gift, or honorarium be used; securing testimonials by such means, whether by more or less open or by subtle methods is condemned.

14. *Resolved*, That these resolutions, in so far as practicable, become effective at once; except that where any change in an existing edition of a book or set of books may be required, these resolutions apply to all future editions or printings.

With the exception of resolution No. 10, the resolutions as stated above were adopted by the members of the industry present unanimously. Attention is also directed to the fact that it is the intention of the industry to put these resolutions into effect immediately.

The above resolutions were reported to the commission and after consideration were received and approved.

Band instrument manufacturers.—This submittal was held at Chicago on July 15, 1924. Those present at the meeting were:

- F. A. Buescher, representing the Buescher Band Instrument Co., Elkhart, Ind.
- James A. Bell, representing the Buescher Band Instrument Co., Elkhart, Ind.
- C. H. Taylor, representing Frank Holton & Co., Elkhorn, Wis.
- J. C. Cox, representing Frank Holton & Co., Elkhorn, Wis.
- A. P. Bassett, representing the Martin Band Instrument Co., Chicago, Ill.
- C. H. Flint, representing the E. A. Couturier Band Instrument Co.; Lyon & Healy (Inc.); William Frank Co., Chicago, Ill.
- Alfred L. Smith, representing the National Association of Band Instrument Manufacturers, New York City.

It appeared that the industry had theretofore agreed upon a code of ethics for the government of their business, which was announced on January 1, 1924, in a bulletin entitled "Announcement of Elimination of Secret Subsidies to Musicians," which bulletin is in words and figures as follows:

ANNOUNCEMENT, JANUARY 1, 1924

The use, ownership, or recommendation of any make of band instrument by a professional musician, or by any other person who for some reason may be supposed to be specially well informed about or have an exceptional opportunity to judge the real merits of band instruments, is accepted by the buying public as indicating honest preference for that make of instrument based solely on merit. Thus a false and misleading impression is created when there has been a secret inducement of any kind.

The subsidizing secretly of prominent musicians and others by manufacturers and dealers in band instruments for the advertising value to be derived therefrom, has developed or tended to develop unfair competition, improper trade practices and unfair price discrimination to buyers, and has misled the public. Such a condition of affairs is detrimental to the best interest of both the industry and the buying public.

There are various methods of subsidizing professional musicians. It has been a more or less common practice to give to bands, orchestras, and individual musicians the instruments they require professionally. Sometimes the instruments have been merely loaned. Also in a few cases prominent professional musicians have been paid salaries to induce them to use certain instruments.

Not all subsidies, however, are direct. Preferential discounts, special instruments at regular prices, extra plating or engraving on instruments without charge, abnormal allowances for used instruments taken in exchange; i. e., traded in, special terms of credit, subscriptions to or payments of advertising or other expenses of musical enterprises or organizations are typical indirect subsidies.

The granting of subsidies has been by no means confined to prominent professional musicians. A secret special discount to an influential member of the village band is no different in effect from the payment of a large salary to an artist of international reputation. He may be any person whose ownership or advocacy of a particular make of band instrument for some special reason adds to the reputation of that instrument in the community.

Even when no subsidy is involved, the granting of excessive allowances for used instruments taken in exchange is against public interest. It constitutes price discrimination, and is unfair to customers who have no instruments to exchange or who trade in their instruments as a fair valuation. Overallowances are conducive to the development of misleading and improper trade practices, such as quoting fictitiously high prices and making false reductions on new instruments when no used instrument is taken in exchange. Furthermore, a consistent policy of granting overallowances on used instruments leads inevitably to either business failure or to a regular policy of overpricing of new instruments to the consequent detriment of the buying public. The evil of granting overallowances is frequently promoted by ignorance of the real value of the instrument taken in exchange and the difficulty of obtaining accurate information on that subject.

In view of these facts and in the public interest, the undersigned manufacturers and dealers in band instruments do hereby agree not to subsidize musicians or others in any manner whatsoever, and to this end they agree specifically:

1. That they will not give away instruments to prominent musicians or others.
2. That they will not loan instruments for the purpose of having them used by prominent musicians or others.

3. That they will not pay salaries, fees, or gratuities to induce prominent musicians or others to use or recommend their instruments.

4. That they will not grant to prominent musicians or others secret discounts or rebates or special terms not available to retail customers generally.

5. That they will not grant allowances in excess of the actual value of second-hand instruments taken in exchange for new.

(Signed) C. Bruno & Sons, Buegelesen & Jacobson, Buescher Band Instrument Co., C. G. Conn (Ltd.), E. A. Couturier Band Inst. Co., Cundy-Bettoney Co., W. J. Dyer & Bro., Carl Fischer, William Frank Co., Fred Gretsch Mfg. Co., Frank Holton & Co., J. W. Jenkins' Sons Music Co., Leedy Mfg. Co., Ludwig & Ludwig, Lyon & Healy (Inc.), Martiu Band Instrument Co., Pan-American Band Inst. & Case Co., Harry Pedler Co. (Inc.), H & A. Selmer (Inc.), The Vega Co., H N. White Co., Rudolph Wurlitzer Co., J. W. York & Sons.

At said meeting of July 15, 1924, there was also presented a letter from C. G. Conn Co. (Ltd.), signed by C. D. Greenleaf, president of said company, and also president of the Association of Band Instrument Manufacturers, which letter is in the words and figures following:

ELKHART, IND., July 14, 1924.

FEDERAL TRADE COMMISSION,

14 West Washington Street, Chicago, Ill.

GENTLEMEN: I regret very much that I am prevented by illness from appearing before the commission at this time. I wish to assure the commission that this company is in hearty accord with the so-called code of ethics as adopted by the leading manufacturers and jobbers of musical instruments, copy of which is inclosed.

I believe that this agreement marks the beginning of a very desirable reform, which will be entirely in the public interest in every way, and that if the Federal Trade Commission sees fit to give to this agreement its formal approval, this approval will be of great assistance in securing adherence to the provisions of this agreement by the retail trade. The signatories to this agreement may be depended upon to carry it out, but, of course, there is no way by which the manufacturers can prevent their dealers from continuing these very vicious practices if they so desire. The approval of these principles, however, by the Federal Trade Commission would have a very great effect in bringing about the compliance on the part of the retail trade in general, and if this can be done I believe that these practices, which have been so long an evil and a detriment to the public interest, can be finally stopped.

Yours very truly,

(Signed) C. D. GREENLEAF, *President*.

It was represented to the commissioner that practically the entire industry was represented in the agreement set forth above. The parties undertaking to observe this code of ethics are composed of manufacturers and importers of band instruments, and they requested and petitioned the Federal Trade Commission to give its approval to the principles laid down in said bulletin and to announce the same to the industry and the public.

After consideration of the matter, it was concluded by the commission as follows:

1. That the commission accepts and approves the code of ethics so adopted by the manufacturers of band instruments so far as the same relates to the subsidizing of musicians, and will take cognizance of violations of the same; and
2. That as to other matters covered by said code of ethics the commission receives and takes note of the same as representing the views and opinions of the industry.

ECONOMIC DIVISION

This division is under the supervision of the chief economist, the economic advisor of the commission. The general economic work during the fiscal year, as in previous years, has formed a vital part of the commission's activities, and one that is fundamental for the proper presentation to the Congress, to the President, and to the public, facts relating to the organization, practices, and results of commercial enterprises. Such facts are fundamental not only with respect to the general problem of maintaining healthful competition in industry and restraining the encroachment of monopoly, but are also useful in the fields of industrial organization and marketing methods and for constructive legislation. Important acts of Congress have resulted from such inquiries while in other cases they have had significant relations to judicial proceedings or to administrative policies. This economic activity is the continuation and enlargement of the Bureau of Corporations, the predecessor of the Federal Trade Commission, and was, indeed, the purpose of the original Federal Trade Commission bill.

As illustrations the following facts may be mentioned: The Webb-Pomerene Act regarding export associations was passed in consequence of Report on Cooperation in American Export Trade; the packers and stockyards act was the result of Report on the Meat Packing Industry. The reports of the commission frequently make recommendations for legislative action. Trust suits against the packers' combination and the newsprint manufacturers' association resulted, respectively, from the meat packing industry and newsprint paper reports. The decree in the Harvester case was reopened in consequence of Report on the Causes of the High Prices of Farm Implements, and for the handling of the packer decree the Department of Justice was furnished with special data and recommendations. In the decisions on the packers and stockyards act and on the grain futures act the Supreme Court relied on and quoted the reports of the commission relating to the meat packing industry and to the grain trade. During the war the commission's cost-finding work was the basis for governmental price fixing, and even after the war similar service was given to administrative authorities in time of coal strikes, and for the purchase of certain

supplies under agreements with the manufacturers. In response to requests for reports regarding economic conditions from the President reports were made to President Wilson on the fall of wheat prices in 1920, to President Harding on the general price dislocations in 1921, and to President Coolidge regarding the charges of manipulation of gasoline prices in 1924. The collection, currently of information on prices, costs, and profits of basic industries in 1920 was an administrative action of great significance, which was interrupted by certain judicial proceedings challenging the legislative powers of Congress. A somewhat similar activity was developed in 1923, as a result of a recent inquiry by the President into the high prices charged by anthracite coal dealers.

This branch of the work is carried forward primarily under section 6 of the act, which grants the commission power to gather information concerning any corporation engaged in interstate and foreign commerce (except banks and common carriers) and also authorizes the commission, upon the direction of the President or either House of Congress, to investigate and report the facts relating to any alleged violation of the antitrust acts by any corporation. The power of the commission to require annual or special reports under this section is now before the Supreme Court of the United States. Other duties of the commission in this field are to investigate and report to the Attorney General the manner in which final decrees of the United States courts to prevent violations of the antitrust acts are being carried out; upon application of the Attorney General to investigate and make recommendations for the readjustment of the business of any corporation alleged to be violating the antitrust acts; to classify corporations; and to investigate trade conditions in foreign countries. As has been true from the beginning most of the inquiries have been initiated at the request of Congress or of the President.

Section 6 of the act reads:

Sec. 6. That the commission shall also have power—

(a) To gather and compile information concerning, and to investigate from time to time the organization, business, conduct, practices, and management of any corporation engaged in commerce, excepting banks and common carriers subject to the act to regulate commerce, and its relation to other corporations and to individuals, associations, and partnerships.

(b) To require, by general or special orders, corporations engaged in commerce, excepting banks, and common carriers subject to the act to regulate commerce, or any class of them, or any of them, respectively, to file with the commission in such form as the commission may prescribe annual or special, or both annual and special, reports or answers in writing to specific questions, furnishing to the commission such information as it may require as to the organization, business, conduct, practices, management, and relation to other corporations, partnerships, and individuals of the respective corporations filing such reports or answers in writing. Such reports and answers shall be

made under oath, or otherwise, as the commission may prescribe, and shall be filed with the commission within such reasonable period as the commission may prescribe, unless additional time be granted in any case by the commission.

(c) Whenever a final decree has been entered against any defendant corporation in any suit brought by the United States to prevent and restrain any violation of the antitrust acts, to make investigation, upon its own initiative, of the manner in which the decree has been or is being carried out, and upon the application of the Attorney General it shall be its duty to make such investigation. It shall transmit to the Attorney General a report embodying its findings and recommendations as a result of any such investigations, and the report shall be made public in the discretion of the commission.

(d) Upon the direction of the President or either House of Congress to investigate and report the facts relating to any alleged violations of the antitrust acts by any corporation.

(e) Upon the application of the Attorney General to investigate and make recommendations for the readjustment of the business of any corporation alleged to be violating the antitrust acts in order that the corporation may thereafter maintain its organization, management, and conduct of business in accordance with law.

(f) To make public from time to time such portions of the information obtained by it hereunder, except trade secrets and names of customers, as it shall deem expedient in the public interest; and to make annual and special reports to the Congress and to submit therewith recommendations for additional legislation; and to provide for the publication of its reports and decisions in such form and manner as may be best adapted for public information and use.

(g) From time to time to classify corporations and to make rules and regulations for the purpose of carrying out the provisions of this act.

(h) To investigate, from time to time, trade conditions in and with foreign countries where associations, combinations, or practices of manufacturers, merchants, or traders, or other conditions, may affect the foreign trade of the United States, and to report to Congress thereon, with such recommendations as it deems advisable.

Inquiries were conducted during the year by the economic division in response to eight congressional resolutions. These are listed below:

House Furnishings, Senate Resolution 127, Sixty-seventh Congress, second session, adopted January 4, 1922.

Cotton Industry, Senate Resolution 262, Sixty-seventh Congress, second session, adopted March 29, 1922.

Cotton Industry, Senate Resolution 429, Sixty-seventh Congress, fourth session; adopted January 31, 1923.

Cotton Industry—Cotton Marketing Practices, Senate Resolution No. 252, Sixty-eighth Congress, first session, adopted June 7, 1924.

Flour Milling, Senate Resolution 212, Sixty-seventh Congress, second session, adopted January 18, 1922.

National Wealth, Senate Resolution 451, Sixty-seventh Congress, fourth session, adopted February 28, 1923.

Export Grain, Senate Resolution 133, Sixty-seventh Congress, second session, adopted December 22, 1921.

Bread, Senate Resolution 163, Sixty-eighth Congress, first session, adopted February 16, 1924.

The above list includes two resolutions passed by Congress during the period July 1, 1923, to June 30, 1924. These relate, respectively, to cotton-marketing practices and the flour and bread industry. Copies of the resolutions follow.

Cotton-marketing practices, Senate Resolution 252, Sixty-eighth Congress, first session, adopted June 7, 1924:

Resolved, That for the purpose of providing the Congress with information to serve as a basis for such legislation as may in its opinion be found necessary for the regulation of the shipment or sale of cotton in interstate and foreign commerce, and to investigate and report the facts relating to any alleged violations of the antitrust acts by any corporation, the Federal Trade Commission is authorized and directed to investigate (in pursuance of the powers conferred upon it by subdivision (d) of section 8 of the act entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," approved September 28, 1914, as amended, and in pursuance of any other power conferred upon it by such act) the facts relating to alleged shipments and sales in interstate or foreign commerce by cotton factors or shippers of cotton held by them as security for advances, or otherwise, and to report to the Senate, not later than December 1, 1924, its findings thereon, together with such recommendations as it may deem advisable.

Flour and bread industry, Senate Resolution 163, Sixty-eighth Congress, first session, adopted February 16, 1924:

Resolved, That the Federal Trade Commission be, and it is hereby, directed to investigate the production, distribution, transportation, and sale of flour and bread, including by-products, and report its findings in full to the Senate, showing the costs, prices, and profits at each stage of the process of production and distribution from the time the wheat leaves the farm until the bread is delivered to the consumer; the extent and methods of price fixing, price maintenance, and price discrimination; the developments in the direction of monopoly and concentration of control in the milling and baking industries, and all evidence indicating the existence of agreements, conspiracies, or combinations in restraint of trade.

A memorandum covering all inquiries made by the commission since its organization, at the direction of the President or in response to congressional resolutions and requests of the Attorney General, has been prepared and is found on page 92.

The principal subjects of inquiry for the economic division during the fiscal year ended June 30, 1924, including presidential and congressional, were with respect to the prices of gasoline, cotton trade practices, taxation and tax-exempt income, grain trade costs and profits, conditions in the house-furnishing industries, prices and profits of flour millers, and premium prices and speculation in the anthracite trade.

The inquiry with regard to gasoline prices, which included also the general conditions in the petroleum industry, was made pursuant to a request of the President as a result of a complaint from the Governor of South Dakota. A comprehensive report was prepared

by the commission on this subject, which was referred by the President to the Attorney General. The report was prepared jointly by the chief economist and chief examiner.

In connection with certain Senate resolutions calling for investigation into the methods of trading in cotton and in future contracts for the delivery of cotton, the Commission concluded an extensive inquiry into the subject in the course of which a hearing was held to obtain the opinions of all those directly interested in cotton prices. The commission made in compliance with the mandate of the Senate several important recommendations for the improvement of the present law regulating the cotton trade, which are specifically mentioned below.

As the first part of a broad inquiry into national wealth, income, and taxation called for by a Senate resolution, the commission issued a report on taxation and tax-exempt income which showed the amount of taxation and debt of the Federal, State, and local governments, and the great increases therein, the amount of tax-exempt securities, with an estimate of the amounts held by corporations or persons of large incomes, and, briefly, the relative burdens of taxation.

A general inquiry into the flour-milling industry resulted in a report setting forth the recent developments with respect to prices, costs, and profits, and made certain constructive proposals regarding the elimination by legislation of various odd sizes of flour packages, which cause useless expense to the miller and are confusing and disadvantageous to the consumer.

The full report on costs and profits of grain middlemen was issued during the year, setting forth not only the profits of country and terminal grain elevators but also measuring by statistical methods, for the years investigated, the average spread or difference between the prices received by the farmer and those paid by the grain converter or exporter.

In the further study of the house-furnishing industry, the commission completed and issued a report on household stoves, in which the activity of trade associations were found to have had a considerable influence on the course of prices.

Following a request of the President to examine certain alleged unfair practices in the sale of anthracite at abnormally high prices during the panic-market conditions in the autumn of 1923, this commission continued a plan of calling for current reports from anthracite wholesale dealers regarding their selling prices, which had been initiated shortly before by the United States Coal Commission, just then about to go out of existence. The information, so obtained, was published fortnightly, and the work was continued until the market had practically returned to its usual condition.

As in previous years, all the more important economic inquiries conducted by the commission were initiated directly at the request of the President or of Congress. The economic division was also called upon during the year to render extensive assistance to the United States Coal Commission, through the loan of employees who were expert in the problems of the coal industry. It also loaned three accountants to the Senate Committee investigating the so-called Teapot Dome lease, for the purpose of examining the books of stock-brokers and ascertaining whether there had been any speculation in oil stocks in that connection by persons in public office.

GASOLINE

In compliance with a communication from the President of February 7, 1924, directing an immediate inquiry by the commission into conditions in the petroleum industry, concerning which complaints had been lodged by Gov. W. H. McMaster, of South Dakota, the commission submitted to the President on June 4, 1924, a report on the "Increase in Gasoline Prices in 1924." Governor McMaster's charges, which were embodied in a published telegram to the President under date of February 6, 1924, were (1) an accumulation of large stocks of crude petroleum at very low prices by the Standard Oil interests during the last half of 1923; (2) a "corner" of the crude-petroleum market by these interests in January, 1924; (3) a large increase in refinery prices of gasoline in the period from January 15 to February 6, 1924, brought about as a result of this "corner" and without regard to conditions of supply and demand; and (4) excessive profit-taking in the sale of gasoline.

A proper sifting of these charges involved an examination of the production, stocks, investment, and profits of producers, refiners, and marketers, and a study of competitive conditions in the industry as a whole, with particular reference to the position and activities of the so-called Standard group. The data contained in the report were secured by means of schedules, interviews, and direct examination of the books of the more important companies. Examination of correspondence files of a number of companies, with a view to securing evidence of any price-fixing activities, was made by the legal division.

Upon receipt of the report, on June 4, 1924, the President referred it to the Department of Justice for consideration in connection with an inquiry into related phases of the petroleum industry which was under conduct by that department. Pending action or suggestion by the President or the Attorney General, the commission's report has not been made public.

COTTON TRADE

Under Senate Resolution No. 262, of March, 1922, and again under Senate Resolution No. 429, of January, 1923, the commission was directed to make inquiry into the causes of the depressed prices of cotton, the operations of the cotton exchanges and the trading thereon, and alleged corporate violations of the antitrust laws. In the event that the commission found remedial legislation necessary, it was directed to inform the Senate thereof and to submit such recommendations as it deemed appropriate.

In February, 1923, a preliminary report under Senate Resolution No. 262 was made to the Senate dealing chiefly with the causes of the decline in cotton prices. Following this report the inquiry under the two resolutions was combined.

During the fiscal year closing June 30, 1924, field work at the cotton exchanges was continued for a time, and the marketing of cotton by the grower was also investigated. In view of the wide differences of opinion expressed by various members of the cotton trade and by other persons interested therein, particularly in regard to proposed changes in the system of future trading in cotton, the commission called a conference in November, 1923, at which the exchanges, cotton growers' cooperative associations, merchants, spinners, and others were invited to state their opinions. In April, 1924, the Report on the Cotton Trade was submitted to the Senate.

This report shows that, on the whole, competition for the growers' cotton has been greater in recent years than formerly, two important contributing factors being the increase in the number of southern cotton mills and the increase in cotton growers' cooperative associations. Of the latter, there are over a dozen, nine of which, in 1923, handled in the aggregate about 700,000 bales. In selling cotton competition was also found generally active, but certain letters are presented in the report which strongly indicate that an attempt was made by at least two leading merchants to bring about an agreement or understanding with regard to "selling basis" (the number of points "on" or "off" futures) in quoting prices of cotton to southern mills. One trade criticism of the three largest merchants was to the effect that, by virtue of their large volume of future trading, they could individually manipulate or affect future prices to the disadvantage of the other traders.

A comparison of the operating margins of three nonstaple cooperative associations with those of the merchants reporting for the year 1922-23 is favorable in several respects to the former. This result is not conclusive, however, except for 1922-23, since the comparison is for one year only.

The report discusses in detail the various proposals which have been made for the revision of the grades deliverable on contract. The commission considered that the only one which promised desirable results was the three contiguous grades contract, providing that the delivery on each contract be composed of not more than three adjacent or contiguous grades, which may be any of those now deliverable. The commission did not, however, recommend that this form of contract should be employed unless southern warehouse delivery was also adopted. The commission was of the opinion that the contiguous grade contract would prove to be a valuable adjunct of southern deliveries (1) by offsetting in part the decreased value of the contract arising from the additional option given to the seller of contracts as to place of delivery; (2) by counteracting in part the depressing effect on future prices of deliveries of varying grades on each contract, which tends to be emphasized by the number of delivery points; (3) by making it more practicable for the smaller merchant to take delivery of cotton on future contracts, thus reducing the tendency to run from delivery notices; and (4) by improving, through the increased merchantability of the delivery, the relationship of spots and futures and hence the serviceability of the future market for hedging.

To establish more accurate spot quotations and differences, therefore, the commission recommended (1) that there be substantial uniformity of procedure in determining quotations and differences; (2) that all pertinent price information, such as quantity, price, grade, and staple, be reported for every spot sale and be made the basis of spot quotations and differences by mathematical computations; (3) that this information be verified by a committee of competent classifiers, preferably not engaged in the trade; and (4) that, in view of the disparity in volume of sales among the several markets, the feasibility of taking a "weighted" average of their differences, instead of a "simple" average, for use in the settlement of the future contract should be considered.

The commission thought that some form of southern delivery on New York contracts should be adopted and recommended, therefore, that Congress enact legislation to that end. The strongest argument for a futures market is that it furnishes a safe hedge for cotton merchants, but the New York futures market does not always do this; in fact, it is frequently manipulated, its prices being forced out of line, so that in recent years the New York futures market has failed to perform satisfactorily its chief function.

The commission expressed the opinion that the better features of the New York futures market could be maintained, and much of the ground for criticism eliminated, by the adoption of some system of southern warehouse deliveries on New York contracts. It was

recommended (1) that the number of southern delivery points selected for New York deliveries be few and that, at least for the present, they be only Atlantic and Gulf ports; (2) that the delivery, inspection, and certification of cotton at southern ports be under rigid Government supervision and that deliveries be only from warehouses licensed under the Federal warehouse act; (3) that the tender of cotton on futures at New York be no longer permitted.

The public, the commission believes, is entitled to prompt information regarding the volume of trading in cotton futures and the total open interests, by options, namely, the open trades on the books of members. Such figures should be published currently.

The commission also recommended that consideration be given to a reduction in the size of the contract delivery (100 bales), because a reduction in the size of the delivery would render the contract more merchantable and at the same time would permit closer hedging.

Subsequent to the submittal of this report, namely, on June 6, 1924, another resolution was passed by the Senate calling for a further inquiry into certain alleged practices in the merchandising of cotton, but active work on this inquiry was not initiated during the fiscal year here under report.

TAXATION AND TAX-EXEMPT INCOME

Senate Resolution No. 451, adopted February 28, 1923, directed the commission to make an inquiry into and to compile data concerning the total amount of the chief kinds of wealth in the United States, to ascertain the ownership thereof and the encumbrances thereon, including both public and private indebtedness, to determine for recent years the amount of the annual increase in the wealth of this country in the various lines of economic activity and by different classes of the population; and also to obtain information respecting the amount and ownership of income exempt from Federal taxation and to report upon the various phases of the inquiry as soon as practicable. An amendment to the resolution instructed the commission to ascertain the aggregate taxes levied by States, counties, municipalities, and other taxing bodies for the last fiscal year and for the corresponding period of five years previous.

On account of the comprehensiveness of the subject matter, and in order to expedite the inquiry and to enable the commission to report on certain phases of immediate public interest at an early date, the work was confined at first to the preparation of a report on Taxation and Tax-Exempt Income, which was submitted to Congress on June 6, 1924.

This report shows the amount of tax-exempt securities outstanding in 1922, presents estimates of the amounts of such securities held by corporations, by wealthy individuals, and by all others; gives estimates of the amount of Federal taxes which might be collected, if these securities were taxable; shows the amount of the National, State, and local public debt in 1917 and 1922, together with the purposes for which incurred; gives the aggregate tax burden for Federal, State, and local purposes, and points out where the heaviest tax burdens lie. The salient facts set forth in this report are as follows:

The total amount of tax-free securities outstanding on December 31, 1922, amounted to 32 billion dollars, of which 12 billions were wholly tax free and over 20 billions subject only to surtaxes. Of the 12 billions wholly tax free, about \$2,294,000,000 were Federal bonds and \$8,797,000,000 were State and local securities. It is estimated that business corporations owned \$10,700,000,000 of tax-exempt securities, a small group of wealthy individuals \$4,450,000,000, and all other owners \$16,770,000,000. It is estimated that the tax-exempt interest received during 1922 by individuals whose taxable incomes exceeded \$10,000 amounted to \$176,000,000, of which \$97,000,000 was wholly tax free and over \$78,000,000 conditionally subject to surtax. The maximum possible addition to the Federal income under the 1922 tax rates through the taxation of securities now exempt by law would have been about \$100,000,000.

Between 1912 and 1922 the aggregate debt of the National, State, and local governments increased more than sixfold, and was about 32 billion dollars in 1922. The enormous increase in the national debt was due, almost wholly, to the World War and its immediate consequences. The major portion of the increase in the debts of the State governments was due to highway construction and soldiers' bonus bonds; two-fifths of the total in 1922 being for highways and more than one-eighth for soldiers' bonus bonds. The bonded debt of the cities increased 32 per cent between 1917 and 1922, the chief purposes being to provide facilities for public health, transportation and education.

The aggregate tax burden for National, State, and local purposes was over seven and three-fourths billion dollars in 1922, which was an increase of 127 per cent over 1917. Federal taxes were over \$3,600,000,000 in 1922, and constituted over one-half of the total tax burden, while State taxes were one-ninth of the total.

The aggregate of National, State, and local taxes was heaviest per capita of population among the North Atlantic, Rocky Mountain, and Pacific States, but was most burdensome to agricultural communities, particularly in the large wheat-raising States, which suffered from an unprecedented price decline for their products.

while the general price level remained high. Reflecting the economic distress of the agricultural population, the mercantile and bank failures in Idaho, Montana, the Dakotas, Nebraska, Iowa, and Kansas increased from 1919 to 1924 in much greater proportion than in the country as a whole. Nearly one-fourth of all farmers in Kansas and Iowa, nearly 3 out of every 10 farmers in Nebraska, nearly 4 out of every 10 in South Dakota, over half those in North Dakota, and 5 farmers out of every 8 in Montana have either lost their farms in bankruptcy or foreclosure proceedings, or otherwise, or retained them only through the leniency of their creditors. Plans for a reduction of the present great burdens of taxation should be adjusted especially with a view to this depressed condition of agriculture.

The work on the remaining phases of the inquiry, relating to the total amount of the chief kinds of wealth in the United States, the ownership thereof and the encumbrances thereon, and the amount and distribution of the annual income of the people, is being carried on as rapidly as the limited funds and personnel available will permit.

FLOUR MILLING

Senate Resolution No. 212, adopted January 18, 1922, directed the commission to extend a report on commercial wheat-flour milling. This was submitted to the Senate on May 16, 1924.

Although an effort was made to hamper the inquiry by the Millers' National Federation, the leading association of the flour industry, through the publication of an opinion of its attorneys advising the millers regarding their alleged rights to refuse information and by the recommendation that under no circumstances should representatives of the commission be given access to their books, papers or documents, or be permitted to take any information or copies, this advice was generally disregarded and practically every company requested, including members of the federation, cooperated heartily in sending in the necessary data, or in granting access to their books and in assisting the commission's accountants in the preparation of reports.

This report shows a marked decline in flour costs, resulting from the unprecedented decline in wheat prices since 1920. From January, 1919, to September, 1922, the monthly average quoted prices of flour declined 33 per cent in the Minneapolis market and 43 per cent in the Kansas City market; wheat prices declined 50 per cent in Minneapolis and 55 per cent in Kansas City, while bread prices declined about 2 per cent in Minneapolis, about 15 per cent in Kansas City (due to a price war), 6.6 per cent in Boston, and 2 per cent in New York City. This comparison indicated that the decline

in wheat prices, so disastrous to the farmer, benefited the purchaser of bread very little.

Concentration in the industry is shown by a decrease in the number of merchant wheat-flour mills from 6,900 in 1914 to 4,800 mills in 1921, while the average mill production increased from about 16,000 barrels to 23,000 barrels per annum. In 1921 five large flour-milling companies, operating 49 mills and each producing in excess of 2,000,000 barrels, had an aggregate production of over 25,000,000 barrels, or nearly 23 per cent of the country's total. This concentration was largely the result of the expansion of business on the part of some of the largest flour-milling concerns, although it was partly the result of the merging of different interests.

Extensive data on flour-milling investment and income for the four-year period 1919-1922, were secured from 108 companies, which produced over 40 per cent of the total wheat-flour output of the country, and also for the 10-year period 1913-1922 from 28 identical companies, producing about 29 per cent of the production.

The average rate of net profit on the milling investment for all companies combined for the four-year period 1919-1922 was 10.6 per cent. The annual average rates were as follows: 1919, 13.9 per cent; 1920, 14.9 per cent; 1921, 1.6 per cent, and 1922, 10.9 per cent. The average rate of profit of these companies varied considerably according to the sections of the country in which they were located. The average rate of milling profit for individual companies showed a wide range. Thus in 1920, when the average for all companies was 14.9 per cent, the rate for individual companies ranged from a loss of 51.4 per cent to a profit of 49.2 per cent. On the other hand, in 1921, when the average rate of profit for all companies was only 1.6 per cent, the range was from a loss of 72.6 per cent to a profit of 44.1 per cent.

The milling profit per barrel in the four-year period 1919-1922 showed a wide range for different years and for different milling districts. The average annual milling profit per barrel, on all flour sold for all companies covered, ranged from 6 cents in 1921 to 58 cents in 1920, with an average for the period 1919-1922 of 36 cents per barrel.

The average cost of wheat flour for the 108 companies was \$8.85 per barrel for the four years 1919-1922, the annual average cost ranging from \$10.98 per barrel in 1920 to \$5.97 per barrel in 1922. For the 10-year period the annual average cost of producing a barrel of wheat flour increased rapidly from 1913 to 1920, after which there was a sharp decline. Thus the annual average cost for the 28 identical companies increased from \$3.84 per barrel in 1913 to \$11.09 per barrel in 1920, and then decreased to \$6.03 per barrel in 1922. There was a wide range in the total cost per barrel for indi-

vidual companies. This was largely due to the wide differences in the price of the wheat ground in different sections of the country, depending upon the kind and quality of wheat as well as the locality of growth.

The average cost of the wheat ground in the four-year period was \$9.01 per barrel of flour produced, or 89.1 per cent of the total cost, while in the 10-year period the average for the 28 companies was \$7.25 per barrel, or about 90 per cent. Labor and also general expenses, including depreciation, were each \$0.25 per barrel, or 2.5 per cent of the total cost in the four-year period. Packages constituted the second largest item of cost, being \$0.40 per barrel, or 4 per cent, in 1919-1922.

The absence of Federal laws regulating the sizes of flour and feed packages and the widely varying State laws and customs have resulted in an unnecessary diversity and multiplicity of packages, thus increasing cost of production and distribution. The need of standardizing the sizes of packages by law has long been recognized. The laws of various States requiring that the weight contents shall be marked on each package do not satisfy this need. Forty-one States have such laws for flour packages, and 46 States for commercial feeding stuffs. Weight marking laws afford no relief from the waste involved in a multiplicity of packages, nor do they give full protection against deception of the consumer.

Not less than 34 different sizes of flour packages are now in use in the domestic trade. Reports from 80 representative milling companies show that more than 97 per cent of their combined sales in 1922 were in 12 different sizes of packages, which, in fact, really represented only 6 substantially different sizes of packages, namely, the barrel, half barrel, quarter barrel, eighth barrel, and sixteenth barrel, and the special 140-pound export sack. The close resemblance between 48 and 49 pound sacks, 24 and 24½ pound sacks, and 12 and 12¼ pound sacks, respectively, affords an easy opportunity for deceiving the uninformed or unobservant purchaser.

Aside from the 140-pound sack, which is the customary size for bulk sales and export business, the entire list of flour packages might well be limited to a few standard sizes, each one of which would be so distinctly different in weight as to leave no room for mistake by the purchaser. The proposed "decimal weight law" would accomplish this purpose. It aims at a simplicity and economy, and its adoption would remove the unsatisfactory conditions arising from the present multiplicity of packages. This proposed law appears to have practically the unanimous and unqualified approval of all the factors engaged in the different branches of business which have to do with the production and distribution of flour and feed.

GRAIN TRADE

During the fiscal year there was completed and sent to the printer Volume IV of the commission's report on the grain trade, dealing with the costs, profits, and margins involved in the handling of grain.

Comparisons of the results of the cooperative, independent, and line elevators were found to be favorable to the cooperative type in a number of particulars. The cooperative obtained on the average the largest gross revenue from the sale of grain, while the independent secured the next largest and the line the smallest. The cooperative, in five out of six years compared, handled grain on a narrower margin of gross profit than did the independent, while both the cooperative and independent types averaged lower gross profits per bushel than the line elevators in every one of the five years for which comparisons could be made. Before deducting any patronage dividends paid, and disregarding hedging results, the cooperative gross profit per bushel ranged from about 2 to 7 cents per bushel, whereas that of the line elevators ranged from about $4\frac{1}{4}$ to $13\frac{3}{4}$ cents per bushel. The explanation of the narrower gross profit of the cooperatives, as compared with the other types of elevators, lies apparently in the very much larger volume of grain sold per elevator.

Of the gross spread per bushel between the producer, on the one hand, and the converter, exporter, and feed dealer, on the other hand, transportation cost frequently exceeded the amount received by grain middlemen in the years compared. For the period 1912-13 to 1916-17 the spread between the producer and the converter averaged about 24.71 cents on wheat, 17.22 cents on corn, and 14.38 cents on oats. In 1919-20 the wheat spread averaged 33.20 cents, the oats spread 17.14, and the corn spread 17.80 cents. During the period 1912-13 to 1916-17 the average transportation cost of wheat was 11.08 cents, as compared with 13.63 cents obtained by country and terminal grain middlemen. In 1919-20 the transportation of a bushel of wheat cost, on an average, 14.31 cents, as compared with the middlemen's spread of 18.89 cents.

For the period 1912-13 to 1916-17 the average spreads of country elevators were lower than terminal middlemen spreads on wheat, corn, and oats, but in 1919-20 the reverse obtained. The spread for terminal middlemen practically always involves more than one handling of the grain, and for certain small portions may involve as high as five or six. On the average a bushel of grain is handled more than one and one-half times by terminal middlemen.

The commission recommended a wider and more general development of the patronage dividend or truly cooperative principle, by

country elevators, as a means of narrowing the country elevator spread. It was also pointed out in the report that some direct saving to the producer in the spread of terminal middlemen might be obtained through the development of cooperative commission houses and terminal elevators, provided that a sufficient volume of business could be assured them. It suggested, further, that cooperation in the terminal market branches of the grain trade should make it possible to effect savings in the number of middlemen handlings, and also in the transportation cost, by shipping grain to its ultimate destination by the shortest routes and the most direct channels.

HOUSE FURNISHINGS

During the fiscal year the commission continued its inquiry into the house-furnishings industries, which was undertaken pursuant to Senate Resolution No. 127, adopted January 4, 1922, directing the commission to inquire into factory, wholesale, and retail price conditions in the principal branches of the house-furnishings goods industries, and particularly to ascertain the organization and interrelation of corporations and firms engaged therein and whether there were unfair practices or methods of competition or restraints of trade, and to report as the various phases of the inquiry should be completed.

The first report, which was published January 17, 1923, and covered ordinary wooden household furniture, was referred to in the last annual report.

The second report, on household stoves, was published October 1, 1923, as Volume II of the report on House Furnishings Industries. It deals with investment, costs, prices and profits of the stove industry, competitive conditions, and trade association activities.

Financial reports for 1920 and 1921 were secured from 78 stove manufacturers and price data for 1920, 1921, and 1922 were obtained from 75 manufacturers. Selling price and purchase cost quotations from 15 wholesalers and 260 retailers were dealt with in the report. The report shows that manufacturers' prices of stoves increased about 176 per cent above pre-war level, declined in 1921 and the first half of 1922, but after a slight recovery in the latter part of 1922 were, in December of that year, still 120 per cent above pre-war level. The report further states that—

Retailers' selling prices of stoves during 1920 to 1922 generally followed their reported purchase prices, but did not rise in as great proportion as manufacturers' prices in 1920 nor fall so much subsequently. In October, 1922, they were about 11 per cent below the peak price of 1920.

The profits of the 78 stove manufacturers covered by this inquiry averaged 16.9 per cent of the investment, including borrowed funds, in 1920, but only 1.1 per cent in 1921, their sales having been reduced two-fifths in volume without a

corresponding decline in costs. There was, however, a very wide variation in the profits of individual companies, which during 1920 ranged from a loss of 14.7 per cent to a profit of 67 per cent, and in 1921 from a loss of 32.4 per cent to a profit of 45.8 per cent. Within these extremes the individual rates of profit were rather evenly scattered.

The mark-up in the cash selling prices of stoves for 260 retail dealers from whom information was received ranged from 30 to 54 per cent, based on cost, and averaged 42.8 per cent and 39.6 per cent in 1920 and 1921, respectively.

For the study of competitive conditions, schedule returns were obtained showing the organization and ownership of 183 manufacturers and a considerable mass of letters, minutes of meetings, bulletins, and other documents were secured by agents of the commission through interviews and examination of the records and files of trade associations. The industry is organized into various local associations which coordinate their activities through a national association. These associations perform various useful and lawful services, but some of their activities are evidently in restraint of trade. The report points out that—

Prices are frequently discussed at association meetings, and thereby informal understandings appear to be arrived at among competitors regarding a common price policy. Such price discussions are made apparent by the correspondence among the officers and members; but references thereto were either omitted from the minutes of proceedings or camouflaged by the use of such substitute terms as "cost comparison," "conditions in the industry," and the like.

Uniformity of price policy is sought also by exchanging price lists and by notification of price changes, sometimes directly, but often through the agency of association secretaries. Stove manufacturers who make prices lower than those regarded as acceptable by the associations are criticized therefor and often urged to increase their prices.

The price advances during 1920 came in distinct general movements that immediately followed association meetings. Although price reductions during 1921 and 1922 could not be entirely prevented, that they were delayed and minimized by association activities is evidenced by the fact that these reductions also came in distinct general movements that followed immediately after association meetings and closely agreed in amount with the consensus of opinion there expressed. Notwithstanding these activities, the depressed conditions of business in 1921 prevented many manufacturers from making any profit in that year.

Of the consumer's dollar spent for stoves in 1920, 23.8 cents went for raw materials, 35.8 cents for other manufacturing costs, 7.5 cents for manufacturers' profit, 2.9 cents for freight, and 30 cents for retailers' expenses and profit; in 1921, 23.4 cents went for raw materials, 43.8 cents for other manufacturing costs, 1 cent for manufacturers' profit, 3.4 cents for freight, and 28.4 cents for retailers' expenses and profit.

The third volume under the resolution covering conditions in a number of industries making household labor-saving devices and kitchen equipment was nearly completed during the fiscal year.

This volume will include data on vacuum cleaners, washing machines, sewing machines, refrigerators, cooking utensils, and various other articles, and consideration will also be given to the problems of wholesale and retail distribution.

ANTHRACITE

Early in August, 1923, it was apparent that the threat of a strike of the anthracite miners, at the expiration of their contract on August 31, was creating a buyers' panic throughout the country, and it was also apparent that some operators and wholesalers were taking advantage of this panic to increase their prices unduly. In view of this condition the United States Coal Commission adopted a plan of requiring wholesalers to report, weekly, their purchases and sales of anthracite similar to the plan used by the Federal Trade Commission in the spring of 1917. Shortly before the Coal Commission ceased to function, on September 22, 1923, the President requested the Federal Trade Commission to examine the findings of fact of the Coal Commission, in order to ascertain whether the passing of anthracite through numerous hands before it reaches the consumer was really a device by which the price was unduly raised, and, perhaps, constituted an unfair trade practice.

In complying with this request the Federal Trade Commission decided also to continue the collection of the price data begun by the Coal Commission and to issue bulletins thereon, believing that publicity would tend to counteract the consumers' panic caused by dread of a shortage in production which did not in fact exist. These data were promptly compiled and published every fortnight, and the reports were continued until the market situation settled down in the latter part of January, when "premium anthracite" became a comparatively unimportant factor in the wholesale markets. The commission also requested the anthracite operators to report monthly, for the months of October, November, and December, 1923, the mine prices at which sales in interstate commerce were made, and the quantity sold at each price. A report summarizing the results of this work was prepared, but it was not issued until after the close of the fiscal year.

BREAD

By Senate Resolution No. 163 the commission was directed to investigate the production, distribution, transportation, and sale of flour and bread; to ascertain costs, prices, and profits at each stage of the process of production and distribution from the time the wheat leaves the farm until the bread is delivered to the consumer; and to inquire into developments in the direction of monopoly and

concentration of control in the milling and baking industries, together with evidences indicating violation of antitrust laws. On March 7, 1924, the commission advised the Senate that it was then without the funds necessary to comply with the resolution and could not do so without incurring a deficiency. For this reason but little was done on the inquiry until the funds of the new fiscal year were available.

COOPERATION WITH THE LEGAL DIVISION

As in previous years, the services of the specially trained personnel of the economic division was frequently in request from the legal division. Among the cases in which important assistance of a professional economic or accounting character was called for were those relating to the Pittsburgh basing point for steel prices, the Bethlehem-Midvale-Lackawanna steel merger, the "premium prices" for anthracite, and the costs of corn products. In certain other cases considerable amounts of clerical service were rendered.

AID TO OTHER BRANCHES OF THE GOVERNMENT

The most important instances of formal aid rendered to other branches of the Government were as follows:

Senate Committee on Public Lands.—In connection with an inquiry into the leasing of certain petroleum reserves, especially the so-called Teapot Dome, the Senate Committee on Public Lands called upon the commission for accounting assistance in order to discover whether there had been any speculation in the shares of certain petroleum companies by officials of the United States Government. For this purpose the Commission detailed three accountants for a period of several weeks, who examined the books of a large number of stock brokers, and reported their findings directly to the Senate Committee.

United States Coal Commission.—As mentioned in the last annual report, a large number of experts and clerks, familiar with the problems of the coal industry, were loaned to the United States Coal Commission to assist in its investigations. The Coal Commission utilized their experience to conduct an inquiry into costs, prices, and profits of coal mine operators in which the information called for was substantially the same as that called for by the inquiry of the Federal Trade Commission in 1920, but which was opposed by the National Coal Association as beyond the power of Congress to authorize. Further experience and consideration, however, led the National Coal Association to change its attitude, and it not only freely responded to the inquiry of the Coal Commission, but also recommended what the Federal Trade Commission has consistently advocated and attempted to put into practice, namely, current re-

ports to a governmental agency, for prompt publication, of basic data regarding prices, costs, and profits in the coal industry. The Coal Commission also made this proposition the basic feature of its recommendations.

INQUIRIES MADE BY THE FEDERAL TRADE COMMISSION AT THE REQUEST OF THE CONGRESS, THE PRESIDENT, OR THE ATTORNEY GENERAL, 1915-1924, INCLUSIVE

Fertilizer—*S. Res. 487, 62d Cong., 3d sess.*—The inquiry made in response to this resolution, which was begun by the Bureau of Corporations, disclosed the extensive use of bogus independent fertilizer companies used for purposes of competition, but through conferences with the principal manufacturers agreements were reached for the abolition of such unfair competition.

Pipe lines—*S. Res. 109, 63d Cong., 1st sess.*—The report on this inquiry, which was begun by the Bureau of Corporations, showed the dominating importance of the pipe lines in the great Mid-Continent oil fields, and that the pipe-line companies, which were controlled by a few large oil companies, not only charged excessively high rates for transporting petroleum but also evaded their duties as common carriers by insisting on unreasonably large shipments, to the detriment of the numerous small producers.

Gasoline—*S. Res. 457, 63d Cong., 2d sess.*—Acting under this resolution, the Commission published a report on Gasoline Prices in 1915, which discussed the high prices of petroleum products and showed how the various Standard Oil companies had continued to maintain a division of marketing territory among themselves. The commission suggested several plans for restoring effective competition in the oil industry.

Sisal hemp—*S. Res. 170, 64th Cong., 1st sess.*—In response to a resolution calling on the commission to assist the Senate Committee on Agriculture and Forestry by advising how certain quantities of hemp, promised by the Mexican Sisal Trust, might be fairly distributed among American manufacturers of binder twine, the commission made an inquiry and submitted a plan of distribution, which was followed.

Anthracite—*S. Res. 217, 64th Cong., 1st sess.*—The rapid advance in the prices of anthracite at the mines, compared with costs, and the extortionate overcharging of anthracite jobbers and dealers were disclosed in this inquiry, and a system of current reports called for regarding selling prices which substantially checked further exploitation of the consumer.

Bituminous coal—*H. Res. 352, 64th Cong., 1st sess.*—While this resolution aimed originally at the investigation of the alleged depressed condition of the bituminous coal industry, the inquiry had not been long under way before there was a great advance in prices;

and the commission in its report made in June, 1917, suggested various measures for insuring a more adequate supply at reasonable prices. War-time price control was soon after established.

Newsprint paper—*S. Res. 177, 64th Cong., 1st sess.*—The newsprint-paper inquiry resulted from an unexpected advance in prices. The report of the commission showed that these prices were very profitable, and that they had been partly the result of certain newsprint association activities which were in restraint of trade. Through the good offices of the commission distribution of a considerable quantity of paper to needy publishers was obtained at comparatively reasonable prices. The Department of Justice instituted proceedings in consequence of which the association was abolished and certain newsprint manufacturers indicted.

Book paper—*S. Res. 269, 64th Cong., 1st sess.*—The inquiry into book paper, which was made shortly after the newsprint inquiry, had a similar origin and disclosed similar restraints of trade, resulting in proceedings by the commission against the manufacturers involved therein to prevent the enhancement of prices. The commission also recommended legislative action to repress restraints of trade by such associations.

Flags—*S. Res. 35, 65th Cong., 1st sess.*—A sudden increase in the prices of American flags led to this inquiry, which disclosed that while a trade association had been active to fix prices shortly before, the price advance had been so great on account of the war demand that further price fixing had been superfluous.

Meat-packing profit limitations—*S. Res. 177, 66th Cong., 1st sess.*—The inquiry into meat-packing profit limitations had as its object the study of the system of war-time control established by the Food Administration; certain changes were recommended by the commission, including more complete control of the business and lower maximum profits.

Farm implements—*S. Res. 223, 65th Cong., 2d sess.*—The high prices of farm implements led to this inquiry, which disclosed that there were numerous trade combinations to advance prices and that the consent decree for the dissolution of the International Harvester Co. was absurdly inadequate. The commission recommended a revision of the decree and the Department of Justice is now proceeding against the company to that end.

Milk—*S. Res. 431, 65th Cong., 3d sess.*—This inquiry into the fairness of milk prices to producers and of canned milk to consumers, and whether they were affected by fraudulent or discriminatory practices, resulted in a report showing marked concentration of control and of questionable practices in the buying and handling of cream by butter manufacturers, many of which have since been recognized as unfair by the trade itself.

Cotton yarn—*H. Res. 451, 66th Cong., 2d sess.*—The House called on the commission in 1920 to investigate the very high prices of combed cotton yarn, and the inquiry disclosed that there had been an extraordinary advance in prices and that the profits in the industry had been extraordinarily large for several years.

Pacific coast petroleum—*S. Res. 138, 66th Cong., 1st sess.*—On the Pacific coast the great increase in the prices of gasoline, fuel oil, and other petroleum products led to this inquiry, which disclosed that several of the companies were fixing prices.

Petroleum prices—*H. Res. 501, 66th Cong., 2d sess.*—This was another inquiry into high prices of petroleum products. The report of the commission pointed out that the Standard companies practically made the prices in their several marketing territories and avoided competition among themselves. Various constructive proposals to conserve the oil supply were made by the commission.

Commercial feeds—*S. Res. 140, 66th Cong., 1st sess.*—The inquiry into commercial feeds, which aimed to discover whether there were any combinations or restraints of trade in that business, was diligently pursued, and though it disclosed some association activities in restraint of trade, it found no important violation of the antitrust laws. Certain minor abuses in the trade were eliminated.

Sugar supply—*H. Res. 150, 66th Cong., 1st sess.*—The extraordinary advance in the price of sugar in 1919 led to this inquiry, and the price advance was found to be due chiefly to speculation and hoarding in sugar. Certain recommendations were made for legislative action to cure these abuses.

Southern livestock prices—*S. Res. 133, 66th Cong., 1st sess.*—The low prices of southern livestock, which gave rise to the belief that discrimination was being practiced, were investigated, but the alleged discrimination did not appear to exist.

Shoe costs and prices—*H. Res. 217, 66th Cong., 1st sess.*—The high prices of shoes after the war led to this inquiry, and the investigation of the commission attributed them chiefly to supply and demand conditions. The economic waste due to the excessive variety of styles and rapid changes therein was emphasized.

Tobacco prices—*H. Res. 533, 66th Cong., 2d sess.*—The House called upon the commission to make inquiry into the prices of leaf tobacco and the selling prices of tobacco products. The unfavorable relationship between them was reported to be due in part to the purchasing methods of the large tobacco companies. As a result of this inquiry the commission recommended that the decree dissolving the old Tobacco Trust should be amended and alleged violations of the existing decree prosecuted. Better systems of grading tobacco were also recommended by the commission.

Tobacco prices—*S. Res. 129, 67th Cong., 1st sess.*—This inquiry was also directed to the low prices of leaf tobacco and the high prices of tobacco products. It disclosed that in the sale of tobacco several of the largest companies were engaged in numerous conspiracies with their customers—the jobbers—to enhance the selling prices of tobacco. Proceedings against these unlawful acts were instituted by the commission.

Export grain—*S. Res. 133, 67th Cong., 2d sess.*—The low prices of export wheat gave rise to this inquiry, which developed extensive and harmful speculative manipulation of prices on the grain exchanges and conspiracies among country grain buyers to agree on maximum prices for grain purchased. Legislation for a stricter supervision of grain exchanges was recommended, together with certain changes in their rules. The commission also recommended governmental action looking to additional storage facilities for grain uncontrolled by grain dealers.

House furnishings—*S. Res. 127, 67th Cong., 2d sess.*—The alleged failure of house furnishings goods to decline in price since 1920 as much as most other commodities, alleged to be due to restraints of trade, was inquired into by the commission, and two reports were issued up to June 30, 1924. The first report dealt with wooden household furniture and the second with household stoves. These reports showed that extensive conspiracies existed, under the form of cost accounting devices and meetings, to inflate the prices of such goods. The commission announced at the close of the fiscal year that a report on Kitchen Utensils and Household Appliances was approaching completion, and this report has since then been sent to the Senate.

Flour milling—*S. Res. 212, 67th Cong., 2d sess.*—A report on the inquiry into the flour-milling industry was sent to the Senate in May, 1924. It showed the costs of production of wheat flour and the profits of the flour-milling companies in recent years. It also discussed the disadvantages to the miller and consumer arising from an excessive and confusing variety in the sizes of flour packages.

Cotton trade—*S. Res. 262, 67th Cong., 2d sess.*—The inquiry into the cotton trade originated by this resolution was covered in part by a preliminary report issued in February, 1923, which discussed especially the causes of the decline in cotton prices in 1922 and left the consideration of the other topics indicated to be treated in connection with an additional and related inquiry called for by the Senate at that time.

Fertilizer—*S. Res. 307, 67th Cong., 2d Sess.*—The fertilizer inquiry developed that active competition generally prevailed in the industry in this country, though in foreign countries combinations

control some of the most important raw materials. The commission recommended constructive legislation to improve agricultural credits and more extended cooperative action in the purchase of fertilizer by farmers.

Foreign ownership in petroleum industry—*S. Res. 311, 67th Cong., 2d sess.*—The acquisition of extensive oil interests in this country by the Dutch-Shell concern, an international trust, and discrimination practiced against Americans in foreign countries provoked this inquiry which developed the situation in a manner to promote greater reciprocity on the part of foreign governments.

Cotton trade—*S. Res. 429, 67th Cong., 4th sess.*—The inquiry in response to this second resolution on the cotton trade was combined with the one mentioned above and resulted in a report which was sent to the Senate in April, 1924. This report recommended that Congress enact legislation providing for some form of southern warehouse delivery on New York contracts, and as a part of such a delivery system the adoption of a future contract which would require that not more than three adjacent or contiguous grades should be delivered on any single contract. The commission also recommended a revision of the system of making quotations and differences at the various spot markets and the abolition of deliveries on futures at New York. The special warehouse committee of the New York Cotton Exchange on June 28, 1924, adopted the recommendations of the commission with reference to the southern delivery on New York contracts, including the contiguous grade contract.

National wealth—*S. Res. 451, 67th Cong., 4th sess.*—This resolution called for a comprehensive inquiry into national wealth and income and specially indicated for investigation the problem of tax exemption and the increase in Federal and State taxes in recent years. As a first report on this general subject the commission in June, 1924, sent to the Senate a discussion of taxation and tax exemption which among other things comprised an elaborate estimate of the amount and ownership of tax exempt securities by different classes of corporations and persons, and examined the significance of these facts with respect to the great increase in the burdens of taxation.

Calcium arsenate—*S. Res. 417, 67th Cong., 4th sess.*—The high prices of calcium arsenate, a poison used to destroy the cotton boll weevil, led to this inquiry from which it appeared that the cause was due to the sudden increase in demand rather than to any restraints of trade.

Radio—*H. Res. 548, 67th Cong., 4th sess.*—The patents in the radio industry, which the commission was called upon to investigate by this resolution, were found to be controlled by a combination of a few great companies, as also commercial communications

by radio. The commission since issuing the report has instituted proceedings against these companies. These facts are of vital importance in considering what legislation shall be now provided for the regulation of the radio industry.

Bread—*S. Res. 163, 68th Cong., 1st sess.*—The bread inquiry was begun just at the close of the fiscal year, insufficient funds delaying its initiation for several months.

Cotton merchandising practices—*S. Res. 252, 68th Cong., 1st sess.*—Certain objectionable practices prevailed among cotton factors or shippers, a concrete illustration of which would be the delivery of consigned cotton by a factor or owner on his future contract where the consignees had not given permission to use it in that manner. This inquiry was initiated just before the close of the fiscal year 1923-24.

Food inquiry—*Direction of the President, February 7, 1917.*—The President's food inquiry, undertaken with a special appropriation of Congress, resulted in a very important series of reports on the meat-packing industry, which had as their immediate result the enactment of the packers and stockyards act for the control of this industry and the prosecution of the big packers for a conspiracy in restraint of trade by the Department of Justice. Another branch of the food inquiry developed important facts regarding the grain trade which were of assistance to Congress in regulating the grain exchanges and to the courts in interpreting the law. Reports were also issued on the flour-milling and food-canning industries.

War-time cost finding—*Direction of the President, July 25, 1917.*—The numerous cost investigations made by the Federal Trade Commission during the war into the coal, steel, lumber, petroleum, cotton-textile, locomotive, leather, canned-foods, and copper industries, not to mention scores of other important industries, on the basis of which prices were fixed by the Food Administration, the War Industries Board and the purchasing departments like the Army, Navy, Shipping Board, and Railroad Administration, were all done under the President's special direction, and it is estimated that they helped to save the country many billions of dollars by checking unjustifiable price advances. Subsequent to the war a number of reports dealing with costs and profits were published based on these war-time inquiries. Among these may be mentioned reports on coal, copper, lumber, and canned foods.

Wheat prices—*Direction of the President, October 12, 1920.*—The extraordinary decline of wheat prices in the summer and autumn of 1920 led to a direction of the President to inquire into the reasons for the decline. The chief reasons were found in abnormal market conditions, including certain arbitrary methods pursued by the grain-purchasing departments of foreign governments.

Gasoline—*Direction of the President, February 7, 1924.*—At the direction of the President, the commission undertook an inquiry into a sharp advance in gasoline prices. The report on this inquiry was referred by the President to the Attorney General and has not yet been published.

Raisin combination—*September 30, 1919*—*Request of the Attorney General.*—A combination of raisin growers in California was referred to the commission for examination by the Attorney General pursuant to the Federal Trade Commission act, and the commission found that it was not only organized in restraint of trade but was being conducted in a manner that was threatening financial disaster to the growers. The commission recommended a change of organization to conform to the law, which was adopted by the raisin growers.

Lumber industry—*Request of the Attorney General, September 4, 1919.*—At the request of the Attorney General the commission examined certain alleged trade combinations in the lumber industry. Violations of the antitrust acts were disclosed with respect to the Southern Pine Association, West Coast Lumbermen's Association, Western Pine Manufacturers' Association, Northern Hemlock & Hardwood Manufacturers' Association, Western Red Cedar Association, Lifetime Post Association, and Western Red Cedarmen's Information Bureau. The Department of Justice has already initiated proceedings, in consequence of the commission's recommendations, with respect to the Southern Pine Association and the Western Pine Manufacturers' Association.

Other inquiries by the commission.—Under its organic act the commission is also authorized to initiate inquiries, but these are not listed herein. Because of its special importance as leading to legislation by Congress, mention may be made of the inquiry into Cooperation in American Export Trade, on which a report was made in 1916. The Webb-Pomerene Act regarding export associations was a direct result of this inquiry.

EXPORT TRADE DIVISION

The export trade division handles work of the commission along the lines of foreign trade, under the export trade act (Webb-Pomerehne law) and under section 6 (h) of the Federal Trade Commission act. These acts are reproduced herein as exhibits.

ASSOCIATIONS UNDER THE EXPORT TRADE ACT

During the past year 50 associations have filed documents and reports with the Federal Trade Commission in connection with the export trade act. Among these were two newly organized associations, the American Spring Manufacturers Export Association, of Pittsburgh, Pa., and the Producers Linter Export Co., of New Orleans, La. The complete list follows:

American Corn Products Export Association, 17 Battery Place, New York City.

American Locomotive Sales Corporation, 30 Church Street, New York City.

American Milk Products Corporation, 71 Hudson Street, New York City.

American Paper Exports (Inc.), 136 Liberty Street, New York City.

American Pitch Pine Export Co., 522 Audubon Building, New Orleans, La.

American Provisions Export Co., 112 West Adams Street, Chicago, Ill.

American Soda Pulp Export Association, 200 Fifth Avenue, New York City.

American Spring Manufacturers' Export Association, 921 Farmers Bank Building, Pittsburgh, Pa.

American Surface Abrasives Export Corporation, 82 Beaver Street, New York City.

American Textile Machinery Corporation, 24 Federal Street, Boston, Mass.

American Tire Manufacturers' Export Association, 7 Dey Street, New York City.

American Webbing Manufacturers' Export Corporation, 395 Broadway, New York City.

Associated Button Exporters of America (Inc.), 1182 Broadway, New York City.

Automatic Pearl Button Export Co. (Inc.), 301 Mulberry Avenue, Muscatine, Iowa.

Cement Export Co. (Inc.), c/o Charles F. Conn, president, Pennsylvania Building, Philadelphia, Pa.

Chalmers (Harvey) & Son Export Corporation, rear 31 East Main Street, Amsterdam, N. Y.

Copper Export Association (Inc.), 25 Broadway, New York City.

Davenport Pearl Button Export Co., 1231 West Fifth Street, Davenport, Iowa.

- Delta Export Lumber Corporation, 1339 Bank of Commerce Building, Memphis, Tenn.
- Douglas Fir Exploitation & Export Co., 244 California Street, San Francisco, Calif.
- Export Clothes Pin Association of America (Inc.), 280 Madison Avenue, New York City.
- Export Trade Association (Inc.), 99 John Street, New York City.
- Florida Hard Rock Phosphate Export Association, Savannah Bank & Trust Building, Savannah, Ga.
- Florida Pebble Phosphate Export Association, Produce Exchange Building, New York City.
- General Alcohol Export Corporation, 60 Wall Street, New York City.
- Goodyear Tire & Rubber Export Co., The, 1144 East Market Street, Akron, Ohio.
- Grain Products Export Association, The, 17 Battery Place, New York City.
- Grand Rapids Furniture Export Association, 213 Lyon Street, NW., Grand Rapids, Mich.
- Gulf Pitch Pine Export Association, 1212 Whitney Central Building, New Orleans, La.
- Hawkeye Pearl Button Export Co., 601 East Second Street, Muscatine, Iowa.
- Locomotive Export Association, 30 Church Street, New York City.
- McKee Button Export Co., 1000 Hershey Avenue, Muscatine, Iowa.
- Naval Stores Export Corporation, The, 1425 Whitney Central Annex Building, New Orleans, La.
- Pan American Trading Co., 89 Broad Street, New York City.
- Phosphate Export Association, Produce Exchange Building, New York City.
- Pioneer Pearl Button Export Corporation, 257 Mansion Street, Poughkeepsie, N. Y.
- Pipe Fittings & Valve Export Association, Branford, Conn.
- Producers Linter Export Co., The, 316 Baronne Street, New Orleans, La.
- Redwood Export Co., 260 California Street, San Francisco, Calif.
- Rubber Export Association, The, 1790 Broadway, New York City.
- Sugar Export Corporation, 113 Wall Street, New York City.
- Sulphur Export Corporation, 33 Rector Street, New York City.
- United Paint & Varnish Export Co., 601 Canal Road, Cleveland, Ohio.
- United States Alkali Export Association (Inc.), 25 Pine Street, New York City.
- United States Button Export Co., 701 East Third Street, Muscatine, Iowa.
- United States Handle Export Co., The, Piqua, Ohio.
- United States Maize Products Export Association, 332 South La Salle, Street, Chicago, Ill.
- Walnut Export Sales Co. (Inc.), 616 South Michigan Avenue, Chicago, Ill.
- Walworth International Co., 88 Pearl Street, Boston, Mass.
- Wisconsin Cannery Export Association, Manitowoc, Wis.

These organizations represent more than 500 producers, scattered throughout the United States, exporting both raw materials and manufactured goods to all parts of the world.

Sales for 1923 showed an appreciable increase over the previous year, especially in trade to the Orient and South America. Exporters of foodstuffs report an increase of 60 per cent and in lumber about 55 per cent. Even business with European buyers shows improvement, although the chief obstacles reported as to operation

during the past year were low rates on foreign exchange and the depressed financial conditions in Europe. One association states that "The market has been slow to recover, but business is now increasing appreciably each year." Aggressive effort of foreign competitors was one of the features of the past year's work.

Exports during 1923 by export trade associations totaled about \$153,500,000. Approximately 823,000 tons of copper, cement, and phosphate rock, valued at \$68,500,000, were exported. Lumber (about 680,000,000 feet hard and soft woods), naval stores, and wood products to the amount of about \$26,000,000 were exported. Soda pulp, alkali, and sulphur totaled 385,000 tons, valued at \$9,660,000. Locomotives, textile machinery, steel tires and wheels, pipe fittings, and valves totaled \$3,200,000. Foodstuffs, including milk, meat, sugar, and grain products, totaled 590,000,000 pounds, to the value of \$32,400,000. Manufactured products such as paper, abrasives, rubber goods, webbing, furniture, alcohol, paint and varnish, buttons, clothespins, and general merchandise amounted to \$13,800,000.

PROVISIONS OF THE EXPORT TRADE ACT

This act, commonly known as the Webb-Pomerene law, is entitled "An act to promote export trade," and was approved in April, 1918. Under its terms exemption from the antitrust laws is granted to an association composed of two or more persons, partnerships, or corporations entered into for the sole purpose of and solely engaged in export trade. Export trade is further defined in the act as "trade of commerce in goods, wares, or merchandise exported, or in the course of being exported from the United States or any territory thereof to any foreign nation," and does not include the production, manufacture, or selling for consumption or resale within the United States. Such exemption is granted provided the association is not in restraint of trade within the United States, is not in restraint of the export trade of any domestic competitor of the association, and does not enter into any agreement or conspiracy or do any act which artificially or intentionally enhances or depresses prices or substantially lessens competition within the United States.

The act also extends the jurisdiction of the Commission under the Federal Trade Commission act to unfair methods of competition used in export trade against competitors engaged in export trade, even though the acts constituting such methods are done without the territorial jurisdiction of the United States.

Associations organized under the act are required to file papers with the Federal Trade Commission. Forms used for reports may be obtained upon application to the commission.¹

¹ See Exhibits 3 and 4.

PROVISIONS OF SECTION 6 (H) OF THE FEDERAL TRADE COMMISSION ACT

Under this portion of the law the Commission is directed to investigate trade conditions in and with foreign countries where associations, combinations, or practices of manufacturers, merchants, or traders, or other conditions, may affect the foreign trade of the United States.

A recent study was made of cooperative marketing systems in Great Britain and European countries, which have shown marked development since the World War.

Unfair competition and antitrust laws were passed in Argentina, Austria and Germany during the past year. Combinations in foreign countries have shown considerable activity, especially along the line of foreign trade.

At a recent general meeting of the French Committee of Action for Export Trade emphasis was placed on the necessity for forming associations of industrials for common action abroad, and for the formation of syndicates to quote uniform prices, delivery and terms of payment to foreign buyers. There are now five export groups representing the principal French iron and steel producers; and during the past year a *comptoir* was organized by industrials engaged in the machinery, metal, and construction industry for the purpose of centralizing export dealings, creating and developing foreign trade.

In September, 1923, chinaware manufacturers of Czechoslovakia organized for the purpose of establishing uniform prices, especially in export trade. The organization is expected to follow the lines of the steel and coal combines organized in 1921 and 1922, respectively, for the purpose of establishing foreign markets and fixing export prices.

Within the last few months an important combine of tin plate makers has been formed in Wales, representing more than half of the industry. The object of the movement is said to be to eliminate to a degree the cost of middlemen, to bring the trade under more severe control as regards export prices and the handling of orders, and especially to give solidarity to the trade through more thorough organization of the selling agency side and the cultivation of foreign markets. In the same country three combines of collieries have recently been formed, and it is expected that these will exploit the coal industry by expansion of export trade.

In New Zealand a bill called the "dairy produce control act" has been introduced in Parliament, which provides for a central council composed of 30 representatives selected annually by the dairy companies and proprietary factory owners. The council in turn shall appoint a dairy producers' board for the handling, pooling, storage, shipment, sale, and disposal of New Zealand dairy

produce, all such produce exported from the country to be sold and disposed of as the board may direct. The organization of the board would be similar to the meat producers' board which has been in operation for nearly three years.

FOREIGN TRADE COMPLAINTS INVESTIGATED

In the interest of the foreign trade of the United States, investigation is made of complaints filed by foreign concerns against American exporters and importers. Such inquiries fall generally under section 6 (h) of the Federal Trade Commission act, but occasionally features of unfair competition develop and the case is turned over to the legal division for proceedings under section 5 of the act or section 4 of the export trade act.

A total of 95 foreign trade complaints have been handled during the past year, some of which are still pending. Ordinarily such cases are reported by the complainant to the American consulate in the foreign district. Many of them are later transmitted to the commission by other governmental departments such as the Department of State and the Department of Commerce, and occasionally directly by the complainant.

The commission's investigations along this line serve to bring out the facts of the cases reported, and these facts are transmitted to the foreign complainant via the Government department through which the complaint was received. Although complaints are filed against a very small percentage of the exporters of this country, the need of such inquiries is urged by the American consular officers "from the standpoint of the promotion of American trade and the maintenance of American reputation in local business circles." If the inquiry results in a better understanding between the parties in dispute, it is, in the words of one consul, "a real benefit to the prestige of American commerce and an effective and desirable proof of this consulate's contribution to business."

The most common complaint is that of shipment of defective or inferior products, goods not up to sample or not in accordance with specifications of the order. To illustrate: Leather shipped to Spain and to Greece, and found to be defective; flour shipped to Egypt, found to be below sample and not suitable for the purpose for which it was ordered; radio equipment and hardware to South Africa, found to be of inferior quality; batteries and mirrors to India, of poor quality and arriving in broken condition due to bad packing; defective tires and tubes shipped to Java; unsatisfactory coal shipped to Italy and to the Argentine; shoes exported to Denmark and found to be below sample. In some cases, complaint was made that orders had been placed and part payment made by the foreign buyer, but

the goods had not been shipped, or money returned. Small "fly by night" concerns go out of business without completing their orders or refunding remittances. Occasionally goods are damaged en route and insurance difficulties arise. Sometimes there is delay in transmitting documents and demurrage results in loss. Rescinded contracts and delays in filling orders, taken in connection with market fluctuations, may be of very serious import to the foreign buyer. Short weight, overcharge, balance due on sales commissions, and incomplete delivery are among the complaints received. Almost all of these cases involve sales by American exporters, although occasionally an inquiry is made concerning an important transaction; i. e., hemp shipped from India, lambskins from Persia, or prism glasses from Germany, for which payment was not made by the American purchaser.

In some cases investigation shows that the complaint is not justified. If this is true, the facts established by the commission's inquiry may serve to clarify the situation and to forestall unjustified criticism and propaganda adverse to American business in foreign countries. Declining market in the foreign district may lead the consignee to refuse to accept the goods or to make allegations of unsatisfactory delivery, in the hope of recovering on his loss. Machinery misused by unaccustomed workmen (such as steel pile drivers shipped to China and operated by unskilled employees) proves unsatisfactory sometimes through no fault of the manufacturer or exporter. In one case motor cars shipped to Switzerland were transported in open box cars from Antwerp to Berne, and no attempt was made to have the machines inspected by Lloyd's agents until five months after the consignment arrived in Berne. It was therefore unfair to place the responsibility of damage upon the consignor, who was able to prove that the machines were in good condition when they left the factory, and under the terms of the sales contract the seller was not liable for any loss or damage after the cars left the factory.

REPRESENTATION ON THE LIAISON COMMITTEE

A representative of the commission attends the weekly conference of the Interdepartmental Liaison Committee. Members of this committee represent all offices and departments of the Government that are concerned with foreign trade. Weekly discussion and reports serve to keep each office informed, to promote cooperation, and to prevent duplication of effort in the Government's foreign-trade activities.

TRADING WITH THE ENEMY ACT

The work delegated to the commission under Executive order of October 12, 1917, based on section 10 of the act of October 6, 1917, which was an act to "define, regulate, and punish trading with the enemy, and for other purposes," was completed during the fiscal year, and under date of January 28, 1924, the commission's final report in connection therewith was submitted to the President.

The commission maintains its supervision over the outstanding licenses which have been issued, and it is anticipated that there will be more or less frequent demands for data during the prosecution of numerous suits now pending in the various courts. Correspondence from licensees and other interested parties continues to be received but the amount of active work remaining to be done is negligible.

All of which is respectfully submitted.

HUSTON THOMPSON, *Chairman.*
VERNON W. VAN FLEET,
NELSON B. GASKILL,
JOHN F. NUGENT,
CHARLES W. HUNT,
Commissioners.

EXHIBITS

EXHIBITS

EXHIBIT 1

FEDERAL TRADE COMMISSION ACT

AN ACT To create a Federal Trade Commission, to define its powers and duties, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That a commission is hereby created and established, to be known as the Federal Trade Commission (hereinafter referred to as the commission), which shall be composed of five commissioners, who shall be appointed by the President, by and with the advice and consent of the Senate. Not more than three of the commissioners shall be members of the same political party. The first commissioners appointed shall continue in office for terms of three, four, five, six, and seven years, respectively, from the date of the taking effect of this act, the term of each to be designated by the President, but their successors shall be appointed for terms of seven years, except that any person chosen to fill a vacancy shall be appointed only for the unexpired term of the commissioner whom he shall succeed. The commission shall choose a chairman from its own membership. No commissioner shall engage in any other business, vocation, or employment. Any commissioner may be removed by the President for inefficiency, neglect of duty, or malfeasance in office. A vacancy in the commission shall not impair the right of the remaining commissioners to exercise all the powers of the commission.

The commission shall have an official seal, which shall be judicially noticed.

Sec. 2. That each commissioner shall receive a salary of \$10,000 a year, payable in the same manner as the salaries of the judges of the courts of the United States. The commission shall appoint a secretary, who shall receive a salary of \$5,000 a year, payable in like manner, and it shall have authority to employ and fix the compensation of such attorneys, special experts, examiners, clerks, and other employees as it may from time to time find necessary for the proper performance of its duties and as may be from time to time appropriated for by Congress.

With the exception of the secretary, a clerk to each commissioner, the attorneys, and such special experts and examiners as the commission may from time to time find necessary for the conduct of its work, all employees of the commission shall be a part of the classified civil service, and shall enter the service under such rules and regulations as may be prescribed by the commission and by the Civil Service Commission.

All of the expenses of the commission, including all necessary expenses for transportation incurred by the commissioners or by their employees under their orders in making any investigation, or upon official business in any other places than in the City of Washington, shall be allowed and paid on the presentation of itemized vouchers therefor approved by the commission.

Until otherwise provided by law, the commission may rent suitable offices for its use.

The Auditor for the State and other Departments shall receive and examine all accounts of expenditures of the commission.

Sec. 3. That upon the organization of the commission and election of its chairman, the Bureau of Corporations and the offices of the commissioner and deputy commissioner of corporations shall cease to exist; and all pending investigations and proceedings of the Bureau of Corporations shall be continued by the commission.

All clerks and employees of the said bureau shall be transferred to and become clerks and employees of the commission at their present grades and salaries. All records, papers, and property of the said bureau shall become records, papers, and property of the commission, and all unexpended funds and appropriations for the use and maintenance of the said bureau, including any allotment already made to it by the Secretary of Commerce from the contingent appropriation for the Department of Commerce for the fiscal year nineteen hundred and fifteen, or from the department printing fund for the fiscal year nineteen hundred and fifteen, shall become funds and appropriations available to be expended by the commission in the exercise of the powers, authority, and duties conferred on it by this act.

The principal office of the commission shall be in the city of Washington, but it may meet and exercise all its powers at any other place. The commission may, by one or more of its members, or by such examiners as it may designate, prosecute any inquiry necessary to its duties in any part of the United States.

Sec. 4. That the words defined in this section shall have the following meaning when found in this act, to wit:

"Commerce" means commerce among the several States or with foreign nations, or in any Territory of the United States or in the District of Columbia, or between any such Territory and another, or between any such Territory and any State or foreign nation, or between the District of Columbia and any State or Territory or foreign nation.

"Corporation" means any company or association, incorporated or unincorporated, which is organized to carry on business for profit and has shares of capital or capital stock, and any company or association, incorporated or unincorporated, without shares of capital or capital stock, except partnerships, which is organized to carry on business for its own profit or that of its members.

"Documentary evidence" means all documents, papers, and correspondence in existence at and after the passage of this act.

"Acts to regulate commerce" means the act entitled "An act to regulate commerce," approved February fourteenth, eighteen hundred and eighty-seven, and all acts amendatory thereof and supplementary thereto.

"Antitrust acts" means the act entitled "An act to protect trade and commerce against unlawful restraints and monopolies," approved July second, eighteen hundred and ninety; also the sections seventy-three to seventy-seven, inclusive, of an act entitled "An act to reduce taxation, to provide revenue for the Government, and for other purposes," approved August twenty-seventh, eighteen hundred and ninety-four; and also the act entitled "An act to amend sections seventy-three and seventy-six of the act of August twenty-seventh, eighteen hundred and ninety-four entitled "An act to reduce taxation, to provide revenue for the Government, and for other purposes," approved February twelfth, nineteen hundred and thirteen.

Sec. 5. That unfair methods of competition in commerce are hereby declared unlawful.

The commission is hereby empowered and directed to prevent persons, partnerships or corporations, except banks and common carriers subject to the acts to regulate commerce, from using unfair methods of competition in commerce.

Whenever the commission shall have reason to believe that any such person, partnership, or corporation has been or is using any unfair method of competition in commerce, and if it shall appear to the commission that a proceeding by it in respect thereof would be to the interest of the public, it shall issue and serve upon such person, partnership, or corporation a complaint stating its charges in that respect and containing a notice of a hearing upon a day and at a place therein fixed at least thirty days after the service of said complaint. The person, partnership, or corporation so complained of shall have the right to appear at the place and time so fixed and show cause why an order should not be entered by the commission requiring such person, partnership, or corporation to cease and desist from the violation of the law so charged in said complaint. Any person, partnership, or corporation may make application, and upon good cause shown may be allowed by the commission, to intervene and appear in said proceeding by counsel or in person. The testimony in any such proceeding shall be reduced to writing and filed in the office of the commission. If upon such hearing the commission shall be of the opinion that the method of competition in question is prohibited by this act it shall make a report in writing in which it shall state its findings as to the facts and shall issue and cause to be served on such person, partnership, or corporation an order requiring such

person, partnership, or corporation to cease and desist from using such method of competition. Until a transcript of the record in such hearing shall have been filed in a circuit court of appeals of the United States, as hereinafter provided, the commission may at any time, upon such notice and in such manner as it shall deem proper, modify or set aside, in whole or in part, any report or any order made or issued by it under this section.

If such person, partnership, or corporation fails or neglects to obey such order of the commission while the same is in effect, the commission may apply to the circuit court of appeals of the United States, within any circuit where the method of competition in question was used or where such person, partnership, or corporation resides or carries on business, for the enforcement of its order, and shall certify and file with its application a transcript of the entire record in the proceeding, including all the testimony taken and the report and order of the commission. Upon such filing of the application and transcript the court shall cause notice thereof to be served upon such person, partnership, or corporation and thereupon shall have jurisdiction of the proceeding and of the question determined therein, and shall have power to make and enter upon the pleadings, testimony, and proceedings set forth in such transcript a decree affirming, modifying, or setting aside the order of the commission. The findings of the commission as to the facts, if supported by testimony, shall be conclusive. If either party shall apply to the court for leave to adduce additional evidence, and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the proceeding before the commission, the court may order such additional evidence to be taken before the commission and to be adduced upon the hearing in such manner and upon such terms and conditions as to the court may seem proper. The commission may modify its findings as to the facts, or make new findings, by reason of the additional evidence so taken, and it shall file such modified or new findings, which, if supported by testimony, shall be conclusive, and its recommendation, if any, for the modification or setting aside of its original order, with the return of such additional evidence. The judgment and decree of the court shall be final, except that the same shall be subject to review by the Supreme Court upon certiorari as provided in section two hundred and forty of the Judicial Code.

Any party required by such order of the commission to cease and desist from using such method of competition may obtain a review of such order in said circuit court of appeals by filing in the court a written petition praying that the order of the commission be set aside. A copy of such petition shall be forthwith served upon the commission, and thereupon the commission forthwith shall certify and file in the court a transcript of the record as hereinbefore provided. Upon the filing of the transcript the court shall have the same jurisdiction to affirm, set aside, or modify the order of the commission as in the case of an application by the commission for the enforcement of its order, and the findings of the commission as to the facts, if supported by testimony, shall in like manner be conclusive.

The jurisdiction of the circuit court of appeals of the United States to enforce, set aside, or modify orders of the commission shall be exclusive.

Such proceeding in the circuit court of appeals shall be given precedence over other cases pending therein, and shall be in every way expedited. No order of the commission or judgment of the court to enforce the same shall in any wise relieve or absolve any person, partnership, or corporation from any liability under the antitrust acts.

Complaints, orders, and other processes of the commission under this section may be served by anyone duly authorized by the commission, either (a) by delivering a copy thereof to the person to be served, or to a member of the partnership to be served, or to the president, secretary, or other executive officer or a director of the corporation to be served; or (b) by leaving a copy thereof at the principal office or place of business of such person, partnership, or corporation; or (c) by registering and mailing a copy thereof addressed to such person, partnership, or corporation at his or its principal office or place of business. The verified return by the person so serving said complaint, order, or other process setting forth the manner of said service shall be proof of the same, and the return post-office receipt for said complaint, order, or other process registered and mailed as aforesaid shall be proof of the service of the same.

Sec. 6. That the commission shall also have power—

(a) To gather and compile information concerning, and to investigate from time to time the organization, business, conduct, practices, and management of

any corporation engaged in commerce, excepting banks and common carriers subject to the act to regulate commerce, and its relation to other corporations and to individuals, associations, and partnerships.

(b) To require, by general or special orders corporations engaged in commerce, excepting banks, and common carriers subject to the act to regulate commerce, or any class of them, or any of them, respectively, to file with the commission in such form as the commission may prescribe annual or special, or both annual and special, reports or answers in writing to specific questions, furnishing to the commission such information as it may require as to the organization, business, conduct, practices, management, and relation to other corporations, partnerships, and individuals of the respective corporations filing such reports or answers in writing. Such reports and answers shall be made under oath, or otherwise, as the commission may prescribe, and shall be filed with the commission within such reasonable period as the commission may prescribe, unless additional time be granted in any case by the commission.

(c) Whenever a final decree has been entered against any defendant corporation in any suit brought by the United States to prevent and restrain a violation of the antitrust acts, to make investigation, upon its own initiative, of the manner in which the decree has been or is being carried out, and upon the application of the Attorney General, it shall be its duty to make such investigation. It shall transmit to the Attorney General a report embodying its findings and recommendations as a result of any such investigation, and the report shall be made public in the discretion of the commission.

(d) Upon the direction of the President or either House of Congress to investigate and report the facts relating to any alleged violations of the antitrust acts by any corporation.

(e) Upon the application of the Attorney General to investigate and make recommendations for the readjustment of the business of any corporation alleged to be violating the antitrust acts in order that the corporation may thereafter maintain its organization, management, and conduct of business in accordance with law.

(f) To make public from time to time such portions of the information obtained by it hereunder, except trade secrets and names of customers, as it shall deem expedient in the public interest; and to make annual and special reports to the Congress and to submit therewith recommendations for additional legislation; and to provide for the publication of its reports and decisions in such form and manner as may be best adapted for public information and use.

(g) From time to time to classify corporations and to make rules and regulations for the purpose of carrying out the provisions of this act.

(h) To investigate, from time to time, trade conditions in and with foreign countries where associations, combinations, or practices of manufacturers, merchants, or traders, or other conditions, may affect the foreign trade of the United States, and to report to Congress thereon, with such recommendations as it deems advisable.

Sec. 7. That in any suit in equity brought by or under the direction of the Attorney General, as provided in the antitrust acts, the court may, upon the conclusion of the testimony therein, if it shall be then of opinion that the complainant is entitled to relief, refer said suit to the commission, as a master in chancery, to ascertain and report an appropriate form of decree therein. The commission shall proceed upon such notice to the parties and under such rules of procedure as the court may prescribe, and upon the coming in of such report such exceptions may be filed and such proceedings had in relation thereto as upon the report of a master in other equity causes, but the court may adopt or reject such report, in whole or in part, and enter such decree as to the nature of the case may in its judgment require.

Sec. 8. That the several departments and bureaus of the Government when directed by the President shall furnish the commission, upon its request, all records, papers, and information in their possession relating to any corporation subject to any of the provisions of this act, and shall detail from time to time such officials and employees to the commission as he may direct.

Sec. 9. That for the purpose of this act the commission, or its duly authorized agent or agents, shall at all reasonable times have access to, for the purposes of examination, and the right to copy any documentary evidence of any corporation being investigated or proceeded against; and the commission shall have power to require by subpoena the attendance and testimony of witnesses and the production of all such documentary evidence relating to any matter under investigation. Any member of the commission may sign subpoenas, and

members and examiners of the commission may administer oaths and affirmations, examine witnesses, and receive evidence.

Such attendance of witnesses, and the production of such documentary evidence, may be required from any place in the United States, at any designated place of hearing. And in case of disobedience to a subpoena the commission may invoke the aid of any court of the United States in requiring the attendance and testimony of witnesses and the production of documentary evidence.

Any of the district courts of the United States within the jurisdiction of which such inquiry is carried on may, in case of contumacy or refusal to obey a subpoena issued to any corporation or other person, issue an order requiring such corporation or other person to appear before the commission, or to produce documentary evidence if so ordered, or to give evidence touching the matter in question; and any failure to obey such order of the court may be punished by such court as a contempt thereof.

Upon the application of the Attorney General of the United States, at the request of the commission, the district courts of the United States shall have jurisdiction to issue writs of mandamus commanding any person or corporation to comply with the provisions of this act or any order of the commission made in pursuance thereof.

The commission may order testimony to be taken by deposition in any proceeding or investigation pending under this act at any stage of such proceeding or investigation. Such depositions may be taken before any person designated by the commission and having power to administer oaths. Such testimony may be reduced to writing by the person taking the deposition or under his direction, and shall then be subscribed by the deponent. Any person may be compelled to appear and depose and to produce documentary evidence in the same manner as witnesses may be compelled to appear and testify and produce documentary evidence before the commission as hereinbefore provided.

Witnesses summoned before the commission shall be paid the same fees and mileage that are paid witnesses in the courts of the United States, and witnesses whose depositions are taken and the persons taking the same shall severally be entitled to the same fees as are paid for like services in the courts of the United States.

No person shall be excused from attending and testifying or from producing documentary evidence before the commission or in obedience to the subpoena of the commission on the ground or for the reason that the testimony or evidence, documentary or otherwise, required of him may tend to criminate him or subject him to a penalty or forfeiture. But no natural person shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he may testify, or produce evidence, documentary or otherwise, before the commission in obedience to a subpoena issued by it: *Provided*, That no natural person so testifying shall be exempt from prosecution and punishment for perjury committed in so testifying.

SEC. 10. That any person who shall neglect or refuse to attend and testify, or to answer any lawful inquiry, or to produce documentary evidence, if in his power to do so, in obedience to the subpoena or lawful requirement of the commission, shall be guilty of an offense and upon conviction thereof by a court of competent jurisdiction shall be punished by a fine of not less than \$1,000 nor more than \$5,000, or by imprisonment for not more than one year, or by both such fine and imprisonment.

Any person who shall willfully make, or cause to be made, any false entry or statement of fact in any report required to be made under this act, or who shall willfully make, or cause to be made, any false entry in any account, record, or memorandum kept by any corporation subject to this act, or who shall willfully neglect or fail to make, or to cause to be made, full, true, and correct entries in such accounts, records, or memoranda, of all facts and transactions appertaining to the business of such corporation, or who shall willfully remove out of the jurisdiction of the United States, or willfully mutilate, alter, or by any other means falsify any documentary evidence of such corporation, or who shall willfully refuse to submit to the commission or to any of its authorized agents, for the purpose of inspection and taking copies, any documentary evidence of such corporation in his possession or within his control, shall be deemed guilty of an offense against the United States, and shall be subject, upon conviction in any court of the United States of competent jurisdiction, to a fine of not less than \$1,000 nor more than \$5,000, or to imprisonment for a term of not more than three years, or to both such fine and imprisonment.

If any corporation required by this act to file any annual or special report shall fail so to do within the time fixed by the commission for filing the same.

and such failure shall continue for thirty days after notice of such default, the corporation shall forfeit to the United States the sum of \$100 for each and every day of the continuance of such failure, which forfeiture shall be payable into the Treasury of the United States, and shall be recoverable in a civil suit in the name of the United States brought in the district where the corporation has its principal office or in any district in which it shall do business. It shall be the duty of the various district attorneys, under the direction of the Attorney General of the United States, to prosecute for the recovery of forfeitures. The costs and expenses of such prosecution shall be paid out of the appropriation for the expenses of the courts of the United States.

Any officer or employee of the commission who shall make public any information obtained by the commission without its authority, unless directed by a court, shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be punished by a fine not exceeding \$5,000, or by imprisonment not exceeding one year, or by fine and imprisonment, in the discretion of the court.

Sec. 11. Nothing contained in this act shall be construed to prevent or interfere with the enforcement of the provisions of the antitrust acts or the acts to regulate commerce, nor shall anything contained in the act be construed to alter, modify, or repeal the said antitrust acts or the acts to regulate commerce or any part or parts thereof.

Approved, September 26, 1914.

EXHIBIT 2

PROVISIONS OF THE CLAYTON ACT WHICH CONCERN THE FEDERAL TRADE COMMISSION

"Commerce," as used here'n, means trade or commerce among the several States and with foreign nations, or between the District of Columbia or any Territory of the United States and any State, Territory, or foreign nation, or between any insular possessions or other places under the jurisdiction of the United States, or between any such possession or place and any State or Territory of the United States or the District of Columbia or any foreign nation, or within the District of Columbia or any Territory or any insular possession or other place under the jurisdiction of the United States: *Provided*, That nothing in this act contained shall apply to the Philippine Islands.

The word "person" or "persons" wherever used in this act shall be deemed to include corporations and associations existing under or authorized by the laws of either the United States, the laws of any of the Territories, the laws of any State, or the laws of any foreign country.

Sec. 2. That it shall be unlawful for any person engaged in commerce, in the course of such commerce, either directly or indirectly, to discriminate in price between different purchasers of commodities, which commodities are sold for use, consumption, or resale within the United States or any Territory thereof or the District of Columbia, or any insular possession or other place under the jurisdiction of the United States, where the effect of such discrimination may be to substantially lessen competition or tend to create a monopoly in any line of commerce: *Provided*, That nothing here'n contained shall prevent discrimination in price between purchasers of commodities on account of differences in the grade, quality, or quantity of the commodity sold, or that makes only due allowance for difference in the cost of selling or transportation, or discrimination in price in the same or different communities made in good faith to meet competition: *And provided further*, That nothing herein contained shall prevent persons engaged in selling goods, wares, or merchandise in commerce from selecting their own customers in bona fide transactions and not in restraint of trade.

Sec. 3. That it shall be unlawful for any person engaged in commerce, in the course of such commerce, to lease or make a sale or contract for sale of goods, wares, merchandise, machinery, supplies, or other commodities, whether patented or unpatented, for use, consumption, or resale within the United States or any Territory thereof or the District of Columbia or any insular possession or other place under the jurisdiction of the United States, or fix a price charged therefor, or discount from, or rebate upon, such price, on the condition, agreement, or understanding that the lessee or purchaser thereof shall not use or deal in the goods, wares, merchandise, machinery, supplies, or other commodities of a competitor or competitors of the lessor or seller, where the effect of such lease, sale, or contract for sale or such condition, agreement, or understanding may be to substantially lessen competition or tend to create a monopoly in any line of commerce.

Sec. 7. That no corporation engaged in commerce shall acquire, directly or indirectly, the whole or any part of the stock or other share capital of another corporation engaged also in commerce, where the effect of such acquisition may be to substantially lessen competition between the corporation whose stock is so acquired and the corporation making the acquisition, or to restrain such commerce in any section or community, or tend to create a monopoly of any line of commerce.

No corporation shall acquire, directly or indirectly, the whole or any part of the stock or other share capital of two or more corporations engaged in commerce where the effect of such acquisition, or the use of such stock by the

voting or granting of proxies or otherwise, may be to substantially lessen competition between such corporations, or any of them, whose stock or other share capital is so acquired, or to restrain such commerce in any section or community, or tend to create a monopoly of any line of commerce.

This section shall not apply to corporations purchasing such stock solely for investment and not using the same by voting or otherwise to bring about, or in attempting to bring about, the substantial lessening of competition. Nor shall anything contained in this section prevent a corporation engaged in commerce from causing the formation of subsidiary corporations for the actual carrying on of their immediate lawful business, or the natural and legitimate branches or extensions thereof, or from owning and holding all or a part of the stock of such subsidiary corporations, when the effect of such formation is not to substantially lessen competition.

Nor shall anything herein contained be construed to prohibit any common carrier subject to the laws to regulate commerce from aiding in the construction of branches or short lines so located as to become feeders to the main line of the company so aiding in such construction or from acquiring or owning all or any part of the stock of such branch lines, nor to prevent any such common carrier from acquiring and owning all or any part of the stock of a branch or short line constructed by an independent company where there is no substantial competition between the company owning the branch line so constructed and the company owning the main line acquiring the property or an interest therein, nor to prevent such common carrier from extending any of its lines through the medium of the acquisition of stock or otherwise of any other such common carrier where there is no substantial competition between the company extending its lines and the company whose stock, property, or an interest therein is so acquired.

Nothing contained in this section shall be held to affect or impair any right heretofore legally acquired: *Provided*, That nothing in this section shall be held or construed to authorize or make lawful anything heretofore prohibited or made illegal by the antitrust laws, nor to exempt any person from the penal provisions thereof or the civil remedies therein provided.

Sec. 8. That from and after two years from the date of the approval of this act no person at the same time shall be a director in any two or more corporations, any one of which has capital, surplus, and undivided profits aggregating more than \$1,000,000, engaged in whole or in part in commerce, other than banks, banking associations, trust companies, and common carriers subject to the act to regulate commerce, approved February fourth, eighteen hundred and eighty-seven, if such corporations are or shall have been theretofore, by virtue of their business and location of operation, competitors so that the elimination of competition by agreement between them would constitute a violation of any of the provisions of any of the antitrust laws. The eligibility of a director under the foregoing provisions shall be determined by the aggregate amount of the capital, surplus, and undivided profits, exclusive of dividends declared but not paid to stockholders, at the end of the fiscal year of said corporation next preceding the election of directors, and when a director has been elected in accordance with the provisions of this act it shall be lawful for him to continue as such for one year thereafter.

When any person elected or chosen as a director or officer or selected as an employee of any bank or other corporation subject to the provisions of this act is eligible at the time of his election or selection to act for such bank or other corporation in such capacity, his eligibility to act in such capacity shall not be affected, and he shall not become or be deemed amenable to any of the provisions hereof by reason of any change in the affairs of such bank or other corporation from whatsoever cause, whether specifically excepted by any of the provisions hereof or not, until the expiration of one year from the date of his election or employment.

Sec. 11. That authority to enforce compliance with sections two, three, seven, and eight of this act by the persons respectively subject thereto is hereby vested: In the Interstate Commerce Commission where applicable to common carriers, in the Federal Reserve Board where applicable to banks, banking associations, and trust companies, and in the Federal Trade Commission where applicable to all other character of commerce, to be exercised as follows:

Whenever the commission or board vested with jurisdiction thereof shall have reason to believe that any person is violating or has violated any of the provisions of sections two, three, seven, and eight of this act, it shall issue and serve upon such person a complaint stating its charges in that respect, and

containing a notice of a hearing upon a day and at a place therein fixed at least thirty days after the service of said complaint. The person so complained of shall have the right to appear at the place and time so fixed and show cause why an order should not be entered by the commission or board requiring such person to cease and desist from the violation of the law so charged in said complaint. Any person may make application, and upon good cause shown may be allowed by the commission or board to intervene and appear in said proceeding by counsel or in person. The testimony in any such proceeding shall be reduced to writing and filed in the office of the commission or board. If upon such hearing the commission or board, as the case may be, shall be of the opinion that any of the provisions of said sections have been or are being violated, it shall make a report in writing in which it shall state its findings as to the facts, and shall issue and cause to be served on such person an order requiring such person to cease and desist from such violations, and divest itself of the stock held or rid itself of the directors chosen contrary to the provisions of sections seven and eight of this act, if any there be, in the manner and within the time fixed by said order. Until a transcript of the record in such hearing shall have been filed in a circuit court of appeals of the United States, as hereinafter provided, the commission or board may at any time, upon such notice and in such manner as it shall deem proper, modify or set aside in whole or in part, any report or any order made or issued by it under this section.

If such person fails or neglects to obey such order of the commission or board while the same is in effect, the commission or board may apply to the circuit court of appeals of the United States, within any circuit where the violation complained of was or is being committed or where such person resides or carries on business, for the enforcement of its order, and shall certify and file with its application a transcript of the entire record in the proceeding, including all the testimony taken and the report and order of the commission or board. Upon such filing of the application and transcript the court shall cause notice thereof to be served upon such person and thereupon shall have jurisdiction of the proceeding and of the question determined therein, and shall have power to make and enter upon the pleadings, testimony, and proceedings set forth in such manuscript a decree affirming, modifying, or setting aside the order of the commission or board. The findings of the commission or board as to the facts, if supported by testimony, shall be conclusive. If either party shall apply to the court for leave to adduce additional evidence and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the proceeding before the commission or board, the court may order such additional evidence to be taken before the commission or board and to be adduced upon the hearing in such manner and upon such terms and conditions as to the court may seem proper. The commission or board may modify its findings as to the facts, or make new findings, by reason of the additional evidence so taken, and it shall file such modified or new findings, which, if supported by testimony, shall be conclusive, and its recommendation, if any, for the modification or setting aside of its original order, with the return of such additional evidence. The judgment and decree of the court shall be final, except that the same shall be subject to review by the Supreme Court upon certiorari as provided in section two hundred and forty of the Judicial Code.

Any party required by such order of the commission or board to cease and desist from a violation charged may obtain a review of such order in said circuit court of appeals by filing in the court a written petition praying that the order of the commission or board be set aside. A copy of such petition shall be forthwith served upon the commission or board, and thereupon the commission or board forthwith shall certify and file in the court a transcript of the record as hereinbefore provided. Upon the filing of the transcript the court shall have the same jurisdiction to affirm, set aside, or modify the order of the commission or board as in the case of an application by the commission or board for the enforcement of its order, and the findings of the commission or board as to the facts, if supported by testimony, shall in like manner be conclusive.

The jurisdiction of the circuit court of appeals of the United States to enforce, set aside, or modify orders of the commission or board shall be exclusive.

Such proceedings in the circuit court of appeals shall be given precedence over other cases pending therein, and shall be in every way expedited. No order of the commission or board or the judgment of the court to enforce the same shall in anywise relieve or absolve any person from any liability under the antitrust acts.

Complaints, orders, and other processes of the commission or board under this section may be served by anyone duly authorized by the commission or board, either (a) by delivering a copy thereof to the person to be served, or to a member of the partnership to be served, or to the president, secretary, or other executive officer or a director of the corporation to be served; or (b) by leaving a copy thereof at the principal office or place of business of such person; or (c) by registering and mailing a copy thereof addressed to such person at his principal office or place of business. The verified return by the person so serving said complaint, order, or other process setting forth the manner of said service shall be proof of the same, and the return post-office receipt for said complaint, order, or other process registered and mailed as aforesaid shall be proof of the service of the same.

Approved, October 15, 1914.

EXHIBIT 3

EXPORT TRADE ACT

AN ACT To promote export trade, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the words "export trade" wherever used in this act mean solely trade or commerce in goods, wares, or merchandise exported, or in the course of being exported from the United States or any Territory thereof to any foreign nation; but the words "export trade" shall not be deemed to include the production, manufacture, or selling for consumption or for resale, within the United States or any Territory thereof, of such goods, wares, or merchandise, or any act in the course of such production, manufacture, or selling for consumption or for sale.

That the words "trade within the United States" wherever used in this act mean trade or commerce among the several States or in any Territory of the United States, or in the District of Columbia, or between any such Territory and another, or between any such Territory or Territories and any State or States or the District of Columbia, or between the District of Columbia and any State or States.

That the word "association" wherever used in this act means any corporation or combination, by contract or otherwise, of two or more persons, partnerships, or corporations.

Sec. 2. That nothing contained in the act entitled "An act to protect trade and commerce against unlawful restraints and monopolies," approved July second, eighteen hundred and ninety, shall be construed as declaring to be illegal an association entered into for the sole purpose of engaging in export trade and actually engaged solely in such export trade, or an agreement made or act done in the course of export trade by such association, provided such association, agreement, or act is not in restraint of trade within the United States, and is not in restraint of the export trade of any domestic competitor of such association: *And provided further,* That such association does not, either in the United States or elsewhere, enter into any agreement, understanding, or conspiracy, or do any act which artificially or intentionally enhances or depresses prices within the United States or commodities of the class exported by such association, or which substantially lessens competition within the United States or otherwise restrains trade therein.

Sec. 3. That nothing contained in section seven of the act entitled "An act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," approved October fifteenth, nineteen hundred and fourteen, shall be construed to forbid the acquisition or ownership by any corporation (of the whole or any part of the stock or other capital of any corporation) organized solely for the purpose of engaging in export trade, and actually engaged solely in such export trade unless the effect of such acquisition or ownership may be to restrain or substantially lessen competition within the United States.

Sec. 4. That the prohibition against "unfair methods of competition" and the remedies provided for enforcing said prohibition contained in the act entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," approved September twenty-sixth, nineteen hundred and fourteen, shall be construed as extending to unfair methods of competition used in export trade against competitors engaged in export trade, even though the acts constituting such unfair methods are done without the territorial jurisdiction of the United States.

Sec. 5. That every association now engaged solely in export trade, within sixty days after the passage of this act, and every association entered into hereafter which engages solely in export trade, within thirty days after its

creation, shall file with the Federal Trade Commission a verified written statement setting forth the location of its offices or places of business and the names and addresses of all its officers and of all of its stockholders or members, and if a corporation, a copy of its certificate or articles of incorporation and by-laws, and if unincorporated, a copy of its articles or contract of association, and on the first day of January of each year thereafter it shall make a like statement of the location of its offices or places of business and the names and addresses of all its officers and of all its stockholders or members and of all amendments to and changes in its articles or certificate of incorporation or in its articles or contract of association. It shall also furnish to the commission such information as the commission may require as to its organization, business, conduct, practices, management, and relation to other associations, corporations, partnerships, and individuals. Any association which shall fail so to do shall not have the benefit of the provisions of section two and section three of this act, and it shall also forfeit to the United States the sum of \$100 for each and every day of the continuance of such failure, which forfeiture shall be payable into the Treasury of the United States, and shall be recoverable in a civil suit in the name of the United States brought in the district where the association has its principal office, or in any district in which it shall do business. It shall be the duty of the various district attorneys, under the direction of the Attorney General of the United States, to prosecute for the recovery of the forfeiture. The costs and expenses of such prosecution shall be paid out of the appropriation for the expenses of the courts of the United States.

Whenever the Federal Trade Commission shall have reason to believe that an association or any agreement made or act done by such association is in restraint of trade within the United States or in restraint of the export trade of any domestic competitor of such association either in the United States or elsewhere has entered into any agreement, understanding, or conspiracy, or done any act which artificially or intentionally enhances or depresses prices within the United States of commodities of the class exported by such association, or which substantially lessens competition within the United States or otherwise restrains trade therein, it shall summon such association, its officers, and agents to appear before it, and thereafter conduct an investigation into the alleged violations of law. Upon investigation, if it shall conclude that the law has been violated, it may make to such association recommendations for the readjustment of its business, in order that it may thereafter maintain its organization and management and conduct its business in accordance with law. If such association fails to comply with the recommendations of the Federal Trade Commission, said commission shall refer its findings and recommendations to the Attorney General of the United States for such action thereon as he may deem proper.

For the purpose of enforcing these provisions the Federal Trade Commission shall have all the powers, so far as applicable, given it in "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

Approved, April 10, 1918.

EXHIBIT 4

RULES OF PRACTICE BEFORE THE FEDERAL TRADE COMMISSION

I. SESSIONS

The principal office of the commission at Washington, D. C., is open each business day from 9 a. m. to 4.30 p. m. The commission may meet and exercise all its powers at any other place, and may, by one or more of its members or by such examiners as it may designate, prosecute any inquiry necessary to its duties in any part of the United States.

Sessions of the commission for hearing contested proceedings will be held as ordered by the commission.

Sessions of the commission for the purpose of making orders and for the transaction of other business, unless otherwise ordered, will be held at the office of the commission at Washington, D. C., on each business day at 10.30 a. m. Three members of the commission shall constitute a quorum for the transaction of business.

All orders of the commission shall be signed by the secretary.

II. COMPLAINTS

Any person, partnership, corporation, or association may apply to the commission to institute a proceeding in respect to any violation of law over which the commission has jurisdiction.

Such application shall be in writing, signed by or in behalf of the applicant, and shall contain a short and simple statement of the facts constituting the alleged violation of law and the name and address of the applicant and of the party complained of.

The commission shall investigate the matters complained of in such application, and if upon investigation the commission shall have reason to believe that there is a violation of law over which the commission has jurisdiction, the commission shall issue and serve upon the party complained of a complaint stating its charges and containing a notice of a hearing upon a day and at a place therein fixed, at least 40 days after the service of said complaint.

III. ANSWERS

Within 30 days from the service of the complaint, unless such time be extended by order of the commission, the defendant shall file with the commission an answer to the complaint. Such answer shall contain a short and simple statement of the facts which constitute the ground of defense. It shall specifically admit or deny or explain each of the facts alleged in the complaint, unless the defendant is without knowledge, in which case he shall so state, such statement operating as a denial. Answers in typewriting must be on one side of the paper only, on paper not more than 8½ inches wide and not more than 11 inches long and weighing not less than 16 pounds to the ream, folio base, 17 by 22 inches, with left-hand margin not less than 1½ inches wide, or they may be printed in 10 or 12 point type on good unglazed paper 8 inches wide by 10½ inches long, with inside margins not less than 1 inch wide. Three copies of such answers must be furnished.

IV. SERVICE

Complaints, orders, and other processes of the commission may be served by anyone duly authorized by the commission, either (a) by delivering a copy thereof to the person to be served or to a member of the partnership to be

served, or to the president, secretary, or other executive officer, or a director of the corporation or association to be served; or (b) by leaving a copy thereof at the principal office or place of business of such person, partnership, corporation, or association; or (c) by registering and mailing a copy thereof addressed to such person, partnership, corporation, or association at his or its principal office or place of business. The verified return by the person so serving said complaint, order, or other process, setting forth the manner of said service, shall be proof of the same, and the return post-office receipt for said complaint, order, or other process, registered and mailed as aforesaid, shall be proof of the service of the same.

V. INTERVENTION

Any person, partnership, corporation, or association desiring to intervene in a contested proceeding shall make application in writing, setting out the grounds on which he or it claims to be interested. The commission may, by order, permit intervention by counsel or in person to such extent and upon such terms as it shall deem just.

Applications to intervene must be on one side of the paper only, on paper not more than 8½ inches wide and not more than 11 inches long, and weighing not less than 16 pounds to the ream, folio base, 17 by 22 inches, with left-hand margin not less than 1½ inches wide, or they may be printed in 10 or 12 point type on good unglazed paper 8 inches wide by 10½ inches long, with inside margins not less than 1 inch wide.

VI. CONTINUANCES AND EXTENSIONS OF TIME

Continuances and extensions of time will be granted at the discretion of the commission.

VII. WITNESSES AND SUBPŒNAS

Witnesses shall be examined orally, except that for good and exceptional cause for departing from the general rule the commission may permit their testimony to be taken by deposition.

Subpœnas requiring the attendance of witnesses from any place in the United States at any designated place of hearing may be issued by any member of the commission.

Subpœnas for the production of documentary evidence (unless directed to issue by a commissioner upon his own motion) will issue only upon application in writing, which must be verified and must specify, as near as may be, the documents desired and the facts to be proved by them.

Witnesses summoned before the commission shall be paid the same fees and mileage that are paid witnesses in the courts of the United States, and witnesses whose depositions are taken and the persons taking the same shall severally be entitled to the same fees as are paid for like services in the courts of the United States. Witness fees and mileage shall be paid by the party at whose instance the witnesses appear.

VIII. TIME FOR TAKING TESTIMONY

Upon the joining of issue in a proceeding by the commission the examination of witnesses therein shall proceed with all reasonable diligence and with the least practicable delay. Not less than five days' notice shall be given by the commission to counsel or parties of the time and place of examination of witnesses before the commission, a commissioner, or an examiner.

IX. OBJECTIONS TO EVIDENCE

Objections to the evidence before the commission, a commissioner, or an examiner shall, in any proceeding, be in short form, stating the grounds of objections relied upon, and no transcript filed shall include argument or debate.

X. MOTIONS

A motion in a proceeding by the commission shall briefly state the nature of the order applied for, and all affidavits, records, and other papers upon which the same is founded, except such as have been previously filed or served in the same proceeding, shall be filed with such motion and plainly referred to therein.

XI. HEARINGS ON INVESTIGATIONS

When a matter for investigation is referred to a single commissioner for examination or report, such commissioner may conduct or hold conferences or hearings thereon, either alone or with other commissioners who may sit with him, and reasonable notice of the time and place of such hearings shall be given to parties in interest and posted.

The general counsel or one of his assistants, or such other attorney as shall be designated by the commission, shall attend and conduct such hearings, and such hearings may, in the discretion of the commissioner holding same, be public.

XII. HEARINGS BEFORE EXAMINERS

When issue in the case is set for trial it shall be referred to an examiner for the taking of testimony. It shall be the duty of the examiner to complete the taking of testimony with all due dispatch, and he shall set the day and hour to which the taking of testimony may from time to time be adjourned. The taking of the testimony both for the commission and the respondent shall be completed within 30 days after the beginning of the same unless, for good cause shown, the commission shall extend the time. The examiner shall, within 10 days after the receipt of the stenographic report of the testimony, make his report on the facts, and shall forthwith serve copy of the same on the parties or their attorneys, who, within 10 days after the receipt of same, shall file in writing their exception, if any, and said exceptions shall specify the particular part or parts of the report to which exception is made, and said exceptions shall include any additional facts which either party may think proper. Seven copies of exceptions shall be filed for the use of the commission. Citations to the record shall be made in support of such exceptions. Where briefs are filed, the same shall contain a copy of such exceptions. Argument on the exceptions, if exceptions be filed, shall be had at the final argument on the merits.

XIII. DEPOSITIONS IN CONTESTED PROCEEDINGS

The commission may order testimony to be taken by deposition in a contest proceeding.

Depositions may be taken before any person designated by the commission and having power to administer oaths.

Any party desiring to take the deposition of a witness shall make application in writing, setting out the reasons why such depositions should be taken, and stating the time when, the place where, and the name and post-office address of the person before whom it is desired the deposition be taken, the name and post-office address of the witness, and the subject matter or matters concerning which the witness is expected to testify. If good cause be shown, the commission will make and serve upon the parties or their attorneys an order wherein the commission shall name the witness whose deposition is to be taken, and specify the time when, the place where, and the person before whom the witness is to testify, but such time and place, and the person before whom the deposition is to be taken, so specified in the commission's order, may or may not be the same as those named in said application to the commission.

The testimony of the witness shall be reduced to writing by the officer before whom the deposition is taken, or under his direction, after which the deposition shall be subscribed by the witness and certified in usual form by the officer. After the deposition has been so certified it shall, together with a copy thereof made by such officer or under his direction, be forwarded by such officer under seal in an envelope addressed to the commission at its office in Washington, D. C. Upon receipt of the deposition and copy the commission shall file in the record in said proceeding such deposition and forward the copy to the defendant or the defendant's attorney.

Such deposition shall be typewritten on one side only of the paper, which shall be not more than 8¼ inches wide and not more than 11 inches long and weighing not less than 16 pounds to the ream, folio base 17 by 22 inches with left-hand margin not less than 1½ inches wide.

No deposition shall be taken except after at least 6 days' notice to the parties, and where the deposition is taken in a foreign country such notice shall be at least 15 days.

No deposition shall be taken either before the proceeding is at issue or, unless under special circumstances and for good cause shown, within 10 days

prior to the date of the hearing thereof assigned by the commission, and where the deposition is taken in a foreign country it shall not be taken after 30 days prior to such date of hearing.

XIV. DOCUMENTARY EVIDENCE

Where relevant and material matter offered in evidence is embraced in a document containing other matter not material or relevant and not intended to be put in evidence, such document will not be filed, but a copy only of such relevant and material matter shall be filed.

XV. BRIEFS

Unless otherwise ordered, briefs may be filed at the close of the testimony in each contested proceeding. If briefs are filed, the exceptions, if any, to the examiner's report must be incorporated in the briefs. The presiding commissioner or examiner shall fix the time within which brief shall be filed and service thereof shall be made upon the adverse parties.

All briefs must be filed with the secretary and be accompanied by proof of service upon the adverse parties. Twenty copies of each brief shall be furnished for the use of the commission, unless otherwise ordered.

Application for extension of time in which to file any brief shall be by petition in writing, stating the facts upon which the application rests, which must be filed with the commission at least 5 days before the time for filing the brief.

Every brief shall contain, in the order here stated—

(1) A concise abstract or statement of the case.

(2) A brief of the argument, exhibiting a clear statement of the points of fact or law to be discussed, with the reference to the pages of the record and the authorities relied upon in support of each point.

Every brief of more than 10 pages shall contain on its top flyleaves a subject index with page references, the subject index to be supplemented by a list of all cases referred to, alphabetically arranged, together with references to pages where the cases are cited.

Briefs must be printed in 10 or 12 point type on good unglazed paper 8 inches by 10½ inches, with inside margins not less than 1 inch wide and with double-leaded text and single-leaded citations.

Oral arguments will be had only as ordered by the commission.

XVI. ADDRESS OF THE COMMISSION

All communications to the commission must be addressed to Federal Trade Commission, Washington, D. C., unless otherwise specially directed.

EXHIBIT 5

NATIONAL BISCUIT CASE

United States Circuit Court of Appeals for the Second Circuit

National Biscuit Company and Loose-Wiles Biscuit Company, Petitioners,
Against Federal Trade Commission, Respondent

Before Hough, Manton, and Mayer, Circuit Judges.

Petitions to revise orders of the Federal Trade Commission

Separate petitions by the National Biscuit Co. and the Loose-Wiles Biscuit Co. against the Federal Trade Commission to have set aside orders of the commission separately entered against both petitioners.

William C. Breed, Esq., Charles A. Vilas, Esq., George E. Shaw, Esq., Dava T. Ackerly, Esq., counsel for National Biscuit Co.

J. Frederick Eagle, Esq., Carroll G. Walter, Esq., counsel for Loose-Wiles Biscuit Co.

W. H. Fuller, Esq., I. E. Lambert, Esq., counsel for Federal Trade Commission.

MANTON, Circuit Judge.

These proceedings to review orders of the respondent were heard together and will be disposed of in one opinion.

The complaints against the petitioners charge (a) violation of section 5 of the Federal Trade Commission act (38 Stat. 717); (b) violation of section 2 of the Clayton Act (38 Stat. 730). The petitioners manufacture and sell to retail grocers crackers, biscuits, cakes, and other bakery products. They are perishable and therefore sold in small quantities at frequent intervals to insure freshness and quality. The petitioners have a business policy of allowing the following discounts: (a) Customers whose purchases from the company in a calendar month are less than \$15 pay list prices with no discounts; (b) customers whose purchases from the company in a calendar month aggregate \$15 or more receive a quantity discount of 5 per cent; (c) customers whose purchases from the company in a calendar month aggregate \$50 or more receive a quantity discount of 10 per cent; (d) customers whose purchases from the company in a calendar month aggregate \$200 or more receive a quantity discount of 15 per cent. For payment in cash a 1 per cent discount is given to all customers, and no customer under any circumstances receives any greater quantity discount than 15 per cent.

The orders entered against the petitioners were the same in form and directs them to cease and desist—

"1. From discriminating in price between purchasers operating separate units or retail grocery stores of chain systems and purchasers operating independent retail grocery stores of similar kind and character purchasing similar quantities of respondent's products, where such discrimination is not made on account of difference in the grade or quality of the commodity sold, nor for a due allowance in the difference in the cost of selling or transporting, nor in good faith to meet competition in the same or different communities.

"2. From giving to purchasers operating two or more separate units or retail grocery stores of chain systems a discount on the gross purchases of all the separate units or retail stores of such chain system, where the same or a similar discount on gross purchases is not allowed or given to associations or combinations of independent grocers operating retail grocery stores similar to the separate units or stores of such chain system."

A chain store referred to in this proceeding is regarded as a series of two or more retail stores owned by one person or corporation. The quantity discounts allowed to owners of chain stores are computed upon the purchase of

the owner of the chain for all his stores and quantity discounts computed at the same rates are allowed to the owner of a single store. In practice, the retailer owning one store must meet the competition of the branches of the chain stores whose owner because of the volume of his purchases for all his units or stores in the chain, obtains a greater discount than does the owner of the one store who does not use the same volume, and therefore does not buy in such quantities. The disadvantage is sought to be corrected by respondent, by requiring the petitioners to (1) base chain store discounts upon the quantity delivered to each store, treating each branch of the chain as a separate purchaser or owner, or (2) to allow separate and individual purchasers or owners to pool their purchases for the purpose of computing discounts. It is found as a fact

"That the respondent (National Biscuit Co.) is the largest single producer of such bakery products in the United States; that the total value of respondent's products for the year 1914 was approximately \$46,143,210; whereas the total value of production in the biscuit and cracker industry in the United States for the same year was approximately \$89,484,000. Figuring the same in percentages, the National Biscuit Co., for the year 1914, had approximately 51.6 per cent of the biscuit and cracker business in this country; that the value of respondent's products for the year 1919 was approximately \$101,707,597; whereas the total value of production in the biscuit and cracker industry in the United States for the same year was approximately \$204,020,000. Figuring the same in percentages, the National Biscuit Co. for the year 1919, had approximately 49.9 per cent of the biscuit and cracker business in this country; that the total value of respondent's products for the year 1921 was approximately \$104,836,255; whereas the total value of production in the biscuit and cracker industry in the United States for the same year was approximately \$187,509,000. Figuring the same in percentages, the National Biscuit Co., for the year 1921, had approximately 55.7 per cent of the biscuit and cracker business in this country; that east of the Mississippi River, for the year 1921, the National Biscuit Co. had approximately 64.1 per cent of the biscuit and cracker business.

"The respondent has, in the various States of the United States, 28 cracker bakeries and 8 bread bakeries and has sales agents established in more than 192 different cities. Quoting from the testimony of Albert B. Bixler, respondent's general sales manager, 'They are from Portland, Me., to Portland, Oreg., and from Duluth to New Orleans, scattered over all the country.' In 1921 the respondent had approximately 248,487 customers. Nearly every grocer in Greater New York handles respondent's products, and in the District of Columbia and the vicinity thereof, out of 2,000 grocers, every one of them carried National Biscuit Co.'s products. Similar conditions exist in many cities of the United States. 'Uneeda biscuit' is a cracker manufactured and sold by respondent, and is the fastest selling cracker in the world."

The Loose-Wiles Biscuit Co. does about 15 per cent of the cracker and biscuit business in the United States. It is also found that the cracker and biscuit sales represent from 1 to 3 per cent of the grocers' total business.

Error is assigned in the finding that the petitioners are engaged in interstate commerce. It is argued that the transactions affected by the order of the commission are solely between agencies of the petitioners and retail merchants located adjacent to other branches within a State and therefore the respondent was without jurisdiction. The petitioners admitted in the answer filed, that they were engaged in interstate commerce, as charged in paragraph I of the complaint. There is some evidence that biscuits and crackers which are manufactured in one State are shipped without that State and to another within the United States in competition with other firms and corporations similarly engaged. Since this conclusion of fact has some support in the evidence, we must regard it as binding upon us. (Curtis Pub. Co. v. Federal Trade Commission, 260 U. S. 563.) We do not, however, regard the existence of this interstate commerce as material to the present litigation.

Section 5 of the Federal Trade Commission act (38 Stat. 724) provides that unfair methods of competition in commerce are declared unlawful and the commission is empowered to order a person, partnership, or corporation to cease and desist from using such unfair methods in commerce. The finding of the commission as to the facts, if supported by testimony, is conclusive on the review in this court. The Supreme Court said as to the conclusiveness of the findings of the commission in the Curtis Publishing Co. case, *supra*:

"Manifestly, the court must inquire whether the commission's findings of fact are supported by evidence. If so supported, they are conclusive. But as the statute grants jurisdiction to make and enter upon the pleadings, testimony and proceedings, a decree affirming, modifying, or setting aside an order, the court must also have power to examine the whole record and ascertain for itself the issues presented and whether there are material facts not reported by the commission."

Section 2 of the Clayton Act, which is declared to be an act to supplement existing laws against unlawful restraints and monopolies and for other purposes (38 Stat. 730), provides:

"Sec. 2. That it shall be unlawful for any person engaged in commerce, in the course of such commerce, either directly or indirectly to discriminate in price between different purchasers of commodities, which commodities are sold for use, consumption, or resale within the United States or any territory thereof or the District of Columbia or any insular possession or other place under the jurisdiction of the United States, where the effect of such discrimination may be to substantially lessen competition or tend to create a monopoly in any line of commerce: *Provided*, That nothing herein contained shall prevent discrimination in price between purchasers of commodities on account of difference in the grade, quality, or quantity of the commodity sold, or that makes only due allowance for difference in the cost of selling or transportation, or discrimination in price in the same or different communities made in good faith to meet competition: *And provided further*, That nothing herein contained shall prevent persons engaged in selling goods, wares, or merchandise in commerce from selecting their own customers in bona fide transactions and not in restraint of trade."

The gravamen of the offense or the unfair method is the granting of discounts to purchasers of quantities as above referred to. The commission does not find that the respondents have a monopoly nor that they intend by unlawful means to obtain one. It is not charged or found that the petitioners have an agreement or understanding of any kind as to the creation of a monopoly or, indeed, the maintenance of a sales policy for such a purpose. The law does not make mere size of business an offense or the existence of unexercised power an offense. It requires overt acts and trusts to its prohibition of them and its power to repress or punish them. It does not compel competition nor require all that is possible. (*United States v. U. S. Steel Corp.*, 251 U. S. 417; *United States v. United Shoe Machinery Co.*, 247 U. S. 32.) In the first case it was held to be lawful for a single corporation to control 50 per cent of the steel industry, and in the latter it was said to be lawful for a single corporation to control substantially all the shoe machinery industry. Size alone does not create a monopoly.

In many instances each branch of the chain stores is a distinct and separate purchaser; petitioners solicit and take orders and make deliveries to each unit of the chain, and it is found that in some instances the owner of but one store is in competition with a branch of a chain that handles no more of the companies' goods in a month than does the owner of but one store, and the unit of the chain store receives a discount. It is found that the cost of selling and delivery is the same. This is said to be the disadvantage in competing with chain stores, and the various owners have pooled their orders because they do not carry on a large enough business to obtain the discounts. But the petitioners refuse to grant the discounts for such pooled or combined orders, and it is found that "an undue advantage in competing with the owners operating but one retail store in the handling of respondent's (petitioner's) said products, which practices have the capacity to and do tend to substantially lessen competition and create a monopoly in the retail distribution of respondent's (petitioner's) products." And the commission says that (1) they "are all to the prejudice of the public"; and (2) they "are all to the prejudice" "of said respondent's competitors." This court announced in *Standard Oil Co. v. Federal Trade Commission* (273 Fed. 478) that:

"It may be admitted that one function of the Trade Commission is to discern and suppress such practices in their beginning; but a thing exists from its beginning, and it is not a conclusion of law from any facts here found that a system which at present is keenly competitive, extremely advantageous to the public, and, in the opinion of a majority of the competent witnesses, economical, is at present unfair to any one or unfair because tending to monopoly. A tendency is an inference from proven facts and an inference from the facts as found by the commission is a question of law for the court."

In *Mennen Co. v Federal Trade Commission* (288 Fed. 774; certiorari denied, 262 U. S. 759) a charge was made against the petitioner, which sold its products to wholesalers, retailers, and cooperative corporations of retailers who practiced unfair methods of competition in violation of the Trade Commission Act and of section 2 of the Clayton Act, in that they refused to grant to cooperative corporations of retailers or to retailers therein discounts as large as those granted wholesalers. One of the charges against the petitioner there was that the practice of varying discounts irrespective of the quantity and quality tended unduly to hinder competition between distributors of the respondent's products to retailers or directly to the consuming public. This court set aside the commission's order and announced:

"In this case, as in the Gratz case, the complaint contains no intimation that the Mennen Co. has any monopoly of the business of manufacturing and selling toilet articles or that it has the ability or intent to acquire one. So far as appears, the Mennen Co., acting independently, has undertaken to sell its own products in the ordinary course, without deception, misrepresentation, or oppression, and at fair prices, to purchasers willing to take them upon terms openly announced.

"In this case, as in the Gratz case, nothing is alleged which would justify the conclusion that the public suffered injury or that competitors had reasonable ground for complaint. The allegation that its practice of varying discounts tended unduly to hinder competition between distributors of respondent's products to retailers or directly to the consuming public is a pleader's conclusion. The acts complained of in this case are not those which have heretofore been regarded as 'opposed to good morals because characterized by deception, bad faith, fraud, or oppression, or as against public policy because of their dangerous tendency unduly to hinder competition or create monopoly.' And as said in the Gratz case: 'If real competition is to continue, the right of the individual to exercise reasonable discretion in respect of his own business methods must be preserved.'"

Whatever may be the exact meaning of the phrase "unfair methods of competition," it is now settled that it is for the courts and not the commission to determine as a matter of law what is and what is not included in the phrase. This rule is not voided by stating as a finding of fact what is a mere conclusion of law. (*Federal Trade Commission v. Gratz*, 253 U. S. 421; *Standard Oil Co. v. Federal Trade Commission*, 273 Fed. 478; *N. J. Asbestos Co. v. Federal Trade Commission*, 264 Fed. 509.) It is very apparent that no cracker manufacturer could be prejudiced by the refusal of his largest rival to satisfy customers or prospective customers by granting the discounts desired. Such a refusal could only have the effect upon a competitor of driving the dissatisfied customer to it. In this regard, there is nothing to indicate that the public was in any way prejudiced by the discounts. There is no claim that the owners of chain stores are not competing one with the other or with other retail grocers, including those who have pooled or combined for ordering purposes, and there being no allegation or suggestion of any agreement or understanding among manufacturers, it is evident that the public purchases its bakery products in an open competitive market as respects both manufacturer and distributor. The only pools or combinations are among the grocers who seek to combine for ordering purposes. The practice of giving discounts is permitted under section 2 of the Clayton Act where it is provided "that nothing herein contained shall prevent discrimination in price between purchasers of commodities on account of differences in the grade, quality, or quantity of the commodity sold, or that makes only due allowance for difference in the cost of selling or transportation, or discrimination in price in the same or different communities made in good faith to meet competition."

The holding below does not say that the size of the petitioner's business was attained or contributed to by unfair or unlawful methods or that it had any monopoly or control of the biscuit or cracker business, nor that it does injure its competitors or restrain trade among them. No conspiracy is alleged or proven. In deed, the petitioner, the Loose-Wiles Co., has but 15 per cent of the business. And there are many smaller cracker and biscuit manufacturers throughout the country. It is the exclusion of others from the opportunity of doing business that is regarded as monopolizing. (*Patterson v. United States*, 222 Fed. 599.) It has been said that size may increase trade and may benefit the consumer. (*United States v. Keystone Watch Case Co.*, 218 Fed. 502.) There is a finding that the petitioners have extensively advertised and have created a great demand for their products throughout the United States,

and now the commission concludes that "in many localities the demand for such products is so great that it is impossible for a retail grocer to successfully conduct his business if he does not handle respondent's products"

Even though the manager of the branch store of a chain exercises the fullest discretion in determining what and how he will purchase from the company and that the salesmen and deliverymen of the company spend as much time and effort in the branch store of the retail grocer as in the store of the so-called independent or individual grocer, it can not be said that the branch store of the chain retailer is a separate or different purchaser as intended by section 2. It is undeniable that the manager of a branch of a chain-store system, who may have the fullest individual authority in dealing with the salesmen or deliverymen of the petitioner, is nevertheless an employee or agent of the owner of the chain system and can not be regarded as a different purchaser; the indebtedness is incurred by the company, the payment is made by it, and the goods are delivered to it. It may be that the cost of selling the chain is the same as the cost of selling to the owner of but one store, but that does not sustain the charge of price discrimination, for there is no provision in the Clayton Act or elsewhere that the price to two different purchasers must be the same if it cost the seller as much to sell one as it does to the other. The provision of section 2 of the act as to the difference in the cost of selling is merely one of many separate and distinct permissive exemptions in that section expressly declaring price determination to be lawful if within the particular exception. Equal opportunity is given to all, in the discount system of petitioners' business. The determining factor is the quantity consumed; there is no discrimination among purchasers. All are supplied on equal terms according to the quantity purchased. While the chain stores have grown in numbers, this record demonstrates that there are thousands of retail grocers who are carrying on their business in one store. The discount plan was designed for the individual dealer as well as for the large chain-store owner. It is the right of a merchant engaged in private business freely to exercise his own independent discretion as to the parties with whom he will deal. (Federal Trade Commission *v.* Raymond Bros.-Clark Co., 280 Fed. 529, 64 L. Ed. 175; Great Atlantic & Pacific Tea Co. *v.* Cream of Wheat Co., 224 Fed. 566.) The only injury claimed as a result of the petitioners' acts comes after the retailer has the biscuits or crackers and is disposing of them at retail. Then it is said, one retailer has an undue advantage over another of the same competing class. But we said in the Mennen case:

"This substitution in the final stages of the Clayton bill of the clause to which we have referred plainly indicates the intent of Congress to exclude from the operation of the section (sec. 2) mere competition among 'purchasers' from the 'seller' or 'person' who allowed or withheld the discount and to include therein only competition between such 'seller' or 'person' and the latter's own competitors."

This section can have no application unless the unfair act substantially lessens competition or tends to create a monopoly in any line of commerce. It was never intended by Congress that the Trade Commission would have the duty and power to judge what is too fast a pace for merchants to proceed in business and to compel them to slow up. To do so, would be to destroy all competition except that which is easy. Congress intended to eliminate all varieties of fraudulent practices from business in interstate commerce. (Sinclair Refining Co. *v.* Federal Trade Comm., 276 Fed. 686.) "The great purpose of both statutes was to advance the public interest by securing fair opportunity for the play of the contending forces ordinarily engendered by an honest desire for gain. And to this end it is essential that those who adventure their time, skill, and capital should have large freedom of action in the conduct of their own affairs," said the Supreme Court in Federal Trade Commission *v.* Sinclair Refining Co. (261 U. S. 463.) Effective competition requires that merchants have freedom of action in conducting their own affairs. To be successful may increase or render insuperable the difficulties that rivals must face, but it does not constitute reprehensible or fraudulent methods. (Federal Trade Commission *v.* Curtis Pub. Co., 260 U. S. 568.) The method of competition to be condemned as unfair, should be characterized by fraud, deception, or oppression. (Federal Trade Comm., *v.* Curtis, *supra*; Federal Trade Comm. *v.* Gratz, 253 U. S. 421; N. J. Asbestos Co. *v.* Federal Trade Comm., 264 Fed. 511; Silver Co. *v.* Federal Trade Comm., 289 Fed. 983.)

In its complaint the commission charged that the practices were all to the prejudice of the public. It does not make any specific finding as to this. The practice of discounts is not an unfair method of competition under the statute unless it is prejudicial to the public. The intent of the act is the prevention of injury to the general public and what forms the basis of the proceeding is that it deceives the public or that it was unfair alike to the public and to the competitors. (*Royal Baking Powder Co. v. Federal Trade Comm.*, 281 Fed. 744; *N. J. Asbestos Co. v. Federal Trade Comm.*, 264 Fed. 510.)

We conclude that the sales policy of the petitioners as to their discount plan as well as the refusal to sell cooperative or pooling buyers, is fair in all respects as to all its competitors and customers. This policy obviously does not affect the public interest nor deprive it of anything it desires. It is a practice which is recognized by manufacturers of bakery products and is inoffensive to good business morals. It was error to direct the petitioners to sell to individual grocers who pooled their orders of purchase or who bought on a cooperative basis. While a chain-store owner may handle more crackers because of his ownership of more than one store, this is but the result of healthy competition. A manufacturer of biscuits can not be expected to adopt a uniform policy that is appropriate to meet the small buyer and the large buyer. There is no discrimination between the large buyer, such as the owner of a chain store, and the grocer owning but one store. There is evidence in the record that many individual grocers do a large enough business to win the discount provided for under the petitioners' policies. A pool is organized merely to buy and not for selling purposes. The manager of the pool, when it has a manager, merely buys as an agent or employee of the pool. He has no control over any of the various grocers in the pool. He incurs no financial liability. Each member of the pool controls his own business and is liable for his own indebtedness. The case is different where the scale is made direct to the manager of a chain unit. By pooling purchases, the retail customers of the petitioners would afford no service in the sale of the petitioners' product to the consumers beyond that which each furnishes individually, and it may be noted that the advertising of the large chain stores inures to the benefit of the petitioners' products by creating a wide-spread and uniform demand for their products and consequently larger sales.

For these reasons, we regard the orders below entered against each of the petitioners as improvidently granted and the orders complained of are reversed.

EXHIBIT 6

B. S. PEARSALL CASE

United States Circuit Court of Appeals for the Seventh Circuit

No. 3190. October Term, 1922, April Session, 1923

B. S. Pearsall Butter Company, Petitioner, v. Federal Trade Commission,
Respondent

Petition to review order of Federal Trade Commission

Before Alschuler, Evans, and Page, Circuit Judges.

ALSCHULER, Circuit Judge.

The petitioner complains of an order of the Federal Trade Commission directing petitioner to desist from "directly or indirectly using formal or informal contracts or understandings to the effect that purchasers or dealers in respondent's products shall not deal in the goods, wares, merchandise, supplies, or other commodities of a competitor or competitors of respondent or in competing commodities." The complaint originally charged petitioner with violating section 5 of the Federal Trade Commission act in the use of unfair methods of competition, and section 3 of the Clayton Act in making contracts as hereinafter stated. By amendment the first charge was eliminated. Section 3 of the Clayton Act is as follows:

"It shall be unlawful for any person engaged in commerce, in the course of such commerce, to lease or make a sale or contract for sale of goods, wares, merchandise, machinery, supplies, or other commodities, * * * or fix a price charged therefor, or discount from, or rebate upon, such price, on the condition, agreement, or understanding that the lessee or purchaser thereof shall not use or deal in the goods, wares, merchandise, machinery, supplies, or other commodities of a competitor or competitors of the lessor or seller, where the effect of such lease, sale, or contract for sale or such condition, agreement, or understanding may be to substantially lessen competition or tend to create a monopoly in any line of commerce."

The contract alleged to be violative of this section is:

"That the said party of the first part does hereby give to the said party of the second part the exclusive sale of its brands of oleomargarine and nut margarine in the city of ----- and vicinity for the period beginning on the first day of March, A. D. 1920, and ending on the last day of Feb., A. D. 1921.

"And the party of the second part agrees to wholesale party of the first part's brands of oleomargarine and nut margarine exclusively in the above territory during the period of this contract; second party also agreeing to actively and vigorously press to the best of their ability the sale of said products of first party, and to in every way promote a demand for them in the aforesaid territory.

"It is further agreed by the said party of the first part to refund one-half of the amount of the Federal wholesale license (\$100.00) when the party of the second part has sold 40,000# of party of the first part's oleomargarine and nut margarine and the full amount of (\$200.00) when they have sold 75,000# of said party's oleomargarine and nut margarine during the period of this contract; also furnish specialty man for a couple of weeks, circularize the trade, furnish advertising literature, and do a reasonable amount of newspaper advertising."

It appears that there were in this country 65 manufacturers of margarine products, and that the total product for the year preceding the complaint

against petitioner was 350,000,000 pounds, of which petitioner produced about 4,000,000, or slightly over 1 per cent. The largest producer, the Jelke Co. of Chicago, 55,000,000 pounds, are extensive advertisers and do not make exclusive agreements for the handling of their product. The five big Chicago packers who, with Jelke, manufacture the large bulk of this product, distribute to the trade largely through their own local branches. About 20 of the other manufacturers used contracts more or less similar, and most of the rest of them have some kind of understanding for exclusive representation with the various jobbers who handle their product. There was no evidence of any improper practices on the part of petitioner or of harmful result of its contract either to other manufacturers, dealers, or the public, save only as might be gathered from the contract itself.

It is contended for petitioner that its contract does not constitute "a sale or contract for sale of goods" and therefore does not fall within the provisions of section 3; and that under this record the effect of the contract, if of sale, may not "be to substantially lessen competition or tend to create a monopoly."

The agreement may be lacking in elements which would technically make it a contract for sale of goods, such as price and quantity, but it provides a basis for sales under which the parties acted and sales between them were being made, and for the purposes hereof they should not be heard to deny that it was in fact a contract for sale of goods within the purview of section 3 of the Clayton Act. In this respect we think it falls fairly within the recent decision of the Supreme Court in *Standard Fashion Co. v. Magrane-Houston Co.*, 258 U. S. 346. The contract in that case held to be violative of section 3 of the Clayton Act has much similarity to the one here under consideration.

But the circumstances there appearing, and which were manifestly influential in the result there reached, when compared with those here disclosed, require a different disposition hereof. In commenting on the effect of the phrase in section 3, "may be to substantially lessen competition," the court said:

"Section 3 condemns sales or agreements where the effect of such sale or contract of sale 'may' be to substantially lessen competition or tend to create monopoly. It thus deals with consequences to follow the making of the restrictive covenant limiting the right of the purchaser to deal in the goods of the seller only. But we do not think that the purpose in using the word 'may' was to prohibit the mere possibility of the consequences described. It was intended to prevent such agreements as would, under the circumstances disclosed, probably lessen competition, or create an actual tendency to monopoly. That is was not intended to reach every remote lessening of competition is shown in the requirement that such lessening must be substantial.

"Both courts below found that the contract interpreted in the light of the circumstances surrounding the making of it was within the provisions of the Clayton Act as one which substantially lessened competition and tended to create monopoly. These courts put special stress upon the fact found that, of 52,000 so-called pattern agencies in the entire country, the petitioner, or a holding company controlling it and two other pattern companies, approximately controlled two-fifths of such agencies. As the Circuit Court of Appeals summarizing the matter pertinently observed: 'The restriction of each merchant to one pattern manufacturer must in hundreds, perhaps in thousands, of small communities amount to giving such single pattern manufacturer a monopoly of the business in such community. Even in the larger cities, to limit to a single pattern maker the pattern business of dealers most resorted to by customers whose purchases tend to give fashions their vogue, may tend to facilitate further combinations; so that the plaintiff, or some other aggressive concern, instead of controlling two-fifths, will shortly have almost, if not quite, all the pattern business.'"

The record in the case at bar discloses no facts or circumstances which would justify the conclusion that there was here shown more than "the mere possibility of the consequences described." We find nothing from which it might be deduced that the agreement here, "would, under the circumstances disclosed, possibly lessen competition or create an actual tendency to monopoly." Petitioner is comparatively, and in fact, a small factor in the margarine business of the country—about 1 per cent of the entire production. There does not appear to be anything distinctive about its product—nothing which could not readily be supplied by many other makers of this apparently standardized product. Petitioner does not occupy "a dominant position" in that line of commerce, as was the case in *United Shoe Mach. Co. v. United*

States, 258 U. S. 451. And it can not be here said, as in the last named case, that to its customer its particular product "may be absolutely essential to the prosecution and success of his business."

It is interesting here to note that it was only five years previous that petitioner entered into this doubtless then well-standardized business in competition with many others, most of whom have arrangements with their jobbers more or less similar, and that in the face of this competition in such brief time built up a business of about 4,000,000 pounds for its last year. From this it may well appear that the similar practice by others in the same class did not result in stifling of competition and monopolizing the trade to the substantial or serious detriment of this recent entrant therein. Nothing here appears to indicate that the ultimate distributor of the product, the retailer, is in any way bound or restricted. He is generally familiar with the market and with the ways and means of transportation of commodities, and if he desires in his business to handle the product of other makers he is at liberty to procure it—from the maker himself or from those who handle it.

Most of the witnesses unite in saying that in the handling of this product there is advantage to manufacturer, jobber, retailer, and the public in having a particular brand handled exclusively by one jobber in a given locality where he handles no other similar product; and while one or two did say, on being examined as to the result of such contract, that it might restrict competition, it is evident that they meant no more than that the employment of such contracts might in some circumstances so result.

Under the particular facts which this record discloses it is our view that the contract in question as employed by this petitioner does not fall under the condemnation of section 3 of the Clayton Act.

The order herein of the Federal Trade Commission is reversed, and it is directed that the complaint herein against petitioner be dismissed.

EXHIBIT 7

JOHN BENE & SONS

United States Circuit Court of Appeals for the Second Circuit

John Bene & Sons, Inc., Petitioner, v. Federal Trade Commission, Respondent.

Before Hon. Charles M. Hough, Hon. Martin T. Manton, Hon. Julius M. Mayer, Circuit Judges.

Petition to review an order of the Federal Trade Commission made and entered December 27, 1922.

Petitioner (hereinafter called Bene) is and was in 1918 engaged among other things in the manufacture and sale of hydrogen peroxide.

At the same time one Proper was making and selling a compound to which he gave the trade name of Daxol.

Among the customers of Bene were certain store systems commonly known as chain stores, and the same chain stores or some of them had purchased some Daxol.

In the autumn of 1918 Bene obtained a bottle purporting to contain Daxol, and submitted it for analysis to a well known independent laboratory in New York City. The result was not favorable to Daxol, and Bene communicated the same (in language of the findings) "to the principal officers of * * * four large chain stores." In the month of December, petitioner submitted Daxol to another and different independent laboratory, and again the result of the analysis was not, to say the least, a favorable advertisement for Proper's compound. This analysis Bene sent (according to findings) to one chain-store manager, accompanied by a letter substantially advising the recipient to confirm the result of the analysis, and the comment of the letter "by asking and chemist or doctor."

In April, 1920, the commission issued a complaint alleging that the analyses aforesaid and Bene's comment upon them "contained certain false and misleading statements and representations concerning (Daxol); that among such false and misleading statements * * * (is the representation that Daxol) contained lime, and that the use of (Daxol) on the human body would be attended with great danger."

Bene answered promptly, averring inter alia that the analysis was correct and that the label upon Daxol was "absolutely false, fraudulent, and misleading."

Testimony on this issue was taken in September, 1921, and on December 27, 1922, findings were made to the effect:

First. As the result of the analyses circulated by Bene, the chain store systems known as Kresge, McCrory, Kress, and Woolworth withdrew from sale in their stores the preparation known as Daxol, and shortly thereafter ceased to purchase the same.

Second. The analyses aforesaid and petitioner's comment thereon misled the customers of Proper into the belief that Daxol contained lime; that the use of the same on the human body would be attended with great danger, that Daxol was a weak solution and lost its effectiveness in about 72 hours.

Third. The truth of the matter is that Daxol contains either no lime, or lime in such small quantities as to be entirely innocuous, and its use on the human body would not be attended with great danger, and that Daxol is not a weak solution of bleaching powder and does not lose its effectiveness in 72 hours.

Fourth. That the statement of Bene concerning a competitive product, to wit, Daxol, that its use on the human body would be attended with great

danger is false and that the statement of the analyses to the effect that Daxol is a solution of calcium hypochlorite, commonly known as bleaching powder, is misleading, deceptive, and constitutes a misrepresentation.

Immediately on making these findings the order under review was entered. The order is as follows:

"It is ordered that the respondent, John Bene & Sons (Inc.), its officers, agents, representatives, and employees, do cease and desist, from directly or indirectly, publishing, circulating, or causing to be published or circulated, any false, deceptive, or misleading statements of or concerning the product of a competitor, and particularly from publishing, circulating, or causing to be published or circulated, directly or indirectly, such statements concerning the product Daxol manufactured by the Proper Antiseptic Laboratories of Cincinnati, Ohio, to wit:

"That 'this is a solution of calcium hypochlorite or, as it is usually known, bleaching powder. It is our opinion that its use on the human body would be attended with great danger."

"That 'Daxol is a very weak solution of bleaching powder and loses its effect in about 72 hours."

Petition for review followed.

Frederick N. Van Zandt for petitioner.

W. A. Sweet and W. H. Fuller for Federal Trade Commission.

HOUGH, Circuit Judge.

Under the Curtis Publishing Co. case (260 U. S. 568) we "must inquire whether the commission's findings of fact are supported by evidence;" and this inquiry includes an ascertainment of what kind of evidence, or evidence so-called, the fact-findings rest upon.

If by evidence is meant testimonial matter legally competent, relevant, pertinent, and material, this record contains very little of that kind.

It was plainly desirable, as Bene manufactured hydrogen peroxide, to compare Daxol with the other preparation, and on this point one Irene Kuhlman replied in answer to the question, "What are Daxol and peroxide used for?" thus: "Well, not a serious wound of any kind; it is very injurious to a serious wound; for cuts, very small cuts, or bruises, or sore throat, it was very helpful, the same as could be considered as to peroxide." How competent this witness was to answer this question over due objection is perhaps suggested by the fact that her usual and regular occupation was that of running a "beauty parlor."

It also seemed appropriate to show that the business of the proprietors of Daxol had been injured by what Bene had done, and how such injury had arisen, and Miss Kuhlman testified fully on this point. Her qualifications for giving such testimony were that on the 6th of January, 1920, she became connected with the corporation that succeeded Proper in the manufacture of Daxol. At this time she became a stockholder to the extent of one share, and a director, and she also, in her own language, "operated the books of the company." After thus qualifying she testified at length concerning events that had occurred long before her connection with the concern. The scheme of her evidence may be judged from this question and answer:

"Q. Do you remember when this trouble arose about this analysis?—A. I was not connected with the company, but at the time they incorporated the whole case was explained and I have all the papers concerning the case."

She was permitted to testify not only as to correspondence antedating her connection with Proper's successor, but as to the contents of books which were never produced. This evidence related to sales made by Proper individually prior to the time when (again in the witnesses's language) he "sold out as an individual and changed it to a corporation."

It was further necessary under the issue as framed, to prove the inaccuracy or falsity of the analyses made at Bene's request; and this was sought to be done by introducing the investigation of other chemists. Accordingly there was offered in evidence a report on Daxol made in February, 1919, by the chemist of the dairy and food department of the State of Ohio, one made by the Bureau of Chemistry of the United States Department of Agriculture in November, 1919, and one made in September, 1921, by Pitkin (Inc.), of New York City.

Apparently no effort was made to identify or ascertain the origin of the substance submitted for analysis further than that it was contained in a bottle labeled Daxol. The inference is necessarily that the commission regarded

the content of any bottle labeled Daxol as material to this issue, and it must also have been assumed that everything in a bottle labeled Daxol came from Proper. But there was no identification of what was analyzed as being Proper's product.

On the assumption made and without any evidence as to the age of the preparation as analyzed, the inferences are irresistible either that the preparation known as Daxol was not stable or that its composition varied.

The taking of opinion evidence extends over a field hitherto we think unknown in legal investigation. One of the chemists who had analyzed the contents of a Daxol bottle at the request of Bene had said that its use "on the human body would be attended with great danger." Whereupon another chemist was asked by the commission's attorney whether he thought Daxol would be injurious when applied to the human body. Over objection he was permitted to testify on the ground that "Well, it was a chemist that made the statement, that's the reason I think that he (the witness) is qualified." And examples of similar procedure might be multiplied.

The questions suggested by the foregoing references are whether the commission, in its investigations, is restricted to the taking of legally competent and relevant testimony. We incline to think that it is not by the statute, and having regard to the exigencies of administrative law, that it should not be so restricted.

We are of opinion that evidence or testimony, even though legally incompetent, if of the kind that usually affects fair-minded men in the conduct of their daily and more important affairs, should be received and considered; but it should be fairly done. The Trade Commission, like many other modern administrative legal experiments, is called upon simultaneously to enact the rôles of complainant, jury, judge, and counsel. This multiple impersonation is difficult, and the maintenance of fairness perhaps not easy, but we regard the methods pursued in showing Proper's diminution in sales as lacking in every evidential or testimonial element of value; and opposed to that sense of fairness which is almost instinctive.

We note that no finding of fact was made by the commission to the effect that Proper's sales of Daxol in the aggregate diminished. But a finding was made *ut supra* that four chain store systems excluded Daxol from their counters.

As to this finding the record contains no evidence whatever justifying any reference to the Woolworth Co. The agent of Kresge testified plainly that Daxol did not sell and that that was the reason "we discontinued carrying it." The buyer for McCrory declared that the chemical analysis would have had no effect on him if there had been a large trade in Daxol, and averred that the reason why he did not continue buying it was because the demand slackened. The witness produced from the Kress Co. was the only support of the commission's substantial averment, namely, that these particular four chain stores dropped Daxol as the result of Bene's activities.

We can not think that such testimony as this affords a foundation either legal or reasonable for the finding first above summarized.

Having pointed out the infirmity of what was introduced as evidence, we shall not pause to inquire as to whether the order could be justified on all that is left of any probative value, to wit, the statement on behalf of the Kress Co., the various analyses, and the admissions of the petitioner herein. For there is a much more important question presented by this record.

This proceeding has nothing to do with the various antitrust acts; the only statute invoked is section 5 of the act creating the commission (38 Stat. 717, 724).

Under this statute there are two points that must be made to appear before any complaint can issue:

First. That the person complained of "is using any unfair method of competition in commerce"; and

Second. That a proceeding by the commission in respect thereof would be "to the interest of the public."¹

It would seem elementary that whatever is necessary to justify a proceeding by the commission must be proved in that proceeding by said commission. Both these points are duly alleged in the complaint herein, but no finding has been made to the effect that the proceeding has been justified as being in the interest of the public.

¹ See a discussion of this point by Denison, J., in *Silver v. F. T. C.*, 289 Fed., 985.

That the public interest is to be considered in proceedings of this kind is manifest from all the reports, but it is sufficient to cite the Winsted Hosiery case, 258 U. S. 483. The court said (p. 493): "The facts show that it is to the interest of the public that a proceeding to stop the practice be brought * * *. When misbranded goods attract customers by means of the fraud which they perpetrate, trade is diverted from the producer of truthfully marked goods." The decision cited rests flatly on the proposition that the goods there complained of were misbranded, and therefore afforded an unfair method of competition with goods properly branded. But what the court said concerning the goods advertised under a name deemed to contain improper, and indeed fraudulent, implications is just as applicable to goods sought to be protected and the sale thereof advanced through a proceeding by the Federal Trade Commission, but for the benefit and advantage primarily of a complainant; in this case a single person, the manufacturer of Daxol.

The real meaning of this litigation is perfectly shown by the witness Kuhlman, who after testifying that sales of Daxol had practically ceased at the time she testified, volunteered the statement that "the concerns to whom we have been selling this product have had no faith up to this time because of the analysis that has been forwarded to the different companies. If the decision is in our favor, we may be able to reinstate their faith in the product." An objection by petitioner to this declaration was overruled, and the statement stands as a peculiarly frank exposition of the nature and purpose of the proceeding. We shall therefore consider, in the absence of any finding on the subject, whether it is true, as alleged in the answer, that what is imparted to the public by the label on the Daxol container is "false, fraudulent, and misleading."

The label on a Daxol bottle declares that it is a "new American antiseptic, stronger than peroxide." It is said to represent "the highest chemical skill in producing a most potent antiseptic similar to the one in use at hospitals at the European fronts and recognized to be the greatest medical discovery of the age." In a special note the public is recommended "To obtain the best results, use Daxol as often as possible."

The directions for using this "potent antiseptic" are in part as follows: "For cuts, open wounds and ulcers, moisten thoroughly on lint or cotton and apply freely. For sore throat gargle every half hour. For abscesses and boils apply freely by moistening cotton. For sore and inflamed eyes mix one teaspoonful to two tablespoons warm water and bathe eye." And there are other directions of a similar nature too long to quote.

Of the five analyses offered in evidence all but one report lime as present in varying proportions, and the one that does not mention lime does not pretend to be fully quantitative. This analysis put in evidence by the commission concludes thus: "Product is principally chlorine water of a strength of 0.06 per cent. As a disinfectant free chlorine is only equal to hydrogen peroxide, so to be as strong, this solution should be 3 per cent. Misbranded. Statement on label is false."

So far as chlorine is concerned, the proportions of that chemical found in the samples submitted vary enormously, viz, from 0.11 per cent to 0.058 per cent, while as for calcium hypochlorite (bleaching powder) it is present in a majority of the specimens submitted. The record contains no attack upon the accuracy of the several analyses.

It follows necessarily that we have here a compound either chemically unstable, which is a point no chemist testified upon, or varying in composition, which is a point any layman can ascertain and understand from the evidence herein.

Finally the record contains no contradiction of the evidence given from a highly qualified physician and surgeon who testified from all the analyses, and his own experience with disinfectants and antiseptics. This uncontradicted and unimpeached witness went through the label from which we have quoted above and pointed out that most of the purposes for which the proprietor so highly recommended Daxol meant the free application of this solution to mucous membrane both healthy and diseased. He gave it as his professional opinion that such applications of Daxol would invariably produce "an irritating caustic effect"; and he heartily agreed with the Ohio Food Department that Daxol was a misbranded article.

From this evidence we deduce as findings of fact:

First. Daxol is a product of varying composition and misbranded in that the public is by its label requested to use it for purposes for which it is medically unfit.

Second. The public has no interest in the protection of such an article.

As a conclusion of law we hold that there being no proof of a public interest herein, or of its being to the interest of the public that this proceeding should have been begun or the order complained of made, said order must be reversed; and it is reversed accordingly.

EXHIBIT 8

AMERICAN TOBACCO CASE

Supreme Court of the United States, Nos. 206 and 207. October term, 1923

Federal Trade Commission, Plaintiff in Error, *v.* American Tobacco Company
and P. Lorillard Company, Inc.

In Error to the District Court of the United States for the Southern District
of New York

Mr. Justice HOLMES delivered the opinion of the court.

These are two petitions for writs of mandamus to the respective corporations respondent, manufacturers and sellers of tobacco, brought by the Federal Trade Commission under the act of September 26, 1914, c. 311, section 9, 38 Stat. 717, 722, and in alleged pursuance of a resolution of the Senate passed on August 9, 1921. The purpose of the petitions is to require production of records, contracts, memoranda, and correspondence for inspection and making copies. They were denied by the district court (283 Fed. Rep. 999). The resolution directs the commission to investigate the tobacco situation as to domestic and export trade, with particular reference to market price to producers, etc. The act directs the commission to prevent the use of unfair methods of competition in commerce and provides for a complaint by the commission, a hearing and a report, with an order to desist if it deems the use of a prohibited method proved. The commission and the party concerned are both given a resort to the Circuit Court of Appeals (sec. 5). By section 6 the commission shall have power (a) to gather information concerning, and to investigate the business, conduct, practices, and management of any corporation engaged in commerce, except banks and common carriers, and its relation to other corporations and individuals; (b) to require reports and answers under oath to specific questions, furnishing the commission such information as it may require on the above subjects; (c) upon the direction of the President or either House of Congress to investigate and report the facts as to alleged violation of the antitrust acts. By section 9 for the purposes of this act the commission shall at all reasonable times have access to, for the purposes of examination, and the right to copy any documentary evidence of any corporation being investigated or proceeded against and shall have power to require by subpoena the attendance and testimony of witnesses and the production of all such documentary evidence relating to any matter under investigation. In case of disobedience an order may be obtained from a district court. Upon application of the Attorney General the district courts are given jurisdiction to issue writs of mandamus to require compliance with the act or any order of the commission made in pursuance thereof. The petitions are filed under this clause and the question is whether orders of the commission to allow inspection and copies of the documents and correspondence referred to were authorized by the act.

The petitions allege that complaints have been filed with the commission charging the respondents severally with unfair competition by regulating the prices at which their commodities should be resold, set forth the Senate resolution, and the resolutions of the commission to conduct an investigation under the authority of sections 5 and 6 (a), and in pursuance of the Senate resolution and for the further purpose of gathering and compiling information concerning the business, conduct and practices, etc., of each of the respondent companies. There are the necessary formal allegations and a prayer that unless the accounts, books, records, documents, memoranda, contracts, papers, and correspondence of the respondents are immediately submitted for inspection

and examination and for the purpose of making copies thereof, a mandamus issue requiring, in the case of the American Tobacco Co., the exhibition during business hours when the commission's agent requests it, of all letters and telegrams received by the company from or sent by it to all of its jobber customers between January 1, 1921, to December 31, 1921, inclusive. In the case of the P. Lorillard Co the same requirement is made, and also all letters, telegrams, or reports from or to its salesmen, or from or to all tobacco jobbers' or wholesale grocers' associations, all contracts or arrangements with such associations and correspondence and agreements with a list of corporations named.

The Senate resolution may be laid on one side, as it is not based on any alleged violation of the antitrust acts, within the requirement of section 6 (d) of the act. (*United States v. Louisville & Nashville R. R. Co.*, 236 U. S. 318, 329.) The complaints, as to which the commission refused definite information to the respondents, and one at least of which, we understand, has been dismissed, also may be disregarded for the moment, since the commission claims an unlimited right of access to the respondents' papers, with reference to the possible existence of practices in violation of section 5.

The mere facts of carrying on a commerce not confined within State lines and of being organized as a corporation do not make men's affairs public, as those of a railroad company now may be. (*Smith v. Interstate Commerce Commission*, 245 U. S. 33, 43.) Anyone who respects the spirit as well as the letter of the fourth amendment would be loath to believe that Congress intended to authorize one of its subordinate agencies to sweep all our traditions into the fire (*Interstate Commerce Commission v. Brimson*, 154 U. S. 447, 479) and to direct fishing expeditions into private papers on the possibility that they may disclose evidence of crime. We do not discuss the question whether it could do so if it tried, as nothing short of the most explicit language would induce us to attribute to Congress that intent. The interruption of business, the possible revelation of trade secrets, and the expense that compliance with the commission's wholesale demand would cause are the least considerations. It is contrary to the first principles of justice to allow a search through all the respondents' records, relevant or irrelevant, in the hope that something will turn up. The unwillingness of this court to sustain such a claim is shown in *Harriman v. Interstate Commerce Commission*, 211 U. S. 407, and as to correspondence, even in the case of a common carrier, in *United States v. Louisville & Nashville R. R. Co.*, 236 U. S. 318, 335. The question is a different one where the State granting the charter gives its commission power to inspect.

The right of access given by the statute is to documentary evidence—not to all documents, but to such documents as are evidence. The analogies of the law do not allow the party wanting evidence to call for all documents in order to see if they do not contain it. Some ground must be shown for supposing that the documents called for do contain it. Formerly in equity the ground must be found in admissions in the answer. (*Wigram, Discovery*, 2d ed., sec. 293.) We assume that the rule to be applied here is more liberal but still a ground must be laid and the ground and the demand must be reasonable. (*Essgee Co. v. United States*, 262 U. S., 147, 156, 157.) A general subpoena in the form of these petitions would be bad. Some evidence of the materiality of the papers demanded must be produced. (*Hale v. Henkel*, 201 U. S. 43, 77.) In the State case relied on by the Government the requirement was only to produce books and papers that were relevant to the inquiry. (*Consolidated Rendering Co. v. Vermont*, 207 U. S. 541.) The form of the subpoena was not the question in *Wheeler v. United States*, 226 U. S. 478, 488.

The demand was not only general, but extended to the records and correspondence concerning business done wholly within the State. This is made a distinct ground of objection. We assume for present purposes that even some part of the presumably large mass of papers relating only to intrastate business may be so connected with charges of unfair competition in interstate matters as to be relevant. (*Stafford v. Wallace*, 258 U. S. 405, 520, 521.) But that possibility does not warrant a demand for the whole. For all that appears the corporations would have been willing to produce such papers as they conceived to be relevant to the matter in hand. (See *Terminal Taxicab Co. v. District of Columbia*, 241 U. S. 252, 256.) If their judgment upon that matter was not final, at least some evidence must be offered to show that it was wrong. No such evidence is shown.

We have considered this case on the general claim of authority put forward by the commission. The argument for the Government attaches some

force to the investigations and proceedings upon which the commission had entered. The investigations and complaints seem to have been only on hearsay or suspicion—but even if they were induced by substantial evidence under oath the rudimentary principles of justice that we have laid down would apply. We can not attribute to Congress an intent to defy the Fourth Amendment or even to come so near to doing so as to raise a serious question of constitutional law. (*United States v. Delaware & Hudson Co.* 213 U. S. 366, 408; *U. S. v. Jin Fuey Moy*, 241 U. S. 394, 401).

Judgments affirmed.

March 17, 1924.

EXHIBIT 9

RAYMOND BROS.-CLARK CO. CASE

Supreme Court of the United States. No. 102. October Term, 1923

Federal Trade Commission, Petitioner, v. Raymond Bros.-Clark Company

On writ of Certiorari to the United States Circuit Court of Appeals for the Eighth Circuit

(January 7, 1924)

Mr. Justice Sanford delivered the opinion of the court.

This writ brings up for review a decree of the Circuit Court of Appeals which set aside an order of the Federal Trade Commission requiring the Raymond Bros.-Clark Co. to desist from a method of competition held to be prohibited by the Trade Commission act of September 26, 1914, c. 311, 38 Stat. 717.

By section 5 of that act "unfair methods of competition" in interstate commerce are declared unlawful, and the commission is empowered and directed to prevent their use.

The commission, in January, 1920, issued a complaint charging the Raymond Co. with acts and practices the purpose and effect of which was to cut off the supplies purchased by the Basket Stores Co., a competitor, from the T. A. Snider Preserve Co., stifle and prevent competition by the Stores Co., and interfere with the right of the Stores Co. and the Snider Co. to deal freely with each other in interstate commerce. The Raymond Co. answered, and evidence was taken. The commission made a report, stating its findings of fact and conclusions.

The material facts shown by the findings are: The Raymond Co. and the Stores Co. are dealers in groceries, with their principal places of business and warehouses in Nebraska. They buy groceries in wholesale quantities from manufacturers in other States, which are shipped to their warehouses and resold to customers within and outside of Nebraska. Each does an annual business of approximately \$2,500,000. The Raymond Co. sells exclusively at wholesale. The Stores Co. operates a chain of retail stores, but also sells at wholesale. In its wholesale trade, which constitutes about 10 per cent of its total business, it is a competitor of the Raymond Co. The Snider Co. is a manufacturer of groceries, with its office in Illinois. In September, 1918, it sold groceries to the Raymond Co., the Stores Co. and other neighboring dealers. These groceries were shipped in interstate commerce in a "pool" car to the Raymond Co., for distribution among the several purchasers. The Raymond Co., upon thus learning of the sale to the Stores Co., delayed the delivery of its portion of the groceries to the hindrance and obstruction of its business, and wrote to the Snider Co., protesting against the sale direct to the Stores Co. and asking for the allowance of the jobber's profit on such sale.¹ Later, the Raymond Co. declined to pay the Snider Co. until this commission was allowed, and threatened to cease business with it and return all goods purchased from it then in stock, unless it allowed this commission and discontinued direct sales to the Stores Co.; and, thereafter, an attempted settlement of the controversy having failed, the Raymond Co. ceased to purchase from the Snider Co.

¹ The facts that the Snider Co.'s office is in Illinois and that it shipped these groceries in interstate commerce, are not stated in the findings; but they otherwise appear in the record and are not disputed.

² It otherwise appears from the record that the ground of its protest and claim was its assertion that the Stores Co. was "nothing but a retail store."

The conclusions of the commission were: That the conduct of the Raymond Co. tended to, and did, unduly hinder competition between the Stores Co. and others similarly engaged in business; that the purpose of the Raymond Co. was also to press the Snider Co. to a selection of customers, in restraint of its trade, and to restrict the Stores Co. in the purchase of commodities in competition with other buyers; and that the conduct of the Raymond Co. tended to the accomplishment of this purpose.

The commission thereupon adjudged that the method of competition in question was prohibited by the act, and ordered the Raymond Co. to desist from directly or indirectly—hindering or preventing any person, firm, or corporation in or from the purchase of groceries or like commodities direct from the manufacturers or producers, in interstate commerce, or attempting so to do; hindering or preventing any manufacturer, producer, or dealer in groceries and like commodities in or from the selection of customers in interstate commerce, or attempting so to do; and influencing or attempting to influence any such manufacturer, producer, or dealer not to accept as a customer any firm or corporation with which, in the exercise of a free judgment, he has, or may desire to have, such relationship.

Upon a petition of the Raymond Co. for review of this order, the circuit court of appeals held that the findings of fact did not show an unfair method of competition by the Raymond Co. as to the Stores Co. or others similarly engaged in business. The court said: "There is no finding that petitioner combined with any other person or corporation for the purpose of affecting the trade of the Basket Stores Co., or others similarly engaged in business. So far as petitioner itself is concerned, it had the positive and lawful right to select any particular merchandise which it wished to purchase, and to select any person or corporation from whom it might wish to make its purchase. The petitioner had the right to do this for any reason satisfactory to it, or for no reason at all. It had a right to announce its reason without fear of subjecting itself to liability of any kind. It also had the unquestioned right to discontinue dealing with any manufacturer, * * * for any reason satisfactory to itself or for no reason at all. Any incidental result which might occur by reason of petitioner exercising a lawful right can not be charged against petitioner as an unfair method of competition." The decree setting aside the order of the commission was thereupon entered.

We pass, without determination, the preliminary contentions of the Raymond Co. that the findings of the commission are not supported by the testimony in many respects,⁶ and that, as both the complaint and the findings of fact relate merely to a controversy between it and a single manufacturer, over a single shipment of merchandise, the broad order of the commission, commanding it to desist from all acts of like character with "the entire commercial world" is improvident, and can not be sustained.⁷

The gravamen of the contention in behalf of the commission is that the conduct of the Raymond Co., acting alone and not in combination with others, in threatening the withdrawal of patronage from the Snider Co. if it continued to sell goods to the Stores Co., constituted an unfair method of competition, oppressive in its character, unlawful when tested by common law criteria, and having a dangerous tendency unduly to hinder competition.

The words "unfair method of competition," as used in the act, "are clearly inapplicable to practices never heretofore regarded as opposed to good morals because characterized by deception, had faith, fraud, or oppression, or as against public policy because of their dangerous tendency unduly to hinder competition or create monopoly." Federal Trade Comm. v. Gratz, 253 U. S. 421, 427; Federal Trade Comm. v. Beech-Nut Co., 257 U. S. 441, 453. If real

⁶ The Raymond Co. insists that the testimony shows, among other things, that it did not intentionally delay the delivery of the groceries to the Stores Co.; that the Stores Co. is not its competitor in the wholesale business, but engaged in the retail business, selling groceries to consumers in competition with other retail dealers to whom the Raymond Co. sells at wholesale; and that it did not threaten the Snider Co. with the withdrawal of patronage if it continued to sell to the Stores Co., but merely expressed surprise at the change made by the Snider Co. from its former policy of selling only to wholesalers, and declared that it would not have made its own purchases had it known of this change.

⁷ The circuit court of appeals stated, in the outset of its opinion, that, in any event, as the proceeding related to the use of an unfair method of competition against the Stores Co., the order of the commission, being "as broad as the business world," would have to be modified, if sustained in any particular. See Federal Trade Comm. v. Gratz, 253 U. S. 421, and Western Sugar Refining Co. v. Trade Comm. (C. C. A.), 275 Fed. 725, 732.

competition is to continue, the right of the individual to exercise reasonable discretion in respect of his own business methods must be preserved. Federal Trade Comm. *v. Gratz*, supra, page 429.

The present case discloses no elements of monopoly or oppression. So far as appears the Raymond Co. has no dominant control of the grocery trade, and competition between it and the Stores Co. is on equal terms. Nor do we find that the threatened withdrawal of its trade from the Snider Co. was unlawful at the common law, or had any dangerous tendency unduly to hinder competition.

It is the right, "long recognized," of a trader engaged in an entirely private business, "freely to exercise his own independent discretion as to the parties with whom he will deal." *United States v. Colgate & Co.*, 250 U. S. 300, 307. See also *United States v. Freight Ass'n.*, 166 U. S. 290, 320; *Dueber Watch-Case Co. v. Howard Watch Co.* (C. C. A.), 66 Fed. 637, 645; *Great Atlantic Tea Co. v. Cream of Wheat Co.* (C. C. A.), 227 Fed. 46, 48; *Wholesale Grocers' Ass'n v. Trade Comm.* (C. C. A.), 277 Fed. 637, 664; *Mennen Co. v. Trade Comm.* (C. C. A.), 288 Fed. 774, 780; *Booth v. Burgess*, 72 N. J. Eq. 181, 190; and 2 *Cooley on Torts* (3d ed.), 587. Thus a retail dealer "has the unquestioned right to stop dealing with a wholesaler for reasons satisfactory to himself." *Eastern States Lumber Co. v. United States*, 234 U. S. 600, 614; *United States v. Colgate & Co.*, supra, p. 307. He may lawfully make a fixed rule of conduct not to buy from a producer or manufacturer who sells to consumers in competition with himself. *Granada Lumber Co. v. Mississippi*, 217 U. S. 433, 440. Or he may stop dealing with a wholesaler who he thinks is acting unfairly in trying to undermine his trade. *Eastern States Lumber Co. v. United States*, supra, p. 614; *United States v. Colgate & Co.*, supra, 307. Likewise a wholesale dealer has the right to stop dealing with a manufacturer "for reasons sufficient to himself." And he may do so because he thinks such manufacturer is undermining his trade by selling either to a competing wholesaler or to a retailer competing with his own customers. Such other wholesaler or retailer has the reciprocal right to stop dealing with the manufacturer. This each may do, in the exercise of free competition, leaving it to the manufacturer to determine which customer, in the exercise of his own judgment, he desires to retain.

A different case would, of course, be presented if the Raymond Co. had combined and agreed with other wholesale dealers that none would trade with any manufacturer who sold to other wholesale dealers competing with themselves, or to retail dealers competing with their customers. An act lawful when done by one may become wrongful when done by many acting in concert, taking on the form of a conspiracy which may be prohibited if the result be hurtful to the public or to the individual against whom the concerted action is directed. *Granada Lumber Co. v. Mississippi*, supra, p. 440; *Eastern States Lumber Co. v. United States*, supra, p. 614. See also *Binderup v. Pathe Exchange*, — U. S. — (Nov. 19, 1923).

We conclude that the Raymond Co., in threatening to withdraw its trade from the Snider Co., exercised its lawful right, and that its conduct did not constitute an unfair method of competition within the meaning of the act. The decree of the Circuit Court of Appeals is accordingly

Affirmed.

EXHIBIT 10

FOX FILM CORPORATION

United States Circuit Court of Appeals for the Second Circuit

Fox Film Corporation, Petitioner, Against Federal Trade Commission,
respondent

Before Hough, Manton, and Mayer, Circuit Judges.

Petition to review the order of the Federal Trade Commission directing the petitioner to cease and desist from methods of unfair competition in trade. This petition is by the Fox Film Corporation to revise such order. Order affirmed.

Saul E. Rogers, Esq., counsel for petitioner.

Adrien F. Busick, Esq., counsel for respondent.

MANTON, Circuit Judge.

Under the authority of the act of September 24, 1914 (38 Stat. L. 717, Comp. Stat. 8836-a), the respondent filed a complaint against the petitioner, alleging that it was engaged in the production of photoplays and leased and sold its products to the owners and operators of moving-picture theaters throughout the United States, granting the right to exhibit said photoplays to the public. It is admitted that the petitioner, in leasing and selling to the exhibitors, maintains agencies at various cities in the several States of the United States. It makes positive photoplays produced by it and packs the same in such manner as to be adapted for use in motion-picture projecting machines. These are called films, and the photoplays are known in the trade as releases. It ships to its agencies in several States from New York City. The petitioner is therefore engaged in interstate commerce. (*Blinderup v. Pathe Exchange*, Supreme Court, Nov. 19, 1923, 63 L. Ed. 114.)

The parties stipulated the facts, and they had been embodied in the findings of the commission. It is stipulated that when a picture has been run and generally exploited in the United States or in a considerable portion of it, and it is again offered for exhibition at a later period, it is commonly known as a reissue or revival. That according to the accepted practice, usage, and custom of this industry, unless the original title of the picture is retained or the picture is so described in the contract between the producer and the exhibitor, and in the advertising matter as a reissue or revival of a photoplay previously released, it is understood by the exhibitor and the public that the photoplay to be furnished or screened is or will be a new picture—that is to say, a continuity not previously exhibited or exploited throughout any considerable portion of the United States. On December 18, 1916, the petitioner released a motion picture which was entitled "The Love Thief" and on May 28, 1917, it released a motion picture which was entitled "The Silent Lie," and on September 17, 1917, it released a motion picture entitled "The Yankee Way." These pictures were extensively exploited and exhibited throughout the United States. They were known at the time as feature pictures, being ordinary five-reel pictures designed for the principal part of an ordinary motion-picture theater program. It is stipulated that in the course of the season of 1919-20 the petitioner reissued the old picture of "The Love Thief" as "The She Tiger"; reissued the old picture of "The Silent Lie" and entitled it "Camille of the Yukon"; and reissued the old picture of "The Yankee Way" and entitled it "Sink or Swim." It furnished each of these three pictures so retitled to exhibitors in

various States of the United States in connection with leases providing for the petitioner's so-called program series of pictures. All other pictures furnished under such program contracts to exhibitors were new pictures. The petitioner furnished the exhibitors with bill posters and other matter for use in advertising the photoplays to the public. In no way did the petitioner disclose that the pictures so furnished or any of them were reissues. The advertising matters furnished exhibitors by petitioner in connection with the picture "Sink or Swim" conspicuously displayed the legend "William Fox presents George Walsh in 'Sink or Swim,'" and in connection with "The She Tiger" it conspicuously displayed the legend "'The She Tiger' from the famous novel, 'The Love Thief,' by N. P. Niessen." The advertising furnished exhibitors in connection with the picture "Camille of the Yukon" displayed the legend, "Based on Larry Evans's Alaskan novel, 'The Silent Lie.'" Various exhibitors who received these three photoplays from the petitioner used this advertising matter to advertise the exhibition of the pictures without further disclosing to the public that they were old pictures. It was, in effect, stipulated that without further information from the petitioner or its agents that any or either of the pictures were reissues the exhibitors believed them new pictures and advertised them for exhibition with the bills and posters supplied by the petitioner, and in some instances they received complaints from patrons of their theaters, who claimed to have been misled into believing them new pictures. In effect, it was stipulated that in communities where pictures were received and advertised, patrons attended the exhibition under the belief that they were new pictures.

The petitioner concedes that it is engaged in competition with other persons, partnerships, and corporations similarly engaged. Through its agency, it enters into leases, and contracts with exhibitors, agreeing to furnish the exhibitors over a fixed period, its current releases and grants the right to exhibitors to exhibit the same to the public for a stated number of performances. The president of the petitioner, in effect, testified that it has never been the general practice or policy of the petitioner to exploit, sell, or lease old pictures under new names or to reissue pictures under any names other than those of their original release. That the practice or policy of reissuing of old pictures under new names is obnoxious to him and to the motion-picture industry "and indefensible from any ethical or business standpoint; that of the multitude of motion pictures or photoplays produced by respondent, he knows of no instance except those involved in this proceeding in which respondent has reissued any old pictures under new names; that with respect to the above pictures there was no attempt to mislead the exhibitors, or the public that said pictures were not reissues." The order to cease and desist provides "that the respondent, Fox Film Corporation, its agents, servants and employees, cease and desist from directly or indirectly advertising, selling, or leasing, or offering to sell or lease, reissued motion-picture photo-plays under titles other than those under which such photoplays were originally issued and exhibited, unless the former titles of such photoplays and the fact that they theretofore have been exhibited under such former titles, be clearly, definitely, distinctly and unmistakably stated and set forth, both in the photoplay itself and in any and all advertising matter used in connection therewith in letters and type equal in size and prominence to those used in displaying the new titles." While the findings of the commission embraced but three pictures where the unfair methods were practiced, that is sufficient to support the order to desist. It is now well recognized that the act refers specifically to unfair methods of competition. This does not mean the general practice of the offender must be unfair in competition. General practice may involve many methods each conceived and to be applied for its particular desired result. One act that constitutes an unfair practice may of itself be offensive to the act. Congress had in mind, in this legislation, the prevention of acts which amount to unfair methods of competition, whatever their inception.¹ (Federal Trade Comm. v.

¹ Senator Cummins, chairman of the committee which reported the bill, said (Cong. Rec. vol. 51, p. 11455):

"Unfair competition must usually proceed to great lengths and be destructive of competition before it can be seized and denounced by the antitrust law. In other cases it must be associated with, coupled with, other vicious and unlawful practices in order to bring the person or the corporation guilty of the practice within the scope of the antitrust law. The purpose of this bill in this section and in other sections, which I hope will be added to it, is to seize the offender before his ravages have gone to the length necessary in order to bring him within the law that we already have."

"We knew little of these things in 1890. The commerce of the United States has largely developed in the last twenty-five years. The modern methods of carrying on

Gratz, 253 U. S. 421). To meet this, the antitrust law was supplemented. To violate the Sherman Act, it is necessary to find that the practice has grown to such proportions and strength that the business and practice is obnoxious as a trust or monopoly and restrains trade. No better illustration may be exemplified than the instant case of these three offenses or acts which are unfair restraints of trade and damage the competitor who sells to the exhibitors. The Federal trade act was intended to reach such unfair business methods when the antitrust law could not do so. The commission may restrain an act which tends so unduly to hinder competition as to permit the act to be classed as an unfair method of competing. An act which involves such fraud in competition as to render it unfair, is an act within the condemnation of this statute. It is by stopping its use before it becomes a general practice that the effect of an unfair method in suppressing competition is destroyed and competitors protected. False and misleading advertising or representations concerning hosiery was held to be an unfair method of competition. (Winsted Hosiery case, 258 U. S. 483.) In that case a manufacturer's practice of selling underwear and other knit goods made partly of wool, was to label it "Natural merino," "Natural worsted," and "Natural wool." This product was purchased by the consuming public in the retail trade as indicating pure wool fabrics. It misled part of the public into buying as all wool garments, garments made largely of cotton and aided and encouraged misrepresentation by unscrupulous retailers and other salesmen. It was held to be an unfair method of competition as against manufacturers of like garments made of wool and wool and cotton who branded their products truthfully and therefore should be suppressed under Sec. 5 of the Federal trade act. It was held further that such method of competition does not cease to be so because competitors became aware of it or because it becomes so well known to the trade that retailers as distinguished from consumers are not deceived by it. The pictures in the instant case were presented in the advertising matter and misrepresented by the petitioner to the exhibitors as new pictures when they were in fact old. The exhibitors in the trade had a right to expect that a new name described a new picture. The exhibitors were accordingly deceived. It had been the custom to entitle the photoplay products truthfully. Fox's stipulated testimony concedes this. In *Royal Baking Powder Co. v. Federal Trade Comm.* (281 Fed. 741) the petitioner, due to the increased cost of cream of tartar, discontinued manufacturing its widely advertised brand of cream of tartar baking powder which had been on the market for sixty years, and began to manufacture a phosphate baking powder and advertised it for sale at about one-half the former price, under practically the same trade name and put up in the same containers. This court held that the finding to the effect that this was misleading to the public and unfair to other manufacturers selling cream of tartar baking powder, was justified and that false and misleading labeling and advertising induced the public to believe that the phosphate baking powder it was manufacturing was the same as the more expensive cream of tartar baking powder which it had formerly manufactured, was an unfair method of competition and could be prevented by the Trade Commission. The fact that the petitioner has discontinued this misrepresentation and promises a business practice which will forbid the publishing of false advertising in the future, does not deprive the the commission of authority to command the company to desist from such advertising for it is not obliged to assume that false representations or publications or advertising will not be resumed. (*Guaranty Vet. Co. v. Federal Trade Comm.*, 285 Fed. 860.) This record establishes that exhibitors were actually misled by the contracts and the advertising matter into the belief that the pictures purchased for exhibition were new pictures. The case, therefore, presents the instance of a producer and distributor misrepresenting the

business have been discovered and put into operation in the last quarter of a century; and as we have gone on under the antitrust law and under the decisions of the court in their effort to enforce that law, we have observed certain forms of industrial activity which ought to be prohibited whether in and of themselves they restrain trade or commerce or not. We have discovered that their tendency is evil: we have discovered that the end which is inevitably reached through these methods is an end which is destructive of fair commerce between the States. It is these considerations which, in my judgment, have made it wise, if not necessary, to supplement the antitrust law by additional legislation, not in antagonism to the antitrust law, but in harmony with the antitrust law, to more effectively put into the industrial life of America the principle of the antitrust law, which is fair, reasonable competition, independence to the individual, and disassociation among the corporations. * * *

quality of his goods in his contracts and in his advertising matter misrepresenting them so that the trade, apart from the public, was misled and deceived. In the reissuance of the old pictures under the new titles, without any intimation or notice concerning their origin or history, the petitioner was passing off one of its products for another of its products; that is to say, one of its old productions for a new production. This order to desist will not prohibit the remaking of a photoplay in which an entirely new cast is used or an entirely new production is made, or where the original title is used or reference made thereto in the advertising of the picture. There is no objection to the use of the former photoplay if the name be not changed and no deception be practiced in its release to the exhibitors or its exhibition.

The order of the commission is affirmed.

EXHIBIT 11

PROCEEDINGS DISPOSED OF DURING YEAR ENDED JUNE 30, 1924

1. ORDERS TO CEASE AND DESIST

Complaint No. 303—Federal Trade Commission v. Utah-Idaho Sugar Co., Amalgamated Sugar Co., E. R. Wooley, A. P. Cooper, and E. F. Cullen. Charge: Using unfair methods of competition in connection with the manufacture and sale of beet sugar, consisting in the circulation of false and misleading reports concerning the business, methods, and financial standing of competitors and the inability of competitors to produce sugar, due to the alleged fact that all the producing territory is controlled by respondent; making long-term contracts with growers in territories where competitors were intending to erect factories; causing railroads to delay building tracks and other facilities for competitors, and causing banks to withhold credit; spying upon the private and business affairs of competitors; establishing factories and buying up supplies in territories about to be occupied by competitors; preventing manufacturers of machinery from supplying competitors; secretly paying others to institute litigation against competitors and furnishing money to secret agents for the purpose of acquiring the controlling interest in the business of competitors, in alleged violation of section 5 of the Federal Trade Commission act.

Disposition: After hearing, the commission dismissed the complaint as to E. F. Cullen, and entered the following order:

Now therefore it is ordered that the respondents, Utah-Idaho Sugar Co. and the Amalgamated Sugar Co., each of them and their officers, agents, and employees and E. R. Wooley and A. P. Cooper, shall forever cease and desist from conspiring or combining between and among themselves to maintain or retain the monopoly of corporation respondents hereinbefore set out; to prevent the establishment of beet-sugar enterprises and the building of sugar factories by persons or interests other than said corporation respondents, and to hinder, forestall, obstruct, or prevent competitors or prospective competitors from engaging in the purchase of sugar beets, and in the manufacture and sale of refined beet sugar in interstate commerce, and from effectuating or attempting to effectuate such conspiracy and combination—

(1) By respondent corporations allocating to themselves certain territory and establishing interstate territorial divisions lines to be observed by and between themselves in the obtaining of sugar beets and the building of beet-sugar factories for the purpose of unlawfully protecting the said respondent corporations against competitors who may endeavor to come into such allocated territory for the purpose of obtaining sugar beets and for the purpose of building factories for the manufacture of beet sugar.

(2) By intimidation, untruthful statements, or otherwise, preventing, hindering, or attempting to prevent or hinder the Dyer Co., a corporation of Cleveland, Ohio, a manufacturer of beet sugar factory machinery and builder of beet sugar factories in the United States, or any other such manufacturer, from engaging in interstate commerce in selling, building, and equipping beet sugar factories for competitors or prospective competitors who are engaged or who are about to engage in the purchase of sugar beets and the manufacture and sale of refined beet sugar in interstate commerce.

(3) By using their financial power and influence so as to cause banks and others to refuse credit to and to discourage competitors and prospective competitors from engaging in the purchase of sugar beets and the manufacture and sale of refined beet sugar in interstate commerce.

(4) By using their financial power and influence to purchase land and erect factories in the territory where competitors or prospective competitors intend or shall undertake to start in the business of purchasing sugar beets and of manufacturing and selling refined beet sugar in interstate commerce,

when such purchases or erections are not done in good faith and for no other purpose than to forestall, obstruct, and prevent competitors and prospective competitors from engaging in the business of purchasing sugar beets and of manufacturing and selling beet sugar in interstate commerce.

(5) By inducing beet growers to break or cancel contracts for the production of sugar beets for competitors or prospective competitors by promises to build sugar factories, when said respondent corporations have no intention of constructing same, but make such promise solely for the purpose of causing breach of contracts for said production in order thereby to prevent or hamper the building of prospective competing factories or the operation of existing competing factories.

(6) By circulating and publishing false, misleading, and unfair statements concerning the machinery and equipment of competitors or prospective competitors' factories or the fitness of such machinery to successfully manufacture refined beet sugar.

(7) By circulating and publishing false, misleading, and unfair statements concerning the (a) ability of competitors or prospective competitors to get and pay for beet seed; (b) adaptability to raising sugar beets of land or territory in the localities where competitors are located or are intending to locate; (c) ability of competitors or prospective competitors to pay producers or growers for sugar beets contracted for or delivered to them.

(8) By making untruthful and unjustifiable statements against competitors or prospective competitors to induce, persuade, and influence United States Government departments and agents, for the purpose of causing said governmental departments or agents to use their power and authority to prevent the building of factories for the manufacture and sale in interstate commerce of refined beet sugar by competitors or prospective competitors.

(9) By offering to advertise in newspapers circulating in the localities of the States of Utah, Idaho, Oregon, and Montana or elsewhere, where competitors operate or prospective competitors intend to build and operate beet sugar factories, with the understanding that editorial policies shall be in favor of corporation respondents as against competitors in regard to the beet sugar industry.

(10) By inducing beet growers or others, through false, unfair, and misleading statements, to withdraw their support from, and to breach contracts for the growing of sugar beets with competitors and prospective competitors in the manufacture and sale in interstate commerce of refined beet sugar, thereby depriving said competitors of, or hampering them in, the ability to compete with corporation respondents.

(11) By circulating and publishing false, misleading, and unfair statements concerning the financial standing and responsibility of competitors or prospective competitors for the purpose of preventing or hampering the sale or disposition of the stocks, bonds, and promissory notes of such competitors, or of otherwise causing said competitors financial embarrassment.

(12) By financing and furnishing money to secret and undisclosed agents or employees for the purpose of inciting financial trouble and embarrassment to competitors or prospective competitors by purchasing or acquiring secretly the whole or a controlling interest in the business of competitors or prospective competitors who are engaged or who intend to engage in the manufacture and sale of refined beet sugar in interstate commerce.

(13) By financing and furnishing money to secret and undisclosed agents or employees for the purpose of annoying, harassing, and eliminating competitors and prospective competitors by instituting unjustifiable and groundless litigation and law suits.

(14) By circulating false, misleading, and unfair statements in writing or orally concerning the honesty, integrity, or ability of the promoters, officers, or employees of competitors or prospective competitors engaged in or about to engage in the purchase of sugar beets and the manufacture and sale in interstate commerce of refined beet sugar.

(15) By utilizing any other equivalent means not hereinbefore stated of accomplishing the object of unfairly preventing, forestalling, stifling or hampering the business of competitors and of those about to compete with corporation respondents in the purchase of sugar beets and the manufacture and sale of refined beet sugar in interstate commerce.

No service of the complaint having been made upon the respondent, E. F. Cullen, it is further ordered that the complaint herein be, and the same is hereby, dismissed as to the said respondent, E. F. Cullen.

By the commission, Commissioners Van Fleet and Gaskill, dissenting. Memorandum dissent by Commissioner Van Fleet attached.

DISSENT BY COMMISSIONER VAN FLEET

In this case the respondents are engaged in the manufacture and sale of beet sugar. The sugar is sold in interstate commerce. The manufacture is intrastate. This proceeding is based on section 5 of the Federal Trade Commission act, which declares unlawful unfair methods of competition in commerce. The fact that respondents are engaged in commerce in selling sugar produced has no bearing on the case for the reason that the proof does not show any acts of unfair competition in such product. The fact that a respondent is engaged in commerce is not material unless the acts charged have to do with such commerce or that of its competitors in such commerce. The acts to which the proof is directed are concerning only the manufacture. The manufacture of sugar from beets is somewhat peculiar in that it is necessary to have the factory located where beets may readily be obtained by short haul. It is not profitable to ship the beets a great distance to the factory. The acts to which the proof is directed consisted in the effort of respondents to prevent competing factories being located in contiguous territory where they might absorb a part of the supply of beets to respondents' factories. It was at most a prevention of competition in the purchase of the raw material for manufacture within the State, and in no case does the proof show an interference with the transport of beets from one State to another, or an interference with the purchase thereof.

It is well settled that production and manufacture is not commerce. *Coe v. Errol*, 116 U. S. 517; *Kidd v. Pearson*, 128 U. S. 1; *United States v. E. C. Knight Co.*, 156 U. S. 1; *Capital City Dairy Co. v. Ohio*, 183 U. S. 238; *McCluskey v. Marysville & Northern Ry. Co.*, 243 U. S. 251; *Arkadelphia Milling Co. v. St. Louis Southwestern Ry. Co.*, 249 U. S. 134; *The Coronado case*, 259 U. S. 844; *Hammer v. Dagenhart*, 247 U. S. 251.

The fact that an article in process of manufacture is intended for export to another State does not render it an article of interstate commerce. *Crescent Oil Company v. Mississippi*, 257 U. S. 129. But it is contended in support of the jurisdiction of the commission that such interference with the source of supply of respondent's competitors affects the ability of such competitors to produce sugar to be sold in interstate commerce and that such acts are thus an interference with such commerce. This theory is based on those cases holding that intrastate acts which directly interfere with a current of commerce may be controlled by Congress. *Swift v. U. S.*, 196 U. S. 375; *United States v. Patten*, 226 U. S. 525; *United States v. Ferger*, 250 U. S. 199; *Stafford v. Wallace*, 257 U. S. —; *Board of Trade of the City of Chicago v. Olsen, et al.* U. S. Sup., Apr. 16, 1923.

There is no conflict between the cases holding that production and manufacture are not commerce and the doctrine laid down in the *Swift* and following cases. In the first case there is no interstate commerce unless the acts themselves are such. In the second case there already is interstate commerce which is being affected or obstructed by the intrastate acts. Confusion may arise if the intrastate acts regulated under the doctrine in the *Swift* case be compared with intrastate acts where there is not already commerce.

Purely intrastate acts may or may not come under the Federal jurisdiction, depending on whether they affect existing interstate commerce. The same acts thus may or may not be subject to such jurisdiction. This is well illustrated in the two cases of *Hill v. Wallace*, 42 Sup. Ct. Rep. 453; *Board of Trade of the City of Chicago v. Olsen et al.* U. S. Sup., Apr. 16, 1923. When such acts are subject to such jurisdiction it is not because they are commerce, but because they affect or obstruct it.

In the present case there is no commerce to obstruct until the beets are manufactured into sugar and such sugar has been placed in transport. The argument is, however, as stated above, that the acts here cut off at the source such commerce. It is only such acts as directly interfere with commerce which come under the Federal jurisdiction. The line must be drawn somewhere, else all jurisdiction in trade or production would become Federal. Hence Congress has not jurisdiction of such acts as only indirectly or remotely affect commerce. In the instant case if interference with the production and manufacture into sugar of beets is an obstruction to a later or unborn commerce in sugar to be made from the beets, one who intrastate sold defective beet seed,

thus preventing the production of beets to be manufactured into sugar, would be in commerce. Or one who sold fertilizer to raise the seed to plant the beets to make the sugar to be shipped in commerce would be in commerce.

Complaint No. 459.—Federal Trade Commission v. United Typothetae of America, Benjamin P. Moulton, Arthur E. Southworth, Charles L. Kingsley, George H. Gardner, E. H. James, Fred W. Gage, and Joseph A. Borden. Charge: Using unfair methods of competition by inaugurating a campaign known as the "three-year plan" for the purpose of collecting assessments from manufacturers and merchants who sell paper, printing presses, type, ink, and other supplies to employing printers and other associations allied to the printing industry, the money to be used mainly for the purpose of inducing employing printers to use a uniform system of cost accounting and a standard price list compiled by the respondent; using coercive methods to obtain subscriptions to the "three-year-plan" fund; adopting through its "trade-matter committee" a practice of attempting to control the matter of terms on which manufacturers of printing presses, etc., sell their output to printing establishments, and attempting to have such manufacturers refuse to place any of their presses, etc., in any printing establishment until a cash payment equal to 25 per cent of the amount of the total purchase price be paid; urging printers to adopt a "standard cost system" and "standard price list," for the purpose of establishing a uniform scale of prices throughout the printing industry, in alleged violation of section 5 of the Federal Trade Commission act.

Disposition: After hearing the commission entered the following order:

It is now ordered that the respondent, United Typothetae of America, its officers, as individuals and as officers of the United Typothetae of America; its members, individually and as members of the United Typothetae of America; its branch and affiliated local organizations, including, in addition to some not known to the commission, the following:

Capital District Typothetae, Albany, N. Y.; Fox River Valley Typothetae, Appleton, Wis.; Mountain Typothetae, Ashville, N. C.; Atlanta Typothetae, Atlanta, Ga.; Augusta Typothetae, Augusta, Ga.; Austin Typothetae, Austin, Tex.; Baltimore Typothetae, Baltimore, Md.; Battle Creek Typothetae, Battle Creek, Mich.; Bay City Typothetae, Bay City, Mich.; Binghamton Typothetae, Binghamton, N. Y.; Birmingham Typothetae, Birmingham, Ala.; Bloomington Typothetae, Bloomington, Ill.; Boston Typothetae Board of Trade, Boston, Mass.; Bridgeport Typothetae, Bridgeport, Conn.; Buffalo Typothetae, Buffalo, N. Y.; West Jersey Typothetae, Camden, N. J.; Stark County Typothetae, Canton, Ohio; Charleston Typothetae, Charleston, S. C.; Charlotte Typothetae, Charlotte, N. C.; Chattanooga Typothetae, Chattanooga, Tenn.; Franklin Typothetae of Chicago, Chicago, Ill.; Franklin Typothetae of Cincinnati, Cincinnati, Ohio; Graphic Arts Club of Cleveland, Cleveland, Ohio; Columbia Typothetae, Columbia, S. C.; Columbus Typothetae, Columbus, Ga.; Columbus Typothetae, Columbus, Ohio; Dallas Typothetae, Dallas, Tex.; Franklin Typothetae of Dayton, Dayton, Ohio; Des Moines Typothetae, Des Moines, Iowa; Typothetae Franklin Association, Detroit, Mich.; Duluth Typothetae, Duluth, Minn.; Typothetae of Elmira, Elmira, N. Y.; Erie Typothetae, Erie, Pa.; Everett Typothetae, Everett, Wash.; Fargo-Moorhead Typothetae, Fargo, N. Dak.; Flint Typothetae, Flint, Mich.; Typothetae of Fort Smith, Fort Smith, Ark.; Fort Wayne Typothetae, Fort Wayne, Ind.; Fort Worth Typothetae, Fort Worth, Tex.; Grand Rapids Typothetae, Grand Rapids, Mich.; Greenville Typothetae, Greenville, S. C.; Western Ontario Typothetae, Guelph, Ontario, Canada; Central Pennsylvania Typothetae, Harrisburg, Pa.; Hartford Typothetae, Hartford, Conn.; Typothetae of Haverhill, Haverhill, Mass.; Houston-Galveston Typothetae, Houston, Tex.; Southwestern Typothetae of Kansas and Oklahoma, Independence, Kans.; Indianapolis Typothetae, Indianapolis, Ind.; Jackson Typothetae, Jackson, Mich.; Jacksonville Typothetae, Jacksonville, Fla.; Hudson County Typothetae, Jersey City, N. J.; East Tennessee Typothetae, Johnson City, Tenn.; Kalamazoo Typothetae, Kalamazoo, Mich.; Graphic Arts Organization, Kansas City, Mo.; Knoxville Typothetae, Knoxville, Tenn.; Lansing Typothetae, Lansing, Mich.; Lima Typothetae, Lima, Ohio; Lincoln Typothetae, Lincoln, Nebr.; Arkansas Typothetae, Little Rock, Ark.; Typothetae of Macon, Macon, Ga.; Marietta Typothetae, Marietta, Ohio; Memphis Typothetae, Memphis, Tenn.; Milwaukee Typothetae, Milwaukee, Wis.; Minneapolis Typothetae, Minneapolis, Minn.; Mobile Typothetae, Mobile, Ala.; Montgomery Typothetae, Montgomery, Ala.; Graphic Arts Section, C. M.

A., Montreal, Province of Quebec, Canada; Muskegon Typothetae, Muskegon, Mich.; Ben Franklin Typothetae of Muskogee, Muskogee, Okla.; Typothetae of Newark, Newark, N. Y.; New Haven Typothetae, New Haven, Conn.; New Orleans Typothetae, New Orleans, La.; New Westminster Typothetae, New Westminster, British Columbia, Canada; New York Employing Printers Association, New York, N. Y.; Tidewater Typothetae, Norfolk, Va.; Graphic Arts Association, Oklahoma City, Okla.; Ottawa Typothetae, Ottawa, Ontario, Canada; Pensacola Club, Pensacola, Fla.; Typothetae of Philadelphia, Philadelphia, Pa.; Typothetae of Western Pennsylvania, Pittsburgh, Pa.; Maine Typothetae, Portland, Me.; Portland Typothetae, Portland, Oreg.; Typothetae of Rhode Island, Providence, R. I.; Quebec Typothetae, Quebec, Province of Quebec, Canada; Gem City Typothetae, Quincy, Ill.; Racine-Kenosha Typothetae, Racine, Wis.; Central North Carolina Typothetae, Raleigh, N. C.; Richmond Typothetae, Richmond, Va.; Rochester Typothetae, Rochester, N. Y.; Rockford Typothetae, Rockford, Ill.; Tri-City Manufacturing Printers' Association, Rock Island, Ill.; Saginaw Typothetae, Saginaw, Mich.; Employing Printers' Educational Association, San Antonio, Tex.; Typothetae of Savannah, Savannah, Ga.; Ben Franklin Club of St. Louis, St. Louis, Mo.; St. Paul Typothetae, St. Paul, Minn.; Anthracite Typothetae, Scranton, Pa.; Seattle Division, U. T. A., Seattle, Wash.; St. Joseph Valley Typothetae, South Bend, Ind.; Spokane Typothetae, Spokane, Wash.; Springfield Typothetae, Springfield, Mass.; Springfield Typothetae, Springfield, Ohio; Okanagan Press Guild, Summerland, British Columbia, Canada; Syracuse Typothetae, Syracuse, N. Y.; Tacoma Typothetae, Tacoma, Wash.; Florida West Coast Typothetae, Tampa, Fla.; Terre Haute Typothetae, Terre Haute, Ind.; Toledo Typothetae, Toledo, Ohio; Topeka Typothetae, Topeka, Kans.; Toronto Typothetae, Toronto, Ontario, Canada; Trenton Typothetae, Trenton, N. J.; Typothetae of Tulsa, Tulsa, Okla.; Typothetae of Utica, and vicinity, Utica, N. Y.; Vancouver Typothetae, Vancouver, British Columbia, Canada; Waco Typothetae, Waco, Tex.; Typothetae of Washington, D. C., Washington, D. C.; Ben Franklin Typothetae of Wichita, Wichita, Kans.; Williamsport Typothetae, Williamsport, Pa.; Wilmington Typothetae, Wilmington, Del.; Ben Franklin Typothetae, Wilmington, N. C.; Triangle Typothetae, Winston-Salem, N. C.; Winnipeg Typothetae, Winnipeg, Manitoba, Canada; Worcester Typothetae, Worcester, Mass.—

cease and desist, directly or indirectly—

1. From conducting its system of education in principles and methods of cost accounting in such way as to suggest any uniform percentage to be included in selling price as profit or otherwise by members or others using such system of cost accounting.

2. From requiring or receiving from members and others using respondent's uniform cost-accounting system, identified and itemized statements of production costs for the purpose of calculating average, normal, or standard costs of production, and from publishing them to members and the trade generally as a "Standard Price List" or "Standard Guide" or association cost or price list under any other name.

3. From compiling and publishing for use by members and others in the same trade, average, normal, or standard production costs with instructions or suggestions for the translation of such standard costs into selling prices under the name of "Standard Price List" or "Standard Guide" or any other name.

Complaint No. 472.—Federal Trade Commission v. Pioneer Paper Co. Charge: Using unfair methods of competition by falsely advertising its products as "rubber," and using the terms "one ply," "two ply," and "three ply," to designate and describe the different degrees of thickness of its product, when the different degrees of thickness consist of but one layer or ply, with the effect of misleading and deceiving the public, and giving the respondent's product an undue preference over products of competitors who do not use such methods, in alleged violation of section 5 of the Federal Trade Commission act.

Disposition: A stipulation having been entered into in lieu of testimony, the commission entered the following order:

It is now ordered that respondent, Pioneer Paper Co., its agents, servants, employees, and representatives do cease and desist—

From employing or using in connection with the sale of roofing material not composed of rubber the word "Rubber," alone or in combination with any other word or words to describe its product; (a) in circulars, booklets, or other advertising matter; or (b) as, or in connection with, or as part of, a

trade name or brand for such roofing; or (c) on labels, covers, or wrappers for, or on rolls of, such roofing; and

From employing or using in connection with the sale of roofing material not composed of two or more plies, layers, or thicknesses the words "two ply" or "three ply," alone or in combination with any other word or words to describe its product; (a) in circulars, booklets, or other advertising matter; or (b) as, or in connection with, or as part of, a trade name or brand for such roofing; or (c) on labels, covers, or wrappers for, or on rolls of, such roofing.

Complaint No. 473.—Federal Trade Commission *v.* Western Elaterite Roofing Co. Charge: (Ante, complaint No. 472.) Disposition: (Ante, complaint No. 472.)

Complaint No. 474.—Federal Trade Commission *v.* Sifo Products Co. Charge: (Ante, complaint No. 472.) Disposition: (Ante, complaint No. 472.)

Complaint No. 475.—Federal Trade Commission *v.* Oertell Roofing Manufacturing Co. Charge: (Ante, complaint No. 472.) Disposition: (Ante, complaint No. 472.)

Complaint No. 476.—Federal Trade Commission *v.* Stowell Manufacturing Co. Charge: (Ante, complaint No. 472.) Disposition: (Ante, complaint No. 472.)

Complaint No. 477.—Federal Trade Commission *v.* Beckman-Dawson Co. Charge: (Ante, complaint No. 472.) Disposition: (Ante, complaint No. 472.)

Complaint No. 478.—Federal Trade Commission *v.* Durable Roofing Manufacturing Co. Charge: (Ante, complaint No. 472.) Disposition: (Ante, complaint No. 472.)

Complaint No. 479.—Federal Trade Commission *v.* McHenry-Millhouse Manufacturing Co. Charge: (Ante, complaint No. 472.) Disposition: (Ante, complaint No. 472.)

Complaint No. 480.—Federal Trade Commission *v.* International Roofing Manufacturing Co. Charge: (Ante, complaint No. 472.) Disposition: (Ante, complaint No. 472.)

Complaint No. 481.—Federal Trade Commission *v.* Amalgamated Roofing Co. Charge: (Ante, complaint No. 472.) Disposition: (Ante, complaint No. 472.)

Complaint No. 482.—Federal Trade Commission *v.* The Chatfield Manufacturing Co. Charge: (Ante, complaint No. 472.) Disposition: (Ante, complaint No. 472.)

Complaint No. 483.—Federal Trade Commission *v.* H. W. Johns-Manville Co. Charge: (Ante, complaint No. 472.) Disposition: (Ante, complaint No. 472.)

Complaint No. 484.—Federal Trade Commission *v.* Keystone Roofing Manufacturing Co. Charge: (Ante, complaint No. 472.) Disposition: (Ante, complaint No. 472.)

Complaint No. 485.—Federal Trade Commission *v.* The Barrett Co. Charge: (Ante, complaint No. 472.) Disposition: (Ante, complaint No. 472.)

Complaint No. 487.—Federal Trade Commission *v.* Phillip Carey Manufacturing Co. Charge: (Ante, complaint No. 472.) Disposition: (Ante, complaint No. 472.)

Complaint No. 488.—Federal Trade Commission *v.* H. F. Watson Co. Charge: (Ante, complaint No. 472.) Disposition: (Ante, complaint No. 472.)

Complaint No. 489.—Federal Trade Commission *v.* The Paraffine Companies. Charge: (Ante, complaint No. 472.) Disposition: (Ante, complaint No. 472.)

Complaint No. 490.—Federal Trade Commission *v.* Sylvester L. Weaver, trading as the Weaver Roof Co. Charge: (Ante, complaint No. 472.) Disposition: (Ante, complaint No. 472.)

Complaint No. 594.—Federal Trade Commission *v.* Butterick Co., Federal Publishing Co., Standard Fashion Co., Butterick Publishing Co., New Idea Pattern Co., and Designer Publishing Co. (Inc.). Charges: Using unfair methods of competition by entering into contracts with approximately 20,000 retail dry goods dealers whereby its paper dress patterns are to be resold at certain prices fixed and established by respondents, and refusing to sell to those who do not maintain such resale prices in alleged violation of section 5 of the Federal Trade Commission act; and entering into contracts whereby its dealers are prohibited from dealing in patterns manufactured by competitors of respondents, and enforcing such contracts by refusal to sell to such dealers who do not maintain such agreements and by threats of suits and institution of suits for damages, in alleged violation of section 3 of the Clayton Act.

Disposition: After hearing, the commission entered the following order:

Now, therefore, it is ordered that the respondents, Butterick Co., Federal Publishing Co., Standard Fashion Co., Butterick Publishing Co., New Idea

Patterson Co., and Designer Publishing Co. (Inc.), their officers, directors, agents, and employees, while engaged in competition in interstate commerce among the several States and Territories of the United States and District of Columbia, cease and desist—

From selling the patterns manufactured by them, or any of them, for resale to the public upon any contract, agreement, or understanding that the distributor shall maintain the resale price fixed by the maker, and/or that such distributor shall not deal in patterns produced by any other maker than the respondents or any of them.

Complaint No. 694.—Federal Trade Commission v. The Chamber of Commerce of Minneapolis; the officers, board of directors, and members of the Chamber of Commerce of Minneapolis; Manager Publishing Co.; John H. Adams; and John F. Flemming. Charges: Using unfair methods of competition by engaging in a confederation and conspiracy to annoy and embarrass and destroy the business of the Equity Cooperative Exchange, a competitor of the respondent chamber of commerce and its members in the selling, buying, and distribution of grain, by (a) the publication of false and misleading statements concerning the said cooperative exchange, particularly in the publications of the respondent publishing company; (b) the instigation and preparation for trial of certain litigation; (c) refusal to make available to said cooperative exchange and its members the telegraphic market quotation service supplied by the respondents; (d) the boycott of and persistent refusal to buy grain from the said cooperative exchange; (e) the suppression of competition among members of the respondent chamber of commerce and discrimination against nonmembers; and (f) by the means of contracts binding country shippers to ship all or a greater part of their grain to the respondent chamber of commerce members, in alleged violation of section 5 of the Federal Trade Commission act.

Disposition: After hearing, the commission entered the following order:

Now, therefore, it is ordered that the respondents, the Chamber of Commerce of Minneapolis; C. A. Magnuson, C. M. Case, William Dalrymple, A. C. Andrews, B. F. Benson, W. T. Frasier, H. P. Gallaher, J. B. Gillilan, Jr., H. S. Helm, Asher Howard, John McLeod, J. H. MacMillan, F. C. Van Dusen, John G. McHugh, and all other members, officers, directors, agents, servants, and employees of the Chamber of Commerce of Minneapolis; Manager Publishing Co.; John H. Adams; and John F. Flemming, and each of them and their or its officers, agents, solicitors, representatives, servants, and employees, and all other persons acting under, through, by, or in behalf of them or any of them, forever cease and desist—

From combining and conspiring among themselves or with others, directly or indirectly, to interfere with or injure or destroy the business or the reputation of the St. Paul Grain Exchange, or its officers and members, or the Equity Cooperative Exchange, or its officers and stockholders (or other competitors of the respondent chamber and its members), by—

(1) Publishing or causing to be published in any newspaper, periodical, pamphlet, or otherwise, or circulating, or causing to be circulated orally or otherwise, among the customers or prospective customers of the members of the St. Paul Grain Exchange, or the public generally, any false or misleading statements concerning the financial standing, the business, or the business methods of the said exchange, its officers or members, or concerning the said Equity Cooperative Exchange, its officers or stockholders.

(2) Instituting vexatious or unfounded suits either at law or in equity against said Equity Cooperative Exchange with the purpose or intent, or with the effect of hindering or obstructing the business of the said Equity Cooperative Exchange or injuring its credit and reputation.

It is further ordered that the respondents, the Chamber of Commerce of Minneapolis; C. A. Magnuson, C. M. Case, William Dalrymple, A. C. Andrews, B. F. Benson, W. T. Frasier, H. P. Gallaher, J. B. Gillilan, Jr., H. S. Helm, Asher Howard, John McLeod, J. H. MacMillan, F. C. Van Dusen, John G. McHugh, and all other members, officers, directors, agents, servants, and employees of the Chamber of Commerce of Minneapolis, and each of them, and their or its officers, agents, solicitors, representatives, servants, and employees and all persons acting under, through, by or in behalf of it or them, or any of them, forever cease and desist from—

(1) Combining and conspiring among themselves or with others directly or indirectly to induce, persuade, or compel and from inducing, persuading, or

compelling any of the members of said chamber, their agents or employees, to refuse to buy from, sell to, or otherwise deal with the St. Paul Grain Exchange or its members or the Equity Cooperative Exchange, or its stockholders, or the customers of any of them, because of the patronage dividend plan of doing business adopted by the said Equity Cooperative Exchange, or by any of the members of the said St. Paul Grain Exchange, as more particularly set forth in paragraph (4) *infra* of this order.

(2) Hindering, obstructing, or preventing any telegraph company or other distributing agent from furnishing continuous or periodical price quotations of grains to the St. Paul Grain Exchange, or its members, or to the Equity Cooperative Exchange or its stockholders.

(3) Passing or enforcing any rule or regulation, or enforcing any usage or custom, that prohibits or prevents members of the respondent chamber from conducting their business of dealing in grain according to the cooperative method of marketing grain or according to the patronage dividend plan, like or similar to the method or plan adopted by the Equity Cooperative Exchange.

(4) Denying to any duly accredited representatives of any organization or association of farmer grain growers or shippers admission to membership in said respondent chamber, with full and equal privileges enjoyed by any or all of its members or by any or all concerns represented by membership in said respondent chamber of commerce, because of the plan or purpose on the part of such organization or association to pay or purpose to pay patronage dividends or to operate or purpose to operate according to the cooperative plan of marketing grain, namely, the plan of returning any portion or all of its earnings or surplus to its patrons or members on the basis of patronage, whether such earnings or surplus is derived from charging patrons or members commissions or otherwise.

(5) Passing or enforcing any rule or regulation or enforcing any usage or custom, that compels shippers of grain to Minneapolis, Minn., from country points or from St. Paul, Minn., to pay commission or other charges, unless and until like commissions and charges are paid by shippers of grain to Minneapolis from Omaha, Nebr., or from Kansas City, Mo., or other such favored markets.

(6) Passing or enforcing any rule or regulation, or enforcing any usage or custom, that prohibits members of the respondent chamber, when buying grain on track at country points from paying therefor more than the market price of similar grain prevailing at that time in the exchange room of the respondent chamber, less freight, commissions, and other charges.

(7) Promulgating, interpreting, or enforcing any rule, custom, regulation, or usage in such a manner as to require any member of respondent chamber to pay to the farmer or country shipper or other person a price for grain limited to a price equivalent to or identical with the Minneapolis market price, or otherwise limit the exercise of free will and individual independent judgment of any such member as to the price which he shall pay, or which he desires to pay, farmers, country shippers, or others for grain on track at country points.

Complaint No. 740.—Federal Trade Commission *v.* Prichard & Constance (Inc.). Charge: Using unfair methods of competition in the manufacture of cosmetics and toilet articles by adopting and maintaining a system of fixing the resale price of its products and refusing to sell until prospective customers have given written assurance that the resale prices fixed by respondent will be maintained, in alleged violation of section 5 of the Federal Trade Commission act.

Disposition: After hearing, the commission entered the following order:

It is now ordered that the respondent, Prichard & Constance (Inc.), its officers, directors, agents, servants, and employees cease and desist from employing or carrying into effect any selling policy or system of merchandising, whereby respondent through cooperation with its customers, fixes or controls, or undertakes to fix or control the prices at which its products shall be resold by others—more particularly, through any of the following means:

1. By giving or offering to give special discounts, bonuses, or terms of sale, to jobbers or retailers, conditional upon their observance of or promise to observe the resale prices fixed by respondent.

2. By otherwise contracting or entering into agreements or understandings with jobbers or retailers, providing for the maintenance of such prices.

3. By cooperation with its customers in establishing or maintaining a system of resale prices.

4. By utilizing any other cooperative means, directly or indirectly, to bring about the maintenance of the resale prices fixed by respondent.

Complaint No. 742.—Federal Trade Commission v. F. B. Dunn, R. T. Harris, L. G. Wright, T. E. Lester, S. H. Miles, George F. Burton, F. L. McCoy, and J. H. Darby. Charge: Using unfair methods of competition in the sale of the capital stock of the Congressional Oil Co. by the use of said company as a device for the disposition of certain oil leases at exclusive and fictitious prices; by published false and misleading statements relative to the company's property, earnings, and prospects, and by deceiving the purchasing public by numerous fraudulent schemes of promotion, in alleged violation of section 5 of the Federal Trade Commission act.

Disposition: After hearing, the commission dismissed the complaint as to respondents L. G. Wright, T. E. Lester, S. H. Miles, F. L. McCoy, J. H. Darby, and entered the following order to the remaining respondents:

It is now ordered that the respondents, F. B. Dunn, R. T. Harris, and George F. Burton and their agents do cease and desist from, directly or indirectly—

Publishing, circulating, or distributing or causing to be published, circulated, or distributed, any magazine, newspaper, pamphlet, circular, letter, advertisement, or any other printed or written matter whatsoever in connection with the sale or offering for sale in interstate commerce of stock or securities wherein is printed or set forth any false or misleading statements or representations to the effect that the property or operation of any corporation, association, or partnership is in proven oil territory, or any other false or misleading statements or representations concerning the promotion, organization, character, history, resources, assets, oil production, earnings, income, dividends, progress, or prospect of any corporation, association, or partnership.

Complaint No. 776.—Federal Trade Commission v. Armstrong Paint & Varnish Works, United States Roofing Paper & Paint Factories (Inc.), and Abe Hochman and Harry Goldfish, partners doing business under the trade name of Army & Navy Stores. Charge: Using unfair methods of competition by offering for sale paints, varnishes, and roofing paper, labeled "U. S." with a reproduction of a picture of Uncle Sam, with the purpose and effect of misleading the purchasing public into the belief that the goods were made for the Army or Navy, or according to Government specifications, and by labeling its product in such manner as to indicate they were manufactured by the respondent United States Roofing Paper & Paint Factories (Inc.) and by the use of numerous false and misleading statements by the respondent, Hochman and Goldfish, as to the value and quality of the paints, varnishes, and roofing paper offered for sale, with the effect of misleading and deceiving the purchasing public, in alleged violation of section 5 of the Federal Trade Commission act.

Disposition: After hearing, the commission entered the following order:

Therefore it is now ordered that respondent, Armstrong Paint & Varnish Works, a corporation organized under and existing by virtue of the laws of the State of Illinois, its officers, directors, agents, servants, and employees, do cease and desist—

(1) From using the words "United States" or the symbol or abbreviation thereof "U. S.," or a picture of the figure known as "Uncle Sam" which by custom and general usage has become well known as symbolic of the United States, either in combination or alone, in advertising matter or labels or otherwise, as describing commodities as having been purchased from or manufactured for or by the Government of the United States, when such commodities have not in fact been purchased from or manufactured for or by the Government of the United States.

(2) From selling or offering for sale by means of labeling, designating, or otherwise describing or advertising a commodity as "U. S. House Paint," "U. S. Floor or Utility Varnish," or by using words of similar import, as having been purchased from or manufactured for or by the Government of the United States, when such commodities have not in fact been purchased from or manufactured for or by the Government of the United States.

It is further ordered that respondent, United States Roofing Paper & Paint Factories (Inc.) (otherwise United States Roofing Paper Co. (Inc.)), a corporation organized under and doing business by virtue of the laws of the State of South Dakota, its officers, directors, agents, servants, and employees do cease and desist—

(1) From using the words "United States" or the symbol or abbreviation thereof "U. S." or a picture of the figure known as "Uncle Sam," which by custom and general usage has become well known as symbolic of the United States, either in combination or alone, in advertising matter or labels or otherwise, as describing commodities as having been purchased from or manufac-

tured for or by the Government of the United States, when such commodities have not in fact been purchased from or manufactured for or by the Government of the United States.

(2) From selling or offering for sale by means of labeling, designating, or otherwise describing or advertising a commodity as "U. S. House Paint," "U. S. Floor or Utility Varnish," or by using words of similar import, as having been purchased from or manufactured for or by the Government of the United States, when such commodities have not in fact been purchased from or manufactured for or by the Government of the United States.

(3) From using in its firm name or on labels or advertising or otherwise the word "Factories" or words of similar import in connection with statements indicating or representing that by reason of purchasing paints, varnish, or roofing from it customers save or can save costs or profits otherwise and ordinarily required by intermediary dealers unless respondent is in fact a manufacturer and not itself an intermediary dealer.

It is further ordered that respondents, Abe Hochman and Harry Goldfish, doing business under the name "Army and Navy Stores" or "Army and Navy Goods Stores," and each of them, their agents, servants, and employees, do cease and desist—

(1) From using the words "United States" or the symbol or abbreviation thereof "U. S." or a picture of the figure known as "Uncle Sam," which by custom and general usage has become well known as symbolic of the United States, either in combination or alone, in advertising matter or labels or otherwise, as describing commodities as having been purchased from or manufactured for or by the Government of the United States, when such commodities have not in fact been purchased from or manufactured for or by the Government of the United States.

(2) From selling or offering for sale by means of labeling, designating or otherwise describing or advertising a commodity as "U. S. House Paint," "U. S. Floor or Utility Varnish," or by using words of similar import, as having been purchased from or manufactured for, or by the Government of the United States, when such commodities have not in fact been purchased from, or manufactured for or by the Government of the United States.

(3) From selling or offering for sale in "Army and Navy Stores" or otherwise, either by means of advertising, designating or otherwise describing or representing, directly or indirectly a commodity as surplus Government supplies, or Government supplies when such commodities have not been purchased from, or manufactured by, or for the Government of the United States.

Complaint No. 793.—Federal Trade Commission v. the Q. R. S. Music Co. Charge: Unfair competition in the manufacture and sale of rolls for player pianos, in establishing and announcing fixed resale prices and stating that it will refuse to sell, and in fact has refused to sell, to those who fail to maintain such prices, in alleged violation of section 5 of the Federal Trade Commission act; further, because of contracts entered into with dealers under the terms of which such dealers to the extent of their trade in player rolls are to handle respondent's products only, the effect is to substantially lessen competition and tend to create a monopoly, in alleged violation of section 3 of the Clayton Act

Disposition: After hearing, the commission entered the following order:

Now, therefore, it is ordered that the respondent, the Q. R. S. Music Co., its officers, directors, agents, servants and employees, cease and desist from carrying into effect a policy of fixing and maintaining uniform prices at which the articles manufactured by it shall be resold by its distributors and dealers, by—

1. Entering into contracts, agreements and understandings with distributors or dealers requiring or providing for the maintenance of specified resale prices on products manufactured by respondent.

2. Attaching any condition, expressed or implied, to purchases made by distributors or dealers to the effect that such distributors or dealers shall maintain resale prices specified by the respondent.

3. Requesting dealers to report competitors who do not observe the resale price suggested by respondent, or acting on reports so obtained by refusing or threatening to refuse sales to dealers so reported.

4. Requesting or employing salesmen or agents to assist in such policy by reporting dealers who do not observe the suggested resale price, or acting on reports so obtained by refusing or threatening to refuse sales to dealers so reported.

5. Requiring from dealers previously cut off promises or assurances of the maintenance of respondent's resale prices as a condition of reinstatement.

6. Utilizing any other equivalent cooperative means of accomplishing the maintenance of uniform resale prices fixed by the respondent.

It is further ordered that respondent, the Q. R. S. Music Co., its officers, directors, agents, servants and employees cease and desist from entering into contracts, agreements or understandings or making sales or fixing a price charged therefor or discount from or rebate upon such price subject to the condition, agreement or understanding that the purchaser of respondent's product shall not deal in the goods, wares or merchandise of any competitor of respondent.

Complaint No. 826.—Federal Trade Commission v. Phillip Moskowitz, trading under the name and style of Rochester Clothing Co. Charge: Unfair methods of competition in that the respondent, engaged in New York, N. Y., in the manufacture and sale of clothing for men and boys, labels his clothes "Trade-Mark, Rochester Clothing Co., for particular men," with the abbreviation "Co.," inconspicuously placed, thereby misleading the purchasing public into the belief that the respondent's clothing is of the quality produced in Rochester and under Rochester manufacturing conditions as extensively advertised by the chamber of commerce and other business associations of that city, in alleged violation of section 5 of the Federal Trade Commission act.

Disposition: After hearing, the commission entered the following order:

Now, therefore, it is ordered that the respondent, Phillip Moskowitz, individually and trading under the name of Rochester Clothing Co., his partners, agents, servants, representatives, and employees do cease and desist from—

(1) Using on tags or labels on clothing manufactured in New York City, N. Y., or any place other than Rochester, N. Y., and sold and shipped, or sold for shipment, in interstate commerce, the words "Rochester Clothing Company," or the word "Rochester" alone or in combination with other word or words, unless following such words or brand, and in type or lettering equally conspicuous with them appear the words "Made in New York City," or "Manufactured in New York City," if the clothing is, in fact, made in New York City, N. Y., or by the words "made in" or "manufactured in" or words of equivalent meaning followed by the name of the city or place and State where such clothing is made.

(2) Displaying or using the words or brand "Rochester Clothing Company," or "Rochester" alone or in combination with other words, on stationery and billheads used in the business of making, selling, and shipping, or selling for shipment, clothing in interstate commerce, or in advertising clothing made elsewhere than in Rochester, N. Y., in newspapers, trade journals, or elsewhere in interstate commerce, unless following such words or brand, and in type or lettering equally conspicuous with them appear the words "Made in New York City" or "Manufactured in New York City," if the clothing, in fact, is made in New York City; or by the words "made in" or "manufactured in" or words of equivalent meaning, followed by the name of the city, town, or place and State where such clothing is made or manufactured.

Complaint No. 827.—Federal Trade Commission v. Samuel Blum. Charge: Unfair methods of competition in that the respondent, engaged in New York, N. Y., in the manufacture and sale of clothing for men and boys, labels his clothes to indicate Rochester, N. Y., manufacture, thereby misleading the purchasing public into the belief that the respondent's clothing is of the quality produced in Rochester and under Rochester manufacturing conditions, as extensively advertised by the chamber of commerce and other business associations of that city, in alleged violation of section 5 of the Federal Trade Commission act.

Disposition: After hearing, the commission entered the following order:

Now, therefore, it is ordered that the respondent, Samuel Blum, his agents, servants, representatives, and employees cease and desist from—

1. Using on tags or labels on clothing manufactured in New York City, N. Y., or in any other place than Rochester, N. Y., and sold and shipped, or sold for shipment, in interstate commerce, the words or brand "High grade tailored Rochester art clothes," unless following such words or brand, and in type or lettering equally conspicuous with them, appear the words "Made in New York City, N. Y.," if the clothing, in fact, is made in New York City, N. Y., or by words in which the true place of manufacture, town, or city and State is stated.

2. Displaying or using the words or brand "High class tailored Rochester art clothes" on stationery and billheads used in the business of making, selling, and shipping, or selling for shipment, such clothes in interstate commerce, or in advertising such clothes made elsewhere than in Rochester, N. Y., in newspapers, trade journals, or elsewhere, unless following such words or brand, and in type or lettering equally conspicuous with them, appear the words "Made in New York City, N. Y.," if the clothing, in fact, is made in New York City, N. Y., or by words in which the true place of manufacture, town, or city and State is stated.

3. Using on tags or labels on clothing manufactured in New York City, N. Y., or any other place than Rochester, N. Y., and sold and shipped, or sold for shipment in interstate commerce, or displaying or using on stationery and billheads used in the business of making, selling, or shipping, or selling for shipment, such clothing, or in advertising such clothing in newspapers, trade journals, or elsewhere, in interstate commerce, the word "Rochester" alone or in any combination of words other than those stated in the preceding paragraph, unless in connection therewith and with equal prominence appear the words "Made in New York City" or a like statement according to the facts as to the place or places of the manufacture of respondent's product or of clothing sold by him; and from representing in any manner or form whatever that clothing made elsewhere than in the city of Rochester, N. Y., is made there.

Complaint No. 836.—Federal Trade Commission v. National Biscuit Co. Charge: Unfair methods of competition in that the respondent, engaged in the manufacture and sale of biscuits, crackers, and other bakery products, in allowing discounts based on aggregate monthly orders, refuses to grant as high a rate of discount on the pooled orders of two or more retail store owners as on the orders of owners of so-called chain stores, thereby giving the owners of chains of retail stores an undue advantage in competing with owners operating but one retail store, the said discrimination in price tending to lessen competition and create a monopoly, in alleged violation of section 5 of the Federal Trade Commission act and section 2 of the Clayton Act.

Disposition: After hearing, the commission entered the following order:

It is now ordered that respondent, National Biscuit Co., its officers, directors, agents, representatives, servants, and employees cease and desist in interstate commerce, directly or indirectly—

1. From discriminating in price between purchasers operating separate units or retail grocery stores of chain systems and purchasers operating independent retail grocery stores of similar kind and character purchasing similar quantities of respondent's products, where such discrimination is not made on account of difference in the grade or quality of the commodity sold, nor for a due allowance in the difference in the cost of selling or transporting, nor in good faith to meet competition in the same or different communities.

2. From giving to purchasers operating two or more separate units or retail grocery stores of chain systems a discount on the gross purchases of all the separate units or retail stores of such chain system, where the same or a similar discount on gross purchases is not allowed or given to associations or combinations of independent grocers operating retail grocery stores similar to the separate units or stores of such chain system.

Complaint No. 837.—Federal Trade Commission v. Loose-Wiles Biscuit Co. Charge: Unfair methods of competition in that the respondent, engaged in the manufacture and sale of biscuits, crackers, and other bakery products, in allowing discounts based on aggregate monthly orders, refuses to grant as high a rate of discount on the pooled orders of two or more retail store owners as on the orders of owners of so-called chain stores, thereby giving the owners of chains of retail stores an undue advantage in competing with owners operating but one retail store, the said discrimination in price tending to lessen competition and create a monopoly, in alleged violation of section 5 of the Federal Trade Commission act and section 2 of the Clayton Act. Status:

Disposition: After hearing, the commission entered the following order:

It is now ordered that respondent, Loose-Wiles Biscuit Co., its officers, directors, agents, representatives, servants, and employees cease and desist, in interstate commerce, directly or indirectly—

1. From discriminating in price between purchasers operating separate units or retail grocery stores of chain systems and purchasers operating independent retail grocery stores of similar kind and character purchasing similar quantities of respondent's products, where such discrimination is not made on account of difference in the grade or quality of the commodity sold, nor for a

due allowance for the difference in the cost of selling or transporting, nor in good faith to meet competition in the same or different communities.

2. From giving to purchasers operating two or more separate units or retail grocery stores of chain systems a discount on the gross purchases of all the separate units or retail stores of such chain system, where the same or a similar discount of gross purchases is not allowed or given to associations or combinations of independent grocers operating retail grocery stores similar to the separate units or stores of such chain system.

Complaint No. 856.—Federal Trade Commission *v.* George F. Barton, Rockwood Brown, Charles N. Edwards, Claude A. Hargis, and R. W. Watts. Charge: The respondents are the officers and promoters of the Consolidated Royalty & Leasing Syndicate, an unincorporated association. They are charged with making and publishing numerous false and misleading statements relative to the organization, business, and prospects of the association, as a means of deceiving the purchasing public and furthering the sale of the share stock of the said Consolidated Royalty & Leasing Syndicate, all in alleged violation of section 5 of the Federal Trade Commission act.

Disposition: After hearing, the commission dismissed the complaint as to Rockwood Brown, R. W. Watts, Claude A. Hargis, and entered the following order to the remaining respondents:

It is now ordered that the respondents George F. Barton and Charles N. Edwards, individually and as officers, shareholders, agents, or trustees of the Consolidated Royalty & Leasing Syndicate, or as officers, agents, or shareholders of any other corporation, association, or partnership, and their agents and representatives, do cease and desist from directly or indirectly—

1. Publishing, circulating, or distributing, or causing to be published, circulated, or distributed, any newspaper, pamphlet, circular letter, advertisement, or any other printed or written matter whatsoever in connection with the sale or offering for sale in interstate commerce of stock or securities wherein is printed or set forth any false or misleading statements or representations to the effect that the property or operation of any corporation, association, or partnership is in proven oil territory, or any false or misleading statements or representations concerning the promotion, organization, character, history, resources, assets, oil production, earnings, income, dividends, progress, or prospect of any corporation, association, or partnership.

Complaint No. 862.—Federal Trade Commission *v.* Crofts & Reed Co., Polonia Soap Co. Charge: Unfair methods of competition in that the respondent Crofts & Reed Co., controlled by the respondent Polonia Soap Co., brands and mislabels its products to promote the belief that olive oil, peroxide, palm oil, witch hazel, buttermilk, medicines, or drugs are contained in the soaps so designated, when in fact its soaps contain no such ingredients, in alleged violation of section 5 of the Federal Trade Commission act.

Disposition: A stipulation having been entered into, in lieu of testimony, the commission entered the following order:

Now, therefore, it is ordered that the respondents, Crofts & Reed Co. and Polonia Soap Co., their officers, directors, representatives, agents, and employees cease and desist—

(1) From employing or using as labels or brands on soap sold by them, the fatty ingredient of which is not composed entirely of olive oil, or on the wrappers and containers in which such soap is delivered to customers, the word "Olive" alone or in combination with any other word or words, unless accompanied by a word or words designating the constituent elements other than olive oil constituting in part the fatty ingredient of the soap (e. g., "Olive oil, coconut oil, and tallow base;" "Olive oil and tallow base") or by a word or words otherwise clearly indicating that the fatty ingredient of such soap does not consist entirely of olive oil (e. g., "5 per cent olive oil base").

(2) From employing or using as labels or brands on soap sold by them, which contains no medicament, or on the wrappers or containers in which such soap is delivered to customers the word "medicinal" alone or in combination with any other word or words.

(3) From employing or using as labels or brands on soap sold by them, or on the wrappers or containers in which such soap is delivered to customers, the word "Peroxide," "Buttermilk," or "Witch hazel," either alone or in combination with another word or words, which soap when purchased by the consumer in the usual and regular course of commerce, contains none of the ingredient or ingredients indicated by such labels or brand names.

(4) From employing or using as labels or brands on soap sold by them, the fatty ingredient of which is not composed entirely of palm oil, or on the

wrappers or containers in which such soap is delivered to customers, the word "Palm," either alone or in combination with any other word or words unless accompanied by a word or words designating the material other than palm oil constituting in part the fatty ingredient of the soap (e. g., "Palm oil cocoanut oil, and tallow base;" "Palm oil and tallow base") or by a word or words otherwise clearly indicating that the fatty ingredient of the soap does not consist entirely of palm oil (e. g., "5 per cent palm oil base").

Complaint No. 875.—Federal Trade Commission *v.* Lexington Manufacturing Co., Middlesburg Mills, Millwood Corporation. Charge: The respondents Lexington Manufacturing Co. and Middlesburg Mills are engaged in the manufacture of cotton bedticking and other cotton products and are controlled by the respondent Millwood Corporation, a holding company. Unfair methods of competition are charged in that some of the respondent's bedticking of various grades and qualities are labeled "A. C. A." in simulation of a symbol used for many years by the Amoskeag Manufacturing Co. as a designation for its best quality special-process bedticking, which, because of its quality and adaptability to purpose is popular and in great demand in the trade, the said practice by the respondents tending to mislead and deceive the purchasing public into the belief that tickings manufactured by respondent manufacturers are identical with those of the Amoskeag Manufacturing Co., in alleged violation of section 5 of the Federal Trade Commission act.

Disposition: After hearing, the commission dismissed the complaint as to Millwood Corporation, and entered the following order to the remaining respondents:

Therefore, it is now ordered that the respondents, Lexington Manufacturing Co. and Middlesburg Mills, corporations organized and existing under and by virtue of the laws of the State of South Carolina, their officers, directors, agents, servants, and employees, do cease and desist—

1. From in any way designating or describing any bedticking manufactured or sold by them as "A. C. A." ticking, either in advertisements, circulars, price lists, or other literature in which bedticking manufactured or sold by respondents is listed, described, or advertised for sale in interstate commerce.

2. From placing upon any ticking manufactured or sold by them any ticket or label upon which appear the letters "A. C. A.," or any combination or variation thereof.

Complaint No. 876.—Federal Trade Commission *v.* Lawrence S. Mayers and Chauncey H. Mayers, partners, doing business under the firm name and style of Geneva Watch Co. Charge: The respondents, wholesale dealers in watches, the movements of which they import from places in Switzerland other than Geneva, have adopted the trade name "Geneva Watch Co." for their watch business, have procured the United States registration of the trade-mark "Geneva," and stamp it on the dials of their watches with the addition of the word "Swiss," to simulate the standard method of designating high-grade Geneva watches, and advertise the said watches as "Geneva" watches manufactured by the "Geneva Watch Co." and offered at the lowest manufacturer's prices, all for the purpose of creating the mistaken belief that they are engaged in the manufacture of watches in the Swiss city of Geneva, well known as the place of origin of the highest grade of Swiss watches, that their watches are manufactured in said city, and that they are sold direct to the trade at manufacturer's prices, and thereby induce the trade and consuming public to purchase respondents' watches in preference to competitors' watches of like quality, which are not falsely designated "Geneva," and in many instances in violation of section 5 of the Federal Trade Commission act.

Disposition: After hearing, the commission entered the following order:

Now, therefore, it is ordered that the respondents, Lawrence L. Mayers and Chauncey M. Mayers, individually and as copartners, trading under the name and style of Geneva Watch Co., their agents, servants, representatives, and employees do cease and desist from—

1. Using or displaying upon circulars or advertising matter used in connection with the sale of watches and watch movements manufactured, dealt in, or sold by them in interstate commerce, upon the cases containing said watch movements, or upon the boxes or packages containing said watches or watch movements the words "Geneva Watch Company," or the word "Geneva," alone or in combination with other word or words, if in truth and fact the said watches and watch movements were not made in the city of Geneva, Switzerland, unless following such word or words and in type or lettering

equally conspicuous with them, appear words in which the true place of manufacture, town or city and State, is stated.

2. Using or displaying upon circulars or advertising matter used by them in connection with the sale of watches or watch movements made, dealt in, or sold by them in interstate commerce, upon the dials of said watches or watch movements, upon the cases containing said watch movements, or upon the boxes and containers thereof, the word or brand "Geneva" in association with the words "Geneva Watch Company" or in simulation of the word or brand "Geneva," if in truth and fact such watches or watch movements were not made in the city of Geneva, Switzerland, unless such brand and words are followed by words in type or lettering equally conspicuous with them, in which the true place of manufacture, town or city and State, is stated.

Complaint No. 886.—Wholesale Tobacco Cigar Dealers' Association of Philadelphia, its officers, directors, and members, the American Tobacco Co. and P. Lorillard Co., respondents. Charge: That the association and its members agreed upon a schedule of fixed prices for tobacco products at which the members should resell to their dealer customers, and that they adopted a system for the maintenance and enforcement of such prices by the members of the association and by all other wholesale dealers selling in the association's territory, the respondent manufacturers cooperating and conspiring with the association and its members and participating in said price-maintenance system by agreeing to refuse to sell and by refusing to sell offending dealers further supplies of their products, all in alleged violation of section 5 of the Federal Trade Commission act.

Disposition: After hearing, the commission dismissed the complaint as to P. Lorillard Co., and entered the following order to the remaining respondents:

Now, therefore, it is ordered that the Wholesale Tobacco & Cigar Dealers' Association of Philadelphia, Pa., and its officers, directors, and members, as follows: Nelson F. Eberbach, president; Harvey D. Narrigan and James Murphy, vice presidents; Herman J. Krull, treasurer; Paul L. Brogan, secretary, respectively; Arthur Shipton, Frank Kuhn, William Cohen, Bennett Holland, Frank Blatt, H. Stewart Moorhead, Phillip Godeski, William D. Shepherd, and Morris Hochman, its directors; and the following members: Nelson F. Eberbach, John S. Eberbach, and Joseph H. Eberbach, partners doing business under the name and style A. B. Cunningham & Co.; Dusel, Goodloe & Co. (Inc.), a corporation; Phillip Godeski and Sidney G. Godeski, partners doing business under the name and style Franklin Tobacco Co.; Frank Kuhn, George Kuhn, and John Kuhn, partners doing business under the name and style F. Kuhn & Bro.; Peter J. Murphy and John Murphy, partners doing business under the name and style Peter J. Murphy Co.; Charles A. Krull and Herman Krull, partners doing business under the name and style Charles A. Krull; Baum & Neely (Inc.), a corporation; William F. Shepherd and John G. Shepherd, partners doing business under the name and style S. Shepherd's Sons; T. H. Hart and A. I. Mitchell, partners doing business under the name and style T. H. Hart & Co.; F. Hartmann & Son, a corporation; Yahn & McDonnell Co., a corporation; M. Blumenthal, John Wagner, and Joseph W. Wagner, partners doing business under the name and style of John Wagner & Sons; Harvey D. Narrigan, an individual doing business under the trade name H. D. Narrigan & Co.; Victor Fermani; Anna E. Bechtold, an individual doing business under the trade name James S. Bechtold; Frank Blatt, Arthur Shipton, and Thomas F. Cooper, partners doing business under the name and style Shipton & Payne Co.; H. S. Moorhead, an individual doing business under the trade name Duncan & Moorhead; Bennett Holland; P. Hochman; M. J. Dalton Co., a corporation; Brucker & Boghien (Inc.), a corporation; Fred G. H. Woerner, an individual doing business under the trade name Fred G. H. Woerner & Sons; S. T. Banham and A. L. Banham, partners doing business under the name and style S. T. Banham & Bros.; E. Cohen and William Cohen, partners doing business under the name and style E. Cohen & Sons; John Murphy and James Murphy, partners doing business under the name and style Murphy Bros., cease and desist from fixing, enforcing, and maintaining and from enforcing and maintaining by combination, agreement, or understanding among themselves, or with or among any of them, or with any other wholesaler of cigarettes or other tobacco products, resale prices for cigarettes or other tobacco products dealt in by such respondents, or any of them, or by any other wholesaler of cigarettes or other tobacco products.

And it is further ordered that the American Tobacco Co. cease and desist from assisting and from agreeing to assist any of its dealer customers in

maintaining and enforcing in the resale of cigarettes and other tobacco products manufactured by the said the American Tobacco Co., resale prices for such cigarettes and other tobacco products, fixed by any such dealer customer by agreement, understanding, or combination with any other dealer customer of said the American Tobacco Co.

Commissioner Van Fleet dissenting.

DISSENT BY COMMISSIONER VAN FLEET

I dissent in this case as to the order against the American Tobacco Co. The charge is that said company conspired with the Wholesale Dealers Association to maintain prices. The association was interested in maintaining the price that its members might obtain more for their goods. The object of the American Co. was not the same as the association. The American Co. sold its goods upon a 10 per cent discount to the members of the association and its price was in no wise affected by the cutting of dealers. Of course, this did not necessarily prevent the American Co. from conspiring with the association, but it is a fact to be considered whether there was such conspiracy. If dealers were cutting prices and demoralizing the trade, which at the time charged had proceeded to the extent of ruin if continued, the American Co. had a legal right to refuse to continue business dealings with such concerns. It is evident that a concern can not stay in business if it sells at no profit, as the evidence shows was the case here. The mere fact that the acts of the American Co. were contemporaneous with those of the association is not determinative.

Of course, conspiracy is often incapable of direct proof, but when resort is had to circumstantial evidence, as in this case, the proof should rise above the dignity of mere suspicion. Some of the evidence relied upon to sustain the order hardly ever rises to that dignity. Without summarizing the evidence, to my mind, it appears that the truth is that the American Co. had nothing to do with the organization of nor conduct of the association, and I know of no proof to the contrary. Also, I believe, its acts were taken independently of the association and no real proof to the contrary appears. The commission dismissed the case against the Lorillard Co. for lack of proof, and, I believe, that eliminating evidence of acts of others for which the American Co. was in no wise responsible and discarding mere conjecture there is not proof to warrant an order against the American Co.

Complaint No. 887.—Federal Trade Commission *v.* Oppenheim, Oberndorf & Co. (Inc.), doing business under the trade name and style Sealpax Co. Charge: The respondent, in the sale of its "Sealpax" underwear, maintains a schedule of uniform resale prices and refuses to sell said underwear to wholesale dealers who fail to observe and maintain said resale prices and otherwise endeavors to enforce its fixed prices for the resale of its product, in alleged violation of section 5 of the Federal Trade Commission act.

Disposition: After hearing, the commission entered the following order:

It is now ordered that the respondent, V. Vivandou (Inc.), its officers, agents, representatives, servants, and employees, do cease and desist from adopting and employing, or attempting to employ, any cooperative system or method whereby respondent or its officers, agents, representatives, servants, or employees undertake to prevent others from obtaining respondent's products at less than the prices designated by it, and more particularly, from carrying out any said system or method by the following means:

(a) Securing from its customers or others names of dealers who do not observe the resale prices fixed by respondent.

(b) Enrolling the names of dealers so reported or who come to its attention otherwise, upon lists of undesirable purchasers, who are not to be supplied with its products until they furnish satisfactory assurances of their purpose to maintain such prices in the future.

(c) Securing or attempting to secure assurances from other dealers that they will observe the resale prices on respondent's products as fixed by it.

(d) Giving assurances to dealers that others who do not observe respondent's fixed resale prices will be cut off from further supplies of respondent's goods, and requesting cooperation and support in such a course of action.

(e) Threatening to refuse to sell or refusing to sell dealers who sell to others who do not observe the resale prices fixed by respondent.

(f) Attempting to establish and enforce its resale prices by any other equitable cooperative means.

Complaint No. 892.—Federal Trade Commission *v.* V. Vivaudou (Inc.). Charge: The respondent, engaged in the manufacture and sale of toilet articles, adopted and maintains a schedule of uniform prices for the resale of its products, threatening to refuse to sell and refusing to sell said products to those dealers who persist in selling below the resale prices fixed by the respondent and otherwise enforcing said system of price maintenance, in alleged violation of section 5 of the Federal Trade Commission act.

Disposition: A stipulation having been entered into in lieu of testimony, the commission entered the following order:

It is now ordered that the respondent, V. Vivaudou (Inc.), its officers, agents, representatives, servants, and employees, do cease and desist from adopting and employing, or attempting to employ, any cooperative system or method whereby respondent, or its officers, agents, representatives, servants, or employees, undertake to prevent others from obtaining respondent's products at less than the prices designated by it and, more particularly, from carrying out any said system or method by the following means:

(a) Securing from its customers or others names of dealers who do not observe the resale prices fixed by respondent.

(b) Enrolling the names of dealers so reported, or who come to its attention otherwise, upon lists of undesirable purchasers who are not to be supplied with its products until they furnish satisfactory assurances of their purpose to maintain such prices in the future.

(c) Securing or attempting to secure assurances from other dealers that they will observe the resale prices on respondent's products as fixed by it.

(d) Giving assurances to dealers that others who do not observe respondent's fixed resale prices will be cut off from further supplies of respondent's goods, and requesting cooperation and support in such a course of action.

(e) Threatening to refuse to sell or refusing to sell dealers who sell to others who do not observe the resale prices fixed by respondent.

(f) Attempting to establish and enforce its resale prices by any other equivalent cooperative means.

Complaint No. 893.—Federal Trade Commission *v.* St. Louis Wholesale Grocers' Association, its officers and members. Charge: The respondent association is an unincorporated trade association composed of wholesale grocers and jobbers of groceries and food products. Unfair methods of competition are charged in that said association, acting on behalf of its members and in cooperation with them, has adopted and carried out a plan of coercing and attempting to coerce manufacturers to guarantee against decline in price, publishing classified lists of manufacturers that the said members may give preference when making purchases to those manufacturers who have agreed to guarantee against decline in price and thereby tend to restrict, diminish, and obstruct the business of manufacturers of food products who do not so guarantee in alleged violation of section 5 of the Federal Trade Commission act.

Disposition: After hearing, the commission dismissed the complaint as to J. M. Anderson Grocery Co. and entered the following order to the remaining respondents:

Now, therefore, it is ordered that the respondents, and each of them, their officers, directors, representatives, agents, and employees, cease and desist from cooperating among themselves or with others, directly or indirectly, to induce, influence, or coerce, and from inducing, influencing, or coercing by cooperative methods, manufacturers from whom they purchase the goods and commodities in which they deal, into guaranteeing and assuring them that in the event of a reduction in the prices charged them by said manufacturers for such commodities each such respondent holding in stock at the time of such a reduction any of said commodities purchased prior to the time of such reduction will receive from said manufacturers, respectively, a rebate or credit allowance equivalent to the difference between the price paid by him in each instance for said commodities actually on hand and unsold and said reduced prices thereof—

(1) By the practice of reporting to respondent association the names of manufacturers who do not so guarantee the prices of their commodities against decline.

(2) By causing the names of manufacturers thus reported who do not so guarantee the prices of their commodities against decline to be enrolled upon a list and such list inserted and published in bulletins and letters issued and distributed by respondent association, together with information emphasizing the advisability of confining their purchases to manufacturers who guarantee the price of their commodities against decline.

(3) By the practice of soliciting the names of and information concerning manufacturers who do and those who do not guarantee the prices of their commodities against decline and causing such names and information to be published and distributed among the members of respondent association and others by means of bulletins and letters containing such names, together with information and statements setting forth the advisability of making purchases from those manufacturers who guarantee the price of their commodities against decline and the inadvisability of purchasing from manufacturers of competitive commodities who do not so guarantee the prices thereof against decline and comments denunciatory and depreciatory of such manufacturers who do not so guarantee against decline.

(4) By boycotting, or threatening to boycott, or threatening with loss of patronage or custom any manufacturer, or his agent or representative, who does not guarantee the prices of commodities sold by him against decline.

(5) By utilizing any other equivalent cooperative means of obtaining from manufacturers guaranties or assurances against decline in the price of their commodities.

Complaint No. 894.—Federal Trade Commission v. Wisconsin Wholesale Grocers' Association, its officers, directors, and members. Charge: The respondent association is an unincorporated trade association composed of wholesale grocers and jobbers of groceries and food products. Unfair methods of competition are charged in that the said association, acting on behalf of its members and in cooperation with them, has adopted and carried out a plan of coercing and attempting to coerce manufacturers to guarantee against decline in price, publishing classified lists of manufacturers that the said members may give preference when making purchases to those manufacturers who have agreed to guarantee against decline in price and thereby tend to restrict, diminish, and obstruct the business of manufacturers of food products who do not so guarantee, in alleged violation of section 5 of the Federal Trade Commission act.

Disposition: After hearing, the commission dismissed the complaint as to Chesbrough-Moss Co., J. F. Rappel Co., Mueller-Wild Co., and entered the following order to the remaining respondents:

Now, therefore, it is ordered that the respondent association, its officers and directors, individually and as representatives of the members, the successors of said officers and directors, and the members, their agents, representatives, and employees, cease and desist from cooperating among themselves or with others directly or indirectly to induce, influence, or coerce, and from inducing, influencing, or coercing by cooperative methods manufacturers from whom they purchase the goods and commodities in which they deal to guarantee and assure them that in the event of a reduction in the prices charged them by said manufacturers for such commodities, each such respondent holding in stock at the time of such a reduction any of said commodities purchased prior to the time of such reduction will receive from said manufacturers, respectively, a rebate or credit allowance equivalent to the difference between the price paid by him in each instance for said commodities actually on hand and unsold and said reduced prices thereof—

(a) By the practice of publishing and distributing among the members of respondent association and others communications and statements which directly or indirectly convey that manufacturers guaranteeing against decline are entitled to receive the cooperation and preferential patronage of members of respondent association or of the jobbers generally.

(b) By the practice of publishing and circulating among the members of respondent association and others communications and statements which identify manufacturers not guaranteeing against decline and which directly or indirectly convey that such manufacturers are not equally entitled to the cooperation and patronage of members of respondent association or of the jobbers generally.

(c) By the practice of urging and requesting members of respondent association to make concerted protest and solicitation to manufacturers who do not guarantee against decline.

(d) By the practice of directly or indirectly conveying to manufacturers who refuse to guarantee against decline that such refusal would result in a lack of cooperation on the part of respondent jobbers or of jobbers generally.

(e) By the practice of directly or indirectly conveying to respondent members that in correspondence with manufacturers who refuse to guarantee against decline they suggest that such refusal would result in a lack of cooperation on the part of respondent jobbers or of jobbers generally.

(f) By the practice of suggesting to members of respondent association that in their solicitation of manufacturers for guarantees against decline they should urge the point that guarantee against decline is necessary and valuable as a means of protecting respondent members against price competition with each other.

(g) By the practice of soliciting the names of and information concerning manufacturers who do and those who do not guarantee the prices of their commodities against decline and causing the names and policy of the former to be published and distributed among the members of respondent association and others.

(h) By utilizing any other equivalent cooperative means of obtaining from manufacturers guarantees or assurances against decline in the price of their commodities.

Complaint No. 898.—Federal Trade Commission v. United States Products Co. Charge: Unfair methods of competition in that respondent, engaged in the manufacture and sale of an abrasive bearing-fitting compound named by it "Kwik-Ak-Shun," having done no more than to file with the commission a petition praying that the commission institute such proceedings in the premises as might seem proper against the M. K. T. Products Co., a competitor, nevertheless notified the trade, through advertisements, that it had commenced proceedings for unfair competition against the M. K. T. Products Co. before the commission to enjoin the same, which notification had the capacity and tendency of misleading and deceiving the trade into the belief that respondent had instituted competent legal proceedings before the Federal Trade Commission wherein the rights and liabilities of respondents and the M. K. T. Products Co. in the premises would be legally adjudicated and determined and the legality or illegality of the things done by the M. K. T. Products Co. complained against be fixed and determined in alleged violation of section 5 of the Federal Trade Commission act.

Disposition: After hearing, the commission dismissed the complaint as to Harry C. Hagmaier, and entered the following order to the remaining respondents:

Now, therefore, it is ordered that respondent Charles C. Buttenfield individually and as an officer of respondent United States Products Co., and respondent United States Products Co., cease and desist from—

(1) Advertising and representing to the trade that the product Kwik-Ak-Shun is the result of any invention on the part of the patentee Hagmaier.

(2) Advertising and representing to the trade that Time Saver was not or is not patented and that it was or is an infringement of a patent owned or controlled by respondent United States Products Co. or by respondent Buttenfield, at the time this proceeding was instituted.

(3) Passing off or attempting to pass off the product Kwik-Ak-Shun as and for Time Saver, the product of the M. K. T. Products Co.

(4) Advertising and representing to the trade that Kwik-Ak-Shun is the original product and that Time Saver is a duplicate thereof.

(5) Advertising and representing to the trade that Time Saver is an inferior imitation of Kwik-Ak-Shun.

(6) Fabricating letters, forging signatures thereto, and submitting same to the Federal Trade Commission as the basis for action by said commission against a competitor.

(7) Making application to the Federal Trade Commission for relief against a competitor and simultaneously advertising to the trade the filing of such application before the issues involved are determinable by the Federal Trade Commission.

(8) Notifying the customers of a competitor that charges have been filed with the Federal Trade Commission against said competitor, and simultaneously publishing advertisements to the same effect, before the issues involved are determinable by the Federal Trade Commission.

Complaint No. 909.—Cincinnati Tobacco Jobbers' Association, its officers and members, and the P. Lorillard Co., respondents. Charge: The charge is unfair competition in that the association and its members agreed with the P. Lorillard Co. upon a schedule of prices at which they should thereafter resell the tobacco products of that company, and that the P. Lorillard Co. cooperated with the respondent association and its members in enforcing the maintenance of such fixed schedule of prices, all in alleged violation of section 5 of the Federal Trade Commission act.

Disposition: After hearing, the commission entered the following order:

Now, therefore, it is ordered that the Cincinnati Wholesale Tobacco Association, its officers, as follows: J. E. Cruse, president; G. O. Fennell, vice president; J. C. Nienaber, vice president; John H. Dickerson, secretary and the following corporations, partnerships, and persons: David Straus, Robert Straus, and Charles L. Straus, partners trading as Henry Straus; J. B. Moos Co., a corporation, and its following officers: D. J. Brown, president; R. C. Christie, vice president; E. D. Stickle, secretary and treasurer; Janszen Grocery Co., a corporation, and its following officers: August Janszen, sr., president; Joseph A. Janszen, vice president; Frank Harpenau, treasurer; and August Janszen, jr., secretary; I. Kellson, Dan Kellson, Alexander Schwartz, partners, trading as I. Kellson & Sons; Minnie Young Casey, trading as M. & L. Young; G. W. Bickett and Ray F. W. Bickett, partners, trading as G. W. Bickett's Son; Louis C. Weisbrodt; G. O. Fennell; John C. Davis, James E. Cosgrove; George W. Harriman; John H. Schulten and Edwin E. Schulten, partners, trading as George Schulten Sons; J. C. Nienaber; H. Haebe, C. Bosken, and each of them cease and desist from fixing, enforcing, and maintaining, and from enforcing and maintaining, by combination, agreement, or understanding among themselves, or with or among any of them, or with any other wholesaler of cigarettes of their tobacco products, or any manufacturer thereof, resale prices for cigarettes or other tobacco products dealt in by said respondents, or any of them, or by any of them, or by any other wholesaler of cigarettes or other tobacco products.

And it is further ordered that P. Lorillard Co. (Inc.) cease and desist from assisting and from agreeing to assist any of its dealer customers in maintaining and enforcing in the resale of cigarettes and other tobacco products manufactured by the said P. Lorillard Co. (Inc.), resale prices for such cigarettes and other tobacco products fixed by any such dealer customer by agreement, understanding, or combination with any other dealer customer of said P. Lorillard Co. (Inc.).

Complaint No. 920.—*Commission v. Atlantic Comb Works.* Charge: Unfair methods of competition in commerce are charged in that the respondent in the sale of its toilet articles, composed of nitrated cellulose or pyroxylin plastic, known commercially as "celluloid," "pyroxylin," "fibrolid," "viscoloid," etc. advertises said products as "white ivory," thereby misleading and deceiving the purchasing public as to the quality and value of said articles, in alleged violation of section 5 of the Federal Trade Commission act.

Disposition: After hearing, the commission entered the following order:

It is now ordered that the respondent, Atlantic Comb Works, its officers, directors, agents, and employees, cease and desist from making use of any form of advertising matter in which articles manufactured and sold by it and composed in whole or in part of nitrated cellulose or pyroxylin plastics, known commercially as "celluloid," "pyralin," and by other names, are described as "ivory" or "white ivory."

Complaint No. 924.—*Federal Trade Commission v. The Don-O-Lac Co. (Inc.).* Charge: Using unfair methods of competition by falsely advertising and misrepresenting as "American Shellac" a product which is not shellac as commercially known and which contains no shellac gum.

Disposition: After hearing, the commission entered the following order:

Now, therefore, it is ordered that the respondent, the Don-O-Lac Co. (Inc.), its officers, directors, representatives, agents and employees cease and desist—

(1) From employing or using on labels or as brands for varnish not composed wholly, 100 per cent, of shellac gum cut in alcohol, or on the containers in which the varnish is delivered to customers, the words "American shellac" or the word "shellac" alone or in combination with any word or words unless accompanied by a word or words clearly and distinctly setting forth the substance, ingredient, or gum of which the varnish is composed with the percentages of all such substances, ingredients, or gums therein used clearly stated upon the label, brand, or upon the containers (e. g. "shellac substitute," or "imitation-shellac" to be followed by a statement setting forth the percentages of ingredients or gums therein used).

(2) From using or displaying in circulars or advertising matter used in connection with the sale of its products in interstate commerce, except when such products contain 100 per cent shellac gum cut in alcohol, the words "American shellac" or the word "shellac" alone or in combination with any other word or words unless accompanied by a word or words clearly and distinctly setting forth the substance, ingredient, or gum of which the varnish is composed with the percentages of all such substances, ingredients, or gums

therein used clearly stated (e. g. "shellac substitute," or "imitation shellac" to be followed by a statement setting forth the percentages of ingredients or gums therein used).

Complaint No. 931.—Commission *v.* Occidental Oil Corporation and T. F. Smith, president; W. R. Charles, vice president; and L. J. Robling, secretary-treasurer. Charge: Unfair methods of competition in commerce are charged in that the individual respondents in their efforts to sell the shares of stock in the respondent corporation make use of statements concerning the properties, assets, oil production, and prospects thereof, in letters, circulars, maps, and other literature that are false and misleading, in alleged violation of section 5 of the Federal Trade Commission act.

Disposition: After hearing, the commission entered the following order:

It is now ordered that the respondent Occidental Oil Corporation, T. Frank Smith, W. R. Charles, and L. J. Robling, and their agents, do cease and desist from directly or indirectly making any false or misleading statements or representation concerning the resources, operations, production, profits, earnings, disbursements, dividends, progress, or prospects of the respondent Occidental Oil Corporation, or of any other corporation, association, or partnership, in connection with the sale or offering for sale in interstate commerce of the stock or other security of the respondent Occidental Oil Corporation, or of any other corporation, association, or partnerships.

Complaint No. 933.—Commission *v.* Texas-Atlantic Oil Co., G. P. Edgell, J. B. Sikes, V. C. Nelson, R. J. Leavitt, and W. Lincoln Wilson. Charge: The respondent company is a Texas trust and the respondent individuals are the promoters, officers, and agents thereof. Unfair methods of competition are charged in that the respondents, to further the sale of the share stock of said company, made numerous false and misleading statements and concealed essential facts as to the properties, prospects, and earnings of said company, in alleged violation of section 5 of the Federal Trade Commission act.

Disposition: After hearing, the commission entered the following order:

It is now ordered that the respondent, Texas-Atlantic Oil Co., and the respondents G. P. Edgell, J. B. Sikes, V. C. Nelson, and R. J. Leavitt, individually and as officers, shareholders, or agents of the respondent Texas-Atlantic Oil Co., and as officers, shareholders, or agents of any other corporation, association, or partnership, their trustees and agents, do cease and desist from directly or indirectly—

Publishing, circulating, or distributing, or causing to be published, circulated, or distributed, any newspaper, pamphlet, circular, letter, advertisement, or any other printed or written matter whatsoever, in connection with the sale or offering for sale in interstate commerce of stock or securities, wherein is printed or set forth any false or misleading statements or representations concerning the promotion, organization, character, history, resources, assets, oil production, earnings, income, dividends, progress, or prospect of any corporation, association, or partnership.

Complaint No. 934.—Commission *v.* Pacific States Paper Trade Association, its officers and members; Seattle-Tacoma Paper Trade Conference, its officers and members; Spokane Paper Dealers, its officers and members; Portland Paper Trade Association, its officers and members; Paper Trade Conference of San Francisco, its officers and members; Los Angeles Wholesale Paper Jobbers' Association, its officers and members J. Y. C. Kellogg, individually and as secretary of the Seattle-Tacoma Paper Trade Conference; Chriss A. Bell, individually and as secretary of the Portland Paper Trade Association; B. N. Coffman, individually and as secretary of the Pacific States Paper Trade Association; J. R. Coffman, individually and as secretary of the Los Angeles Wholesale Paper Jobbers' Association; W. B. Gilbert, individually and as secretary of the Spokane Paper Dealers; Zellerbach Paper Co.; Blake, Moffitt & Towne; American Paper Co.; J. W. Fales Paper Co.; Mutual Paper Co.; Washington Pulp & Paper Corporation; Paper Warehouse Co. (Inc.); the Seattle Paper Co.; Standard Paper Co.; Tacoma Paper & Stationery Co.; John W. Graham & Co.; B. G. Ewing Paper Co.; American Type Founders Co.; Blake-McFall Paper Co.; J. W. P. McFall, an individual doing business under the trade name J. W. P. McFall Paper Co.; Endicott Paper Co.; R. L. Brackett and Charles L. Frazier, partners doing business under the name and style Crescent Paper Co.; Bonestell & Co.; Pacific Coast Paper Co.; Union Paper Co.; Richardson Case Paper Co.; Eastman Gibbons Paper Co.; Delmas Paper Co.; San Jose Paper Co.; Pioneer Paper Co.; R. L. Craig Co.; Spokane Paper & Stationery Co.; Rogers Paper Co.; Sierra Paper Co.; Standard Woodenware Co. Charge:

Arbitrary designation as to "legitimate" or "illegitimate" dealers and the same adjective applied to the channels through which their trade flows are among the factors involved in this complaint. The association, through its members comprising a number of "local associations," the complaint states, embraces practically all the wholesale dealers in paper and paper products throughout the States of Oregon, Washington, and California. Other States affected in great part by the activities of the association are Idaho, Nevada, Arizona, Montana, New Mexico, and the Territory of Alaska. Averments by the commission are to the effect that by concerted agreement adherence of members of local associations to the maintenance of enforced schedule prices is consummated. It is further alleged that to the end that such schedule prices may be maintained and price competition eliminated throughout the Pacific States, the members notify their local associations and the Pacific States Paper Trade Association of infractions of the agreement to maintain standard prices, and these various associations bring pressure to bear upon the offending member to cease such practice. It is charged that the alleged acts and things done by respondents and by each of them have a dangerous tendency unduly to hinder competition and to create a monopoly, and constitute unfair competition within the meaning of section 5 of the Federal Trade Commission act.

Disposition: A stipulation having been entered into in lieu of testimony, the commission dismissed the complaint as to Washington Pulp & Paper Corporation and as to American Type Founders Co., and entered the following order to the remaining respondents:

It is now ordered that—

(a) The Spokane Paper Dealers, its officers and members, forever cease and desist from entering into or acting under any agreement or understanding, express or implied, among each other or with other jobbers or dealers, which fixes or is intended to fix the prices to be charged for paper or paper products in interstate commerce, or from using any joint or uniform price list or other device which fixes prices for paper or paper products sold or to be sold in interstate commerce.

(b) The Spokane Paper Dealers, Portland Paper Trade Association, Paper Trade Conference of San Francisco, Los Angeles Wholesale Paper Jobbers Association, and their officers and members, or any of them, forever cease and desist from using, directly or indirectly, either separately or in combination, in the making or soliciting of sales in interstate commerce, the price list of any local association, or any price list the prices wherein have been fixed by agreement or understanding between two or more respondent jobbers or wholesalers, or from compiling, publishing, and distributing any joint or uniform list or compilation of prices for use or used or intended to be used in making sales of paper products in interstate commerce.

(c) Each and all of the respondent local associations, their officers and members, forever cease and desist from entering into or acting under any agreement or understanding, express or implied, among each other or others, which fixes the prices for sales designated and described in the findings herein as "mill shipments" in carload quantities or less than carload quantities, where the article sold by respondent jobber or wholesaler is one supplied by the manufacturer from a point without the State wherein such jobber or wholesaler is located, or from compiling, publishing, and distributing any joint or uniform list or compilation of prices for use or intended to be used in making such sales.

(d) Each and all of the members of the respondent local associations, whether acting independently or through the medium of such local association or associations, forever cease and desist from entering into any agreement or understanding with each other or with others to fix prices for any particular article or kind of paper or to fix prices for any particular State or Territory, where the prices so fixed are designed for use and are used in quoting prices or making sales in interstate commerce.

(e) The Seattle-Tacoma Paper Trade Conference, Spokane Paper Dealers, Portland Paper Trade Association, their officers and members, the Pacific States Paper Trade Association and its officers, forever cease and desist, through the medium of meetings of the so-called Northwest Paper Dealers, or in any similar manner, from discussing uniform terms, discounts and prices, agreeing upon prices by resolution or otherwise, or employing any similar device, which fixes or tends to fix the prices at which paper or paper products shall be sold in interstate commerce, or which is designed to equalize or make uniform the selling prices, terms, discounts, or policies of such

respondent jobbers in the sale of paper or paper products in interstate commerce.

(f) The Pacific States Paper Trade Association, its officers and members, and the various respondent local associations, their officers and members, forever cease and desist from conspiring or combining between or among themselves or any of them, to hinder or prevent, by intimidation, coercion, withdrawal or threatened withdrawal of patronage, or any other similar means, the American Writing Paper Co., or any other manufacturer of paper and paper products, from making sales of paper or paper products at any price or upon any terms or condition such manufacturer may elect, to any wholesaler, jobber, dealer or consumer, whether or not considered by said respondents as entitled to such purchases.

(g) All of respondent associations and their officers and members forever cease and desist from conspiring, combining, or agreeing among themselves, or with each other or others, or through respondent associations, or any other organization or association, or in any way whatsoever, to hinder or prevent any wholesaler, jobber, dealer, or consumer from purchasing paper or paper products in interstate commerce directly from the manufacturer or wholesaler thereof or from any one else selling or desiring to sell such products.

(h) All of respondent associations and their officers and members forever cease and desist from any attempt or effort through such associations or by concert of two or more of their members, or through any other organization or association, to hinder or prevent, by intimidation, coercion, withdrawal or threatened withdrawal of patronage or custom, either express or implied, or promises or agreements to increase such patronage or custom, any person, firm, partnership, or corporation, or any agent or representative thereof, from buying and selling paper or paper products in interstate commerce, from or to whomsoever, or at whatsoever price or terms may be agreed upon between the seller and the purchaser; or by combination or agreement, express or implied, to communicate directly or indirectly with any manufacturer, wholesaler, or retail dealer, or any agent or representative thereof, for the purpose of inducing, coercing, or compelling such manufacturer, wholesaler, or retail dealer, not to sell paper or paper products in interstate commerce to any person, firm, partnership, or corporation whether or not recognized or classified by respondents as a legitimate dealer or otherwise entitled to such purchases.

Complaint No. 943.—Commission v. Abbott E. Kay and R. T. Nelson, as individuals and as copartners, doing business under the name of Aaban Radium Co. Charge: Unfair methods of competition in commerce are charged in that respondent, while engaged in the manufacture and sale of a product purporting to contain radium, but which in fact contains no radium, advertise radium content and thereby tend to mislead and deceive the purchasing public in alleged violation of section 5 of the Federal Trade Commission act.

Disposition: After hearing, the commission entered the following order:

It is now ordered that respondents, Abbott E. Kay and R. T. Nelson, as individuals and as copartners, doing business under the name of Aaban Radium Co., their servants, agents, and employees, cease and desist from further, in any manner whatsoever—

1. Selling or offering for sale or advertising as and for radium the product heretofore sold and advertised as and for radium by respondents.

2. Applying, employing, or using the word "radium" in connection with the sale, offering for sale, or advertising of the product heretofore sold and advertised as and for radium by respondents.

3. Making or causing to be made, in advertising matter or otherwise, representations, statements, or assertions that the product heretofore sold and advertised by respondents is radium or that said product contains radium.

4. Making or causing to be made any false statement, claim, or representation of similar import or effect in connection with the sale of any other product or substance.

Complaint No. 945.—Commission v. Ajax Rope Co. (Inc.). Charge: Unfair methods of competition in commerce are charged, in that the respondent, engaged in the purchase and sale of rope, cable, and twine, advertises as the "maker" of said products and states that it operates "mammoth rope factories," when in fact the respondent does not own, operate, or control any factory engaged in the manufacture of rope, cable, or twine, and by its advertising tends to mislead the trade and purchasing public, in alleged violation of section 5 of the Federal Trade Commission act.

Disposition: After hearing, the commission entered the following order:

It is now ordered that respondent, its officers, agents, representatives, and employes, cease and desist from representing or causing to be represented, by advertisements, labels, tags, stencil marks, circulars, verbal statements, or in any other manner—

1. That the respondent, Ajax Rope Co. (Inc.) is the maker or manufacturer of the rope which it sells and offers for sale, unless and until said respondent shall engage in the manufacture of such rope; or

2. That the respondent, Ajax Rope Co. (Inc.), is the maker or manufacturer of the rope which is made for it by the Waterbury Co., of the city of Brooklyn, State of New York, either by virtue of contract obligations or in any other manner.

Complaint No. 950.—Commission v. Dr. Herman Heuser. Charge: Unfair methods of competition in commerce are charged in that the respondent, licensor of patent rights for a process of manufacture of nonalcoholic beverages caused a letter of warning to be sent to licensees of the Baltimore Process Co., holder of a similar patent of prior date, advising them that the process they were using was an infringement of certain patents owned by the respondent, and, for purposes of intimidation and without intention of bringing suit, threatening legal action unless said licensees discontinued the use of the process owned by the Baltimore Process Co., thereby tending to intimidate and coerce said licensees to discontinue the use of the Baltimore process in favor of respondent's process, in alleged violation of section 5 of the Federal Trade Commission act.

Disposition: After hearing, the commission entered the following order:

It is now ordered that respondent, Dr. Herman Heuser, his servants, agents, representatives, and employes cease and desist from directly or indirectly—

Threatening, by letters or otherwise to institute suits against manufacturers of nonalcoholic beer, for the infringement of the process claimed in respondent's letters patent, without in good faith intending to institute such suit or suits, and in fact following up such threat, or threats, with suit, or suits, brought within a reasonable time, unless such acts shall be desisted from.

Commissioner Van Fleet dissenting.

DISSENT BY COMMISSIONER VAN FLEET

I do not believe the necessary element of public interest exists in this case. This is not on account of the nature of the case. An often used method by those seeking the elimination of competition has been to harass weak competitors by threats of patent litigation. But in this case it would appear that applicant and respondent are equally matched and the controversy is a private one which they may settle and which will ultimately be settled in the litigation now pending.

Complaint No. 954.—Commission v. Jacob Hochman and Samuel Levine, as individuals and trading under the name and style of Hochman & Levine. Charge: Unfair methods of competition are charged in that the respondents label, brand, and sell shirts manufactured by them as "English broadcloth," when in fact said shirts are manufactured from cotton cloth manufactured in the United States of a quality inferior to that of the widely advertised English broadcloth imported from England, in alleged violation of section 5 of the Federal Trade Commission act.

Disposition: After hearing, the commission entered the following order:

It is now ordered that the respondents, Jacob Hochman and Samuel Levine, do cease and desist from—

Using the words "English broadcloth" as a label or brand for shirts, or other garments, unless such garments be made from broadcloth made in and imported from England.

Complaint No. 959.—Commission v. Hygienic Laboratories. Charge: Unfair methods of competition in commerce are charged in that respondent's "free trial" offer for its hair color restorer "Kolor-Bak" does in fact involve the payment of the regular price for the said restorer, and in that the respondent avoids fulfillment of its money-back guarantee by claiming that the preparation has not been used according to instructions, in alleged violation of section 5 of the Federal Trade Commission act.

Disposition: A stipulation having been filed in lieu of testimony, the commission entered the following order:

It is now ordered that the respondent, Hygienic Laboratories, its officers, agents, representatives, servants, and employes, do cease and desist from—

Stating, in advertisements which it may cause to be published, or in advertising matter which it may cause to be distributed to the public, that it will give to anyone desiring it or applying for it, a "Special free trial offer," or a "Free trial offer," of a preparation manufactured and sold by respondent and for which the claim is made by respondent, that such preparation will restore the original color to gray hair, and then requiring those who apply for the so-called "Free trial" privilege, to purchase a quantity of such preparation upon the condition that if the preparation should fail to satisfy the customer, then the purchase price will be returned, thereby affording customers only what is known commercially, as a conditional "money-back offer" and not a free trial offer.

Complaint No. 965.—Federal Trade Commission v. Turner & Porter (Inc.). Charge: Unfair methods of competition in commerce are charged in that the respondent, engaged in the manufacture and sale of stationery, designates and advertises as "Relief-Engraving" its process of printing which resembles, in appearance, to some extent, an impression made from engraved plates but is not "engraving" as commonly understood by the purchasing public, and in that respondent falsely represents that the words "Relief-Engraving" have been registered in the United States Patent Office as the trade-mark, all for the purpose of misleading and deceiving the purchasing public in alleged violation of section 5 of the Federal Trade Commission act.

Disposition: After hearing, the commission entered the following order:

Now, therefore, it is ordered that the respondent, Turner & Porter (Inc.), its officers, directors, representatives, agents, and employees cease and desist—

(1) From causing advertisements to be published in magazines, trade papers, or other publications of general circulation among the States of the United States, and from causing circulars, catalogues, and other forms of advertising matter, to be distributed in the several States, in which advertisements and advertising matter the claim is made that the word "Relief-Engraving" has been registered in the United States and Canada as the trade-mark of respondent, or for any similar purpose.

(2) From using "Relief-Engraving" or the word "Engraving," either alone or in combination with any other word or words, in its advertisements and advertising matter, to designate or describe stationery sold by it, the lettering, inscription, or designs on which have been printed from inked type faces, electrotypes, or similar devices, and which stationery does not have thereon impressions from engraved plates or dies, and which lettering, inscription, or designs, have been given a raised letter effect by the application of a chemical in powder form to the ink while it was still wet, then subjecting same to heat thereby causing the chemical so applied to fuse with the wet ink.

Complaint No. 970.—Federal Trade Commission v. Wasatch Woolen Mills, a corporation. Charge: Unfair methods of competition in commerce are charged in that the respondent, engaged in the purchase and sale of "woolen goods made to order," and having no mills or factories of its own, indicates by the use of its corporate name that it is a manufacturer owning or operating woolen mills and that its customers thereby save the profits of the middleman, thus misleading and deceiving the purchasing public, in alleged violation of section 5 of the Federal Trade Commission act.

Disposition: After hearing, the commission entered the following order:

Now, therefore, it is ordered that the respondent, Wasatch Woolen Mills (Inc.) cease and desist from doing business under the corporate name and style of Wasatch Woolen Mills, or any other corporate name which includes the word "mills," unless and until such respondent actually owns or operates a mill or mills in which it manufactures the woolen articles which it sells.

Complaint No. 971.—Federal Trade Commission v. Salt Lake Cooperative Woolen Mills, a corporation. Charge: Unfair methods of competition in commerce are charged in that the respondent, engaged in the purchase and sale of "woolen goods made to order," and having no mills or factories of its own, indicates by the use of its corporate name that it is a manufacturer owning or operating woolen mills, and that its customers thereby save the profits of the middleman, thus misleading and deceiving the purchasing public, in alleged violation of section 5 of the Federal Trade Commission act.

Disposition: After hearing, the commission entered the following order:

Now, therefore, it is ordered that the respondent, Salt Lake Cooperative Woolen Mills (Inc.), its successors, officers, directors, agents, servants, and employees, cease and desist from—

1. Doing business under the corporate name and style of "Salt Lake Cooperative Woolen Mills," or any other corporate name which includes the words

"woolen mills," unless and until such respondent actually owns or operates a mill or mills in which raw wool is converted into yarn or cloth by the process of spinning or weaving.

2. Using any words, phrases, sentences, or order blanks, letterheads, or any other literature distributed by it in the course of its business which indicates or creates the impression that said respondent is a manufacturer of the articles which it sells, unless and until such respondent does actually manufacture said articles.

Complaint No. 972—Federal Trade Commission v. Jenkins Knitting Mills Co., a corporation. Charge: Unfair methods of competition in commerce are charged in that the respondent, having no mills or factories of its own, but engaged in the purchase and sale of knit goods, indicate by the use of its corporate name that it is a manufacturer owning and operating woolen mills, and that its customers therefore save the profits of the middleman, thus misleading and deceiving the purchasing public, in alleged violation of section 5 of the Federal Trade Commission act.

Disposition: After hearing, the commission entered the following order:

Now, therefore, it is ordered that the respondent, Jenkins Knitting Mills Co. (Inc.), cease and desist from doing business under the corporate name and style of Jenkins Knitting Mills Co. or any other corporate name which includes the words "knitting" or "mills" unless and until such respondent actually owns or operates a factory or mills in which it manufactures the knitted articles which it sells.

Complaint No. 973—Federal Trade Commission v. B. Raff & Sons. Charge: Unfair methods of competition are charged in that the respondent in jobbing pyroxylin or celluloid combs, toilet sets, etc., advertises said articles as "Parisian Ivory," "White Ivory," or "Reed Ivory," thereby misleading and deceiving the purchasing public, in alleged violation of section 5 of the Federal Trade Commission act.

Disposition: A stipulation having been entered into in lieu of testimony, the commission entered the following order:

It is now ordered that the respondents, B. Raff, M. Raff, and I. Raff, as partners and individually do cease and desist from directly or indirectly advertising or representing as "Ivory" articles offered for sale or sold by them, unless such articles are in fact made or composed of ivory.

Complaint No. 975—Edward Frohlich, trading under the name and style of Frohlich Glass Co., and E. A. Benedict. Charge: Unfair methods of competition in commerce are charged in that the respondents, cooperating in the sale of house paint, have falsely represented, advertised, and labeled said products as "U. S. Quality Paint," the said paint in fact being a low-grade product not made for nor used by the United States Government and not made according to any Government specification or requirements, in alleged violation of section 5 of the Federal Trade Commission act.

Disposition: A stipulation having been entered into in lieu of testimony, the commission entered the following order:

It is now ordered that the respondents, Edward Frohlich and E. A. Benedict, their agents, representatives, servants, and employees do cease and desist from directly or indirectly—

(1) Using a label, mark, or brand containing the words "U. S. Quality Paint" upon paint manufactured or sold by them or either of them, or any similar label, mark, or brand that would tend to induce the belief that said paint was manufactured for use by the United States Government or prepared according to specifications or requirements of the United States Government, unless the paint in the containers upon which said label is used is or was manufactured for use by the United States Government or prepared according to the specifications or requirements of the United States Government.

(2) Selling or offering for sale in commerce paint, the containers of which bear the label, mark, or brand "U. S. Quality Paint" or any similar label, mark, or brand that would tend to induce the belief that the paint therein contained was manufactured for use by the United States Government or prepared according to specifications or requirements of the United States Government, unless the paint in the containers so labeled was, and is, in fact manufactured for use by the United States Government or prepared according to specifications or requirements of the United States Government.

Complaint No. 977—Federal Trade Commission v. Eastman Kodak Co., Allied Laboratories Association (Inc.), the Burton Holmes Lectures (Inc.), the Crafts-

men Film Laboratory (Inc.), Kinetograph Co. of America (Inc.), Erbograph Co., Cromlow Film Laboratories (Inc.), Fallsades Film Laboratories (Inc.), Claremont Film Laboratory (Inc.), Film Developing Corporation, Evans Film Manufacturing Co. (Inc.), Republic Laboratories (Inc.), Lyman H. Howe Film Co., Rex Laboratory (Inc.), Tremont Film Laboratories (Inc.), Mark Dintenfass, George Eastman, Jules E. Brulatour. Charge: The complaint alleges that the Eastman interests, in an endeavor to monopolize the manufacture and sale of cinematograph film in the United States, caused the respondent Brulatour to establish and operate laboratories for the production of positive-print motion-picture films (without disclosing the true ownership) for the purpose of coercing competing laboratories to refrain from purchasing foreign cinematograph film, such coercion being effected by underselling, discrimination in price and terms of credits, or delay in or refusal to make delivery; and that subsequently the Eastman interests assumed title to said laboratories and by threat of operation thereof induced the respondent association and its members to join in a conspiracy by which the association members agreed to confine their purchases to film manufactured in the United States, the Eastman Co. agreeing to close its manufacturing laboratories and to refrain from further competition with members of the association, but threatening to reopen and operate its laboratories if the association members again purchased or used imported film, and the respondent members thereupon confined their purchases to Eastman film, falsely announcing that film produced by manufacturers other than Eastman can not be used to good advantage. Unfair methods of competition are charged in that the practices above described have resulted in the monopoly of the cinematograph-film business in the United States by the Eastman Co. and restricted competition and fixed prices in the sale of positive prints to the producers of motion-picture film in alleged violation of section 5 of the Federal Trade Commission act.

Disposition: A stipulation having been entered into in lieu of testimony, the commission issued the following order:

Now, therefore, it is ordered that the respondents, Eastman Kodak Co., its officers, agents, and employees, George Eastman, Jules E. Brulatour, the Allied Film Laboratories Association (Inc.), its officers, agents, and employees, the Burton Holmes Lectures (Inc.), the Craftsmen Film Laboratory (Inc.), the Kinetograph Co. of America (Inc.), the Erbograph Co., the Cromlow Film Laboratories (Inc.), the Fallsades Film Laboratories (Inc.), the Claremont Film Laboratory (Inc.), the Film Developing corporation, the Evans Film Manufacturing Co. (Inc.), the Republic Laboratories (Inc.), the Lyman H. Howe Film Co., the Rex Laboratory (Inc.), the Tremont Film Laboratories (Inc.), their respective officers, agents, and employees, and Mark Dintenfass, his servants, agents, and employees, and each of them, forever—

Cease and desist from conspiring, combining, confederating, agreeing and cooperating between or among themselves to hinder and restrain competition in the manufacture and sale of positive raw cinematograph-film stock and to maintain and extend or attempt to maintain and extend the monopoly of the Eastman Kodak Co. in the distribution and sale of positive raw cinematograph-film stock, in interstate and foreign commerce, by—

First. The acquisition and equipment by the Eastman Kodak Co. of the Paragon Laboratory, the G. M. Laboratory, and the Sen Jacq Laboratory, whose combined capacity equals the market demand for printing and developing positive prints of cinematograph films from exposed and developed cinematograph films, for the purpose of extending its business to include the making and selling of such prints.

Second. The use by the Eastman Kodak Co. of the ownership and possession of the said Paragon, G. M., and Sen Jacq laboratories and their equipment and capacity for producing positive prints of cinematograph films from exposed and developed negative cinematograph films to induce, compel, and coerce the Allied Film Laboratories Association (Inc.), and its members, to use in their laboratories for the manufacture of positive prints of cinematograph films, exclusively, American-made positive raw cinematograph film stock of which the said Eastman Kodak Co. has a monopoly in the manufacture and sale thereof.

Third. The agreement or understanding by and between members of the Allied Film Laboratories Association (Inc.) and the Eastman Kodak Co. that the said members will use American-made positive raw cinematograph film stock of which said Eastman Kodak Co. has a monopoly in the manufacture and sale thereof, exclusively, and particularly to the exclusion of foreign manufactured positive raw cinematograph film stock, provided the Eastman Kodak

Co. will not operate commercially the said Paragon, G. M., and Sen Jacq laboratories in competition with the laboratories operated by said members of the Allied Film Laboratories Association (Inc.).

Fourth. The agreement or understanding entered into by and between the Eastman Kodak Co. and the members of the Allied Film Laboratories Association (Inc.) that the Eastman Kodak Co. will not operate commercially the Paragon, G. M., and Sen Jacq laboratories in the manufacture and sale of positive prints of cinematograph films in competition with the laboratories operated by said members, provided that said members use and continue to use American-made positive raw cinematograph film stock, of which the Eastman Kodak Co. has a monopoly in the manufacture and sale thereof, exclusively in the manufacture of positive prints or cinematograph films from exposed negative cinematograph films and the sale thereof.

Fifth. The continued ownership by the Eastman Kodak Co. of the Paragon, G. M., and Sen Jacq laboratories and the maintenance of the same in readiness for immediate operation for the production of positive prints of cinematograph films or any other dominant control of the production, or capacity for production, of positive prints of cinematograph films from exposed negative cinematograph films.

Sixth. Utilizing any other equivalent means, not hereinbefore stated, to accomplish the object of unfairly forestalling, preventing, hindering, or restraining the manufacture and sale of positive raw cinematograph film stock and the making of positive prints of cinematograph films from exposed negative cinematograph films, or the sale thereof, in interstate and foreign commerce.

It is further ordered that for the purpose of preventing the maintenance and extension of the monopoly of the Eastman Kodak Co. in the manufacture and sale of positive raw cinematograph film stock to the use thereof in making positive prints of cinematograph films and of restoring competitive freedom in the distribution and sale of positive raw cinematograph film stock, the Eastman Kodak Co. shall, with all due diligence, sell and convey the said Paragon, G. M., and Sen Jacq laboratories to parties not connected directly or indirectly in interest with the Eastman Kodak Co.

Complaint No. 978.—Federal Trade Commission *v.* Western Woolen Mills Co., a corporation. Charge: Unfair methods of competition are charged in that the respondent, engaged in the purchase and sale of woolen goods and having no mills of its own, indicates by the use of its corporate name that it is a manufacturer owning or operating woolen mills and that its customers therefore save the profits of the middleman, thus misleading and deceiving the purchasing public, in alleged violation of section 5 of the Federal Trade Commission act.

Disposition: After hearing, the commission entered the following order:

Now, therefore, it is ordered that the respondent, Western Woolen Mills Co. (Inc.), its successors, officers, directors, agents, servants and employees cease and desist from—

(1) Doing business under the corporate name and style of Western Woolen Mills Co. or any other corporate name which includes the word "mills" unless and until such respondent actually owns or operates a mill or mills in which it manufactures the woolen articles which it sells.

(2) Using any words, phrases, or sentences on the order blanks, letterheads, or any other literature distributed by it in the course of its business which indicate or create the impression that said respondent is a manufacturer of the articles which it sells, unless and until such respondent does actually manufacture said articles.

Commissioner MURDOCK dissents.

Complaint No. 989.—Federal Trade Commission *v.* Victor K. Kissal and Paul Kokalis, copartners doing business under the name of Kissal & Kokalis. Charge: Unfair methods of competition are charged in that the respondents, operating a beverage stock in the District of Columbia, have simulated the white store front and distinctive sign well known to the people of the District of Columbia as originally adopted by and associated with a chain of retail stores known as Dikeman's Orange Beverage Stores, thereby tending to mislead and deceive the consuming public in alleged violation of section 5 of the Federal Trade Commission act.

Disposition: After hearing, the commission entered the following order:

It is now ordered that respondents, Victor K. Kissal and Paul Kokalis, copartners doing business under the name of Kissal & Kokalis, their agents, representatives, servants, and employees, do cease and desist from simulating the signs, letterings, legend, and store front in color, size, shape, design, and general appearance of the chain stores of Carroll H. Dikeman

Complaint No. 982.—Federal Trade Commission v. E. O. Wakefield, Mrs. E. O. Wakefield, A. J. Plume, and William Plume, copartners, doing business under the firm name of Murray Knitting Co. Charge: Unfair methods of competition in commerce are charged in that the respondents, engaged in the purchase and sale of knit goods and having no mills or factories of their own, indicate by the general use and prominent display of the firm name under which they do business that they are manufacturers and that their customers therefore save the profits of the middleman, thereby misleading and deceiving the purchasing public in alleged violation of section 5 of the Federal Trade Commission act.

Disposition: After hearing, the commission entered the following order:

Now, therefore, it is ordered that the respondents, E. O. Wakefield, Mrs. E. O. Wakefield, A. J. Plume, and William Plume, copartners, doing business under the firm name of Murray Knitting Co., cease and desist from—

(1) Doing business under the firm name and style of Murray Knitting Co. or any other firm name which includes the word "knitting," unless and until such respondents actually own or operate a factory or mills in which they manufacture the knitted articles which they sell.

(2) Using any words, phrases, or sentences on the order blanks, letterheads, or any other literature distributed by them in the course of their business, which indicate or create the impression that said respondents are manufacturers of the articles which they sell, unless and until such respondents do actually manufacture said articles.

Commissioner McBook dissents.

Complaint No. 983.—Federal Trade Commission v. Morris Errera. Charge: Unfair methods of competition in commerce are charged in that respondent, operating a beverage store in the District of Columbia, has simulated the white store front and distinctive signs well known to the people of the District of Columbia as originally adopted by and associated with a chain of retail stores known as Dikeman's Orange Beverage Stores and thereby tends to mislead and deceive the consuming public in alleged violation of section 5 of the Federal Trade Commission act.

Disposition: After hearing, the commission entered the following order:

It is now ordered that respondent, Morris Errera, his agents, representatives, servants, and employees, do cease and desist from simulating the signs, letterings, legend, and store front in color, size, shape, design, and general appearance of the chain of stores of Carroll H. Dikeman.

Complaint No. 986.—Federal Trade Commission v. Broadway Knitting Co., a corporation. Charge: Unfair methods of competition in commerce are charged in that the respondent, engaged in the purchase and sale of knit goods and "woolen goods made to order," and having no mills or factories of its own, indicates by the use of its corporate name that it is a manufacturer and that its customers therefore save the profits of the middleman, thereby misleading and deceiving the purchasing public in alleged violation of section 5 of the Federal Trade Commission act.

Disposition: After hearing, the commission entered the following order:

Now, therefore, it is ordered that the respondent Broadway Knitting Co. cease and desist from doing business under the name and style of Broadway Knitting Co. or any other corporate name which includes the word "knitting" unless and until such respondent actually owns or operates a factory or mills in which it manufactures the knitted articles which it sells.

Complaint No. 994.—Federal Trade Commission v. Standard Education Society. Charge: The complaint relates that the respondent offers its "Standard Reference Work" free of charge in conjunction with a 10 years' subscription for its "Standard Loose-Leaf Extension Service" at \$49, payable within one year in monthly installments. Unfair methods of competition are charged in that the respondent's representation that the sum of \$49 is for the so-called extension service is false and misleading, as such sum is greatly in excess of the cost of the service and is sufficient to compensate the respondent for the set of books delivered "free," and in that the respondent misrepresents the value of the said books and extension service and induces individuals to accept said books on approval, but prevents the purchasers from exercising their option of returning the books to the respondent at its expense; misrepresents the quality of its book bindings; makes false and misleading representation as to honorary membership in the "Standard Education Society," offered as an inducement to purchase respondent's books; claims that other books offered in connection with its "Standard Reference Work" are given free and with-

out charge, whereas the price obtained is so far in excess of the usual selling price of the Standard Reference Work as to constitute a fair price for all of the books delivered to the customers; falsely advertises that the Standard Reference Work has been "officially adopted by 24 States"; and circulates commendations of its publications subsequent to their withdrawal and abrogation by the persons signing them, all in alleged violation of section 5 of the Federal Trade Commission act.

Disposition: A stipulation having been entered into in lieu of testimony the commission entered the following order:

It is now ordered that the respondent, Standard Education Society, a corporation, its officers, agents, and employees cease and desist from—

(1) Representing to customers or prospective customers that the usual prices which it receives or has received for any book, set of books, or any publication, or any combination of books, sets of books, or publications, are greater than the price at which they are offered to such customers or prospective customers, when such is not the fact.

(2) Representing that any book or publication offered for sale by it is bound in "rich maroon levant" or other leather when such is not the fact.

(3) Offering to its prospective customers honorary memberships in the Standard Education Society.

(4) Advertising that the publication designated as "Standard Reference Work" has been officially adopted by 24 States or by any State.

Complaint No. 995.—Federal Trade Commission v. King-Ferree Co. (Inc.). Charge: Unfair methods of competition are charged in that the respondent, a manufacturer of cigars at Greensboro, N. C., by labeling and advertising its said product as "Vantampa" cigars, tends to mislead and deceive the purchasing public to believe said cigars are Tampa cigars manufactured from the Havana tobacco used in the Tampa district, in alleged violation of section 5 of the Federal Trade Commission act.

Disposition: A stipulation having been entered into in lieu of testimony the commission entered the following order:

It is now ordered that the respondent, King-Ferree Co. (Inc.), its officers, agents, representatives, servants, and employees, do cease and desist from—

Using the word "Vantampa" alone or in combination with other words in brands, labels, or legends on cigars and the containers thereof manufactured by it in Greensboro, N. C., or any other place than the city of Tampa, Fla., or the Tampa district, so-called, unless, if the cigars in fact are not made in Tampa, Fla., or the Tampa district, such word or words are followed by words in type or lettering equally conspicuous with the word "Vantampa" which state the true place of manufacture.

Complaint No. 997.—Federal Trade Commission v. Prosperity Co. (Inc.). Charge: Complaint herein charges unfair methods of competition in that the respondent, for the purpose of inducing its competitors' customers to wrongfully and unlawfully breach their contracts with said competitors and therefor those of its competitors, allows as part payment of the purchase price for its own machines such sums as have been paid on contracts for the purchase of competing machines and furnishes the services of attorneys to defend suits brought by competitors for the purchase price for competing machines originally installed in alleged violation of section 5 of the Federal Trade Commission act.

Disposition: A stipulation having been entered into in lieu of testimony, the commission entered the following order:

It is now ordered that the respondent, Prosperity Co. (Inc.), its agents, representatives, servants, and employees, do cease and desist from—

Inducing, or attempting to induce, purchasers of garment-pressing machines of competitors to breach their contracts with such competitors, and to install and use machines purchased from said respondent corporation.

And in particular by any of the following means:

(a) Allowing or offering to allow such purchasers as part payment of the purchase price of its own machines, such sums as have been paid on contracts for the purchase of such competing machines.

(b) Agreeing to indemnify or offering to indemnify such purchasers who breach their contracts for the purchase of competing machines against any loss which may accrue to them because of such breach.

Complaint No. 998.—Federal Trade Commission v. Mrs. E. M. Henning, Joseph M. Henning, C. Wesley Henning, and William E. Henning, individuals,

trading under the name and style of Phillips Genuine Sausage Co. Charge: Unfair methods of competition are charged in that the respondents, engaged in the sale of pork sausage, simulate the trade name and label of the Joseph Phillips Co., a long-established and favorably known manufacturer of "Phillips Original All-Pork Sausage," in alleged violation of section 5 of the Federal Trade Commission act.

Disposition: After hearing, the commission entered the following order:

It is now ordered that the respondents, Mrs. E. M. Henning, Joseph M. Henning, C. Wesley Henning, and William E. Henning, individuals, trading under the name and style of Phillips Genuine Sausage Co., their agents, servants, and employees, do cease and desist from directly or indirectly—

Representing, advertising, labeling, or branding in any manner whatsoever, their said sausage as "Made and prepared by Thomas C. Phillips," unless and until such products are actually made and prepared by Thomas C. Phillips.

Complaint No. 1002.—Federal Trade Commission v. A. Morrison and L. Morrison, partners, trading as Morrison Fountain Pen Co. Charge: Unfair methods of competition are charged in that the respondents, engaged in the sale and manufacture of fountain pens and pencils, label their products with false and fictitious resale prices far in excess of the usual retail prices for the purpose of misleading and deceiving the purchasing public as to the true value and usual selling price of said articles, in alleged violation of section 5 of the Federal Trade Commission act.

Disposition: After hearing, the commission entered the following order:

It is ordered that the respondents, A. Morrison and L. Morrison, do cease and desist from selling in interstate commerce fountain pens bearing upon them any brand, label, or other mark indicating a false, fictitious, exaggerated, and misleading price in excess of the price at which such pens are usually sold at retail.

Complaint No. 1003.—Federal Trade Commission v. Henry Lederer & Bros. (Inc.). Charge: Unfair methods of competition are charged in that pens and pen points manufactured by the respondent from metals other than gold are inscribed or stamped in small and indistinct letters and figures: "Premo 141 Warranted," the said figures being used with the intent and purpose of deceiving the purchasing public by reason of their resemblance to the "14K" mark on articles made of gold, in alleged violation of section 5 of the Federal Trade Commission act.

Disposition: A stipulation having been entered into in lieu of testimony, the commission entered the following order:

It is now ordered that the respondent, Henry Lederer & Bros. (Inc.), its officers, agents, and employees, cease and desist from—

Selling or offering to sell in interstate commerce pens or pen points made from metal or metals other than gold and finished to resemble gold in color and appearance, bearing thereon the following inscription: "Premo 141 Warranted," or any other device or mark calculated to indicate to the purchasing public that said pens are made from or contain gold.

Complaint No. 1005.—Federal Trade Commission v. Greenhalgh Mills, a corporation, J. Braumhall, J. W. Bird, W. C. Bayles, Robert Amory, Charles Crehore, and B. F. Meffert, copartners, trading under the name and style of Amory, Browne & Co. Charge: Unfair methods of competition are charged in that the respondents, manufacturers and sales agents of cotton fabrics, caused certain of said cottons to be labeled "De Luxe Pongee," the said name having the capacity and tendency to mislead the trade and purchasing public to believe that the fabric so labeled is a silk fabric such as that commonly known and designated "Pongee," in alleged violation of section 5 of the Federal Trade Commission act.

Disposition: After hearing, the commission entered the following order:

Now, therefore, it is ordered that respondents Greenhalgh Mills, a corporation, J. Braumhall, J. W. Bird, W. C. Bayles, Robert Amory, Charles Crehore, and B. F. Meffert, copartners, trading under the name and style of Amory, Browne & Co., its or their officers, agents, representatives, servants, or employees, cease and desist from using as a brand, stamp, or label, or otherwise using or applying the word "Pongee" on or in connection with any fabric manufactured by respondent, Greenhalgh Mills, sold or to be sold in interstate commerce, unless such fabric is the product of the cocoon of the silk worm.

Complaint No. 1011.—Federal Trade Commission v. J. Mailender, trading under the unincorporated names and styles of "M. Rider & Co.," "Queen

City Salvage Co.," "Army Goods Headquarters," "Army-Navy Store," and "Army Goods Store." Charge: Unfair methods of competition are charged in that the respondent, engaged in the purchase and sale of men's work and dress clothing, surplus Army and Navy property, paints, and other goods, falsely represents certain of his wares as purchased from the United States Army or Navy, or made in accordance with specifications of the United States Government and of high quality, thereby tending to mislead and deceive the purchasing public, in alleged violation of section 5 of the Federal Trade Commission act.

Disposition: A stipulation having been entered into in lieu of testimony, the commission entered the following order:

It is now ordered that the respondent H. Mailender (whose full name is Harry Mailender), trading under the unincorporated names and styles of "M. Rider & Co.," and "Queen City Salvage Co.," his agents, representatives, servants, and employees, cease and desist from directly or indirectly—

(1) Selling or offering for sale in interstate commerce, in places of business designated and described by him as "Army Goods Headquarters," "Army-Navy Stores" or "Army Goods Store," ordinary commercial merchandise or commodities as surplus Army and Navy supplies or Government supplies, when, in truth and in fact, such merchandise or commodities were not purchased from or manufactured by or for the United States Government or made in accordance with specifications or requirements of the United States Government.

(2) Advertising or describing in newspapers, circulars, or other literature, ordinary commercial merchandise or commodities as surplus Army and Navy supplies, when, in truth and in fact, such merchandise and commodities were not purchased from or manufactured for or by the United States Government, or made in accordance with specifications or requirements of the United States Government.

(3) Employing or using on labels or as brands for paint manufactured, sold or offered for sale by him in interstate commerce, or upon the containers in which said paint is delivered to purchasers, the words "U. S. Marine Paint, One Gallon U. S. Standard," unless in truth and in fact, said paint was purchased from or manufactured by or for the United States Government, or prepared in accordance with specifications or requirements of the United States Government.

(4) Using or displaying in advertising matter, circulars, or other literature used in connection with the sale of paint manufactured, sold, or offered for sale by him in interstate commerce, the words "U. S. Marine Paint" or "U. S. Quality Paint," unless, in truth and in fact, said paint was purchased from or manufactured by or for the United States Government, or prepared in accordance with specifications or requirements of the United States Government.

Complaint No. 1014.—Federal Trade Commission *v.* Ralph E. Dings and Lyon S. Schuster, a partnership doing business under the name and style of Dings & Schuster. Charge: Unfair methods of competition are charged, in that the respondents, engaged in the manufacture and sale of paints, varnishes, shellac, and shellac substitutes, label as "white shellac" a product composed of shellac gum and a large quantity of shellac-gum substitutes, such as rosin and similar ingredients, without distinguishing it from their similarly labeled product which is composed solely of shellac gum dissolved in alcohol, thereby tending to mislead and deceive the purchasing public, in alleged violation of section 5 of the Federal Trade Commission act.

Disposition: A stipulation having been entered into in lieu of facts, the commission entered the following order:

It is now ordered that the respondents, Ralph E. Dings and Lyon S. Schuster, copartners, doing business under the name and style of Dings & Schuster, and each of them, their agents, representatives, servants, and employees, cease and desist from directly or indirectly—

(1) Employing or using on labels or as brands for varnish not composed wholly, 100 per cent, of shellac gum cut in alcohol, or on the containers in which the varnish is delivered to customers, the words "White shellac" or the word "Shellac" alone or in combination with any word or words unless accompanied by a word or words clearly and distinctly setting forth the substance, ingredient, or gum of which the varnish is composed, with the percentages of all such substances, ingredients, or gums therein used clearly stated upon the label, brand, or upon the containers (e. g., "Shellac substitute"

or "Imitation shellac," to be followed by a statement setting forth the percentages of ingredients or gums therein used).

(2) Using or displaying in circulars or advertising matter used in connection with the sale of its products in interstate commerce, except when such products contain 100 per cent shellac gum cut in alcohol, the words "White shellac" or the word "Shellac" alone or in combination with any other word or words unless accompanied by a word or words clearly and distinctly setting forth the substance, ingredient, or gum of which the varnish is composed, with the percentages of all such substances, ingredients, or gums therein used clearly stated (e. g., "Shellac substitute" or "Imitation shellac," to be followed by a statement setting forth the percentages of ingredients or gums therein used).

Complaint No. 1017.—Federal Trade Commission v. Process Engraving Co. Charge: Unfair methods of competition are charged in that the respondent, engaged in the printing and selling of stationery, designates and advertises as "Process engraving" its method of printing in simulation of impressions made from engraved plates, thereby tending to mislead and deceive the purchasing public into the erroneous belief that the respondent's products are in fact "engraved," in alleged violation of section 5 of the Federal Trade Commission act.

Disposition: After hearing, the commission entered the following order:

Now, therefore, it is ordered that the respondent, Process Engraving Co., its officers, directors, representatives, agents, and employees cease and desist—

From using the words "process engraving," "engraved by our process," or the word "engraving," either alone or in combination with any other word or words, in its advertisements and advertising matter distributed or displayed to the public in the several States of the United States, to designate or describe stationery sold by it, the lettering, inscription, or designs on which have been printed from inked type faces, electrotypes, or similar devices, and which stationery does not have thereon impressions from engraved plates or dies, and which lettering, inscriptions, or designs have been given a raised-letter effect by the application of a chemical in powder form to the ink while it was still wet, then subjecting same to heat, thereby causing the chemical so applied to fuse with the wet ink.

Complaint No. 1026.—Federal Trade Commission v. M. Kaplin, trading as Butterfly Shop. Charge: Unfair methods of competition are charged in that the respondent, engaged in the sale of wearing apparel at retail, falsely represents as "silk" certain hosiery and other articles manufactured from materials or fabrics other than silk but resembling silk in appearance and texture, thereby misleading and deceiving the purchasing public, in alleged violation of section 5 of the Federal Trade Commission act.

Disposition: After hearing, the commission entered the following order:

It is now ordered that respondent, M. Kaplin, his servants, agents, representatives, and employees cease and desist from directly or indirectly—

Using in advertisements, placards, or signs in connection with hosiery sold by him the word "silk" or any modification thereof, (1) unless the hosiery on which it is used is made entirely of the silk of the silk worm, or (2) unless where the hosiery is made partly of silk it is accompanied by a word or words aptly and truthfully describing the material or materials of which said hosiery is in part composed.

Complaint No. 1041.—Federal Trade Commission v. Mountain Grove Creamery, Ice & Electric Co. Charge: Unfair methods of competition are charged in that the respondent has caused its butter to be put up in packages or cartons containing from 1 to 2 ounces less than the recognized standard weight of 16 ounces or 1 pound, the true weight being marked on the container, however, each carton containing separately wrapped unmarked units of slightly less than the standard and customary size and weight, and in limitation thereof, the tendency being to enable and encourage retailers to commit a fraud on the ultimate purchasers of the separately wrapped unmarked units, in alleged violation of section 5 of the Federal Trade Commission act.

Disposition: A stipulation having been entered into in lieu of facts, the commission entered the following order:

It is now ordered that respondent Mountain Grove Creamery, Ice & Electric Co., its officers, agents, and employees, do cease and desist from selling, or offering for sale to distributors, dealers, or others butter in shapes, sizes, and dress in imitation of, or resembling the standard or recognized shapes and sizes generally known to the purchasing public to contain 4 ounces, 8 ounces,

and 1 pound of butter, respectively, when such shapes and sizes contain less than said standard respective weights.

Complaint No. 1042.—Federal Trade Commission *v.* The Wichita Creamery Co. Charge: Unfair methods of competition are charged in that the respondent has caused its butter to be put up in packages or cartons containing 1 ounce less than the recognized standard weight of 16 ounces or 1 pound, the true weight being marked on the container, however, each carton containing separately wrapped unmarked units of slightly less than the standard and customary size and weight, and in imitation thereof, the tendency being to enable and encourage retailers to commit a fraud on the ultimate purchasers of the separately wrapped unmarked units, in alleged violation of section 5 of the Federal Trade Commission act.

Disposition: A stipulation having been entered into in lieu of facts, the commission entered the following order:

It is now ordered that respondent, the Wichita Creamery Co., its officers, agents, and employees, do cease and desist from selling or offering for sale to distributors, dealers, or others, butter in shapes, sizes, and dress in imitation of, or resembling the standard or recognized shapes and sizes generally known to the purchasing public to contain 4 ounces, 8 ounces, and 1 pound of butter, respectively, when such shapes and sizes contain less than said standard respective weights.

Complaint No. 1043.—Federal Trade Commission *v.* The Meriden Creamery Co. Charge: Unfair methods of competition are charged in that the respondent has caused its butter to be put up in packages or cartons containing 1 ounce less than the recognized standard weight of 16 ounces or 1 pound, the true weight being marked on the container, however, each carton containing separately wrapped, unmarked units of slightly less than the standard and customary size and weight, and in imitation thereof, the tendency being to enable and encourage retailers to commit a fraud on the ultimate purchasers of the separately wrapped, unmarked units, in alleged violation of section 5 of the Federal Trade Commission act.

Disposition: A stipulation having been entered into in lieu of facts, the commission entered the following order:

It is now ordered that respondent, the Meriden Creamery Co., its officers, agents, and employees, do cease and desist from selling or offering for sale to distributors, dealers, or others, butter in shapes, sizes, and dress in imitation of, or resembling the standard or recognized shapes and sizes generally known to the purchasing public to contain 4 ounces, 8 ounces, and 1 pound of butter, respectively, when such shapes and sizes contain less than said standard respective weights.

Complaint No. 1049.—Federal Trade Commission *v.* Philadelphia Blanket Co. (Inc.). Charge: Unfair methods of competition are charged in that the respondent sells certain of its blankets, rugs, and robes under the trade name "William B. Riley & Co.," the name of a partnership formerly engaged in a similar business and from which the respondent purchased certain trade-marks which did not include the aforesaid trade name, the sale or transfer of which to the respondent was refused, the respondent thereby tending to mislead the purchasing public to believe that the respondent's products are those of William B. Riley & Co., and that the last-named company continues its existence, when in fact it has been dissolved, in alleged violation of section 5 of the Federal Trade Commission act.

Disposition: After hearing, the commission entered the following order:

It is ordered that the respondent, Philadelphia Blanket Co. (Inc.), its agents, representatives, and employees, do—

Cease and desist from trading under the name Wm. B. Riley & Co. by causing the said name to be or to remain listed in any telephone directory, either in connection with the same telephone number and address as the Philadelphia Blanket Co. (Inc.) or in connection with any other telephone number or address; from using the name Wm. B. Riley & Co. on letterheads or other stationery in any manner representing that it is conducting business under said firm name or in connection therewith; from using the name Wm. B. Riley & Co. in any manner on any sign used by respondents in its business except in connection with the words "former lines of" or words of equivalent meaning placed conspicuously immediately preceding the said firm name.

Commissioner Van Fleet dissents.

MEMORANDUM BY COMMISSIONER VAN FLEET

I dissent from the order in this case.

On March 17, 1924, the complaint in this case by vote of the commission was dismissed "for the reason that the record shows that this matter should have been determined between the parties by private action in court," and the secretary was directed to serve the order of dismissal. On March 28, 1924, the commission by majority vote reconsidered the former vote and voted the present order to cease and desist. I am dissenting because I adhere to the opinion as expressed in the first order of the commission, that "the record shows that this matter should have been determined between the parties by private action in court." The record disclosed that William B. Riley & Co. was a partnership composed of William B. Riley and Edgar E. Young; that Riley died and Young continued the business for a time under the firm name; that Young later sold to respondent all the merchandise of said partnership on hand, together with the right to use certain trade-marks belonging to said partnership.

The agreement was evidenced by a written instrument executed by the parties, Edgar E. Young died and his widow and the executors of his estate complained of the use by respondent of the name William B. Riley, evidently deeming that the name was of some commercial value. Whether under the written agreement the respondent had the right to use this name is a question of law to be determined by the court. It is a purely private controversy between them. The commission is not created to collect debts or establish purely personal and private rights between parties.

The trial examiner in this case found that:

"The form of letterhead adopted by the respondent on or about April 29, 1922, and continued in use by the respondent until on or about November 29, 1922, is calculated to, and might, cause someone seeing said stationery to believe that the respondent, Philadelphia Blanket Co. (Inc.), was a successor to Wm. B. Riley & Co., but such was the fact, and there is no evidence of any of the trade, or of the consuming public, in any way being misled or deceived. The notice sent out by Edgar E. Young to the trade, advising them that Wm. B. Riley & Co. had ceased business, and of the transference of the business of Wm. B. Riley & Co. to the Philadelphia Blanket Co. would negative any presumption which might arise as to any general tendency or capacity of such stationery to mislead or deceive the trade, and there is absolutely no evidence that the ultimate user of blankets or robes, the consumer, ever had any opportunity to see such stationery.

"The respondent ceased the use of the words, 'Wm. B. Riley & Co.' upon its stationery on or about November 29, 1922, as set out in Paragraph IV, and has not since that time used same. The respondent has used, since November 29, 1922, and continues to use upon the sign at the New York office, under the words 'Steamer rugs,' the words, 'Former lines of Wm. B. Riley & Co.,' which is a statement of a fact.

"The evidence reveals no acts or things done by respondent which are to the prejudice of the public or to the competitors of respondent, and reveals only a private dispute between the widow and executors of Edgar E. Young and the respondent.

"The respondent contends that among the rights conveyed was the right to the good will of Wm. B. Riley & Co.; the widow and executor of Edgar E. Young contend that the contract does not carry the good will. This is strictly a question of involving the construction of a contract, which is for the courts to determine. There is no substantial public interest involved."

The law authorizes the commission to issue orders only when it shall be to the public interest. There being no public interest and this being in my opinion a purely private controversy, I dissent from the order.

Complaint No. 1055.—Federal Trade Commission v. Max Baer and A. Baer, partners, doing business under the name and style of Baer Bros. Charge: Unfair methods of competition are charged in that the respondents' product, which is not composed wholly of shellac gum dissolved in alcohol, is represented as pure shellac or shellac varnish and labeled and advertised as "Mongol shellac" without indicating that said product contains any gum, ingredient, or substitute for gum other than genuine gum shellac, all in alleged violation of section 5 of the Federal Trade Commission act.

Disposition: A stipulation having been entered into in lieu of testimony, the commission entered the following order:

It is now ordered that the respondents, Max Baer and A. Baer, copartners doing business under the name and style of Baer Bros., and each of them, their agents, representatives, servants, and employees, cease and desist—

(1) From directly or indirectly employing or using on labels or as brands for varnish not composed wholly, one hundred per cent, of shellac gum cut in alcohol, or on the containers in which the varnish is delivered to customers, the words "Mongol shellac" or the word "shellac" alone or in combination with any word or words unless accompanied by a word or words clearly and distinctly setting forth the substance, ingredient or gum of which the varnish is composed with the percentages of all such substances, ingredients or gums therein used clearly stated upon the label, brand or upon the containers (e. g., "shellac substitute," or "imitation shellac" to be followed by a statement setting forth the percentages of ingredients or gums therein used).

(2) From using or displaying in circulars or advertising matter used in connection with the sale of its products in interstate commerce, except when such products contain one hundred per cent shellac gum cut in alcohol, the words "Mongol shellac" or the word "shellac" alone or in combination with any other word or words unless accompanied by a word or words clearly and distinctly setting forth the substance, ingredient or gum of which the varnish is composed with the percentages of all such substances, ingredients or gums therein used clearly stated (e. g., "shellac substitute," or "imitation shellac" to be followed by a statement setting forth the percentages of ingredients or gums therein used).

Complaint No. 1056.—Federal Trade Commission v. H. O. Greenbaum, trading as Technical Color & Chemical Works, and Victory Shellac Works. Charge: Unfair methods of competition are charged in that the respondent misrepresents its product composed of a small percentage of pure shellac gum, and in some instances no shellac whatever, as a pure shellac dissolved in denatured alcohol, failing to indicate that the product contains any gum other than pure shellac gum, and labels and advertises it as "Red Devil Shellac" and "Victory White Shellac," thereby misleading and deceiving the purchasing public as to the quality of said product, in alleged violation of section 5 of the Federal Trade Commission act.

Disposition: A stipulation having been entered into in lieu of testimony, the commission entered the following order:

It is now ordered that the respondent, H. O. Greenbaum, trading under the names and styles of Technical Color & Chemical Works and Victory Shellac Works, his agents, representatives, servants, and employees, cease and desist—

(1) From, directly or indirectly, employing or using on labels, or as brands for varnish not composed wholly, one hundred per cent, of shellac gum cut in alcohol, or on the containers in which the varnish is delivered to customers, the words "Red Devil shellac," "Victory White shellac," or the word "Shellac" alone or in combination with any word or words unless accompanied by a word or words clearly and distinctly setting forth the substance, ingredient, or gum of which the varnish is composed, with the percentages of all such substances, ingredients, or gums therein used, clearly stated upon the label, brand, or upon the containers (e. g., "Shellac Substitute," or "Imitation shellac," to be followed by a statement setting forth the percentages of ingredients or gums therein used).

(2) From using or displaying in circulars or advertising matter used in connection with the sale of his products in interstate commerce, except when such products contain one hundred per cent shellac gum cut in alcohol, the words "Red Devil shellac," "Victory White shellac," or the word "Shellac" alone or in combination with any other word or words, unless accompanied by a word or words clearly and distinctly setting forth the substances, ingredients, or gums of which the varnish is composed, with the percentages of all such substances, ingredients, or gums therein used clearly stated (e. g., "Shellac Substitute" or "Imitation shellac," to be followed by a statement setting forth the percentages of ingredients or gums therein used).

Complaint No. 1059.—Federal Trade Commission v. J. D. Smiley, doing business under the trade name and style of "Dixie Tailors." Charge: The complaint relates that the respondent, in soliciting orders for his men's clothing, represents that his weekly-payment-plan customers are formed into groups and that the respondent selects one customer from each group each week to receive his suit of clothing without further payment until all customers in the group have received their suits. Unfair methods of competition are charged in that the respondent fails to divide said customers into groups and make a

weekly selection therefrom, but makes selections at random from time to time and not to the number represented at the time the orders were solicited, all in alleged violation of section 5 of the Federal Trade Commission act.

Disposition: A stipulation having been entered into in lieu of testimony, the commission entered the following order:

It is now ordered that respondent, J. D. Smiley, doing business under the name and style of Dixie Tailors, his agents, solicitors, representatives, servants, and employees, do cease and desist from directly or indirectly—

(1) Falsely representing through his agents, or by or through any other means whatsoever, to his customers or prospective customers, his method of marketing his merchandise in commerce, and especially from—

(2) Falsely representing through his agents, or by or through any other means whatsoever, to his prospective customers that in the sale of suits of clothing customers would be divided into clubs or groups of forty-eight persons each, and that from such clubs or groups each week the name of a person would be drawn or otherwise selected by choice to receive a suit of clothing without further charge or payment.

(3) From representing to customers or prospective customers that under respondent's plan of marketing his merchandise each and every customer would have an equal chance or opportunity with other customers in a selection and designation for those who were to receive a suit of clothing at a price under the full payment of \$48, when in truth and in fact no equal chance or opportunity is given.

Complaint No. 1062.—Federal Trade Commission v. L. F. Cassoff, an individual doing business under the names and styles of Central Paint & Varnish Works and Central Shellac Works. Charge: Unfair methods of competition are charged in that the respondent's product, which is not composed wholly of gum shellac dissolved in alcohol, is advertised as "White Shellac" and "Orange Shellac" without indicating that said product contains any gum, ingredient, or substitute for gum, other than the genuine shellac gum, in alleged violation of section 5 of the Federal Trade Commission act.

Disposition: A stipulation having been entered into in lieu of testimony, the commission entered the following order:

It is now ordered that the respondent, L. Francis Cassoff, otherwise known as L. F. Cassoff, doing business under the names and styles of Central Paint & Varnish Works and Central Shellac Works, his agents, representatives, servants, and employees, cease and desist—

1. From directly or indirectly employing or using on labels or as brands for varnish not composed wholly 100 per cent of shellac gum cut in alcohol or on the containers in which the varnish is delivered to customers the words "Orange shellac," "White shellac," or the word "Shellac" alone or in combination with any other word or words unless accompanied by a word or words clearly and distinctly indicating that such product contains other substances, ingredients, or gums than shellac gum, and by a word or words clearly and distinctly setting forth the substances, ingredients, or gum of which the varnish is composed with the percentages of all such substances, ingredients, or gums therein used clearly stated upon the label, brand, or upon the containers (e. g. "Shellac substitute" or "Imitation shellac" to be followed by a statement setting forth percentages of ingredients or gums therein used).

2. From using or displaying in circulars or advertising matter used in connection with the sale of its products in interstate commerce, except when such products contain 100 per cent shellac gum cut in alcohol, or on the containers in which the varnish is delivered to customers the words "Orange shellac," "White shellac" or the word "Shellac" alone or in combination with any other word or words unless accompanied by a word or words clearly and distinctly indicating that such product contains other substances, ingredients, or gum than shellac gum, and by a word or words clearly and distinctly setting forth the substances, ingredients, or gum of which the varnish is composed with the percentages of all such substances, ingredients, or gums therein used clearly stated upon the label, brand or upon the containers (e. g. "Shellac substitute" or "Imitation shellac" to be followed by a statement setting forth percentages of ingredients or gums therein used).

Complaint No. 1063.—Federal Trade Commission v. Brown-Phelps Hosiery Co. Charge: Unfair methods of competition are charged in that the respondent, engaged in the manufacture and sale of hosiery composed in part of vegetable fiber or other material not derived from the cocoon of the silkworm,

labels its hosiery as "Special Thread Silk Hosiery" and by other similar designations represents it to be made of silk, thereby misleading and deceiving the purchasing public, in alleged violation of section 5 of the Federal Trade Commission act.

Disposition: A stipulation having been entered into in lieu of testimony, the commission entered the following order:

Now, therefore, it is ordered that the respondent, Brown-Phelps Hosiery Co., its officers, agents, representatives, servants, and employees, cease and desist from, directly or indirectly—

(1) Using as labels or brands on hosiery sold by it, or on the containers thereof, or in advertisements thereof, the word "silk" or any modification thereof, (a) unless the hosiery on which it is used is made entirely of silk of the silk worm, or (b) unless where the hosiery is made partly of silk, it is accompanied by a word or words aptly and truthfully describing the other materials of which such hosiery is in part composed.

Complaint No. 1069.—Federal Trade Commission v. Herman M. Neuschatz and I. M. Halpern, partners doing business under the trade name and style of Peruvian Rubber Cement Co. Charge: Unfair methods of competition are charged in that the respondents by labeling and advertising their millinery glue as "G L U," in conjunction with a design closely resembling the trademark of U-Glu (Inc.), an established manufacturer of millinery glue, and by printing on their labels certain statements and assertions as to their product and directions for its use, all practically identical with the printed matter on the labels used by the said U-Glu (Inc.), tend to mislead and deceive the millinery trade to believe that the glue manufactured by the respondents is the same as that of U-Glu (Inc.), in alleged violation of section 5 of the Federal Trade Commission act.

Disposition: A stipulation having been entered into in lieu of testimony, the commission entered the following order:

It is now ordered that the respondents, Herman M. Neuschatz and I. M. Halpern, individually and as copartners doing business under the trade name and style of Peruvian Rubber Cement Co. and/or National Rubber Manufacturing Co., their agents, representatives, servants, and employees do cease and desist from describing the commodity known as millinery glue, manufactured and sold by respondents, by or with the name spelled "Glu" either alone or surrounded by a wreath or other device with or without connection with the words "Trade-mark" on any labels attached to a container or containers or in connection with any printed matter relating to the said commodity dealt in by respondents known as millinery glue.

Respondents shall cease and desist from using labels on a container or containers of their said product which are printed closely resembling the labels of the corporation known as "U-Glu Inc.," in color, size, and design, and from printing upon the said labels any statement of the purposes of the use of said millinery glue or directions for its use, the words of which statement or the manner of their arrangement are identical or substantially identical with such statements heretofore used upon the labels of the aforesaid corporation "U-Glu Inc."

Complaint No. 1075.—Federal Trade Commission v. American Turpentine Co., a corporation, trading under the name and style of North American Fibre Products Co. Charge: Unfair methods of competition are charged in that the respondent, engaged in the purchase and sale of paints, varnishes, roofing material, and similar products, in publishing as advertising matter that which it stated to be an exact copy of a letter from a State official comparing the analyses of two samples of roof paint, captioned one of the numerically designated analyses as its roof paint "Horneblend" and the other as "Arco," the product of a competitor, and changed the analyses to favor its "Horneblend," thereby tending to mislead and deceive the purchasing public as to the true text of said letter, in alleged violation of section 5 of the Federal Trade Commission act.

Disposition: A stipulation having been entered into in lieu of testimony, the commission entered the following order:

It is now ordered that the respondent, American Turpentine Co., trading under the name and style of North American Fibre Products Co., and its officers, directors, agents, representatives, servants, and employees do cease and desist—

From circulating or publishing, or causing to be circulated or published, in the form of circulars or otherwise, advertisements offering products for sale, which advertisements do not truthfully describe such products.

From circulating or publishing in such advertisements or otherwise a purported analysis of paints or other products which is not, in fact, an accurate and truthful analysis of such products.

Complaint No. 1078.—Federal Trade Commission v. Allied Golf Co., a corporation. Charge: Unfair methods of competition are charged in that the respondent labels its golf balls "official" and by printing a legend on its wrappers and containers to the effect that its ball is standard and official as required by the United States Golf Association, the Royal & Ancient Club, and other governing bodies tends to mislead the purchasing public to believe that the respondent's product has been officially adopted by the United States Golf Association and the Royal & Ancient Club of St. Andrew's, Scotland, in alleged violation of section 5 of the Federal Trade Commission act.

Disposition: A stipulation having been entered into in lieu of testimony, the commission entered the following order:

It is now ordered that the respondent, Allied Golf Co., a corporation organized and existing by and under the laws of the State of Illinois, its officers, agents, and employees, do cease and desist from directly or indirectly—

Marketing in commerce, among any of the States in the United States, golf balls, with the word "Official" imprinted or stamped upon such balls or upon the wrappers or containers in which such balls are wrapped or packed, unless and until such golf balls have been adopted as "Official" by some competent authority.

Complaint No. 1079.—Federal Trade Commission v. Joseph Greenberg, Ben Greenberg, and Eva Greenberg, copartners, trading at King Overall Co., Atlantic Overall Co. and A. Greenberg Sons. Charge: Unfair methods of competition are charged in that the respondents, engaged in the manufacture and sale of overalls and trousers, label their products as "Union made," when in fact said overalls and trousers are of nonunion make, being fabricated by workmen who are not affiliated with any association or organization generally recognized as a "union," thereby tending to mislead and deceive the purchasing public in alleged violation of section 5 of the Federal Trade Commission act.

Disposition: A stipulation having been entered into in lieu of testimony, the commission entered the following order:

It is now ordered that the respondents, Joseph Greenberg, Benjamin Greenberg, and Eva Greenberg, copartners, trading as Atlantic Overall Co., King Overall Co., and A. Greenberg Sons, do cease and desist from, directly or indirectly, selling in commerce among the States of the United States, overalls or trousers with the words "Union made" stamped, imprinted, or placed upon such garments or upon labels or cards attached thereto, unless and until such overalls or trousers are in fact manufactured, made, or fabricated in a "union" shop by persons who are members of a labor union.

Complaint No. 1088.—Federal Trade Commission v. C. Read & Co. (Inc.). Charge: Unfair methods of competition are charged in that the respondent supplied retailers with chinaware in conjunction with their purchases of tea and coffee, the said chinaware to be given the consuming public as premiums or prizes pursuant to coupons inserted in its packages of tea and coffee, thereby tending to mislead the purchasing public into the belief that the said chinaware was free of cost to the purchaser, whereas the cost of such premium, together with a reasonable profit thereon, is included in the price paid for respondent's tea and coffee, in alleged violation of section 5 of the Federal Trade Commission act.

Disposition: A stipulation having been entered into in lieu of testimony the commission entered the following order:

It is now ordered that the respondent, C. Read & Co. (Inc.), its agents, representatives, servants, and employees, do cease and desist from directly or indirectly—

(1) Giving or delivering or from offering to give or to deliver and from combining or conspiring with others, individuals, partnerships, or corporations, in giving or delivering or offering to give or to deliver articles or quantities of merchandise with or in connection with the sale of delivery in commerce of packages or quantities of teas, coffees, or other commodities by means of any plan, method, arrangement, scheme, combination, or conspiracy, or otherwise, whereby by means of coupons or tickets inclosed with or in or distributed or

delivered in connection with such packages or quantities of teas, coffees, or other commodities, or by means of any system or device of lottery or chance, for equal prices paid by them, respectively, purchasers receive equal quantities or values, respectively, of the said teas, coffees, or other commodities together with articles or quantities of unequal values, respectively, of such other merchandise, and whether or not the cost of such other merchandisæ, either wholly or in part, has been included in the price or prices paid by the purchasers for the teas, coffees, or other commodities.

(2) Representing or combining or conspiring with others in representing by circulars or other forms of advertising or in bills or statements rendered to purchasers for teas, coffees, or other commodities sold to them, or by coupons or tickets inclosed with or in or distributed or delivered in connection with packages or quantities of teas, coffees, or other commodities, or by or through agents or salesmen, or in any other manner, or by any other means that articles or quantities of merchandise delivered or to be delivered with or in connection with the sale or delivery in commerce of packages or quantities of teas, coffees, or other commodities are given or are to be given or delivered free of charge to purchasers of such packages or quantities of teas, coffees, or other commodities when the cost or price of such other articles or quantities of other merchandise has been or is to be either wholly or in part included in the price of the said packages or quantities of teas, coffees, or other commodities, respectively.

Complaint No. 1090.—Federal Trade Commission *v.* C. N. Dellinger, trading as C. N. Dellinger & Co., and Jno. M. Thomas, trading as Tampa Ribbon Cigar Co. Charge: Unfair methods of competition are charged in that the respondents label as "Tampa Ribbon" and "Havana" their cigars manufactured in the city of Red Lion, Pa., thereby tending to mislead and deceive the purchasing public into the belief that said cigars were manufactured in the Tampa district from Havana tobacco and are of the workmanship and quality generally associated with cigars of such manufacture, in alleged violation of section 5 of the Federal Trade Commission act.

Disposition: Stipulations having been entered into in lieu of testimony, the commission entered the following order:

It is ordered that the respondents, C. N. Dellinger, trading as C. N. Dellinger & Co., and Jno. M. Thomas, trading as Tampa Ribbon Cigar Co., cease and desist from—

(1) Using the word "Tampa," alone or in combination with any other word or words, in labels, brands, or legends on cigars or on the containers thereof, or in advertisements thereof, in connection with the manufacture and sale or distribution of cigars, if such cigars are in fact not made in the city of Tampa, Fla., or the Tampa district in the State of Florida.

(2) Using the word "Havana," alone or in combination with any other word or words, in labels, brands, or legends on cigars or on the containers thereof, or in advertisements thereof, in connection with the manufacture and sale or distribution of cigars, if such cigars are not composed of tobacco grown in and imported from the island of Cuba.

Complaint No. 1091.—Federal Trade Commission *v.* Spier-Simmons & Co. (Inc.). Charge: Unfair methods of competition are charged in that the respondent, engaged in the sale of textile starches, soluble oils, and textile finishing products to owners and operators of textile mills, has made it a practice to promise and give sums of money as gratuities to employees of its customers, without the knowledge and consent of the employers and principle of such employees, as an inducement to such employees to recommend the respondent's commodities and obtain the purchase thereof in preference to the like commodities of respondent's competitors, in alleged violation of section 5 of the Federal Trade Commission act.

Disposition: A stipulation having been entered into in lieu of testimony, the commission entered the following order:

It is now ordered that the respondent, Spier-Simmons & Co. (Inc.), its officers, agents, representatives, servants, and employees, cease and desist from, directly or indirectly, giving or offering to give to employees of its customers or prospective customers, without the knowledge or consent of their employers, sums of money as inducements to influence their employers to purchase or contract to purchase the products of respondent, or to influence their employers to refrain from purchasing or contracting to purchase, the products of respondent's competitors.

Complaint No. 1099.—Federal Trade Commission *v.* Durable Pure Silk Fashioned Hosiery (Inc.), a corporation. Charge: Unfair methods of competition

are charged in that the respondent engaged in the sale of hosiery purchased from others, and not being a manufacturer, represents itself as the manufacturer of its product and illustrates its catalogues and prospectuses with pictures of a factory described as the respondent's; and in that it advertises and sells its "seamless" hosiery as "Fashioned" hosiery, thereby misleading and deceiving the purchasing public, in alleged violation of section 5 of the Federal Trade Commission act.

Disposition: A stipulation having been entered into in lieu of testimony, the commission entered the following order:

It is now ordered that respondent, Durable Pure Silk Fashioned Hosiery (Inc.), its agents, representatives, servants, and employees, do cease and desist from, directly or indirectly—

1. Advertising, describing, or representing in any manner or form that respondent is the manufacturer of the products which it sells or offers for sale, unless and until it is in truth and fact the manufacturer of such products.

2. Advertising, labeling, or representing the hosiery which respondent sells or offers for sale as "fashioned" or "full fashioned," or by the use of the word "fashioned" in combination with any other word or words, unless such hosiery is actually made by joining the opposite sides of a fabric which has been knitted or woven flat and open in a form so that it makes a shaped hose when closed, or in which the fabric, so knit or woven, has been cut so that when closed it makes a shaped hose.

3. Advertising, labeling, or representing the hosiery which respondent sells or offers for sale, as "silk," "pure silk," "chiffon silk," or "pure thread silk," unless such hosiery is actually made entirely of silk spun from the cocoon of the silk worm.

Complaint No. 1112.—Federal Trade Commission v. William Schmidt, trading under the name and style of Plateless Engraving Bureau. Charge: Unfair methods of competition are charged in that the respondent, engaged in the printing and selling of stationery, designates and advertises as "Plateless Engraving" his method of printing in simulation of impressions made from engraved plates thereby tending to mislead and deceive the purchasing public into the erroneous belief that the respondent's products are in fact "engraved," in alleged violation of section 5 of the Federal Trade Commission act.

Disposition: A stipulation having been entered into in lieu of testimony, the commission entered the following order:

Now, therefore, it is ordered that the respondent, William Schmidt, trading under the name and style of "Plateless Engraving Bureau," his agents and employees, cease and desist—

From using the words "Plateless Engraving Bureau" or "Plateless Engraving" or "Engraved without Plates" or "Engraved" or "Engraving" in the business signs or advertisement, offer for sale, or sale of stationery, the words, letters, figures, and designs upon which have not been produced from metal plates into which such words, letters, and designs have been cut.

2. CASES DISMISSED

Complaint No. 123.—Federal Trade Commission v. American Can Co. Charge: Price discrimination and price fixing on condition that the purchasers shall not use or deal in the products of competitors, the effect of which is to substantially lessen competition and to tend to create a monopoly in the tin-can business in alleged violation of sections 2 and 3 of the Clayton Act; stifling and suppressing competition in the manufacture and sale of tin cans by attempting to induce customers to enter into long-term contracts by giving certain customers more favorable terms than others in reference to allowances for leaky cans and storage privileges, by rebating if prices are lowered, and by other discriminations, in alleged violation of section 5 of the Federal Trade Commission act. Disposition: After hearing, the complaint was dismissed.

Complaint No. 446.—Federal Trade Commission v. Van Camp Packing Co. and Van Camp Products Co. Charge: Using unfair methods of competition in the sale of soap and washing powders by guaranteeing its jobbers in the wholesale grocery trade against the decline in price of goods purchased and not resold by such customers at the time of any subsequent decline in the respondent's list price thereof; and in the event of decline in price of goods giving to such jobbers rebates equal to the difference between the purchase price of such products as were undisposed of and respondent's lower list price therefor subsequently made, with the effect of obtaining from respondent an

unfair and undue advantage over competitors who do not follow this practice; relieving respondent's jobbers from risk of loss and encouraging such jobbers to hold in stock excessively large quantities of respondent's products for the purpose of realizing a speculative profit thereby and deterring respondent from reducing list prices of its product in accordance with reductions in cost of manufacturing, in alleged violation of section 5 of the Federal Trade Commission act. Disposition: Dismissed without prejudice, Commissioner Nugent dissenting.

Complaint No. 486.—Federal Trade Commission *v.* Patent Vulcaulite Roofing Co. Charge: Using unfair methods of competition by falsely advertising its products as "rubber," and using the terms "one ply," "two ply," and "three ply" to designate and describe the different degrees of thickness of its product, when the different degrees of thickness consist of but one layer or ply, with the effect of misleading and deceiving the public and giving the respondent's product an undue preference over products of competitors who do not use such methods, in alleged violation of section 5 of the Federal Trade Commission act. Disposition: Dismissed; respondent out of business.

Complaint No. 508.—Federal Trade Commission *v.* C. H. Kroneberger and W. M. Kroneberger, doing business under the name of C. H. Kroneberger & Co. Charge: Unfair methods of competition are charged in that the respondents, engaged in the business of selling coffee and tea, have adopted the practice of leasing or loaning coffee urns to customers without consideration other than an expressed agreement that such customers will purchase all coffee and tea used by them from the respondent and thereby tend to stifle and suppress competition, in alleged violation of section 5 of the Federal Trade Commission act. Disposition: Dismissed November 13, 1923, this order rescinding order to cease and desist entered May 26, 1920.

Complaint No. 509.—Federal Trade Commission *v.* John H. Wilkins Co. (Inc.). Charge: Unfair methods of competition are charged in that the respondents, engaged in the business of selling coffee and tea, have adopted the practice of leasing or loaning coffee urns to customers without consideration other than an expressed agreement that such customers will purchase all coffee and tea used by them from the respondents and thereby tend to stifle and suppress competition, in alleged violation of section 5 of the Federal Trade Commission act. Disposition: Dismissed November 13, 1923, this order rescinding order to cease and desist entered May 26, 1920.

Complaint No. 510.—Federal Trade Commission *v.* The Levering Coffee Co. Charge: Unfair methods of competition are charged in that the respondents, engaged in the business of selling coffee and tea, have adopted the practice of leasing or loaning coffee urns to customers without consideration other than an expressed agreement that such customers will purchase all coffee and tea used by them from the respondents and thereby tend to stifle and suppress competition, in alleged violation of section 5 of the Federal Trade Commission act. Disposition: Dismissed November 13, 1923, this order rescinding order to cease and desist entered May 26, 1920.

Complaint No. 551.—Federal Trade Commission *v.* Armour & Co. Charge: Using unfair methods of competition by adopting and maintaining a practice of offering, giving, and allowing certain benefits and advantages to purchasers in the way of free advertising, services of specialty salesmen, and payment of dealers' license fee, on the condition that such purchasers agree to purchase all or a large percentage of their supplies of butterine and oleomargarine from the respondent, in alleged violation of section 5 of the Federal Trade Commission act; and entering into contracts with a large number of purchasers of its said products at prices, in quantities, and for periods therein specified upon the condition, agreement, or understanding in the case of each contract that the purchaser named therein shall purchase all or a large percentage of the oleomargarine and butterine needed by said purchaser of the respondent, in alleged violation of section 3 of the Clayton Act. Disposition: Dismissed without prejudice by reason of the Circuit Court of Appeals for the Seventh Circuit in the matter of *B. S. Pearsall Butter Co. v. Federal Trade Commission*.

Complaint No. 552.—Federal Trade Commission *v.* Swift & Co. Charge: (Ante, complaint No. 551.) Disposition: (Ante, complaint No. 551.)

Complaint No. 553.—Federal Trade Commission *v.* Downey-Farrel Co. Charge: (Ante, complaint No. 551.) Disposition: (Ante, complaint No. 551.)

Complaint No. 554.—Federal Trade Commission *v.* Wm. J. Moxley (Inc.). Charge: (Ante, complaint No. 551.) Disposition: (Ante, complaint No. 551.)

Complaint No. 555.—Federal Trade Commission *v.* The Ed. S. Vail Buttering Co. Charge: Ante, complaint No. 551.) Disposition: (Ante, complaint No. 551.)

Complaint No. 559.—Federal Trade Commission *v.* Troco Nut Butter Co. Charge: (Ante, complaint No. 551.) Disposition: (Ante, complaint No. 551.)

Complaint No. 560.—Federal Trade Commission *v.* Friedman Manufacturing Co. Charge. (Ante, complaint No. 551.) Disposition: (Ante, complaint No. 551.)

Complaint No. 591.—Federal Trade Commission *v.* Onepiece Bifocal Lens Co. Charge: The respondent, engaged in the manufacture, sale, and distribution of onepiece bifocal lenses for optical purposes, has adopted a system of licensing and price fixing by which its products are manufactured in part by certain licensee manufacturers to a specified degree of utility and thereupon sold to other finishing or retailing licensees who complete and sell the product, the prices thereof being at all times prescribed and maintained by the terms and conditions of the respondent's licensing agreements, which are not entered into, nor are respondent's products sold, unless customers or dealers agree to maintain the standard prices and system of price fixing and refrain from dealing in the one-piece bifocal lenses of competitors of respondent, in alleged violation of section 5 of the Federal Trade Commission act and of section 3 of the Clayton Act. Disposition: Dismissed.

Complaint No. 728.—Federal Trade Commission *v.* American Safety Razor Corporation. Charge: Using unfair methods of competition by the use of advertising matter containing false and misleading statements concerning the quality of material and workmanship entering into shaving brushes sold by it and by placing deceptive labels on the containers of such brushes with the effect of misleading and deceiving the purchasing public, in alleged violation of section 5 of the Federal Trade Commission act. Disposition: Dismissed.

Complaint No. 729.—Federal Trade Commission *v.* South Bend Bait Co. Charge: Unfair methods of competition, tending to create a monopoly in the manufacture and sale of fishing tackle and artificial bait, are charged by reason of the respondent's practice of making price discriminations between customers by varying its rates of trade discount in accordance with its classification of customers and without regard to quantities purchased, in alleged violation of section 5 of the Federal Trade Commission act and of section 2 of the Clayton Act. Disposition: Dismissed by reason of the decision of the Circuit Court of Appeals for the Second Circuit in the matter of the Mennen Co. *v.* Federal Trade Commission, the order of dismissal rescinding the order to cease and desist issued March 14, 1922.

Complaint No. 767.—Federal Trade Commission *v.* Wichita-Engle Oil Co., E. U. Engle, C. T. Engle, and W. S. Pratt. Charge: Using unfair methods of competition in the sale of the capital stock of the respondent company by the use of false and misleading statements respecting the location, owners, productivity, and value of respondent's oil interests, with the effect of misleading and deceiving the purchasing public, in alleged violation of section 5 of the Federal Trade Commission act. Disposition: Dismissed.

Complaint No. 778.—Federal Trade Commission *v.* Tide Water Oil Co. and Tide Water Oil Sales Corporation. Charge: That the respondents, by maintaining a system of rebates and discounts based and graduated on the separate purchases of their petroleum products by dealers during a definite period and on purchases of carload lots thereof, thereby causing the purchasers to confine their purchases to the respondents, have indulged in the practice which tends to substantially lessen competition and create a monopoly in alleged violation of section 5 of the Federal Trade Commission act and section 2 of the Clayton Act. Disposition: Dismissed without prejudice, Commissioner Thompson dissenting.

Complaint No. 807.—Federal Trade Commission *v.* Athol Manufacturing Co. Charge: The respondent, which is engaged in the manufacture of "Atholeather," a cotton fabric product finished so as to resemble genuine leather, indicates by the use of the name of "Atholeather" that its product consists of or contains leather, thereby tending to confuse the purchasing public, in alleged violation of section 5 of the Federal Trade Commission act. Disposition: Dismissed.

Complaint No. 900.—Commission *v.* National Lead Co. Charge: Unfair methods of competition are charged in that the respondent, engaged in the manufacture of white lead, red lead, litharge, and other products used in the painting trade, has adopted and enforced a system of fixing and maintaining

standard prices for the resale of its products by dealers, in alleged violation of section 5 of the Federal Trade Commission act. Disposition: Dismissed without prejudice, Commissioner Nugent dissenting.

Complaint No. 908.—Cincinnati Tobacco Jobbers' Association, its officers and members, and the Tobacco Products Corporation and Falk Tobacco Co., respondents. Charge: The charge is unfair competition in that the association and its members agreed with the Tobacco Products Corporation and Falk Tobacco Co. upon a schedule of prices at which they should thereafter resell the tobacco products of these companies, and that the Tobacco Products Corporation and Falk Tobacco Co. operated with the respondent association and its members in enforcing the maintenance of such fixed schedule of prices, all in alleged violation of section 5 of the Federal Trade Commission act. Disposition: Dismissed without prejudice, Commissioner Thompson dissenting.

Complaint No. 935.—Federal Trade Commission v. T. S. Southgate, trading under the name and style of T. S. Southgate & Co., and Lexington Grocery Co. and Taylor Bros. & Co. (Inc.), trading under the name and style of Southern Salt Co. Charge: The complaint relates that there are numerous manufacturers of salt in the United States who manufacture salt by the evaporation process and advertise their product as "Common fine salt;" also that there are numerous salt manufacturers who manufacture salt from rock salt, which is usually imported and is indicated to be of inferior quality, and advertise their product as rock salt. Unfair methods of competition are charged in that the respondents advertise and sell their ground rock salt as "Common fine" and as "The highest grade of salt obtainable" without disclosing the fact that said salt was imported from Germany and that it is in fact rock salt, in alleged violation of section 5 of the Federal Trade Commission act. Disposition: Dismissed without prejudice, this order rescinding order to cease and desist issued March 9, 1923.

Complaint No. 951.—Commission v. Pennsylvania, New Jersey, and Delaware Wholesale Grocers' Association, its officers, members of executive committee, and members. Charge: Unfair methods of competition are charged in that the respondents adopted a plan of hampering, obstructing, and preventing the Procter & Gamble Distributing Co., engaged in sale direct to the retail trade, from selling soap, soap products, and cooking fats to the members of the respondent association and wholesale grocers, and sought to coerce wholesalers to refrain from dealing in the products of said Procter & Gamble Distributing Co., in alleged violation of section 5 of the Federal Trade Commission act. Disposition: Dismissed, Commissioner Nugent dissenting.

Complaint No. 957.—Commission v. the Ohio Wholesale Grocers' Association Co., a corporation, and its stock-holding members. Charge: Unfair methods of competition in commerce are charged in that respondents have adopted and carried out the policy and plan of coercing manufacturers to guarantee the respondent members against decline in price of commodities dealt in and to make their purchases from manufacturers so guaranteeing in alleged violation of section 5 of the Federal Trade Commission act. Disposition: Dismissed.

Complaint No. 966.—Federal Trade Commission v. J. B. Harris-Mexia Trust, J. B. Harris-Mexia Trust No. 2, and J. B. Harris. Charge: Unfair methods of competition in commerce are charged in the sale of stock of respondent trusts in that the respondents have misrepresented the business, management, properties, and prospects of the said respondent trusts for the purpose of misleading and deceiving the purchasing public in alleged violation of section 5 of the Federal Trade Commission act. Disposition: Dismissed.

Complaint No. 979.—Federal Trade Commission v. Abraham Cohen, trading under the name and style of Puritan Products Co. (Inc.). Charge: Unfair methods of competition in commerce are charged in that the respondent, engaged in the manufacture and sale of "Magnolia" salad and cooking oil simulate the trade name, containers, and labels used by the Corn Products Refining Co., in the sale of its favorably known Mazola salad and cooking oil made of corn oil, thereby misleading and deceiving the purchasing public in alleged violation of section 5 of the Federal Trade Commission act. Disposition: Dismissed without prejudice, respondent having discontinued business.

Complaint No. 993.—Federal Trade Commission v. Bowers Bros. (Inc.), Lipscomb-Russell Co., W. K. Livingston, and J. K. Livingston, a partnership trading under the name of Livingston & Co.; J. E. Talmadge, Jr., C. J. Talmadge, J. Y. Talmadge, and the executors of J. E. Talmadge, sr., a partnership trading under the name of Talmadge Bros. & Co. Charge: Unfair methods of competition are charged in that the respondents cooperate to maintain and enforce standard

resale prices established for the resale of coffees roasted by respondent, Bowers Brow, (Inc.); refuse to sell to price cutters and prevent certain wholesalers and jobbers from obtaining said products, thereby suppressing and preventing all price competition, in alleged violation of section 5 of the Federal Trade Commission act. Disposition: Dismissed.

Complaint No. 999.—Federal Trade Commission v. Royal Dutch Co. of Texas. Charge: Unfair methods of competition are charged in that respondent, originally organized as the "Pennsylvania Dutch Oil Co.," changed its name in simulation of that of the internationally known Royal Dutch Co., thereby tending to mislead prospective purchasers of its corporate stock to believe that the said respondent is affiliated with the Royal Dutch-Shell group of corporations, in alleged violation of section 5 of the Federal Trade Commission act. Disposition: Dismissed without prejudice.

Complaint No. 1003.—Federal Trade Commission v. Consolidated Woolen Mills Co. Charge: Unfair methods of competition are charged in that the respondent, engaged in knitting garments from yarns purchased from woolen mills and in purchasing from the manufacturers thereof blankets, robes, and mackinaws for sale by it, indicates by the use of its corporate name that it is a manufacturer of woollens, thereby causing the public to believe that purchases from the respondent are direct from the manufacturers of such yarn, cloth, and garments, and that the profits of the middleman are thus saved to the purchaser, in alleged violation of section 5 of the Federal Trade Commission act. Disposition: Dismissed, respondent having changed its name to "Consolidated Knitting Mills Co.," Commissioner Nugent dissenting.

Complaint No. 1008.—Federal Trade Commission v. S. A. Samuels, L. E. Samuels, L. H. Samuels, Harry H. Samuels, doing business under the name and style of Cocoa Products Co. Charge: Unfair methods of competition are charged in that the respondents, engaged in the manufacture and sale of cocoa and chocolate preparations, changed, altered, and falsified orders obtained by respondents' salesmen for presentation to and to be filled by jobbers from stock to be purchased from respondents so that said orders represented larger purchases than the actual orders obtained from the retailers, thereby causing retail dealers to refuse to accept the respondents' products from the jobbers, to the detriment and loss of said jobbers, in alleged violation of section 5 of the Federal Trade Commission act. Disposition: Dismissed.

Complaint No. 1029.—American Tobacco Co., Bauswitz Cigar Co., of Phoenix, Ariz., and others, all of whom are Phoenix, Ariz., tobacco jobbers, respondents. Charge: The charge is unfair competition in that the American Tobacco Co. and the other respondents entered into an understanding by which they fixed the prices at which respondent jobbers should resell the products of the American Tobacco Co. and that the American Tobacco Co. promised the other respondents its cooperation in the enforcement of the alleged conspiracy by agreeing to discontinue selling such of the jobber respondents as would resell its products at prices less than those fixed by the conspiracy. All in alleged violation of section 5 of the Federal Trade Commission act. Disposition: Dismissed without prejudice.

Complaint No. 1030.—Liggett & Myers Tobacco Co., Bauswitz Cigar Co., of Phoenix, Ariz., and others, all of whom are Phoenix, Ariz., tobacco jobbers, respondents. Charge: The charge is unfair competition in that the Liggett & Myers Tobacco Co. and the other respondents entered into an understanding by which they fixed the prices at which respondent jobbers should resell the products of the Liggett & Myers Tobacco Co., and that the Liggett & Myers Tobacco Co. promised the other respondents its cooperation in the enforcement of the alleged conspiracy by agreeing to discontinue selling such of the jobber respondents as would resell its products at prices less than those fixed by the conspiracy. All in alleged violation of section 5 of the Federal Trade Commission act. Disposition: Dismissed without prejudice.

Complaint No. 1031.—P. Lorillard Co. (Inc.), Bauswitz Cigar Co., of Phoenix, Ariz., and others, all of whom are Phoenix, Ariz., tobacco jobbers, respondents. Charge: The charge is unfair competition in that the P. Lorillard Co. (Inc.) and the other respondents entered into an understanding by which they fixed the prices at which respondent jobbers should resell the products of the P. Lorillard Co. (Inc.) and that the P. Lorillard Co. (Inc.) promised the other respondents its cooperation in the enforcement of the alleged conspiracy by agreeing to discontinue selling such of the jobber respondents as would resell its products at prices less than those fixed by the conspiracy. All is alleged

violation of section 5 of the Federal Trade Commission act. Disposition: Dismissed without prejudice.

Complaint No. 1057.—Federal Trade Commission *v.* Abner Frankel and Alexander Frankel, partners doing business under the trade name and style of the Willard Tailoring Co. Charge: The complaint relates that the respondents, in soliciting orders for their men's clothing, represent that their weekly-payment-plan customers are formed into groups and that the respondents select one customer from each group each week to receive his suit of clothing without further payment until all customers in the group have received their suits. Unfair methods of competition are charged in that the respondents fail to divide said customers into groups and make a weekly selection therefrom as represented, but make selections at random from time to time and not to the number represented at the time the orders were solicited; and in that said customers were not permitted the choice of any material on display in the respondent's place of business as originally represented, but were compelled to make selection from certain inferior materials unless payments in addition to the agreed price were forthcoming, all in alleged violation of section 5 of the Federal Trade Commission act. Disposition: Dismissed without prejudice.

Complaint No. 1058.—Federal Trade Commission *v.* E. W. Lynch, doing business under the name and style Pure Silk Hosiery Co. Charge: Unfair methods of competition are charged in that the respondent, engaged in the purchase and sale of hosiery and having no mill or factory of his own, indicates by the use of his trade name, and the slogan "From mill to consumers," that he is a manufacturer and therefore able to sell said hosiery to the ultimate consumer at mill or wholesale prices, thereby misleading and deceiving the purchasing public, in alleged violation of section 5 of the Federal Trade Commission act. Disposition: Dismissed without prejudice, as respondent can not be located.

Complaint No. 1077.—Federal Trade Commission *v.* Madeira, Hill & Co., Pattison & Bowns (Inc.), Titan Fuel Corporation, Hartwell-Lester (Inc.), Clement P. Brodhead, an individual doing business under the name and style of C. P. Brodhead Coal Co., and Lynn M. Ranger. Charge: Unfair methods of competition are charged in that the operator respondent Maderia, Hill & Co., well knowing and taking advantage of the monopolistic condition and the shortage of supply existing in the production of anthracite coal at a time of national emergency, agreed and conspired with the remaining respondents (wholesalers) that it would invoice its anthracite coal to said wholesaler-respondents at the maximum prices approved by the fair practice committee of the Pennsylvania State Fuel Commission upon the secret condition that said wholesaler respondents thereafter when said anthracite coal was resold at higher prices would pay to said operator respondent a part of the margins of profit realized over and above the prices at which the anthracite coal was invoiced to the wholesaler-respondents, which margins of profit were unjust, unreasonable, and unfair, thereby tending to unduly enhance the price of anthracite coal to the consuming public, in alleged violation of section 5 of the Federal Trade Commission act. Disposition: Dismissed, Commissioner Murdock dissenting and Commissioner Thompson taking no part in the action.

EXHIBIT 12

PROCEEDINGS PENDING JUNE 30, 1924

Complaint No. 82.—Federal Trade Commission v. Photo-Engravers' Club of Chicago. Charge: Adopting a standard scale of uniform prices at which the members sell their products, with the intent of stifling and suppressing competition in the manufacture and sale of photoengravings, the respondent having entered into an agreement with the Chicago Photo-Engravers' Union No. 5, I. P. E. U., by the terms of which the respondent's members employ only union labor in their manufacturing plants and the members of the union do not accept employment from any manufacturing photoengraver not a member of the respondent club. In furtherance of such agreement the union has adopted a rule whereby union labor is to cease working in photoengraving plants which do not maintain such standard scale of prices, and has initiated a series of fines and threats to withdraw labor, thereby compelling members to maintain such prices against their will, all in alleged violation of section 5 of the Federal Trade Commission act. Disposition: In course of trial. (Consolidated with docket 928.)

Complaint No. 157.—Federal Trade Commission v. Saenger Amusement Co. Charge: Stifling and suppressing competition in the purchase and sale, lease, and exhibition of moving-picture films by forcing exchanges to accept its terms on threat to cause exhibitors to refuse to handle otherwise; causing contracts between exhibitors and exchanges to be broken by divers means and methods, including prior exhibition of films in neighboring theaters after "first exhibition" had been advertised by the other; threatening withdrawal of patronage if exchanges continued to supply exchanges; threatening curtailing supply unless exhibitors dealt with respondent; inducing employees of competitors to leave their employment, all in alleged violation of section 5 of the Federal Trade Commission act. Status: On suspense pending close of docket 835.

Complaint No. 163.—Federal Trade Commission v. Armour & Co. Charge: Stifling and suppressing competition in the manufacture and sale of dairy products by concealing its control of and affiliation with Beyer Bros. Co., a creamery company, while directing the efforts and business of said company; discriminating in prices paid for butterfat or cream; and by purchasing and offering to purchase butterfats or cream in certain localities at prices unwarranted by trade conditions and so high as to be prohibitive to small competitors, in alleged violation of section 5 of the Federal Trade Commission act. Status: On suspense pending close of dockets 455 and 531.

Complaint No. 163.—Federal Trade Commission v. The National Wholesale Druggists' Association et al. Charge: Engaging in a combination or conspiracy among themselves with the intent, purpose, and effect of discouraging, stifling, and suppressing competition in the wholesale drug trade and of unfairly hampering and obstructing certain of their competitors by inducing or compelling manufacturers to refuse to recognize competitors as jobbers, and as entitled to the benefits such competitors as jobbers would receive by means of oral and written notices to manufacturers to the effect that certain competitors not eligible to membership in the association were not entitled to recognition as jobbers; the appointment of committees to confer with manufacturers to the end that they adopt sales methods in harmony with the policies of the association, written and oral notices to the secretary of the association to manufacturers to the effect that competitors are selling below the manufacturers' established resale price, or that such competitors are persistent price cutters; the compilation and distribution among manufacturers and wholesalers of lists of so-called legitimate jobbers, and by bringing influence to bear on various local associations of drug jobbers and wholesalers to adopt policies in harmony with the policies of the association, in alleged violation of section 5 of the Federal Trade Commission act. Status: At issue.

Complaint No. 266.—Federal Trade Commission v. Pictorial Review Co. Charge: Using unfair methods of competition in the sale of paper dress pat-

terns, consisting of selling patterns to dealers under a contract permitting the dealer to return all unsold patterns on the termination of contract at three-fourths of the cost thereof, upon the condition that during the continuance of such contracts they have sold no patterns except those manufactured by respondent, or shall have sold such patterns at the prices fixed by respondent, in alleged violation of section 5 of the Federal Trade Commission act; selling and making contracts for sale of its paper dress patterns on the condition, agreement, or understanding that the purchasers thereof shall not use or deal in the patterns of competitors, the effect of which is to substantially lessen competition or tend to create a monopoly in violation of section 3 of the Clayton Act. Status: On suspense, awaiting the outcome of the Butterick Co. case. (Doc. 594.)

Complaint No. 424.—Federal Trade Commission v. Lantz Bros & Co. Charge: Using unfair methods of competition in the sale of soap and washing powders by guaranteeing its jobbers in the wholesale grocery trade against the decline in price of goods purchased and not resold by such customers at the time of any subsequent decline in the respondent's list price thereof; and in the event of decline in price of goods giving to such jobbers rebates equal to the difference between the purchase price of such products as were undisposed of and respondent's lower list price therefor subsequently made, with the effect of obtaining for respondent an unfair and undue advantage over competitors who do not follow this practice; relieving respondent's jobbers from risk of loss and encouraging such jobbers to hold in stock excessively large quantities of respondent's product for the purpose of realizing a speculative profit thereby and deterring respondent from reducing list prices of its product in accordance with reductions in cost of manufacturing, in alleged violation of section 5 of the Federal Trade Commission act. Status: In course of trial.

Complaint No. 425.—Federal Trade Commission v. Fels & Co. Charge: Using unfair methods of competition in the sale of soap and soap powders. (Ante, complaint No. 424.) Status: Awaiting briefs.

Complaint No. 426.—Federal Trade Commission v. The Globe Soap Co. Charge: Using unfair methods of competition in the sale of soap, soap powders, and other cleaning compounds. (Ante, complaint No. 424.) Status: In course of trial.

Complaint No. 427.—Federal Trade Commission v. B. T. Babblitt (Inc.). Charge: Using unfair methods of competition in the sale of soap, soap powders, and other cleaning compounds. (Ante, complaint No. 424.) Status: In course of trial.

Complaint No. 428.—Federal Trade Commission v. Curtice Bros. Co. Charge: Using unfair methods of competition in the sale of canned food products. (Ante, complaint No. 424.) Status: At issue.

Complaint No. 429.—Federal Trade Commission v. Joseph Campbell Co. Charge: Using unfair methods of competition in the sale of canned soups. (Ante, complaint No. 424.) Status: At issue.

Complaint No. 449.—Federal Trade Commission v. Wilson & Co. (Inc.). Charge: That the respondent purchased all the property of the Morton Gregson Co., a Nebraska corporation, theretofore engaged in the same line of business as respondent and in active competition with it, and thereafter organized under the laws of the State of Delaware a subsidiary corporation called the "Morton Gregson Co.," which proceeded to take over the property thus purchased and to operate the business of the said Nebraska corporation, with the effect of eliminating competition previously existing between Morton Gregson Co., the Nebraska corporation, and the respondent, in alleged violation of section 5 of the Federal Trade Commission act and section 7 of the Clayton Act. Status: Awaiting answer to third amended complaint.

Complaint No. 450.—Federal Trade Commission v. Wilson & Co. (Inc.). Charge: That the respondent acquired the whole of the common or voting stock of the Paul O. Reyman Co., a corporation, the effect of such acquisition being to enable respondent to completely dominate the business and policy of said Paul O. Reyman Co., to restrain competition between said respondent and said Paul O. Reyman Co., and to tend to create a monopoly in the sale of meats and like products, in alleged violation of section 5 of the Federal Trade Commission act and section 7 of the Clayton Act. Status: Awaiting examiner's findings.

Complaint No. 451.—Federal Trade Commission v. The Cudahy Packing Co. Charge: That respondent acquired 55 per cent of the shares of capital stock of the Nagel Packing Co., a competitor; 95 per cent of the capital stock of the D. E. Wood Butter Co., a competitor; and that a subsidiary corporation, the

Dow Cheese Co., purchased the business and good will of a competitor, the A. C. Dow Co., with the effect that respondent has dominated the business of the Nagel Packing Co. and the D. E. Wood Butter Co., and has eliminated competition theretofore existing between the three above-mentioned companies and the respondent, in alleged violation of section 5 of the Federal Trade Commission act and section 7 of the Clayton Act. Status: Dismissed in part and in course of trial as to remainder.

Complaint No. 452.—Federal Trade Commission v. Morris & Co. Charge: That the respondent acquired approximately 75 per cent of the capital stock of the Crescent City Stock Yard & Slaughter House Co., a competitor; that it acquired stock in the Bluefield Produce & Provision Co.; that it acquired the whole of the capital stock of the Holland Butterine Co., and held the same out to the public as wholly independent and without connection with respondent; that it acquired 66 per cent of the common stock of the Providence Churning Co., a competitor, and organized a corporation to take over and succeed to the business and property of said Providence Churning Co.; that it acquired one-half of the entire capital stock of the Eskerson Co., a competitor; that it acquired one-half of the capital stock of the Jacob Marty Co., a competitor; that it acquired one-half of the capital stock of the C. A. Straubel Co., a competitor; and acquired \$64,300 of the capital stock of the Sherman, White Co., whose entire stock was \$123,700; and that the result of such acquisition is the domination by respondent of some of the above-mentioned companies, the elimination of competition therefore existing between the above-mentioned companies and the respondent, and the creation of conditions which tend to create a monopoly, in alleged violation of section 5 of the Federal Trade Commission act and section 7 of the Clayton Act. Status: Awaiting examiner's report.

Complaint No. 454.—Federal Trade Commission v. Swift & Co., and United Dressed Beef Co. Charge: That the respondent caused its subsidiary, United Dressed Beef Co., to acquire all of the capital stock of J. J. Harrington & Co. (Inc.), which acquisition resulted in the control by Swift & Co. of the business theretofore conducted and controlled by said J. J. Harrington & Co. (Inc.), elimination of competition between respondents, Swift & Co. and United Dressed Beef Co. and J. J. Harrington & Co. (Inc.), and a tendency to create for respondent, Swift & Co., a monopoly in alleged violation of section 5 of the Federal Trade Commission act and section 7 of the Clayton Act. Status: Awaiting briefs.

Complaint No. 455.—Federal Trade Commission v. Armour & Co. Charge: That respondent acquired three-fifths of the capital stock of Harold L. Brown Co. (Inc.), a competitor, which company had previously acquired the capital stock and business of Beyer Bros. Commission Co., and also the capital stock and business of Beyer Bros. Co.; that it acquired as vendee and pledgee a controlling amount of the capital stock of the Eau Claire Creamery Co.; that it acquired through its agents 503 of the 1,000 shares of the capital stock of the Loudon Packing Co., an Ohio corporation, which corporation transferred all its business and property to the Loudon Packing Co., a Delaware corporation, in consideration of all of the stock of the Delaware corporation, consisting of 1,000 shares, 503 of which are held by agents of respondent in trust for respondent; that it acquired one-half of the capital stock of the A. S. Kinimoth Produce Co.; that it acquired the entire capital stock of the Pacific Creamery, which company the respondent held out and advertised as wholly independent without connection with respondent; and acquired 501 shares of the capital stock of Smith, Richardson & Conroy, a Florida corporation, and that the result of such acquisitions by respondent is the domination by respondent of the business of some of the above-mentioned companies, the elimination of competition between the above-mentioned companies, and the creation of conditions which tend to create a monopoly, in alleged violation of section 5 of the Federal Trade Commission act and section 7 of the Clayton Act. Status: Commission's testimony in chief completed.

Complaint No. 457.—Federal Trade Commission v. Western Meat Co. and Nevada Packing Co. Charge: That respondents have violated section 5 of the Federal Trade Commission act and section 8 of the Clayton Act by having F. L. Washburn, a director of both the Western Meat Co. and the Nevada Packing Co. (between which companies competition existed), and illegally acquiring by the Western Meat Co., the capital stock of the Nevada Packing Co., which acquisition suspended between respondents competition which

therefore existed between them and tended to create a monopoly. Status: Held pending decision in docket 456, which is now pending in the Circuit Court of Appeals for the Ninth Circuit.

Complaint No. 522.—Federal Trade Commission *v.* Rub-No-More Co. Charge: Using unfair competition in the sale of soaps. Status: (Ante. complaint No. 424.)

Complaint No. 531.—Federal Trade Commission *v.* Armour & Co. Charge: Organizing apparently independent companies for the purpose of taking over the business and property of the Lookout Refining Co. and the Chattanooga Oxygen Gas Co. and the Harris Tannery Co., competitors of respondent, the capital stock of the independent companies being held by officers and employees or agents of respondents with the purpose or effect of restraining and eliminating competition and tending to create a monopoly, in alleged violation of section 5 of the Federal Trade Commission act and section 7 of the Clayton Act. Status: In course of trial.

Complaint No. 540.—Federal Trade Commission *v.* Royal Baking Powder Co. Charge: Using unfair methods of competition by unfairly representing and charging that its competitors' products contain alum, to wit, sodium aluminum sulphate (SaS), and are harmful, unhealthful, deleterious, and dangerous to users and consumers of such baking powders, in alleged violation of section 5 of the Federal Trade Commission act. Status: In course of trial.

Complaint No. 549.—Federal Trade Commission *v.* Cement Securities Co. Charge: Using unfair methods of competition by purchasing the whole of the stock and share capital of the Oklahoma Portland Cement Co., a competitor; purchasing and acquiring \$392,300 of preferred stock of a total of \$400,000, and \$195,750 of the common stock of a total of \$199,750 of the United States Portland Cement Co.; and purchasing and acquiring all of the preferred stock of the Nebraska Cement Co., in alleged violation of section 5 of the Federal Trade Commission act and section 7 of the Clayton Act. Status: Suspended, pending action by the Department of Justice.

Complaint No. 573.—Federal Trade Commission *v.* Owens Bottle Co. Charge: That respondents have violated section 3 of the Clayton Act by entering into licensing agreements for the use of its glass-blowing machines with the principal manufacturers in the United States of glass bottles, jars, and other glass products, upon the express condition, agreement, and understanding in each licensing agreement that the licensee named therein shall not use respondent's machine in connection with the machine or devices of competitors, with the effect of excluding and debarring competitors of respondents from securing sales of their machines or devices in commerce and lessening competition therein; that respondent has violated section 7 of the Clayton Act by acquiring 4,836 shares of the capital stock of the Whitney Glass Works, a competitor; the whole of the capital stock of the American Bottle Co., a competitor; and the whole of the capital stock of the Graham Glass Co., with the effect of eliminating competition in sections and communities theretofore served by said companies; and that respondents have violated section 8 of said Clayton Act by having L. S. Stoehr a director of both the American Bottle Co. and the Graham Glass Co. since respondent acquired the capital stock of said companies. Status: Awaiting briefs.

Complaint No. 578.—Federal Trade Commission *v.* Swift & Co., Libby, McNeill & Libby (of Illinois) and Libby, McNeill & Libby (Ltd.) (of Honolulu). Charge: That the respondent, Libby, McNeill & Libby, in effect a subsidiary of the respondent, Swift & Co., acquired all of the share capital of the Thomas Pineapple Co.; the share, capital, property, and business of the Honolulu Pineapple Co.; Kahalu Pineapple & Range Co. (Ltd.); and Koolau Fruit Co. (Ltd.), with the effect of substantially lessening competition in the sale of pineapples in the Territory of Hawaii and creating a condition which tended to create for respondents a monopoly in the growing and sale of pineapples, in alleged violation of section 7 of the Clayton Act and section 5 of the Federal Trade Commission act. Status: On suspense pending court decisions in dockets Nos. 351 and 453, being the commission's proceedings against Armour & Co. and Swift & Co., respectively, both of which are on appeal in the United States Circuit Court of Appeals for the seventh circuit.

Complaint No. 626.—Federal Trade Commission *v.* Gulf Ship Chandlery Co. Charge: Unfair methods of competition in that the respondent, engaged in the sale of ship chandlery, etc. has given valuable gifts, cash commissions, and gratuities to captains and other officers of ships to induce them to purchase ship chandlery and supplies from the respondent, in alleged violation of

section 5 of the Federal Trade Commission act. Status: Suspended because of the action of the Supreme Court of the United States in denying petitions for writs of certiorari in the Winslow and Norden cases. (Dockets 453 and 614.)

Complaint No. 648.—Federal Trade Commission *v.* Alabama Dry Dock & Ship Building Co. (Inc.). Charge: Unfair methods of competition in that the respondent, engaged in the business of repairing ships and furnishing repair parts, has given to captains and other officers and employees of vessels valuable gifts, cash commissions, and gratuities as an inducement to have the ships operated by them for the owners thereof repaired by the respondent, in alleged violation of section 5 of the Federal Trade Commission act. Status: (Ante, complaint No. 626.)

Complaint No. 705.—Federal Trade Commission *v.* S. Davidson Co., D. R. Davidson, S. Davidson, and M. A. Davidson. Charge: Using unfair methods of competition in the sale of ship chandlery by giving expensive gifts and large sums of money in the form of cash commissions to officers and employees of ships to induce them to purchase ship-chandlery supplies from the respondent, in alleged violation of section 5 of the Federal Trade Commission act. Status: (Ante, complaint No. 626.)

Complaint No. 726.—Federal Trade Commission *v.* Constantine Calevas, Joseph Garcia, and E. A. Piller, partners, styling themselves Garcia, Piller & Co., and Calevas Bros. Charge: Using unfair methods of competition in the sale of ship chandlery, including stewards' supplies, deck, engine, and cabin supplies, by giving to captains and other officers of vessels valuable gifts, cash commissions, and gratuities to induce them to purchase supplies from the respondents, in alleged violation of section 5 of the Federal Trade Commission act. Status: (Ante, complaint No. 626.)

Complaint No. 745.—Federal Trade Commission *v.* Austin, Nichols & Co. (Inc.) (Virginia). Charge: That Austin, Nichols & Co. (Inc.) entered into an agreement with Wilson & Co. (Inc.) for the acquisition of the Wilson & Co. (Whiteland, Ind.) vegetable-canning plant and control of the Fame Canning Co. and Wilson Fisheries Co. in anticipation of a consent decree resulting from the prosecution of a suit in equity brought by the Attorney General of the United States, by which decree Wilson & Co. (Inc.) were perpetually enjoined from engaging in business unrelated to the meat-packing industry. The respondent, incorporated to effect the consolidation of all the properties, now holds control thereof, and is charged with the suppressing of competition, tending to create a monopoly in the grocery and food-product business, in alleged violation of section 7 of the Clayton Act. Status: Awaiting final argument.

Complaint No. 746.—Federal Trade Commission *v.* W. J. Chapman. Charge: Using unfair methods of competition by offering and giving to captains of vessels cash gratuities to induce them to purchase ship chandlery, stewards' supplies, deck, engine, and cabin supplies from the respondent, in alleged violation of section 5 of the Federal Trade Commission act. Status: (Ante, complaint No. 626.)

Complaint No. 760.—Federal Trade Commission *v.* United States Steel Corporation, American Bridge Co., American Sheet & Tin Plate Co., Carnegie Steel Co., National Tube Co., American Steel & Wire Co., Illinois Steel Co., Minnesota Steel Co., Clairton Steel Co., Union Steel Co., the Lorain Steel Co., and the Tennessee Coal, Iron & Railroad Co. Charge: Using unfair methods of competition and discrimination in prices, in that the United States Steel Corporation and its subsidiaries, in fixing the price of steel which is made and used in such centers as Chicago, Duluth, and Birmingham upon the price f. o. b. mill at Pittsburgh, plus the freight rates from Pittsburgh to such centers, operates as a discrimination in price in favor of Pittsburgh fabricators as against fabricators in Chicago, Duluth, and Birmingham districts, in violation of section 2 of the Clayton Act and section 5 of the Federal Trade Commission act. Status: Awaiting final determination by the commission.

Complaint No. 775.—Federal Trade Commission *v.* Swift & Co., National Leather Co. Charge: That the respondent Swift & Co., by reason of its acquisition of a controlling interest in England, Walton & Co. (Inc.) and its subsidiaries, and the subsequent organization by Swift & Co. of respondent National Leather Co. and the transfer thereto of the Swift & Co. interest in England, Walton & Co., and in numerous other corporations engaged in tanning and the manufacture and sale of leather and by-products, the corporate stock of which had been acquired by Swift & Co., has been for the purpose and

effect of substantially lessening competition and of creating a combination in restraint of trade in the manufacture and sale of leather, in alleged violation of section 5 of the Federal Trade Commission act and section 7 of the Clayton Act. Status: At issue.

Complaint No. 785.—Federal Trade Commission v. J. H. Crites, John G. Dee, W. J. Ross, M. W. McQuaid, and M. L. Chaudler. Charge: Using unfair methods of competition in the sale of share stock of the O-tex Production Co. by the use of numerous false and misleading statements as to the said company's drilling operations and the productivity of its properties, to the effect of misleading and deceiving the purchasing public, in alleged violation of section 5 of the Federal Trade Commission act. Status: Awaiting respondent's brief.

Complaint No. 786.—Federal Trade Commission v. Kelly Dry Dock & Ship Building Co. (Inc.). Charge: Using unfair methods of competition by offering and giving to officers and other employees of vessels, without the knowledge and consent of their employers, cash commissions and gratuities as an inducement to have their vessels repaired and repair parts furnished by the respondent, in alleged violation of section 5 of the Federal Trade Commission act. Status: (Ante, complaint No. 626.)

Complaint No. 798.—Federal Trade Commission v. Osa J. Smythe and S. W. Levy, partners, styling themselves Smythe & Levy. Charge: Unfair method of competition in that the respondent, engaged in the sale of ship chandlery, has given cash commissions and gratuities of various kinds to captains, officers, and employees of ships to induce them to purchase ship-chandlery supplies from the respondents, all in alleged violation of section 5 of the Federal Trade Commission act. Status: (Ante, complaint No. 626.)

Complaint No. 800.—Federal Trade Commission v. Herbert W. Brand, Harry C. Oppenheimer, and Edwin W. Brand, partners, doing business under the name and style of Brand & Oppenheimer. Charge: Unfair methods of competition are charged in that the respondents, engaged in the manufacture and sale of cotton lining material, advertise and label their product as "Silkette" thereby deceiving and misleading the purchasing public into the belief that their linings are partly or wholly composed of silk, in alleged violation of section 5 of the Federal Trade Commission act. Status: Order of dismissal issued May 18, 1923, was revoked; an order dated May 14, 1924, reopening the case for further consideration.

Complaint No. 801.—Federal Trade Commission v. Adolphe Schwobe (Inc.). Charge: Unfair methods of competition in taking advantage of the American practice of grading watches by the number of jewels in the movement, by importing Swiss lever watch movements of a low grade but containing 15 to 23 jewels, and after casing said movements, selling the watches to retailers with the number of jewels conspicuously marked on the works or dial or both thereby enabling said retailers to deceive the purchasing public as to the value and quality of said watches and injuring the manufacturers of and dealers in Swiss and American-made watches, in alleged violation of section 5 of the Federal Trade Commission act. Status: Before the commission for final determination.

Complaint No. 804.—Federal Trade Commission v. Maritime Co. (Inc.). Charge: Unfair methods of competition in offering and giving to captains, engineers, and other officers of vessels, without the knowledge of their employers, as an inducement to have their vessels cleaned, painted, and repaired by the respondent, lavish entertainment, including automobile, dinner, and theater parties, lodging accommodations, and for other forms of entertainment, are in alleged violation of section 5 of the Federal Trade Commission act. Status: (Ante, complaint 626.)

Complaint No. 821.—Federal Trade Commission v. Liberty Iron & Wire Co. (Inc.). Charge: Unfair methods of competition in offering and giving to captains, engineers, and other officers of vessels, without the knowledge of their employers, as an inducement to have their vessels repaired and repair parts furnished by the respondent, money and lavish entertainment, including automobile parties, dinner and theater parties, lodging accommodations, and forms of amusement, in alleged violation of section 5 of the Federal Trade Commission act. Status: (Ante, complaint No. 626.)

Complaint No. 825.—Federal Trade Commission v. J. Berman and B. Brenner, partners, styling themselves Berman & Brenner. Charge: Unfair methods of competition in that the respondents, engaged in New York, N. Y., in the manufacture and sale of clothing for men and boys, label their clothes to indicate

Rochester, N. Y., manufacture, thereby misleading the purchasing public into the belief that the respondents' clothing is of the quality produced in Rochester and under Rochester manufacturing conditions, as extensively advertised by the chamber of commerce and other business associations of that city, in alleged violation of section 5 of the Federal Trade Commission act. Status: Suspended pending disposition of other similar cases.

Complaint No. 828.—Federal Trade Commission *v.* A. D. Davis Packing Co. Charge: Unfair methods of competition in offering and giving to officers and employees of vessels without the knowledge of their employers, as an inducement to have their vessels provisioned by respondent, lavish entertainment, in alleged violation of section 5 of the Federal Trade Commission act. Status: (Ante, complaint No. 626.)

Complaint No. 833.—Federal Trade Commission *v.* John J. Morrill and Louis Halvarson, partners, styling themselves A. H. McLeod & Co. Charge: The respondents have offered and given cash commissions and gratuities to captains, engineers, and other officers or employees of vessels without the knowledge of their employers to induce the purchase of sails, rigging, and canvas equipment from respondent, in alleged violation of section 5 of the Federal Trade Commission act. Status: (Ante, complaint No. 626.)

Complaint No. 835.—Federal Trade Commission *v.* Famous Players-Lasky Corporation, the Stanley Co. of America, Stanley Booking Corporation, Black New England Theaters (Inc.), Southern Enterprises (Inc.), Saenger Amusement Co., Adolphe Zukor, Jesse L. Lasky, Jules Mastbaum, Alfred S. Blank, Stephen A. Lynch, Ernest V. Richards, jr. Charge: Unfair methods of competition in that the respondents Famous Players-Lasky Corporation, Adolphe Zukor, and Jesse L. Lasky have combined and conspired to secure control of and monopolize the motion-picture industry, and to restrain, restrict, and suppress competition in the distribution of motion-picture films by (a) acquisition of all the corporate stock of Bosworth (Inc.), Jesse L. Lasky Feature Play Co. (Inc.), Famous Players Film Co., and by coercion, Paramount Pictures Corporation; (b) affiliation with certain independent producers; (c) the creation and exploitation of the Realart Pictures Corporation which the respondents held out to the general public as wholly independent and not affiliated with or controlled by said respondents; (d) acquiring, with the aid of the other respondents, the control of numerous theater corporations operating motion-picture theaters throughout the United States; and (e) building or acquiring numerous theaters for the exhibition of respondents' motion pictures, exclusively, all in alleged violation of section 5 of the Federal Trade Commission act, and, as to respondents Famous Players-Lasky Corporation, Adolphe Zukor, and Jesse L. Lasky, in alleged violation of section 7 of the Clayton Act. Status: In course of trial.

Complaint No. 842.—Federal Trade Commission *v.* Berkeley Machine Works (Inc.). Charge: Unfair methods of competition in that cash commissions, gratuities, and lavish entertainment, including automobile parties, dinner and theater parties, lodging accommodations, and other forms of entertainment and amusements are offered and given to officers, agents, and employees of vessels, without the knowledge or consent of their employers, to induce them to have their vessels repaired by the respondent, in alleged violation of section 5 of the Federal Trade Commission act. Status: (Ante, complaint No. 626.)

Complaint No. 852.—Federal Trade Commission *v.* The Procter & Gamble Co. and the Procter & Gamble Distributing Co. Charge: Unfair methods of competition in that the respondents, certain of whose soaps and washing powders contain no naphtha, falsely designate said products as naphtha soap and naphtha washing powders, and further advertise their soap as of the highest grade because it is white and because it contains naphtha, which loosens the dirt, whereas said soap contains no naphtha, and the fact that it is white adds nothing to its cleansing value, thereby misleading and deceiving the purchasing public, in alleged violation of section 5 of the Federal Trade Commission act. Status: Before the commission for final determination.

Complaint No. 857.—Federal Trade Commission *v.* S. F. Shepard, Rockwood Brown, A. L. Todd, R. Allyn Lewis, R. J. Wiswell, D. M. Leopold, H. P. Hanson, E. H. Eshleman, F. L. Moorman, and E. H. McArthur. Charge: The respondents are trustees for or associated in the promotion of the Burkley Oil Co., Burk Crest Oil Co., Burk Bethel Oil Co., Gypsy Burk Oil Co., Burk Imperial Oil Co., and Burk Consolidated Oil Co. Unfair methods of competition are charged in that the respondents, to further the sale of the share stock of said unincorporated associations, issued and published numerous false and

misleading statements and concealed or withheld other material information relative to the organization, business, and properties of the said companies, thereby deceiving and misleading the purchasing public, in alleged violation of section 5 of the Federal Trade Commission act. Status: Awaiting respondent's brief.

Complaint No. 863.—Federal Trade Commission *v.* Central Railway Signal Co. Charge: Unfair methods of competition in that the respondent, which is a manufacturer of certain compounds, features, and parts for railway signal fuses, brought suit in equity against the Unexcelled Manufacturing Co. (Inc.) for alleged infringement of patents and notified a number of railway companies who were the principal purchasers of said fuses of the pendency of said suit, stating that other fuses on the market were infringements also, and making mention of a right to recover damages from the users of any such alleged infringing fuses, all of which was calculated to bring and had the tendency of bringing all railway signal fuses other than those manufactured by the respondent into suspicion among the railway companies, in alleged violation of section 5 of the Federal Trade Commission act. Status: Awaiting final argument.

Complaint No. 865.—Federal Trade Commission *v.* Henry H. Hoffman, R. C. Russell, J. H. Cain, R. V. Wilson, B. Baernstein, the Ranger-Burkburnett Oil Co., the Ranger-Comanche Oil Co., and the Union National Oil Co. Charge: The respondent individuals are promoters of the respondent corporation. Unfair methods of competition are charged in that they, in order to further the sale of the share stock of the said corporations, issued and published numerous false and misleading statements and concealed or withheld other material information relative to the organization, business, and properties of the said corporations, thereby deceiving and misleading the purchasing public in alleged violation of section 5 of the Federal Trade Commission act. Status: Awaiting respondent's brief.

Complaint No. 868.—Federal Trade Commission *v.* Calumet Baking Powder Co. Charge: Unfair method of competition in that the respondent, for the purpose of furthering the sale of its baking powders, adopted the practice of publishing anonymously adverse, disparaging, and derogatory opinions, statements and comments as to the wholesomeness of *self-rising* flours, the use of which does not involve the addition of baking powder, such statements being not founded in fact, all for the purpose of deceiving the purchasing public, in alleged violation of section 5 of the Federal Trade Commission act. Status: Awaiting approval of stipulation.

Complaint No. 871.—Federal Trade Commission *v.* A. W. Perryman, doing business under the name and style Perryman Investment Co.; A. W. Perryman, F. P. Penfield, C. S. Thomas, individually and as trustees and officers of the Houston Oil & Refining Co., a trust; W. L. Diehl, individually and as second vice president of the Houston Oil & Refining Co., a trust; and William M. Huff, individually and as third vice president of the Houston Oil & Refining Co., a trust. Charge: The respondents are the promoters of the Houston Oil & Refining Co., a Texas trust. Unfair methods of competition are charged in that the respondents, for the purpose of furthering the sale of the share stock of the said oil company, issued and published numerous false and misleading statements and concealed or withheld other material information relative to the organization, business, property, and prospects of said corporation, thereby deceiving the purchasing public, in alleged violation of section 5 of the Federal Trade Commission act. Status: Awaiting briefs.

Complaint No. 873.—Federal Trade Commission *v.* Hewitt Brothers Soap Co. Charge: Unfair methods of competition in that the respondent advertises, brands, and labels its soap as "white naphtha," stating that it is made by a new process and of a combination of naphtha, coconut oil, and other cleansing ingredients, when, in fact, the said soap contains no naphtha, but contains instead a petroleum distillate other than naphtha, originally only to the extent of 1 per cent or less of the whole constituent ingredients, and substantially all lost by volatilization or evaporation before such soap reaches the ultimate consumer, thereby misleading and deceiving the purchasing public, in alleged violation of section 5 of the Federal Trade Commission act. Status: At issue.

Complaint No. 880.—Federal Trade Commission *v.* Douglas Fur Exploitation & Export Co. (Inc.) and 107 others. Charge: The complaint sets forth that, although the respondent Douglas Fir Exploitation & Export Co., a domestic corporation of the State of Washington, engaged in the manufacture and sale of lumber in interstate and foreign commerce, has filed papers with the Federal

Trade Commission under the Webb Export Trade Associations Act, by reason of its policy and plan of business it is not such an association within the meaning of said act. The 107 other respondents are stockholders and officers of the respondent company and are themselves engaged in the lumber business, representing about 85 per cent of the productive capacity of all American manufacturers, vendors, shippers, and dealers in Oregon pine, red fir, yellow fir, Columbian pine, Puget Sound pine, and British Columbia pine and the products thereof. Respondents are charged with having fixed the prices and terms at which they have agreed to sell their lumber and by various and divers means conspiring to hinder and obstruct competition in the sale and distribution of said lumber and lumber products, all in alleged violation of section 5 of the Federal Trade Commission act. Status: Awaiting final determination by the commission.

Complaint No. 881.—Federal Trade Commission v. Citrus Soap Co. Charge: The respondent, engaged in the manufacture and sale of washing powders, soaps, and similar products, has adopted and employs a system for the maintenance and enforcement of uniform prices fixed by it for the resale of its products to retail dealers, refusing to sell to wholesale dealers who fail to observe and maintain said resale prices and requiring its vendees not to sell to other wholesalers except at resale prices fixed by respondent, in alleged violation of section 5 of the Federal Trade Commission act. Status: In course of trial.

Complaint No. 883.—Federal Trade Commission v. Alfred Peats Co. Charge: The respondent, engaged in the sale of paints and painters' supplies, advertises and asserts that its "Clover Leaf Paint" consists of the purest grades of white lead, zinc, linseed oil, Japan drier, and is of an exceptional high grade, which has never failed to give the best satisfaction, when in fact the said paint consists largely of adulterants and fillers, mineral spirits, and substitutes for pure linseed oil, in alleged violation of section 5 of the Federal Trade Commission act. Status: At issue.

Complaint No. 884.—Federal Trade Commission v. Henry Bosch Co. Charge: Unfair methods of competition in that the respondent, engaged in the sale of paints and painters' supplies, falsely advertises and asserts that as to its "Henry Bosch Co.'s Prepared Paint" every ounce of lead, zinc, oil, and Japan drier is of the highest grade and that it is impossible to produce any better paint, when in fact adulterants and fillers are substituted for white lead and zinc oxide and the volatile ingredient consists of mineral spirit, in alleged violation of section 5 of the Federal Trade Commission act. Status: At issue.

Complaint No. 890.—Federal Trade Commission v. Cream of Wheat Co. Charge: Unfair methods of competition in that the respondent engaged in the manufacture and sale of a cereal-food product known as "Cream of Wheat," has maintained and enforced a schedule of uniform prices for the resale of said product, refusing to sell to price cutters and otherwise enforcing said system of price maintenance, in alleged violation of section 5 of the Federal Trade Commission act. Status: Awaiting examiner's report.

Complaint No. 899.—Federal Trade Commission v. Joyce-Fruit Co. The respondent, engaged in the sale of dry goods, clothing, hardware, and groceries at wholesale and retail, offered a prize of \$10 worth of merchandise to the person producing the largest number of current mail-order catalogues, thereby procuring many catalogues of the National Cloak and Suit Co. and other mail-order house competitors, which catalogues it retained for the purpose of unduly hindering the business of its mail-order house competitors which sell merchandise principally by means of catalogues in the hands of customers and prospective customers in alleged violation of section 5 of the Federal Trade Commission act. Status: At issue.

Complaint No. 902.—The Chicago Tobacco Jobbers' Association, its officers and members, and the American Tobacco Co., respondents. Charge: The charge is unfair competition in that the association and its members agreed upon a schedule of fixed prices at which the members should resell tobacco products to their customers and that the American Tobacco Co. entered into an agreement with the association and its members to assist them in maintaining the prices fixed and agreed upon, all in alleged violation of section 5 of the Federal Trade Commission act. Status: Awaiting final determination by the commission.

Complaint No. 904.—Commission v. Lease Motor Co. (Inc.) and Acoma Motors Co. (Inc.). Charge: The respondent Lease Motor Co. is engaged in the business of repairing Ford motor cars and trucks and in assembling,

producing, and rebuilding "Mohawk" trucks, and its subsidiary, respondent Acoma Motors Co., (Inc.), acts as its sales agent. Unfair methods of competition in commerce are charged in that the respondent falsely advertise and represent their assembled trucks as new "Mohawk" trucks made in New York and describe the chassis thereof as the Mohawk chassis when in truth and in fact such trucks are not made in New York, the chassis thereof is a Ford chassis, and old, used, worn, and second-hand parts enter into said product, in alleged violation of section 5 of the Federal Trade Commission act. Status: Awaiting answer.

Complaint No. 906.—Cincinnati Tobacco Jobbers' Association, its officers and members, and the American Tobacco Co., respondents. Charge: The charge is unfair competition in that the association and its members agreed with the American Tobacco Co. upon a schedule of prices at which they should thereafter resell the tobacco products of that company, and that the American Tobacco Co. cooperated with the respondent association and its members in enforcing the maintenance of such fixed schedule of prices, all in alleged violation of section 5 of the Federal Trade Commission act. Status: Awaiting final determination by the commission.

Complaint No. 907.—Cincinnati Tobacco Jobbers' Association, its officers and members, and the Liggett & Myers Tobacco Co., respondents. Charge: The charge is unfair competition in that the association and its members agreed with the Liggett & Myers Tobacco Co. upon a schedule of prices at which they should thereafter resell the tobacco products of that company, and that the Liggett & Myers Tobacco Co. cooperated with the respondent association and its members in enforcing the maintenance of such fixed schedule of prices, all in alleged violation of section 5 of the Federal Trade Commission act. Status: Awaiting final determination by the commission.

Complaint No. 911.—Milwaukee Tobacco Jobbers' Association and P. Lorillard Co. (Inc.), respondents. Charge: The charge is unfair competition in that the association and its members agreed upon a schedule of fixed prices at which the members should resell tobacco products to their dealer customers and that the P. Lorillard Co. (Inc.) entered into an agreement with the association and its members to assist them in maintaining the prices fixed and agreed upon, all in alleged violation of section 5 of the Federal Trade Commission act. Status: Awaiting briefs.

Complaint No. 912.—Milwaukee Tobacco Jobbers' Association and the American Tobacco Co., respondents. Charge: The charge is unfair competition in that the association and its members agreed upon a schedule of fixed prices at which the members should resell tobacco products to their dealer customers and that the American Tobacco Co. entered into an agreement with the association and its members to assist them in maintaining the prices fixed and agreed upon, all in alleged violation of section 5 of the Federal Trade Commission act. Status: Awaiting briefs.

Complaint No. 913.—Commission v. Films Distributors League (Inc.), Eastern Feature Film Co., Favorite Players Film Corporation, Lande Film Distributing Corporation (of Ohio), Lande Film Distributing Corporation (of Delaware), Supreme Photo Play Corporation, Favorite Film Co., Friedman Film Corporation, Alexander Film Corporation, Supreme Film Co., Quality Film Corporation, Leo G. Garner, doing business under the trade name and style Reliance Film Exchange, M. Brown, doing business under the trade name and style Capital Film Exchange, William Alexander, Maurice Fleckles, Herman Rifkin. Charge: The respondents, distributors of motion-picture films, are members of the respondent Films Distributors League (Inc.). Unfair methods of competition in commerce are charged in that the respondents at the time of the production of the photo play entitled "The Three Musketeers" by the Douglas Fairbanks interests, with the purpose of trading on the popularity of said Douglas Fairbanks and on the demand created by advance advertising of his production, reissued the photo play "D'Artagnan," produced by the Triangle Film Corporation in 1915, after changing the name to "The Three Musketeers," advertised said reissue under its new title without designating it as a reissue, and in some instances by displaying in inconspicuous type a statement to the effect that the respondent's photo play was formerly entitled "D'Artagnan," or was an adaptation or recreation of D'Artagnan, and in that the respondents to further the deception that the said reissue was the Fairbanks production supplied for exhibition with the reissue other photo plays in which said Douglas Fairbanks did enact the leading rôle, all for the purpose of

misleading and deceiving the public, in alleged violation of section 5 of the Federal Trade Commission act. Status: Awaiting briefs.

Complaint No. 914.—Commission *v.* Twinplex Sales Co., a corporation, and Mrs. H. S. Gardner, H. S. Gardner, jr., and Charles H. Gardner, individually and as copartners doing business under the trade name and style of Twinplex Sales Co., H. S. Gardner, individually and as trustee of said business for said copartners, and J. Bryant Reinhart and Thomas L. Fouke, individually and as employees and agents of said partnership. Charge: Unfair methods of competition in commerce are charged in that the respondents have fixed standard prices for the resale of their razor-stropping devices known as "Twinplex" stroppers, and employ cooperative means in the maintenance of said resale prices, listing dealers who fail to maintain the same, and refusing to further supply such offending dealers, thus tending to suppress competition, in alleged violation of section 5 of the Federal Trade Commission act. Status: At issue.

Complaint No. 915.—Commission *v.* Cutler-Hammer Manufacturing Co. Charge: Unfair methods of competition in commerce are charged in that the respondent practices discrimination in prices in the sale of its electric controllers by granting a greater rate of discount from the list price to those of its vendees who accept the respondent's "sole use contract" whereby the vendee agrees to purchase the respondent's controllers only, the effect of said practice being to substantially lessen competition and to create a monopoly, in alleged violation of section 2 and section 3 of the Clayton Act. Status: In course of trial.

Complaint No. 916.—Trigg, Dobbs & Co. and others. Charge: The respondents, Chattanooga Wholesale Tobacco Dealers, are charged with unfair competition in that they entered into an agreement, understanding, and conspiracy by which they fixed a schedule of prices at which they would thereafter resell to their dealer customers, all in alleged violation of section 5 of the Federal Trade Commission act. Status: Awaiting examiner's report.

Complaint No. 917.—The American Tobacco Co., Trigg, Dobbs & Co., and others, respondents. Charge: That the American Tobacco Co. and the other respondents, Chattanooga Wholesale Grocers and Wholesale Tobacco Dealers, entered into a combination, conspiracy, and understanding by which they fixed resale prices on American Tobacco Co.'s products, and that the American Tobacco Co. agreed with the other respondents to refuse to continue selling to such of the respondents as would resell its products at prices lower than those agreed upon, all in alleged violation of section 5 of the Federal Trade Commission act. Status: Awaiting examiner's report.

Complaint No. 918.—Commission *v.* Superior Woolen Mills. Charge: Unfair methods of competition in commerce are charged in that the respondent, engaged in retail business, falsely advertises that clothing is sold by it directly from the weaver to the wearer, and indicated by the display of its corporate name that it operates woolen mills and manufactures in its mills the materials used by it in the manufacture of the suits and garments sold by it, all for the purpose of misleading and deceiving the purchasing public, in alleged violation of section 5 of the Federal Trade Commission act. Status: Awaiting briefs.

Complaint No. 922.—Commission *v.* Michigan Wholesale Grocers' Association, its officers, executive committee, and members. Charge: Unfair methods of competition in commerce are charged in that respondents have adopted and carried out a policy and plan of coercing manufacturers to guarantee the respondent members against decline in price of commodities dealt in and to make their purchases from manufacturers so guaranteeing, thereby tending to restrict, diminish, and obstruct the sales and business of manufacturers of food products who do not guarantee against price decline, in alleged violation of section 5 of the Federal Trade Commission act. Status: At issue.

Complaint No. 925.—Commission *v.* Mid-American Oil & Refining Co. and J. H. Crites. Charge: The respondent individual is the promoter of respondent Mid-American Oil & Refining Co., a Texas trust. Unfair methods of competition in commerce are charged in that respondents, with the aid of certain subsidiaries known as Mid-American Syndicate, Mid-American Mexia Syndicate, and Mid-American Stevens County Syndicate, published numerous false and misleading statements and representations relative to the organization, business, property, and prospects of respondent company and said syndicates, to further the sale of the share stock of the respondent, and thereby deceived the purchasing public, in alleged violation of section 5 of the Federal Trade Commission act. Status: Awaiting final determination by the commission.

Complaint No. 927.—Commission *v.* Corn Products Refining Co. Charge: Unfair methods of competition in commerce are charged in that the respondent's practice of guaranteeing against decline in price, aided and abetted by its great financial resources, its domination of the markets for glucose and table sirups, and its control of market price of said commodities is a potential weapon for the ruin and elimination of respondent's competitors and has a dangerous tendency unduly to hinder competition in the table-sirup industry, and to create a monopoly thereof in the hands of the respondent, in alleged violation of section 5 of the Federal Trade Commission act. Status: In course of trial.

Complaint No. 928 (in consolidation with 82).—Commission *v.* The American Photo-Engravers' Association and others, and the International Photo-Engravers' Union of North America, and others. Charge: Unfair methods of competition in commerce are charged in that the respondents conspired and agreed to adopt and maintain a scale of uniform prices for the sale of all photo-engraving products. The respondent, International Photo-Engravers' Union of North America and its local organizations threatened to call strikes or withdraw union employees from photo-engraving establishments that would not maintain said uniform scale of prices, it being understood between the respondents that the members of the respondent association would employ none but members of respondent union's local organization, thereby and with the aid of other methods of enforcement of said agreement, regulating, controlling, and suppressing competition between manufacturers of photo-engraving products, making possible the establishment and maintenance of enhanced prices of such products, and hindering free competition, in alleged violation of section 5 of the Federal Trade Commission act. Status: In course of trial.

Complaint No. 930.—Commission *v.* Right-Way Royalty Syndicate, E. L. Chapman, H. F. Mitchell, and A. J. Chapman. Charge: Respondent syndicate is an unincorporated Texas trust. The respondent individuals are trustees, officers, organizers, and promoters and constitute the board of trustees of said respondent syndicate. Unfair methods of competition are charged in that the respondents, to further the sale of syndicate securities have made and are still making numerous false, misleading, and deceptive statements concerning the business, management, operations, property, prospects, etc., of said syndicate, in violation of section 5 of the Federal Trade Commission act. Status: Awaiting final determination by the commission.

Complaint No. 932.—Commission *v.* Dispatch Petroleum Co., Porter Oakes, and James T. Chiles. Charge: Respondent company as a Texas joint-stock association and respondent individuals are promoters thereof. Unfair methods of competition in commerce are charged in that respondents, to further the sales of the share stock of said company, made numerous false and misleading statements and concealed essential facts as to the properties, prospects, and earnings of said company, in alleged violation of section 5 of the Federal Trade Commission act. Status: Awaiting briefs.

Complaint No. 937.—Commission *v.* McCord Manufacturing Co. (Inc.). Charge: It is charged that unfair methods of competition in commerce in the manufacture and sale of automotive equipment, including motor gaskets for use on cylinder heads, manifolds, etc., have been engaged in by respondent by endeavoring to accomplish the maintenance of standard resale prices by divers cooperative means and by favoring distributors who do maintain such prices and discriminating against distributors who fail to maintain such prices, in alleged violation of section 5 of the Federal Trade Commission act. Status: Ready for trial.

Complaint No. 940.—Commission *v.* Scotch Woolen Mills. Charge: Respondents are engaged in the manufacture of men's clothing and the sale thereof in interstate commerce to retail dealers doing business under the name of Scotch Woolen Mills, in many of which respondent or its stockholders have a beneficial interest. The respondent does not own nor is it interested in any woolen mills. Unfair methods of competition in commerce are alleged in that the use of the name Scotch Woolen Mills, when in fact the respondent has no such mills, tends to mislead and deceive the purchasing public to believe that purchases from the respondent are from the manufacturer of the cloth, in alleged violation of section 5 of the Federal Trade Commission act. Status: Awaiting final determination by the commission.

Complaint No. 941.—Commission *v.* Keeler Bros. & Co., a corporation; the Columbia Securities Co., a corporation; the National Finance Co., a corporation; George Keeler and Frank Keeler. Charges: Unfair methods of competition are charged in that the respondents, engaged in the purchase and sale

of municipal, county, and school bonds, procured bonds, apparently valid, but in which had been fraudulently embodied provisions and terms which indicated increased commercial value, using in connection with the sale thereof false and misleading histories of the bonds, failing to disclose to purchasers and prospective purchasers the real facts of the issues, and thereby misleading the purchasing public to believe that the bonds sold by the respondents were valid obligations of the municipalities by which they had been executed, issued as by law provided in conformity with elections duly called and held, and that said purchasers would involve no risk of repudiation or expense of litigation to confirm validity or to enforce collection, in alleged violation of section 5 of the Federal Trade Commission act. Status: Awaiting final argument.

Complaint No. 947.—*Commission v. Waldes & Co. (Inc.)* Charge: The complaint relates that Waldes & Co., of Prague, Czechoslovakia, sold about 80 per cent of the snap fasteners that were marketed in the United States at the time of the outbreak of the World War, at which time the importation of products from Austria was discontinued by the American trade. During the World War many American corporations were organized for and began the manufacture and sale of snap fasteners in the United States. Unfair methods of competition are charged in that the respondent, organized under the laws of the State of New York in 1919, and engaged in the manufacture and sale of snap fasteners, under the brands "Kohinour," "Revol," etc., established by its predecessor, Waldes & Co., of Prague, adopted and put into effect the practices of (a) exchanging its products for competitors' snap fasteners found on the shelves of jobbers and department stores, (b) subsequently selling at extremely low prices the snap fasteners so acquired, thereby demoralizing the market and causing many customers of its competitors to discontinue purchasing snap fasteners from said competitors, and (c) underselling its competitors by the sale of its products at less than the cost of production, all for purpose and with the intent of driving the American manufacturer of snap fasteners from the competitive field and to create a monopoly in the manufacture and sale of dress snap fasteners such as was formerly enjoyed by Waldes & Co., of Prague, in alleged violation of section 5 of the Federal Trade Commission act. Status: Awaiting examiner's report.

Complaint No. 949.—*Commission v. Seth Thomas Clock Co.* Charge: Unfair methods of competition are charged in that respondent, engaged in the manufacture and sale in interstate commerce of clocks, employs a system of fixing and maintaining standard prices for the resale of its products, refuses to sell to jobbers, wholesalers, and retailers who fail to maintain said prices, and employs other cooperative means of insuring the observance of its retail price system, thus tending to obstruct commerce and freedom of competition, in alleged violation of section 5 of the Federal Trade Commission act. Status: In course of trial.

Complaint No. 952.—*Commission v. Pennsylvania, New Jersey, and Delaware Wholesale Grocers' Association*, its officers, members of executive committee, and members. Charge: Unfair methods of competition in commerce are charged in that the respondents have adopted and carried out a policy and plan of coercing manufacturers to guarantee the respondent members against decline in price of commodities dealt in and to make their purchases from manufacturers so guaranteeing, thereby tending to restrict, diminish, and obstruct the sales and business of manufacturers who do not guarantee against decline in price, in alleged violation of section 5 of the Federal Trade Commission act. Status: In course of trial.

Complaint No. 956.—*Commission v. Oakleed Oil Co., Mark Kleeden, and Julia K. Threlkeld.* Charge: Unfair methods of competition in commerce are charged in the sale of the share stock of respondent company in that the respondents have misrepresented the business, management, properties, and prospects of the said respondent oil company for the purpose of misleading and deceiving the purchasing public, in alleged violation of section 5 of the Federal Trade Commission act. Status: Suspended pending investigation by the Post Office Department.

Complaint No. 958.—*Commission v. Ohio Dairy Co.* Charge: Unfair methods of competition in commerce are charged in that respondent's practice of paying, temporarily, unduly high prices at selected competitive points, while at the same time paying lower prices at other points for the same grade, quality, and quantity of cream and butterfat for the purpose of controlling or suppressing competition, tends to compel its competitors to cease buying at such points and artificially restrains competition in alleged violation of section 5 of the Federal Trade Commission act. Status: Awaiting briefs.

Complaint No. 960.—*Commission v. Texas-Mexia Drilling Syndicate, B. M. Hatfield, Sterling Syndicate, J. D. Johnson, Old Timers Oil Pool, Albert S. Leach, Co-operative Oil Interests, and C. R. Farmer.* Charge: Unfair methods of competition in the sale of the share stock of the respondent syndicates and interests, are charged, in that the respondents have misrepresented the business, management, properties, and prospects of said respondent syndicates and interests for the purpose of misleading and deceiving the purchasing public, in alleged violation of section 5 of the Federal Trade Commission act. Status: Suspended pending criminal prosecution by the United States.

Complaint No. 961.—*Federal Trade Commission v. M. F. Skidmore and Elmer L. Skidmore, partners, doing business under the names and styles of "Skidmore Pen Co.," "William Bolles Dollar Pen Co.," and "Toledo Gold Filler Fountain Pen Co."* Charge: Unfair methods of competition in commerce are charged in that the respondents manufacture fountain pens to resemble the product of the Conklin Pen Co. and by simulating the brands and trade names of said Conklin pens tend to deceive and mislead the purchasing public into the belief that pens manufactured by respondents are Conklin pens, in alleged violation of section 5 of the Federal Trade Commission act. Status: Awaiting final argument.

Complaint No. 962.—*Federal Trade Commission v. Bethlehem Steel Corporation, Bethlehem Steel Co., Bethlehem Steel Bridge Corporation, Lackawanna Steel Co., Lackawanna Bridge Works Corporation, Midvale Steel & Ordnance Co., Cambria Steel Co.* Charge: The respondent, the Bethlehem Steel Corporation, on or about October 25, 1922, acquired the properties, assets, and businesses of the Lackawanna Steel Co. and its subsidiaries and is now acquiring and has acquired the properties, assets, and businesses of the respondents, Midvale Steel & Ordnance Co. and Cambria Steel Co. Unfair methods of competition in commerce are charged in that the respondents by uniting under a common ownership and management and thereby effecting control of the iron and steel products originating in their respective territories tend to substantially lessen potential and actual competition, contrary to the public policy expressed in section 7 of the Clayton Act and in alleged violation of section 5 of the Federal Trade Commission act, to unduly hinder competition in the iron and steel industries in said territory and unreasonably restrict competition so as to restrain trade contrary to the public policy expressed in sections 1 and 3 of the Sherman Act and in alleged violation of section 5 of the Federal Trade Commission act. Status: In course of trial.

Complaint No. 963.—*Federal Trade Commission v. Roller Oil & Refining Co. (Inc.), H. C. Roller, C. F. Gibbons, Percie C. Willie, E. H. Doud.* Charge: Unfair methods of competition are charged in the sale of share stock of the respondent corporation in that the respondents have misrepresented the business, management, properties, and prospects of said corporation for the purpose of misleading and deceiving the purchasing public, in alleged violation of section 5 of the Federal Trade Commission act. Status: Awaiting final argument.

Complaint No. 964.—*Federal Trade Commission v. Standard Oil Co. of New Jersey.* Charge: Unfair methods of competition are charged in that the respondent acquired one-half or more of the stock or share capital of the Humble Oil & Refining Co., the effect of such acquisition being to substantially lessen competition between the said Humble Oil & Refining Co. and the respondent and its subsidiary, the Standard Oil Co. of Louisiana, to restrain commerce in those sections in which said companies are engaged in commerce and to create a monopoly in alleged violation of section 7 of the Clayton Act. Status: In course of trial.

Complaint No. 967.—*Tobacco Products Corporation and Midwest Tobacco Jobbers' Association, respondents.* Charge: That the respondent association and the Tobacco Products Corporation entered into an agreement, understanding, and conspiracy by which they fixed the price at which the members of the respondent association should resell the products of the Tobacco Products Corporation, and that the Tobacco Products Corporation agreed to assist in the carrying out of the conspiracy by discontinuing the sale of its products to such members of the association as would sell such products at prices less than those fixed by the conspiracy, all in alleged violation of section 5 of the Federal Trade Commission act. Status: In course of trial.

Complaint No. 968.—*Scotten-Dillon Co. and Midwest Tobacco Jobbers' Association, respondents.* Charge: That the respondent Association and Scotten-Dillon Co. entered into an agreement, understanding, and conspiracy by which

they fixed the price at which the members of the respondent association should resell the products of Scotten-Dillon Co., and that Scotten-Dillon Co. agreed to assist in the carrying out of the conspiracy by discontinuing the sale of its products to such members of the association as would sell such products at prices less than those fixed by the conspiracy, all in alleged violation of section 5 of the Federal Trade Commission act. Status: In course of trial.

Complaint No. 969.—The American Tobacco Co. and Midwest Tobacco Jobbers' Association, respondents. Charge: That the respondent association and the American Tobacco Co. entered into an agreement, understanding, and conspiracy by which they fixed the price at which the members of the respondent association should resell the products of the American Tobacco Co., and that the American Tobacco Co. agreed to assist in the carrying out of the conspiracy by discontinuing the sale of its products to such members of the association as would sell such products at prices less than those fixed by the conspiracy, all in alleged violation of section 5 of the Federal Trade Commission act. Status: In course of trial.

Complaint No. 974.—Federal Trade Commission v. Brooks Oil Co. and E. A. Benedict. Charge: Unfair methods of competition in commerce are charged in that the respondents, cooperating in the sale of house paint, have falsely represented, advertised, and labeled said product as "U. S. Quality Paint," the said paint in fact being a low-grade product not made for nor used by the United States Government and not made according to any Government specification or requirements, in alleged violation of section 5 of the Federal Trade Commission act. Status: Awaiting briefs.

Complaint No. 976.—Federal Trade Commission v. Goodall Worsted Co. and Albert Rohaut. Charge: Unfair methods of competition in commerce are charged in that the respondent corporation, a manufacturer of Palm Beach cloth, and its sales agent, the respondent Rohaut, fixed uniform and minimum prices, thereby tending to unduly restrain the natural flow of commerce and be sold to jobbers and dealers and enforce said standard prices by the use of a license agreement with the manufacturers of Palm Beach clothing by refusing to sell such cloth to manufacturers who fail to observe and maintain said resale prices, thereby tending to unduly restrain the natural flow of commerce and freedom of competition in alleged violation of section 5 of the Federal Trade Commission act. Status: At issue.

Complaint No. 984.—The American Tobacco Co. and the Tobacco Jobbers' Association of Western Pennsylvania, its officers and members, respondents. Charge: That the respondent association and the American Tobacco Co. entered into a conspiracy, agreement, and understanding, by which they fixed resale prices of tobacco products of the American Tobacco Co. handled by the members of the respondent association, and that the American Tobacco Co. agreed to assist in the accomplishment of the conspiracy by agreeing to discontinue selling to such members of the association as would sell the products of the American Tobacco Co. at prices less than those fixed by the conspiracy, all in alleged violation of section 5 of the Federal Trade Commission act. Status: At issue.

Complaint No. 985.—P. Lorillard Co. (Inc.), and the Tobacco Jobbers' Association of Western Pennsylvania, its officers and members, respondents. Charge: That the respondent association and the P. Lorillard Co. (Inc.) entered into a conspiracy, agreement, and understanding, by which they fixed resale prices of tobacco products of the P. Lorillard Co. handled by the members of the respondent association, and that the P. Lorillard Co. (Inc.), agreed to assist in the accomplishment of the conspiracy by agreeing to discontinue selling to such members of the association as would sell the products of the P. Lorillard Co. (Inc.) at prices less than those fixed by the conspiracy, all in alleged violation of section 5 of the Federal Trade Commission act. Status: At issue.

Complaint No. 987.—Federal Trade Commission v. The American Tobacco Co., a corporation; Tri-State Tobacco Jobbers' Conference, an unincorporated organization, its officers, T. W. Mahany, president, William J. Stern, secretary and manager, S. D. Ostrow, treasurer, their successors, and its members. Charge: Unfair methods of competition in commerce are charged in that respondents conspired and agreed to fix uniform prices for the sale and resale of cigars, cigarettes, and other tobacco products, thereby tending to restrict competition and restrain the natural flow of commerce, in alleged violation of section 5 of the Federal Trade Commission act. Status: At issue.

Complaint No. 988.—Federal Trade Commission *v.* Paramount Royalty Syndicate and Lea R. Ellis. Charge: Unfair methods of competition in commerce are charged in the sale of securities of respondent syndicate in that the respondents have misrepresented the organization, business, management, properties, and prospects of said respondent syndicate for the purpose of misleading and deceiving the purchasing public, in alleged violation of section 5 of the Federal Trade Commission act. Status: At issue.

Complaint No. 990.—Federal Trade Commission *v.* Missouri-Kansas Wholesale Grocers' Association, Peet Bros. Manufacturing Co., the Rub-No-More Co. Charge: The complaint charges unfair methods of competition in that the respondents adopted a plan of hampering, obstructing, and preventing the Procter & Gamble Distributing Co., which quotes equal prices to wholesalers and retailers, from selling soaps, soap products, and cooking fats to the members of the respondent association and wholesale grocers, and sought to coerce wholesalers into refraining from dealing in the said products of the Procter & Gamble Distributing Co., in alleged violation of section 5 of the Federal Trade Commission act. Status: Awaiting briefs.

Complaint No. 991.—Federal Trade Commission *v.* Iowa-Nebraska-Minnesota Wholesale Grocers' Association, its officers, members of executive committee, and all of its members; Slocum-Bergren Co.; Gowan-Lenning-Brown Co.; Peet Bros. Manufacturing Co.; Jas. S. Kirk & Co.; and Cudahy Packing Co. Charge: The complaint charges unfair methods of competition in that the respondents adopted a plan of hampering, obstructing, and preventing the Procter & Gamble Distributing Co., which quotes equal prices to wholesalers and retailers, from selling soaps, soap products, and cooking fats to the members of the respondent association and wholesale grocers, and sought to coerce wholesalers into refraining from dealing in the said products of the Procter & Gamble Distributing Co., in alleged violation of section 5 of the Federal Trade Commission act. Status: In course of trial.

Complaint No. 992.—Federal Trade Commission *v.* The Ohio Wholesale Grocers' Association Co., a corporation, and its stockholding members, and Peet Bros. Manufacturing Co., a corporation. Charge: Unfair methods of competition are charged in that the respondents adopted a plan of hampering, obstructing, and preventing The Procter & Gamble Distributing Co., which quotes equal prices to wholesalers and retailers, from selling soap, soap products, and cooking fats to the members of the respondent association and wholesale grocers, and sought to coerce wholesalers to refrain from dealing in the products of said Procter & Gamble Distributing Co., in alleged violation of section 5 of the Federal Trade Commission act. Status: At issue.

Complaint No. 1000.—Federal Trade Commission *v.* The Charles H. Elliott Co. Charge: Unfair methods of competition are charged in that the respondent, engaged in the manufacture of jewelry, stationery, printing and engraving products suitable for use by schools, colleges, universities, and the student organizations thereof, offers and gives, without the knowledge and consent of the student organization, valuable gratuities to the students authorized to purchase said products as an inducement to buy respondent's products; offers and gives substantial and unwarranted reductions in price and valuable gratuities to induce said students to cancel contracts entered into with competitors of said respondent, and circulates false, misleading, and disparaging statements concerning its competitors, in alleged violation of section 5 of the Federal Trade Commission act. Status: Awaiting final determination by the commission.

Complaint No. 1006.—Federal Trade Commission *v.* Hill Bros. Charge: Unfair methods of competition are charged in that the respondents adopted and maintained a system of standard prices for the resale of certain brands of their roasted coffee, refusing to sell to dealers failing to observe the minimum resale prices and employing various cooperative means for the enforcement of the price list, thereby hindering and suppressing all price competition and tending to obstruct the natural flow of commerce, in alleged violation of section 5 of the Federal Trade Commission act. Status: In course of trial.

Complaint No. 1007.—Federal Trade Commission *v.* Canada Dry Ginger Ale (Inc.) and Canada Dry Sales Corporation. Charge: Unfair methods of competition are charged in that the respondents, engaged in the manufacture of ginger ale in the United States and the sale thereof, have adopted and used labels simulating in color, design, wording, and general arrangement the well-known labels of the J. J. McLaughlin (Ltd.), manufacturers of Canadian ginger ale formerly sold in the United States by the respondent Canada Dry

Sales Corporation, thereby misleading and deceiving the purchasing public, in alleged violation of section 5 of the Federal Trade Commission act. Status: In course of trial. Awaiting final determination by the commission.

Complaint No. 1009.—Federal Trade Commission *v.* Illinois Glass Co. Charge: Unfair methods of competition are charged in that the respondent, engaged in the manufacture and sale of glass bottles, entered into and carried out an agreement by the effect of which the respondent acquired the entire assets and capital stock of the Cumberland Glass Manufacturing Co., the More Jonas Glass Co., and the Minotola Glass Co., thereby tending to substantially lessen competition, restrain commerce, and create a monopoly, in alleged violation of section 5 of the Federal Trade Commission act and section 7 of the Clayton Act. Status: At issue.

Complaint No. 1010.—Federal Trade Commission *v.* Pittsburgh Coal Co. of Wisconsin, Northwestern Fuel Co., Reiss Coal Co., Clarkson Coal & Dock Co., M. A. Hanna Coal & Dock Co., Carnegie Dock & Fuel Co., Berwind Fuel Co., Northern Coal & Dock Co., Great Lakes Coal & Dock Co., Pittsburgh & Ashland Coal & Dock Co., Northwestern Coal Dock Operators Association, its officers, directors, and members. Charge: Unfair methods of competition are charged in that the respondent companies, the largest distributors of anthracite and bituminous coal in the northwest territory, which comprises the States of Minnesota, Wisconsin, North Dakota, South Dakota, and parts of Iowa and Nebraska, entered into an agreement and conspiracy among themselves, through the respondent association and with others, to restrict, restrain, and suppress competition in the sale of coal by (a) abolishing commissions to jobbers; (b) refraining from soliciting certain municipal business, recognizing such business as the prospect of the local retail dealer; (c) restricting certain contracts with retail dealers to cover public-utility business; (d) adopting uniform grading and cost-accounting methods for the standardization of coal sizes and costs; (e) refusing to sell to certain dealers not equipped with sheds and scales; (f) agreeing to uniform methods of accounting with retail dealers; (g) adopting uniform contracts with retail dealers and large consumers, prohibiting the diversion of coal except as authorized by the contract; (h) circulating lists of retailers to whom the respondents refuse to sell; (i) providing for the standardization and maintenance of uniform selling prices; (j) discriminating in price between the city of Duluth and the cities of St. Paul and Minneapolis; (k) selling at less than cost; (l) discriminating in price between wagon dealers and retail dealers equipped with yards and sheds; (m) arbitrarily reducing the price of coal to compel competitors to join the respondent association, all in alleged violation of section 5 of the Federal Trade Commission act and section 2 of the Clayton Act. Status: Awaiting examiner's report.

Complaint No. 1012.—Ohio Wholesale Grocers' Association, Cleveland Tobacco Jobbers, and P. Lorillard Co. (Inc.), respondents. Charge: The charge is unfair competition in that the Ohio Wholesale Grocers' Association and a group of Cleveland, Ohio, tobacco jobbers, and P. Lorillard Co. (Inc.), entered into a conspiracy, agreement, and understanding, by which they fixed the prices at which the products of P. Lorillard Co. (Inc.), should be resold by the jobber respondents, and that P. Lorillard Co. (Inc.), agreed with the other respondents to assist in the carrying out of the conspiracy alleged, by refusing to sell to such of the respondents as would resell its products at prices less than those fixed by the conspiracy. All in alleged violation of section 5 of the Federal Trade Commission act. Status: At issue.

Complaint No. 1013.—Ohio Wholesale Grocers' Association, Cleveland Tobacco Jobbers, and American Tobacco Co., respondents. Charge: The charge is unfair competition in that the Ohio Wholesale Grocers' Association and a group of Cleveland, Ohio, tobacco jobbers and the American Tobacco Co. entered into a conspiracy, agreement, and understanding, by which they fixed the prices at which the products of the American Tobacco Co. should be resold by the jobber respondents, and that the American Tobacco Co. agreed with the other respondents to assist in the carrying out of the conspiracy alleged, by refusing to sell to such of the respondents as would resell its products at prices less than those fixed by the conspiracy. All in alleged violation of section 5 of the Federal Trade Commission act. Status: At issue.

Complaint No. 1015.—Federal Trade Commission *v.* William R. Warner & Co. (Inc.). Charge: Unfair methods of competition are charged in that the respondent, having established two scales of prices for its patent medicines, pharmaceuticals, and drug specialties designated, respectively, as jobbers'

prices and retailers' prices, makes a regular practice of selling its products at said jobbers' prices to certain selected wholesalers and retailers; at the same time and irrespective of quantity purchased charges the higher retailers' prices to other wholesalers and retailers, thereby discriminating between its two classes of customers and giving preferred wholesalers and retailers an unfair advantage over competitors, who are compelled to purchase the respondent's goods of the same quality and quantity at higher prices and on less advantageous terms, tending to hinder and lessen competition, in alleged violation of section 5 of the Federal Trade Commission act and section 2 of the Clayton Act. Status: At issue.

Complaint No. 1016.—Federal Trade Commission v. Edwin E. Ellis Co. (Inc.) Charge: Unfair methods of competition are charged in that the respondent engaged in the printing and selling of stationery, designates and advertises as "Process engraving" its method of printing in simulation of impressions made from engraved plates, thereby tending to mislead and deceive the purchasing public into the erroneous belief that the respondent's products are in fact "engraved," in alleged violation of section 5 of the Federal Trade Commission act. Status: Awaiting briefs.

Complaint No. 1018.—Federal Trade Commission v. Toledo Pipe Threading Machine Co. Charge: Unfair methods of competition are charged in that the respondent, engaged in the manufacture of pipe-threading, boring and cutting tools and similar products, employs a system or policy whereby it has established and maintained standard prices for the resale of its products by jobbers and other distributors, refusing to sell its products to price cutters and employing other cooperative means for the enforcement of said resale prices, thereby tending to obstruct the free and natural flow of commerce and freedom of competition, in alleged violation of section 5 of the Federal Trade Commission act. Status: Awaiting final determination by the commission.

Complaint No. 1019.—Federal Trade Commission v. The Standard Register Co. Charge: Unfair methods of competition are charged in that the respondent, engaged in the manufacture and sale of manifolding or autographic registers and supplies therefor, publishes numerous false, misleading, disparaging, and unfair representations concerning its competitor, the Egly Register Co., falsely asserting that a court decision in favor of the respondent has had the effect of cancelling all orders placed with said Egly Co.; threatening to bring and instituting suit for alleged infringement of patents, said suit and threat of litigation being not in good faith but for the purpose of intimidating the said Egly Co. and its customers; falsely representing its register as superior in quality; and circulating statements to the effect that the Egly Co. is more than six months in arrears with its orders, all for the purpose of injuring its competitor and in alleged violation of section 5 of the Federal Trade Commission act. Status: Awaiting final determination by the commission.

Complaint No. 1020.—Federal Trade Commission v. The Armand Co. Charge: Unfair methods of competition are charged in that the respondent, engaged in the manufacture and sale of toilet preparations, employs a system of fixing and establishing certain specified standard prices for the resale of its products by jobbers, wholesalers, and retailers, refusing to sell to price cutters and employing other cooperative means for the enforcement of said system of resale prices, thereby tending to obstruct the natural flow of commerce and freedom of competition, in alleged violation of section 5 of the Federal Trade Commission act. Status: At issue.

Complaint No. 1021.—Federal Trade Commission v. Hygrade Lamp Co. Charge: Unfair methods of competition are charged in that the respondent, engaged in the manufacture and sale of tungsten lamps, adopted and enforces a policy of requiring its jobbers to enter into an exclusive agreement whereby said jobbers agree to restrict their purchases to the respondent and to limit their Hygrade Lamp business to said jobber's exclusive territory, which is clearly defined in agreement, all in consideration of respondent's agreement to sell exclusively to said jobber in said exclusive territory, thereby hindering and suppressing competition in the jobbing of electric lamps, in alleged violation of section 5 of the Federal Trade Commission act. Status: At issue.

Complaint No. 1022.—Federal Trade Commission v. Hygrade Lamp Co. Charge: Unfair methods of competition are charged in that the respondent, by the acquisition of the capital stock of the Lux Manufacturing Co., a competitor, tends to lessen competition and restrain commerce in the territory served by the Lux Co., in alleged violation of section 7 of the Clayton Act. Status: At issue.

Complaint No. 1023.—Federal Trade Commission v. International Shoe Co. Charge: It is charged that the respondent, by acquiring substantially all of the capital stock of the W. H. McElwain Co., theretofore engaged in the manufacture and sale of shoes in competition with the respondent, tends to lessen competition, restrain commerce, and create a monopoly, in alleged violation of section 7 of the Clayton Act. Status: Awaiting examiner's report.

Complaint No. 1024.—Federal Trade Commission v. Charles E. Cormier Rice Milling Co. (Inc.). Charge: Unfair methods of competition are charged in that the respondent, engaged in buying and selling rice and having no rice mills of its own, indicates by the use of the word "milling" as a part of its corporate name that it is a miller of rice and that its customers therefore save the profits of all intermediate dealers, thereby tending to mislead and deceive the purchasing public, in alleged violation of section 5 of the Federal Trade Commission act. Status: In course of trial.

Complaint No. 1025.—Federal Trade Commission v. Charles Tager, an individual trading under the name of Regat Sales Co. Charge: Unfair methods of competition are charged in that the respondent, by resorting to false, misleading, and deceptive representations as to the Markwell Manufacturing Co. and the Botts Marking Ink Co., distributors of Acme tacking machines and staples, persuades and induces customers and prospective customers who were using Acme tacking machines and staples to discontinue the use of said Acme machines in exchange for the respondent's Regat tacking machines, and to purchase large supplies of Regat staples, thus preventing said competitors from selling staples to their customers, in alleged violation of section 5 of the Federal Trade Commission act. Status: Awaiting final determination by the commission.

Complaint No. 1026.—Federal Trade Commission v. Panama Rice Milling Co. Charge: Unfair methods of competition are charged in that the respondent, engaged in the buying and selling of rice and having no rice mills of its own, indicates by the use of the word "milling" as a part of its corporate name that it is a miller of rice and that its customers therefore save the profits of all intermediate dealers, thereby tending to mislead and deceive the purchasing public, in alleged violation of section 5 of the Federal Trade Commission act. Status: In course of trial.

Complaint No. 1028.—Federal Trade Commission v. Guaranty Royalties Co., W. F. Rogers, W. L. Hughes, and A. C. Loughrey. Charge: Unfair methods of competition are charged in the sale of the stock of the respondent joint-stock association in that the respondents have made numerous false, misleading, and deceptive statements concerning the organization, management, properties, production, earnings, and prospects of the respondent company for the purpose of inducing the public to purchase said stock, in alleged violation of section 5 of the Federal Trade Commission act. Status: Awaiting answer.

Complaint No. 1032.—The American Tobacco Co., Conference of Wholesale Tobacco Dealers of Oregon, and others, respondents. Charge: The respondents joined in its complaint with the American Tobacco Co., groups of tobacco jobbers, and wholesale grocers located in numerous localities along the Pacific coast. The charge is that each group and the American Tobacco Co. conspired to fix resale prices on American Tobacco Co.'s products sold by the members of such groups, and that each of the groups agreed with each and every one of the other groups and with the American Tobacco Co. to adhere to the prices fixed by the American Tobacco Co., and each of such of the other groups, and that the American Tobacco Co. offered each of the groups to assist in the conspiracies by refusing to continue selling to such jobber as would resell its products at prices less than those fixed by the conspiracies aforesaid, all in alleged violation of the Federal Trade Commission act. Status: Awaiting examiner's report.

Complaint No. 1033.—Liggett & Myers Tobacco Co., Conference of Wholesale Tobacco Dealers of Oregon, and others, respondents. Charge: The respondents joined in its complaint with the Liggett & Myers Tobacco Co. and groups of tobacco jobbers and wholesale grocers located in numerous localities along the Pacific coast. The charge is that each group and the Liggett & Myers Tobacco Co. conspired to fix resale prices on Liggett & Myers Tobacco Co.'s products sold by the members of such groups and that each of the groups agreed with each and every one of the other groups and with the Liggett & Myers Tobacco Co. to adhere to the prices fixed by the Liggett & Myers Tobacco Co. and each of such of the other groups, and that the Liggett & Myers Tobacco Co. offered each of the groups to assist in the conspiracies by refusing to continue

selling to such jobber as would resell its products at prices less than those fixed by the conspiracies aforesaid, all in alleged violation of the Federal Trade Commission act. Status: Awaiting examiner's report.

Complaint No. 1034.—Liggett & Myers, Keystone Tobacco Jobbers' Association, its officers and members, and the Central Pennsylvania Tobacco Jobbers' Association, its officers and members, respondents. Charge: The charge is unfair competition in that Liggett & Myers Tobacco Co. and the Keystone Tobacco Jobbers' Association by conspiracy fixed prices at which the members of that association should resell the products of the Liggett & Myers Tobacco Co.; that the Central Pennsylvania Tobacco Jobbers' Association entered into a similar conspiracy with the Liggett & Myers Tobacco Co.; that each association agreed to abide by the prices of the other association when its members sold into territory of the members of such other associations and that the Liggett & Myers Tobacco Co. agreed with both of the associations to assist in the carrying out of the several conspiracies by discontinuing to sell such members of the associations as would sell its products at prices less than those fixed by the conspiracies aforesaid. Status: At issue.

Complaint No. 1035.—Larus Bros. Co., Keystone Tobacco Jobbers' Association, its officers and members, and the Central Pennsylvania Tobacco Jobbers' Association, its officers and members, respondents. Charge: The charge is unfair competition in that Larus Bros. Co. and the Keystone Tobacco Jobbers' Association, by conspiracy, fixed prices at which the members of that association should resell the products of Larus Bros. Co.; that the Central Pennsylvania Tobacco Jobbers' Association entered into a similar conspiracy with Larus Bros. Co.; that each association agreed to abide by the prices of the other association when its members sold into territory of the members of such other association, and that Larus Bros. Co. agreed with both of the associations to assist in the carrying out of the several conspiracies by discontinuing to sell such members of the associations as would sell its products at prices less than those fixed by the conspiracies aforesaid. Status: At issue.

Complaint No. 1036.—Federal Trade Commission *v.* The American Tobacco Co., a corporation; Keystone Tobacco Merchants' Association, an unincorporated organization, its officers, J. C. Lindner, president; E. A. Stroud, vice president; I. Finkelstein, treasurer; W. F. Smulyan, secretary; their successors and its members; Central Tobacco Jobbers' Association of Pennsylvania, an unincorporated organization, its officers, G. H. Stallman, president; Jacob L. Hauer, vice president; W. Clyde Shissler, secretary and treasurer; their successors, and its members. Charge: Unfair methods of competition are charged in that the respondents conspired and agreed to fix uniform prices for the sale and resale of cigars, cigarettes, and other tobacco products, the respondent, the American Tobacco Co., refusing to sell its products to those who did not maintain said standard resale prices or resold said products to price-cutting subjobbers and retailers, all for the purpose and with the effect of restricting competition and restraining the natural flow of commerce in alleged violation of section 5 of the Federal Trade Commission act. Status: At issue.

Complaint No. 1037.—Federal Trade Commission *v.* P. Lorillard Co. (Inc.), a corporation; Keystone Tobacco Merchants' Association, an unincorporated organization; its officers, J. C. Lindner, president; E. A. Stroud, vice president; I. Finkelstein, treasurer; W. F. Smulyan, secretary; their successors and its members; Central Tobacco Jobbers' Association of Pennsylvania, an unincorporated organization, its officers, G. H. Stallman, president; Jacob L. Hauer, vice president; W. Clyde Shissler, secretary and treasurer; their successors and its members. Charge: Unfair methods of competition are charged in that the respondents conspired and agreed to fix uniform prices for the sale and resale of cigars, cigarettes, and other tobacco products, the respondent, P. Lorillard Co. (Inc.), refusing to sell its products to those who did not maintain said standard resale prices or resold products to price-cutting subjobbers and retailers, all for the purpose and with the effect of restricting competition and restraining the natural flow of commerce in violation of section 5 of the Federal Trade Commission act. Status: At issue.

Complaint No. 1038.—Federal Trade Commission *v.* Standard Oil Co. of Kentucky, a corporation, F. T. Hurner, Gulf Refining Co., a corporation, F. D. Jones, the Texas Co., a corporation, H. G. Thompson, Tampa Automobile Dealers' Association, its officers, directors, and members, Tampa Retail Gasoline Dealers' Association, its officers, directors, and members. Charge: Unfair methods of competition are charged in that the respondent associations and their members conspired and agreed to fix prices and margins of profit for the

sale of gasoline and for the enforcement of said prices solicited and obtained the cooperation of the respondent oil companies and their local agents, the individual respondents, the last-named group of respondents refusing to sell and deliver gasoline on usual and customary terms and conditions to those gasoline dealers who would not enter into and abide by the agreement fixing prices and margins of profit, all of which tends to reduce and divert the natural flow of commerce and to suppress and restrict the freedom of competition, in alleged violation of section 5 of the Federal Trade Commission act. Status: Awaiting final argument.

Complaint No. 1039.—Federal Trade Commission v. American Electric Heater Co. Charge: Unfair methods of competition are charged in that the respondent, engaged in the manufacture and sale of electrical appliances, established certain specified wholesale and retail prices at which its "American Beauty" iron should be sold by dealers, refusing to sell to price cutters and employing other cooperative means for the enforcement of its standard resale prices, thereby hindering and suppressing competition and obstructing the free and natural flow of commerce. In alleged violation of section 5 of the Federal Trade Commission act. Status: At issue.

Complaint No. 1040.—Federal Trade Commission v. F. M. Stamper Co. Charge: Unfair methods of competition are charged in that the respondent, engaged in the purchase and sale of poultry, eggs, and cream, has adopted and maintains the practice of paying higher prices for poultry and eggs at one of its buying stations than it pays for such produce at other buying stations, thereby compelling competing buyers to discontinue purchasing produce in the territory in which higher prices are paid by the respondent and tending to substantially lessen competition and create a monopoly in said territory, in alleged violation of section 5 of the Federal Trade Commission act. Status: Awaiting final determination by the commission.

Complaint No. 1044.—Federal Trade Commission v. Pacific Commercial Co. and Exporters' and Importers' Association of the World. Charge: Respondents are charged with having accepted orders and received payment from foreign customers for first-class new automobile chassis, and through negligence or collusion have caused or permitted to be substituted for the goods ordered secondhand, inferior, or worthless goods, which unfair method of competition has the tendency to injure and damage the reputation of respondents' competitors who truthfully fulfill their contracts, in alleged violation of section 5 of the Federal Trade Commission act as extended by the provisions of section 4 of the Webb Act. Status: At issue.

Complaint No. 1045.—Federal Trade Commission v. Daniel Platt, doing business under the name of Waterman Ink Pencil Co. Charge: Unfair methods of competition are charged in that the respondent, engaged in assembling and selling ink pencils and fountain pens, simulates the trade name and marking employed by the L. E. Waterman Co., well known as the manufacturer of Waterman's Ideal Fountain Pens, and in that the respondent claims to be a manufacturer of ink pencils, with a factory in the Borough of Brooklyn, when in fact said respondent has no interest in any factory for the manufacture of such articles, all for the purpose of misleading and deceiving the purchasing public, in alleged violation of section 5 of the Federal Trade Commission act. Status: Awaiting answer.

Complaint No. 1046.—Federal Trade Commission v. Joseph Feldman and Gertrude Feldman, doing business under the name and style of Roxford Knitting Mills. Charge: Unfair methods of competition are charged in that the respondents, engaged in the business of buying and selling knitted goods, simulate the name and marking employed by the long-established Roxford Knitting Co., of Philadelphia (now Roxford Florine Co. (Inc.)), and in that the respondents, having no knitting mills of their own, falsely indicate by the use of their trade name that they are manufacturers of knit goods and that their customers therefore save the profits of all intermediate dealers, thereby tending to mislead and deceive the purchasing public, in alleged violation of section 5 of the Federal Trade Commission act. Status: Awaiting answer.

Complaint No. 1047.—Federal Trade Commission v. American Shellac Co. (Inc.). Charge: Unfair methods of competition are charged in that the respondent, engaged in the manufacture and sale of paints, varnishes, shellacs, and shellac substitutes, manufactures a varnish composed of shellac gum and shellac gum substitutes, cut in alcohol, which it labels and advertises as "white shellac" and "orange shellac" without indicating that said varnish contains gum other than shellac gum, thereby tending to mislead and deceive the pur-

chasing public as to the quality of said varnish, in alleged violation of section 5 of the Federal Trade Commission act. Status: In course of trial.

Complaint No. 1048.—Federal Trade Commission v. Holeproof Hosiery Co. Charge: Unfair methods of competition are charged in that the respondent, engaged in the manufacture and sale of hosiery, employs a system or policy whereby it establishes certain specific standard resale prices, at which certain of its products shall be resold by retail dealers, refuses to sell to price cutters, and employs other cooperative means for the maintenance of said standard prices, thereby tending to obstruct the free and natural flow of commerce and freedom of competition, in alleged violation of section 5 of the Federal Trade Commission act. Status: At issue.

Complaint No. 1050.—Federal Trade Commission v. Federal Bond & Mortgage Co. Charge: Unfair methods of competition are charged in that respondent, engaged in the sale of bonds, promissory notes, and similar obligations and securities, give prominence in its advertising matter to the word "Federal," which is a part of its corporate name, refers to its bonds as "Federal bonds," employs the slogan "Federal bonds are better bonds," and in printing its bonds simulates the size, design, color, etc., of the bonds issued by the United States Government and displays prominently the words "United States of America" and "Federal," thereby tending to mislead and deceive the purchasing public to believe the respondent's bonds are those of the United States Government or are bonds made and issued under its supervision and sponsored by it, in alleged violation of section 5 of the Federal Trade Commission act. Status: In course of trial.

Complaint No. 1051.—Federal Trade Commission v. Manhattan Shirt Co. Charge: Unfair methods of competition are charged in that the respondent, engaged in the manufacture and sale of shirts, underwear, and pajamas, employs a merchandising plan or policy by which it establishes certain specified standard resale prices at which its product shall be resold by retailers, refuse to sell to price cutters, and employs other cooperative means for the enforcement of said standard prices, in alleged violation of section 5 of the Federal Trade Commission act. Status: At issue.

Complaint No. 1052.—Federal Trade Commission v. Johnson Process Glue Co. Charge: Unfair methods of competition are charged in that the respondent, engaged in the business of manufacturing and selling glue and other kindred products, has been offering and giving substantial sums of money and other things of value to employees of printing, bookbinding, publishing, and other establishments using glue, and without the knowledge or consent of the respective employers, to influence said employees to purchase or recommend the purchase of respondent's products, in alleged violation of section 5 of the Federal Trade Commission act. Status: In course of trial.

Complaint No. 1053.—Federal Trade Commission v. The Worrell Manufacturing Co. Charge: Unfair methods of competition are charged in that respondent, engaged in the sale of insecticides, disinfectants, and sanitary appliances, offers and gives goods and merchandise as premiums or gratuities to public officials in charge of Government departments, boards, and administrative offices purchasing supplies for public institutions, as an inducement to purchase respondent's products, in alleged violation of section 5 of the Federal Trade Commission act. Status: At issue.

Complaint No. 1054.—Federal Trade Commission v. Phillips-Jones Corporation. Charge: Unfair methods of competition are charged in that the respondent, engaged in the manufacture of sundry articles of men's wear, fixed a specified uniform resale price at which it requires its retailers to retail its "Van Heusen" collar and has since employed a system of enforcing the observance of said standard resale price, refusing to sell to price cutters and employing other cooperative means of price maintenance, in alleged violation of section 5 of the Federal Trade Commission act. Status: Awaiting examiner's report.

Complaint No. 1060.—Federal Trade Commission v. John C. Winston Co. Charge: The complaint relates that the respondent offers "Winston's Cumulative Loose Leaf Encyclopedia" free of charge on condition that the customer will furnish letters of recommendation concerning the merits of the said encyclopedia and will subscribe to the so-called "Cumulative Loose Leaf Annual Service," accompanying said encyclopedia, at \$49, payable within one year in monthly installments. Unfair methods of competition are charged in that the respondent's representation that the sum of \$49 is for the so-called "Cumulative Loose Leaf Annual Service" is false and misleading as such sum is greatly in

excess of the price at which the respondent can furnish said service to bona fide purchasers, and is sufficient to compensate the respondent for the encyclopedia delivered "free" together with accompanying service; and in that the respondent misrepresents the value of the said encyclopedia and annual service, claiming that the true price is \$154 and that said publications are available at a special reduced price of \$49 to a limited number of persons only, the special price being for advertising purposes, whereas the \$49 price is in fact that at which its publications are regularly sold, all in alleged violation of section 5 of the Federal Trade Commission act. Status: Awaiting final determination by the commissioner.

Complaint No. 1061.—Federal Trade Commission v. Smith-Kirk Candy Co. Charge: Unfair methods of competition are charged in that the respondent engaged in the manufacture and sale of a chocolate and candy confection containing no ice cream, labels its product as "Chocolate Ice Cream Bar" and pictures a child holding in its hand an ice cream cone, thereby misleading and deceiving the public to believe that its confection contains ice cream, and is of the nature of the chocolate coated ice cream bars popularly known as "Eskimo Pie," "Polar Cake Ice Cream," and "Guernsey Alaska Bars," the size and shape of which are simulated by the respondent in the manufacture of its product, in alleged violation of section 5 of the Federal Trade Commission act. Status: In course of trial.

Complaint No. 1064.—Federal Trade Commission v. Blue Valley Creamery Co. Charge: The respondent is engaged in the manufacture of butter and obtains its cream or butterfat from farmers by the direct shipment plan involving the use of cans or containers which are the sole property of the farmer and which are accepted for shipment by the transportation companies without record of shipment other than the shipping instructions attached to each can. Unfair methods of competition are charged in that the respondent adopted the plan of substituting for all other tags or shipping instructions found on the cans, including those intended to insure the safe return of the can to the owner, its undetachable tags or plates bearing the permanent shipping instructions "When full ship to Blue Valley Creamery Co.," thereby making it difficult for farmers to ship cream to competitors and bringing about the receipt by the respondent of cream intended for its competitors, in alleged violation of section 5 of the Federal Trade Commission act. Status: In course of trial.

Complaint No. 1065.—Federal Trade Commission v. Samuel Katz and Samuel Davidson, doing business under the name and style of Katz & Davidson. Charge: Unfair methods of competition are charged in that the respondents label and describe their shirts, made from materials manufactured in the United States, as "English broadcloth," thereby tending to mislead the purchasing public into the belief that the material used in the manufacture of respondents' shirts is the favorably known cotton fabric manufactured in England and sold under the name "English broadcloth," in alleged violation of section 5 of the Federal Trade Commission act. Status: at issue.

Complaint No. 1066.—Federal Trade Commission v. Jacob Busch. Charge: Unfair methods of competition are charged in that the respondent's practice of stamping as "Sheffield" his silver-plated ware which is not manufactured in Sheffield, England, and which is of a quality inferior to that of the silver and silver-plated ware commonly known as Sheffield silver or Sheffield silver plate, tends to mislead and deceive the purchasing public as to the value and quality of his wares, in alleged violation of section 5 of the Federal Trade Commission act. Status: Awaiting approval of stipulation.

Complaint No. 1067.—Federal Trade Commission v. Ontario Silver Co. Charge: Unfair methods of competition are charged in that the respondent's practice of stamping as "Sheffield" its silver-plated ware which is not manufactured in Sheffield, England, and which is of a quality inferior to that of the silver and silver-plated ware commonly known as Sheffield silver or Sheffield silver plate, tends to mislead and deceive the purchasing public as to the value and quality of its wares, in alleged violation of section 5 of the Federal Trade Commission act. Status: Awaiting approval of stipulation.

Complaint No. 1068.—Federal Trade Commission v. Samuel E. Bernstein (Inc.). Charge: Unfair methods of competition are charged in that the respondent's practice of stamping as "Sheffield" its silver-plated ware which is not manufactured in Sheffield, England, and which is of a quality inferior to that of the silver and silver-plated ware commonly known as Sheffield silver

or Sheffield silver plate, tends to mislead and deceive the purchasing public as to the value and quality of its wares, in alleged violation of Section 5 of the Federal Trade Commission act. Status: Awaiting approval of stipulation.

Complaint No. 1070.—Federal Trade Commission v. The American Tobacco Co., a corporation; New England Tobacco Conference, its officers and officers of its various sections and the members thereof. Charge: Unfair methods of competition are charged in that the respondents conspired and agreed to fix uniform prices for the sale and resale of cigars, cigarettes, and other tobacco products, the respondent the American Tobacco Co. refusing to sell its products to those who did not maintain said standard resale prices or resold said products to price-cutting subjobbers and retailers, all for the purpose and with the effect of restricting competition and the natural flow of commerce, in alleged violation of section 5 of the Federal Trade Commission act. Status: At issue.

Complaint No. 1071.—Federal Trade Commission v. P. Lorillard Co. (Inc.), a corporation; New England Tobacco Conference, its officers and officers of the various sections and the members thereof. Charge: Unfair methods of competition are charged in that the respondents conspired and agreed to fix uniform prices for the sale and resale of cigars, cigarettes, and other tobacco products, the respondent, P. Lorillard Co. (Inc.), refusing to sell its products to those who did not maintain said standard resale prices or resold said products to price-cutting subjobbers and retailers, all for the purpose and with the effect of restricting competition and the natural flow of commerce, in alleged violation of section 5 of the Federal Trade Commission act. Status: At issue.

Complaint No. 1072.—Federal Trade Commission v. Joseph P. Manning Co. Charge: Unfair methods of competition are charged in that respondent, doing business as a "Cash and Carry Tobacconist," discriminates in price between different purchasers of tobacco and tobacco products, not because of difference in grade, quality, or quantity, but with the purpose, intent, and effect of forcing competitors out of business or to force said competitors to agree to maintain certain prices established by the respondent and other wholesalers, thereby tending to substantially lessen competition in the territory served by the respondent, in alleged violation of section 5 of the Federal Trade Commission act. Status: At issue.

Complaint No. 1073.—Federal Trade Commission v. The C. T. Sweet Co., a corporation. Charge: Unfair methods of competition are charged in that the respondent, engaged in the sale of ship chandlery, offers and gives sums of money and other things of value to employees and representatives of steamship owners without the knowledge or consent of such owners as an inducement to influence said employees and representatives to purchase from the respondent, in alleged violation of section 5 of the Federal Trade Commission act. Status: At issue.

Complaint No. 1074.—Federal Trade Commission v. Interstate Fuel Co., a corporation, White Ash Coal Co., a corporation. Charge: Unfair methods of competition are charged in that the respondents, engaged in the purchase and sale of coal offer and advertise their coal as "Mt. Olive" coal, when, in fact, the respondent's coal is not mined in the Mount Olive (Ill.) district and has a market value which is lower than that of the product of the Mount Olive mines against which the respondents compete, thereby misleading and deceiving the purchasing public, in alleged violation of section 5 of the Federal Trade Commission act. Status: Awaiting final argument.

Complaint No. 1076.—Federal Trade Commission v. Nashua Manufacturing Co. and Walter Bayliss, Robert Amory, and Charles L. Crebore, copartners, doing business under the name and style of Amory, Browne & Co. Charge: Unfair methods of competition are charged in that the respondent company, a manufacturer of pure cotton blankets, and the remaining respondents, its sales agents, advertise and label their cotton blankets which contain no wool with the term "Woolnap" printed in large bold-faced type to which were added the words "pure cotton" or "a perfect blend of the world's finest cotton" in smaller and less conspicuous type, and in that similar cotton blankets were sold and labeled as "Wool finish," thereby tending to mislead the purchasing public to believe such cotton blankets were composed wholly or in part of wool, in alleged violation of section 5 of the Federal Trade Commission act. Status: In course of trial.

Complaint No. 1080.—Federal Trade Commission v. Wisconsin Cooperative Creamery Association, its officers, directors, and members, et al. Charge: Unfair methods of competition are charged in that the respondent association and the respondent cooperative creameries, the members of said association, combined and conspired to hinder, obstruct, and prevent the sale and distribution of oleomargarine, circulating a resolution urging the elimination of butter substitutes and by persuasion and threats of loss of patronage inducing dealers to agree to discontinue the sale of oleomargarine, in alleged violation of section 5 of the Federal Trade Commission act. Status: Awaiting briefs.

Complaint No. 1081.—Federal Trade Commission v. International Ice Cream Company (Inc.). Charge: Unfair methods of competition are charged in that the respondent sold its ice cream in Pittsfield and North Adams, Mass., at a price far below the usual and customary price, below the price charged by it in other territories, and below cost, with the purpose and intention of suppressing the competition of the Country Maid Ice Cream Co. and of eventually forcing said competitor out of business, in alleged violation of section 2 of the Clayton Act and section 5 of the Federal Trade Commission act. Status: Awaiting examiner's report.

Complaint No. 1082.—Federal Trade Commission v. Coast States Oil Co., a corporation, J. C. Van Slyke, L. Clair Van Slyke, W. H. Labofish, J. W. Hood. Charge: Unfair methods of competition are charged in that the respondents, to further the sale of the corporate stock of the respondent corporation, made numerous false, misleading, and deceptive statements as to the properties, prospects, and management of said corporation, in alleged violation of section 5 of the Federal Trade Commission act. Status: At issue.

Complaint No. 1083.—Federal Trade Commission v. Garnett S. Zorn and H. Voltze, doing business under the trade name and style of S. Zorn & Co. Charge: Unfair methods of competition are charged in that the respondent, engaged in the sale of grain, adulterated oats by the addition of water and screenings and charged customers on the basis of the total weight of the shipment multiplied by the unit price of oats of the grade ordered, in alleged violation of section 5 of the Federal Trade Commission act. Status: At issue.

Complaint No. 1084.—Federal Trade Commission v. Graham Brothers Soap Co. Charge: Unfair methods of competition are charged in that the respondent labels, advertises and sells a number of its soaps under various misleading names which import nature, qualities, and characteristics not possessed by said soaps, thereby tending to mislead and deceive the purchasing public, in alleged violation of section 5 of the Federal Trade Commission act. Status: At issue.

Complaint No. 1085.—Federal Trade Commission v. North Dakota Wholesale Grocers' Association, its officers and members. Charge: Unfair methods of competition are charged in that the respondents have agreed to confine the distribution of groceries and allied products to "regular" and "legitimate" channels of trade to wit: From the producer or manufacturer to the wholesaler, from the wholesaler to the retail dealer; and to fix uniform wholesale prices and to prevent price cutting, the said agreement, enforced by intimidation, coercion and boycotting, tending to suppress and hinder competition and to obstruct the natural flow of commerce, in alleged violation of section 5 of the Federal Trade Commission act. Status: Awaiting examiner's report.

Complaint No. 1086.—Federal Trade Commission v. Inecto (Inc.). Charge: Unfair methods of competition are charged in that the respondent, in advertising its liquid human hair dye known as "Inecto-Rapid," makes numerous false and misleading statements as to the qualities, properties, uses and popularity of said hair dye, thereby misleading and deceiving the purchasing public, in alleged violation of section 5 of the Federal Trade Commission act. Status: At issue.

Complaint No. 1087.—Federal Trade Commission v. E. O. Olson, trading as Worthington Creamery & Produce Co. Charge: Unfair methods of competition are charged in that the respondent, engaged in the purchase and sale of dairy products, has offered and given competitors' employees increased salaries, commissions, compensations or other valuable consideration for the purpose of inducing said employees to terminate their contracts of employment with respondent's competitors, and by offering increased rentals and other valuable consideration have induced lessors to violate and terminate their contracts of lease of buildings to respondent's competitors, all for the purpose of destroying or appropriating the patronage, property or business of competitors, in alleged violation of section 5 of the Federal Trade Commission act. Status: Awaiting briefs.

Complaint No. 1089.—Federal Trade Commission *v.* The Three-In-One Oil Co. Charge: Unfair methods of competition are charged in that the respondent employs a system for the maintenance and enforcement of certain specified uniform prices fixed by it at which its oil shall be resold by wholesale and retail dealers, respectively, and uses cooperative means of accomplishing the maintenance of said retail prices, thereby tending to restrain the natural flow of commerce and freedom of competition, in alleged violation of section 5 of the Federal Trade Commission act. Status: At issue.

Complaint No. 1092.—Federal Trade Commission *v.* The Illinois and Wisconsin Retail Coal Dealers' Association, its officers and members. Charge: Unfair methods of competition are charged in that the respondents have undertaken to prevent the distribution of coal through other than so-called regular channels and to prevent so-called irregular dealers, cooperative purchasing associations, and consumers from obtaining coal at wholesale prices and from other than regular dealers, effecting the enforcement of said undertaking by the issue of disparaging statements seeking to injure the business of offending wholesalers, and by other equivalent cooperative means, thereby tending to hinder competition and to obstruct the natural flow of commerce, in alleged violation of section 5 of the Federal Trade Commission act. Status: At issue.

Complaint No. 1093.—Federal Trade Commission *v.* David Bernsteen, Republic Products Co. Charge: The respondent Bernsteen was engaged formerly in the sale of lubricating oils under the trade name "Great Lakes Refining Co." and in the sale of paints under the name "Republic Paint & Lead Works," one of his products being "Paramount auto oil." The said businesses were acquired by the Klein Manufacturing Co. from a receiver for respondent, Bernsteen. Unfair methods of competition are charged in that respondents simulated the trade names acquired by the Klein Manufacturing Co. and by reason of said simulation of names prevent the aforesaid manufacturing company from enjoying the benefits of its purchase, in alleged violation of section 5 of the Federal Trade Commission act. Status: Awaiting final determination by the commission.

Complaint No. 1094.—Federal Trade Commission *v.* Joseph S. Weinstock. Charge: Unfair methods of competition are charged in that the respondent's practice of stamping as "Sheffield" or "Sheffield plate" his silver-plated ware which is not manufactured in Sheffield, England, and which is of a quality inferior to that of the wares commonly known as Sheffield silver or Sheffield silver-plate, tends to mislead and deceive the purchasing public as to the value and quality of the respondent's wares in alleged violation of section 5 of the Federal Trade Commission act. Status: Awaiting answer.

Complaint No. 1095.—Federal Trade Commission *v.* DeGolyer Varnish Works. Charge: Unfair methods of competition are charged in that the respondent, in marketing a composition of shellac gum and a large quantity of shellac gum substitutes, labels, brands, and advertises said product as "White shellac" or "Orange shellac" without indicating adulteration, thereby tending to mislead and deceive the purchasing public, in alleged violation of section 5 of the Federal Trade Commission act. Status: Awaiting final determination by the commission.

Complaint No. 1096.—Federal Trade Commission *v.* Waterproof Paint & Varnish Co. Charge: Unfair methods of competition are charged in that the respondent sells certain of its products as "Government waterproof paint" and "Government waterproof varnish" when in fact respondent is in no way connected with the United States Government and does not manufacture its products in accordance with any formula or specification of said Government, thereby tending to mislead and deceive the purchasing public as to the value and quality of said paints and varnishes, in alleged violation of section 5 of the Federal Trade Commission act. Status: Awaiting approval of stipulation.

Complaint No. 1097.—Federal Trade Commission *v.* H. O. Rogers Silver Co., a corporation. Charge: Unfair methods of competition are charged in that the respondent's practice of stamping as "Sheffield" or "Sheffield, made in U. S. A." its silver-plated ware which is not manufactured in Sheffield, England, and which is of a quality inferior to that of the wares commonly known as "Sheffield silver" or "Sheffield silver plate," tends to mislead and deceive the purchasing public as to the value and quality of its ware, in alleged violation of section 5 of the Federal Trade Commission act. Status: At issue.

Complaint No. 1098.—Federal Trade Commission *v.* (1) California Retail Fuel Dealers' Association, its officers and executive committee and members; (2) Retail Coal and Wood Dealers' Association of Alameda County, Stockton

Retail Coal Dealers' Association, Richmond Retail Fuel Dealers' Association, Sacramento Retail Fuel Dealers' Protective Association, San Jose Feed and Fuel Dealers' Protective Association, San Francisco Retail Coal Dealers' Association, Peninsula Fuel Dealers' Association, Southern California Fuel and Feed Dealers' Association, all members of and constituting (1), their respective officers and members; (3) sundry wholesale coal companies, members of (1), the State association; and (4) sundry retail dealers who are members of (1), though not of any one of the local associations named in (2). Charge: Unfair methods of competition are charged, namely, unduly obstructing and hindering competition and depriving consumers of the advantages in price, etc., which they would obtain from the natural flow of commerce in coal under conditions of free competition and further by causing producers and wholesalers to feel constrained to confine the distribution of coal in California to channels selected and approved by respondents and thus preventing cooperative associations and so-called irregular dealers from securing coal at wholesale or from any other source than from the so-called regular dealers and at the retail prices fixed by respondents (a "regular" retail dealer being an association member who engages in the sale of coal or wood as a regular business, buying to sell again; who owns and operates a yard, keeps an office, and displays a sign; has a stock of coal and proper scales to weigh the same—others are "irregular"), by price fixing by the respective local associations, the observation by all of the prices fixed within the respective territories covered thereby, punishment for nonobservance, refusal of respondent wholesalers to supply coal to other than regular dealers, attempting to persuade and, that failing, to coerce and compel other wholesalers and producers by boycott, threats of boycott, and other means of intimidation not to sell except to "regular" dealers, and by other cooperative means, all in alleged violation of section 5 of the Federal Trade Commission act. Status: Awaiting examiner's report.

Complaint No. 1100.—Federal Trade Commission v. American Snuff Co. Charge. Unfair methods of competition are charged in that the respondent adopted and enforced a system of uniform prices for the resale of its products, refusing to sell to price cutters and employing other cooperative means and methods to compel the maintenance of its resale prices, thereby tending to suppress competition and to deprive the consuming public of advantages in price which they would obtain under conditions of free competition, in alleged violation of section 5 of the Federal Trade Commission act. Status: At issue.

Complaint No. 1101.—Federal Trade Commission v. Oneida Community (Ltd). Charge. Unfair methods of competition are charged in that the respondent employs a system of fixing and maintaining specified standard prices for the resale of its silver-plated flatware and uses numerous cooperative means and methods for the enforcement of said standard prices, thus tending to obstruct the free and natural flow of commerce and to establish an arbitrary price, in alleged violation of section 5 of the Federal Trade Commission act. Status: Awaiting examiner's report.

Complaint No. 1102.—Federal Trade Commission v. White Silver Co. Charge: Unfair methods of competition are charged in that the respondent, engaged in the manufacture and sale of silver-plated tableware, tends to mislead and deceive the purchasing public by stamping its product as "Quadruple plate," thereby indicating that its wares have been plated four times or bear a four-fold thickness of silver plating when in fact the respondent's products are stated to be of the most thinly plated and least durable quality or variety of silver-plated commodities, in alleged violation of section 5 of the Federal Trade Commission act. Status: At issue.

Complaint No. 1103.—Federal Trade Commission v. Pacific Coast Steel Co., Columbia Steel Co., Llewellyn Iron Works, Judson Manufacturing Co., Southern California Iron & Steel Co., Steel Mill & Foundry Supply Co. Charge: Unfair methods of competition are charged in that the respondent manufacturing companies entered into an undertaking to suppress all competition in the purchase of scrap iron and steel, of which they are the only users in the Pacific Coast States, and pursuant thereto organized the respondent Steel Mill & Foundry Supply Co. to buy sufficient scrap and steel to satisfy the requirements of the respondent manufacturers, thereby making possible the purchase of said raw materials at prices far below the fair market value thereof and effecting a practical monopoly in the purchase of said commodities, in alleged violation of section 5 of the Federal Trade Commission act. Status: Awaiting examiner's report.

Complaint No. 1104.—Federal Trade Commission *v.* Adolph Greenpan, Irvine Greenpan, and Saul Goodman, partners, doing business under the trade name and style Lewis Feather Bed & Pillow Co. Charge: Unfair methods of competition are charged in that the respondents, engaged in the purchase and sale of feather beds and pillows and having no factory of their own, mislead and deceive the purchasing public by depicting in catalogs the exterior and interior view of a factory claimed to be that of the respondents, and by representing and advertising that they sell direct to the consumer at factory prices, thus eliminating the middleman's profits, and in that the respondents falsely represent that their present prices are much lower than prices previously charged, and that certain of their commodities are of different grades and qualities, when in fact said commodities are all of the same grade and quality, all in alleged violation of section 5 of the Federal Trade Commission act. Status: In course of trial.

Complaint No. 1105.—Federal Trade Commission *v.* Rosenberg & Gordon (Inc.), Park Bros. & Rogers Co. Charge: Unfair methods of competition are charged in that certain collar buttons made of silver-plated base metal were stamped "Sterling silver" by the respondent manufacturers, pursuant to the order of the respondent jobbers Rosenberg & Gordon (Inc.), and in that said buttons were sold as "Sterling silver" by said jobbers, all in alleged violation of section 5 of the Federal Trade Commission act. Status: Awaiting approval of stipulation.

Complaint No. 1106.—Federal Trade Commission *v.* Lapat Knitting Mill, a corporation, and Sobel Hosiery Co. (Inc.), a corporation. Charge: Unfair methods of competition are charged in that the respondent manufacturer, Lapat Knitting Mill, and the respondent distributor, Sobel Hosiery Co. (Inc.), labeled, represented, and sold certain hosiery, made in part of a knit cotton fabric, as "Pure silk hosiery of quality," thereby misleading and deceiving the purchasing public, in alleged violation of section 5 of the Federal Trade Commission act. Status: Awaiting answer.

Complaint No. 1107.—Federal Trade Commission *v.* M. G. Berg and Stanton S. Sanson, partners, doing business under the trade name and style Hercules Hosiery Mills. Charge: Unfair methods of competition are charged in that the respondents, engaged in the purchase and sale of hosiery, and having no factory of their own, mislead and deceive the purchasing public by illustrating trade literature with exterior and interior views of a factory claimed to be that of the respondents, by the display of their trade name, and by representing and advertising that they sell direct to the consumer at factory prices, thus eliminating the middleman's profits, and in that they represent and sell their "seamless" hosiery as "fashioned" hosiery, all in alleged violation of section 5 of the Federal Trade Commission act. Status: At issue.

Complaint No. 1108.—Federal Trade Commission *v.* Colorado Wholesale Grocers' Club, its officers and members; L. F. Hickman, individually and as president of said club; M. E. Warner, individually and as secretary of said club; J. S. Brown Mercantile Co.; Colorado Merchandise Brokers' Association, its officers and members; R. M. Simons, individually and as president of said association; G. A. Morris, individually and as secretary of said association; C. R. Hurd Brokerage Co. Charge: Unfair methods of competition are charged in that the respondents have undertaken to prevent competing dealers in food-stuffs and groceries doing business in the territories served by respondent wholesale dealers and selling said commodities both at wholesale and retail from securing same direct from the manufacturers at prices accorded wholesale dealers, giving force and effect to their agreement by threats of boycott and by intimidation and coercion and other equivalent cooperative means, thereby tending to obstruct the natural flow of commerce, in alleged violation of section 5 of the Federal Trade Commission act. Status: At issue.

Complaint No. 1109.—Federal Trade Commission *v.* James McCord Co., Waples-Platter Grocer Co., Carter Grocery Co., C. G. Quillan. Charge: Unfair methods of competition are charged in that the respondents entered into a combination and undertaking to prevent one H. Lederman and other dealers not engaged in selling exclusively at wholesale to retail dealers from obtaining further supplies direct from the Reynolds Tobacco Co. at prices accorded the wholesale trade and thereupon cooperated in an endeavor to coerce said Reynolds Tobacco Co. by threats of boycott and by other forms of intimidation into refusing to further supply its products at such prices to the said H. Lederman and other dealers, in alleged violation of section 5 of the Federal Trade Commission act. Status: In course of trial.

Complaint No. 1110.—Federal Trade Commission *v.* James S. Kirk & Co. Charge: Unfair methods of competition are charged in that the respondent has manufactured and sold in addition to its several brands of soap which contain various percentages of olive oil, seven other separate kinds of soap which it labeled, advertised, and sold as "Castile" soaps, though said soaps contained no olive oil content whatsoever, thereby tending to mislead and deceive the public into the belief that the respondent's soaps are genuine Castile soap the oil ingredient of which is olive oil, in alleged violation of section 5 of the Federal Trade Commission act. Status: At issue.

Complaint No. 1111.—Federal Trade Commission *v.* Dwinell-Wright Co., a corporation. Charge: Unfair methods of competition are charged in that the respondent, engaged in the importation and sale of teas and coffees, employs a system of fixing and maintaining certain specified uniform prices at which its products will be resold by wholesaler or jobbers to retailers and by retailers to the consuming public, using various cooperative methods of maintaining the said established resale system, and thereby tending to hinder and suppress competition and to obstruct the free and natural flow of commerce, in alleged violation of section 5 of the Federal Trade Commission act. Status: At issue.

Complaint No. 1113.—Federal Trade Commission *v.* McKesson & Robbins (Inc.), Schieffelin & Co., The Druggists Circular (Inc.). Charge: Unfair methods of competition are charged in that the respondents conspired and cooperated to obstruct and eliminate competition in the sale and distribution of drugs, druggists' sundries, and supplies by causing advertisements of competitors of the first-named respondents to be refused and rejected by trade publications, and as to the respondent wholesalers by preventing and forestalling competitors from purchasing in commerce commodities dealt in by said respondents, and by injuring and destroying the business reputation, credit, and business of competitors, in alleged violation of section 5 of the Federal Trade Commission act. Status: Awaiting examiner's report.

Complaint No. 1114.—Federal Trade Commission *v.* M. Golden and N. Lichter, partners doing business under the trade name and style Shawmut Knitting Mills. Charge: Unfair methods of competition are charged in that the respondents engaged in the manufacture and sale of knitted scarfs and sweaters simulate the trade name and trade-mark of the long-established and favorably known Shawmut Woolen Mills, a manufacturer of silk, cotton, and woolen fabrics, thereby tending to mislead and deceive the purchasing public, in alleged violation of section 5 of the Federal Trade Commission act. Status: Awaiting briefs.

Complaint No. 1115.—Federal Trade Commission *v.* General Electric Co., American Telephone & Telegraph Co., Western Electric Co. (Inc.), Westinghouse Electric & Manufacturing Co., The International Radio Telegraph Co., United Fruit Co., Wireless Specialty Apparatus Co., and Radio Corporation of America. Charge: Unfair methods of competition are charged in that the respondents have combined and conspired for the purpose and with the effect of restraining competition and creating a monopoly in the manufacture, purchase, and sale of radio devices and apparatus by: (1) Acquiring patents and patent rights covering all radio devices and apparatus and combining and pooling or allotting the rights thereunder to manufacture, sell, or use such devices and apparatus; (2) granting to the respondent Radio Corporation of America the exclusive right to sell certain radio devices and restricting its purchases to the products of certain of the respondent manufacturers; (3) restricting the competition of certain respondents; (4) restricting the use in radio communication or broadcasting of articles manufactured and sold under respondent's patents and patent rights; (5) acquiring equipment heretofore existing for transoceanic radio communication and perpetuating the monopoly thereof by refusing to supply to others the apparatus and devices necessary for the equipment and operation of certain service; (6) entering into exclusive contracts and preferential agreements for the handling of transoceanic radio traffic and the transmission of radio messages in this country, thereby excluding others from the necessary facilities for the transmission of radio traffic; and (7) agreeing and contracting among themselves to cooperate in the development of new inventions relating to radio and to exchange patents covering the results of the research and experiment of their employees in the art of radio, seeking thereby to perpetuate their control and monopoly of the various means of radio communication and broadcasting beyond the time covered by existing patents owned by them or under which they are licensed, all

in alleged violation of section 5 of the Federal Trade Commission act. Status: At issue.

Complaint No. 1116.—Federal Trade Commission v. Eastern Federation Farm Machinery Dealers, its officers and members; the officers, boards of directors, and members of its constituent organizations; Wright & Wilkinson (Inc.), a corporation, its officers, including Grant Wright, its president and treasurer, and editor of its publication, "The Eastern Dealer." International Harvester Co., a corporation; Emerson-Brantingham Company, a corporation; Moline Plow Co. (Inc.), a corporation; Oliver Chilled Plow Works, a corporation. Charge: Unfair methods of competition are charged in that the respondents entered into an unlawful agreement, understanding, and conspiracy to fix and maintain prices at which agricultural implements and farm machinery should be sold in certain territories, refusing to sell, purchase from, or otherwise deal with those persons, partnerships, or corporations who continue to sell to dealers who are termed "irregular" by the respondent associations and corporations, thereby tending to restrain competition among manufacturers and retail dealers, in alleged violation of section 5 of the Federal Trade Commission act. Status: At issue.

Complaint No. 1117.—Federal Trade Commission v. Kelsey Wheel Co. (Inc.); Jacob Mattern & Sons (Inc.); Standard Tire & Rubber Co.; William H. Johnson, trading as Johnson Wheel Co.; H. O. Norris, trading as H. W. Norris & Sons Co.; Motor Rim & Wheel Manufacturing Co.; The Motor Rim Manufacturers Co.; Keaton Tire & Rubber Co. Charge: Unfair methods of competition are charged in that the respondent manufacturer and the respondent distributors have combined and cooperated to maintain and enhance prices and suppress competition in the distribution and sale of their automobile wheels and parts by means of a system of fixed retail prices and trade discounts in connection with restrictive territorial contracts and arrangements, employing cooperative methods for the maintenance of said prices and arrangements, in alleged violation of section 5 of the Federal Trade Commission act. Status: At issue.

Complaint No. 1118.—Federal Trade Commission v. Missouri State Retail Coal Merchants Association, also known as the Mid-West Retail Coal Association, its officers and members, and J. B. Sanborn & Co. Charge: Unfair methods of competition are charged in that the respondents have undertaken and cooperated to prevent the distribution of coal, in the territory served by respondent association members, by any means other than through the so-called regular channels controlled by members of the respondent association (who qualified for membership therein by reason of the fact that they are regularly engaged in business of selling coal, coke, or other fuel and have facilities and stock sufficient to meet the reasonable demand of the public), and to prevent irregular dealers, cooperative associations and other consumers from obtaining coal at wholesale prices or from any source other than the so-called regular dealers, thereby obstructing and hindering competition in the sale of coal in the territory served by the respondents and depriving consumers of the advantage in price which they would obtain from the natural flow of commerce under conditions of free competition, in alleged violation of section 5 of the Federal Trade Commission act. Status: In course of trial.

Complaint No. 1119.—Federal Trade Commission v. John Blockl & Son (Inc.); A. T. Renck and Ada A. Renck, partners doing business under the name and style A. & A. Renck; B. F. Coleman and Maude W. Humphrey, partners doing business under the name and style Coleman & Humphrey; Opal Eckhoff, Martha Abel, Bess Freeman, Mary Elizabeth Hall, Tress Welsh. Charge: Unfair methods of competition are charged in that the respondent John Blockl & Son (Inc.) engaged in the manufacture of perfumes and toilet articles and the sale thereof to respondent distributors, fixed specified uniform prices for resale of its products, and in cooperation with said distributors employed a system of enforcing and maintaining said resale prices; and in that the respondent took into its employ certain employees and distributors of the Franco-American Hygienic Co., a competitor sales company which had theretofore been supplied with the respondent's products to be sold under the trade name "Franco-American," and thereupon sold the Blockl products to the public as and for the goods of said competitor, also seeking to induce the customers of said competitor to abandon the use of the products of the competitor company and to adopt and use the products of the respondent manufacturer, to this end making numerous false, misleading, and unfair

representations as to said competitor, all in alleged violation of section 5 of the Federal Trade Commission act. Status: At issue.

Complaint No. 1120.—Federal Trade Commission *v.* Boston Automobile Dealers' Association (Inc.), its officers and members. Charge: Unfair methods of competition are charged in that the respondents have combined and cooperated to agree upon and fix uniform maximum allowances for used automobiles taken by respondent members in trade as partial compensation for new cars sold and to cause all dealers in the territory served by respondents, whether or not members of said association, to abide by and observe said fixed prices, the effect of said acts and practices being to suppress competition and to deny to the purchasers of automobiles the advantages in price which they would obtain under free and unobstructed competition, in alleged violation of section 5 of the Federal Trade Commission act. Status: At issue.

Complaint No. 1121.—Federal Trade Commission *v.* B. J. Goldstein, doing business under the trade name and style of Ajax Fire Engine Works. Charge: The respondent purchased a large number of Fyr-Fyter chemical fire extinguishers which had been made for and sold to the United States Government for use in France at the time of the World War and reimported into the United States, and which by reason of the lapse of time had become deteriorated and defective. Unfair methods of competition are charged in that the respondent advertised and offered said fire extinguishers at \$3.75 each, together with a statement to the effect that the regular retail price of said extinguishers was \$12 without stating or setting forth the facts as to said extinguishers, their age and condition, thereby tending to mislead and deceive the purchasing public and to injure the business and good will of the Fyr-Fyter Co., in alleged violation of section 5 of the Federal Trade Commission act. Status: In course of trial.

Complaint No. 1122.—Federal Trade Commission *v.* Glidden Co. and Forest City Paint & Varnish Co. Charge: Unfair methods of competition are charged in that the respondent affiliated corporations sold paint under the name "U. S. marine paint," when in fact neither of the respondents is in any way connected with the United States Government and said products are not made for or according to any specification of said Government or the United States Navy, thereby tending to mislead and deceive the purchasing public, in alleged violation of section 5 of the Federal Trade Commission act. Status: At issue.

Complaint No. 1123.—Federal Trade Commission *v.* Real Silk Hosiery Mills, a corporation. Charge: Unfair methods of competition are charged in that the respondent makes numerous misleading statements through its salesmen and advertisements as to the production and quality of its hosiery, falsely representing that such hosiery is "fashioned" and indicating that it is wholly composed of silk, when in fact the top, toe, and heel are made of cotton and the sole is made of a mixture of cotton and silk, all in alleged violation of section 5 of the Federal Trade Commission act. Status: At issue.

Complaint No. 1124.—Federal Trade Commission *v.* Zellerbach Paper Co., Western Newspaper Union, Carpenter Paper Co. of Utah. Charge: Unfair methods of competition are charged in that the respondents, engaged in the sale of paper and paper products at wholesale, combined and cooperated to suppress competition and to enhance prices in the territory served by them by fixing uniform, minimum prices at which their products are to be sold, said fixed prices being revised from time to time to meet varying conditions of business, but when so revised remaining uniform and the same for each respondent, in alleged violation of section 5 of the Federal Trade Commission act. Status: In course of trial.

Complaint No. 1125.—Federal Trade Commission *v.* Mack, Miller Candle Co. Charge: The respondent is engaged in the manufacture and sale of candles, including "altar" candles, for use in religious ceremonies. The complaint relates that 50 per cent of the ingredients of said altar candles are required to be beeswax under the laws, rules, regulations, and customs of certain religious denominations and churches. Unfair methods of competition are charged in that certain of the respondent's candles, purported to be "altar" candles but containing beeswax to an amount which is no more than 15 per cent of their total content, are falsely labeled, advertised, and represented to be in compliance with the rules, laws, regulations, and customs of religious denominations and churches as to beeswax content, the respondent thereby tending to mislead and deceive the purchasing public, in alleged violation of section 5 of the Federal Trade Commission act. Status: At issue.

Complaint No. 1126.—Federal Trade Commission *v.* Jean Jordeau (Inc.). Charge: Unfair methods of competition are charged in that the respondent, engaged in the manufacture and sale of a compound for removing hair from the human body, commonly known as a depilatory, makes false and misleading assertions to the effect that said product removes or kills the roots of the hair, thus preventing regrowth, when in fact said depilatory does not destroy the roots of the hair nor prevent its regrowth, thereby tending to mislead and deceive the purchasing public, in alleged violation of section 5 of the Federal Trade Commission act. Status: In course of trial.

Complaint No. 1127.—Federal Trade Commission *v.* Calumet Baking Powder Co. Charge: Unfair methods of competition are charged in that the respondent has published and circulated numerous false and misleading statements in disparagement of "K. C. baking powder," a product of the Jaques Manufacturing Co., thereby tending to mislead the trade into the belief that said K. C. baking powder is an inferior, adulterated, and undesirable product and to injure and damage the business and good will of said competitor, the Jaques Manufacturing Co., in alleged violation of section 5 of the Federal Trade Commission act. Status: In course of trial.

Complaint No. 1128.—Federal Trade Commission *v.* Boehmer Coal Co., Victory Coal & Mining Co. Charge: Unfair methods of competition are charged in that the respondents by the use of the trade name "Victory coal" for their product, tend to mislead and deceive the purchasing public in the belief that the coal produced and sold by the respondents is identical with the coal produced by the long-established and favorably known Victory Collieries Co., a competitor of the respondents, in alleged violation of section 5 of the Federal Trade Commission act. Status: At issue.

Complaint No. 1129.—Federal Trade Commission *v.* Joseph Gilbert and John Gilbert, partners, doing business under the trade name and style American Feather Bed & Pillow Co. Charge: Unfair methods of competition are charged in that the respondents, engaged in the sale of feather beds, pillows, and allied products and having no factory of their own, falsely represent and assert that they manufacture the articles in which they deal and sell them direct to the consumer at factory prices, thus eliminating the profits of all middlemen, and in that they misrepresent their commodities as of different grades and qualities when in fact the commodities thus represented to be of different grades are all of the same grade and quality, all in alleged violation of section 5 of the Federal Trade Commission act. Status: In course of trial.

Complaint No. 1130.—Federal Trade Commission *v.* Riverside Rice Milling Co. (Inc.). Charge: Unfair methods of competition are charged in that the respondent, being engaged in the purchase of the rice it sells and having no rice mill of its own, tends to deceive the purchasing public by the use of the word "milling" in its corporate name, misleading purchasers into the belief that the respondent is a miller of rice and thereby saves its customers the profits of all intermediate dealers, in alleged violation of section 5 of the Federal Trade Commission act. Status: In course of trial.

Complaint No. 1131.—Federal Trade Commission *v.* Cosmopolitan Silver Co. Charge: Unfair methods of competition are charged in that the respondent, engaged in the manufacture of silver-plated ware in the city of New York and in the sale thereof, stamps its silverware with the words "Sheffield," "Sheffield plate," or other similar designations containing the word "Sheffield," thereby tending to create the false impression that its silver-plated ware was manufactured in Sheffield, England, and is of the high quality associated with the terms "Sheffield silver" and "Sheffield plate," in alleged violation of section 5 of the Federal Trade Commission act. Status: At issue.

Complaint No. 1132.—Federal Trade Commission *v.* Firestone Steel Products Co., Jacob Mattern & Sons (Inc.), Motor Rim Manufacturers Co., Motor Rim & Wheel Manufacturing Co., Keaton Tire & Rubber Co., Standard Tire & Rubber Co., Phineas Jones & Co., Eastern Rim & Wheel Co., and H. O. Norris, trading as R. W. Norris & Sons Co. Charge: Unfair methods of competition are charged in that the respondent manufacturer, Firestone Steel Products Co., and its distributors, the remaining respondents, have combined and cooperated to maintain and enhance prices and suppress competition in the distribution and sale of their automobile wheel rims and rim parts by means of a system of fixed retail prices and trade discounts in connection with restrictive territorial contracts and arrangements, employing cooperative methods for the maintenance of said prices and arrangements, in alleged violation of section 5 of the Federal Trade Commission act. Status: At issue.

Complaint No. 1133.—Federal Trade Commission v. Edwin A. Ames, trading as Ostermoor & Co. Charge: The respondent, in the sale of its felt mattresses attaches to each mattress a brand or label carrying pictorial representations or depictions of complete and incomplete Ostermoor mattresses with superimposed layers of cotton felt protruding therefrom. Unfair methods of competition are charged in that said depictions are false, deceptive, and misleading, designed to deceive and mislead the purchasing public into the belief that they were made from and are truthful portrayals of the Ostermoor mattress as offered to the public, and that the cotton felt layers commonly known as "bats" are of great number and possessed of great resilience and elasticity, when in fact said depictions were made from a model specially constructed by the respondent and are grossly exaggerated and inaccurate depictions of the content and quality of the mattresses sold by the respondent, and in that the respondent's advertising matter is similarly false and misleading, in alleged violation of section 5 of the Federal Trade Commission act. Status: In course of trial.

Complaint No. 1134.—Federal Trade Commission v. P. H. Hanes Knitting Co. Charge: Unfair methods of competition are charged in that the respondent, engaged in the manufacture and sale of underwear, fixes and maintains certain specified uniform prices for the resale of its products by wholesale dealers, refusing to supply price-cutting dealers and employing various other cooperative means for the enforcement of its system of resale prices, in alleged violation of section 5 of the Federal Trade Commission act. Status: At issue.

Complaint No. 1135.—Federal Trade Commission v. Samuel Seligsohn. Charge: Unfair methods of competition are charged in that the respondent, engaged in the purchase of men's clothing for resale, falsely advertises that he manufactures his clothing, thereby tending to mislead and deceive the purchasing public into the belief that the respondent owns, controls, or operates a clothing factory and that consumers buying from the respondent are buying from the manufacturer and saving the profits of middlemen, in alleged violation of section 5 of the Federal Trade Commission act. Status: At issue.

Complaint No. 1136.—Federal Trade Commission v. Patent Cereals Co. Charge: Unfair methods of competition are charged in that the respondent, engaged in the manufacture of dry paste from corn and the sale thereof to paper hangers and bookbinders, fixed certain standard prices for the resale of its product by wholesalers and subjobbers, refusing to sell to price cutters and employing other cooperative means for the maintenance of said standard resale prices, thereby tending to restrain the natural flow of commerce and freedom of competition, in alleged violation of section 5 of the Federal Trade Commission act. Status: At issue.

Complaint No. 1137.—Federal Trade Commission v. James B. Hall, jr. (Inc.), a corporation. Charge: Unfair methods of competition are charged in that the respondent, engaged in the manufacture of cigars in New York, N. Y., falsely advertises its product as manufactured from tobacco grown on the island of Cuba on plantations owned by the respondent and at a saving of from 50 to 80 per cent to the purchaser, and in that it uses the word "Havana" in labeling said cigars, thereby furthering the deception, in alleged violation of section 5 of the Federal Trade Commission act. Status: At issue.

Complaint No. 1138.—Federal Trade Commission v. Edwin Cigar Co. (Inc.), a corporation. Charge: Unfair methods of competition are charged in that the respondent, engaged in the manufacture of cigars in New York, N. Y., falsely advertises its product as manufactured from tobacco grown on the island of Cuba on plantations owned by the respondent and at a saving of more than 50 per cent to the purchaser, and in that it uses the word "Havana" in labeling said cigars, thereby furthering the deception, in alleged violation of section 5 of the Federal Trade Commission act. Status: At issue.

Complaint No. 1139.—Federal Trade Commission v. H. F. Fliegelman. Charge: Unfair methods of competition are charged in that the respondent, engaged in the purchase and resale of furniture and having no factory of his own, falsely advertises and sells his product as "direct from factory to you," thereby tending to mislead the purchasing public into the belief that purchases made from the respondent are from the manufacturer of said furniture and at a saving of middlemen's profits, in alleged violation of section 5 of the Federal Trade Commission act. Status: At issue.

Complaint No. 1140.—Federal Trade Commission v. Cleveland Metal Products Co. Charge: Unfair methods of competition are charged in that the respondent enforces a merchandising system by which certain specified uniform

prices are fixed and maintained for the resale of its stoves and heaters by retail dealers, the respondent refusing to supply price cutters and employing cooperative methods for the enforcement of said standard resale prices, thereby tending to suppress competition and to deprive ultimate purchasers of the advantages they would obtain from the natural and unobstructed flow of commerce in such commodities, in alleged violation of section 5 of the Federal Trade Commission act. Status: At issue.

Complaint No. 1141.—Federal Trade Commission v. Standard Oil Co. of Kentucky. Charge: Unfair methods of competition are charged in that the respondent enforces a merchandising system by which certain specified uniform prices are fixed and maintained for the resale of its stoves and heaters by retail dealers, the respondent refusing to supply price cutters and employing cooperative methods for the enforcement of said standard resale prices, thereby tending to suppress competition and to deprive ultimate purchasers of the advantages they would obtain from the natural and unobstructed flow of commerce in such commodities, in alleged violation of section 5 of the Federal Trade Commission act. Status: At issue.

Complaint No. 1142.—Federal Trade Commission v. Samson Rosenblatt. Charge: The complaint relates that the Jacques Manufacturing Co. sold its K. C. baking powder to the United States Government for use in France during the World War, and that so much of said baking powder as remained unused was sold by the United States Government as Army surplus property. Unfair methods of competition are charged in that the respondent, having purchased large quantities of said surplus baking powder, which had become deteriorated in quality and effectiveness, advertised and resold the K. C. baking powder under the label of the Jacques Manufacturing Co. and without in any manner disclosing that said product was deteriorated thereby tending to mislead and deceive the purchasing public and to prejudice and injure the business and good will of the Jacques Manufacturing Co., in alleged violation of section 5 of the Federal Trade Commission act. Status: Awaiting briefs.

Complaint No. 1143.—Federal Trade Commission v. P. Perlmutter and C. W. Quigley, partners doing business under the trade name and style P. and Q. Furniture Store. Charge: Unfair methods of competition are charged in that the respondents, engaged in the purchase and resale of furniture and having no factory of their own, sell and advertise said furniture as from "factory direct to you," thereby tending to mislead the purchasing public to believe that in dealing with the respondents they are buying direct from the manufacturer and saving the profits of middlemen, in alleged violation of section 5 of the Federal Trade Commission act. Status: At issue.

Complaint No. 1144.—Federal Trade Commission v. Joseph Byrne, doing business under the trade name and style Perfumers' Journal and Essential Oil Recorder. Charge: Unfair methods of competition are charged in that the respondent, in the publication of his perfumery trade journal, simulates the name of a like publication of one Louis S. Levy, long established and favorably known to the perfumery trade, thereby tending to mislead and deceive the trade into the belief that respondent's trade journal is the same as that published by said Louis S. Levy, in alleged violation of section 5 of the Federal Trade Commission act. Status: At issue.

Complaint No. 1145.—Federal Trade Commission v. Northwestern Traffic & Service Bureau (Inc.), its officers, directors, and subscribers, and Northwestern Publishing Co. and its president. Charge: Unfair methods of competition are charged in that the respondents, by cooperating in the employment of various unfair, intimidating, and coercive measures in behalf of their subscribers, heretofore affiliated as the Northwestern Retail Coal Dealers Association, and with the aid of the respondent publishing company's trade journal "The Coal Dealer," tend to constrain producers and wholesalers of coal to confine distribution to so-called regular channels selected and approved by the respondents and to prevent the sale of coal to independents and consumers, thereby obstructing and hindering competition, in alleged violation of section 5 of the Federal Trade Commission act. Status: At issue.

Complaint No. 1146.—Federal Trade Commission v. Ideal Baby Shoe Co. Charge: Unfair methods of competition are charged in that the respondent manufacturer of children's shoes, by the use of its corporate name, tends to mislead and deceive the trade and public into the belief that its business is identical with the long established and favorably known business conducted by one Adra L. Day under the trade name "Ideal Baby Shoe Co." in alleged violation of section 5 of the Federal Trade Commission act. Status: At issue.

Complaint No. 1147.—Federal Trade Commission *v.* John Moir, William T. Rich, Harry L. Jones, Fred A. Flood, Warren F. Kimball, Charles R. Butler, Carlton Moseley, and Henry T. Brown, partners doing business under the trade name and style of Chase & Sanborn. Charge: Unfair methods of competition are charged in that the respondents, engaged in the sale of coffees and teas to wholesale and retail dealers, established certain specified prices for the resale of their products by retailers, refusing to sell to price cutters, and employing other cooperative means for enforcing said standard resale prices, thereby hindering and suppressing competition and obstructing the free and natural flow of commerce, in alleged violation of section 5 of the Federal Trade Commission act. Status: In course of trial.

Complaint No. 1148.—Federal Trade Commission *v.* Harriet Hubbard Ayer (Inc.). Charge: Unfair methods of competition are charged in that the respondent, engaged in the manufacture and sale of perfumes, cosmetics, and allied products, fixed specified uniform prices for the resale of its products by retailers, enforcing the observance of said standard resale prices by refusing to sell to price cutters, and by the employment of cooperative means of price maintenance, in alleged violation of section 5 of the Federal Trade Commission act. Status: In course of trial.

Complaint No. 1149.—Federal Trade Commission *v.* Marinello Co. Charge: Unfair methods of competition are charged in that the respondent, engaged in the manufacture and sale of cosmetics and allied products commonly called toilet articles, adopted a system of fixing standard prices for the resale of its products, refusing to sell to price cutters and employing cooperative means for the enforcement of said standard resale prices, thereby tending to deprive the ultimate purchasers of advantages in price which they would obtain from the natural and unobstructed flow of commerce, in alleged violation of section 5 of the Federal Trade Commission Act. Status: In course of trial.

Complaint No. 1150.—Federal Trade Commission *v.* Morton F. Baum, an individual doing business under the trade name and style Michigan Sample Furniture Co. Charge: Unfair methods of competition are charged in that the respondent retailer falsely advertises that his furniture is sold at manufacturers' prices, thereby tending to mislead the purchasing public into the belief that middlemen's profits are saved to the respondent's customers, and in that the respondent advertises and offers certain of his furniture as "walnut" when in fact said furniture is made of woods other than walnut and in imitation of genuine walnut wood, all in alleged violation of section 5 of the Federal Trade Commission act. Status: At issue.

Complaint No. 1151.—Federal Trade Commission *v.* Robert Lewis, an individual doing business under the trade name and style Great Eastern Wholesale Furniture Co. Charge: Unfair methods of competition are charged in that the respondent retailer falsely advertises that his furniture is sold at wholesalers' prices, thereby tending to mislead the purchasing public into the belief that middlemen's profits are saved to the respondent's customers; and in that the respondent advertises and offers certain of his furniture as "walnut" when in fact said furniture is made of woods other than walnut and in imitation of genuine walnut wood, all in alleged violation of section 5 of the Federal Trade Commission act. Status: At issue.

Complaint No. 1152.—Federal Trade Commission *v.* M. Goldberg, an individual doing business under the trade name and style "Factory-to-You Furniture Store." Charge: Unfair methods of competition are charged in that the respondent retailer advertises and sells his furniture as from "Factory-to-You" when in fact the respondent is not a manufacturer but purchases for resale, and in that the respondent advertises certain of his furniture as "mahogany" or "walnut" or "genuine leather" when in fact said furniture is made of woods other than mahogany or walnut or is covered or upholstered with material other than leather, and in imitation of genuine mahogany, walnut, or leather, respectively, thereby tending to mislead and deceive the purchasing public as to price and quality, in alleged violation of section 5 of the Federal Trade Commission act. Status: At issue.

Complaint No. 1153.—Federal Trade Commission *v.* The National Association of Stationers & Manufacturers of the United States, its officers and members, et al. Charge: Unfair methods of competition are charged in that the respondent associations of stationery manufacturers and dealers entered into a combination and conspiracy with the purpose, intent, and effect of discouraging, stifling, and suppressing competition in the wholesale and retail stationery trade and of enhancing the prices of such goods by (a) establish-

ing and maintaining a National Catalogue Commission for the preparation and distribution of lists of standard minimum retail prices; (b) establishing and maintaining local committees to further the purposes of the National Catalogue Commission; (c) inducing manufacturers to adopt the recommendations of the National Catalogue Commission and to increase their list prices, enlarge trade discounts and standardize resale prices; (d) endeavoring to compel the adoption of said minimum prices and standard retailers' discounts; (e) securing the adoption of standard cost-keeping methods which have the effect of inflating costs as a basis for the gross margins to be secured and the resale prices to be recommended; (f) encouraging refusal to sell to price cutters; (g) by inducing dealers to boycott manufacturers not in harmony with the policies of the respondents and give preference to cooperating manufacturers; (h) circulating false and derogatory statements concerning the quality of goods and business methods of those who refuse to adopt the respondents' recommendations; (i) inducing manufacturers to refuse to sell to the so-called irregular dealers, transient dealers and brokers; (j) endeavoring to eliminate competition between the various branches of the trade and discriminating in favor of manufacturers who abstain from selling direct to consumers; (k) gathering and disseminating information in aid of the enforcement of the aforesaid policies and excluding from membership in the respondent association all retailers not in harmony with said policies, all in alleged violation of section 5 of the Federal Trade Commission act. Status: At issue.

Complaint No. 1154.—Federal Trade Commission v. L. Plucus and Benjamin Blainstein, partners doing business under the trade names Louben Furniture Co. and the Big G Furniture Warehouse. Charge: Unfair methods of competition are charged in that the respondent retailers falsely indicate that they are the manufacturers of the furniture which they in fact buy for resale, and in that they advertise certain of their furniture as "mahogany" or "walnut" or "genuine blue leather" or "imperial leather," when in fact said furniture is made of woods other than mahogany or walnut or is covered or upholstered with materials other than leather, said materials being in imitation of genuine mahogany, walnut, or leather, respectively, thereby tending to mislead the purchasing public as to price and quality, in alleged violation of section 5 of the Federal Trade Commission act. Status: At issue.

Complaint No. 1155.—Federal Trade Commission v. Western Silver Works (Inc.). Charge: Unfair methods of competition are charged in that the respondent's practice of using the word "Sheffield" or "Sheffield plate" in designating its silver-plated ware which is not manufactured in Sheffield, England, nor of the quality of genuine Sheffield silver and Sheffield plate, tends to mislead and deceive the purchasing public as to the value and quality of said product, in alleged violation of section 5 of the Federal Trade Commission act. Status: At issue.

Complaint No. 1156.—Federal Trade Commission v. Hemill Silverware Co. Charge: Unfair methods of competition are charged in that the respondent's practice of using the word "Sheffield" or "Sheffield plate" in designating its silver-plated ware which is not manufactured in Sheffield, England, nor of the quality of genuine Sheffield silver and Sheffield plate, tends to mislead and deceive the purchasing public as to the value and quality of said product, in alleged violation of section 5 of the Federal Trade Commission act. Status: At issue.

Complaint No. 1157.—Federal Trade Commission v. Benedict Manufacturing Co. Charge: Unfair methods of competition are charged in that the respondent, engaged in the manufacture and sale of silver-plated ware, stamps its products with the words "Quadruple plate," thereby tending to create the false impression that its ware have been coated or plated four times and to induce the purchase of its product in preference to competitors' commodities of similar quality not misrepresented, in alleged violation of section 5 of the Federal Trade Commission act. Status: At issue.

Complaint No. 1158.—Federal Trade Commission v. W. A. L. Silver Manufacturing Co. Charge: Unfair methods of competition are charged in that the respondent, engaged in the manufacture of silver-plated ware in the City of New York, stamps its silverware with the words "Sheffield," "Sheffield plate," or other similar designations containing the word "Sheffield," thereby tending to create the false impression that its silver-plated ware was manufactured in Sheffield, England, and is of the high quality associated with genuine Sheffield silver and Sheffield plate, in alleged violation of section 5 of the Federal Trade Commission act. Status: At issue.

Complaint No. 1159.—Federal Trade Commission *v.* I. Weisenfreind and B. Lieberman, partners, doing business under the trade name and style Century Silver Manufacturing Co. Charge: Unfair methods of competition are charged in that the respondents, engaged in the manufacture of silver-plated ware in the city of New York, confuse and mislead the purchasing public by stamping their wares with such designations as "Sheffield," "Sheffield plate," "Quadruple plate," "Guaranteed Dutch silver," any and all of which are misrepresentative of the manufacture, quality, and value of the respondent's products in alleged violation of section 5 of the Federal Trade Commission act. Status: At issue.

Complaint No. 1160.—Federal Trade Commission *v.* A. L. Wagner Manufacturing Co. Charge: Unfair methods of competition are charged in that the respondent, engaged in the manufacture of silver-plated ware in the city of New York, stamps its silverware with the words "Sheffield," or other similar designations containing the word "Sheffield," thereby tending to create the false impression that its silver-plated ware was manufactured in Sheffield, England, and is of the high quality associated with genuine Sheffield silver and Sheffield plate, in alleged violation of section 5 of the Federal Trade Commission act. Status: At issue.

Complaint No. 1161.—Federal Trade Commission *v.* Abraham Ash, doing business under the trade name and style Abraham Ash Co. Charge: Unfair methods of competition are charged in that the respondent by designating his silver-plated ware as "Sheffield plate made in U. S. A." falsely indicates that said product is of the quality associated with Sheffield silver and Sheffield plate made by the silversmiths of Sheffield, England, thereby tending to mislead and confuse the purchasing public, in alleged violation of section 5 of the Federal Trade Commission act. Status: At issue.

Complaint No. 1162.—Federal Trade Commission *v.* The Rialto Silver Plated Ware Co. (Inc.). Charge: Unfair methods of competition are charged in that the respondent, engaged in the manufacture of silver-plated ware in the city of New York, stamps its silverware with the words "Sheffield," "Sheffield plate," or other similar designations containing the word "Sheffield," thereby tending to create the false impression that its silver-plated ware was manufactured in Sheffield, England, and is of the high quality associated with genuine Sheffield silver and Sheffield plate, in alleged violation of section 5 of the Federal Trade Commission act. Status: At issue.

Complaint No. 1163.—Federal Trade Commission *v.* Keystone Metal Spinning & Stamping Co. Charge: Unfair methods of competition are charged in that the respondent, engaged in the manufacture of silver-plated ware in the city of New York, confuses and misleads the purchasing public by stamping its wares with such designations as "Sheffield," "Sheffield plate," and "Quadruple plate," any and all of which are misrepresentative of the manufacture, quality, and value of the respondent's products, in alleged violation of section 5 of the Federal Trade Commission act. Status: At issue.

Complaint No. 1164.—Federal Trade Commission *v.* The Best Foods (Inc.), The Nucoa Butter Co., a corporation. Charge: Unfair methods of competition are charged in that the respondent, engaged in the manufacture and sale of a substitute for butter, contracts for the sale of its product and the prices to be charged therefor on the condition that the purchaser thereof shall not deal in similar products manufactured by competitors, thereby tending to create a monopoly in alleged violation of section 3 of the Clayton Act, and in that it employs a system of fixing and maintaining specified standard resale prices, refusing to sell to price cutters and using cooperative methods for the maintenance of said prices, also granting resale privileges in certain territories and providing free advertising and the service of specialty salesmen on agreement by its customers that competitors' products will not be dealt in, thereby tending to hinder and obstruct competition, in alleged violation of section 5 of the Federal Trade Commission act. Status: In course of trial.

Complaint No. 1165.—Federal Trade Commission *v.* James A. McCafferty Sons Manufacturing Co. (Inc.). Charge: Unfair methods of competition are charged in that the respondent, engaged in the manufacture and sale of paint and paint products, advertises and sells one of its products as "Gold seal combination white lead," when in fact said product contains no sulphate or carbonate of lead in amount greater than 3 per cent of the total ingredients of said product, thereby tending to mislead and deceive the purchasing public as to the quality of said product, in alleged violation of section 5 of the Federal Trade Commission act. Status: At issue.

containing no lemon juice or citric acid or properties tending to produce bleaching or whitening, labels and advertises its products by featuring prominently the word "lemon" and implies that said products contain lemon juice or citric acid, thereby tending to mislead the purchasing public as to the quality and properties of said toilet preparations, in alleged violation of section 5 of the Federal Trade Commission act. Status: Awaiting answer.

Complaint No. 1180.—Federal Trade Commission v. Holly Sugar Corporation, Southern California Sugar Co., Santa Ana Sugar Co., Alameda Sugar Co., and S. W. Slusheimer. Charge: It is charged that the respondent, S. W. Slusheimer, is ineligible to act as director of any two or more of the respondent corporations and that his service in that capacity constitutes a violation of section 8 of the Clayton Act. Status: At issue.

Complaint No. 1181.—Federal Trade Commission v. Holly Sugar Corporation. Charge: It is charged that the respondent by acquiring the stock or share capital of the Southern California Sugar Co., Santa Ana Sugar Co., and Alameda Sugar Co., tends to substantially lessen competition, to restrain commerce, and to create a monopoly in commerce in beet sugar, in alleged violation of section 7 of the Clayton Act. Status: At issue.

Complaint No. 1182.—Federal Trade Commission v. Holly Sugar Corporation, Southern California Sugar Co., and E. A. Carlton. Charge: It is charged that the respondent E. A. Carlton, is ineligible to act as director of both the respondent corporations and that his service in that capacity constitutes a violation of section 8 of the Clayton Act. Status: At issue.

Complaint No. 1183.—Federal Trade Commission v. Philip Carey Manufacturing Co., Philip Carey Co., Waring Underwood Co., Pioneer Asphalt Co., Western Elaterite Roofing Co. Charge: Unfair methods of competition are charged in that the respondents, in the manufacture or sale of asphalt paving joints, entered into a combination and undertaking to suppress competition by entering into uniform license agreements and by establishing and observing uniform prices for the sale of said product, thereby denying purchasers the advantages in price which they would enjoy under conditions of natural and normal competition, in alleged violation of section 5 of the Federal Trade Commission act. Status: At issue.

Complaint No. 1184.—Federal Trade Commission v. Philip Carey Manufacturing Co., Philip Carey Co. Charge: Unfair methods of competition are charged in that the respondents' practices of entering into exclusive contracts whereby competitors bind themselves not to deal in the products of any competitor of respondents tends to substantially lessen competition in the sale of asbestos and asphalt products, and asphalt paving joints particularly, and to create a monopoly of such commerce in the hands of the respondents, in alleged violation of section 5 of the Federal Trade Commission act and section 3 of the Clayton Act and in that the respondents make disparaging statements concerning competitors' products, business methods, and financial responsibility, practice espionage, threaten and intimidate customers of competitors, thereby causing them to break existing contracts, and threaten infringement suits without intention of bringing such suits, said persecution and harassment against competitors being calculated and intended to prevent sales of said competitors' paving joints, in alleged violation of section 5 of the Federal Trade Commission act. Status: At issue.

Complaint No. 1185.—Federal Trade Commission v. Tivoli-Union Co., John C. Cavos. Charge: Unfair methods of competition are charged in that the respondents, engaged in the sale of a malt beverage named "Flag-Staff malt beverage," simulate the trade name, brand, and labels of the Falstaff Corporation, long established and favorably known as a manufacturer of malt beverages, thereby tending to mislead the purchasing public into the belief that the respondent's beverage is identical with that of the beverage manufactured by the said Falstaff Corporation, in alleged violation of section 5 of the Federal Trade Commission act. Status: Awaiting answer.

Complaint No. 1186.—Federal Trade Commission v. The Good-Grape Co., a corporation. Charge: Unfair methods of competition are charged in that the respondent, engaged in the manufacture and sale of a sirup for beverages, labels and advertises its product with the name "Good-Grape," and otherwise indicates that it is composed of the juice of the natural fruit of the grape when in fact said product is not made of the juice of the grape, thereby tending to mislead the purchasing public as to the quality of its product and to stifle and suppress competition in the sale of beverages made in whole or in part of juice from the natural fruit of the grape and to divert the trade from truthfully marked goods,

in alleged violation of section 5 of the Federal Trade Commission act. Status: At issue.

Complaint No. 1187.—Federal Trade Commission v. Franklin Coal Co. Charge: Unfair methods of competition are charged in that the respondent sells its coal as "Mt. Olive coal" and "Mt. Olive district coal," thereby tending to mislead the consuming public to believe that the respondent's coal is the favorably known product of the Mount Olive district, in the State of Illinois, when in fact the respondent's coal is not derived from said Mount Olive district, in alleged violation of section 5 of the Federal Trade Commission act. Status: Awaiting answer.

Complaint No. 1188.—Federal Trade Commission v. James Heddon's Sons, a corporation. Charge: Unfair methods of competition are charged in that the respondent, engaged in the manufacture of fishing tackle, artificial bait, and allied products, enforces a merchandising system adopted by it of fixing and maintaining certain specific uniform prices for the resale of its products, refusing to supply price cutters and employing cooperative means and methods for the enforcement of said resale prices, in alleged violation of section 5 of the Federal Trade Commission act. Status: Awaiting answer.

Complaint No. 1189.—Federal Trade Commission v. Interwoven Stocking Co. Charge: Unfair methods of competition are charged in that the respondent adopted a merchandising system of fixing and maintaining certain specified uniform prices for the resale of its hosiery, refusing to supply price cutters and employing cooperative means and methods for the enforcement of said resale prices, in alleged violation of section 5 of the Federal Trade Commission act. Status: Awaiting answer.

Complaint No. 1190.—Federal Trade Commission v. U. S. Sanitary Specialties Corporation. Charge: Unfair methods of competition are charged in that respondent causes to be sent to competitors and to customers of competitors letters of warning advising the recipients that the manufacture, sale or use of competitors' products is an infringement of respondent's patent and threatening to institute legal proceedings unless recipients discontinue the manufacture, sale or use of said competing products, in alleged violation of section 5 of the Federal Trade Commission act. Status: Awaiting answer.

Complaint No. 1191.—Federal Trade Commission v. Furniture Manufacturers' Show Rooms (Inc.). Charge: Unfair methods of competition are charged in that respondent, engaged in the purchase and resale of furniture and having no factory of his own, sells and advertises such furniture as "direct from the factory," thereby tending to mislead the purchasing public to believe that in dealing with the respondent they are buying direct from the manufacturer and saving the profits of middlemen, and in that respondent represents and sells as mahogany, furniture made of woods other than mahogany, all in alleged violation of section 5 of the Federal Trade Commission act. Status: At issue.

Complaint No. 1192.—Federal Trade Commission v. Kritzer (Inc.). Charge: Unfair methods of competition are charged in that respondent engaged in the resale of furniture which he has purchased, for the most part, from manufacturers other than those of Grand Rapids, Mich., by using the trade name "Furniture manufacturers warehouse" and falsely advertising that he is a sales agent for furniture manufacturers of Grand Rapids, Mich., tends to mislead the purchasing public to believe that in dealing with the respondent they are buying direct from the manufacturer and saving the profits of middlemen, in alleged violation of section 5 of the Federal Trade Commission act. Status: Awaiting answer.

Complaint No. 1193.—Federal Trade Commission v. Grand Rapids Sales Co. Charge: Unfair methods of competition are charged in that respondent, engaged in the resale of furniture which he has purchased for the most part from manufacturers other than those of Grand Rapids, Mich., by using the trade name "Grand Rapids Sales Co." and falsely advertising that he is a sales agent for furniture manufacturers of Grand Rapids, Mich., tends to mislead the purchasing public into the belief that in dealing with the respondent they are buying direct from the manufacturer and saving the profits of middlemen, in alleged violation of section 5 of the Federal Trade Commission act. Status: Awaiting answer.

Complaint No. 1194.—Federal Trade Commission v. M. H. Powers Co. (Inc.). Charge: Unfair methods of competition are charged in that respondent, engaged in the resale of furniture which he has purchased for the most part from

manufacturers other than those of Grand Rapids, Mich., falsely advertises that he is a sales agent for furniture manufacturers of Grand Rapids, Mich., thus tending to mislead the purchasing public into the belief that in dealing with respondent they are buying direct from the manufacturer and saving the profits of middlemen, in alleged violation of section 5 of the Federal Trade Commission act. Status: Awaiting answer.

Complaint No. 1195.—Federal Trade Commission v. Nathan Tannebaum, trading as Capitol Furniture Distributing Co. Charge: Unfair methods of competition are charged in that respondent, engaged in the resale of furniture which he has purchased for the most part from manufacturers other than those of Grand Rapids, Mich., falsely advertises that he is a sales agent for furniture manufacturers of Grand Rapids, Mich., together with statements to the effect that furniture buyers save 40 to 50 per cent by buying direct from the manufacturer, thus tending to mislead the purchasing public into the belief that in dealing with respondent they are buying direct from the manufacturer and saving the profits of middlemen, in alleged violation of section 5 of the Federal Trade Commission act. Status: Awaiting answer.

Complaint No. 1196.—Federal Trade Commission v. Wisconsin Wholesale Grocers' Association, James D. Godfrey, individually and as president of said association; M. J. Brew, individually and as first vice president of said association; Mitchell Joannes, individually and as second vice president of said association; Francis E. Dewey, individually and as treasurer of said association; Francis J. Reckert, individually and as secretary of said association; Glass-Turbush Co.; Otto L. Kuehn & Co. Charge: Unfair methods of competition are charged in that respondents have agreed to confine the distribution of groceries and allied products to "regular" and "legitimate" channels of trade, to wit, from the producer or manufacturer to the wholesaler, from the wholesaler to the retail dealer, and to fix uniform wholesale prices and to prevent price cutting, the said agreement, enforced by intimidation, coercion, and boycotting, tending to suppress and hinder competition and to obstruct the natural flow of commerce, in alleged violation of section 5 of the Federal Trade Commission act. Status: Awaiting answer.

Complaint No. 1197.—Federal Trade Commission v. Northern Jobbers' Club, Walter H. Gander, individually and as president of said club, Leland Joannes, individually and as secretary-treasurer of said club, Glass-Turbush Co., Otto L. Kuehn & Co., the Zinke Co., Bemis Hooper Hays Co., F. B. Ives Co., S. C. Shannon Co., J. F. Rappl Co., the Copps Co., Wilson Mercantile Co., Marshfield Grocer Co., Booth Newton Co., Joannes Bros. Co., Frank C. Schilling Co., Breiling Innes Co., National Grocer Co., Gannon Grocery Co., Roach & Seeber Co., the Peninsular Wholesale Grocery Co., Carpenter-Cook Co. Charge: Unfair methods of competition are charged in that respondents have agreed to confine the distribution of groceries and allied products to "regular" and "legitimate" channels of trade, to wit, from the producer or manufacturer to the wholesaler, from the wholesaler to the retail dealer, and to fix uniform wholesale prices and to prevent price cutting, the said agreement, enforced by intimidation, coercion, and boycotting, tending to suppress and hinder competition and to obstruct the natural flow of commerce, in alleged violation of section 5 of the Federal Trade Commission act. Status: Awaiting answer.

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JAMES J. DAVIS, Secretary

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ETHELBERT STEWART, Commissioner

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1926



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DECISIONS OF COURTS AND OPINIONS AFFECTING LABOR: 1926

INTRODUCTION

Beginning with the year 1912 the Bureau of Labor Statistics has published annual bulletins presenting decisions of courts and opinions affecting labor, with the exception of the years 1919-1920 and 1923-1924 when the bulletins were biennial. Prior to 1912 this material had appeared in the bimonthly bulletins of the bureau and its predecessors.

As the title indicates, the subject matter is such decisions by the State and Federal courts as are adjudged to be of definite interest to students of the relations of employer and employee and the conditions of industry, including opinions of the Attorney General of the United States construing and applying the Federal labor laws. It would be neither practicable nor desirable, from any standpoint, to reproduce all the decisions, or to present those selected in all their details. Abridged statements of the facts, attempting particularly to bring out such items as are of special interest from the standpoints indicated, are followed by the conclusions reached by the courts, expressed either in the language of the courts or in that of the editors.

For the most part decisions appearing in the sources used—i. e., the National Reporter System and the Washington Law Reporter—for the calendar year 1926 are reproduced, though in a few cases later decisions have been noted on account of their application to points involved in cases presented, or for other reasons.

Workmen's compensation continues to afford the most fruitful source of material, the courts being still called upon in numerous instances to give construction to this recently adopted form of legislation. That employers' liability is not entirely superseded thereby is evident from the considerable number of cases that still arise under this system, though many of them relate to railroad employments to which the compensation laws do not, in the main, apply. An outstanding decision in admiralty completely reverses the previously accepted position as to the status of longshoremen under the seamen's acts; however, the effect of this decision is greatly minimized, if not destroyed entirely, by reason of the enactment of the longshoremen's compensation act of March 4, 1927. The development of a

harmonious and intelligible body of laws with regard to labor organizations continues, even though the line can not be regarded as a straight one nor the progress steady. Nevertheless, it is only from a study of such decisions as are presented in this bulletin and in preceding bulletins that the student of the legal aspects of the labor problem (in so far as judicial activities are concerned) can discover the trends of growth and the tendencies toward a recognition of legal personality that seems to be manifested.

The sources from which the material of this bulletin has been obtained are as follows:

Supreme Court Reporter, volume 46, page 108, to volume 47, page 217.
Federal Reporter, volume 8 (2d), page 321, to volume 15, page 608.
Northeastern Reporter, volume 149, page 657, to volume 154, page 192.
Northwestern Reporter, volume 206, page 1, to volume 210, page 1007.
Pacific Reporter, volume 241, page 1, to volume 250, page 992.
Atlantic Reporter, volume 131, page 145, to volume 135, page 240.
Southwestern Reporter, volume 277, page 1, to volume 237, page 1119.
Southeastern Reporter, volume 130, page 305, to volume 135, page 608.
Southern Reporter, volume 106, page 81, to volume 110, page 368.
New York Supplement, volume 212, page 353, to volume 218, page 400.
Washington Law Reporter, volume 54.
Opinions of the Attorney General, volume 35, pages 1-158.

OPINIONS OF THE ATTORNEY GENERAL

HOURS OF LABOR—EIGHT-HOUR LAW—PILOTS—PANAMA CANAL—
Opinions of Attorney General, volume 35, page 73 (June 11, 1926).—
The President requested an opinion of the Attorney General as to whether or not the eight-hour law provided for by an act of Congress of August 1, 1892, as amended by the act of March 3, 1913, applied to pilots employed aboard ships in the Panama Canal and adjacent waters. The acts referred to provide that eight hours shall constitute a day's work for all laborers and mechanics employed by the Government or by a contractor for the Government. The acts, however, do not apply to persons employed in connection with dredging or rock excavating in any river or harbor of the United States or the District of Columbia while not directly operating machinery or tools.

Pilotage through the Panama Canal was made compulsory by Executive Order of February 2, 1914, that order requiring all vessels to take Government pilots. The time required to pass through the canal varies from 6½ to 14 hours.

Rule 30 of Executive Order No. 4314, dated October 27, 1925, defines the pilot's responsibilities, in part, as follows: "The pilot is to be considered on board solely in an advisory capacity, but the master of a vessel must obey all the rules and regulations of the canal as interpreted by the pilot."

The Attorney General held that the act in question by its terms is limited to "laborers and mechanics"; that a pilot is neither a laborer nor a mechanic, nor are his duties similar thereto; that the duties of a pilot are supervisory and directory and are solely maritime in nature. He then said that the act of March 3, 1913, chapter 118, (37 Stat. 732), relating to officers of vessels subject to the inspection laws of the United States, has no application to pilots.

I am of the opinion, therefore, that Panama Canal pilots are not laborers or mechanics within the meaning of the act of August 1, 1892, as amended, and are not subject to the eight-hour limitation on hours of service.

WORKMEN'S COMPENSATION—UNITED STATES EMPLOYEES' COMPENSATION COMMISSION—POWERS—MEDICAL AND SURGICAL AID—
Opinions of Attorney General, volume 35, page 36 (February 4, 1926).—
Congress passed an act in 1916 (39 Stat. 742) providing compensation for the disability or death of an employee of the United States resulting from a personal injury sustained while in the performance of duty.

A commission was created by the act with the power of making the necessary rules and regulations for its enforcement, and with power to decide all questions arising under the act. Section 9 provides that when an employee is injured within the provisions of the act, the United States shall furnish him reasonable medical, surgical, and hospital services and supplies, unless he refuses to accept them, and if necessary for the securing of proper medical, surgical, etc., treatment, the employee, in the discretion of the commission, may be furnished transportation at the expense of the employees' compensation fund. The question submitted by the President to the Attorney General was whether the language of section 9 includes authority to furnish artificial limbs, artificial eyes, and other prosthetic appliances which in the opinion of the commission are necessary for the rehabilitation of such injured employee.

In the course of his opinion the Attorney General pointed out and dwelt somewhat at length on the intent and purposes of Congress in enacting the Federal compensation act, holding that the fundamental purpose of the act was a humanitarian one and that it should be administered with regard to its purpose. The case of *Olmstead v. Lamphier* (104 Atl. 488), decided by the Supreme Court of Connecticut, was cited and the opinion quoted from, in part, as follows:

Our act contemplates the furnishing of all the medical and surgical aid that is reasonable and necessary. The purpose of this provision is to restore the injured employee to a place in our industrial life as soon as possible by the use of all medical and surgical aid and hospital service which the ordinary usages of the modern science of medicine and surgery furnish. Humanity and economic necessity in this instance are in harmony in working for the accomplishment of the individual and of the public welfare.

It was held that the quoted paragraph admirably stated the purpose of the workmen's compensation act of Connecticut and was fully applicable to the Federal employees' compensation act. In concluding his opinion, the Attorney General said:

Keeping in mind the humanitarian purpose of said act, and giving due weight to the opinion of the Supreme Court of Connecticut in construing language of similar import, the conclusion reached inevitably must be that the purpose and intent of section 9 is to include within its scope artificial limbs and other prosthetic appliances which, in the opinion of the commission, are reasonable and necessary to the treatment and rehabilitation of injured and disabled Federal employees.

I have the honor to advise you, therefore, that section 9 of the Federal employees' compensation act contemplates the furnishing to injured and disabled employees, at the expense of the United States, artificial limbs, artificial eyes, and other prosthetic appliances, deemed reasonable and necessary for the treatment and rehabilitation of such employees by the United States Compensation Commission.

DECISIONS OF THE COURTS

ALIENS—SEAMEN—NATURALIZATION—RESIDENCE—*In re Jansson*, Supreme Court of the District of Columbia (January 4, 1926), 54 Washington Law Reporter, page 41.—Bror Alfons Jansson, a Swede, having followed the occupation of a seaman for many years, and as such having served on American merchant vessels for the requisite number of years, on June 3, 1922, while in an American port, declared his intention to become an American citizen. This gave him the status and protection of a citizen of the United States, under section 4, subdivision 8, of the act of June 20, 1906, which provides in part that an alien shall "be deemed a citizen of the United States for the purpose of serving on board any such merchant or fishing vessels of the United States, anything to the contrary in any act of Congress notwithstanding." Jansson continued to serve on American vessels until September, 1925, and while in an American port on February 24, 1924, he was admitted to the United States as an immigrant for permanent residence. Almost immediately thereafter, however, he renewed his occupation as a seaman on American vessels and continued in that work for more than a year and a half thereafter.

The Government contended that Jansson could not make a valid declaration of his intention until he had been admitted as an immigrant for permanent residence and then "only in the district in which such alien resides," under section 4, subsection 1, of the law. Mr. Justice Siddons construed this to mean that such a seaman "must first secure admission as an immigrant for permanent residence, establish a residence somewhere in the United States, and make his declaration in the district in which he has thus established his residence."

The question arose as to what was meant by "residence" in the case of an alien seaman in the class under consideration. Under the terms of section 4, subsection 7, the supreme court was of the opinion that such an alien seaman could be admitted to citizenship without proof of residence in this country for five years, or, apparently, at all, if "such residence can not be established."

Mr. Justice Siddons, speaking for the court, in conclusion said:

In the court's opinion the intention of Congress in such cases, is to confer citizenship on alien seamen, not on admitted immigrants for permanent residence. And to give such seamen the status and protection afforded by the quoted provision of the act, and finally full citizenship, it does not require residence in the United States as a necessary prerequisite in all cases.

In the pending case we have an applicant who has been a seaman on United States merchant vessels for the required period of time, who has declared his intention to become a citizen of the United States, who has been, in addition, though unnecessarily, a resident of the United States for nearly two years, and who now asks that he be admitted to citizenship.

The court is of the opinion that he is legally entitled to be admitted and an order will be signed to this effect.

CONTRACT OF EMPLOYMENT—BONUS—EMPLOYMENT AT WILL—*Andrews v. Belleman, Supreme Court of South Dakota (April 5, 1926), 208 Northwestern Reporter, page 175.*—Action was brought by Gladys Andrews to recover \$100 from the defendant, which she alleged he promised her as a bonus. The plaintiff alleged in her petition that she entered the employment of the defendant in March, 1919, at an agreed wage of \$3.50 per day for candling eggs and \$4 per day for picking chickens; that the defendant promised to raise her pay to \$5 per day when she became proficient; that in October, 1920, the defendant made a further promise that instead of an increase in wages to \$5 per day he would give her a bonus of \$100 at the termination of her employment. She terminated her employment April 9, 1923, and asked for but was denied the bonus.

There was judgment for the plaintiff, and from an order denying a motion for a new trial the defendant appealed. He contended that the evidence was insufficient to support a verdict for the plaintiff. The court held that the case came squarely within the rule announced in *Russell v. H. W. Johns-Manville Co.* (53 Cal. App. 572, 200 Pac. 668; see Bul. No. 309, p. 213). In that case the decision was that the promise of a bonus was in the nature of a gratuity; that it did not in any way change the status of the employee who was suing, and therefore judgment in his favor could not be sustained.

Judge Polley, speaking for the court, said in part:

The contract shown by plaintiff lacks the essential element of a valid consideration. The most that can be said for it is that it is an unexecuted promise of a gift or gratuity, and cannot be the basis of an enforceable right.

The judgment and order appealed from were therefore reversed, one judge dissenting, holding that, as the jury had found evidence to support the claim, the judgment should not have been disturbed.

CONTRACT OF EMPLOYMENT—BONUS—RIGHTS OF DISCHARGED EMPLOYEE—*Pontius Shoe Co. v. Lamberton, Supreme Court of Colorado (October 26, 1925), 241 Pacific Reporter, page 542.*—William J. Lamberton was employed by the Pontius Shoe Co. as a salesman

under a contract at a fixed rate per week, the employer "reserving the right to discharge the second party at any time it might see fit." Below the signatures to the contract was a statement signed by the company setting forth a bonus plan, payable semimonthly, based on sales in excess of an allotted quota value. This statement contained a provision that:

In the event that any salesman shall voluntarily leave the employ of the company, or in the event that any salesman shall be discharged or dismissed for any cause whatever within the sole judgment of the company, then any bonus which shall otherwise be payable to any salesman shall be forfeited to the company for its own use and benefit and such salesman shall have no claim whatever upon the company for such bonus.

Lamberton and two others were discharged in the autumn of 1923, he becoming the assignee of the claims of his fellow employees. A bonus was due at the time of the discharge, but no payments were made thereon and action was brought to secure such payment. The court below found in favor of the plaintiff, but on a writ of error the case was taken to the supreme court, where the judgment was reversed and directions given to dismiss the action. The contract was said by the court to be "nothing more than an announcement of the policy of the defendant. Its forfeiture provisions seem harsh but we can act only upon the contract which the parties have made." The company announced that the bonus was given "only as a gratuity," and the court found no case among those brought to its attention "which gave an employer such latitude as that given by the contract here involved." No ground for the plaintiff's suit appearing, the case was dismissed.

In a case before the Supreme Court of Arizona it was held that a promise of a bonus made by one member of a partnership, over the protest of the other member, was not binding on the latter in the event of the death of the former before the promise was fulfilled. (*Warren v. Mosher* (1926), 250 Pac. 354.)

CONTRACT OF EMPLOYMENT—"BREACH"—DISSOLUTION BY DEATH OF PARTNER—*Shumate v. Sohon et al.*, *Court of Appeals of District of Columbia* (May 3, 1926,) 12 *Federal Reporter* (2d), page 825.—Bernard M. Bridget and Samuel Rosenthal, doing business under the firm name of Bridget & Rosenthal, had for a number of years employed Bailey Shumate as assistant manager of their business. On June 1, 1915, the partnership agreement expired, and the partners by a written instrument renewed it for a period of eight years. One of the provisions of the new contract was that, in the event of the death of either of the partners, the survivor should continue the business in the firm name for a period of 90 days, during which period the interest of the deceased partner was to be ascertained, and if the survivor elected

to take over the assets and continue the business he could do so by paying to the estate of the deceased the amount of his interest in the business; otherwise the business was to be closed out and the liquidated assets divided ratably between the survivor and the deceased's estate. There was also a stipulation in the contract that Bailey Shumate was to be continued in the employ of the firm for a period of five years at a specified compensation, and a written contract to that effect was entered into between Shumate and the firm. Rosenthal died on December 16, 1917, and Bridget continued the business for about 90 days, during which time Shumate continued to render the same service as before. At the expiration of the 90 days Bridget took over the assets of the firm and almost immediately sold out to a stranger without making any provisions for the employment of Shumate, who thereupon brought suit for breach of contract and claimed judgment against Bridget in the sum of \$49,171.44. From a judgment for defendant, plaintiff appealed. The court of appeals, on review of the case, said in part:

The death of Rosenthal on December 16, 1917, caused a dissolution of the copartnership then existing between the two partners as fully as if both partners had died upon that day. Moreover, in the instant case the partnership business as such was not continued beyond the period permitted by the partnership agreement, but was in effect closed out and terminated conformably with that agreement.

If the employee dies the employer has no remedy against his estate. His death puts an end to the contract. It is but just that the same results shall follow from the death of the employer. The principle is still more obvious in the case of a copartnership, which is dissolved by operation of law when one of the partners dies.

The court then cited a number of cases wherein the holdings have been in accordance with its view. The opinion concluded:

It is true that the authorities are not uniform upon this subject [citing cases]; but the foregoing doctrine is sustained by the greater weight of authority and by the better reasoning. It distinctly applies to the facts in this case. Accordingly we conclude that the contract of July 2, 1915, was not breached by Bridget, and that the ruling of the lower court was correct.

The judgment of the lower court was affirmed with costs.

A similar conclusion was reached in a case where the plaintiff was induced to purchase a truck under a promise to employ him for a period of one year to haul lumber for the defendant. After some weeks the defendant sold its business, and gave notice that it would have no more hauling, whereupon the plaintiff sued for breach of contract. The California district court of appeal found no violation of the contract, as there was no covenant not to sell the business, in the absence of which there was no obligation. No implication of this effect appearing in the contract, there was no liability. (*Langenberg v. Guy* (1926), 247 Pac. 621.)

CONTRACT OF EMPLOYMENT—COLLECTIVE AGREEMENT—RECOVERY FOR WRONGFUL DISCHARGE—*St. Louis, B. & M. Ry. Co. v. Booker, Court of Civil Appeals of Texas (June 20, 1926), 287 Southwestern Reporter, page 130.*—T. F. Booker entered the employment of the defendant railroad company on September 20, 1919, as a car inspector, under a contract of employment entered into with the Brotherhood of Railway Carmen, which contained the following provisions:

RULE No. 37. An employee who has been in the service of the railroad 30 days shall not be dismissed for incompetency, neither shall an employee be discharged for any cause without first being given an investigation.

RULE No. 38. If it is found that an employee has been unjustly discharged or dealt with, such employee shall be reinstated with full pay for all lost time.

Booker was discharged on November 30, 1920, and the defendant refused to reinstate him upon his application to the proper officials. The matter was submitted to the Railroad Labor Board, which found that the plaintiff had been wrongly discharged and ordered that he be immediately restored to his former position, and that he make out a statement showing the time lost by him because of the wrongful discharge and the amount earned by him in other employment.

The plaintiff returned to work and in due time rendered his account of wages due him under the contract of employment, the amount being \$1,712.74, which the defendant refused to pay. The plaintiff thereupon brought suit in the district court to recover that amount, with interest and costs. There was a directed verdict for the defendant company, and the plaintiff appealed and a new trial was granted. From the order granting a new trial the defendant appealed.

The court of appeals, in affirming the order appealed from, said in part:

We think it clear that the evidence was sufficient to sustain a finding by the jury that the contract of employment between plaintiff and defendant existing at the time of his discharge contained the provision that if he was wrongfully discharged he would be entitled to recover from defendant the wages due him for the time lost by his wrongful suspension from the service, less any amount he might have earned during that time. The testimony of plaintiff that he was wrongfully discharged and subsequently reinstated, and as to the amount lost by him by reason of his discharge, is not contradicted.

As we construe the pleadings and understand the evidence, the motion for new trial was properly granted, and the judgment should be affirmed.

The judgment was therefore affirmed.

CONTRACT OF EMPLOYMENT—DISCHARGE FOR INCOMPETENCY—TERM—IMPLIED CONDITIONS—*Robertson et al. v. Wolfe, Court of Appeals of Kentucky (June 8, 1926), 283 Southwestern Reporter, page 428.*—R. D. Wolfe sued the defendants for damages in the amount of \$700, less a credit of \$150. He alleged that he was hired by the defendant in November, 1923, as a bookkeeper at a monthly salary of \$175, the employment to continue until May 1, 1924; that he was wrongfully discharged at the end of the month of December; and that he made diligent effort to procure other work but was able to earn only \$150. The defendants contended that the plaintiff was employed only for a part of November and for the month of December, with the understanding that his employment was to cease if his services were not satisfactory, or the defendants sold out. Evidence was offered which showed that a substantial part of the plaintiff's work was incorrect, and therefore liable to cause the defendants considerable loss. Judgment was in his favor in the trial court, from which the defendants appealed. The Court of Appeals of Kentucky, speaking through Judge Clay, said in part:

There is an implied condition in every contract of service that the employee is competent to discharge the duties for which he is employed, and an employer may refuse to continue in his employ any person who has shown himself to be incompetent or inefficient. Under this rule the discharge of a bookkeeper before the time fixed by the contract of employment will not render his employer liable in damages, where his incompetency is such as to subject his employer to the danger of repeated losses and seriously affect his standing in the business world.

Judgment was reversed and the cause remanded for a new trial in conformity with this opinion.

Where a railroad conductor was discharged under imputations of dishonesty, he being notified of the discharge while on a run, so that he was compelled to ride as a passenger while in uniform, causing alleged humiliation and mental suffering, a judgment for damages was reversed by the Supreme Court of North Carolina on the ground that there was no slander, assault, or trespass of any sort, the discharge having taken place in the office to which he was ordered to report. "Under these conditions, the law imposes on the defendant no liability for the remote and collateral consequences resulting from inferences or deductions that may have been drawn by the public from the situation of the plaintiff." (*Elmore v. Atlantic Coast Line R. Co. (1926), 131 S. E. 633.*)

CONTRACT OF EMPLOYMENT—EMPLOYEE'S INVENTION—RIGHTS OF EMPLOYER—*Toledo Machine & Tool Co. v. Byerlein, United States Circuit Court of Appeals (December 11, 1925), 9 Federal Reporter (2d), page 279.*—Arthur A. Byerlein entered into a contract of employment in writing with the Toledo Machine & Tool Co. on March 1, 1918, for a period of five years. His duties were to be those of a chief

engineer, and he agreed to assign to the machine company any ideas, patents, or patentable features developed or invented by him pertaining to their line of product during the life of the contract. He continued to work for the company for some 20 days after the expiration of the contract, and then made an oral contract with Mr. Hinde, president of the company, the terms and conditions of which were the same as in the prior contract, except as to salary, which was increased, and the duration of the employment. He continued to work under the latter agreement for about six and one-half months, and during this period of his employment he conceived and developed the patentable idea or invention which was the subject of the suit. He then quit the machine company's employ and accepted a similar position with a competing company, and shortly thereafter the Toledo Machine & Tool Co. made demand on him to assign to it the application for the patent. On his refusal to do so a bill in equity was filed to enjoin him from selling or assigning the invention or the use thereof to others, and also for an injunction requiring its assignment to the machine company. Byerlein denied the extension of the original contract or that he entered into a new contract with the machine company. The bill was dismissed by the district court and the machine company appealed. On the appeal the decree was reversed and the court said in part:

From the evidence of both Hinde and Byerlein it is conclusive that some agreement was made by which Byerlein was to continue in the employ of the company at an increased salary for either a definite or indefinite term of service. The only question is as to the terms and conditions of the contract under which he continued in its employ.

There is no theory consistent with honesty and fair dealing upon which Byerlein could reasonably have believed that his employer was offering him an increase in salary for the performance of less service than he agreed to perform in the original contract. When Hinde said to him that his salary would be increased, either \$50 a month or to \$6,000 a year, he knew that Hinde was offering to him the proposition to pay this increased salary for the performance of the same service, and when he said, "Thank you, sir," and continued in plaintiff's employ, he accepted this proposition as clearly as if Hinde had stated to him in detail the services that would be required of him, word for word as it was written in the original contract, and he had replied, "I accept your proposition."

We do not consider the claim made by Byerlein that he developed this patentable idea at nights as of the slightest importance. Certainly under the written contract it would make no difference what time in the day or night such ideas were developed, and in the opinion of this court the terms of the oral contract under which Byerlein continued in the company's employ are exactly the same, except as to the duration of the employment and the salary to be paid.

The decree was therefore reversed and the cause remanded, with instructions to enter a decree in accordance with the opinion.

Quite similar circumstances existed in another case, *Conway v. White* (C. C. A. 1926, 9 Fed. (2d) 863), where a mechanical engineer, under contract to convey to the employing company all right, title, and interest in his inventions and discoveries, used or capable of being used in its business, was held bound to convey to an assignee of a trustee of the company, which had become bankrupt, a useful invention for which patents had been obtained. The court here said that: "It is, of course, well-settled law that a contract to sell or transfer a patented right, like a contract to sell real estate, may be specifically enforced."

The contracts in the foregoing cases were entered into at the time of entrance upon employment, and retained in force during the employment. In a case before the New York Court of Appeals (*National Cash Register Co. v. Remington Arms Co.* (1926), 151 N. E. 144), a contract made at the beginning of the employment was found to contain such a term, but on renewal this provision was held to have been omitted, so that no assignment of a patented invention could be enforced. Much more, in the absence of any agreement, the courts will protect the employee, even though employed as a foreman of the manufacturing department of his employer's plant, from any attempt to compel a transfer of the patent to the employer, no right accruing to the employer other than a license or shop right for the use of the patented invention in his own plant, which right "the employee may be estopped to deny, by the fact of his employment and his conduct in relation to the use of the inventions by his employer." (*Manton-Gaulin Mfg. Co. v. Colony* (Mass., 1926), 151 N. E. 71.) Nor will it suffice to procure of an employee under a general contract an agreement to assign an invention after he has entered upon the employment, no added consideration being offered, either by way of salary or term of employment. "The contract is unilateral in the truest sense, * * * so vague, uncertain, indefinite, unequal, unilateral, and deficient in fairness and justice as to require that its specific performance be denied." (*Goodyear Tire & Rubber Co. v. Miller* (U. S. D. C., 1926), 14 Fed. (2d) 776.)

CONTRACT OF EMPLOYMENT—ENFORCEMENT—INJUNCTION TO PREVENT DISCHARGE—*Hewitt v. Magic City Furniture & Mfg. Co., Supreme Court of Alabama* (March 18, 1926), 107 Southern Reporter, page 745.—On March 16, 1925, R. D. Hewitt entered into a contract with the defendant company whereby he was to be given \$60 per week drawing account, and at the end of 12 months was to be given 10 shares of stock of the par value of \$1,000. There was a provision that in the event the parties severed their connections the plaintiff was to be paid \$1,000 in cash for his stock within 30 days. In consideration of the foregoing the plaintiff was to be superintendent and take charge of the production at the defendant's factory. On December 9, 1925, plaintiff was discharged, and he filed a bill in equity praying for an injunction to restrain defendant from discharging him. He set forth in his petition that, by the performance of his part of the contract, he would have the opportunity to make a reputation in the business world that could not be estimated in dollars and cents, and therefore he had no adequate remedy at law. From a decree for defendant, plaintiff appealed. The court, in affirming the decree of the lower court, held that there was a lack of mutuality

of an equitable remedy in that the plaintiff owed no obligation to the defendant that he might not abandon at his pleasure and the defendant would be remediless. In its opinion the court referred to the class of cases, some of which it cited, in which it was held that where the services to be rendered were of a peculiar kind and were not to be obtained from anyone else, the courts had granted relief. The opinion delivered by Judge Sayre was in part as follows:

Whether as superintendent, employee, or servant, his services are merely personal, no matter how dignified or responsible they may be, and the court of equity can not undertake to enforce the performance of such services.

For the reasons indicated, we are clear to the conclusion stated above that there is no equity in appellant's bill, and that the temporary injunction prayed was properly denied.

The decree was therefore affirmed.

CONTRACT OF EMPLOYMENT—ENFORCEMENT—POWER OVER SUB-CONTRACTOR—SPECIFIC PERFORMANCE—*Dahlstrom Metallic Door Co. v. Evatt Construction Co.*; *Evatt Construction Co. v. Dahlstrom Metallic Door Co.*; *Eliot v. Dahlstrom Metallic Door Co.* *Supreme Judicial Court of Massachusetts (June 14, 1926)*, 152 *Northeastern Reporter*, page 715.—In October, 1922, the trustees of the Boston Chamber of Commerce Realty Trust, so called, entered into a contract with the Evatt Construction Co. for the erection of the new chamber of commerce building in Boston, which contained the following provision:

The architect may from time to time, by an instrument in writing signed by him and approved by the owner in writing, order the contractor to make any changes in the work; but shall otherwise have no power to make any change in this contract. In case the changes thus ordered make the work less expensive to the contractor, a proportional deduction shall be made from the contract price above specified; and, in case said changes make the work more expensive, a proportional addition shall be made to said contract price.

The contract among other things called for installation of elevators essential to the building. The work of fabricating and installing the elevator inclosures and doors was let to the Dahlstrom Metallic Door Co., herein called the defendant, and it agreed to be bound by the same terms, requirements, liabilities, and conditions that the contractor was subject to; and in addition agreed that should it at any time refuse or neglect to supply a sufficient number of properly skilled men or sufficient proper material or fail in any of its agreements, the contractor was to have the right to terminate the contract, enter upon the premises, and take possession, for the purpose of completing the work, of all materials, tools, etc., and to employ any other person or persons to finish the work and to provide material therefor. The

defendants also agreed to discontinue the employment on the work of any of its employees that were not satisfactory to the contractor. The ironworkers on the building threatened a strike unless allowed to install the elevator fronts and doors. The contractor thereupon notified the defendant that it would expect the work to be done by the ironworkers. That notice was disregarded by the defendant, who appeared with carpenters to do the work, and upon being refused permission to proceed with the work, withdrew and refused to deliver the material that had been specially fabricated for the job. The contractor replevined the material and the defendant re-replevined it and brought a bill to compel the contractor to allow it to be installed by carpenters. A cross bill was brought to enjoin further interference, and to compel the defendant to deliver the balance of the materia. From a decree dismissing the bill and a decree on the cross bill for the contractor, the defendant appealed.

Of the several assignments of error made, only one, that dealing with specific performance, is important for the purpose here used, and in speaking of this the court said in part:

The subcontractor under his contract was bound by the change in the principal contract for the reason that he specifically agreed to be bound by it, and was required to supply the material with a proper adjustment of the contract price. It is plain that on the finding of the court the contractor under its cross bill is entitled to specific performance. The materials were designed and made for use in the chamber of commerce building; they were limited in number and could not readily be used in any other building; they could not have been purchased in the open market. To have had them manufactured elsewhere would have caused serious delay in the construction of the building to the great damage of the contractor as well as of the owners. The contractor would not have an adequate remedy at law. Equity will specifically enforce a contract relating to chattels, if the remedy at law for damages would be inadequate, and grant relief for delivery of a thing wrongfully withheld.

A final decree, with some modifications, was rendered for the contractor.

CONTRACT OF EMPLOYMENT—ENGAGING IN SIMILAR BUSINESS—
INJUNCTION—TRADE SECRETS—*Ice Delivery Co. of Spokane v. Davis*,
Supreme Court of Washington (March 4, 1926), 243 *Pacific Reporter*,
page 842.—The Ice Delivery Co. of Spokane, engaged in manufacturing
and selling ice, had in its employ as iceman and driver of a delivery
wagon one Newell S. Davis. Davis, who delivered ice to customers on
what was known as Rockwood route, was, with the exception of a short
period in 1920, employed continuously from June 1, 1919, to October
2, 1924, when he quit. On March 10, 1925, he commenced work for

a competitor of the plaintiff company. The company brought suit for an injunction to restrain Davis from serving or attempting to serve the same route formerly covered by him, or a part of it, or from soliciting the patronage of those whom he had formerly served while in its employ. An emergency restraining order was issued, but subsequently dissolved and the action was dismissed, whereupon the plaintiff appealed.

The plaintiff cited and relied on the case of *John Davis & Co. v. Miller* (177 Pac. 323, 104 Wash. 444). In that case Vincent D. Miller had been employed by John Davis & Co., engaged in a loan, real estate, and insurance agency, for sixteen years, in the last eight of which he stood in a confidential relation to the head of the business, by virtue of which all the secrets, prospects, and plans of the company were confided to him. Upon leaving the employment of the Davis company, he induced two other employees of the company to become employees of a company he organized to compete with John Davis & Co. The court said of that case that it was one "of being bent on mischief in the nature of a positive fraud against John Davis & Co." against which equity would give protection, but held that there was no parallel between the Davis case and the one under consideration. In that respect Judge Mitchell, speaking for the court, said in part:

Not so in the present case, where there was no scheme, plan, fraud, or expression on the part of the respondent, who, months after concluding the employment of the appellant, took employment in an orderly fashion with another. * * * For him to be compelled to give up all the friends and business acquaintances made during his previous employment would tend to destroy the freedom of employees and reduce them to a condition of industrial servitude. Customers are not necessarily trade secrets, nor are they property. In this case the customers were fixed and settled in a known district, and the fact of their being patrons of the appellant was in no way covered up, but capable of ascertainment on behalf of the respondent's new employer, or anyone else, by an independent canvass at small expense and in a very limited period of time. To hold that the Davis case is decisive of this one would be, in our opinion, an unwarranted extension of the doctrine of that case.

The complaint in this action does not state facts sufficient to entitle the appellant to equitable relief.

The decision of the court below was affirmed.

The decision in the foregoing case was arrived at after a very general discussion of principles and cases, and was set forth as conclusive in a later case. (*City Ice & Cold Storage Co. v. Kinnee* (October 4, 1926), 249 Pac. 782.) Here, the suggestion that a knowledge of the trade routes of an ice dealer was a trade secret and entitled to protection was rejected by the court, reversing the superior court, which had awarded an injunction and damages. The information sought to be protected was said to be in no sense like a trade secret, since it could be obtained by anyone by observation and with little trouble.

CONTRACT OF EMPLOYMENT—ENTICING LABORERS—CONSTRUCTION OF STATUTE—*Shilling v. State, Supreme Court of Mississippi (October 11, 1926), 109 Southern Reporter, page 737.*—J. R. Shilling was convicted before a justice of the peace of violating that provision of the Code of 1906, section 1146, as amended by chapter 160, Laws of 1924, which prohibits the willful interference with, enticing away, or knowingly employing a laborer of another employer or landlord who has contracted for a specific period of time. The conviction was affirmed by the circuit court of Bolivar County, and the defendant appealed.

There was no proof that the defendant knew or that he had any intimation that the laborer whom he had hired was under contract to work for the plaintiff, and in fact the laborer told him that he was free to go where he pleased. The plaintiff, however, contended that it was immaterial under the statute whether or not the defendant knew of the contract, and that if he did anything to induce the laborer to leave his employment he was guilty.

It was held by the court to be extremely doubtful whether the construction of the statute as contended for by the plaintiff could be upheld under the fourteenth amendment, since it would tend to abridge the right of contract, by making one contract at his peril in his business, by imposing liabilities and criminal prosecution that might be utterly destructive of his liberty and his business. The judgment below was therefore reversed, and the defendant discharged.

Judge Ethridge, speaking for the court, said in part:

We do not think the legislature intended to penalize a person for making a contract where he acts innocently. In our opinion the inducement must be consciously made—that is, it must be made with the knowledge of the existence of the preceding contract and before it is amended by the laborer.

CONTRACT OF EMPLOYMENT—LIFE EMPLOYMENT—LIABILITY OF PROMOTERS—CONSIDERATION—BREACH—*Mt. Pleasant Coal Co. et al. v. Watts, Appellate Court of Indiana (March 11, 1926), 151 Northwestern Reporter, page 7.*—The plaintiff, Francis M. Watts, owned a 30-year lease on 80 acres of coal land in Vigo County, Ind., which he assigned to the Mt. Pleasant Coal Co. through the promoters of that corporation. It was agreed that if he would assign the lease they would form a corporation with a paid-up capital stock of \$25,000; that in consideration of his assigning the lease they would set aside for him one-sixth of the capital stock, allow him a credit of \$2,000 on it, and loan him the money without interest, for the balance on the condition that he repay it out of dividends accruing on all his stock

and \$2 per day out of his salary as mine boss and superintendent of the mine proposed to be opened. It was further agreed that the plaintiff was to be employed by the corporation as mine boss and superintendent at \$8 per day steady employment during the remainder of his natural life.

Watts brought suit for damages for breach of the contract, alleging that the defendants constructed a mine on the land covered by the lease and had been operating thereunder ever since the assignment; that they refused to issue to him the stock promised or to loan him the money with which to purchase it as agreed, and that he was discharged as mine boss and superintendent after two months' service, without cause. There was a general denial by each of the defendants. There was a trial by jury which resulted in a verdict for the plaintiff for \$10,000, from which the defendants appealed. Of the several assignments of error, the court considered mainly the question of whether or not the contract of the promoters was binding on the corporation, and whether the evidence sustained the verdict.

Judge Nichols, who delivered the opinion of the court affirming the judgment, said in part:

It may be conceded that if the promoter's contract was not made primarily for the benefit of the corporation, and if the corporation does not adopt it or promise to perform it, there would be no liability on the part of the corporation to perform. But where as here the promoters of a corporation make a contract in the interest of the contemplated corporation, if such corporation, when organized recognizes and adopts it, it then becomes the contract of the corporation.

It will hardly be questioned that in this case the contract was primarily made for the benefit of the corporation, and that it knowingly received the benefits thereof.

We have carefully examined the evidence as set out in appellant's brief, and have to say that, while we might not have reached the same conclusion as to its preponderance as the jury reached, there is evidence to sustain the verdict, and it is not for this court to weigh the same. It is altogether probable that the jury, in determining the preponderance of evidence, considered the circumstance that at the beginning of the negotiation between appellee and appellants appellee had a valuable coal lease on 80 acres of land, and that when he was discharged appellants had the lease and he had received nothing therefor except compensation for services which he had theretofore rendered for the company. The verdict cannot be disturbed for insufficiency of the evidence.

The judgment was therefore affirmed.

CONTRACT OF EMPLOYMENT—PROMISE TO MEET FUTURE WAGE INCREASE—EVIDENCE—*Golden v. Salkeld Coal Co., Supreme Court of Appeals of West Virginia (April 6, 1926), 132 Southeastern Reporter, page 751.*—Dewey Golden was employed by the Salkeld Coal Co. as a motorman. The mine was nonunion, but on March 31, 1922, the

day before a strike was called in all union mines in the neighborhood, its employees called on the manager demanding the union rate of pay. He told them that he would call the main office and ascertain its attitude. On the following day he told the men that if they would continue working they would be paid any excess if wages were advanced; but if not, there would be no deduction.

The union rate went into effect August 1, 1922, being higher than the former rate. Golden had quit work on June 2, and filed a claim for the difference between what he had received while employed and the new scale. He assigned his claim to George Ensminger, who brought action on it before a justice of the peace. Judgment was for the plaintiff and the defendant appealed to the circuit court, which affirmed the judgment. The case came before the supreme court of appeals on a writ of error and the judgment of the lower court was affirmed.

The two issues raised by the record were: (1) What were the terms of the contract? and (2) Did the manager of the company have authority to make it? The court, after reviewing the evidence pertaining to the contract, found it to be in conflict, and held that in view of such conflict the matter was properly left to the jury for its determination. As to the question of the authority of the manager to make the contract, the court found that, after taking the demands of the miners up with the company, he had informed the men that if they would not quit work they would receive back pay in accordance with the scale fixed by the United Mine Workers, and that the company had paid claims of other employees, all of which the court held tended to show that the manager had authority to make the contract. The conclusion of the court was that the case had been fairly tried and properly submitted to a jury, and the verdict would not be disturbed by the court of appeals.

CONTRACT OF EMPLOYMENT—TERM—MONTHLY CONTRACT—DISCHARGE—SUIT TO RECOVER WAGES—*Crater Oil Co. v. Voorhies, Court of Civil Appeals of Texas (February 5, 1926), 280 Southwestern Reporter, page 849.*—T. J. Voorhies was employed by the Crater Oil Co. as an oil-well driller at a salary of \$300 per month. He began work on June 15, was paid at the end of the month, and continued to work until July 3, when he was discharged and paid up to and including July 4. He protested his discharge and insisted that he should be permitted to work and be paid for the remainder of July. This being refused, he brought suit against the company for \$260, as balance of wages claimed to be due him for the month, and recovered judgment for that amount in the county court. Defendant appealed on the ground that the plaintiff was not employed for any definite length of time,

and that even though he was employed by the month his month's services ended on July 15, and it would therefore owe him for only 11 days or \$110.

The court, speaking through Judge O'Quinn, said in part:

It appears that appellant paid him for the remainder of the month at the end of the month. There is nothing in the record to indicate that appellant paid its employees weekly or semimonthly, so that we think that appellant's paying appellee at the end of June for the services performed in June indicated that it thus recognized that a new month of service would and did begin on the 1st of July. While there is a sharp conflict in the authorities, the rule as established by the weight of authority, and which is followed in Texas, is that a contract of employment from month to month is a contract for a definite period of time, and can be terminated only at the end of a month, except by consent of the parties.

The judgment was therefore affirmed.

EMPLOYERS' LIABILITY—ADMIRALTY—STEVEDORE—NEGLIGENCE OF FELLOW SERVANT—FEDERAL STATUTE—*International Stevedoring Co. v. Haverty, Supreme Court of the United States (October 18, 1926), 47 Supreme Court Reporter, page 19.*—R. Haverty, an employee of the International Stevedoring Co., was engaged in stowing freight in the hold of a vessel at dock in the harbor of Seattle. Through the negligence of the hatch tender, also employed by the defendant, in not warning the plaintiff that a load of freight was about to be lowered it came down upon Haverty and he was badly hurt. He brought action in the State court, seeking a common-law remedy. There was judgment for the plaintiff, which was affirmed by the supreme court of the State, and the defendant brought a writ of certiorari for review by the United States Supreme Court.

The defendant pleaded the defense of fellow service and cited a number of cases, among which were *The Hoquiam* (253 Fed. 627, 165 C. C. A. 253) and *Cassil v. United States Emergency Fleet Corporation* (C. C. A., 289 Fed. 774; see Bul. No. 391, p. 46). It contended that the ruling of the courts in the instant case was contrary to the established doctrine, and referred to an intimation of the United States Supreme Court that whether the established doctrine be good or bad it is not open to the courts to do away with it upon their personal notions of what is expedient.

The court held that Congress had changed the rule by the act of June 5, 1920, chapter 250, paragraph 20 (41 Stat. 988, 1007; Comp. St., sec. 8337a), which reads as follows:

Any seaman who shall suffer personal injury in the course of his employment may, at his election, maintain an action for damages at

law, with the right of trial by jury, and in such action all statutes of the United States modifying or extending the common-law right or remedy in cases of personal injury to railway employees shall apply.

Mr. Justice Holmes, who wrote the opinion of the court, said in part:

It is not disputed that the statutes do away with the fellow-servant rule in the case of personal injuries to railway employees. The question therefore is how far the act of 1920 should be taken to extend.

It is true that for most purposes, as the word is commonly used, stevedores are not "seamen." But words are flexible. The work upon which the plaintiff was engaged was a maritime service formerly rendered by the ship's crew. We cannot believe that Congress willingly would have allowed the protection to men engaged upon the same maritime duties to vary with the accident of their being employed by a stevedore rather than by the ship. If they should be protected in the one case they should be in the other. In view of the broad field [in] which Congress has disapproved and changed the rule introduced into the common law within less than a century, we are of opinion that a wider scope should be given to the words of the act, and that in this statute "seamen" is to be taken to include stevedores engaged as the plaintiff was, whatever it might mean in laws of a different kind.

The judgment was therefore affirmed.

EMPLOYERS' LIABILITY—ASSUMPTION OF RISK—TUBERCULOSIS CAUSED BY WORKING IN UNHEALTHFUL PLACE—*Wager v. White Star Candy Co. (Inc.)*, Supreme Court of New York, Appellate Division, (July 2, 1926), 217 New York Supplement, page 173.—Frances E. Wager, employed by the White Star Candy Co. (Inc.), developed tuberculosis as a result of her surroundings during her working hours. She brought an action against her employer for damages and recovered judgment for \$2,000. From an order denying defendant's motion to set aside the verdict and to direct a new trial, the defendant appealed. The plaintiff alleged in her complaint that she was required to work in a damp, unsanitary cellar from June, 1924, to October, 1924, and from October, 1924, to December, 1924, she was required to work on the first floor in a room which was not properly heated; that she was subjected to drafts; that she contracted a hacking cough and became incapacitated. Physicians swore that the plaintiff was suffering from tuberculosis in December, 1924, and that the development of the tubercular condition was directly attributable to her surroundings during her working hours.

The defendant urged that the plaintiff's sole remedy lay in her filing a claim under the workmen's compensation law (Laws 1922, ch. 615, sec. 10), which provides as follows:

Every employer subject to this chapter shall in accordance with this chapter secure compensation to his employees and pay or pro-

vide compensation for their disability or death from injury arising out of and in the course of the employment, without regard to fault as a cause of the injury.

The court, after reviewing that portion of the workmen's compensation act defining "injury" and "personal injury" and applying the definitions to the facts in the instant case, said in part:

If there is no accident, there is no liability, and no remedy under the law. In such case the law is not exclusive, and the common-law remedy, if any there be, may be employed. This plaintiff sustained no accidental injury, since there was no sudden occurrence referable to a definite time or place. We think, therefore, that the plaintiff was not debarred, by the provisions of the workmen's compensation law, from bringing this action.

Nevertheless, we think she must fail in her action. The plaintiff was fully aware of the conditions under which she worked and continued in the employment from June to December in spite of such knowledge. It is from her testimony that we learn that the walls of the cellar were wet to the touch; that the cesspool backed up liquids which wet the floor; that the cellar was devoid of windows to light or air it; that dead rats were left about; that the odors were vile; that the plaintiff worked in a drafty place; that the upstairs room was damp. It is common knowledge that such conditions are deleterious to health.¹ The plaintiff was chargeable with such knowledge. We think that the plaintiff, as a matter of law, assumed the risk attendant upon her remaining in the employment, and that the recovery may not stand.

The order and judgment were reversed on the law, with costs, and the complaint dismissed.

EMPLOYERS' LIABILITY—COMPETENT FELLOW SERVANTS—EMPLOYMENT OF FOREIGNERS—SAFE PLACE TO WORK—NEGLIGENCE—*Courtois v. American Car & Foundry Co., Court of Appeals, Missouri (April 6, 1926), 282 Southwestern Reporter, page 484.*—Francis Courtois was employed by the American Car & Foundry Co. as a common laborer and was engaged, along with two Americans, Gibson and Mosby, and three Mexicans, in assorting some steel rails. The Mexicans were unable to understand or comprehend the English language and were guided in a great measure in their work by the movements of the Americans. When a rail was carried to the

¹In connection with this decision, it may be noted that the laws of New York direct that all factories and other workplaces "be so constructed, equipped, arranged, operated, and conducted as to provide reasonable and adequate protection to the lives, health, and safety of all persons employed therein" (Con. L., ch. 31, sec. 300); that "every part of a factory building and of the premises thereof and plumbing therein, shall at all times be kept in a safe and sanitary condition and in proper repair" (*Idem*, sec. 291); that "every workroom in a factory shall be provided with proper and sufficient means of ventilation, natural or mechanical, or both, as may be necessary, and there shall be maintained therein a proper and sufficient ventilation and proper degrees of temperature and humidity at all times during working hours" (*Idem*, sec. 299). Furthermore, an employee assumes only the necessary risks of the occupation or employment, "including those risks, and those only, inherent in the nature of the business which remain after the employer has exercised due care in providing for the safety of the employees, and has complied with the laws affecting or regulating such business or occupation for the greater safety of such employees." (Sec. 4, ch. 74, Con. L., added 1921, ch. 121.)

designated place the foreman would say "Drop it," whereupon the Americans would let loose their hold, and the Mexicans, observing their conduct, would let go also. At the time in question a rail some 23 feet in length and weighing 600 to 700 pounds was being carried. The ground over which the plaintiff was obliged to walk was covered with pig iron, and the foreman observing that he was walking with difficulty, said "Be careful," whereupon the Mexicans, although they had not reached the designated place, released their hold on the rail and a second or two later Gibson and Mosby dropped it, causing the plaintiff to stumble over the pig iron and fall. He was struck upon his right side by the rail as it rebounded, injuring him. He brought an action for damages for his injuries and alleged that the defendant was negligent in employing foreigners who did not understand the English language and in not furnishing a safe place to work. He recovered judgment in the sum of \$1,700 in the circuit court of St. Louis County, from which the defendant appealed. It was argued that the employment of foreigners who could not understand the English language for use in common labor was not negligence. Judge Bennick, speaking for the court of appeals said in regard to this:

In so far as we have been able to determine, this precise question is a matter of first impression in Missouri. We concede, however, as a general rule of law, that defendant's argument is well taken. To hold that an employer might not employ men of foreign birth who are unable to understand and speak the English language would be discriminatory and unjust and contrary to a public policy which has invited such labor to our shores. That the mere employment of such persons is not negligence has been held by eminent and respectable courts. However, this rule, as in the case of all others, has its exceptions. The real issue involved concerns the competency of the employees for the particular tasks to which they are assigned, upon which question our own courts have often spoken. It has been properly held in this State that the master must use ordinary care in employing and retaining competent and suitable servants, that this is a personal duty resting upon him, and that he is liable for a failure to perform such duty when the failure results in an injury to a fellow servant.

Extending the rule, therefore, to its logical conclusion, we are of the opinion that, where laborers are engaged in work (as in the case at bar) which requires cooperation, coordination, and action in response to spoken orders, and which is unsafe in the absence of such elements, as defendant's own evidence tended to show, it is negligence for the master to employ servants who do not understand the language used by the foreman.

The defendant pointed out that the proximate cause of the plaintiff's injury was the action of Gibson and Mosby in dropping the rail, and also that it was not proven that the place of employment was unsafe, but the court held that these were matters for the jury. The judgment of the circuit court was affirmed.

EMPLOYERS' LIABILITY—COMPETENT FELLOW SERVANTS—INTOXICATED EMPLOYEE—NEGLIGENCE—CONTRIBUTORY NEGLIGENCE—*Reed v. Koch, Court of Appeals, Missouri (March 2, 1926), 282 Southwestern Reporter, page 515.*—Inez Reed brought suit to recover damages for personal injuries received about October 25, 1923, while in the employ of the defendant. At the time of his injuries the plaintiff was engaged in driving a team of three horses which were being used to aid in pulling and loading a wheel scraper. The team was attached to the scraper by means of a hook put through the end of the tongue on the scraper. A second team driven by another employee, Archie Wilkerson, was attached to the scraper. When it was filled the teams were stopped and the plaintiff stepped in front of the rear team to unhook his team and drive it aside, when Wilkerson slapped his team and yelled "Get up." The horses moved forward and one of them stepped on the plaintiff's foot causing him to throw up his hand, striking his thumb over the hame and mashing and bruising it. Blood poisoning set in as a result of the injury to the thumb. The plaintiff alleged that Wilkerson was addicted to the use of intoxicants, which the defendant knew, or by reasonable exercise of ordinary care should have known; that he was drinking at the time of the accident; and that the defendant negligently retained him in his employment.

The defendant set up a general denial and also a plea of contributory negligence. The cause was tried twice in the circuit court before a jury, finally resulting in a verdict and judgment for the plaintiff in the sum of \$2,500, from which judgment defendant appealed. It was argued that the fact that the plaintiff continued to work with and around Wilkerson after having knowledge of his drinking was sufficient to charge him with contributory negligence.

The court, after reviewing and quoting from the opinions of numerous cases decided in the courts of Missouri in which the question of contributory negligence was in issue, said in part:

It follows as a corollary to this proposition that in considering the question of a servant's contributory negligence, his conduct in continuing to work with a fellow servant whom he knows to be incompetent is to be judged according to the danger he should reasonably apprehend would result from such incompetency in view of the particular kind or character of work in which the servants may be engaged. For instance, a servant would be expected to apprehend greater danger in constructing a paved road, when working in front of a cement-mixing machine carrying on the end of its boom a heavy load of cement if it were operated by an incompetent engineer, than he would if the incompetent servant with whom he had to work was simply a teamster whose work required no great degree of skill or care.

Applying the rules of law above set forth to the facts of this case, we are unable to declare as a matter of law that plaintiff was guilty of such contributory negligence as to bar his recovery.

The judgment was accordingly affirmed.

EMPLOYERS' LIABILITY—DETENTION OF EMPLOYEE IN OFFICE—FALSE IMPRISONMENT—*Weiler v. Herzfeld-Phillipson Co.*, *Supreme Court of Wisconsin* (April 6, 1926), 208 *Northwestern Reporter*, page 599.—Adeline Weiler was employed by the defendant company as a clerk in its department store. It appeared that certain facts and circumstances had cast some doubt on her fidelity to her employer, and on December 14, 1922, she was called into the office of the assistant manager and there confronted by him with certain articles of merchandise that he alleged she had sold and appropriated the money received therefor to her own use. She was detained for approximately three hours behind closed, but not locked, doors and all the while was being urged by the manager to confess to the charges and was told by him that unless she did confess he would call the patrol and send her to jail. Upon her continued refusal to confess, the manager dictated a confession which she signed. She brought action against the company charging it with false imprisonment, slander, and assault and robbery. The jury found for the plaintiff on the charges of false imprisonment and slander. The court set aside the verdict in so far as it applied to the cause of action for slander and rendered judgment against the defendant for \$500. From that judgment the defendant appealed.

The question considered by the supreme court was whether or not the evidence given in the trial court was sufficient to sustain a charge of false imprisonment. The court defined false imprisonment to be "the unlawful restraint by one person of the physical liberty of another," and said that "the true test seems to be not the extent of the restraint but the lawfulness thereof." Of this Judge Owen, speaking for the court, said in part:

While employers should be admonished that their dealings with their employees under such circumstances must be reasonable and humane, we can not adopt a rule putting an employer in jeopardy of a charge of false imprisonment when he summons to his office for an interview an employee whose conduct is unsatisfactory, or whose fidelity is under suspicion, especially where the office is one in which the employer customarily does his business, and the period of the interview is within the time for which the employee is being compensated by the employer. We conclude that the record discloses no evidence sustaining the finding of false imprisonment.

The judgment was reversed and the cause remanded, with directions to dismiss the plaintiff's complaint.

EMPLOYERS' LIABILITY—DUTY OF EMPLOYER TO GUARD AGAINST STRIKERS—NEGLIGENCE—*St Louis-San Francisco Ry. Co. v. Mills*, *United States Supreme Court* (May 24, 1926), 46 *Supreme Court Reporter*, page 520.—Odell Mills, administratrix of Ira S. Mills, deceased,

brought action in the Circuit Court of Jefferson County, Alabama, under the Federal employers' liability act against the St. Louis-San Francisco Railway Co. to recover damages on account of his death. The cause was removed to the United States District Court of Alabama, where the judgment was for the plaintiff. This was affirmed on appeal, and the defendant then brought certiorari to have the case reviewed.

It appeared that the deceased was employed at the time of his death by the defendant company as a car inspector in its railroad yards at Birmingham, Ala. There was a strike of the railroad shopmen going on at the time, and guards were employed by the company in the yard where the decedent worked, who accompanied decedent and some others to and from their homes. On August 3, 1922, while returning home from work, accompanied by a fellow workman and a guard, Mills was shot to death by strikers. The trial judge withdrew from the jury the question of negligence on the part of the guard, but left it for them to say whether upon the evidence the defendant was employed in interstate commerce at the time and place of the shooting; whether there was a duty of due care on the part of the defendant to protect the decedent from violence by strikers while going from his place of employment to his home; and whether the failure to send more than a single guard for protection was negligence causing the death. The defendant argued that the evidence did not warrant the submission of any of these questions to the jury and contended, among other objections, that there was no evidence of a breach of duty owing by it to the deceased. Mr. Justice Stone delivered the opinion of the court, reversing the judgment and said in part:

There was some evidence that, during decedent's employment, guards had been provided for employees while at work during the day, and to accompany decedent and some others to and from their homes. There was no evidence that petitioner had ever furnished decedent or any other employee with more than one guard in going to or from work, or any other evidence from which it could be inferred that petitioner had undertaken, or held itself out as undertaking, to furnish more protection to the decedent or its other workmen than it actually did furnish.

The respondent here asserts that the defendant, having assumed to do something, should have done more. But the bare fact that the employer voluntarily provided some protection against an apprehended danger, by undertaking to do something which involved no special knowledge or skill, can give rise to no inference that it undertook to do more. Respondent therefore relies on the breach of a duty which does not exist at common law, and of whose genesis in fact it offers no evidence.

There is a similar absence of evidence of negligent failure by petitioners to fulfill this supposed duty of protection. The burden of proving negligence rested on the respondent.

We need not inquire whether decedent was employed in interstate commerce at the time of his death * * * as the court below held, so as to support the judgment of the district court.

The judgment of the circuit court of appeals was reversed and the cause remanded for further proceedings not inconsistent with this opinion.

EMPLOYERS' LIABILITY—"EMPLOYEE"—NIGHT WATCHMAN FURNISHED BY THIRD PARTY—*Tilling v. Indemnity Ins. Co. of North America, Court of Civil Appeals of Texas (April 8, 1926), 283 Southwestern Reporter, page 565.*—Addie L. Tilling brought proceedings under a so-called employers' liability act, in the District Court of Texas, for compensation on account of the death of her husband, William A. Tilling, who was killed by an automobile on the night of December 31, 1924, at a point between the two parts of the plant of Horton & Horton (Inc.), in the city of Houston. The deceased was a night watchman for the firm named, and in the performance of his duties it was necessary for him to cross the street from one part of the plant to the other. At the time he was killed he had with him a watchman's clock furnished by the firm. The suit was opposed by the Indemnity Ins. Co. of North America, insurers of Horton & Horton, on the ground that the deceased was not their employee within the terms of the compensation law.

It appeared from the evidence given at the trial that Horton & Horton (Inc.) had an arrangement with the McCane Detective Agency whereby that agency furnished the watchman service for their plant. The agency employed the deceased, had control over and directed his movements, told him where to go and what to do, paid him for his service, etc. Horton & Horton had nothing whatsoever to do with these matters, and if they had occasion to make complaint about the watchman it was made to the detective agency and not to the watchman himself.

The trial court entered judgment for the defendant and plaintiff appealed. She contended that the trial court erred in holding: (1) that the deceased was not an employee of Horton & Horton (Inc.); (2) that the relationship of employer and employee did not exist between them; and (3) that the deceased was not killed in the course of his employment with the firm. The civil court of appeals, in affirming the judgment of the trial court, said in part:

The controlling question the appeal presents is, we think, whether or not at the time of the accident Tilling was an employee of the firm of Horton & Horton (Inc.) within the meaning of our compensation law (section 1, pt. 4, Vernon's Ann. Civ. St. Supp. 1918, art. 5246—82), providing:

“‘Employee’ shall mean every person in the service of another under any contract of hire, expressed or implied, oral or written, except * * * one whose employment is not in the usual course of trade, business, profession or occupation of his employer.”

“‘Employer’ shall mean any person, firm * * * or corporation * * * that makes contract of hire.”

There was no sort of privity of contract between Tilling and the Horton firm; it neither exercised any control over nor knew him as an individual in the transaction at all, not only dealing exclusively for the services it desired with an independent agency engaged in that business generally, but also depending wholly upon it for proper doing of the work so agreed upon. In such circumstances, no reason occurs to us under our Texas authorities for not holding Tilling to have been an employee of the McCane Agency, and that the latter, in turn, in so using him simply furnished the watchman's service to Horton & Horton as a turnkey job.

The conclusion that Tilling was not an employee of Horton & Horton requires an affirmation of the trial court's judgment, irrespective of the further question of whether or not he was killed while in the course of his employment. Were we called upon to determine that matter, we should hold that he was.

The judgment was accordingly affirmed.

EMPLOYERS' LIABILITY—EMPLOYEE—STATUS—SUBSTITUTE EMPLOYEE—AUTHORITY TO HIRE—*Mathis v. Western & A. R. R., Court of Appeals of Georgia (July 20, 1926), 134 Southeastern Reporter, page 793.*—This suit was brought by M. C. Mathis, administratrix of the estate of Clyde Otis Mathis, deceased, under the Federal employers' liability act (U. S. Comp. St., secs. 8657–8665) against the Western & Atlantic Railroad to recover for his death, alleged to have been caused by the negligence of the defendant's agents and servants. It was averred that at the time the decedent was injured he was an employee of the defendant railroad, and that he and the defendant were engaged in interstate commerce. The trial resulted in a nonsuit, and the case came to this court for review. The evidence showed that the decedent, at the time of receiving the injury which resulted in his death, was working as a substitute for one Boseman, an employee of the defendant, at Boseman's insistence, and that while in the act of delivering orders to the enginemen and conductor of the defendant's train he was attacked with a spell of epilepsy, and fell upon the track and the train ran over his body and killed him. There was no evidence that tended to show that the defendant or any of its agents or employees having authority to do so had anything whatsoever to do with employing the deceased.

The court, holding that the evidence failed to show that the decedent was the defendant's employee, affirmed the judgment of the trial court. Judge Bell, who delivered the opinion of the court, said in part:

The burden was on the plaintiff to prove that the relation of master and servant existed between the decedent and the railroad company on the occasion in question. The plaintiff insists (among other things) that, since the evidence shows that the arrangement between Boseman and Mathis was made with the knowledge of Baldwin, the station agent, Mathis became in law a servant of the company, entitled to the same protection as the regular servant for whom he was substituting. This is to treat Baldwin as having the authority to consent to the arrangement on behalf of the company. This he could not have done in the absence of authority to employ labor. There is nothing in the evidence to show that any such authority had been conferred upon him by the railroad company, or that his duties were of such scope that the authority could be implied. If it had appeared that he employed Boseman, whom the company had undoubtedly treated as its servant, then it might have been inferred that he was empowered to employ Mathis. The evidence as a whole failed, as a matter of law, to show that Boseman's contract of employment was made with the company through its agent Baldwin.

Under the evidence, it does not appear that Baldwin ever undertook to employ Mathis as a servant of the company; the most that is shown by the evidence being that he consented for Boseman to employ anyone that could do the work. Assuming, then, that the authority to employ, under given conditions, was conferred upon the station agent, Baldwin, he could not delegate this authority to the inferior agent, Boseman, since it involved discretion and judgment, the exercise of which the company might never have been willing to intrust to Boseman.

The judgment was affirmed.

Quite similar to the foregoing were the questions involved in the case of *Bernhardt v. American Ry. Express Co.* (1926, 218 N. Y. Supp. 123), in which the Supreme Court of New York, appellate division, reversed a judgment against the defendant for damages incurred by a bystander who responded to the request of a driver of the company's truck engaged in delivering trunks. The trunks weighed 100 to 125 pounds, said to be not heavy enough to create an emergency authorizing the driver to employ an assistant to unload them. Being without this authority, the helper was in the position of a volunteer, and in the absence of willful injury no liability would accrue.

EMPLOYERS' LIABILITY—EMPLOYER SENDING SICK EMPLOYEE HOME—NEGLIGENCE—DAMAGES FOR DEATH—*Tullgren v. Amoskeag Mfg. Co.*, Supreme Court of New Hampshire (March 2, 1926), 133 *Atlantic Reporter*, page 4.—Edwin Tullgren, as administrator and personally, brought two actions in the superior court against the defendant company. One was for negligence in causing the death of his wife, and the other for damages on that account. Both actions were transferred to the supreme court on exceptions by the plaintiff to the granting of motions for a directed verdict for the defendant and on the latter's exceptions to the admission of evidence.

It appeared that the plaintiff's intestate was employed by the defendant company at its factory, and on the day of her death became

so sick while in the performance of her employment that the overseer had her sent home by one of the employees in an automobile owned by the defendant. When the driver got within about 700 feet of the decedent's home he found the road covered with water and let her out of the automobile and left her on the road. She went by foot the rest of the way and died soon after reaching home.

The defendant contended that as both the driver and the deceased were its employees the negligence, if any, was that of the driver and that the act of sending the sick employee home was gratuitous and required care only in furnishing a suitable vehicle and driver. The court, in passing on the defendant's liability for the negligence, speaking through Judge Allen, said in part:

Liability for negligence is imposed by law, regardless of and despite the terms of the contract and the understanding of the parties.

The service being assumed, the plaintiff was entitled to receive due care in being taken home, not only in means, but in manner as well. It was important that she should be taken home in safety, and care in her travel included the conduct of the travel as well as the arrangements for it. Responsibility for actual performance of the service was as much called for as responsibility for its preparation. The duty of preparation, in furnishing a suitable vehicle and competent driver, may or may not be performed by servants.

There remains to be considered the sufficiency of the evidence to show that the driver was negligent, and that, if he was, his negligence bore causal relation to the decedent's death. If the driver was negligent, it was in leaving the decedent to go home unattended. The situation did not readily disclose that a safe passage through the water obtained. But if the water made an apparent barrier to travel by automobile, the duty to use care in getting the decedent to some suitable place was not thereby released. It was for the jury to say whether the decedent discharged further prosecution of the undertaking when the travel by automobile ended, and, if not, whether care was then exercised.

The defendant's right to a verdict does not follow merely because its negligence may have been ineffective in consequences, but, so far as consequences capable of inference from the evidence are found, it is liable.

The court held, therefore, that the plaintiff was entitled to an allowance of the exceptions claimed as to the first action, that for negligence, but that as to the second, the claim for damages, the exception would not be sustained, since "at common law the death of a human being can not be complained of as an injury."

EMPLOYERS' LIABILITY—INTERSTATE COMMERCE—EFFECT OF WORKMEN'S COMPENSATION ACT—ELECTION—*Adams v. Kentucky & West Virginia Power Co.*, *Supreme Court of Appeals of West Virginia* (June 8, 1926), *135 Southeastern Reporter*, page 662.—Aris Adams was employed by the Kentucky & West Virginia Power Co.,

a corporation engaged in producing electricity in West Virginia, which it distributes over high voltage wires through parts of West Virginia and into Pike County, Ky. The plaintiff, a lineman, was on June 10, 1923, engaged in painting the company's substation at Falls Branch, W. Va., when he came in contact with a high tension wire and sustained serious injuries. He applied for and was paid compensation under the workmen's compensation act, but later brought suit in the circuit court for damages and was awarded a verdict for \$20,000. The defendant brought error. The paramount question presented to the court was whether the defendant was protected by the workmen's compensation act.

Section 52 of the workmen's compensation act provides that the employer and employee engaged in intrastate and also interstate and foreign commerce may, if such intrastate work is clearly separable and distinguishable from interstate or foreign commerce, and such action is not forbidden by any act of Congress, voluntarily accept the provisions of the act by filing written acceptances with the commission, and such acceptances when accepted by the commission shall subject the acceptors to the provisions of the act.

The court held that the jury was justified in finding that the defendant was engaged in interstate commerce and that the substation on which the plaintiff was working at the time of his injury was part of its interstate system. It then said in part:

As the plaintiff was engaged in general work over the interstate system of defendant, the joint election or acceptance of the parties under section 52 was necessary to bring them within the provisions of the act, and to determine how much the defendant should have paid into the compensation fund, based upon "the pay roll of the employees who accept as aforesaid, for work done in this State only." We are therefore of opinion that plaintiff is not estopped by applying for and accepting current benefits under the compensation act from prosecuting his common-law remedy for damages against the defendant.

The cases relied on by counsel for the defendant as sustaining the defense of estoppel are from States in which the injured employee is given the right of election to claim the benefits under the compensation act, or sue the employer at law for damages. These cases, therefore, properly hold that the election of the employee to pursue the remedy afforded by the act constitutes a waiver of his right to sue.

As the plaintiff at the time of the injury was entitled to pursue only his remedy for damages at common law, the doctrine of estoppel by election of remedies is inapplicable.

The judgment of the circuit court was therefore affirmed.

EMPLOYERS' LIABILITY—MINOR UNLAWFULLY EMPLOYED—MISREPRESENTATION OF AGE—WORKMEN'S COMPENSATION—*Knoxville News Co. v. Spitzer, Supreme Court of Tennessee (January 19, 1926), 279 Southwestern Reporter page 1043.*—A statute of Tennessee, Public Acts of 1911, ch. 37, provides that no child under the age of 16 shall be employed, permitted, or suffered to operate or assist in operating job or cylinder printing presses operated by power other than foot power, and makes a misdemeanor to violate the act. Chapter 77, section 3, of the Acts of 1917, provides for an employment certificate to be issued by a proper person and kept on file by the employer.

Paul H. Spitzer, a boy under 16 years of age, was employed by the Knoxville News Co., and while engaged in helping change the plates on the cylinder printing press, which was operated by electricity, he suffered a crushed foot when the foreman let a section of the plate he was taking off fall on it. He brought suit for damages in the circuit court, and the jury returned a verdict for \$2,000 which was reduced to \$1,500 by the judge. On appeal to the appellate court the judgment of the circuit court was reversed and the plaintiff brought certiorari for review.

The evidence showed that the plaintiff weighed about 145 pounds, was 6 feet tall and wore a number 8 or 9 shoe, that he had been shaving, and that he represented himself to be 16 years old at the time of his employment. The defendant alleged that it believed that falsehood and on that ground contended that the question of unlawful employment should be eliminated.

The court, in the course of its opinion, cited a number of cases in which questions similar to the one here involved had been in issue and quoted from many of them. Among the cases cited was that of *Secklich v. Harris Emery Co.* (184 Iowa, 1025, 169 N. W. 325), from which it quoted as follows:

"The prohibition declared by the statute is absolute and unconditional; and one who employs a young person to perform a service thus regulated or forbidden cannot be heard to say in excuse that he was misinformed * * * or * * * deceived by apparent maturity of the person employed. To hold otherwise would be to open the door to wholesale violation of the statute" and would further insert the word "knowingly" into the statute.

It was held by the court that under the facts of this case and by the great weight of authority and in sound reason the defendant could not plead as a defense in the case that the plaintiff was estopped by his misrepresentation of his age. It is not a question of whether or not the employer thought the child was over the prohibited age, but whether or not he was. (*De Soto Coal Mining & Development Co. v. Hill*, 179 Ala. 192, 60 So. 583.)

The decree of the court of appeals was reversed and the judgment of the circuit court affirmed with costs.

The question of the applicability of the State workmen's compensation act to the case was disposed of by the court saying that "it has been settled in this State that, where a minor is employed in violation of the statutes involved in this suit, the workmen's compensation act is not applicable to bar an action for damages as a result of injuries suffered by the minor in the unlawful employment."

EMPLOYERS' LIABILITY—NEGLIGENCE—CONTRIBUTORY NEGLIGENCE—EVIDENCE—BURDEN OF PROOF—*Hussey v. Boston & M. R. R.*, Supreme Court of New Hampshire (February 2, 1926), 133 Atlantic Reporter, page 9.—Edwin C. Hussey, an employee of the Boston & Maine Railroad as a lineman, was killed by an electric shock while in the act of making repairs in the company's power house. His administratrix brought suit against the defendant for damages. The cause of the decedent's death was not disputed, but the manner in which it occurred was the main issue.

There were no eye witnesses to the accident, and it was more or less a matter of conjecture based upon the surrounding circumstances which were substantially as follows: The transformer which the decedent was required to repair was located under a balcony, which was supported by iron posts. Two ordinary electric light sockets were attached to the under side of the balcony at the rear of two of these posts and another socket and the switch controlling the current to all the light sockets were located on a southerly post. High tension wires ran from other appliances across the aisle in front of the transformers and were attached to the bottom of the balcony. One of these wires was southerly of the post carrying the switches and not under the balcony. All of the wires were slightly above the socket on the post, and the socket could not be reached by a man standing on the floor. After procuring the necessary tools, an extension light, and a stepladder, and placing the ladder near the southerly post, the decedent placed the lamp near where the work was to be done, and laid the cord alongside the aisle to the post. Shortly thereafter there was an electrical discharge and Hussey was found lying dead near the post. His hat, his head, and the palms of his hands were burned and the light cord was lying across his body. The dust was missing from the bottom of the high tension wire southerly of the post, and an insulator at that point was freshly chipped, indicating that the discharge had been at that place. On this statement of facts the jury found for the plaintiff. On the defendant's exceptions to the denial of its motions for nonsuit and for a

directed verdict and to the admission of evidence the case was transferred to the supreme court.

The court, after considering at some length the evidence in the case and arguments advanced by the defendant in support of its position, said in part:

There is abundant evidence of the defendant's fault. The location of the light socket in close proximity to the high-tension wires, when it might well have been placed two feet lower, and within easy reach of a man standing on the floor, is sufficient upon this issue.

It must be concluded that the decedent's death was caused by his head, covered by his hat, coming in contact with or close to the charged wire. It must also be found that the work he was doing could have been done without his getting any part of his person within the danger zone. The question thus presented is whether a workman employed in a dangerous situation can be thought to be acting with ordinary prudence when he fails to avoid a known and avoidable danger. It is manifest that no dogmatic rule of law can answer this query in all cases. Under some circumstances, failure to avoid must be found to be negligent.

In the present case there is no direct evidence to show how or why the decedent came within the danger zone. Cause for the contact is not established. Burns upon the decedent's hat, head, and hands tend to prove that his hands were on the metal post, presumably in the act of attaching the lamp to the socket, and that his hat touched or came near the charged wire. Why his head was within the danger zone is a matter left to conjecture. The evidence of the decedent's habitual care in the presence of charged wires tends to negative the idea of negligent contact. Any of the other suggested causes would, or might, negative the imputation of his negligence. None of these propositions is conclusively disproved by the evidence. It may be conceded that none of them is proved, and still the decision on the motion to direct a verdict must be against the defendant.

Since there was some evidence that the defendant's conduct was unreasonable, and the proof was not conclusive that the decedent's conduct was not reasonable, the case was one for the jury, and the defendant's motions were rightly denied.

The exception to expert evidence, upon the ground that there was no evidence of the existence of the conditions assumed, is unavailing, "since the jury were expressly instructed that a verdict for the plaintiff must be based upon the evidence and not upon conjecture."

The exceptions were overruled, and on a rehearing on the exceptions to the evidence, the court affirmed the former result.

EMPLOYERS' LIABILITY—NEGLIGENCE—FAILURE TO USE WAY PROVIDED—*Bennett v. Powers, Supreme Court of North Carolina (November 24, 1926), 135 Southeastern Reporter, page 535.*—This was an action for damages in which one Bennett had secured judgment in the Superior Court of Wake County. The verdict found by the jury sustained the charge of negligence on the part of defendant

Powers without contributory negligence on the part of Bennett, and a judgment of \$12,500 was awarded. The defendant, Powers, employer of Bennett, moved for a judgment as of nonsuit, which was overruled, whereupon this appeal was taken.

It appears that Bennett, a plumber, was installing a heating system in a building under construction, the floors not yet being laid. A walkway had been provided from the entrance of the building to the work place, but on leaving for dinner Bennett walked diagonally across the room stepping from sleeper to sleeper. These were about 13 inches apart and had been placed so that there was some vibration. While so proceeding Bennett fell, suffering serious injury.

The supreme court reversed the judgment on the ground that a reasonably safe means of entrance and exit had been provided, which the employee had followed in the morning, but which he departed from in his attempt to leave the building by a shorter route. On this point the court said:

Plaintiff was not injured at the place at which he was at work. Conceding that it was the duty of defendant to use due care, not only to provide for plaintiff a reasonably safe place at which to work but also reasonably safe ways by which plaintiff might pass into and out of the building, in which he was required by the terms of his employment to work, it appears from the evidence that defendant had performed this duty. Plaintiff undertook to leave the place at which he had been at work by a way which had not been provided by defendant. There is no evidence that he had been instructed by defendant or by his foreman to walk diagonally across sleepers, which were shaky or insecure, in order to get to the south door, and thence leave the building. If he had undertaken to leave the building by the same way he had entered that morning, he would not, so far as the evidence discloses, have been injured. Defendant, having exercised due care to provide a reasonably safe way for plaintiff to pass into and out of the building and thence to and from his work, had fully performed the duty which was imposed upon him by law. Plaintiff voluntarily chose another way, which he knew was hazardous. Defendant can not be held liable for damages sustained by plaintiff while leaving the building by a way not provided by defendant.

EMPLOYERS' LIABILITY—NEGLIGENCE—PROXIMATE CAUSE—USE OF PAINT GUN—*Atlantic Coast Line R. Co. v. Wheeler, Supreme Court of Appeals of Virginia (March 18, 1926), 132 Southeastern Reporter, page 517.*—This action was brought by J. L. Wheeler against the Atlantic Coast Line Railroad Co. for injury to his eyes alleged to have been due to lead poisoning caused by the negligence of the company while he was in its employ. The facts in the case were substantially these: Plaintiff, a man in splendid health and with eyesight unimpaired, was employed by the company as a carpenter,

and on August 11, 1922, against his wishes, was put to work as a painter. He informed his boss that he was not a painter; that he knew nothing about paints; and that he could not read. He was first ordered to paint cars with a brush, but later to paint them with a paint blowgun which forced the paint against the car in the form of a fine spray. The paint used contained 36.68 per cent white lead and 33.16 per cent zinc oxide. The defendant knew the paint was poisonous, and had previously purchased face masks and goggles for the protection of the operators of the blowgun. The plaintiff had never seen a blowgun or face mask and did not know that there was danger of being poisoned by the spray. The defendant did not warn him of the danger or instruct him to use the mask and goggles, and consequently the plaintiff inhaled the spray, thereby getting lead poisoning, which resulted in the loss of his eyesight. From a judgment for plaintiff the defendant appealed, on the ground that the verdict of the jury was contrary to the evidence. Judge West delivered the opinion of the court sustaining the judgment, and said in part:

When defendant's primary negligence has been established, plaintiff's right to recover does not depend upon defendant's ability to foresee or anticipate that the particular injury might result from such negligence. Under such circumstances, the defendant is liable for the natural or probable consequences of the act.

It is obvious that there was ample evidence introduced in the instant case tending to prove a different state of facts, which, if believed by the jury, would have justified a different conclusion upon the question of the defendant's primary negligence. But this was a question for the jury, and their finding against the defendant is conclusive here.

The questions of primary negligence and proximate cause having been decided by the jury in favor of the plaintiff, we can not upon the record say the verdict is contrary to the evidence or without evidence to support it.

Had the verdict been for the defendant, we could not have disturbed it, and we find nothing in the record to warrant us in reversing the judgment in favor of the plaintiff.

The judgment was therefore affirmed.

The same court had before it at a little earlier date a case in which the question of proximate cause was likewise involved, the conclusion being reached that the negligence of the employee was responsible for the injury. A gasoline torch was furnished the workman, who found it necessary to make repairs in a way familiar to him, and capable of accomplishment in a safe manner. Failure to use proper care in this respect left the torch dangerous, with fatal results. As it was found to be the decedent's duty to make the repairs, a judgment denying the employer's liability was affirmed. (*Farmer's Adm. v. Chesapeake & O. R. Co.* (1926), 131 S. E. 334.)

EMPLOYERS' LIABILITY—RAILROAD COMPANIES—FEDERAL STATUTE—ASSUMPTION OF RISKS—Looney v. Norfolk & W. Ry. Co., Supreme Court of Appeals of West Virginia (June 1, 1926), 135 South-eastern Reporter, page 262.—George Oscar Looney, an experienced engineer, had been employed by the defendant company many years, most of the time in operating loaded and empty coal cars on its main line from Williamson to Cedar, thence on a branch line to the coal plant of the Majestic Collieries Co. The coal company had a tipple built over four railroad tracks numbered 1, 2, 3, and 4. Tracks Nos. 1 and 4 were used for the delivery of empty cars, which were pushed under and then stored above the tipple, from there being dropped down for loading. Above the tipple the coal company had a car retarder used for dropping down the cars for loading as required, and under which the engines and cars used in this operation were required to pass. On January 23, 1924, when Looney, operating his engine, attempted to go under the tipple, his cab caught the pulley of the retarder and was torn from the boiler, to which it was fastened by iron bolts leaving holes in the boiler through which the steam and hot water escaped into the cab where Looney was, burning him so badly that he died as a result thereof in about two weeks. His widow brought suit for the wrongful death of her husband under section 8069, Barnes' Federal Code, (35 Stat. 65; U. S. Comp. St., sec. 8657) for the benefit of herself and their two infant children, laying the damages at \$100,000. A trial of the cause in the circuit court of Mingo County resulted in a verdict for the plaintiff in the sum of \$53,750. On the court's refusal to set aside the verdict and award a new trial, the defendant brought error.

The main proposition relied on by the defendant was that because of the long service of the deceased and his knowledge of the car retarder, and the dangers incident thereto, he must be held as a matter of law to have assumed the risk, precluding recovery in an action based on the Federal employers' liability act. In answer to that proposition, the court said in part:

It is true defendant had been employed on this branch line for several years, and we may assume, if it is not proven, that he knew of the existence of the car retarder. It does not follow from this knowledge that he knew and appreciated the danger of running his engine under the tipple. The evidence shows that another engineer, on the same day of the accident, had driven an engine of the same model and class safely under the retarder, and he and other engineers had negotiated similar train movements there many times before that. A number of engineers and firemen who had worked with Looney on the same branch for several years testified that they had never during all the years of their employment come in contact with the retarder.

It occurs to us that if the dangers of the car retarder were so open and patent as to charge Looney with notice and appreciation thereof, why was it that some of the numerous other trainmen using the tracks had not observed it and made complaint, and why some superintendent or inspector of the railway company had not done so, and rectified the condition? And is it not fair to assume that if Looney had observed and appreciated the dangers, he would have complained? He had the absolute right to assume, without knowledge to the contrary, that the defendant was furnishing him with a reasonably safe place to work.

The law as declared here and elsewhere is that an employee of a railway company assumes all the ordinary risks of his employment, but not the extraordinary risks and hazards to which the negligence of the railway company may from time to time subject him and to which he has the right to assume his employer will not expose him, and that he may act on this assumption unless the dangers are so open and apparent as to cause a man of ordinary prudence to see and appreciate them.

We are of opinion, based on the decisions cited, that the question of Looney's knowledge and assumption of risk due to the presence of the car retarder was properly submitted to the jury, and that a peremptory instruction to find for the defendant would have been erroneous. It is only where the danger is so open and obvious, and the opportunity or knowledge on the part of the employee is so complete as to leave no doubt that he knew, or should have known all about it, that the question becomes one of law for the court.

It was contended by the defendant that the verdict was excessive and that the jury should have been directed to apportion the amount allowed among the beneficiaries, but the court, after reviewing the evidence submitted as to the age, earning capacity, etc., of the deceased and the fact that he appropriated two-thirds of his earnings to the maintenance and support of his wife and children, held that it was possible to calculate by reference to mortality tables with some degree of certainty the amount of the pecuniary loss and that the amount was not so grossly excessive as to call for a reversal. It also held that the court could not assume that the jury included a greater amount for the infant children than they were entitled to under the law applicable and the facts in evidence.

Judge Miller, in concluding the opinion of the court, said in part:

The recovery here is in a lump sum, and as to how it shall be apportioned between the children will be determined no doubt hereafter by the proper tribunal.

Any doubt we may maintain on any of the questions involved, we must resolve in favor of the judgment below, for it is our duty to affirm unless the judgment is plainly wrong.

The judgment was accordingly affirmed.

In line with the reasoning in the above case, and reaching a like conclusion is a case before the United States Circuit Court of Appeals (*Davis v. Crane* (1926), 12 Fed. (2d) 355.) Here a brakeman riding on top of a long train of cars was

struck by a low bridge, one of several in the place of employment, without tell-tale warnings, and killed while riding backwards, watching for signals from the rear. Judge Kenyon gave the opinion holding the company liable, saying that the defense of assumed risks was properly submitted to the jury, the law not covering extraordinary risks resulting from the employer's negligence.

EMPLOYERS' LIABILITY—RAILROAD COMPANIES—FEDERAL STATUTE—CONTRIBUTORY NEGLIGENCE—*Talbert v. Chicago, R. I. & P. Ry. Co.*, *Supreme Court of Missouri (May 21, 1926)*, 284 *Southwestern Reporter*, page 499.—Rollin E. Talbert brought action as administrator under the Federal employers' liability act for the death of Clyde N. Lillard, who was employed as brakeman by the above-named railroad company, an interstate commerce carrier. At the time he was killed the deceased was engaged in coupling cars which were equipped with automatic couplers operated by a lever. When the car that ran over and killed him was about 25 feet from the car to which it was to be coupled, decedent stepped between the rails and took hold of the drawbar with his hands in the position of opening the knuckle, and while walking with the car his foot went down into the earth and he stumbled and fell under the car on the rail.

The plaintiff in his declaration predicated the right of action on the defective condition of the railroad's roadbed, but, after the defendant's plea, this was amended so as to charge the railroad with defective couplers on the car in question. At the close of the evidence, the court instructed the jury that if it found the facts to be as predicated in the petition, its verdict should be for the plaintiff. The jury returned a verdict for the plaintiff for \$10,000 damages on account of the death of the deceased employee, and \$2,000 for his conscious suffering, whereupon the defendant appealed. The Supreme Court of Missouri in reversing the judgment of the lower court held that there could be no recovery under the Federal employers' liability act (U. S. Comp. St., secs. 8657-8665), since the railroad's liability was based on the defective roadbed and the petition could not by reply be amended so as to predicate liability on the railroad's failure to comply with the requirements of the Federal safety appliance act, section 2 (U. S. Comp. St., sec. 8606), by reason of defective condition of couplers.

The opinion of the majority of the court was in part as follows:

As the petition fails to charge that the car was not equipped with automatic couplers in compliance with the act of Congress, it necessarily results that a recovery can not be had under the pleadings by evidence tending to prove that the coupler was defective. It must be taken as conceded by the petition, for the purpose of this action, that the car was equipped with automatic couplers; hence Lillard's conduct in going between the rails in front of a moving car to effect the coupling was violative of the safety appliance act.

If we read the safety appliance act into the petition, it must be held that the company owed Lillard no duty to maintain the passing track in a reasonably safe condition for him to walk upon. His presence upon the track in dangerous proximity to the moving car was not to have been anticipated. Lillard's violation of the act, and not the condition of the roadbed, was the proximate cause of his injury.

The couplers were of standard construction. The testimony of plaintiff's own witness, that the coupler was in perfect order, as well as the testimony of the company's witnesses to the same effect, is uncontradicted. The testimony offered by plaintiff's witness in rebuttal was that, under the conditions shown by the evidence, the drawbar might have had so much lateral play as to require adjustment by hand, is merely speculative; in fact, from the evidence, there can be little doubt that Lillard's unfortunate action in going in front of the moving car was prompted by the common practice of brakemen in disregard of the positive rule of the company. The company may have waived the rule, but the act of Congress, enacted for the express purpose of guarding employees from the danger incurred in coupling cars with the old style of couplers, stands on a different footing; the mandate of the law can not be waived or disregarded.

The judgment was therefore reversed, and the cause remanded.

In line with the foregoing was a decision by the Court of Appeals of Kentucky. (*Neal's Admr. v. Louisville & N. R. Co.* (1926), 284 S. W. 429.) Here the employee was engaged in doing repair work in the defendant's yards when a claw bar he was using in lifting a heavy car with a 40-ton jack flew out and hit him inflicting injuries which caused his death. The evidence disclosed that the railroad company kept 50-ton jacks in its yards to be used in lifting heavy cars, and that it kept on hand wooden handles made to fit in and use in operating both the 40 and 50 ton jacks. It was also shown that the deceased had been twice ordered and directed by his superiors not to use a 40-ton jack on that job. From a directed verdict for the defendant in the circuit court the plaintiff appealed. The judgment was affirmed, the court holding that "under any interpretation of the evidence the injury to the decedent was brought about solely by his own negligence, and the lower court properly directed the verdict."

EMPLOYER'S LIABILITY—RAILROAD COMPANIES—FEDERAL STATUTE—DEATH OF CAR INSPECTOR—MEASURE OF DAMAGES—*Louisville & N. R. Co. v. Wingo's Admr.*, *Court of Appeals of Kentucky* (March 2, 1926), 281 *Southwestern Reporter*, page 170.—Dewitt Wingo, an employee of the Louisville & Nashville Railroad Co., was killed while in the performance of his duties as a car inspector. His widow brought an action against the defendant for damages on account of the decedent's death.

There was no material dispute about the facts. The defendant ran its passenger trains into the passenger station of the Pennsylvania Railroad Co. in Cincinnati on the tracks of the latter company's road under lease. A sleeping car which Wingo was inspecting at the

time in question was on a side track within 2 or 2½ feet of the bumping post, and while he was between the end of the car and the bumping post making some adjustments of the steam hose, the switching crew approached with a dining car which they attached to the sleeping car. No signal of approach was given, and the coupling was made with such force as to move the sleeper against the post. Immediately thereafter Wingo was found with his head crushed and in a dying condition.

At the close of the trial the court directed a verdict for the plaintiff and submitted to the jury only the question of damages. The jury awarded \$12,500 to the widow, \$6,000 each to two of the infant children, and \$2,000 to the other one. The defendant appealed and set up as a defense its nonliability; assumption of risk; that the facts of the case were matters for the jury; and that the award was excessive.

The court held that in the absence of proof that the switching crew was under the control of the Pennsylvania Railroad Co., it must be held that at the time of the accident it was in the employ of the defendant. Taking up the other questions presented, the court said in part:

Wingo had the right to act on the assumption that the members of a crew, in approaching with another car, would perform their duty, and there is nothing in the evidence to justify the inference that he knew of the diner's approach and voluntarily placed himself in a position of danger.

There is no evidence of contributory negligence. It follows that the case is one where the facts are undisputed, and the only reasonable conclusion that may be drawn therefrom by ordinarily fair and sensible men is that Wingo, while in the performance of his duties, was killed by the negligence of appellant. Therefore the question of negligence and proximate cause was for the court and not for the jury, and the court did not err in directing the jury to find for appellee.

The size of the verdict presents a more serious question. As before stated, the damages were fixed at \$26,500, of which sum \$12,500 was apportioned to the widow, \$6,000 to Thelma Raines Wingo, age 3, \$6,000 to William Thomas Wingo, age 5, and \$2,000 to Deroda Wingo, age 17. Wingo at the time of his death was 42 years of age, and had an expectancy of 26 years. His wages were \$5.60 a day. On the basis of six working days in a week, he received \$1,747.20. On the other hand, if he worked every day in the year, he received \$2,044. Allowing him, as the head of the family, a reasonable amount for his own support, it is apparent that whether we adopt the one figure or the other the interest at the usual and ordinary rate on the amount awarded each of the beneficiaries is only slightly less than, if not equal to, the actual pecuniary benefits which such beneficiary would have received had the decedent continued to live. The result is that the beneficiaries will not only enjoy all the benefits that they would have received from the decedent had he continued to live, but at the end of their expectancy will have on hand a sum almost, if not quite, equal

to the aggregate benefits they would have received. In view of those circumstances, we are constrained to the opinion that the verdict is excessive.

The judgment was therefore reversed and cause remanded for a new trial consistent with the opinion.

EMPLOYERS' LIABILITY—RAILROAD COMPANIES—FEDERAL STATUTE—EFFECT OF JUDGMENT UNDER STATE STATUTE—*Chicago, R. I. & P. Ry. Co. v. Schendel, Same v. Elder, Supreme Court of the United States (April 12, 1926), 46 Supreme Court Reporter, page 420.*—These cases grew out of an accident on the line of the railway company in Iowa in which Clarence Y. Hope was killed and Fred A. Elder injured under circumstances which established the negligence of the railway company and its consequent liability for damages. Separate actions were brought against the company.

In the Hope case the action was brought in the Minnesota District Court, by a special administrator of the deceased's estate, on February 21, 1923, under the Federal employers' liability law (Comp. St., secs. 8657-8665), for the sole benefit of the surviving widow. Thereafter, on March 2, 1923, the railway company instituted a proceeding before the Iowa Industrial Commission under the Iowa workmen's compensation act, and joined the widow as a party as sole beneficiary under the act. It asked for an arbitration as provided in the Code of Iowa of 1924, section 1361 et seq. The arbitrators found that the deceased was engaged in intrastate commerce at the time of the accident; that the case was governed by the compensation act and awarded compensation to the widow, who thereupon filed application for review with the commissioner. That officer, on review of the facts, specifically found that the deceased was engaged in intrastate commerce and approved the award. An appeal to the district court of Lucas County resulted in a final judgment being entered on June 2, 1923, affirming the award. That judgment was pleaded as a bar to the plaintiff's action in the Minnesota court. The court, however, held that the plea was bad for two reasons: (1) because the Federal act was supreme and superseded all State laws in respect of employers' liability in interstate commerce; and (2) that there was a lack of identity of parties. It then rendered a verdict for the plaintiff on March 4, 1924, some eight months after the judgment above referred to was rendered, and the defendant petitioned for a writ of certiorari for review.

Mr. Justice Sutherland delivered the opinion of the court and said in part:

Whenever a judgment is rendered in one of the courts and pleaded in the other, the effect of that judgment is to be determined by the

application of the principles of *res judicata* by the court in which the action is still pending in the orderly exercise of its jurisdiction, as it would determine any other question of fact or law arising in the progress of the case. The rule, therefore, has become generally established that where the action first brought is in personam and seeks only a personal judgment, another action for the same cause in another jurisdiction is not precluded.

The Iowa proceeding was brought and determined upon the theory that Hope was engaged in intrastate commerce; the Minnesota action was brought and determined upon the opposite theory that he was engaged in interstate commerce. The point in issue was the same. That the Iowa court had jurisdiction to entertain the proceeding and decide the question under the State statute, can not be doubted. Under the Federal act, the Minnesota court had equal authority; but the Iowa judgment was first rendered. And, upon familiar principles, irrespective of which action or proceeding was first brought, it is the first final judgment rendered in one of the courts which becomes conclusive in the other as *res judicata*.

The Iowa court, under the compensation law, in the due exercise of its jurisdiction, having adjudicated the character of the commerce in which the deceased was engaged, that matter, whether rightly decided or not, must be taken as conclusively established, so long as the judgment remains unmodified.

Hope's death as the result of the negligence of the railroad company gave rise to a single cause of action, to be enforced directly by the widow, under the State law, or in the name of the personal representative, for the sole benefit of the widow, under the Federal law, depending upon the character of the commerce in which the deceased and the company were engaged at the time of the accident. In either case, the controlling question is precisely the same, namely: Was the deceased engaged in intrastate or interstate commerce? And the right to be enforced is precisely the same, namely, the right of the widow, as sole beneficiary, to be compensated in damages for her loss. The fact that the party impleaded under the State law, was the widow, and under the Federal law was the personal representative, does not settle the question of identity of parties. That must be determined as a matter of substance and not of mere form. The essential consideration is that it is the right of the widow, and of no one else, which was presented and adjudicated in both courts. If a judgment in the Minnesota action in favor of the administrator had been first rendered, it does not admit of doubt that it would have been conclusive against the right of the widow to recover under the Iowa compensation law. And it follows, as a necessary corollary, that the Iowa judgment, being first, is equally conclusive against the administrator in the Minnesota action; for if, in legal contemplation, there is identity of parties in the one situation, there must be like identity in the other.

Then turning his attention to the Elder case, the Justice said:

In the Elder case, as in the case just considered, the railway company began a proceeding before the industrial commissioner. Elder answered, averring that he was engaged in interstate commerce at the time of the injury. The parties stipulated that the commissioner or his deputy should take the place of the arbitration committee; and

the deputy commissioner, pursuant to the stipulation, heard the matter and filed his decision. Thereupon Elder applied for a review by the commissioner, under the statute, but no action had been taken upon that application by the commissioner at the time the judgment was rendered in the Minnesota court. Under the Iowa statute, therefore, the decision had not ripened into an enforceable award, and we are not called upon to determine what, in that event, would have been its effect as an estoppel. The proceeding being still in fieri when the Minnesota case was tried and determined, the doctrine of *res judicata* is not applicable. There must be a final judgment.

The judgment in the Hope case was reversed and the case remanded for further proceedings not inconsistent with the opinion, and the judgment in the Elder case was affirmed.

EMPLOYERS' LIABILITY—RAILROAD COMPANIES—FEDERAL STATUTE—EMPLOYEE KILLED BY SPECIAL OFFICER OF THE COMPANY—NEGLIGENCE—*Southwell v. Atlantic Coast Line R. Co., Supreme Court of North Carolina (February 17, 1926), 131 Southeastern Reporter, page 670.*—Ida Mae Southwell sued the Atlantic Coast Line Railroad Co. to recover damages for the death of her husband, an engineer on that railroad, who was shot and killed by E. H. Dallas while Southwell was passing through the company's station on his way home after coming off his run. Plaintiff had judgment in the superior court, but was nonsuited on defendant's appeal. The supreme court set aside the judgment of nonsuit and ordered a new trial on the issue of whether or not the death of the deceased was due to the negligence of the railroad company, to be determined under the Federal employers' liability act (127 S. E. 361). From a second judgment for plaintiff defendant also appealed.

It appeared from the evidence in the record that E. H. Dallas was employed by the railroad company as assistant yardmaster, and that he also did other kinds of work such as inspecting and repairing cars at the company's terminal at Wilmington, N. C., and was subject to the orders of one Fonville, who was general yardmaster at that terminal. At the time of the killing there was a strike on among the shopmen, and Dallas, at the request of the defendant, had been sworn in by the mayor as a special officer ostensibly to assist A. L. Kelley, a lieutenant of the police department for the railroad whose office was in the station near where the shooting occurred. It was also shown by the evidence that bad feeling existed between Dallas and the deceased to the knowledge of the general yardmaster and the superintendent; that the yardmaster knew that Dallas was carrying a pistol on the premises of the company, and had, only a few minutes before the shooting, walked through the train shed with him and saw a 38 caliber blue steel pistol in his pocket, and that they were talking

about the difference between Dallas and the deceased, Dallas saying, "Cap, all I want to do is to ask Southwell to lay off me and let me alone." This was repeated a few minutes later. The yardmaster then left him near the gate where they both knew Southwell would soon be coming through, and went toward his office. On looking back he saw the men approaching each other and turned back for the purpose of separating them but had advanced only about three steps when the gun was fired.

The defendant introduced no evidence in the trial court, but made numerous exceptions and assignments of error to admission and exclusion of evidence, to refusal to grant its prayers for instructions, and to certain excerpts from charge as given.

The court reviewed at length the history and purpose of the Federal employers' liability act, and cited numerous cases that had been adjudicated by the United States Supreme Court and by the highest courts of several of the States where that act had been in question, saying that, "under the act, the alleged negligence must be the proximate cause of the injury." A principal point of the defendant's appeal was that the killing was a wanton and willful act, outside the scope of Dallas's authority, and that there was not sufficient evidence to be submitted to the jury as to actionable negligence. In disposing of the case the supreme court, speaking through Judge Clarkson, said in part:

Under all the facts and circumstances of the case, both the direct and circumstantial evidence, we think that there was sufficient evidence to warrant the jury in finding that defendant was guilty of actionable negligence under the Federal employers' liability act. The general yardmaster at the Wilmington terminus knew, or in the exercise of reasonable care ought to have known, that the plaintiff's intestate, an engineer, had to pass out of the gate near his office about the time he approached the gate and was shot by defendant's employee, Dallas. The yardmaster knew Dallas, the employee under him, had a pistol. The word "yardmaster" *ex vi termini* indicates one in authority. The yardmaster had the authority to stop Dallas. The engineer, to go to and from his work, passed in and out of the gate near the yardmaster's office. The yardmaster did nothing to restrain or stop his subordinate, with knowledge that Dallas was going to upbraid him, but allowed him, on the company's yard as the engineer approached the gate exit, to shoot the engineer, who was unarmed and on his way home. The engineer was "on duty" in the defendant's inclosed yard. The employer is not an insurer, and the care and diligence required in a particular case, the failure to exercise which is actionable negligence, is that of an ordinarily prudent man under the same or similar circumstances.

We have carefully gone over the record and examined the assignments of error and see no prejudicial or reversible error. We examined defendant's able brief. The whole case is founded on whether there was sufficient evidence to be submitted to the jury as to action-

able negligence. In the former case we thought there was (facts substantially the same) and we think the same in the present case. We can find no error.

The judgment was therefore affirmed.

EMPLOYERS' LIABILITY—RAILROAD COMPANIES—FEDERAL STATUTE—INDUSTRIAL POLICE—*Feaster v. Southern Ry. Co., United States Circuit Court of Appeals (October 19, 1926), 15 Federal Reporter (2d), page 540.*—The question involved in this suit was as to the status of an employee hired as a night watchman during the shopmen's strike of 1922. Mrs. Kate Feaster, administratrix of the estate of the deceased workman, sued in the court of common pleas of Aiken County, S. C., to recover damages for the death of her intestate. The company moved for a transfer of the case to the District Court of the United States on grounds of diversity of citizenship, claiming that the plaintiff had joined a local defendant simply for the purpose of defeating the railway's right of removal. The court held that the case was properly transferred to the Federal court. In opposition to this ruling Mrs. Feaster urged that the employee was by the nature of his employment engaged in interstate commerce so as to come within the terms of the Federal employers' liability act. On the point of status in this aspect, the court found that "although he was employed and paid by the railroad company, Feaster was actually engaged in local police duty." He had been deputized as a deputy sheriff of the county in which the yards and shops were located. The railroad company's rolling stock used in interstate commerce was here repaired and interstate trains moved constantly through the yards. The court compared the situation to the movement of trains through the Pennsylvania Station in New York City; "yet we should not be prepared to hold that the municipal policemen on duty there were employed in interstate commerce."

One Britt was joined as defendant on the ground that it was due to his negligence while foreman of the yards that the fatal assault occurred. The death was due to the acts of unknown parties who shot, beat, and killed the watchman. The negligence charged was failure to provide a safe place to work, to provide proper appliances, and enough fellow guards to enable him to perform his duties without extreme danger, and the admission of hostile employees to the locality. It was found that Feaster was furnished with a first-class pistol in good working order and cautioned that he must be "mighty careful" or "those fellows will get you." It was further found that Britt had nothing to do with the employment or retention of shop or yard employees, and that there was no proper joinder of him as defendant. It was found that the alleged inadequacy of guards,

weapons, and warnings could not be sustained as acts of neglect because there was nothing in the facts alleged to show that "Feaster would not have come to his untimely end, even though the defendants had in these respects exercised all reasonable diligence. Had any negligence of the defendants contributed in a remote degree to his death it might have been necessary, as under the circumstances it is not, to consider whether his deliberate murder by persons altogether unconnected with the defendants was not the interposition of such an independent act of others as made it impossible for such negligence to have been in legal contemplation a proximate cause of his taking off."

Various charges made were characterized as "merely conclusions of the pleader and do not state facts." No "negligent acts" were properly charged, and the court below was held to have acted without error in sustaining the demurrer. The judgment for the defendants was accordingly affirmed.

EMPLOYERS' LIABILITY—RAILROAD COMPANIES—FEDERAL STATUTE—LIMITATIONS—APPOINTMENT OF ADMINISTRATOR—*Reading Co. v. Koons, United States Supreme Court (April 12, 1926), 46 Supreme Court Reporter, page 405.*—This action was brought by John L. Koons, administrator of Lester M. Koons, against the Reading Co., successor of the Philadelphia & Reading Railway Co., for causing the death of the decedent while in its employ nearly seven years before. The defendant pleaded the statute of limitations as provided in section 6 of the Federal employers' liability act, which is as follows:

That no action shall be maintained under this act unless commenced within two years from the day the cause of action accrued.

The plaintiff contended that since the cause of action for death is created by statute, and is given exclusively to the administrator of the decedent, no cause of action can arise or accrue until there is an administrator.

It appeared that the decedent died on April 23, 1915, as a result of injuries received while employed by the defendant, and on September 23, 1921, more than six years afterward, letters of administration were granted to the plaintiff who, on February 6, 1922, brought his action. From judgment for plaintiff the defendant appealed to the Supreme Court of Pennsylvania, which affirmed the judgment of the lower court, and the defendant sued out a writ of certiorari to have the case reviewed by the Supreme Court of the United States, where the decision below was reversed.

Mr. Justice Stone delivered the opinion of the court, saying in part:

The application of this statute turns on the question whether the cause of action created by the act may be deemed to have "accrued," within the meaning of the act, at the time of death or on the appointment of the administrator, who is the only person authorized by the statute to maintain the action.

Many cases were cited in which the holdings of the courts were in conflict on the construction of the word "accrued" used in the statute, some of the courts holding that the limitation begins to run from the appointment of an administrator, while others held that it began to run from the death of the decedent.

The opinion continued:

This diversity of view arises principally from the attempt made to find in the word "accrued," used in the statute, some definite technical meaning which will in itself enable courts to say at what point of time the cause of action has come into existence, and consequently at what point of time the statute of limitations begins to run.

At the time of death there are identified persons for whose benefit the liability exists and who can start the machinery of the law in motion to enforce it by applying for the appointment of an administrator. This court has repeatedly held that a suit brought by such persons in their individual capacity is not a nullity within the provisions of the act, and that if by amendment the plaintiff is properly described as executor or administrator of the decedent, even though the amendment is had after the expiration of the statutory period, the suit may be maintained and a recovery had under the statute.

The language of the statute evidences an intention to set a definite limit to the period within which an action may be brought under it without reference to the exigencies which arise from the administration of a decedent's estate.

The very purpose of a period of limitation is that there may be, at some definitely ascertained period, an end to litigation. If the persons who are the designated beneficiaries of the right of action created may choose their own time for applying for the appointment of an administrator and consequently for setting the statute running, the two-year period of limitation so far as it applies to actions for wrongful death might as well have been omitted from the statute. There is nothing in the language of the statute to require, or indeed to support, such an interpretation.

The judgment of the Supreme Court of Pennsylvania was therefore reversed.

EMPLOYERS' LIABILITY—RAILROAD COMPANIES—FEDERAL STATUTE—MAKING REPAIRS—ASSUMPTION OF RISK—PROXIMATE CAUSE—*Minneapolis, St. P. & S. S. M. Ry. Co. v. Goneau, United States Supreme Court (January 4, 1926), 46 Supreme Court Reporter, page 129.*—Ernest J. Goneau was employed by the railroad company as rear brakeman on one of its freight trains which broke in two between stations in the nighttime;

the two sections of the train stopped a few feet apart on a narrow wooden bridge with open ties. The breaking of the train resulted from a defective coupler, made so by the carrier iron which held it in place becoming loose and letting the coupler drop down so that it did not interlock with the opposite car. When Goneau discovered the trouble he undertook to get the train coupled up again so that it could proceed. To make the coupling it was necessary to get the carrier iron back in place so as to hold the coupler. In attempting to do this and while pulling hard on the carrier iron, it suddenly gave away, causing him to lose his balance and fall over the side of the bridge to the ground below, thereby sustaining serious injuries. He brought suit in a Minnesota court to recover damages under section 2 of the safety appliance act of 1903 and section 4 of the employers' liability act. The safety appliance act makes it unlawful for a carrier to haul cars not properly equipped with automatic couplers, while section 4 of the employers' liability act provides that an employee shall not be held to have assumed the risks of his employment in any case where the violation by the carrier of any statute enacted for the safety of employees contributes to his injury or death. The company defended under section 4 of the supplemental safety appliance act of 1910 (36 Stat. 298, ch. 160), which provides that where a car that has been properly equipped by a carrier becomes defective upon its line of railroad, it may be hauled from the point of discovery of the defect to the nearest point where it can be repaired without liability for penalties, but without releasing the carrier from liability for the injury of any employee caused by or in connection with the hauling of the car with such defective equipment. The railroad company argued that "the evidence did not bring the case within the act and should not have been submitted to the jury; that the car being motionless was not then in use; that Goneau was doing repair work which was permitted by the act and whose risk he assumed; and that the defective condition of the carrier iron was merely a condition presenting the occasion for making the repairs, and not a proximate cause of the accident."

Judgment was rendered in favor of the plaintiff, and the defendant company brought a writ of certiorari to the Supreme Court.

Mr. Justice Sanford delivered the opinion of the court, saying in part:

Under the circumstances indicated it is clear that the use of the defective car had not ended at the time of the accident, although it was then motionless. A defective car is still in use when it has been moved with the train from the main line to a siding, to be cut out and left so that the other cars may proceed on their journey. (*Chicago Railroad v. Schendel*, 267 U. S. 287, 291, 45 Sup. Ct. 303.) And so it is while still in a section of the train on the main line, to be coupled up and proceed on its journey as a part of the train.

Nor can it be said that Goneau was engaged in doing repair work. He was not a repair man, but a brakeman, and was not repairing the carrier iron, but attempting to move it into place to support the coupler, so that the coupling could be made and the train proceed. And although Goneau, in testifying, stated that when he found the coupler in such a condition that he could not couple up the train unless he fixed it, it became his duty to "repair it and get the train going," his use of the word "repair," upon which the railway company lays great stress, does not change the situation in the eyes of the law or transform the coupling operation into repair work.

Since he was injured as a result of the defect in the coupler while attempting to adjust it for the purpose of making an immediate coupling, the defective coupler was clearly a proximate cause of the accident as distinguished from a condition creating the situation in which it occurred. And under the employers' liability act he can not be held to have assumed the risk.

The act of 1910, obviously, has no application.

As there was substantial evidence tending to show that the defective coupler was a proximate cause of the accident resulting in the injury to Goneau while he was engaged in making a coupling in the discharge of his duty, the case was rightly submitted to the jury under the safety appliance act; and the issues having been determined by the jury in his favor, the judgment of the trial court was properly affirmed.

The judgment was therefore affirmed.

EMPLOYERS' LIABILITY—RAILROAD COMPANIES—FEDERAL STATUTE—NEGLIGENCE—EVIDENCE—*Chicago, M. & St. P. Ry. Co. v. Coogan, United States Supreme Court (June 1, 1926), 46 Supreme Court Reporter, page 564.*—Willie Coogan was employed as rear brakeman on a freight train of the Chicago, Milwaukee & St. Paul Railway Co., and was killed July 14, 1923, by an accident in the railroad yards at Farmington, Minn. His body was found by a fellow workman lying parallel to the railroad track. His left leg and left arm had been crushed between the car wheels and the rail and his body had been dragged about 15 feet. His widow brought suit for damages under the Federal employers' liability act, as the deceased was engaged in interstate commerce at the time he was killed.

At the trial circumstantial evidence was offered to prove the cause of death. It was shown that when the deceased was last seen alive he was standing beside the caboose of a train that was being made up in the railroad yards at Farmington, apparently waiting for all the cars to be attached so that he could couple the air hose between the rear and the caboose.

The negligence charged to the railroad company was that an air line which it had fastened to the ties some 12 inches from and parallel to the rail had some time prior to the accident been loosened

and bent 3 or 4 inches toward the rail and upward, leaving a space of from $3\frac{1}{2}$ to 4 inches between it and the ties. It was the plaintiff's theory that when the deceased went to couple the air hose, he stepped his right foot inside the rail, leaving his left foot between the rail and the pipe line; that before he could make the coupling the train started back, and that in attempting to straighten up his left foot he was caught under the pipe, forced backward, run over, and killed. The shoes worn by the deceased at the time he was killed were received in evidence. The outside of the counter of the left shoe was scratched and showed a marked rounding depression parallel with the sole and just above the heel. From judgment for the plaintiff, the defendant appealed.

The Supreme Court of Minnesota affirmed the judgment of the lower court, and defendant brought the case to the Supreme Court of the United States on a writ of certiorari. The Supreme Court, in reversing the judgment, held that there was sufficient evidence to warrant a finding that there was a breach of duty respecting the condition of the pipe, but that the precise question was whether the condition of the pipe contributed to cause the death of the deceased. Mr. Justice Butler, delivering the opinion of the court, said in part:

It follows that, unless the evidence is sufficient to warrant a finding that the death resulted from the catching of deceased's left foot under the bent part of the pipe line the judgment can not be sustained. Whenever circumstantial evidence is relied on to prove a fact, the circumstances must be proved and not themselves presumed.

The "rounding depression" on the counter of the shoe is not sufficient to bridge the hiatus in the evidence. A number of days elapsed before it was noticed, and it is not shown that in the meantime care was taken to keep it in the same condition or that the depression was not made after the accident. And, assuming that the depression on the shoe counter was made by contact with the bent pipe, there is nothing to indicate whether it was made at the time deceased was knocked down or later while he was being dragged. The fact that deceased was run over and killed at the time and place disclosed has no tendency to show that his foot was caught. A finding that his foot was not caught under the pipe is quite as consistent with the evidence as a finding that it was.

When the evidence and the conclusions which a jury might fairly draw from the evidence are taken most strongly against the petitioner the contention of respondent that the bent pipe caused or contributed to cause the death is without any substantial support. The record leaves the matter in the realm of speculation and conjecture. That is not enough.

The judgment was therefore reversed.

The United States Circuit Court of Appeals found it necessary to reverse a judgment given for the death of a brakeman engaged in an undertaking outside his ordinary line of duty, where evidence was lacking as to any order directing him to enter thereon, and where "the evidence does not show how the employes

met his death, whether through fault of the master or fault of his own." (Philadelphia & R. Ry. Co. v. Thirouin (1925), 9 Fed. (2d) 856.)

Judge Wooley concluded the opinion with the remark that such a decision "some day may be made less harsh by the presence of a Federal workmen's compensation act."

The Supreme Court of Pennsylvania likewise denied a right to recovery where the injury complained of was due to the catching of the workman's raincoat on a projecting bolt the use and location of which were prescribed by the Interstate Commerce Commission. There was no evidence that the manner of fastening the bolt was unusual, while the defect complained of "was of a condition obvious to all." (Pursglove v. Monongahela Ry. Co. (1925), 131 Atl. 477.)

EMPLOYERS' LIABILITY—RAILROAD COMPANIES—FEDERAL STATUTE—RELEASE BY INJURED WORKMAN—EFFECT ON CLAIM OF SURVIVOR—*Goodyear v. Davis, Supreme Court of Kansas (July 10, 1926), 247 Pacific Reporter, page 446.*—Louisa Goodyear, as administratrix of the estate of Lewis Goodyear sued under the Federal employers' liability act (35 Stat. 65) to recover damages for his death. The case was before the Supreme Court of Kansas for the third time, the first trial having resulted in a verdict and judgment for the defendant. This judgment was reversed on appeal, and on the second trial there was a general verdict for the plaintiff in the amount of \$5,000.

The single point of interest noted in the present decision is as to the effect of a release made by the injured workman prior to his death from the injury. The court ruled that the act in question gives to the injured workman a right of action for his injuries, and a distinct right for the benefit of designated dependents in the event of death. This rule was more fully expressed in an earlier decision in the same case (*Goodyear v. Davis, 114 Kans. 557, 220 Pac. 282*), as follows:

The Federal employers' liability act (35 U. S. Stat., ch. 149, as amended by 36 U. S. Stat., ch. 143) creates a right of action in the injured employee for his suffering and loss resulting from the injury, and also creates a distinct and independent right of action in the personal representative of the deceased employee in the event death results from the injury, for the benefit of certain designated dependents.

A settlement made by the injured employee after the injury and prior to his death, for his suffering and loss, is not a bar to the action by the personal representative for the benefit of dependents for the death, if it resulted from the injury.

In an action under the Federal employers' liability act by the personal representative for damages to the injured employee and for the death, the widow of the employee having been appointed administratrix, the fact that as the wife of the injured employee she was present at the time an agent of defendant made a settlement with him

for his injuries would not estop her, as personal representative of his estate, from seeking to set aside the release because of his mental incapacity to execute it.

Another contention related to a question of mutual mistake, but this was resolved in favor of the plaintiff, and the judgment below was affirmed.

EMPLOYERS' LIABILITY—RAILROAD COMPANIES—INJURY—PROXIMATE CAUSE—*Weigand v. Chicago, R. I. & P. Ry. Co., Supreme Court of Kansas (October 9, 1926), 249 Pacific Reporter, page 615.*—F. A. Weigand was employed by the defendant railroad company to make light repairs on freight cars. On September 23, 1922, he was directed to go to the defendant's railway stations at Galva and McPherson to repair certain freight cars which had been sidetracked at those points. After finishing his work at Galva, the plaintiff was permitted by the station agent at Galva and the conductor of one of the company's freight trains to ride on the freight train to McPherson. The conductor assisted him to the top of a car loaded with coal and on which he was riding, when some "hoboes," who were also riding on the same train, came over the tops of the cars, seized the plaintiff, and threw him off on the ground. He was severely injured, and brought suit against the railroad company for damages.

He alleged, among other things, that the company was responsible for his injuries on the ground that its station agent and conductor refused to let him ride in the caboose, that he was compelled to ride upon the freight car in order to do the business of his employer, and that these persons had purposely allowed the "hoboes" who threw him off the car to ride on the train.

A demurrer was sustained to the plaintiff's evidence, the trial court ruling:

Weigand being forced to ride on the car of coal was not either the direct or proximate cause of the injury.

The plaintiff appealed.

The court, in affirming the judgment of the trial court, said in part:

His injury was caused by his being assaulted and flung off the train by three or four unknown strangers. If it be urged that it was the duty of the defendant not to permit "hoboes" to ride its freight trains, still it could not reasonably have been anticipated that, as a consequence of defendant's failure to perform that duty, the "hoboes" would assault an employee of defendant and fling him from the train.

It is thoroughly settled law that, when an employee departs even temporarily from his employment on some prank or project of his

own, of which his employer has no notice, and which the employer has neither authorized nor countenanced, the employer is not responsible.

On no rational theory can this court discover a basis for subjecting the defendant railway company to liability for the injuries sustained by plaintiff. The unknown miscreants who assaulted him are clearly responsible. Less clearly, but perhaps sufficiently susceptible of proof to justify its submission to a jury, if plaintiff had been so inclined, was the question of the personal and individual responsibility of members of the train crew, and possibly the station agent; but the record discloses no evidence, and suggests no rule of law, on which a liability can be fastened upon the defendant railway company, and the judgment of the trial court must be affirmed.

EMPLOYERS' LIABILITY—RAILROAD COMPANIES—NEGLIGENCE—HOSPITAL TREATMENT—DAMAGES—*Baker v. Adkins, Court of Civil Appeals of Texas (November 4, 1925), 278 Southwestern Reporter, page 272.*—G. B. Adkins, employed by the International and Great Northern Railroad Co. as a member of a bridge gang, was employed between San Antonio and Laredo when he was taken down with smallpox. He was placed in the car which had been provided for and used by the employees as sleeping quarters and he remained there from the time of his illness until his death on April 23, 1916. It appeared from the evidence that the company, which was in the hands of a receiver at the time, failed to notify the family or anyone else of the condition of the employee, and assumed absolute and exclusive control of him. It also showed that it suffered him to lie in filth, exposed to the vilest insects and vermin, unwashed, with dirty bedclothing, without proper nursing and medical treatment, and in addition on several occasions ran cars or locomotives against the car in which the deceased was helplessly lying, adding to his discomfort and nervousness and hastening his death. In the opinion of the court of civil appeals: "No such negligence has ever been excused, or condoned through any technicalities, by any decision brought to our notice."

Jessie B. Adkins, as an individual and as administratrix in behalf of her children, brought an action for damages arising from the death of her husband. The verdict was for the plaintiffs and the court rendered judgment awarding \$8,000 to the widow, \$5,000 to the minor Mildred Adkins, \$3,000 to the minor Bert Adkins, \$2,500 to Birdie Thomas, \$2,000 to Maude Wolf, \$1,500 to Metal Bentley and \$500 to Virgil Adkins, an adult male, \$22,500 in all. The defendant appealed.

On reviewing the record the court of civil appeals found that negligence in caring for Adkins was the proximate cause of the death,

and it was considered not necessary that these acts of negligence should be the "sole cause of the death of the deceased, but if together with smallpox, brought about the death, appellants are liable." It was held not to matter who had provided the physician, in view of the fact that the defendants, being guilty of the negligence, had contributed to the death, that being sufficient to fix liability.

The court of appeals held that the awards should be viewed as though each plaintiff had sued alone. Five of the children were minors when the father died, Virgil, however, becoming 21 years of age on the date of the burial of his father. The verdict in the aggregate was not considered excessive.

In construing the statute, the court held that the language of it did not "exclude the adult child, male or female, who made his or her home under the family roof-tree and received any maintenance or support from the parents," from recovering with the minors. Although it appeared that the interpretation of the court of civil appeals would sustain such a verdict as was given to Virgil Adkins, in view of the fact that the trial court charged that damages with respect to the children might include maintenance, education, and care "during minority," and no objections were made to the verdict on that ground, the court of civil appeals denied the recovery of \$500 by Virgil Adkins because the verdict was not in response to the charge.

On condition that a remittitur be entered within 10 days from the filing of the opinion for the \$500 in favor of Virgil Adkins, the judgment was affirmed for \$22,000.

EMPLOYERS' LIABILITY—RAILROAD COMPANIES—STRIKE BREAKER INJURED BY ASSAULT—FAILURE OF EMPLOYER TO GIVE NOTICE OF STRIKE—NEGLIGENCE—*Dell v. Lancaster, Court of Civil Appeals of Texas (June 9, 1926), 285 Southwestern Reporter, page 685.*—Frank Dell sued J. L. Lancaster and Charles L. Wallace, receivers of the Texas & Pacific Railway Co., and the company itself, for damages sustained while in its employ. He alleged in his petition that he was employed by the defendants to go from his home in Cleveland, Ohio, to Dallas, Tex., to paint railroad coaches; that when he arrived at Dallas he was sent to Marshall where, as the defendants knew, there was a strike of railroad employees under way but of which he was utterly ignorant, and that while he and his wife were quietly walking on the street in Marshall they were set upon by the strikers, who abused, cursed, assaulted, beat, and injured them. He also claimed the sum of \$38.37 for excess freight and storage on household goods and \$150 hotel expenses for the week he worked in Mar-

shall. From a judgment sustaining the defendant's demurrer, the plaintiff appealed. The judgment of the lower court was affirmed, the court saying in part as follows:

The whole claim is based on the charge that appellees were negligent in not informing appellant that a strike was on before they sent him to Marshall. The cause of the attack is not given, and it is not alleged that appellant was a strike breaker, or what is known as a "scab," and that he was attacked on that ground. There is no allegation that in any manner connects the assault upon appellant with his service for appellees. There is no allegation that appellees failed to furnish a safe place in which he could work, or that the assault had any connection with his employment by appellees. He was, for some reason not disclosed, attacked while on the street by lawless characters for whose acts appellees were not responsible. The petition fails to show that, if there were any danger in going to or remaining in Marshall, it was so because of the employment in which appellant was engaged. The attack was not made on the property of appellees or by any person in its employ or for whom it could be liable. There is no allegation tending to show any causal connection between a failure to disclose the existence of a strike and the attack made by the ruffians on appellant in Marshall.

Appellees were not liable for the safety of appellant, except while he was on a way to his work, which way was prepared for him by his employer, or while engaged in the prosecution of such work. The petition fails to show that any negligence upon the part of appellees was the proximate cause of the assault on him.

The judgment was therefore affirmed.

EMPLOYERS' LIABILITY—SAFETY LAWS—COVENANT NOT TO SUE—
RELEASE OF ONE TORT FEASOR—*Pacific States Lumber Co. v. Bargar*,
United States Circuit Court of Appeals (January 18, 1926), 10 *Federal Reporter (2d)*, page 335.—This suit involved the Coos Bay Stevedoring Co., the Pacific States Lumber Co., and R. J. Barger, an employee of the stevedoring company, who was injured July 6, 1923, while loading lumber on a vessel at defendant's wharf. It appeared from the evidence that there was an agreement between the lumber company and the stevedoring company whereby the lumber company was to deliver lumber on its docks within reach of the ship's tackles for the stevedoring company to load on vessels. This it did by means of small four-wheeled cars pulled by horses. The plaintiff was required to work in and about the dock in assisting in loading lumber and with carloads of lumber. At the time of his injury he was engaged in trying to stop a car that had been pulled by defendant's employee to the proper place for loading into the vessel. To do this he put a board on the track; this did not stop the car, but rendered the load unstable and part of it fell on him. On March 11, 1924, he accepted \$2,000 from the stevedoring company and executed a release to it

and its insurer that he would forever refrain from bringing any suit against either of them on account of said injury. He then brought suit against the lumber company and recovered judgment. The defendant brought error, and contended that the release of the stevedoring company should be treated as full satisfaction of plaintiff's claim and as a bar to the action. The court, speaking through Judge McCamant, stated the purpose of the Oregon employers' liability act, and said in part:

Every employer whose work involves risk or danger is required by the statute to take the required precautions, not only for the protection of his own employees, but also for the protection of employees of others whose duties bring them within reach of the dangers and risks of such work. The Supreme Court of Oregon has so construed the statute, and this construction is binding on the Federal courts. [Cases cited.]

The court in considering defendant's contention that a release of one joint tortfeasor will release the others agreed that it was committed to that proposition, but held that in the instant case the instrument executed by plaintiff did not operate as a release, and pointed out the distinction between a release and a covenant not to sue in the following language:

Releases of, and covenants not to sue, a wrongdoer have from early times been considered distinct. A covenant not to sue one of several joint obligors or joint tortfeasors did not at common law operate to discharge others from liability, since it was said not to have the effect, technically, of extinguishing any part of the cause of action. * * *

Indicia of a covenant not to sue may be said to be: No intention on the part of the injured person to give a discharge of the cause of action, or any part thereof, but merely to treat in respect of not suing thereon (and this seems to be the prime differentiating attribute); full compensation for his injuries not received, but only partial satisfaction; and a reservation of the right to sue the other wrongdoer.

The opinion continued:

By all the tests the instrument executed by plaintiff is a covenant not to sue. The \$2,000 was not accepted in satisfaction of plaintiff's claim, and the transaction is not a defense to this action.

The jury assessed plaintiff's damages at \$4,500. Under the court's instructions they credited thereon the \$2,000 paid by the stevedoring company. This was all that the defendant was entitled to.

There were no other errors assigned, and the judgment was affirmed.

EMPLOYERS' LIABILITY—SEAMAN—FEDERAL STATUTE—LIMITATION—WHAT STATUTE GOVERNS—*Engel v. Davenport, United States Supreme Court (April 12, 1926), 46 Supreme Court Reporter, page 410.*—E. B. Engel, a seaman employed on a vessel owned by the respondent Davenport and others, sought to recover damages for injuries

received while placing a chain lashing around part of a cargo of lumber. He brought an action at law to recover damages. The complaint alleged that the vessel was unseaworthy and the appliances defective in that a pelican hook, a necessary part of the chain lashing, had in it a flaw observable by ordinary inspection, and that this hook broke by reason of the flaw, causing the injury. Davenport demurred to the complaint, his contention being that the action was barred by section 340, subdivision 3, of the California Code of Civil Procedure, which required an action for a personal injury caused by wrongful act or negligence to be commenced within one year. This demurrer was sustained without leave to amend and judgment was entered in favor of Davenport, which was affirmed on appeal by the supreme court of the State. Engel then brought a writ of certiorari to have the case reviewed by the United States Supreme Court.

The petitioner contended that the suit was founded on section 33 of the merchant marine act, of which State courts have jurisdiction concurrently with the Federal courts, and that by virtue of section 6 of the employers' liability act, 35 Stat. 65, ch. 149 (Comp. St., sec. 8662), incorporated in the provisions of the merchant marine act, it might be commenced within two years after the cause of action accrued. The defendant denied that the suit was founded on the merchant marine act, and therefore its provisions were not applicable; and that section 6 (containing the limiting provision) of the employers' liability act was not incorporated in the merchant marine act, and did not determine the limitation in which an action might be brought in a State court.

Mr. Justice Sanford, delivering the opinion of the court, said in part:

Section 6 of the employers' liability act provides that "no action shall be maintained under this act unless commenced within two years from the day the cause of action accrued." This provision is one of substantive right, setting a limit to the existence of the obligation which the act creates. And it necessarily implies that the action may be maintained, as a substantive right, if commenced within the two years.

We conclude that the provision of section 6 of the employers' liability act, relating to the time of commencing the action, is a material provision of the statutes "modifying or extending the common-law right or remedy in cases of personal injuries to railway employes" which was adopted by and incorporated in the merchant marine act. And, as a provision affecting the substantive right created by Congress in the exercise of its paramount authority in reference to the maritime law, it must control in an action brought in a State court under the merchant marine act, regardless of any statute of limitations of the State.

The judgment of the Supreme Court of California was reversed, and the case remanded for further proceedings not inconsistent with the opinion.

EMPLOYERS' LIABILITY—SEAMEN—SAFE PLACE—ASSUMPTION OF RISK—CONSTRUCTION OF STATUTE—Zinnel v. United States Shipping Board Emergency Fleet Corporation, United States Circuit Court of Appeals (December 7, 1925), 10 Federal Reporter (2d), page 47.—Charles J. Zinnel was employed as one of the crew of the defendant's ship, *Eastern Sailor*, on a voyage from New York to Yokohama. The ship carried a deck load of lumber on the "well deck" made fast by chain lashings. Heavy weather and rough seas loosened some of the lashings, and the master directed the intestate and other members of the crew to go forward and add new lashings under the direction of the boatswain. While they were so employed the vessel shipped a sea over her bow which carried the intestate overboard, and he was drowned. Action was brought by his administrator to recover compensation under the Jones act of 1920 (41 Stat. 1007), alleging that the defendant did not provide the intestate with a safe place to work in that there was no guard rope from the rail on the forecastle head leading aft on the port side to the shelter deck. He offered to prove this by the testimony of a member of the crew corroborated by a photograph taken three or four days earlier showing the port side without any rope. The trial court refused to receive the photograph in evidence on the ground that it did not show the condition at the time of the accident, and dismissed the complaint. The plaintiff brought error. The court of appeals in reversing the judgment said in part:

The refusal of the court to allow the photograph in evidence for the purpose offered was erroneous. If it represented the truth in the morning, a few hours before, and at once after the accident, the jury was entitled to assume that there had been no change in the interim. It was, moreover, admissible to contradict the testimony of the master and the mate that the lines were kept standing through the whole voyage, which it very effectually did. Not only was the plaintiff entitled to go to the jury upon the question whether the lines were standing at the time, assuming that to be relevant, but it is very hard to see how the jury could have reached a verdict for the defendant upon that issue. The learned judge was certainly in error in taking the case from the jury.

The question of law remains, whether the absence of the line was a default in the defendant's duty to exercise reasonable care to furnish the decedent with a reasonably safe place to work. Without some guard line we need no expert to show us that a case was presented, which a jury must decide, as to the safety of the place where the intestate was ordered to work.

The cause arises in substance under the employers' liability act (Comp. St., secs. 8657-8665), since that is incorporated by reference. It is therefore quite unnecessary to say that the ship was unseaworthy, at least in the ordinary sense, which makes the commencement of the voyage the test. All we need, and do, hold is that under the law of master and servant, as now in force by statute, the circumstances

were such as would allow the jury to find that there was no rope, and that its absence made the intestate's place of work unsafe.

As to the assumption of risk, on which we all agree, we need do no more than refer to our own decisions in *Cricket S. S. Co. v. Parry* ((C. C. A.) 263 Fed. 523), and *Panama R. R. Co. v. Johnson* ((C. C. A.) 289 Fed. 964, see Bul. No. 391, p. 43).

In these cases the court held that as to seamen under orders on board ship there is not that freedom of action as to obedience or disobedience of orders that would make it possible to say that in obeying any given order the workman voluntarily assumes the risk.

Judgment was therefore reversed and a new trial ordered.

EMPLOYERS' LIABILITY—WORKMEN'S COMPENSATION—ACCIDENTAL INJURY—POISONOUS GASES—EVIDENCE—*Midland Coal Co. v. Rucker's Administrator, Court of Appeals of Kentucky (December 1, 1925), 277 Southwestern Reporter, page 838.*—The deceased, Bert Rucker, an inexperienced coal miner, was employed by the Midland Coal Co. and put to work with his brother, also inexperienced, in a room of the mine into which unwholesome gases came from an abandoned mine near by. At the end of about two weeks of work in the mine and while pushing a car of coal from the mine, deceased sank down, and died as he was being carried from the mine. Evidence was introduced at the trial to show that the coal was mined by and shot with powder and dynamite which produced smoke; that the mine was not properly ventilated; that the deceased had been sick on different days during his employment; that other employees engaged in like service in the mine were also made sick during the same period, and that on the morning of his death the air in the mine where he worked was bad. Judgment was rendered in favor of the plaintiff in the circuit court, and the company appealed on the ground that, since both the employer and the employee had accepted the terms of the workmen's compensation act (Ky. Stat. 4880-4987), there could be no action at common law; that death, being instantaneous, came within the terms of the act; that the lower court had no jurisdiction of the cause, and that the proof failed to show the cause of death, or the proximate cause thereof. The company further contended that the instructions to the jury were not in accordance with the proof. The court in affirming the judgment of the lower court cited the case of *Jellico Coal Co. v. Adkins* (197 Ky. 684, 247 S. W. 972; see Bul. No. 391, p. 324) and that of *Elkhorn Coal Co. v. Kerr* (203 Ky. 804, 263 S. W. 342), in both of which cases it was decided that an action at common law would lie for injury or death arising out of and resulting from inhalation of poisonous gases, but that the compensation act does not apply.

The court continued:

Appellant's chief contention is * * * that the evidence in this case shows only the sudden death of Rucker, and does not show that he died from an occupational disease or from a gradual poisoning of his system. The evidence upon this subject, recited in outline above, indicates the deceased had been suffering more or less from poisonous mine gases ever since he became an employee of appellant company and entered its mines, but that he was so inexperienced in the business of coal mining as not to know the dangerous effects of such gases. This question was submitted to the jury by instructions, of which there is no serious complaint, save that the case should not have been submitted at all.

The verdict and judgment can not therefore be disturbed.

The judgment was accordingly affirmed.

EMPLOYERS' LIABILITY FOR ACTS OF EMPLOYEES—INDUSTRIAL POLICE—COURSE OF EMPLOYMENT—NEGLIGENCE—*Wiley v. Pere Marquette Ry. Co., Supreme Court of Michigan (June 7, 1926), 209 Northwestern Reporter, page 59.*—Samuel Spaulding was employed by the defendant company and designated a patrolman. He was armed with a revolver carried under a permit obtained by the company. At the time in question he went to the home of the plaintiff and asked permission to search the house. Receiving no reply from the plaintiff he knocked a block from the hand of a small child standing in the doorway, and while stooping, ostensibly to pick up the block, but in reality to look under the couch, his revolver fell from its holster and struck the floor, discharging a shot which hit the plaintiff in the thigh, causing a painful wound which it was claimed would cause her permanent discomfort. She was awarded a verdict of \$2,500. The defendant moved for judgment notwithstanding the verdict, and also for a new trial. The court entered judgment for the defendant on the ground that the patrolman was not at the time of the accident acting within the scope of his employment. Plaintiff brought a writ of error for review.

The court, in reversing the judgment of the trial court, said in part:

We think the trial judge was in error in entering judgment for defendant. Spaulding's testimony was to the effect that he was about the business of defendant company intrusted to him, and had reason for looking in this home for stolen goods, and was there on such errand. Without further stating his testimony, we think it carried to the jury the question of whether, at the time of the accident, he was acting within the scope of his employment. The learned trial judge left this question to the jury, and the verdict, supported by evidence, fixed the fact that Spaulding was acting within the scope of his employment. The question was one of fact, and not one of law.

The employee was carrying the revolver under permit obtained by defendant. There was a positive duty resting upon defendant to supervise the carrying of this dangerous instrumentality by its employee, for the firearm was in the service of defendant, and carried by its servant under permit obtained for that purpose. This duty to protect third persons from injury, by reason of careless carrying of an unsafe revolver, was not performed by defendant, and plaintiff, having been injured because this duty was not performed, is entitled to recover damages, irrespective of whether the act was or was not within the scope of the servant's employment.

Upon this record plaintiff is entitled to judgment on the verdict.

The judgment was therefore reversed, with costs to plaintiff, and the case remanded to the circuit court, with direction to enter judgment on the verdict.

EMPLOYERS' LIABILITY FOR ACTS OF EMPLOYEES—NEGLIGENCE—CONTRIBUTORY NEGLIGENCE—MINOR—*D'Allesandro et al. v. Bentivoglio et al.*, Supreme Court of Pennsylvania (January 4, 1926), 131 Atlantic Reporter, page 592.—The plaintiff, a boy over 14 years of age, was asked by the driver of defendant's truck to guide him to his next stop, and in doing so plaintiff took a position on the running board of the truck, from which he was thrown to the street and injured. Action was brought for damages, and the defendants obtained a judgment of nonsuit, and from a refusal to remove the nonsuit, the plaintiff appealed.

The supreme court in affirming the judgment of the court below said:

We agree with the court below that an "employer is liable only for the acts of his servant done in the scope of his employment and the employment in this case did not include taking the minor plaintiff for a ride" either as "a passenger," which the statement of claim alleges he was, or as an assistant.

As no emergency was shown, where the servant was unable alone to perform the work which he was engaged to do, the authority to engage an assistant was not proved.

The judgment was therefore affirmed.

EMPLOYERS' LIABILITY FOR ACTS OF EMPLOYEES—STATE POLICE ACTING AS STRIKE GUARD—STATUS AS EMPLOYEES—*St. Louis Southwestern Ry. Co. of Texas v. Hudson*, Court of Civil Appeals of Texas (1926), 286 Southwestern Reporter, page 766.—A strike of the shopmen employed by the company named took place in connection with the general strike of 1922, a number of the workmen joining the strikers and some of them becoming pickets. Fearing violence and interference with its operations, the company applied to the Governor of

Texas for a body of rangers to act as a guard for its property and employees. This request was complied with, but only on condition that the expenses be met by the company, no State funds being available. On agreement with this condition, a number of rangers came to the locality, Tyler, under the command of one Captain Brady. Among the rangers was one Pearce who, entirely without justification, shot and killed a picket, Clayton Hudson, son of the appellees in this case. The parents sued the company for damages for the death of their son, alleging that though Pearce was nominally a ranger he was in fact the company's employee; that he was a "violent and dangerous man, unfit for such duties; and that, notwithstanding this was known to the appellant, Pearce was continued in its service." The defense offered was that a guard was necessary for the protection of the property of the company and the continuance of its operations, and that the rangers had been applied for and secured in a lawful manner; that Pearce was legally appointed and was subject only to the authority of his captain; that he was not in any sense a private employee, nor at the time of the killing was he performing any service for the railway company. It was also averred that the killing was the result of a private difference between the parties, wholly unconnected with any legal duty which Pearce was engaged to perform. The jury found the company liable for the misconduct of Pearce and fixed damages in the sum of \$9,500, whereupon the company appealed.

The court, Judge Hodges speaking, recited the provisions of law under which the governor had acted, and found that he "was within his legal authority, and that the conditions existed which called for such official action." It was in evidence that the rangers, in their attitude toward the strikers and particularly to the pickets, "generally understood that they were to handle them very roughly," but this testimony was held not to justify any inference that any representative of the company had directed acts of violence to be done, or that the pickets should be in any way molested so long as they were peacefully occupying their positions as pickets. Recognizing that the picket line harassed the shop employees more or less, the captain had advised them that no legal method existed for breaking up the picket line, so that no orders to that effect could be issued. Even if Pearce had been the employee of the company, therefore, even if he should have thought that he was acting in the interest of the company in acting in such a way as to terrorize the pickets and break up their line, that could not "have the legal effect of extending the limits of his master's responsibility"; for while indiscreet or disobedient conduct within the scope of a servant's employment may bind the master for resulting injuries, an enlargement of that scope by the mere act of

the employee can not make the master responsible for conduct outside the duties which he was employed to perform. "The doctrine of 'apparent authority' applies to the relation of principal and agent, not to that of master and servant."

However, the assumption of the relationship of master and servant is not valid if in fact Pearce was an official of the State rendering "service in line with the provisions of the law for the protection of property and the maintenance of order." It was said that "the courts may take judicial notice of the fact that a strike by employees of a railway company is a species of industrial warfare designed to compel concessions from the employer by impairing its ability to continue normal transportation operations." It was also known that violence frequently attended such strikes, an incident of assault upon two workmen and the killing of one having occurred shortly before the coming of the rangers to Tyler. The request by the company was merely an effort to call into action certain agencies of the State, and in complying the governor was acting within the terms of the law. No private right had been invaded and no personal privilege interfered with.

No person, except one desiring to engage in some unlawful form of interference with railway transportation or operation, had any occasion to complain of what the governor did or of the conduct of the appellant in applying for such guards.

The employees of the railway companies had a legal right to quit work in a body, as they did, and were still within their rights in doing what is called "picket service," and with such rights Pearce had no authority, from any source, to interfere. The killing of Hudson was done in the prosecution of a design purely personal to Pearce. To treat the State rangers, while doing legitimate guard duty, as the private employees of the railway company, would impose a legal responsibility which no common carrier should be required to assume when invoking the protection of the law. The public, as well as the carrier, is interested in keeping open the channels of commerce; and the public may suffer when the steps needed to that end are discouraged by the imposition of financial risks which prudent business men might hesitate to incur.

Taking up the question as to the effect of the company furnishing funds to compensate the rangers, the court held that this did not establish the relation of master and servant. Absence of State funds made it necessary for the company to choose between going without the protection desired or furnishing the funds for its payment. Acceptance of the latter alternative did not give the company the power to select the men or exercise control over them. "The captain of the force was in command, and he alone had authority to direct and control the rangers. He and his superiors only had the right to discharge Pearce from the service." The conclusion was "that under

the evidence Pearce must be treated as a public officer and not as the servant of appellant."

The judgment of the trial court was therefore reversed and judgment entered for the appellant.

EMPLOYMENT OFFICES—LICENSING AND REGULATION—POWERS OF COMMISSIONER OF LABOR—CONSTITUTIONALITY OF STATUTE—*Ribnik v. McBride, State Commissioner of Labor, Supreme Court of New Jersey (June 24, 1926), 133 Atlantic Reporter, page 370.*—Chapter 227, Public Laws of 1918 of New Jersey, entitled "an act to regulate the keeping of employment agencies," provides that every applicant shall file with the commissioner a schedule of fees proposed to be charged for the services rendered to employers seeking employees and persons seeking employment, and that the commissioner may refuse to issue any license for any good cause shown within the meaning of the act.

Rupert Ribnik made application for a license to operate an employment agency in compliance with the act. His application was refused by the commissioner on the ground that he could not approve, in its entirety, the proposed schedule of fees to be charged. The applicant sued out a writ of certiorari to have the action of the commissioner reviewed. He alleged that the act which purported to confer upon the commissioner power to fix, determine, regulate, etc., the fees to be charged by him for his services, was contrary to the constitution of New Jersey and to the Federal Constitution.

The court, in dismissing the writ, held that the questions raised and argued in the instant case were determined in substance and effect adversely to the applicant in the case of *Brazee v. Michigan* (241 U. S. 340, 36 Sup. Ct. 561; see Bul. No. 224, p. 130). In that case the judgment of the Supreme Court of Michigan, that a State may require licenses for employment agencies and prescribe reasonable regulations in respect to them to be enforced according to the legal discretion of the commissioner of labor, was upheld by the Supreme Court of the United States as not infringing the provisions of the Federal Constitution. The court was unanimous in its opinion that the present attack upon the statute was without substance and dismissed the writ with costs to the prosecutor.

EMPLOYMENT SERVICE—MONOPOLY—INTERFERENCE WITH INTER-STATE COMMERCE—SHIPPING OF SEAMEN—ANTITRUST ACT—*Anderson v. Shipowners' Association of the Pacific Coast, Supreme Court of the United States (November 22, 1926), 47 Supreme Court Reporter, page 125.*—Cornelius Anderson is a seaman, having followed that calling for more than 20 years on ships engaged in the carrying trade

on the Pacific coast and with foreign countries. He is a member of the Seamen's Union of America, which has a membership of about 10,000 seamen, and in whose behalf he sued as well as his own. The owners and operators of vessels engaged in interstate and foreign commerce on the coast had formed a combination to control the employment of all seamen on vessels in such commerce, requiring every seaman seeking employment to register, receive a number, and await his turn according to such number before employment could be obtained. Each seaman is given a certificate and cards reciting his capacity and stating that no employment must be given in any capacity unless an assignment card issued by the association and addressed to the vessel, "designating the position to which we have assigned him," is presented to the prospective employer.

The associations fix the wages which shall be paid the seamen. Under the regulations, when a seaman's turn comes, he must take the employment then offered or none, whether it is suited for his qualifications or whether he wishes to engage on the particular vessel or for the particular voyage; and the officers of the vessels are deprived of the right to select their own men or those deemed most suitable. Without a compliance with the foregoing requirements, no seaman can be employed on any of the vessels owned or operated by members of the associations.

Anderson recited his experience in attempting to secure employment, which was refused because he failed to produce a discharge book; later he was discharged by a mate who had agreed to take him on because of the requirement that he procure an assignment from the association, which was refused, and when subsequently he did report at the mate's instructions he was informed finally that he was not able to take him on except through the office of the association. Anderson then sued for an injunction against the association and its activities.

On the presentation of these facts to the district court, it was held that the complaint was insufficient and the defendant's motion to dismiss it was sustained. On appeal, the circuit court of appeals took the same view, saying that "if plaintiff has a cause of action, it is not cognizable in the Federal courts." (*Anderson v. Shipowners' Association*, 10 Fed. (2d) 96.)

The case then came to the Supreme Court on a writ of certiorari, where Mr. Justice Sutherland, speaking for the court, set forth the facts as above recited and continued as follows:

From these averments, the conclusion results that each of the ship-owners and operators, by entering into this combination, has, in respect of the employment of seamen, surrendered himself completely to the control of the associations. If the restraint thus imposed had

related to the carriage of goods in interstate and foreign commerce—that is to say, if each shipowner had precluded himself from making any contract of transportation directly with the shipper and had put himself under an obligation to refuse to carry for any person without the previous approval of the associations—the unlawful restraint would be clear. But ships and those who operate them are instrumentalities of commerce and within the commerce clause no less than cargoes. (Second Employers' Liability Cases, 223 U. S. 1, 47-49, 32 Sup. Ct. 169.) And, as was said by this court in *United States v. Colgate & Co.* (250 U. S. 300, 307, 39 Sup. Ct. 465, 468.) "The purpose of the Sherman Act is to prohibit monopolies, contracts, and combinations which probably would unduly interfere with the free exercise of their rights by those engaged, or who wish to engage, in trade and commerce—in a word to preserve the right of freedom to trade." That the effect of the combination now under consideration, both as to the seamen and the owners, is precisely what this language condemns, is made plain by the allegations of the bill which we have just summarized. The absence of an allegation that such was the specific intent is not important, since that is the necessary and direct consequence of the combination and the acts of the associations under it, and they can not be heard to say the contrary.

It was said not to be important whether the object was merely to regulate the employment of the men and not to restrain commerce. The purpose to secure benefits to themselves did not justify conduct that might have been unobjectionable in the absence of restraint. The cases cited by the respondents, in which it had been held that local matters only were affected so that the antitrust law did not apply, were held not in point. Even though the mining of coal and the manufacture of goods are not commerce, although a large part is intended to be shipped therein, the conditions in the instant case present a different situation.

Here, the combination and the acts complained of did not spend their intended and direct force upon a local situation. On the contrary, they related to the employment of seamen for service on ships, both of them instrumentalities of, and intended to be used in, interstate and foreign commerce, and the immediate force of the combination, both in purpose and execution, was directed toward affecting such commerce. The interference with commerce, therefore, was direct and primary, and not, as in the cases cited, incidental, indirect, and secondary.

Taking the allegations of the bill at their face value, as we must do, in the absence of countervailing facts or explanations, it appears that each shipowner and operator in this widespread combination has surrendered his freedom of action in the matter of employing seamen and agreed to abide by the will of the associations. Such is the fair interpretation of the combination and of the various requirements under it, and this is borne out by the actual experience of the petitioner in his efforts to secure employment. These shipowners and operators having thus put themselves into a situation of restraint upon their freedom to carry on interstate and foreign commerce

according to their own choice and discretion, it follows, as the case now stands, that the combination is in violation of the antitrust act.

The decree was accordingly reversed and the cause remanded to the district court for further proceedings in conformity with this opinion.

EXAMINATION, LICENSING, ETC., OF OCCUPATIONS—RESTRICTION OF EMPLOYMENT—ACCOUNTANTS—CONSTITUTIONALITY OF STATUTE—*Frazer et al. v. Shelton, Supreme Court of Illinois (February 18, 1926), 150 Northeastern Reporter, page 696.*—The Legislature of Illinois, at its legislative session of the year 1925, passed an act known as the "accountancy act," by which it undertook to regulate the practice of accountancy within the State. The act provided, among other things, that only those persons who held certificates as certified public accountants prior to October 1, 1925, and those holding such certificates from an outside State should be allowed to assume such title or to use the abbreviation "C. P. A." No provision was made for licensing any citizen of Illinois as a certified public accountant who was not such at the time the act went into effect. There was, however, a provision for licensing persons who met the educational requirements as public accountants, and a further provision that a person not having a certificate from the proper authority could not practice accountancy for more than one person.

George E. Frazer and others attacked the constitutionality of the act, and filed a bill against A. M. Shelton as director of the Department of Registration and Education of Illinois to enjoin the enforcement of the act. It was contended that the act violated section 22 of article 4 of the State constitution prohibiting special privileges, and the fourteenth amendment of the Federal Constitution in that it denied equal protection of the laws and was an unwarranted exercise of the police power of the State.

Defendants demurred to the bill. The demurrer was sustained in the court below, and the bill dismissed. Plaintiff appealed. The supreme court reversed the trial court and in its opinion said in part:

By this act one who on June 30, 1925, commences practicing as a public accountant on his own account may register as such on or before October 1, 1925, because he was practicing as a public accountant on his own account on July 1, 1925, and this though he shall have had no previous experience, while one who has had 4 years and 11 months' experience in the employ of either a certified public accountant or a public accountant can not receive a certificate as public accountant without examination. There is no reasonable basis for the discrimination between such two persons. While a statute intended to be prospective may provide that it shall not apply to

those already in the occupation to be licensed, under conditions named, such exemption must be made to apply equally to all similarly situated.

A statute can not be sustained which applies to some persons or cases and does not apply to all persons and cases not essentially different in kind.

The term "police power" comprehends the power to make and enforce all wholesome and reasonable laws and regulations necessary to maintain the public health, comfort, safety, and welfare. Section 1 of article 2 of the Constitution provides: "All men are by nature free and independent, and have certain inherent and inalienable rights—among these are life, liberty, and the pursuit of happiness."

The right of a citizen to pursue ordinary trades or callings upon equal terms with all other persons similarly situated is a part of his right to liberty and property. Whether or not the regulation of an occupation has in it the elements of protection to the public health, comfort, safety, or welfare is a matter not always easy to determine. The question is here presented, Does the business of accounting affect the public health, comfort, safety, or welfare? It is readily seen that an incompetent accountant may render an inaccurate report and cause his employer to make a business error. This creates no effect upon the public, however, unless the relationship existing between the public welfare and the private business so affected is so close as to establish that influence. In order to say that private business must, in the interest of public welfare, employ one certified by the State, it must appear that the effect of an audit of that business is a matter of public welfare and not of private concern. If it is the latter the audit has no element of public welfare in it, and a law prohibiting or licensing the business of one who makes such audit is but an unwarranted regulation of private business and the right to contract.

We do not say that it is beyond the power of the general assembly to enact a statute requiring that no one shall use the term "certified public accountant" or the term "public accountant" without having met the requirements of such an act. Such a provision may well be within the power of the legislature on the ground that it is to the public interest that no one shall use a term indicating that he has been examined and certified as an accountant when such is not the fact. Such is a misrepresentation which the legislature may prevent by statute. There is, as we view it, however, a wide difference between acts of such character and one which provides that no one who has not received a certificate as public accountant from the department of registration and education shall be allowed to work at the business or occupation of accountancy for more than one person. Such an act does not spring from a demand for the protection of the public welfare, but is an unwarranted regulation of private business and the right of the citizen to pursue the ordinary occupations of life. For these reasons it was error to sustain the demurrer and dismiss the bill.

The decree of the circuit court was reversed and remanded with directions to overrule the demurrer.

HOURS OF LABOR OF WOMEN—BOOKKEEPER IN BANK—NINE-HOUR DAY—CONSTRUCTION OF STATUTE—*Ex parte Carson, Criminal Court of Appeals of Oklahoma (February 6, 1926), 243 Pacific Reporter, page 260.*—Section 7222, as amended (Comp. St. 1921), reads as follows:

That no females shall be employed or permitted to work in any manufacturing, mechanical or mercantile establishment, laundry, bakery, hotel or restaurant, office building or warehouse, telegraph or telephone establishment or office or printing establishment, or bookbindery, or any theater, show house, or place of amusement or any other establishment employing any female, more than 9 hours in any one day, nor more than 54 hours in any one week.

H. B. Carson was convicted under the provisions of that statute before a justice of the peace, fined \$50 and costs, and committed to the custody of the sheriff of the county until the same should be paid. He was charged with violating the statute by permitting Mollie Whitman, a bookkeeper in his bank, to work in excess of nine hours on November 24, 1925. He petitioned the court for a writ of habeas corpus.

The court, on reviewing the statute, said in part:

Under this rule the phrase, "any other establishment employing any female," is restricted and explained by the particular employments named to employees in establishments of like character where the work is similar. Since banks are neither expressly named nor are of the character of business specifically named, they are not within the purview of the statute.

Apparently the legislature was attempting to reach those lines of business that require physical labor, as laundries, bakeries, restaurants, or that operate continuously or for long hours, as hotels and telegraph and telephone establishments, and it took cognizance of the well-known fact that the work done by the employees of a bank is largely mental labor, and the working hours are generally shorter than in other lines of business.

The terms of the statute in question can not be extended to apply to banks. It follows that the conviction of the petitioner is illegal and he should be discharged.

The writ was therefore awarded.

HOURS OF SERVICE—RAILROADS—YARDMASTERS—FEDERAL STATUTE—*Atchison, T. & S. F. Ry. Co. v. United States, Supreme Court of the United States (November 30, 1925), 46 Supreme Court Reporter, p. 109.*—Action was brought by the United States to recover penalties for alleged violation of the hours of service act of March 4, 1907, chapter 2939, section 2 (34 Stat. 1415 [Comp. St., sec. 8678]), two yardmasters being employed for 12 hours on a certain day. The facts not being in dispute, a jury was waived, and the decision turned on the trial

judge's view of the law (298 Fed. 549). His judgment, assessing a penalty, was sustained by the circuit court of appeals (3 Fed. (2d) 138). The material part of the statute is:

That no operator, train dispatcher, or other employee who by the use of the telegraph or telephone dispatches, reports, transmits, receives or delivers orders pertaining to or affecting train movements shall be required or permitted to be or remain on duty for a longer period than 9 hours in any 24-hour period in all towers, offices, places, and stations continuously operated night and day.

It was under the provisions of this statute that the judge in the instant case held that the duty of yardmasters fell within the act. The defendant railroad company brought a writ of certiorari to the United States Circuit Court of Appeals.

Mr. Justice Holmes, delivering the opinion of the Supreme Court, said in part:

"The purpose of the statute is to promote safety in operating trains by preventing the excessive mental and physical strain which usually results from remaining too long at an exacting task." (*Chicago & Alton R. R. Co. v. United States*, 247 U. S. 197, 199, 200, 38 Sup. Ct. 442, 443.)

The yardmaster's duties extend to the breaking up and making up of trains, the prompt movement of cars, and general charge of the yard. The telephoning, although a part of them, was an incidental part only, and a small one. Twenty-four calls a day seems a too liberal estimate. The office hardly could be described as "continuously operated," when the yardmaster was not in it much more than half the time, but was about the yard attending to other things. Taking all the facts into account we are of opinion that the employment of the yardmaster for more than nine hours was not within the evil at which the statute was aimed and that the ruling to the contrary was wrong.

The judgment was therefore reversed.

LABOR ORGANIZATIONS—COLLECTIVE AGREEMENT—REFUSAL TO USE NONUNION MILLWORK—BOYCOTT—MONOPOLY—INTERFERENCE WITH INTERSTATE COMMERCE—*United States v. Brims*, *Supreme Court of the United States* (November 23, 1926), 47 *Supreme Court Reporter*, page 169.—William F. Brims and others associated with him had entered into an agreement between contractors and union labor organizations in the city of Chicago regulating the conditions of employment in the building trades. From 1900 to 1918 the only restriction on material had been against the use of prison-made products. In 1918 the section of the agreement was made to read "except nonunion and prison made," certain products being excepted. Up to that time a large amount of the material known as millwork used in Chicago was shipped from Wisconsin, notably Oshkosh, and some

Southern States, nonunion labor being employed in the production of such material.

The Government proceeded against Brims and others on the ground of a violation of the Sherman Antitrust Act, the agreement having resulted in a great diminution in interstate shipments. For instance, a single firm in Oshkosh which had for 9 years shipped an average of \$250,000 worth of millwork to Chicago, sent but \$61,000 worth in 1919 and \$50,000 worth in 1920. Conviction was had in the District Court of the United States, whereupon error was brought to the circuit court of appeals. Here the judgment below was reversed and the case remanded. However, the United States procured a writ of certiorari from the Supreme Court, where the case was argued and the judgment of the circuit court of appeals was reversed.

It was the contention of the defendants that their objection was not to millwork made outside the State but merely to nonunion made millwork, and that inasmuch as the industry was largely unionized in the city of Chicago, it was to the advantage of the Chicago plants and in line with the policy of the workers that nonunion products from whatever source be excluded. The indictment charged a combination and conspiracy "to prevent manufacturing plants located outside of the city of Chicago and in other States from selling and delivering their building material in and shipping the same to said city of Chicago." The circuit court of appeals held that the Government had "failed to show that the real agreement was not to eliminate 'nonunion-made material, but materials made outside of Chicago.'" It accordingly regarded the restriction "not against the shipment of millwork into Illinois. It was against nonunion-made millwork produced in or out of Illinois," and the judgment below, as already stated, was reversed. (*Brims v. United States*, 6 Fed. (2d) 98.)

The Supreme Court found as a fact that the local manufacturers were at a disadvantage in competition with the cheaper products from outside the State; while as to the workmen the effect of importing millwork was a diminution of local employment. As to the general attitude and the results, Mr. Justice McReynolds, speaking for the court, said:

They wished to eliminate the competition of Wisconsin and other nonunion mills which were paying lower wages and consequently could undersell them. Obviously, it would tend to bring about the desired result if a general combination could be secured under which the manufacturers and contractors would employ only union carpenters with the understanding that the latter would refuse to install nonunion-made millwork. And we think there is evidence reasonably tending to show that such a combination was brought about, and that, as intended by all the parties, the so-called outside competition was cut down and thereby interstate commerce directly and materially impeded. The local manufacturers, relieved from the competition that came through interstate commerce, increased their output

and profits; they gave special discounts to local contractors; more union carpenters secured employment in Chicago and their wages were increased. These were the incentives which brought about the combination. The nonunion mills outside of the city found their Chicago market greatly circumscribed or destroyed; the price of buildings was increased; and, as usual under such circumstances, the public paid excessive prices.

The allegations of the bill were sufficient to cover a combination like the one which some of the evidence tended to show. It is a matter of no consequence that the purpose was to shut out non-union millwork made within Illinois as well as that made without. The crime of restraining interstate commerce through combination is not condoned by the inclusion of intrastate commerce as well.

It was accordingly ruled that the decision below must be reversed; and inasmuch as other assignments of error had been presented to the circuit court of appeals, which it had ignored in view of its finding based on the point of a monopoly interfering with interstate commerce, the case was remanded to this court for further proceedings in order that the Supreme Court might have the view of that court in respect of these other assignments of error.

LABOR ORGANIZATIONS—COLLECTIVE AGREEMENT—SEAMEN—
CONTRACT OF ARBITRATION—*The Howick Hall, United States District Court of Louisiana (May 30, 1925), 10 Federal Reporter (2d), page 162.*—Patrick Monahan and two others brought libel against the steamship *Howick Hall* to recover the difference between wages stipulated in the shipping articles and the rates at which they were paid. The facts, which were undisputed, were that the libelants shipped on the steamship above mentioned at New Orleans and signed articles on April 19, 1921, for a voyage to Yokohama, Japan, and from there back to a port in the United States. The wages were to be \$100, \$95, and \$85, respectively, which were in accordance with the schedule agreed to by the American Steamship Owners' Association and the seamen's union. The articles also provided that any change in the working rules and wages should be retroactive and apply to the articles, and that any question whatsoever between the master, consignee, agent, or owner of the *Howick Hall* and the libelants should be heard by the shipping commissioner or consul appointed by the United States, whose action should be binding upon all the parties and conclusive in any court of justice.

The agreement as to wages, etc., between the steamship association and the seamen's union expired on May 1, 1921, and no new schedule had been agreed upon up to August, 1921, when the association adopted a scale of wages, without agreement with the seamen's union, and declared it to be retroactive to May 1. According to the new

scale, libelants would receive from \$12.50 to \$15 per month less than was stipulated in their contract. The master of the ship took up the matter of paying off the crew under the new scale with the deputy shipping commissioner, who ruled that in accordance with the articles agreed to by the seamen they were obliged to accept payment under the terms of the new schedule, which they did under protest, signing the usual release.

Judge Foster, in delivering the opinion of the court, said in part:

It is evident to my mind that the master and the shipping commissioner wrongly construed the clause in question. This clearly had reference to an agreement changing the wages or working conditions to which libelants were actually or constructively parties. I have no doubt that had the officers of the seamen's unions and the ship-owners' association reached an agreement both sides would have been bound by it, and the clause could have been given effect; but to allow the shipowner or the captain to arbitrarily reduce wages would be going too far.

Respondent replies, also, on the clause making the shipping commissioner an arbitrator in any dispute that might arise between the crew and the master. It is well settled that contracts providing, before the dispute arises, for arbitration, and making the award of the arbitrator conclusive, are void. When applied to a contract of seamen's wages, the rule is all the more to be enforced. Sailors are wards of the admiralty, and the courts jealously protect their rights. It is notorious that sailors, when about to sign up for a new voyage, are usually destitute, and will agree to any stipulation in the shipping articles, without giving its probable effect the slightest consideration.

The judge referred to section 4554, Revised Statutes (Comp. St., sec. 8343), which vests authority in the shipping commissioner to decide questions between the master and the crew which both parties agree to submit in writing. The opinion continued:

This section has application only to such controversies as are actually submitted in writing to the commissioner. It can not be said that the clause in the contract above referred to had the effect of a submission in writing of the particular controversy here developed.

The captain merely stated his case verbally, and the commissioner and deputy commissioner agreed with him, and required the seamen to accept their wages at the rates fixed by the captain. There were none of the elements of an arbitration in this proceeding.

It was held that the libelants were entitled to recover the amounts claimed with interest from the date they were paid off, with costs.

LABOR ORGANIZATIONS—CONSPIRACY—EXTORTION OF MONEY FROM CONTRACTORS—*People v. Walsh, et al., Supreme Court of Illinois (June 16, 1926), 153 Northeastern Reporter, page 357.*—Thomas Walsh, Frank Hayes, Roy Shields, and Patrick Kane were convicted in the criminal court of Cook County on a charge of conspiracy, and were

sentenced to one year in jail. Judgment was affirmed in the appellate court, and the defendants brought error to the supreme court to review the record, where the judgment was again affirmed.

Walsh and Hayes were business agents of the sheet metal workers' union, Shields was agent of the painters' union and Kane was the business agent of the plumbers' union. The charges on which they were convicted grew out of their dealings with contractors and others who were interested in the construction of certain buildings in the city of Chicago.

The facts were substantially as follows: In January, 1920, there was a threatened strike on the Stratford Theater building, which was being constructed by the Chicago United Theaters (Inc.) in charge of William Krieg and Walter Ahschlager. Krieg met with Hayes, Kane, and Shields, and was told by one of them that there was a grievance regarding metal windows, electric work, carpentry, seats, and some other parts of the construction work that would lead to a strike. Kane met a representative of the Chicago Union Theaters (Inc.) at Ahschlager's office on the following day and agreed to settle the matter for \$3,000, to be paid in installments of \$500 each. Five hundred dollars was paid to Kane at the time, \$500 some two weeks later, and \$1,000 was paid to him in March, 1920. Sometime between the middle of July and September 10, 1920, there was some trouble threatened by the painters, and Shields, on being asked by Krieg what the trouble was, said that the painting of the seats should have been done by local union members and not by out of town men. Shields stated that the trouble would be settled if Krieg paid him the other \$1,000 that was promised to Kane. Thereupon he was paid the \$1,000 and there was no further trouble.

In March, 1920, the painters on the Drumm Building that was being constructed by Harold A. Drumm were called out on strike on account of the painting of some doors, and soon thereafter the plumbers also quit for no stated reason. Drumm was informed by Shields that the trouble could be settled by removing all the stain from the doors and by contracting with one Rood to finish the paint work on the building. Drumm was told by Rood that the matter could be settled by paying Shields \$1,000. Drumm met Shields and Kane and paid Shields the \$1,000 and thereafter the painters went back to work, although the stain was not removed from the doors.

In October, 1920, Hayes told Mark Solomon, of the firm of Solomon & Reger, which was having a hotel erected, that certain metal work had been installed by the wrong union and insisted that the work be taken out and be put in by the members of his union. Solomon refused and a strike of the metal workers was called by Hayes. Solomon took the matter up with Walsh but was told that not a thing could be done except to take the metal work out and have it set by

his (Walsh's) men. Four days later Hayes agreed with Solomon that the trouble could be settled by the payment of \$500. This amount was paid to Hayes and the strike was called off, but the metal frames were never taken out and no more complaint was heard from either Hayes or Walsh.

The court disposed of the technical questions raised by the defendants as insufficient grounds for a reversal of the judgment. It then held that the evidence clearly established that the defendants were guilty under some one or more of the charges of conspiracy against the builders named, and accordingly affirmed the judgments of the appellate and of the criminal court of Cook County.

LABOR ORGANIZATIONS—INTERFERENCE WITH EMPLOYMENT—DISCRIMINATION AGAINST OUTSIDE CONTRACTORS—INJUNCTION—*Barker Painting Co. v. Brotherhood of Painters, etc., United States Circuit Court of Appeals (October 2, 1926), 15 Fed. (2d), page 16.*—This was an action by the Barker Painting Co. against the Brotherhood of Painters, which had adopted a rule requiring that where an employer of union labor is residing in one locality and doing work in another he shall select not less than 50 per cent of his men from members of the union in the locality where the work is being done. Another rule requires that the length of the workday and the rate of wage shall be the shorter day and the higher wage prevailing in either locality. In the instant case the complainant is a New York corporation doing painting under contract throughout the United States. A foreman is sent to the place and local workmen hired, always members of the union. The contract under consideration was for work in Philadelphia, the intention being to comply with local requirements. The Philadelphia wage scale was \$1 per hour for 8 hours with a 5½-day week. In New York the scale was \$1.31 for an 8-hour day and a 5-day week. "The complainant's employees resident in Philadelphia, acting under pressure from their union, refused to work in Philadelphia at the Philadelphia scale of wages and hours and demanded the New York scale as to both." The company then sued for injunction, which was denied in the District Court of the United States. From this ruling an appeal was taken, resulting, however, in an affirmance.

Opposite conclusions by various courts were cited in the opinion, one by the Court of Errors and Appeals of New Jersey (*New Jersey Painting Co. v. Local No. 26 (1924), 96 N.J.Eq. 632, 126 Atl. 399; see Bul. No. 391, p. 206*), with two others by the Superior Court of Rhode Island and the Court of Common Pleas of Philadelphia County, opposed to the issue of an injunction. The opinions in the two latter cases were not reported, though they were before the court. In favor

of the issue of such an injunction as was prayed for three cases were cited: *Hass v. Local Union No. 17* (U. S. District Court, District of Connecticut, 1924, 300 Fed. 894; See Bul. No. 391, p. 205); *Barker Painting Co. v. Brotherhood of Painters* (Supreme Court of the District of Columbia, not reported); and *Barker Painting Co. v. Local No. 734* (U. S. District Court, District of New Jersey, not reported).

Circuit Judge Woolley, who delivered the opinion of the court, Judge Buffington dissenting, after stating the above facts, said:

All the cited State decisions are against injunctions; all the Federal decisions favor injunctions.¹ The learned trial court was inclined to the reasoning of the State decisions; and so are we, not because the respondents have shown that the rules are lawful, but, rather, because the complainant has failed to show that they are unlawful.

The theory on which the Federal decisions were rendered is that the rules impose on the outside contractor an unjust discrimination and, in consequence, inflict an injury on the public in that they operate unfairly to restrain trade. The theory on which the State cases were decided initially, and necessarily, includes an admission that the rules work discrimination in some degree against the outside contractor, but it recognizes that it is not every discrimination that is unlawful. The courts in the latter cases restate what is now settled law, that employers have no vested interest in the labor or workers and that their workers have a right, individually and collectively, to lay down terms on which they will sell their labor for the highest return they can obtain, and when not satisfied, they have a right to strike. So long as they do this in their own interest, not with the purpose of assailing others, and do it in a manner not in itself unlawful, the courts will not interfere. [Cases cited.]

Discrimination and injury to the public were points urged against the rule, but the court found that the purpose of avoiding conflicts within the groups on the same job, paid at different rates, was the apparent purpose of the rule. Other plausible arguments were suggested, "certainly not to express our views, nor to intimate sympathy with the rules—for assuredly we have none—nor to suggest arguments in their support or reasons justifying their promulgation, but merely to show that many variable and intangible factors inevitably enter into the situation, making the injunctive process of doubtful propriety and legality."

Continuing, Judge Woolley said:

Because of many unknown factors and the uncertainty of what would be the consequences to both employers and employees of a ruling of the nature sought by the complainant, the case is far from clear. Without doubt a distant employer may be confronted by a practical difficulty when, away from home, he comes against the respondent's rules, and, concededly, the difficulty, when occurring, amounts to discrimination against him in some degree. Yet the

¹ Subsequent to the writing of this opinion, the United States District Court, District of New Jersey, dissolved the preliminary injunction granted in the case here cited. See account at conclusion of this case.

complainant has not convinced us that such discrimination, in kind and degree, is so unreasonable that it is unlawful and that, in consequence, it calls for relief by injunction. Nor has the complainant persuaded us that the offending rules operate to injure the public in the legal sense of that term. Any action that arbitrarily or artificially raises the cost of a thing might be regarded as an injury to the consuming public; yet, when (as here) the injury to the public is too remote to follow and weigh, the law is not concerned with it.

These views—the result of a cold consideration of the cited authorities—are decisive of the suit and sustain the decree below.

Judge Buffington dissented in a brief opinion, expressing his view that the rules in effect stifle competition, are unfair, “and in common parlance not a square deal between two competitors generally.” Added cost was an unfair burden to the public—private citizens as well as States and municipalities—on account of added cost to the construction of buildings.

Special attention is called to the case of *Barker Painting Co. v. Local No. 734*, decided by the United States District Court, District of New Jersey, April 13, 1926 (12 Feb. (2d) 945), reversing the decision in the same case, cited above. The facts in the case were identical with those in the case above, the action being brought by the same company. In the case against Local No. 734, Judge Runyon quoted at length from the opinion of the New Jersey Court of Errors and Appeals in the case of *New Jersey Painting Co. v. Local No. 26*, cited in the above opinion, and concluded that no injunction should have issued, the rule adopted being for the purpose of increasing wages of the members of the union under certain conditions, which they might lawfully do. No illegal method was found, and no unlawful discrimination or improper classification, the opinion concluding: “I am of the opinion that in this case the defendants have acted altogether within their legal right, and that the injunctive restraint heretofore granted should be dissolved.”

LABOR ORGANIZATIONS—PENALTY FOR CALLING STRIKE—CONSTITUTIONALITY OF STATUTE—*Dorchy v. State of Kansas*, *United States Supreme Court* (Oct. 25, 1926), *47 Supreme Court Reporter*, page 86.—Section 17 of the court of industrial relations act of Kansas (Laws 1920, ch. 29), while reserving to the individual employee the right to quit his employment at any time, makes it unlawful to conspire to induce others to quit their employment for the purpose and with the intent to hinder, delay, limit, or suspend the operation of mining. Section 19 makes it a felony for an officer of a labor union willfully to use the power or influence incident to his office to induce another person to violate any provisions of the act.

August Dorchy was prosecuted criminally for violating section 19, and sentenced to pay a fine and serve a term in prison. This judgment was affirmed by the supreme court of the State. (*Kansas v. Howat*, 112 Kans. 235, 210 Pac. 352.) Dorchy appealed to the United States Supreme Court on the ground that section 19 as

applied was void because it prohibited strikes and was therefore in violation of the fourteenth amendment to the Constitution of the United States.

It appeared that Dorchy was vice president of District No. 14, United Mine Workers of America, whose members were employed by the George H. Mackie Fuel Co., and as such officer had been instrumental in calling the strike of the employees for no other purpose than to compel the fuel company to pay a claim of a former employee amounting to \$180. This case had once before been before the United States Supreme Court (*Dorchy v. Kansas*, 44 Sup. Ct. 323; see Bul. No. 391, p. 165), at which time there was no occasion to pass on section 19, now under consideration.

The Supreme Court, in affirming the judgment of the State court, speaking through Mr. Justice Brandeis, said in part:

The right to carry on business—be it called liberty or property—has value. To interfere with this right without just cause is unlawful. The fact that the injury was inflicted by a strike is sometimes a justification. But a strike may be illegal because of its purpose, however orderly the manner in which it is conducted. To collect a stale claim due to a fellow member of the union who was formerly employed in the business is not a permissible purpose. In the absence of a valid agreement to the contrary, each party to a disputed claim may insist that it be determined only by a court. To enforce payment by a strike is clearly coercion. The legislature may make such action punishable criminally, as extortion or otherwise. And it may subject to punishment him who uses the power or influence incident to his office in a union to order the strike. Neither the common law nor the fourteenth amendment confers the absolute right to strike.

LABOR ORGANIZATIONS—PICKETING—COERCION—INJUNCTION—*Jefferson & Indiana Coal Co. v. Marks*, Supreme Court of Pennsylvania (June 26, 1926), 134 Atlantic Reporter, page 430.—The Rochester & Pittsburgh Coal & Iron Co., owners of a mining plant located at Adrian, Pa., entered into an agreement, known as the Jacksonville agreement, with the United Mine Workers of District No. 2. Shortly thereafter the Adrian plant was closed down. It was later leased to the plaintiff, who started operations on what was known as the 1917 scale. A number of its former employees returned to work at wages provided by that scale. The members and officers of the United Mine Workers of that district resented that action and called a general strike, when, because of conditions then existing, a bill was filed to enjoin the strikers from unlawful interference with the men at work. It was charged that forcible interference with the men to induce them to leave their employment took place; marches and parades with bands of music on the public highways were of almost

daily occurrence; picketing of a greater or less magnitude was engaged in; there was a dynamite explosion by unknown persons; threatening letters were sent; and other acts were committed unlawfully tending to persuade the men to leave work. Defendants denied responsibility for all the acts, but insisted that they were making an effort to sustain the Jacksonville agreement as a standard of wages. From a decree for the plaintiff the defendant appealed. The decree appealed from was modified and as modified it was affirmed. The court in its opinion said:

Without considering the direct conduct of the strikers toward the workmen, as they passed along the highway, did such marching under all the circumstances, have an aspect of hostility and intimidation; or did it, through fear, exert a moral coercion on those on whom it was intended to operate? To accomplish this result it is not necessary that there should be force of arms or a threatening manner or attitude. Coercion may be accomplished without threats or violence.

Though the organization may use every fair means of persuasion to accomplish their purpose, when they undertake day after day, or less frequently, to parade on the public highway, at the time and place where the men employed pass to and from their work, this is not peaceful persuasion, but an annoyance, an intimidation, and through fear, a moral coercion which the law will not tolerate. The highways may be used by a large body of men for parades within reasonable limits, but a parade which has lurking within it a spirit of terror, a commandment of fear, assumes an aspect and coloring far different from a peaceful assemblage of men on the public highways. The purpose might have been perfectly legitimate, but the means employed was illegitimate.

We therefore conclude that the picketing here carried on was unlawful and the placing of pickets in and upon the highways leading to these works may be enjoined. The qualifications to the decree should be omitted. The word "peaceful" should be eliminated. As modified, the decree should read to restrain picketing on or near the premises of the complainant, or on the highways leading thereto; that is, in any manner with the purpose and for the effect of intimidating, annoying, embarrassing, or through fear, exercising moral coercion over those lawfully employed by the appellee, whether actual force or violence be used or not.

A similar conclusion was reached by the Supreme Court of Kansas (Bull. International Alliance (1925), 241 Pac. 459), where the proprietor of two moving picture theaters had been granted an injunction against obstructive and intimidating picketing, following threats that he would be turned over "to the tender mercies of organized labor" if he refused to comply with a demand of the union to pay higher wages to his operators. The State law against the issue of injunctions in case of disputes between employers and employees was said not to be applicable because "the defendants were not employed by plaintiff or seeking to be employed, but were outsiders seeking to compel plaintiff to pay higher wages to those he had employed or might employ." There was found to be a conspiracy to inflict injury to the plaintiff's business, which was a tort, besides the unlawful threats, so that an injunction would properly issue.

LABOR ORGANIZATIONS—PICKETING—INJUNCTION—*Public Baking Co. (Inc.) v. Stern, Supreme Court of New York, Special Term (April 21, 1926), 215 New York Supplement, page 537.*—This was an action to continue an injunction against the defendant union, of which Jacob Stern was treasurer, for alleged illegal interference with the plaintiff's business. It appeared that the plaintiff at one time employed members of the defendant union, but upon the expiration of its contract it discharged the members of the union and employed other laborers. The union then caused its representatives to parade for about two hours each day in front of places of business of the plaintiff and some of its customers, bearing placards upon which was printed the label of the union, with the legend:

This union label means shorter hours, sanitary shops, and safety to the customers. Workers and sympathizers demand bread and rolls with the union label.

There was also some public appeal in front of these places of business in the form of street meetings and addresses.

The court refused to grant a continuation of the restraining order for the reason below set forth:

There is no evidence whatever here that the defendant resorted to the threat, coercion, intimidation, or fraud which it is forbidden to use. It advertised to the buying public, before plaintiff's places of business and of some of its customers, the merits of the bread made by union bakers; it accosted no customers; it interfered neither directly nor indirectly with any person attempting to enter any place of business; it made no threat of sympathetic strike. Defendant's action was calculated merely to advance its own cause and procure employment for its own members. So long as it kept its conduct within these bounds of the law, the fact that the plaintiff was incidentally damaged thereby entitled it to no legal redress. (*Gill Engraving Co. v. Doerr*, 214 Fed. 111; see *Bul. No. 169*, p. 301.)

Judgment was accordingly rendered for the defendant.

In a somewhat earlier case the same judge granted an injunction against picketing on the ground that there was no strike by the workmen of the employer, its employees continuing at work, content with the conditions. As the picketing was said to be merely for the purposes of the union, it had no right thus to interfere with the employer's business. (*Polivian Panama Hat Co. v. Finkelstein* (1926), 215 N. Y. Supp. 399.)

This last opinion was cited by a coordinate judge in a case of picketing and the distribution of literature denouncing the plaintiff, where there was an attempt to unionize a nonunion shop in which there was no strike, an injunction being granted. (*Cushman's Sons v. Amalgamated Food Workers, etc.* (1926), 215 N. Y. Supp. 401.)

The same court, appellate division, ruled in favor of the plaintiff where a small private corporation engaged in a small business, employing only members of one family and personal friends, was picketed to compel the employment of union members. None had ever been employed, and the refusal of the court below to grant an injunction was disapproved, costs and disbursements were allowed, and the injunction granted, the court saying "There being no strike,

there is no legal justification for the acts of the defendants." (*L. Daitch & Co. (Inc.) v. Cohen et al.* (1926), 217 N. Y. Supp. 817.)

Not the fact of no strike, but the riotous conduct of persons engaged in mass picketing and provocative articles in the organ of the union were given as reasons for the issue of an injunction by the appellate division in the case of *Rentner v. Sigman et al.* (1926), 215 N. Y. Supp. 323.)

And so of the Supreme Court of Appeals of West Virginia, where a collective agreement had been terminated on the happening of one of the contingencies provided for termination, followed by picketing "with intimidation, threats, coercion and force"; such conduct, being unlawful, will be enjoined regardless of former employment relations. (*National Woolen Mills v. Local No. 350* (1926), 131 S. E. 357.)

The Court of Chancery of New Jersey likewise supported the granting of an injunction where both the above conditions existed, i. e., there was no striking on the part of the plaintiff's employees, and there were allegations of abusive and indecent language and threats of violence against both employees and patrons. Denials were met by the suggestion that "back of the present demonstration is the full force and power of the American Federation of Labor, of which the pickets are mere sentinels or scouts." It was further said that "Picketing, the object of which is unlawful, irrespective of its militant or intimidating character, may be restrained whether peaceable in fact or not. Even peaceable acts, if unlawful and resulting in irreparable injury, may be enjoined." (*Gevay v. Greek Restaurant Workers' Club et al.* (1926), 134 Atl. 309.)

LABOR ORGANIZATIONS—PICKETING—INJURY TO BUSINESS—INJUNCTION—*F. C. Church Shoe Co. v. Turner et al.*, *Court of Appeals, Missouri* (January 5, 1926), 279 *Southwestern Reporter*, page 232.—This was an action for a temporary restraining order and a permanent injunction against the United Shoe Workers of America, together with various locals of that union and certain members of the union. The plaintiffs were shoe manufacturers in St. Louis, Mo., and the defendants were former employees of the company.

It appeared that up to February 1, 1922, the plaintiffs had in their employ approximately 200 operatives, some of whom were members of unions and others who were nonunion. The most of those who belonged to any union were members of the United Shoe Workers of America. On February 1, 1922, the factory was closed down indefinitely but was soon thereafter reopened. In the meantime, however, a contract had been made by the company with the Boot and Shoe Workers Union, a rival to the United Shoe Workers, that in the future only members of the former union would be hired. On the opening of the factory on February 9, notices were inserted in the public press that members of the Boot and Shoe Workers' Union would be employed and preference would be given to former employees, but the hiring was limited to members of the union or to those who were willing to become members thereof.

The plaintiffs alleged that as soon as the factory was reopened the defendants combined and confederated together to terrorize their

employees and persons desirous of entering into their employ; that they stationed themselves in close proximity to the factory; used vile and opprobrious epithets in an attempt to coerce plaintiffs to break their contract with the Boot and Shoe Workers' Union; and that their conduct constituted a private nuisance. A temporary restraining order was issued by the court after plaintiff had given bond in the sum of \$3,000. The defendant union afterward filed a plea of abatement and asked for damages on the bond. This plea was sustained, and plaintiffs appealed.

The case was considered by a commissioner in an opinion which the court adopted as its own.

The commissioner dismissed all of the errors assigned as not being well taken, and addressed himself to a determination of the questions on which relief was sought in the circuit court. The first of these was that the defendants were unlawfully seeking to compel the plaintiffs to break and abrogate their contract with the Boot and Shoe Workers' Union, and in support of this contention they cited the case of *Hughes v. Motion Picture Operators* (221 S. W. 95), also *Hitchman Coal & Coke Co. v. Mitchell* (245 U. S. 229; see Bul. No. 246, p. 145). The commissioner held that these cases were not in point, in that in neither of them had the relation of employer and employee ever existed between the parties. He then referred to the case of *American Steel Foundries v. Tri-City Central Trades Council* (257 U. S. 184, 27 A. L. R. 360; see Bul. No. 309, p. 181), as being more in harmony with the instant case. In that case the United States Supreme Court held that it was clear that Congress wished to forbid the use of the Federal courts to prevent peaceable persuasion by employees, discharged or expectant, in promotion of their side of the dispute. It was therefore held that the former employees, members of the United Shoe Workers, and defendants in this case "were within their rights in so far as they attempted peaceably to persuade plaintiff's employees, actual or expectant, either to leave or not to enter its employ, even though the ultimate effect of such conduct should be the breaking of the contract entered into between plaintiff and the Boot and Shoe Workers' Union, and that, in so far as this part of its case was concerned, plaintiff was clearly not entitled to the relief sought."

Of the remaining complaint, that of the use of profane language by one of the defendants, the commissioner said in part:

The scene of this occurrence was two blocks from the factory. This act was reprehensible, and must not be condoned, but, of itself, it was not sufficient to create a nuisance in such close proximity to plaintiff's factory as to greatly destroy or injure its value. At most it was but a breach of the peace, and certainly not the proper subject of relief by injunction which presupposes acts designed to create a nuisance and calculated to work irreparable injury.

Accordingly the commissioner recommends that the judgment of the circuit court be affirmed and the cause remanded for disposition of the motion filed May 29, 1922, by defendant United Shoe Workers of America, Local No. 10, for the assessment of damages on the injunction bond.

As stated, the conclusions of the commissioner were made the decision of the court, and the judgment below was accordingly affirmed, and the case remanded for an assessment of damages.

LABOR ORGANIZATIONS—PICKETING—SERVICE OF PROCESS—JURISDICTION—CONSTRUCTION OF STATUTE—*Salitra et al. v. Borson et al.*, *Supreme Court of New York, Special Term, (March, 1926), 215 New York Supplement, page 332.*—John B. Salitra and another sought an injunction against Abraham Borson, president of the Delicatessen Clerks' Union of Greater New York, and another to enjoin them from picketing in front of the premises occupied by the plaintiffs. The process server made affidavit that he served the papers in the case by leaving them personally with a person in the office of the defendant, who stated that he was an officer of the association. One of the plaintiff's attorneys made affidavit that he served a copy of the papers on a person who was picketing in front of plaintiff's premises. On return of the order to show cause the defendants appeared specially and objected to the jurisdiction of the court, on the ground that the papers were not served in accordance with the provisions of section 13, article 3, of the general associations law (added by Laws 1920, ch. 915, sec. 6). Application for an injunction was denied by the court without prejudice, however, to the plaintiff's right to renew the application. Judge Biggs, who delivered the opinion of the court, said in part:

Section 13 of the general associations law permits an action to be brought against the president or treasurer of such an association. It is elementary that suit is begun by the service of the summons or by the general appearance of the defendant. The order and the papers upon which order was granted must be served on the defendant association in the manner prescribed by law. (Sections 225 and 883 of the civil practice act; rule 21, Rules of Civil Practice.)

It is conceded that the papers herein were served on neither Borson, alleged to be president, nor his successor. The affidavit of service merely alleges that they were served on a person who said he was an officer. Such service, in my opinion, is not sufficient to confer jurisdiction.

I am not persuaded that compliance with the direction in the order to show cause that service thereof be made upon any officer of the defendant union is sufficient to cure the defect. Accordingly I conclude that this court has no jurisdiction over the person of the defendant.

The application for injunction was denied, without prejudice to the plaintiff's right to renew the application.

LABOR ORGANIZATIONS—REFUSAL TO WORK ON NONUNION PRODUCTS—INJUNCTION—*Bedford Cut Stone Co. v. Journeymen Stonecutters Assn. of North America, United States Circuit Court of Appeals, Seventh Circuit (October 28, 1925), 9 Federal Reporter (2d), page 40.*—The Bedford Cut Stone Co. and others, quarriers and fabricators of Indiana limestone, a building stone found in large quantities in the district about Bedford and Bloomington, Ind., are the appellants. The defendants are the Journeymen Stonecutters Association of North America, a labor union, which for many years prior to 1921 had contracts with the plaintiffs whereunder only members of the union were employed for cutting the stone after it was quarried. Failing to reach an understanding in 1921, the plaintiffs employed nonunion stonecutters, forming them into an association, membership in which was required to obtain employment as stonecutters with these employers. The defendants have local organizations in most of the States, and the plaintiffs' product is sent to nearly all parts of the United States for use in buildings. Some is shipped in the rough, but most of it is partly cut for use in different buildings and the cutting is completed at the place of building. Considerable stone is fully shaped and cut at the quarries, but even this frequently requires some cutting at the building for exact fitting.

After long negotiations the union officers ordered its members to cease cutting stone which had already been partly cut by nonunion labor, and the result was that the completion of buildings was more or less hindered in several States, the manifest object of the order being to induce the plaintiffs to employ only union stonecutters in the Indiana district. The evidence did not disclose that the quarrying of stone, the transportation of it, or setting it in the buildings was sought to be interfered with, and no actual or threatened violence appeared. There was no picketing and no boycotting. Both parties to the action resided in Indiana, and the sole ground for Federal jurisdiction was that the defendants were conspiring to restrain interstate commerce.

The District Court of the United States for the District of Indiana denied the plaintiffs' prayer for a temporary injunction, and an appeal was taken.

The circuit court of appeals was of opinion that under the facts of the case the defendants were "within their rights in thus undertaking to induce members of their craft to refrain from further cutting upon stone which had before been partly cut by nonunion labor, notwithstanding such refusal might have tended in some degree to discourage

builders from specifying appellants' stone, and thus to reduce the quantity of their product which would enter interstate commerce." The tendency to restrain interstate commerce was conceded, but it was held that as long as it did not appear that the defendants "resorted or threatened to resort to unlawful acts or means to accomplish their lawful purpose," there was no error in the refusal of the district court to grant an injunction.

It was contended for the plaintiffs that the holding of the Supreme Court in *United Mine Workers of America v. Coronado Coal Co.* (259 U. S. 344, 45 Sup. Ct. 551) "requires the conclusion here that this asserted conspiracy is in restraint of interstate commerce." Judge Alschuler, speaking for the circuit court of appeals, pointed out that in the *Coronado* case the court found new evidence on the second trial tending to show that one of the purposes of the extensive destruction of mines and other property and of the killing of persons was to prevent the large capacity of the mines destroyed, and other mines there, from entering into competition with the product of union-operated mines in neighboring States. No such evidence appeared in this case, and the judgment was affirmed.

This case came to the Supreme Court on a writ of certiorari, the hearing resulting in a reversal of the court below, the opinion being delivered April 11, 1927 (47 Sup. Ct. 522). It was held, two Justices dissenting, that the local activities, undertaken at the behest of the stonecutters' association, were for the purpose of destroying the market for the product of the complainant companies, thus constituting an interference with interstate commerce in violation of the Federal antitrust law. Mr. Justice Sutherland, speaking for the court, after reviewing certain testimony, said:

The evidence makes plain that neither the general union nor the locals had any grievance against any of the builders—local purchasers of the stone—or any other local grievance; and that the strikes were ordered and conducted for the sole purpose of preventing the use and, consequently, the sale and shipment in interstate commerce, of petitioners' product, in order, by threatening the loss or serious curtailment of their interstate market, to force petitioners to the alternative of coming to undesired terms with the members of these unions. * * *

* * * And indeed, on the argument, in answer to a question from the bench, counsel for respondents very frankly said that, unless petitioners' interstate trade in the so-called unfair stone were injuriously affected, the strikes would accomplish nothing.

Much reliance was placed on the rule laid down by this court in *Duplex Printing Press Co. v. Deering* (254 U. S. 443, 41 Sup. Ct. 172; see Bul. No. 290, p. 174). In this case the market for the products of the company named was to be destroyed by local efforts interfering with the use, setting up, operation, etc., of its presses.

A distinction was drawn between the instant case and the Coronado Case, relied on by the court of appeals, also the case *United Leather Workers v. Herkert & Meisel* (265 U. S. 457, 44 Sup. Ct. 622; see Bul. No. 391, p. 212), where an interference with manufacture was held not an offense against the antitrust act, although the products were chiefly shipped in interstate commerce, the interruption of interstate commerce being incidental to other objectives.

Where the "strikes were directed against the use of petitioners' product in other States, with the plain design of suppressing or narrowing the interstate market, it is no answer to say that the ultimate object to be accomplished was to bring about a change of conduct on the part of petitioners in respect of the employment of union members in Indiana. A restraint of interstate commerce can not be justified by the fact that the ultimate object of the participants was to secure an ulterior benefit which they might have been at liberty to pursue by means not involving such restraint." Other cases were cited, some in support and some by way of distinction, the conclusion being reached that "the acts and conduct of respondents fall within the terms of the antitrust act; and petitioners are entitled to relief by injunction under section 16 of the Clayton Act."

Mr. Justice Sanford concurred "upon the controlling authority of *Duplex Co. v. Deering*, which, as applied to the ultimate question in this case, I am unable to distinguish." Mr. Justice Stone wrote a brief separate opinion in which he cited cases in view of which "I should not have thought that such action as is now complained of was to be regarded as an unreasonable and therefore prohibited restraint of trade." However, the views of the majority in the *Duplex Printing Press Co.* case, again applied in the instant case, were found to be in opposition to such conclusion. "These views, which I should not have hesitated to apply here, have been rejected again largely on the authority of the *Duplex* case. For that reason alone, I concur with the majority."

Mr. Justice Brandeis, Mr. Justice Holmes concurring, wrote a vigorous dissenting opinion, closely in line with the reasoning of the circuit court of appeals indicated above. The situation in the *Duplex Printing Press Co.* case was held to be clearly distinguishable. There was here simply an effort to enforce the provision of the constitution of the association which provides: "No member of this association shall cut, carve, or fit any material that has been cut by men working in opposition to this association." The mere refusal to work on this material was "confessedly legal." There was no trespass or breach of contract, no picketing, violence, intimidation, fraud, or threats. There was no boycott against any of the plaintiffs or against builders who used the plaintiff's product, no attempt by the unions to procure a sympathetic strike or the aid of members of any other craft. "The

association, its locals, and officers were clearly innocent of wrongdoing, unless Congress has declared that for union officials to urge members to refrain from working on stone 'cut by men working in opposition' to it is necessarily illegal if thereby the interstate trade of another is restrained." The opinion concludes:

The Sherman law was held in *United States v. United Shoe Machinery Co.* (247 U. S. 32), to permit capitalists to combine in another corporation practically the whole shoe machinery industry of the country, necessarily giving it a position of dominance over shoe manufacturing in America. It would, indeed, be strange if Congress had by the same act willed to deny to members of a small craft of workmen the right to cooperate in simply refraining from work, when that course was the only means of self-protection against a combination of militant and powerful employers. I can not believe that Congress did so.

LABOR ORGANIZATIONS—REVOCATION OF CHARTER—PROPERTY RIGHTS—*Centralia Labor Temple Assn. v. O'Day et al.*, Supreme Court of Washington (June 16, 1926), 246 Pacific Reporter, page 930.—The Central Labor Council of Lewis County, Wash., was organized in 1918 and was chartered by the American Federation of Labor. During the existence of this council, referred to herein as the old council, a fund was raised with which to build a labor temple. This fund was held by W. F. O'Day, treasurer of the council, and was carried on the books of the council as a temple fund separate and apart from the general fund. In the early part of 1923 the council ceased to function and its charter was revoked by authority of Samuel Gompers, head of the American Federation of Labor. In March, 1923, a new council was organized under the name of the Twin City Central Labor Union of Chehalis and Centralia and was chartered by the American Federation of Labor. In April, 1923, a corporation known as the Central Labor Temple Association was formed, and in May, 1923, the old council, which had only two labor unions in good standing (five being necessary to constitute a quorum for the transaction of business) held a meeting and passed a resolution ratifying the turning over of the fund which had been raised for temple purposes to the Labor Temple Association. That association then made demand on O'Day to pay over to it the funds in his hands. This he refused to do because the new council had demanded that the funds be delivered to it. Action was then commenced by the Labor Temple Association to require O'Day to turn over the funds to it. The action was opposed by the new council. After hearing the evidence, the trial court held that the fund in question was a trust fund to be used for labor temple purposes; that when the old council's charter was revoked and the new council formed with the approval of and under

the charter of the American Federation of Labor, it became entitled to the possession of the trust fund to be used for trust purposes, for which it was contributed. From this judgment the Labor Temple Association appealed. The court, after considering the numerous errors assigned, affirmed the judgment of the lower court, and the conclusion of its opinion said:

We find no error in the holding of the trial court that the fund in question should be delivered to the new council, and its judgment is therefore affirmed.

LABOR ORGANIZATIONS—RULES—REFUSAL TO PAY STRIKE BENEFITS—POWERS OF OFFICIALS OF UNIONS—*Brotherhood of Railroad Trainmen v. Barnhill, Supreme Court of Alabama (April 8, 1926), 108 Southern Reporter, page 456.*—T. L. Barnhill sued the Brotherhood of Railroad Trainmen for strike benefits from September 5, 1923, to July 5, 1924. He alleged in his complaint that he was a member of the defendant's order; that the defendant contracted with him at the time he became a member to pay him strike benefits; that he was called out on a strike inaugurated by the brotherhood on March 5, 1921; that the strike had not been officially terminated and that he continued to strike. He asked judgment in the amount of \$100 per month from September 5, 1923, to July 5, 1924. From judgment for the plaintiff the defendant appealed. It contended that under the provisions of its constitution and by-laws its officers were empowered to take such action as they deemed necessary to protect the funds of the order.

The court, after reviewing and citing a number of cases involving questions similar to that here presented, upheld the defendant's contention in the following language:

After a due consideration of the authorities, the power through the provisions of the brotherhood law to make the decision of their own officials and tribunals conclusive in respect to the extraordinary protective fund and all its strike benefits under its law, we are of opinion are conclusive on the members, no fraud being charged. These institutions, operating for their members or a reasonable classification thereof for reasons of policy and that of its welfare, may adopt laws for their government, to be administered by themselves to its members, and require for the general benefit the surrender of no right that an individual may not waive. And he is bound by that authority and law only so long as he chooses to recognize that authority. Any other rule would impair the usefulness of such institutions and render the duly constituted tribunals of such order practically useless. If the constitution and by-laws be considered under the general issue, the several requested affirmative instructions for defendant should have been given.

The judgment was therefore reversed and the case remanded.

LABOR ORGANIZATIONS—STRIKES—MONOPOLIES—INTERFERENCE WITH INTERSTATE COMMERCE—*Coronado Coal Co. v. United Mine Workers of America*, *United States Supreme Court* (May 25, 1925), 45 *Supreme Court Reporter*, page 651, 268 *U. S.* 295.—This case was before the court in a protracted series of actions involving the labor conflict between the parties named. There was an action for damages brought under the Federal antitrust act, charging conspiracy to restrain and prevent the company's interstate trade in coal. There was in reality a group of plaintiffs operating mines in Sebastian County, Ark. In the course of the effort of the union to secure unionization, valuable mining properties of the plaintiff were destroyed in 1914. Earlier proceedings were reported under *Dowd v. United Mine Workers of America* (235 Fed. 1, 148 C. C. A. 495; see Bul. No. 224, p. 168); *United Mine Workers of America v. Coronado Coal Co.* (258 Fed. 829, 169 C. C. A. 549; see Bul. No. 290, p. 192); same case (259 *U. S.* 344, 42 Sup. Ct. 570; see Bul. No. 344, p. 157); *Finley v. United Mine Workers of America* (300 Fed. 972; see Bul. 391, p. 263).

In the latest case, *Finley*, receiver for the *Coronado Coal Co.*, was denied recovery under the antitrust act on the ground that there was not sufficient evidence of a direct purpose to interfere with or monopolize interstate commerce, the alleged conspiracy being "for the purpose of unionizing the mines and of preventing Mr. Bache from working his mines nonunion." A verdict was therefore directed for the defendants and affirmed by the circuit court of appeals. The case came before the Supreme Court on a writ of error from this decision.

Mr. Chief Justice Taft, speaking for the court, having stated briefly the facts, said:

In our previous opinion we held that the International Union known as the International Mine Workers of America, the union known as United Mine Workers, District No. 21, and the subordinate local unions which were made defendants, were, though unincorporated associations, subject to suit under the antitrust act, but that there was not sufficient evidence to go to the jury to show participation by the International Union in the conspiracy and the wrongs done. We found evidence tending to show that District No. 21 and other defendants were engaged in the conspiracy and the destruction of the property, but not enough to show an intentional restraint of interstate trade and a violation of the antitrust act. The plaintiffs contend that they have now supplied the links lacking at the first trial against each of the principal defendants.

Details were then given as to methods of attack and defense, the purchase of guns and ammunition, the battle between the parties, after which "two of the employees of the mine, after capture, were deliberately murdered," and the use of gunfire, bullets, dynamite, and the torch to destroy the property of various of the plaintiffs.

An essential question was as to the inclusion of the International Union as participant in the strike with the district and local unions. After considering the provisions of the constitution of the union with regard to the authorization of strikes and the acts of the international board and officials, the Chief Justice concluded: "We thought at the first hearing and we think now that none of this evidence tends to establish the participation of the International in the Prairie Creek strike and disturbances."

As to the question of purpose to restrain interstate commerce, evidence was examined tending to show a basis for such a claim. One of the union officials was reported to have said that the nonunion coal must be kept off the market, "because if Bache coal, scab dug coal, got into the market it would only be a matter of time until every union operator in that country would have to close down his mine, or scab it, because the union operators could not meet Bache competition." District union officials were shown to have received large numbers of guns and to have guaranteed the miners' pay "for every day you are in this trouble." In the course of this evidence it was further brought out that the International was not to be involved because "we have West Virginia and Colorado on our hands, and we can not bear any more fights."

The Chief Justice had reviewed certain positions taken at the earlier hearing before the Supreme Court as to the situation of unincorporated associations. It was found that the evidence was "so clear that it does not need further discussion" to the effect that the district officials and agents, with subordinate local unions, organized and carried through the attacks and activities complained of. The only remaining question was as to whether they "were intentionally directed toward a restraint of interstate commerce." On the first trial, this was held not to be shown; but since that time evidence had been introduced indicating the necessity of barring nonunion mined coal from interstate commerce if the union mines were to be kept in operation and union conditions maintained. There was also found to be a discrepancy between the previous understanding as to the output of the mines and the existing facts. Thus it was said in the earlier case that merely to eliminate a product of 5,000 tons a week from interstate commerce would be insignificant as affecting the total tonnage of the country or State. It now appeared that the potential output was 5,000 tons a day. While this difference would not in and of itself affect the conclusion then reached, a different significance is given the situation, "in view of the direct testimony as to the moving purpose of District No. 21 to restrain and prevent plaintiffs' competition." The amount capable of being mined would become "relevant evidence for the jury to consider and weigh as a circumstance with the rest of the new testimony in proof of intent of the

leaders of District No. 21 to prevent shipments to neighboring States of such an amount of nonunion coal at nonunion cost." Continuing, the opinion concludes:

The mere reduction in the supply of an article to be shipped in interstate commerce by the illegal or tortious prevention of its manufacture or production is ordinarily an indirect and remote obstruction to that commerce. But when the intent of those unlawfully preventing the manufacture or production is shown to be to restrain or control the supply entering and moving in interstate commerce, or the price of it in interstate markets, their action is a direct violation of the antitrust act. We think there was substantial evidence at the second trial in this case tending to show that the purpose of the destruction of the mines was to stop the production of nonunion coal and prevent its shipment to markets of other States than Arkansas, where it would by competition tend to reduce the price of the commodity and affect injuriously the maintenance of wages for union labor in competing mines, and that the direction of the district judge to return a verdict for the defendants other than the International Union was erroneous.

The judgment of the lower courts in favor of the International Union was therefore affirmed, but that in favor of District No. 21 and the other local unions and individual defendants was reversed, and the cause remanded for a new trial.

LABOR ORGANIZATIONS—STRIKES—PICKETING—INJUNCTION—
"CLEAN HANDS"—*Forstmann & Huffman Co. v. United Front Committee of Textile Workers, Court of Chancery of New Jersey (May 12, 1926), 133 Atlantic Reporter, page 202.*—The complaint in the above case arose out of conditions attendant upon the strike beginning in January, 1926, among the textile workers of Passaic, N. J., and vicinity. The company named employed about 3,000 hands, and claimed that no strike existed among its workers. On the basis of a sworn statement to this effect, "and further proof of illegal interference with such employees by those of the other mills who had gone on strike, a most drastic and sweeping ad interim restraint was imposed upon the strikers, and they were ordered to show cause why a preliminary injunction should not issue."

Vice Chancellor Bentley, who delivered the opinion of the court, found that by far the greater number of the complainant's employees were on strike, that no acts of violence or intimidation had been proved to have been committed by the strikers, and that picketing had been carried on by as many as 2,000 persons at one time. Quoting at some length from the opinion of Mr. Chief Justice Taft in his decision in the American Steel Foundries case (257 U. S. 184, 42 Sup. Ct. 72; see Bul. No. 309, p. 181), the court announced the conclusion that "picketing in itself, for all its militant name, may be legal

or illegal in a dispute between employer and employee, according to the manner in which it is carried on." No question exists as to the right of workmen to associate for bettering their living or working conditions, or as to the right to strike as an inducement to secure from the employer the desired concessions. Workmen unable to picket in a labor market such as existed in the locality would be reduced to a futile and absurd condition.

Under these circumstances, and so long as they do not resort to interdicted conduct, every dictate of reason and fair play requires that they be given an opportunity to lawfully discuss their grievance, or supposed grievance, with either their fellow employees or others who offer themselves to take their places, unless, indeed, labor is to be returned to that state of bondage that succeeded legal serfdom in England.

However, the mass picketing indulged in could not be permitted to continue, so that while "there should be a material modification of the terms of the restraining order," an injunction would nevertheless be allowed to limit picketing in accordance with the theory of persuasion and imparting information, but without intimidation, even by mere numbers.

The injunction was opposed by the defendants on the theory of an adequate remedy at law, but—

It can not be said that an irresponsible committee not even affiliated with any regular labor organization and a horde of employees attempting to support families on wages of \$15 or \$20 a week could possibly respond to a judgment in an action at law.

The defendants also set out that the complainants had not "come into court with clean hands," in that they had themselves formed an association virtually establishing an employment system embodying a blacklist for workers for any reason objectionable to any member of the employers' association. It was also charged that this association had sent out spies among the employees, to bring back confidential reports about various individuals. The court was unable to see in this anything that offended the maxim of equity referred to.

Certainly the employers have exactly the same right to organize and protect their interests that the law affords to the employees. In the minds of the defendants this appears to have been aggravated by the fact that the complainant had organized among its employees a sort of governing and welfare body, at the same time retaining in its hands control of the affairs thereof, and that this was done for the purpose of forestalling any combination or affiliation with organized labor upon the part of the employees. I do not understand that it is illegal or in any other way offensive for an employer of labor to attempt to operate a shop with workmen who are not members of a trade union, and any such action upon the part of this complainant can have no bearing upon a determination of its right to be free

from illegal actions upon the part of its employees who have refused to continue at their work.

I will advise an order in accordance with the views herein above set forth, but will require that notice thereof be given.

LABOR ORGANIZATIONS—VIOLATION OF INJUNCTION—LIABILITY FOR INJURIES—RECEIVER—SERVICE—WRIT OF PROHIBITION—*District No. 21, United Mine Workers of America, v. Bourland, Chancellor, Supreme Court of Arkansas (November 9, 1925), 277 Southwestern Reporter, page 546.*—A temporary restraining order was granted enjoining certain named individuals and all other members of District No. 21, United Mine Workers of America, from destroying or going upon any of the property and from interfering in any manner with the agents of the Greenwood Coal Co., Mammoth Vein Colliery Co., and the Backbone Coal Co. On August 31, 1925, an amendment to the complaint was filed by the coal companies, alleging that the restraining order had been violated by the defendants who had destroyed property in the value of several thousand dollars, and praying that the court appoint a receiver to take charge of all the district funds on hand or in banks, and any dues thereafter collected by or for it. The companies also prayed that upon final hearing judgment for damages be given in certain amounts as claimed by them individually, and that the sums in the hands of the receiver be applied in payment of the judgment and cost of the action. A receiver was appointed by the chancellor and directed to take charge of the funds as prayed for, and hold them until further orders of the court, and also to take charge of the property belonging to the district and the locals, and to preserve same until further orders of the court. The defendants filed a motion in the chancery court to vacate and set aside the order of the chancellor, but this was overruled. An application for writ of prohibition was filed and the chancellor given due notice thereof. The court, in granting the writ and ordering the receivership vacated, said in part:

The case not being here on appeal, but upon prohibition, our consideration must be confined to the question of the power of the chancery court to appoint a receiver in a case of this sort.

The writ of prohibition is an appropriate remedy to restrain the exercise of jurisdiction by an inferior court over a subject matter when it has none, and over parties where it can acquire none.

It is a principle of elementary law that the pendency of a suit is an absolute prerequisite to the appointment of a receiver, and unless made in a suit pending the court is without jurisdiction, and the order appointing the receiver is void.

A court of equity may appoint a receiver before service of summons upon the defendant and without notice to him. (*Excelsior White*

Lime Co. v. Rieff, 107 Ark. 554, 155 S. W. 921.) This is done on the same principle that an injunction will sometimes be issued before actual service and before actual notice of the application is given. In such case it must appear that the relief and protection can be given in no other way. Since equity acts on the person, and since the appointment of a receiver is an equitable proceeding, and since equity does not act directly against the property, the court cannot appoint a receiver where there can be no legal service of summons against the defendant.

In the case at bar an attempt was made to sue District No. 21, United Mine Workers of America, and the locals which are unincorporated associations by their society or company names. This court has held, however, that an unincorporated or voluntary association of persons has no legal entity, and cannot be sued by its society name. (*Baskins v. United Mine Workers of America*, 150 Ark. 398, 234 S. W. 464.) We are asked to overrule the case last cited under the authority of *United Mine Workers of America v. Coronado Coal Co.* (259 U. S. 344, 42 Sup. Ct. 570; see Bul. No. 344, p. 157).

There is no Federal question involved in the matter and consequently no reason why we should overrule our own opinion, except that it is wrong.

An attempt was also made to obtain service on the defendant under section 1098 of Crawford & Moses Digest. That section provides that where the question is one of common or general interest of many persons, or where the parties are numerous and it is impracticable to bring them all before the court within a reasonable time, one or more may sue or defend for the benefit of all. It will be remembered that this suit originated as an equity proceeding, and it may be here stated that the section of the statute just referred to is, so far as equity is concerned, an adoption by the legislature of the doctrine of virtual representation, which was in accordance with the existing practice of courts of equity at the time of the adoption of our Constitution.

This suit was brought in equity by certain coal operators to recover unliquidated damages for personal injuries to their property. Equity will not by an original action take jurisdiction of a case involving a question of unliquidated damages arising from a tort.

It follows as a consequence that no service was had or could be had upon the members of District No. 21, United Mine Workers of America, and the local union, and the appointment of a receiver in an action against them was a nullity.

The writ of prohibition asked for was granted, and the receivership ordered by the chancellor vacated.

LICENSING BUSINESS—RESTAURANT KEEPER—REVOCATION OF LICENSE WITHOUT HEARING—CITY ORDINANCE—DUE PROCESS OF LAW—*Angelopoulos v. Botorff, City Manager, District Court of Appeal of California (February 24, 1926), 245 Pacific Reporter, page 447.*—John Angelopoulos sought an injunction against H. C. Botorff, as city manager, and others to enjoin them from enforcing ordinance

No. 18 against him as a keeper of a restaurant in the city of Sacramento, Calif.

The ordinance complained of gave the city council wide powers in the matter of issuing and canceling licenses in the city of Sacramento, and provided among other things for the cancellation of licenses without notice to the licensee upon evidence satisfactory to it that any of the provisions of the ordinance had been violated. It was complained by the plaintiff that the ordinance was in violation of the constitution of California, article 1, sections 1 and 13, and the fourteenth amendment to the Constitution of the United States.

Defendants demurred to the plaintiff's complaint. The demurrer was sustained and the plaintiff appealed.

The court in the course of its opinion pointed out the difference between the right to do business and a privilege to engage in certain occupations which might be inimical to the public welfare. It held that to engage in the restaurant business was a fundamental right of the plaintiff and that he was surrounded with certain constitutional safeguards such as notice and the right to be heard in his own defense, which rights the city council had no power to deprive him of.

In concluding its opinion the court, speaking through Judge Plummer, said in part:

The violation of law alleged in this case does not appear to have been in connection with the business licensed, but, whether such be or be not the case, the fact that the revocation was had without notice or hearing renders the purported order of cancellation void, and, as that is the only question necessary to be decided in this case, we limit our ruling to the failure to give notice and afford an opportunity for a hearing.

The judgment of the lower court sustaining defendant's demurrer was reversed with directions to overrule the demurrer and permit defendant to answer the plaintiff's complaint, and it was so ordered.

LICENSING OCCUPATIONS—ARCHITECT—TAXATION—CONTRACTS—*Wolpa et al. v. Hambly, Court of Appeals of Ohio (July 9, 1923), 153 Northeastern Reporter, page 135.*—Action was brought by George Hambly against Louis Wolpa and another in the municipal court of Cincinnati to recover the value of his services as an architect. The suit was contested by the defendants on the ground that the defendant had not at the time he entered into the contract paid an occupational tax in compliance with city ordinance No. 347. From a directed verdict for the defendants the plaintiff appealed. The court of common pleas reversed the judgment of the municipal court, and the defendants brought error. The main question for the court was whether or not the tax in question was an excise or a license tax. If

an excise tax for the purpose of raising revenue, the contract in question would not be void, but if it was a license tax granted by competent authority to do an act which without such authority would be illegal then such contract would be void.

The court, after reviewing the purposes for which the ordinance above referred to was passed, and examining several authorities on the question of taxation and contracts, reached the conclusion that the ordinance could not be classed with ordinances that have for their purpose the benefit and protection of the public.

In concluding, the court said:

We therefore hold that the tax under consideration was a valid excise tax for revenue only, and the failure to pay it did not invalidate a contract for services entered into between the parties herein.

The judgment of the court of common pleas reversing the judgment of the municipal court was therefore affirmed.

LICENSING OCCUPATIONS—ELECTRICAL CONTRACTORS—CONSTITUTIONALITY OF STATUTE—*Berry et al. v. City of Chicago et al.*, *Supreme Court of Illinois (April 23, 1926)*, *151 Northeastern Reporter*, page 531.—The Legislature of Illinois at its 1925 session reenacted section 1 of article 5 of the cities and villages act with a new clause providing for the registration of electrical contractors, which it defined to be any person or firm engaged in the business of installing by contract electrical equipment for the utilization of electricity supplied for light, heat, or power, but exempted from the provisions of the act public utility companies firms of which one member or a representative thereof had had two years' practical experience in installing and altering such electrical equipment, and persons bearing the relation of employee to the person for whom the work was to be done. At the same session of the legislature an act was passed purporting to give to cities and villages the power to regulate the installation, alteration, and use of all electrical equipment within its limits and to provide for the establishment of an inspection commission to see that the terms of the law were carried out.

The city council of Chicago passed two ordinances in strict compliance with the terms of the acts.

Suit was brought by F. S. Berry and others against the city of Chicago and certain of its officers to enjoin them from enforcing the ordinances, on the ground that they and the statutes under which they were passed were unconstitutional, in that the legislature had undertaken to invoke the police power arbitrarily without reference to the object sought—namely, the protection of the public generally against the results of defective electrical work and incompetent workmanship. From a decree dismissing the bill, plaintiffs appealed.

The court held that in view of the plenary powers of the legislature, in the absence of constitutional restrictions, to enact laws and its power to confer upon subordinate agencies all the power it possesses for carrying out such laws, the question for consideration in the instant case was whether the legislature had the authority to confer upon the city council the power to pass the ordinances complained of.

In the course of its opinion the court cited a number of cases in which the question of the constitutionality of similar legislation had been considered, and quoted with approval from the decision in the case of *Jones v. Chicago, R. I. & P. Ry. Co.* (83 N. E. 215, 231 Ill. 302) as follows:

When a law is made applicable to one class of individuals, there must be some actual, substantial difference between the individual so classified and other individuals in the State or community, when considered with reference to the purpose of the legislation.

It also quoted from the decision in the case of *Bagdonas v. Liberty Land Co.* (140 N. E. 49, 309 Ill. 103);

There must be a sound basis in reason and principle for regarding the class of individuals as a distinct and separate class. A class can not be created by arbitrary declaration of the law-making power and endowed with special legislative favors.

Judge Heard, speaking for the court, then said in part:

The legislative purpose for the exercise of the power of regulation of the installation and alteration of electrical equipment is to protect the public from injury to persons from exposed wires and to property from resultant fires from defective electrical workmanship and construction.

After referring to the classes exempted he continued:

A good reason can be seen why they might be separately classified with reference to equipment to be installed for them in their operation as public utilities or common carriers, but that reason does not obtain where they seek to enter into the field of contracting for the installation and alteration of electrical equipment for others.

The act of 1925, in relation to the regulation or installation of electrical equipment, contains the same classifications with reference to public utilities and common carriers and employees of the person for whom the work is done. When the two acts of the legislature are tested by the rules laid down by the authorities above cited, we must hold that they are unconstitutional and invalid.

The decree of the circuit court was therefore reversed.

MECHANIC'S LIENS—CHATTEL MORTGAGE—RANK—*Hockaday Auto Supply Co. v. Huff (Valley Securities Co., Intervener), Supreme Court of Kansas (May 8, 1926), 245 Pacific Reporter, page 1013.*—The Valley Securities Co., referred to herein as intervener, owned by

assignment a chattel mortgage for the purchase price of an automobile. The mortgage had been executed by F. J. Huff and duly filed and recorded. By its terms the mortgagor was allowed to possess and use the automobile. Some time later Huff took the car to the Hockaday Auto Supply Co. and contracted with it for certain repairs and renewals at an agreed price of \$80. The bill for the work done and materials furnished was not paid, and the plaintiff filed a lien for labor and materials against the car. The intervener claimed that the chattel mortgage, being first in time, should be regarded as superior to that of the mechanic for labor and material. From judgment for the plaintiff the intervener appealed on the ground that Revised Statutes 58-201, under which the mechanic's lien was filed, was not enacted by the legislature, but was the creation of the revision commission, and that the judgment of the court would deprive it of its property without due process of law.

In disposing of the case the supreme court said in part:

While the commission reported the revision to the legislature it was in fact constitutionally enacted by that body, and is as much the law of the State as if it had been initiated by the legislature without the report of the commission. Prior to 1913 liens of mechanics or artisans were not given priority over other liens, but in that year the legislature passed a statute providing that certain mechanics should have a first and prior lien upon vehicles, including automobiles, which came into their possession to have work done or repairs or improvements made thereon. (Laws 1913, ch. 218; Gen. Stat. 1915, sec. 6092.) The priority thus provided has been in force since that time.

The court cited several cases wherein the decisions of the courts had upheld the principles of the statute now attacked, and quoted from the opinion of Justice Brewer in the case of *Case v. Allen* (21 Kans. 217, 30 Am. Rep. 425) as follows:

The principle seems to be that where the mortgagee does not take the possession, but leaves it with the mortgagor, he thereby assents to the creation of a statutory lien for any expenditure reasonably necessary for the preservation or ordinary repair of the thing mortgaged. Such indebtedness really inures to his benefit. * * * The work or material enhances or continues the value of that upon which the work is done or to which the material is furnished; and the mortgagee can always protect himself against such liens, or, at least, any accumulation of debt thereon, by taking possession of the chattel mortgaged.

Other cases were cited in which the principles of the case were followed and approved. The opinion continued:

We see no reason to depart from a rule established about 50 years ago and which has been consistently followed since that time. By intrusting the possession of the car to the mortgagor the mortgagee in a sense made him its agent to keep it in a good condition for the

benefit, not only of the mortgagor, but also for the benefit of the mortgagee and in that way preserve the value of its security.

Following these decisions it must be held that the statute giving a lien for labor and material on the automobile and making it superior to that of a prior mortgage does not violate the constitutional provision mentioned, and therefore the judgment of the district court will be affirmed.

PUBLIC CONTROL OF BUSINESS—SALE OF OIL AND GASOLINE BY CITY—CONSTITUTIONALITY OF ORDINANCE—*Mutual Oil Co. v. Zehrung et al*, *United States District Court, Nebraska (April 7, 1925)*, *11 Federal Reporter (2d)*, page 887.—An ordinance was adopted by the city of Lincoln, Nebr., in pursuance to an amendment to the city charter, creating a department to sell oil and gasoline to the inhabitants of the city, and a fund was provided with which to carry on the business. The gasoline and oil were to be sold at cost plus handling and some contingencies. The plaintiff, who was engaged in the business of selling gasoline and oil in Lincoln, filed a bill praying for an injunction permanently to restrain the officers of the city from carrying out the terms of the ordinance, and alleged that such an ordinance was in violation of the Constitution of the United States, of the constitution of Nebraska, and also of the provisions of the city charter. The defendants moved to dismiss the bill, the motion being overruled.

The court first took up the claim that the establishment of the municipal plant deprived the plaintiff of property without due process of law, in violation of the fourteenth amendment to the Constitution; but the hazard of loss by competition was said to be one that existed when the business was entered upon, so that there was no deprivation of property in any legal sense, neither will implications against public rights be indulged in; citing *Helena Water Works Co. v. Helena* (195 U. S. 383, 25 Sup. Ct. 40), and other cases.

More strongly urged was the claim that there was here a use of public money for private purposes. Courts differ as to the point.

Some have condemned the operation of enterprises such as moving-picture exhibitions, the manufacture and sale of ice, the sale of coal and wood, and the sale of goods in ordinary mercantile establishments. (*State v. Lynch*, 88 Ohio St. 71, 102 N. E. 670; Opinion of the Justices, 155 Mass. 598, 30 N. E. 1142; *In re Municipal Fuel Plants*, 182 Mass. 605, 66 N. E. 25; *State v. Orear*, 277 Mo. 303, 210 S. W. 392; *Union Ice & Coal Co. v. Town of Ruston*, 135 Ia. 898, 66 So. 262.) Others of such courts have declared it a proper public purpose for such municipal corporations to engage in the sale of coal and wood, and to manufacture and sell ice, to the inhabitants of the municipality. (*Laughlin v. City of Portland*, 111 Me. 486, 90 Atl. 318; *Jones v. City of Portland*, 113 Me. 123, 93 Atl.

41; *Central Lumber Co. v. City of Waseca*, 152 Minn. 201, 188 N. W. 275; *Holton v. City of Camilla*, 134 Ga. 560, 68 S. E. 472.)³

The Supreme Court of Nebraska, upon a consideration of this division of decisions, has held that a tax for the support of a municipal fuel yard is for a public purpose, and that such a tax is not contrary to any limitations of the taxing power. (*Consumers' Coal Co. v. City of Lincoln*, 109 Nebr. 51, 189 N. W. 643.) The validity of the Maine statute, authorizing the operation of a municipal yard for the sale of wood, coal, and other fuel without financial profit, was sustained by the Supreme Court of the United States against the claim that such a use of the public money was not for a public purpose, and was a violation of the fourteenth amendment. (*Jones v. City of Portland*, 245 U. S. 217, 224, 225, 38 Sup. Ct. 112.)

Other cases were cited, including that of *Green v. Frazier* (253 U. S. 233, 40 Sup. Ct. 499), in which the court sustained the validity of acts of the Legislature of North Dakota providing for the establishment of a system of warehouses, elevators, flour mills, factories, etc. Comparing the purposes and effects of these acts with those of the ordinance under consideration, the court found itself "unable to declare" the latter unconstitutional.

RAILROAD COMPANIES—STRIKE AS CAUSE OF DELAY IN TRANSPORTATION—LIABILITY—*Ritchie v. Oregon Short Line R. Co., Supreme Court of Idaho (February 24, 1926), 244 Pacific Reporter, page 580.*—Ben T. Ritchie sued the Oregon Short Line Railroad Co. to recover damages for losses which he alleged were due to delay and negligence in handling a shipment of eight carloads of sheep from Adrian, Oreg., to Idaho Falls, Idaho. It appeared that the train carrying the sheep arrived in Pocatello, Idaho, 24 hours after loading, but could proceed no further on account of a sudden strike of some 100 switchmen in the employ of the company.

At the close of the trial the company moved for a directed verdict on the grounds of insufficient evidence to establish negligence on its part, etc. The motion was denied and the jury returned a verdict in favor of the plaintiff. From judgment on the verdict the defendant appealed. Numerous errors were assigned, but the question primarily of interest here was whether under the circumstances and the facts as affected by the strike the defendant could be held liable for the loss complained of. The court examined a number of authorities on the question of the liability of carriers in circumstances similar to those in the instant case. The principle applied in *Indianapolis & St. Louis R. R. Co. v. Juntgen* (10 Ill. App. 295), was held applicable here. From this case the court quoted as follows:

³The court included in this list *Baker v. City of Grand Rapids* (116 Mich. 6-7, 106 N. W. 208), but the court in that case decided against the power of the city to operate municipal fuel plants as an improper use of public money, but denied the petitioner the right to an injunction restraining the operation of the plant, as he had not come into the court with clean hands, and furthermore, the operation had ceased.—Editor.

In this respect the common carrier stands on the same ground as other bailees, and may excuse delay in the delivery of goods, by accident or misfortune, although not inevitable, or produced by the act of God. All that can be required of him in such an emergency is that he shall exercise due care and diligence to guard against delay, and that, if it occur without his fault or negligence, he shall omit no reasonable effort to secure the safety of the goods.

Another case which was held to be in point was that of *Panhandle & S. F. Ry. Co. v. Thompson* (Tex. Civ. App., 235 S. W. 913) in which it was held that—

Where the employees suddenly abandon a carrier's service, and, while offering no violence and causing no forcible obstruction to its business, simply refuse to work or further discharge their duties, for any delay in shipment of cattle consequent thereon the carrier is liable if it fails to use reasonable diligence in supplying the places of the striking employees, and that the question of whether the carrier has used reasonable diligence is a question of fact for the jury.

In other cases, a strike of violence was held to be an excuse.

Judge Givens, speaking of the instant case, then said in part:

The question of whether it was a passive strike or a strike of violence would have a bearing upon the diligence to be exercised by the carrier, but would make no difference in principle. In other words, it could not be said as a matter of law that a passive strike was no excuse while a strike of violence would be an excuse. If there were physical interruptions in the transportation of the freight, due to wrecks or any other physical causes, not amounting to an act of God or superinduced by acts of the public enemy, whereby delay ensued, it would be a question of fact as to whether there was negligence, hence an unreasonable delay; or whether there was no negligence, and hence not an unreasonable delay. Practically all the authorities hold that a strike of violence is a valid excuse for a delayed shipment, and their justification in so holding must be that the diligence shown to have been exercised by the carrier in the face of such violence was reasonable; if then in a passive strike the carrier, without fault on its part, and after the exercise of every reasonable effort to secure others to take the place of the strikers, is unable to secure men, there is no difference in principle.

The defendant was liable, if there was a strike, and due diligence had not been exercised by the carrier to overcome the strike; but, if it had exercised such due diligence, the delay would not have been unreasonable. In other words, the court improperly said that, if the unreasonable delay was occasioned by the strike, the defendant was liable. Delay may be excused and therefore not amount to an unreasonable delay, because of acts which do not reach to the dignity of or fall within any of the classes enumerated in instruction No. 17.

The instruction noted advised the jury that the delay was unreasonable unless caused by an act of God, public enemy, authority of law, or inherent tendency of the sheep themselves.

The judgment was ordered reversed and the cause remanded to the lower court with instructions to grant a new trial. Costs allowed to appellant.

RAILROADS—EQUIPMENT—STATE AND FEDERAL REGULATIONS—*Napier v. Atlantic Coast Line R. Co.*, *Supreme Court of the United States* (November 29, 1926), *47 Supreme Court Reporter*, page 207.—The opinion in this case disposed of three actions to determine the validity of State regulations affecting the equipment of locomotive engines used on highways of interstate commerce. The titling case was a suit by the attorney general of Georgia against the company named which had procured an injunction against the enforcement of a statute (acts of 1924, p. 173) prescribing the installation of automatic doors to the fire boxes of certain locomotives. (2 Fed. (2d) 891.) The other cases were from Wisconsin, where the supreme court had upheld an act of 1923 (ch. 139) prescribing cab curtains to be installed on locomotives as a protection to the engineer and fireman (188 Wis. 232, 205 N. W. 932).

The main question was as to the construction of the Federal statute known as the boiler inspection act—i. e., whether it “has occupied the field of regulating locomotive equipment used on a highway of interstate commerce, so as to preclude State legislation.”

All parties conceded the power of Congress so to act in regard to safety as to prevent State interference; also that the Federal safety appliance and boiler inspection acts apply to locomotives used on a highway of interstate commerce even if engaged only in intrastate service. Mr. Justice Brandeis, speaking for the court, recounted prior enactments as to equipment, relating to power brakes, automatic couplers, grab irons, drawbars, safety ash pans, and sill steps. These specific requirements were held as obviously not covering the field, since they are limited to the particular points named; the same is true as to the original boiler inspection act, “but the power delegated to the [interstate commerce] commission by the boiler inspection act as amended is a general one. It extends to the design, the construction, and the material of every part of the locomotive and tender and of all appurtenances.” It was held that the requirements prescribed by the State laws were “within the scope of the authority delegated to the commission.” The preservation of the health of engineers and firemen, like preventing excessive fatigue through limited hours of work, is a promotion of comfort and indirectly of safety. Various orders had been issued by the commission in line with its authority relating to sundry items of equipment, which its power to inspect enables it to enforce. The claim that Congress intended “solely to prevent accidental injury” while the State regulations endeavor “to prevent sickness and disease due to excessive and unnecessary exposure,” was held inadequate.

The Federal and the State statutes are directed to the same subject—the equipment of locomotives. They operate upon the same object. It is suggested that the power delegated to the commission

has been exerted only in respect to minor changes or additions. But this, if true, is not of legal significance. It is also urged that, even if the commission has power to prescribe an automatic fire box door and a cab curtain, it has not done so; and that it has made no other requirement inconsistent with the State legislation. This, also, if true, is without legal significance. The fact that the commission has not seen fit to exercise its authority to the full extent conferred has no bearing upon the construction of the act delegating the power. We hold that State legislation is precluded, because the boiler inspection act, as we construe it, was intended to occupy the field. The broad scope of the authority conferred upon the commission leads to that conclusion. Because the standard set by the commission must prevail, requirements by the States are precluded, however commendable or however different their purpose.

If the requirements now existing are deemed inadequate, the commission has ample power to afford relief, and to it recourse must be had. The decree of the district court forbidding enforcement of the Georgia law was affirmed and the judgment of the Supreme Court of Wisconsin sustaining the law of that State was reversed.

WAGES—ASSIGNMENT—CONTRACTOR'S BOND—*Hartford Accident & Indemnity Co. v. Board of Education, United States Circuit Court of Appeals (October 19, 1926), 15 Federal Reporter (2d), page 317.*—Suit was instituted by the board of education in the district of Beaver Pond, Mercer County, W. Va., as assignee of the claims of certain laborers and material men, to recover on a contractor's bond executed by the Hartford Accident & Indemnity Co. as surety to guarantee the performance of a contract between the plaintiff and the Harrison Construction Co., by the terms of which the latter agreed to erect a school building. The defendant challenged the plaintiff's right to recovery on the ground that the bond did not guarantee the payment of claims of laborers and material men, but merely indemnified the plaintiff against any loss which it might sustain from breach of contract on the part of the contractor, and that the plaintiff had sustained no loss; that with respect to the claims sued on, the plaintiff was in no better position than the laborers and material men who assigned their claims; and that, as these could not have recovered on the bond, the plaintiff could not recover on it. From judgment for the plaintiff the defendant brought error.

The contract in question, among other things, provided that the contractor should provide and pay for all labor and materials necessary for the execution of the work and that it should furnish a guaranty company's bond to "guarantee the faithful performance of the contract and the payment of all subcontractors and labor and material bills." The bond was required, not only by the terms of the contract, but also by the statutes of West Virginia.

The court held that there was no error and affirmed the judgment of the trial court. The opinion was delivered by Judge Parker and was in part as follows:

We quite agree with the proposition that the right of plaintiff to recover on the claims sued on is no greater than that of the laborers and material men whose claims were assigned; but we think that it is clear that these laborers and material men would have been entitled to recover if the action had been instituted by them prior to the assignment. When the bond is read in connection with the contract, which is expressly made a part of it, we have not a mere indemnity agreement guaranteeing plaintiff against loss from breach of contract on the part of the contractor, but a contract of suretyship, in which defendant undertakes that the contractor will faithfully perform his contract and will pay all subcontractors and labor and material bills. The bond itself provides that it shall be construed as one of suretyship; and the contract (by reference made a part of the bond) provides not only that the contractor shall provide and pay for all labor and materials, but also that the bond to be furnished shall "guarantee the faithful performance of the contract and the payment of all subcontractors, and labor and material bills."

Under the law of West Virginia a public building is not subject to liens created under the mechanic's lien statute (Code W. Va., ch. 75, sec. 2, et seq.). And section 12 of chapter 75 of the Code of West Virginia * * * was manifestly intended to require a bond for the protection of those furnishing labor and materials on public buildings, in lieu of the protection afforded by the lien statute in other cases. The bond must be construed in the light of this statute, and * * * there can be no doubt that the bond should be liberally construed to effect the purpose of the statute. When the bond is so construed, and the provisions of the contract are read into it, it is clear that it guarantees the payment of the claims of laborers and material men. To hold otherwise would deny all force and effect to the provision of the contract incorporated in the bond, that it should "guarantee the faithful performance of the contract and the payment of all subcontractors and labor and material bills," would convict the plaintiff of violating the statute above quoted, and would place the defendant in the absurd position of executing a bond in violation of the terms of a contract and at the same time incorporating the contract in the bond.

WAGES—ASSIGNMENT—FRAUD—PAROL EVIDENCE—*Flood v. Empire Investment Co., Court of Appeals of Georgia (April 20, 1926), 133 Southeastern Reporter, page 60.*—The Empire Investment Co. sued H. T. Flood for damages for conversion of a certain sum of money which it claimed by reason of an alleged assignment of salary. It offered in evidence a writing dated May 1, 1924, purporting to have been made by the defendant, by the terms of which he agreed to sell and transfer to the plaintiff all of his salary (\$105) for the period from April 15 to May 1, 1924, already earned. The defendant, in his plea, alleged that the paper was not in fact an assignment but

was "a false and fraudulent writing, couched in its present text and language for the sole and express purpose of evading the usury statutes of this State and to obtain usury of this defendant"; that on the date of the instrument he had drawn his wages for the period named and this the plaintiff knew. He also alleged that he obtained no money from the plaintiff at the time the instrument was executed, but that he did, prior thereto, borrow \$100 from it and had paid usurious charges for the use of same to the amount of \$160. Parol evidence offered to prove these allegations was excluded by the court.

There was a directed verdict for the company, and the defendant brought certiorari, assigning error on the exclusion of certain evidence by the court, and on the direction of the verdict and judgment thereon. The superior court overruled the certiorari and affirmed the judgment of the lower court, and the defendant brought error to the court of appeals.

The court, in reversing the judgment, said in part:

We have not set out the evidence and will not discuss it, because the principal difference between counsel seems to be on whether, in view of the stipulations of the writing, parol evidence was admissible to establish the defendant's claim of a usurious loan, and because the case appears to have turned on this question both in the municipal court and in the superior court, each of them seemingly having agreed with counsel for the plaintiff that the answer to the question should be in the negative.

It is a well-settled rule that, in the absence of fraud, accident, or mistake, parol evidence is ordinarily inadmissible to vary the terms, of a written contract. This, however, is not true where the contract out of which the suit arises is tainted with usury, and that fact is sought to be shown.

The defense in the present case was to impeach the bona fides of the transaction and was meritorious, if the jury believed it. We are not to be understood as holding that an assignment of salary even to secure a usurious debt would not be valid as to the principal. That question is not involved. The contention here is that the entire debt has been paid.

The superior court erred in not sustaining the certiorari.

WAGES—ASSIGNMENT OF FUTURE EARNINGS—EFFECT ON JUDGMENT—"PUBLIC OFFICER"—*Walker v. Rich, District Court of Appeal of California (1926), 249 Pacific Reporter, page 56.*—D. M. Walker had secured a judgment against one D. B. Smith and his wife for groceries furnished, the judgment being for the sum of \$299.99. This judgment was rendered on November 7, 1923, and on June 19, 1924, an execution was issued, but returned unsatisfied.

Smith was employed from time to time by the county of Colusa to work with his teams, wagons, and scrapers upon the county roads

of said county, his earnings approximating \$150 per month, payable on or about the first day of the month. In accordance with the provisions of section 710 of the Code of Civil Procedure of the State, Walker, on June 30, filed with John F. Rich, the auditor of the county, a transcript of the judgment and demanded the issue of a warrant for the sum of money then due Smith. The auditor refused, whereupon proceedings were instituted to secure a writ of mandate requiring the issue of such warrant to satisfy the judgment. The Superior Court of Colusa County denied the application, whereupon appeal was taken to the district court of appeal.

It appeared that on June 15, some two weeks prior to the application of Walker, Smith had assigned his claim to the amount of \$135 for wages earned between June 2 and June 14, the assignment being to a corporation which furnished "the necessities of life" to the judgment debtor. Walker made similar efforts by filing transcripts of judgment at different times, but in every instance it appeared that a prior assignment had been made to this corporation. Such assignments were found to be within the terms of the statute authorizing the assignment of wages for necessities, the effect being the establishment of a prior claim over the transcripts of the judgment later presented. As expressed by the court, on the making of assignment the earnings involved became the property of the College City Rochdale Co. and were not within the control of the auditor for a different application.

In at least two instances the assignments involved not only the transfer of money already earned, but also future earnings. It was contended that such attempt to transfer future earnings was invalid because they were in contravention of established public policy as to compensation payable "in the future to an officer of the Government for services yet to be performed." The court considered the point, and reached the conclusion that a public officer is "an individual invested with some portion of the sovereign functions of the Government, to be exercised by him for the benefit of the public." Smith was found to be "merely engaged to perform labor upon the public highway by the use of mechanical and other equipments," without discharging any duty as a public officer. This objection following, the assignments must be held valid under the provisions of the Civil Code as to the transfer of property. Though this could not be extended to cover a case "where an employment does not exist but a party may be employed by another in the future, such situation presents a case of a mere possibility not coupled with an interest, and hence the element of negotiability is wanting, but where the employment already exists, the wages yet to be earned from such employment by the party employed, then, although we have a case

of mere possibility, it is a possibility coupled with an interest, which is assignable under our code and according to the authorities."

The judgment of the court below sustaining the right of Smith to execute the assignments based on an existing contract of employment between him and the county, the assignment to pay for necessities of life to the parties furnishing them directly, was said to rest "upon an impregnable foundation," and was accordingly affirmed.

WAGES—CONTRACT OF EMPLOYMENT—EMPLOYEE ABSENT ON OWN BUSINESS—*Archer Lumber Co. v. Hall, Supreme Court of Arkansas (March 8, 1926), 280 Southwestern Reporter, page 662.*—W. L. Hall was employed by the defendant as log inspector and log buyer on February 10, 1919, at a salary of \$2,100 per year. In January, 1923, he told the president of the company that he wished to put some timber of his own on the market and was told by the president to go ahead under his present contract, and the president made a trade with the plaintiff to purchase his logs. Plaintiff began delivering the logs in February, 1923, devoting part of his time to his own business and working for the defendant when notified of anything he wanted done. He was paid his salary up to and including July of that year. He performed various services for the defendant at his request during the months of August, September, and October, but did not receive any pay, and when, on November 1, he called for his salary he was told that his employment with the company had ceased on the first day of August. He brought suit to recover for three months' salary in the amount of \$525, and recovered judgment. Defendant appealed on the ground that the court erred in not instructing the jury that if plaintiff absented himself from his place of employment to attend to his own business he could not recover. Judge Hart delivered the opinion of the court and said in part:

The court did not err in refusing to give this instruction. It will be noted that it does not take into account at all the testimony of the plaintiff to the effect that during the period of time in question he was to give a part of his time to his own business and was only to perform services for the defendant when requested to do so.

The respective theories of the plaintiff and of the defendant were submitted to the jury, and the evidence of the plaintiff was sufficient to warrant the jury in returning a verdict in his favor. According to his testimony, it was a part of the contract between himself and the defendant that he should devote a part of his time to his own business, and that he should only be required to perform services for the defendant when requested to do so. He testified further that he held himself in readiness during the three months in question to perform his customary services for the defendant, and that he did whatever work the defendant requested him to do.

There is no prejudicial error in the record.

The judgment was therefore affirmed.

WAGES—GARNISHMENT—EXEMPTIONS—PROOF—SUBROGATION—*Gulf, M. & N. R. Co. v. Sanders, Supreme Court of Mississippi (May 10, 1926), 103 Southern Reporter, page 184.*—T. J. Sanders, an employee of the company named, sued it for \$133.86 due him for wages. The defendant tendered \$35.56, conceding that amount to be due, and stated that the balance, \$88.50 and costs, was garnished in its hands to satisfy a judgment against the plaintiff, given by a justice of the peace in favor of one H. E. Whitten, which it had satisfied and paid.

The cause was submitted to the circuit judge on an agreed statement of facts, and judgment thereon was rendered against the railroad company for the full amount sued for, from which judgment an appeal was prosecuted to the supreme court.

The plaintiff conceded that the judgment given by the justice of the peace was valid, but contended that he was entitled to judgment against the railroad company because it did not answer the writ of garnishment in the statutory period, and that it should not therefore be permitted to set off the amount of such judgment against its payment, and, even so, his being the head of a family would exempt his wages from garnishment. The case as submitted did not indicate that Sanders was the head of a family and entitled to exemptions as such.

The court held that, although the defendant did not answer the writ of garnishment in the time required by law, and had to satisfy the plaintiff on that judgment date by virtue of the garnishment proceedings, having satisfied Whitten's demand by virtue of such proceeding it was entitled to be subrogated to the rights of the judgment creditor in that judgment.

Judge Ethridge, speaking of the plaintiff's claim of exemption, said:

It was the duty of the plaintiff in the present case, if he was the head of the family and entitled to the exemption, to have made that claim in the court below and sustained it by appropriate proof. We cannot here take cognizance of that fact, if it be a fact, but must render judgment upon the record before us.

The judgment of the lower court was therefore reversed and judgment rendered here for the railroad company.

WAGES—PAYMENT—CONSTITUTIONALITY OF STATUTE—IMPRISONMENT FOR DEBT—*Ex parte Oswald, District Court of Appeal, California (February 1, 1926), 244 Pacific Reporter, page 940.*—Section 6, chapter 202, Statutes of 1919 of California, provides for the regulation of the payment of wages and makes it a misdemeanor for an employer, having the ability to pay, willfully to refuse to pay an employee wages that are due under circumstances which show an intent to oppress and defraud. George H. Oswald was convicted

under the terms of this statute and put in prison. He petitioned the court of appeal for a writ of habeas corpus to secure his release. He contended that the statute under which he was held was unconstitutional in that it violated the provisions of article 1, section 15, of the constitution of California, which reads as follows:

No person shall be imprisoned for debt in any civil action on mesne or final process, unless in cases of fraud, nor in civil actions for torts, except in cases of willful injury to person or property; and no person shall be imprisoned for a militia fine in time of peace.

The court, in the course of its opinion, referred to chapter 663 of the Statutes of 1911, which was held to be unconstitutional in that it in effect permitted imprisonment on mesne process for debt. Then, speaking of the statute in question, it said in part:

The statute of 1919 apparently is the result of a legislative effort to substitute for the act of 1911 a law which would not result in imprisonment for mere nonpayment of debt, but would only impose that penalty where the employer or his agent, having the ability to pay, willfully refuses payment with a certain wrongful intent, described as follows:

"With intent to secure for himself, his employer, or other person any discount upon such indebtedness, or with intent to annoy, harass, or oppress, or hinder, or delay, or defraud, the person to whom such indebtedness is due. * * *" (Section 6.)

The court held that in the instant case the imprisonment of the petitioner for the misdemeanor described in the statute was not imprisonment merely for his failure to pay a debt but for the willful failure to do so, under circumstances which showed an intent to oppress and otherwise defraud the employee.

The petitioner was remanded to custody.

WAGES—PAYMENT—SUIT AFTER STATUTORY DEMAND—ATTORNEY'S FEES—*Nirschl v. Nirschl*, *Supreme Court of Oregon* (October 19, 1926), 249 *Pacific Reporter*, page 1099.—Albert Nirschl brought an action for the recovery of wages alleged to be due and owing him for labor performed for the defendant, Andrew Nirschl, in the sum of \$410, and an attorney's fee in the amount of \$100. He recovered judgment for the amounts claimed, together with costs of the suit, and the defendant appealed. It was contended by the defendant that the court erred in allowing any amount as attorney's fee on the ground that such recovery was barred by section 3 of chapter 163, Laws of Oregon of 1907, as construed by the court in *Olson v. Heisen* (90 *Oreg.* 176, 175 *Pac.* 859).

The court affirmed the judgment of the trial court, saying in part:

He [the defendant] ignores the fact that the portion of the statute involved in that decision was later amended by our legislative assembly. (See Laws of Oregon 1919, ch. 54, codified as sec. 6799, Oregon

Laws.) Among other things, that section provides for the allowance of attorney's fees in the prosecution of an action to recover wages for labor, unless the employee has willfully violated his contract of employment, and that, in case the employee voluntarily quits his employment, he shall give not less than three days' notice of his intention to quit such employment. However, it is not claimed that the plaintiff violated his contract of employment. Manifestly the statute does not require the specified three days' notice of intention to quit the employment when the employee remains on the job until its completion. The plaintiff was entitled to recover his attorney's fees in accordance with the findings of the court.

WAGES—PAYMENT IN SCRIP—REDEMPTION IN CASH—CONSTRUCTION OF STATUTE—*Holliday v. Elkhorn-Piney Coal Mining Co., Supreme Court of Appeals of West Virginia (April 21, 1926), 134 Southeastern Reporter, page 736.*—The Elkhorn-Piney Coal Mining Co. had in use a system of credit consisting of brass scrip representing various denominations from one dollar down. The obverse side of the scrip bore the following inscription, "Payable in cash on pay days when due to employee to whom issued," and immediately thereunder, "In merchandise only—nontransferable." On the reverse side was the name of the company. The scrip was issued to the employees at their request. The company redeemed it at face value in merchandise at its store or in cash on pay days when presented by any employee to whom issued. There was no reasonable way of identifying any specific piece or part of said scrip and it did not bear the name of the employee to whom issued.

W. D. Holliday, in the course of his business as a merchant, became possessed of certain of the aforesaid scrip in the amount of \$299.50, which he presented to the company on a regular pay day after same became due and requested that the company redeem it in lawful money of the United States of America. Upon the company's refusal to redeem the scrip, Holliday instituted an action before a justice of the peace and obtained judgment for the amount represented. That judgment was reversed by the circuit court of Raleigh County, and the plaintiff brought a writ of error. Judge Wood delivered the opinion of the supreme court, reversing the circuit court, saying in part:

The "scrip law" as it stood before the addition of two provisos by the last legislature (Acts 1925, c. 87), forbade, under penalty of fine and imprisonment, "any corporation, company, firm or person, engaged in any trade or business, either directly or indirectly, to issue, sell, give or deliver, to any person employed by such corporation, company, firm, or person, in payment of wages due such laborer, or as advances for labor not due, any scrip, token, draft, check, or other evidence of indebtedness, payable or redeemable otherwise than in lawful money,"

and provided that such "scrip, token, draft, check, or other evidence of indebtedness * * * shall be construed, taken, and held in all courts and places, to be a promise to pay the sum specified therein in lawful money by the corporation, company, firm, or person issuing, selling, giving, or delivering the same to the person named therein, or to the holder thereof."

The defendant contended that under the proviso enacted by the legislature in 1925 it was within its rights in refusing to honor its scrip in the hands of another than an employee to whom it was issued. The court, however, held it unnecessary to consider the provisos in the present statute, since it came within the prohibition of the body of the statute, providing that such scrip shall be construed, taken, and held in all courts to be a promise to pay the sum specified therein in lawful money to the person to whom issued, or to the holder thereof.

The judgment of the circuit court was reversed, and judgment rendered for the plaintiff, trial by jury having been waived, the facts being agreed upon.

WAGES—PREFERENCE—PRECEDENCE OVER PRIOR LIENS—CONSTRUCTION OF STATUTE—*Turner v. Randolph, Court of Appeals of Kentucky (February 12, 1926), 280 Southwestern Reporter, page 462.*—Kentucky has a law which provides that when the property or effects of any mine shall in anywise come to be distributed among creditors, whether by operation of law or by the act of such company, owner, or operator in such business, the employees of such owner or operator shall have a lien for wages coming due within six months prior thereto, which shall be superior to the lien of any mortgage or other encumbrance theretofore or thereafter created.

In the instant case the appellant R. W. Turner, in July, 1921, conveyed a coal mine to the Diamond Coal Co. for the consideration of \$125,000; \$55,000 of the consideration was paid at the time by issuing to him that amount of stock in the coal company and the remainder of the consideration was secured by notes payable in the future and for which a vendor's lien was retained in the conveyance. The company ceased operations in May, 1923, leaving unpaid considerable sums to its employees which had become due six months before the suspension. In July, 1923, the employees filed suit against the company for labor and services, asserting that their statutory lien was superior to the appellant's purchase-money lien. From a judgment adjudging the employees' lien superior to that of the vendor, the latter appealed. In affirming the judgment, the court said in part:

The sole question presented on this appeal is whether the statutory lien given to employees of mining or other similar corporations for wages coming due to such employees within six months before the

property or effects of the mining corporation shall come to be distributed among its creditors, as set forth in the statute, is superior to a vendor's lien on the real property of the mining corporation.

The appellant did not question the interpretation of the statute, but argued that the opinion rendered by the court in three cases, viz, *Northern Bank v. Deckebach* (83 Ky. 154), *Cooley v. Black* (105 Ky. 267), and *Sandy Land & Development Co. v. Brown* (175 Ky. 219), wherein it was held that vendor's liens were superior to employee's wage liens, should govern in the present case. The court briefly reviewed the facts in the cases named and pointed out wherein the facts in those cases differed from the facts under consideration.

The opinion concluded:

It is clear that none of the three cases cited, when analyzed and understood, are inconsistent with giving to the employees the preference in this case over the vendor's lien.

The policy of the statute is well recognized, its wisdom is not called in question, and its interpretation is not in doubt.

The judgment was therefore affirmed.

WAGES—PREVAILING RATE IN LOCALITY—CONSTITUTIONALITY OF STATUTE—*Campbell v. City of New York, Municipal Court of City of New York (May 15, 1926), 216 New York Supplement, page 141.*—Section 220 of the labor law of New York State (Laws 1921, ch. 50) provides that workmen and mechanics employed on public works shall be paid not less than the prevailing rate in the same trade or occupation in the locality, etc.

Frank Campbell was employed by the city of New York as a painter in the department of plant and structures at a wage of \$9 a day. He brought action against the city to recover the sum of \$595 claimed to be due him as the difference between the wages paid him and the prevailing rate between May 21, 1923, and January 7, 1925. He established that the prevailing rate of wages for painters in New York City was \$10 a day between May 21, 1923, and January 10, 1924, and between January 21, 1924, and January 7, 1925, that it was \$10.50 a day, and that he worked $193\frac{3}{4}$ days during the first period named and $277\frac{3}{4}$ days during the latter period.

The defendant contended that the statute relied on for recovery by the plaintiff was unconstitutional, and cited as authority therefor the recent decision of the Supreme Court of the United States in the case of *Connally v. General Construction Co.* (46 Sup. Ct. 126, 127; see Bul. No. 417, p. 139) holding a similar statute of Oklahoma to be invalid and in contravention of the fourteenth amendment to the Constitution of the United States.

The court cited with approval the case of *Ryan v. City of New York* (177 N. Y. 271, 69 N. E. 599). In that case the court of

appeals held a similar provision of the then existing labor law to be constitutional. It was pointed out by the court that some time after that decision the constitution of the State of New York was amended and a specific provision was added authorizing the legislature to pass an act fixing wages, etc., of all persons, contractors, and subcontractors employed by the State or a subdivision thereof; that after the amendment was adopted the present labor law was enacted and that various questions had arisen under the statute with reference to the payment of the "prevailing rate of wages" etc., which had been decided by the court of appeals and the constitutionality thereof sustained (cases cited).

The court then said:

In view of the foregoing decisions of the court of appeals, this court feels constrained to follow them and to hold the statutory provisions of the labor law, in so far as they provide for the payment of the "prevailing rate of wages," to be valid, for the purposes of the present litigation, and to deny the motion of the defendant to dismiss the action.

Judgment was ordered for the plaintiff for the difference in wages claimed together with interest from the date of filing the claim, with 10 days' stay.

An appeal was taken from the above decision to the appellate division, where the judgment was affirmed (219 N. Y. Supp. 131). The requirement of law that cities and municipalities pay the prevailing rate of wages was said not to be abrogated by the decision in the Connally case. It was further pointed out that that was a criminal proceeding, requiring a degree of exactness and certainty not essential in civil cases; also that a showing that from 75 to 90 per cent of the total number of painters in the locality received the rate named was sufficient evidence that this was the prevailing rate of wages.

Reference was also made to the case of *Morse v. Delany* (1926, 218 N. Y. Supp. 571, affirmed, 218 N. Y. Supp. 826), where the principles involved and the decisions rendered in the various tests of the law are considered at length. Assuming that the law might not afford an adequate basis for criminal prosecutions, "it does not necessarily follow that the policy of the State, maintained for nearly 30 years, followed by department heads and contractors, and sanctioned in principle by constitutional enactments, should be entirely disregarded." Assuming that the "prevailing rate" means the market rate, it is the same standard that would be used in a quantum meruit action at common law. Both the differences in circumstances between a sparsely settled community and the city of New York, and the differences in the nature of the proceedings tended to the conclusion that the Connally case need not be regarded as compelling a setting aside of the long-standing law in the present instance, and it is sustained.

The Campbell and Morse cases, noted above, were taken to the court of appeals of the State on appeal, the judgments below being affirmed in both cases. (244 N. Y. 317, 155 N. E. 628.) The court found an established public policy of the State, followed throughout some thirty years, established by law, decision, and custom, with a sufficiently definite meaning to be capable of understanding by all

parties in interest. No obligation rests on any contractor to undertake any work proposed by the State, but if he does, it will be presumably after a consideration of all the circumstances, after which he will be bound by the terms prescribed by the State, impliedly accepted by him in submitting his contract, and definitely accepted in making the final agreements. The difference between a civil law relative to contracts and a criminal prosecution as proposed in the Connally case, decided by the Supreme Court, was sufficient to relieve the court in the instant case from any obligation to regard that decision as binding.

There was no indication in the law or its application of any tendency to dissipate the funds of the city or lay improper burdens upon its taxpayers. The matter before the court was "merely a question of the regulation of a form of contract." No illegality being found in the provisions of the statute, the attacks upon it must fail.

WAGES—REDUCTION BY EMPLOYERS—RAILROAD LABOR BOARD—*Schuppan v. Peoria Ry. Terminal Co., United States District Court, District of Illinois, (November 8, 1924), 9 Federal Reporter (2d), page 448.*—The plaintiffs, former employees of the Peoria Railway Terminal Co., brought action against the owners to recover wages alleged to be due them under authority of decision No. 2 of the Railroad Labor Board. The railroad was taken over by the Federal Government during the war and was, therefore, subject to all orders affecting wage scales and working conditions issued by the Railroad Labor Board. When the railroad was turned back to its owners (the defendants) they found that they could not operate it under the conditions established by the Railroad Labor Board. The plaintiffs were advised of the financial straits of the railroad and were given a choice of two propositions: (1) The defendants would furnish the track and all its equipment and, as pay for doing the work, would give them all the income earned less the necessary current supply bills; (2) if they refused to work on those terms they could quit. Plaintiffs did not accept the offer and refused to quit. They contended that the defendants were without authority in the matter of fixing the rate of wages, but that it was in the power of the Labor Board to make them pay what it thought was a just and reasonable wage. At the next and succeeding pay days the plaintiffs were paid according to defendant's proposal, each receiving his pro rata share of the income according to the amount he would have received under the old scale and which amounted to from 75 to 82 per cent of the former pay. The master before whom the hearing was had found that the action of the Labor Board was controlling, and allowed the claims. The defendant appealed, securing a disallowance of the

claims. District Judge Fitzhenry, who delivered the opinion of the court, said in part:

The United States Supreme Court has settled the controversy involved here in a case arising in this circuit by holding that the findings and the awards of the Labor Board are not binding, but are purely advisory. In other words, the Labor Board has said what rates of pay are reasonable; but the Labor Board can do no more, and it did no more. It was not the purpose of Congress to take away from employing masters in this country the right to employ railway employees and fix the rate of pay. (*Pennsylvania R. R. Co. v. U. S. Railroad Labor Board* (Dist. Court, Judge Page, presiding), 282 Fed. 693.)

To require a railroad company to continue in business at a loss is beyond the powers of Congress or a State. Apart from statute or express contract, people who put their money into a railroad are not bound to go on with it at a loss, if there is no reasonable prospect of profitable operation in the future. (*Bullock v. Florida*, 254 U. S. 513, 41 Sup. Ct. 193.) Under our constitutional system of government, there is no power, in or out of Congress, in a State, or in a judiciary, to compel those who devote their property to the use of the public to operate the same at rates of wages which occasion loss. In good morals, neither the public nor the employees should demand such sacrifice. (*Coffee et al. v. Gray et al.*, 158 Ga. 218, 122 S. E. 687; see *Bul. No. 391*, p. 320.)

To the question of whether or not the defendants had a legal right to take such action as they did to prevent the railroad property being consumed by excess operating expenses without first procuring the consent of the Labor Board, the court said:

It did. Of course, it could not do so without giving the employees full, fair, clear, and positive notice of the proposed change in their relations. This was done. Those who continued in the service after receiving that notice must be held, as a matter of law, to have accepted the terms of the proposed change.

The fact that the claimants here misinterpreted their rights under the Transportation Act would not warrant a court in ordering the receivers to make payment of the several claims involved. Furthermore, the opinion of Judge Page in *Pennsylvania R. R. Co. v. United States Railroad Labor Board*, supra, was published May 4, 1921, and was notice that the courts could find in the provisions of that act nothing making the decisions of the board final, or giving them the binding force of decrees to be performed.

The exceptions to the master's report will be sustained, and a decree may be prepared, disallowing and dismissing the claims allowed by the master herein.

WAGES — SEAMEN — ADMIRALTY — CONTRACTS — APPLICATION OF STATUTE TO FOREIGN SEAMEN—*The Strathlorne, Van Der Liet v. Burrell & Sons, United States District Court, District of Oregon (August 9, 1926)*, 15 *Federal Reporter* (2d), page 210.—Judge Wolverton in sustaining an exception to the plaintiff's bill said:

This is a libel whereby four seamen, who are foreign to this country, are seeking to establish a breach of their contracts as able seamen with their vessel, which is also a foreign vessel, on the ground that the vessel is unseaworthy, and to recover the balance of wages due thereunder. Respondent excepts to the libel on the ground that the suit is between foreigners, and the court should not exercise jurisdiction in the case. The action is brought under section 8322, United States Compiled Statutes, which relates to the time and manner of payment of seamen's wages, and which provides, among other things, that the section shall apply to seamen on foreign vessels while in harbors of the United States, and that the courts of the United States shall be open to such seamen for its enforcement.

This statute is exclusively a wage statute, and is not intended to extend to foreign seamen other relief than as a means of enforcing payment of their stipulated wages, in accordance with the provisions of the act. The very matter here presented has been decided against libelants in *Transportes Maritimos do Estado v. Almeida* (C. C. A.) (5 Fed. (2d) 151), wherein it is held that a suit upon a broken contract instituted by one alien against another has no place on the docket of the district court, but, as a wage claim, belongs to a class of demands which can be promoted only by seamen on a foreign vessel while their vessel is in a harbor of the United States.

Here it is sought, not to show merely a failure to pay wages, as the statute requires, but a breach in the contracts on the ground that the ship is unseaworthy, and the contracts are between foreigners. This, it would seem, is outside of the purview of section 8322.

The exception was sustained and the libel dismissed.

WAGES—SEAMEN—DISCHARGE WITHOUT CAUSE—ACTION FOR BREACH OF CONTRACT—*United States Steel Products Co. et al. v. Adams; The Steel Trader, United States Circuit Court of Appeals, Fifth Circuit* (May 13, 1926), 13 *Federal Reporter* (2d), page 614.—On November 29, 1921, Donald J. Adams signed shipping articles agreeing to ship from the port of New Orleans, La., as oiler on the steamship *Steel Trader*, at a wage of \$80 per month for a period not to exceed 12 months. The vessel was to make ports in Europe and Asia and such other ports as the master might direct, and return to a final port of discharge and/or loading port on the Atlantic or Gulf coast of the United States. After the articles were signed, a typewritten sheet of paper was pasted on the front of page 1 of the articles which provided that the owners and crew of the vessel would be bound by any change in the scale of wages made by the American Steamship Owners' Association after the departure of the vessel. The employee, Adams, would not agree to this provision and for that reason was discharged on December 12, 1921, at Port Arthur, Tex., to which place the ship went on leaving New Orleans. He was paid wages at the contract rate for the time served and an extra month's wages of \$80, for which he gave his receipt, but did not sign a release of demand for wages.

After the return of the vessel to New Orleans on May 19, 1922, the employee filed a libel against it for wages up to and including the signing off of the crew. His claim was resisted by the owners of the vessel on the ground that when he was discharged he was paid off in accordance with the provisions of section 4527 of the United States Revised Statutes (Comp. St., sec. 8318), which reads as follows:

Any seamen who has signed an agreement and is afterward discharged before the commencement of the voyage or before one month's wages are earned, without fault on his part justifying such discharge, and without his consent, shall be entitled to receive from the master or owner, in addition to any wages he may have earned, a sum equal in amount to one month's wages as compensation, and may, on producing evidence satisfactory to the court hearing the case, of having been improperly discharged, recover such compensation as if it were wages duly earned.

The plaintiff was awarded the amount of his wages for the voyage less a credit of \$80 paid as above stated, with 6 per cent interest from May 19, 1922, and the defendant appealed. It was argued that the plaintiff's rights under the contract evidenced by the shipping articles are governed by the ordinary rules of contract except where modified by statute, and that under section 4527, Revised Statutes, the payment made to him satisfied all liability incurred by the wrongful discharge.

The court in affirming the decree of the district court said in part:

To say the least, the language of the provision in question does not clearly manifest a purpose to give to the payment to a seaman wrongfully discharged within the time mentioned of the amount of any wages he may have earned, and in addition a sum equal to one month's wages, the effect of satisfying all liability incurred by wrongfully discharging him.

The language of Revised Statutes, section 4527, is consistent with an intention to treat the amount required to be paid to the wrongfully discharged seaman as compensation for the service already rendered by him. Certainly that language falls far short of expressly absolving the vessel, on the payment of such amount, from her liability for damages for breaching the contract evidenced by the shipping articles. That provision determines what is payable to the wrongfully discharged seaman at the time of his discharge.

In the absence of a statute requiring a different result, after the entering upon the voyage provided for in the shipping articles the ship is pledged to the complete execution of the contract, and may be proceeded against for nonperformance, and if a seaman is discharged without justifiable cause before the termination of the voyage he is entitled to full indemnity, which may be measured by the stipulated wages for the entire voyage and the amount of expenses in returning to the port of discharge, deducting what he earned, or reasonably could have earned, in other employment during the period of his engagement.

If the statute in question has the meaning attributed to it by counsel for the appellant, it has the effect of making it possible to discharge a seaman engaged for a long voyage, without his consent and without fault on his part, at whatever place, other than a foreign port, where the ship may be before one month's wages are earned, without incurring any liability, except to pay any wages he may have earned and in addition a sum equal in amount to one month's wages, though what is so paid is greatly less than enough to indemnify the seaman for the loss resulting from the violation of his contract rights. Plain language would be required to justify the imputation to Congress of an intention to permit seamen to be subjected to such treatment and to be deprived of adequate redress therefor.

We conclude that the provision in question did not give to the payment made to the appellee the effect of destroying his right to full redress for the alleged wrong to him, and that the only ground on which the decree was complained of is not a tenable one.

The decree was affirmed.

WAGES—SEAMEN—DOUBLE WAGES FOR DEFERRED PAYMENT—LIBEL—*Mandelin et al. v. Kenneally et al., The Charles Whittemore, United States Circuit Court of Appeals (February 27, 1926), 11 Federal Reporter (2d), page 344.*—Felix Mandelin and three others, seamen on the defendant's schooner, shipped from Norfolk, Va., for a round trip to Dutch Guiana, at the rate of \$60 per month each. On completion of the voyage on November 15, 1924, the plaintiffs were called into the defendant's cabin and he read to them the log showing certain fines and penalties he had imposed upon them. They protested against these fines and penalties being deducted from their wages, but defendant insisted that they were proper, and after deducting the same he paid over to the United States Shipping Commissioner the sum of \$452.02 as the aggregate amount due, with instructions to pay the amount to plaintiffs in a manner indicated by him if they should severally accept the same in full of their accounts. This they refused to do and brought a libel to recover the full amount of their wages, exclusive of the fines legally assessed against them, together with the penalties provided by law for the retention of same.

Sections 4529 and 4530 of the Revised Statutes (as amended by the seamen's act of March 4, 1915) provides a penalty of two days' pay for each day of delay in payment.

The action of the defendant was sustained by the district court and plaintiffs brought error. Judge Waddill, who delivered the opinion of the court modifying and affirming the judgment below, said in part:

Assignments 4 and 5 present the question of the right of the respondent to withhold the amounts admittedly due libelants at the end of their voyage on the 15th of November, 1924, at Newport News, Va., unless libelants would accept the same upon the conditions imposed

by respondent. This the respondent could not do, as it constituted neither a payment of the wages nor a lawful tender of the amount due, but, on the contrary, a proffer of a future lawsuit respecting the same.

Under the law libelants were entitled to have paid them, within two days after the termination of the voyage, the amount of wages due them, and, in default of such payment, * * * a penalty of two days' pay for each day of delay in payment.

The libelants are entitled to recover double wages at the rate of \$60 per month for each day their wages were withheld—that is, from the 17th of November, 1924, to the 1st of January, 1925, inclusive—aggregating \$720, the same to be distributed equally between libelants, with costs. The judgment of the lower court will be accordingly modified and affirmed.

The judgment was accordingly modified.

WAGES—SEAMEN—"STRIKERS"—DESERTERS—FORFEITURE OF WAGES—*United States v. Smith et al.*, *United States Circuit Court of Appeals* (March 8, 1926), *12 Federal Reporter* (2d), page 267.—N. H. Smith and others of the crew of the Steamship *Hahira* brought a libel suit against the United States to recover full wages earned by them up to the time they left the service of the ship. In April, 1921, the libelants signed shipping articles for a voyage from Baltimore to Mexico and one or more ports in the Gulf of Mexico, and such other ports as the master of the ship might direct, and back to a final port of discharge at a point north of Cape Hatteras, for a term not to exceed six calendar months. The vessel proceeded to Mexico, took on a cargo of crude oil, and unloaded it at Baton Rouge on April 27. It then proceeded to New Orleans, where it put into port for repairs. A seamen's strike began on May 1, and as a result the vessel remained at New Orleans until May 16 waiting for repairs. On May 10 the libelants left the service of the vessel, taking their belongings with them, and on the following day they returned and demanded full wages, less advances they had received. They alleged that the master had failed to comply with a demand for half wages at the port of New Orleans, and that thereupon they became entitled to the balance of wages earned and remaining unpaid. The defendant contended that the cargo had not been loaded or delivered at New Orleans; that nevertheless the master had paid or offered to pay one-half of any amount earned by any member of the crew; that the crew deserted and thereby forfeited all claims to wages which had been earned. There was a decree for the libelants, the district judge holding that they left the service of the ship through fear of personal violence at the hands of members of the seamen's union, and therefore they ought not to be classed as deserters. The

court, speaking of the grounds on which recovery was allowed by the district judge, said in part:

It was not even suggested in the libel that there was any such danger. Aside from that, it is not claimed in the testimony that the crew would have been in any danger whatever if they had remained on board, nor that the ship was unable or unwilling to afford them full protection against violence. We are therefore of opinion that the crew must be held to be deserters, under Revised Statutes, section 4596, as amended (Comp. St., sec. 8380).

The decree was therefore reversed with directions to dismiss the libel.

WAGES—SEAMEN—"WATCHES"—CONSTRUCTION OF STATUTE—*O'Hara et al. v. Luckenbach S. S. Co.*, *Supreme Court of the United States (January 4, 1926)*, *46 Supreme Court Reporter*, page 157.—William O'Hara and Sven Tjersland brought a libel against the Luckenbach Steamship Co. to recover their earned wages, on the ground of a violation of section 2 of the seamen's act of March 4, 1915. The pertinent requirement of that section is:

The sailors shall, while at sea, be divided into at least two, and the firemen, oilers, and water tenders into at least three watches, which shall be kept on duty successively for the performance of ordinary work incident to the sailing and management of the vessel.

The libelants alleged that the provisions of this section were not complied with in that there were 13 sailors on the voyage, and while at sea these sailors were not equally divided into watches, but instead only two men, one quartermaster and one able-bodied seaman, were on each of the three watches, while the remaining seven sailors were kept at daywork only. The district court dismissed the libel, and this decision was affirmed by the circuit court of appeals (1 Fed. (2d) 923), both the courts being of the opinion that it was the intention of Congress to regulate the hours of work, and the circuit court of appeals holding that the quality of the men selected rather than the equality of the watches met the requirement of the statute. The case was brought to the Supreme Court on a writ of certiorari.

Mr. Justice Sutherland, delivering the opinion of the court, said in part:

The general purpose of the seaman's act is not only to safeguard the welfare of the seamen as workmen, but, as set forth in the title, also "to promote safety at sea." It is significant that it does not apply to the entire crew, but requires a division into watches only of the sailors and the firemen, oilers, and water tenders. It is natural to suppose that, if the purpose of Congress was chiefly to regulate hours of work, something would have been said about the service, while at sea, of those employed in the steward's department as well. The evident purpose was to compel a division of the men for duty on deck and in the fireroom, and continuity of service, to the end that

in those departments the ship should at all times be actively manned with equal efficiency.

Sections of the act which show that Congress evidently intended the regulations as to "watches" on vessels to be a precautionary measure of safety to the crew, passengers, etc., were noted, and the opinion continued:

It is not unreasonable to conclude that Congress determined that each of the watches, like the crew as a whole, should be "adequate in number," competent and in a state of readiness "for any exigency that is likely to happen," * * * and to this end meant to provide for successive and continuous watches to be constituted in numbers as nearly equal as the sum of the whole number would permit.

In this conclusion we are fortified by the consideration that the legislation deals with seamen and the merchant marine and, consequently, the phrase "divided into * * * watches" is to be given the meaning which it had acquired in the language and usages of the trade in which the act relates.

With nothing in the context and no evidential circumstances to suggest the contrary, we fairly may assume that the use of the technical terms of the trade to which the statute relates imports their technical meaning.

The decree was therefore reversed.

Following the foregoing decision, the case was again before the district court on the question of the amount recoverable—i. e., whether only the wages earned up to the time of demand, or whether the penalty of two days' pay for each day of delay allowed where the master or owner "refuses or neglects to make payment * * * without sufficient cause" accrued. The court had eliminated from the decree presented to it the provision for payment of the penalty, and the libelants appealed. The circuit court of appeals affirmed this judgment, holding that the question of liability for the payment was sufficiently doubtful to justify the employer in withholding payment until a determination. The mere fact that the Supreme Court had held that the payment was due was said not to be of itself sufficient reason for determining that there was no "sufficient cause," as otherwise no disputed question could be litigated without incurring the risk of heavy penalties. (Same case (December 13, 1926), 16 Fed. (2d) 681.)

A quite similar case was before the United States District Court for the Southern District of Texas at a somewhat later date than the Supreme Court decision above. A steamship with a certified requirement of but six seamen carried a crew of additional men who were employed in painting, cleaning, etc., and were not divided into watches as the law prescribes. At settlement they were offered half wages, but demanded full wages, for which they brought libel, as well as the penalty for delayed payment. The employer contended they were employed, not as seamen, but as general workers, and were not within the terms of the seamen's act, while they cited the O'Hara case as sustaining their contention. The court sustained their viewpoint, saying that they were entitled to the protection of the law as to work time and wages, and that the procuring of a certificate could not be availed of as a means of avoiding its provisions. Even if the employer had been mistaken as to the law, he must abide by the consequences of his mistake. The recovery of wages and penalty was therefore awarded. (*El Estero* (1926), 14 Fed. (2d) 349.)

WAGES—TIME OF PAYMENT—AMOUNT—ACTION FOR NONPAYMENT—PENALTY—CONSTITUTIONALITY OF STATUTE—*Deardorf v. Hunter, Supreme Court of Louisiana (January 4, 1926), 106 Southern Reporter, page 831.*—Louisiana has a law (act No. 150 of 1920) which provides that any employer of labor who fails to pay discharged employees within 24 hours after demand at the usual place of payment shall be liable for the wages from the time of such demand until they are paid or tendered.

C. A. Deardorf and four other persons were employed by the defendant to work at his sawmill at a wage of \$5 per day. After working seven days the men were discharged on account of being unable to get logs. The defendant, a resident of Illinois, had visited the mill a few weeks prior to its closing, and at that time requested the manager to submit the pay roll so that he could remit promptly.

This was done, but Spears, the manager, used the money for some other purpose. Suits were brought to collect the wages due and penalty under the provisions of the statute. Judgment was rendered for plaintiffs for wages claimed and costs of the suits except curator's fee, but not for the penalty claimed. Deardorf alone appealed, and at the second hearing was awarded the amount claimed by him and penalty amounting to approximately \$3,200, which judgment the judge refrained from signing. Defendant did not know that the men had not been paid until notified by the curator appointed by the court to represent him in the suits. Upon that notice, he went immediately to Louisiana and "tried faithfully" to settle with them. Being unable to do this, he moved the court for a reopening of the cases, which was granted. He then tendered in open court \$55.10, the amount of wages and costs claimed by Deardorf. The tender was refused and the amount deposited with the court. Evidence was then introduced by defendant to show that it was through no fault of his that the plaintiff had not been paid or an attorney employed to defend the suit. The court in affirming the action taken by the judge in the lower court, said in part:

The judge refused to hold the defendant responsible for the laches of Spears, to the extent of condemning the defendant for the severe penalty allowed by the act 150 of 1920. We approve the ruling. The judge gave judgment in favor of the plaintiff, for \$35, with legal interest from the day he was discharged, and for all court costs, including \$10 for the curator's fee, all subject to credit for the \$55.10 deposited in the registry of the court. The court sustained the writ of attachment which had been levied upon the property of the non-resident defendant. Our conclusion is that the judgment is correct. The language of the act 150 of 1920 is not so peremptory as to forbid an equitable defence against the penalty.

A plea was made alleging the unconstitutionality of the penal provision. As to this, the court said:

The judge's conclusion that the defendant was not liable for the penalty made it unnecessary to decide the question of constitutionality. The defendant answered the appeal, but asked merely that the judgment should be affirmed. Therefore the question of constitutionality of the law is not now an issue in the case.

For a sufficient reason, the attorney employed to represent the defendant in the district court declined to argue the case on appeal, or to file a brief.

The judgment was therefore affirmed.

WAGES—TRADE CHECKS—RIGHTS OF THIRD PARTY—*Moss Federal Coal Co. et al. v. Rhea, Court of Appeals of Kentucky (June 4, 1926), 284 Southwestern Reporter, page 100.*—The Moss Federal Coal Co. operated a coal mine in Bell County, Ky. Another corporation, the Moss Stores Corporation, not identified with the coal company, operated a store in the vicinity of the mines from which the miners bought merchandise. This company issued a lot of metal disks, on one side of which was "Moss Stores Company, Inc., Pineville, Ky.," and on the reverse side of which was stamped "Good for \$1.00 (or other value) in merchandise." These were delivered to the coal company and it issued them to the miners up to the extent of the wages earned by them and charged the amount of such disks to their accounts. Such of the disks as were used in buying merchandise at the Moss Stores Corporation were at stated times presented to the coal company, which would redeem them in cash less an agreed discount. E. T. Rhea, the plaintiff in the case, had a store near that of the Moss Stores Corporation, and in the course of his trade with the miners he took in payment the metal disks issued by it and distributed by the coal company. He presented the disks to the coal company and to the Moss Stores Corporation and demanded that they redeem them in cash. Upon their refusal he brought suit for the amount represented by the disks, joining both companies in the action, and recovered judgment. Defendants appealed and urged two grounds for reversal: (1) That the disks were not transferable by delivery only and that the assignors were necessary parties to the action; and (2) That the companies could not be sued jointly.

The court, in affirming the judgment of the lower court, held that since no objection was raised to the defect of parties in the court below, such objection was not available on appeal. Judge Dietzman, who delivered the opinion of the court, speaking of the joint liability of the defendants, said in part:

The evidence shows that the coal company issued these disks to its miners in the intervals between pay days, charging the same against the time the miner had theretofore put in. It is thus obvious that the coal company was issuing scrip to miners in proportion to the

amount of time the miners had put in and the wages they earned. Therefore, under the holding of this court in *Pond Creek Coal Co. v. Riley Lester & Co.* (171 Ky. 811; 188 S. W. 907; see Bul. No. 224, p. 221), it would have been the duty of the coal company to redeem this scrip if it had been presented to it for redemption by the original holders thereof on or after the pay days of the wages against which the scrip had been issued, and Rhea stands in the shoes of such original holders. It follows, then, that the coal company was clearly liable in this action.

The judgment of the lower court was affirmed.

WEEKLY DAY OF REST—CONSTITUTIONALITY OF STATUTE—*State v. Poccock, Supreme Court of Minnesota (January 2, 1925), 201 Northwestern Reporter, page 610.*—Chapter 293 of the acts of the Minnesota Legislature of 1923 prescribed a weekly day of rest in specified employments, including employees in the power plant, or stationary boiler or engine room of certain establishments, but excluding persons engaged in like employments in other establishments.

Walter A. Poccock, proprietor of a hotel, was charged with a violation of the statute by employing a workman in the power plant, boiler, or engine room of the hotel more than six days in one week. The case came to the supreme court on certified questions, the constitutionality of the statute being challenged on account of alleged violations of the constitution in respect of classification. The court held the statute unconstitutional on grounds that appear in the following quotations from its opinion:

That the legislature may enact laws which apply only to a specified class is beyond question. But under the equality provisions of both the State and Federal Constitutions all similarly situated must be brought within the class and all within the class must be treated alike.

If it selects particular employees of the class, and gives to them privileges which it withholds from other employees of the same class, or if it selects particular employers of the class and imposes upon them burdens and restrictions from which it exempts other employers of the same class, it denies the equal protection of the laws to those discriminated against and thereby violates the constitutional mandate.

An examination of this statute shows that any one who employs men in a power plant or boiler or engine room is within the law if the heat or power generated is used in a hotel, a shoe factory, a bakery or a restaurant, but is outside the law if it is used in a newspaper plant, a place of public amusement, a cannery, a flour mill, an automobile garage or repair shop, or a creamery or cheese factory located in a city of the third or fourth class. The need for a day of rest is the same whether the employee is generating heat and power for use in one or another of the lines of business mentioned, and the excluded employees are as clearly within the class which the law sought to benefit as are those brought within it.

By reason of the discriminations indicated, the court found it necessary to pronounce judgment against the constitutionality of the act in question.

WORKMEN'S COMPENSATION—ACCIDENT—BRUISE—FREEZING—INFECTION—*Mauch v. Bennett & Brown Lumber Co., Supreme Court of Michigan (July 1, 1926), 209 Northwestern Reporter, page 586.*—John Mauch was employed by the defendants as a logger. On or about January 1, 1924, while in the performance of his duties, a cant-hook fell on his foot, bruising a great toe, which soon thereafter was frozen. No other part of the body was frozen. Gangrene set in as a result of the injuries, and it became necessary to have the toe amputated. A physician testified:

He would not have frozen the toe in all probability if he had not received the injury and disturbed the normal circulation.

A letter dated March 25, 1924, written by the plaintiff to the defendant was put in the evidence. In the letter he set out the facts above stated and asked them to see what they could do about his compensation. He later made claim to the department of labor and industry for compensation. From an award for compensation the employer appealed on the ground that there was no accident within the meaning of the workmen's compensation act; that claim was not made within six months as provided by the statute; and that the amount of the award was excessive.

Judge Clark, speaking for the court after saying that "the mere freezing was not an accident," added:

Doubtless the gangrene, the operation, and the disability resulted directly from the freezing, but, there being evidence that the freezing was a consequence of the prior accidental personal injury arising out of and in the course of the employment, the department might and did find as a fact that the disability was due to the accident. The finding has some evidence to support it, and therefore is conclusive on this court.

The court held that the employer's report on January 12, 1924, of compensable accident, which spoke of the freezing of the plaintiff's foot, and the letter written on March 25, 1924, by the plaintiff also referring to that fact, both omitting reference to the bruise, while inaccurate were sufficient notice to meet the requirements of the statute. It also held that the award of \$14 per week was excessive in view of the fact that the plaintiff's weekly wages were only \$19.86 per week, and that the maximum allowance therefor is \$11.92 per week.

The cause was remanded to the department for correction of the weekly allowance and was otherwise affirmed.

WORKMEN'S COMPENSATION—ACCIDENT—CUMULATIVE EFFECT OF REPEATED ACTS—*Aldrich v. Dole, Supreme Court of Idaho (1926), 249 Pacific Reporter, page 87.*—Elmer Aldrich was employed by F. A. Dole to drive a truck which was so worn that "in order to travel at high speed it was necessary for him to press the shift lever with his right knee. In so doing the cogs would frequently slip out of mesh and cause the lever to strike the knee; and the pressing of the knee against the lever and the striking of the knee by the lever caused the knee to become bruised to such an extent claimant became disabled."

The industrial accident board found as a matter of law that the injury was not sustained by accident arising out of and in the course of the employment and compensation was denied. The employment continued from September 12 to October 17, 1923, and on appeal to the district court it was found that "on or about the 17th day of October, 1923, claimant had incurred a personal injury by accident" and was entitled to compensation.

On appeal to the supreme court this judgment was affirmed, the court saying in part:

Had there been a single occasion when the knee pressed the lever and was struck by it, and injury had resulted therefrom, there would be no difficulty in concluding that the injury was received by accident. In such cases it would be said that in the discharge of his duties, the workman placed his knee against the lever, the lever struck the knee, the injury resulted; and it would not be said that the injury was usual, was expected, or was designed. Now, if the single pressing of the knee against the lever and the single striking of the knee by the lever would result in an injury by accident, can we say that the injury actually received was not caused by accident merely because there was a conjunction of the causes that brought on the injury? The injury results from a single event, and there would seem to be no sound reason for holding that an injury occasioned by a number or series of events is not within the act. The continuous pressing of the lever and the repeated striking of the knee had a cumulative effect so that the injury came on gradually; and claimant received the unexpected and unintentional injury during the time of the operation of the causes that produced this injury.

WORKMEN'S COMPENSATION—ACCIDENT—DISEASE—ANTHRACOSIS—*St. Louis Mining & Smelting Co. v. State Industrial Commission, Supreme Court of Oklahoma (September 15, 1925), 241 Pacific Reporter, page 170.*—R. J. Turner was employed by the St. Louis Mining & Smelting Co. in its lead and zinc mine. On October 2, 1923, Turner, after working in a shaft for about 30 minutes, became dizzy from the effects of carbon monoxide gas, and with a fellow workman moved to another section and continued their labor for the

day. The gas had been caused by the explosion of dynamite earlier in the morning and the night before. Turner returned to work the following day with some ill effects, but on the second day he was completely incapacitated and continued in such condition until the time of the hearing on his petition for compensation.

Turner was 50 years of age and had been employed in various kinds of mines since he was about 12 years old. He testified that the effects complained of in this action had not come upon him suddenly but by degrees. From an order of the State industrial commission granting compensation, the employer and the insurance carrier appealed.

Dr. Fred A. Glass, the only medical man who testified for either party, diagnosed the ailment as anthracosis or coal miner's disease contracted by inhaling foreign particles over a long period of time. He testified that exposure to gas under such conditions as existed in the instant case would not produce the result had in the ailment under consideration here, but that it would only have been temporary and transitory in its nature.

It was the contention of the defendants that the commission erred in finding an accidental personal injury arising out of the employment, that it erred in finding the disability resulted from accidental injury, and that it erred in awarding compensation for a disability resulting from an occupational disease in no way relating to or growing out of the employment.

The supreme court considered the facts in this case in conjunction with section 7283 of the Compiled Oklahoma Statutes of 1921, as amended by chapter 61, Session Laws of 1923, in which it is provided that compensation shall be payable for injuries sustained by employees engaged in hazardous occupations, and paragraph 7 of section 7284, which defines "injury" and "personal injury" to mean only accidental injuries arising out of and in the course of the employment and such diseases and infections as may result therefrom. The court's interpretation of these sections excluded an occupational disease from being compensable.

In reviewing the evidence and testimony the supreme court held that if a personal injury is of such a character as to require professional or scientific men to determine the cause and extent, that question must then be proven by the testimony of such persons. It appeared that in the trial of this case there was no testimony by a person skilled in scientific knowledge that the fact of the claimant being slightly gassed caused his disability. There was also no testimony showing or attempting to show that the fact of the claimant being gassed accelerated his disease.

Under the Oklahoma rule, as stated by the supreme court, the findings of the commission are conclusive unless there is an absence

of competent evidence to support the findings and in such a situation the question becomes a pure question of law for the determination of the court.

In conclusion the supreme court was of the opinion that "the claimant failed to produce any competent evidence to form a basis for the finding by the commission that the 'accident' as claimed, resulted in the disability."

The order was therefore reversed and the cause remanded to the State industrial commission with directions to dismiss.

WORKMEN'S COMPENSATION — ACCIDENT — DISEASE — PNEUMONIA—*Jones v. Philadelphia & Reading Coal & Iron Co., Supreme Court of Pennsylvania (February 1, 1926), 132 Atlantic Reporter, page 122.*—George R. Jones, the deceased, was an employee of the Pennsylvania & Reading Coal & Iron Co. On January 25, 1923, his father, also an employee of the company, was buried by the slide of a culm bank. Jones and other employees made a desperate effort, lasting about two and a half hours, to rescue his father, but succeeded only in recovering his lifeless body. A large quantity of water was used in the rescue and deceased was drenched from the knees down. Following the exposure, excitement, and exertion he had a severe cold, but attended the funeral of his father on January 29, and, returning home, went to bed and called a doctor, who gave him some temporary relief. On February 7, other physicians were summoned, who found him suffering with pneumonia, which resulted in his death on February 11, 17 days after the exposure. His widow was awarded compensation, which was reversed by the court of common pleas for lack of sufficient medical evidence connecting the pneumonia with the exposure. Additional testimony was taken, and a second award made to the claimant, which was affirmed by the court of common pleas. The company appealed on the ground that the proof did not sustain the award.

In affirming the award the court said in part:

A specialist in internal diseases (Doctor Collins), not called at the first hearing, on a consideration of all the facts, testified, "I think the wetting was the cause of his trouble which eventually terminated in pneumonia and caused his death," and further, "pneumonia was the condition resulting from fever and chills operating for several days." The conclusion of an expert, given as "I think," is equivalent to saying, "I believe," and amounts to an assertion of his professional opinion, at least as strong as the assertion of his opinion that, under all the attending data, the result in question most probably came from the assigned cause, which is sufficient. The testimony of the three attending physicians is consistent with that of Doctor Collins, although they leave the cause of the pneumonia somewhat in doubt; but no other probable cause therefor was

pointed out. If the exposure on January 25 was the superinducing cause of death, it matters not that it may have been aggravated by some other cause, such as attending his father's funeral when ill, or going out improperly clad. Injury following an extraordinary exposure to wet and cold, suffered in the course of employment, may be compensable under the workmen's compensation statutes (Pa. St., 1920, sec. 21916 et seq.), on the same principle as a prostration resulting from the heat. (*Lane v. Horn & Hardart Baking Co.*, 261 Pa. 329, 104 Atl. 615; see Bul. No. 258, p. 156.) So may death from pneumonia caused by an injury or unusual exertion and exposure (citing cases).

The judgment was therefore affirmed.

WORKMEN'S COMPENSATION—ACCIDENT—DISEASE—PROXIMATE CAUSE—*New River Coal Co. v. Files, Supreme Court of Alabama (June 30, 1926)*, 103 *Southern Reporter*, page 360.—This case came up on the defendant's application for a writ of certiorari to review the judgment of the circuit court of Walker County awarding compensation to Jasper Files for alleged injuries received while he was employed as a miner in the defendant's coal mine.

The evidence for the plaintiff tended to show that while engaged in coal mining he was overcome and for a time rendered unconscious from breathing carbon dioxide or carbon monoxide or both; that the bad air was due to insufficient ventilation; that the immediate cause of his suffocation was a current of such air passing through an opening he was making into a room where other workmen had been shooting, the gases from the shots not having disappeared. There was also evidence that before the accident the plaintiff was in apparent good health and able to work regularly, and that at the time of the trial he was disabled on account of an abnormal condition of the heart.

The court, in denying the writ, said in part:

We have no difficulty in holding that whatever injury and disability resulted proximately from this event was due to accident within the meaning of the act. A disease "results proximately from the accident" if the disease is induced by lowered resistance proximately caused by the accident, or if it is aggravated or accelerated by the accident so that the disabling injury results proximately from the accident—would not have developed but for the accident. The benefits of the compensation law are not limited to those in perfect health.

Giving full effect to the opinion evidence that persons in good health quickly and fully revive from the effects of carbon dioxide without lasting injury, this must be viewed in the light of all the evidence. It can not be said with certainty that carbon dioxide alone caused the suffocation.

This court does not review the weight of the evidence on certiorari.

True, the burden of proof in the trial court is on the claimant to prove the conditions upon which his right to compensation depends. The issue should be determined fairly upon the legal evidence as in other cases; but the law places that responsibility on the trial judge.

It can not be declared on this record that there was no evidence of injury from accident within the workmen's compensation law.

WORKMEN'S COMPENSATION — ACCIDENT — INTOXICATION AS CAUSE—BURDEN OF PROOF—*Shearer v. Niagara Falls Power Co., Court of Appeals of New York (January 19, 1926), 150 Northeastern Reporter, page 604.*—William A. Shearer was employed by the defendant company in taking down a bridge at its plant at Niagara Falls, N. Y. In the course of his employment he lost his balance while walking along a girder of the bridge and fell, striking a scaffolding, and then falling into the water. He sustained injuries from which he died almost instantly. The industrial board made an award to Lenora Shearer and others, claimants, which was affirmed by the appellate division of the supreme court. The defendant appealed on the ground that no specific finding was made by the industrial board on the evidence offered at the hearing that deceased was intoxicated at the time of the accident. The award was reversed and proceedings remitted to the State industrial board. Judge Pound, speaking for the court, said in part:

The issues in compensation cases, although informally joined, should, however, be disposed of by the board by a determination on all material controverted questions.

Evidence was offered that Shearer was intoxicated at the time of the accident. The question of intoxication as the sole cause of injury was therefore material, but the board made no specific finding on the point. New York constitution (art. 1, 19), excepts from the general grant of power to the legislature to pass workmen's compensation laws all cases "where the injury results solely from the intoxication of the injured employee while on duty." The workmen's compensation law (sec. 10) contains the same exception.

If the employer seeks to establish that intoxication was the sole cause of the accident, the burden is upon him to offer substantial evidence from which reasonable persons would reasonably draw the inference (a) that the employee was drunk at the time of the accident; (b) that he fell owing to his drunkenness and was injured or killed. The ultimate burden is on the employer to establish his defense. The board should make a specific finding whenever the question becomes material.

Here death was due to the fall from the bridge girder, but if the fall was due solely to the intoxication of the employee the case does not come under the act. If the board reaches the conclusion on the evidence that Shearer was drunk at a place where if he fell he would probably be killed, and that he fell owing to his drunkenness, compensation should be denied.

The award of the State industrial board and order of the appellate division should be reversed, with costs to abide event, and proceeding remitted to the State industrial board to make a finding on the question, Did the death of Shearer result solely from his intoxication while on duty?

Ordered accordingly.

WORKMEN'S COMPENSATION—ACCIDENT—NOTICE—BENEFITS UNPAID AT TIME OF DEATH—VESTED RIGHTS—*Roney v. Griffith Piano Co.*, Court of Common Pleas of New Jersey (December 30, 1925), 131 Atlantic Reporter, page 686.—Roney was employed by defendant company as a piano mover. On December 23, 1923, while Roney was moving a piano, it fell, knocking him down and injuring his neck. The accident was witnessed by Penn, the man in charge of the work. Roney continued to work for five or six weeks, when he became wholly disabled from further labor. A diagnosis made on May 19, 1924, showed that cancer had developed as a result of the injuries, from which he subsequently died. Some time before his death Roney submitted a claim, on which compensation was awarded by the workmen's compensation bureau but no payments were made thereon. The employer appealed on the ground that Roney did not report his injury within 90 days as required by the statute, and that there was no person to whom any compensation was properly payable. In affirming the award the court said in part:

Penn was in charge of the work. He was a witness to the accident, saw Roney knocked down when the piano fell, and heard him complain of his neck having been hurt. This notice to Penn, whether or not he reported it to those in authority, was a compliance with section 2, paragraph 15, of the statute (act of April 4, 1911; P. L., p. 140).

The diagnosis as to cancer was made five months after the injury. The court stated that an award for temporary disability should be made up to the date of the diagnosis, followed by an award for permanent disability until the date of death. Continuing, the court said:

It seems that no compensation has been paid in this case, and it is urged by respondent appellant that, as the petitioner has died, there is now no person to whom compensation is properly payable. The authorities cited in support of this view do not sustain that contention. The law is settled that the personal representative of the deceased is entitled to the compensation which accrued up to the date of death of the petitioner. (*Erie Railroad Co. v. Clara Callaway*, Executrix, 91 N. J. L. 32, 102 Atl. 6.)

Let the petitioner respondent submit a determination in accordance with these views.

The rights of the widow as dependent and entitled to a death benefit were not before the court, and it declined to comment thereon.

WORKMEN'S COMPENSATION—"ACCIDENT"—OCCUPATIONAL DISEASE—ANILINE POISONING—CONSTRUCTION OF STATUTE—*Sokol v. Stein Fur Dyeing Co. et al.*, *Supreme Court of New York, Appellate Division (May 5, 1926)*, 216 *New York Supplement*, page 167.—Harry Sokol was employed by the defendant to handle and brush dry furs after the process of dyeing was complete. He contracted a disease known as dermatitis, which disabled him in respect to the use of his hands. He made a claim for compensation under the provisions of section 3, group 19, subdivision 2, of the workmen's compensation law (Laws 1922, ch. 615), alleging that his disease was caused by aniline poisoning. From an award by the State industrial board the defendant appealed.

In reversing the award and dismissing the claim the court said:

We think that "any process involving the use" of aniline is descriptive of a chemical process, and in the fur-dyeing trade involves the application of the chemical to the furs. The claimant, not having been engaged in making application of the dyes, was not, we think, within the coverage of the subdivision, and was not suffering from an occupational disease.

WORKMEN'S COMPENSATION—"ACCIDENT"—OCCUPATIONAL DISEASE—TUBERCULOSIS—*Etna Life Ins. Co. v. Graham et al.*, *Commission of Appeals of Texas (June 9, 1926)*, 284 *Southwestern Reporter*, page 931.—Artie Graham was employed by the Thomsen Co., of Waco, manufacturers of shoe polish. It was her duty to stir and boil various chemicals used in the manufacture of shoe polish, from which arose certain gases, fumes, and powders, all more or less poisonous and irritating. She had been working for this employer for two years prior to May, 1922, when she resigned on account of ill health. She died on January 31, 1924, of tuberculosis. Carrie Graham and another made claim for compensation on account of her death, which was denied by the industrial accident board and the claimants appealed. Upon a trial in the district court a jury awarded compensation. The insurer appealed to the court of civil appeals, and the judgment was reversed and the cause remanded for a new trial. A writ of error was then sued out to bring the case before the supreme court.

The question for the consideration of the court was whether or not a disease that is gradual in its development due to the natural surroundings of the employment is compensable under the Texas statute.

The commission of appeals in disposing of the question said in part:

Considered most favorably from the standpoint of defendants in error, it is conclusively shown that Miss Artie was exposed to the natural surroundings of her employment; that such exposure gradually developed a disease known as tuberculosis, from which she died

in about two years after her employment ceased. In other words, her death was due to what is called an industrial or occupational disease, and not to an accidental injury.

It was held by the commission that while the workmen's compensation act did not expressly include or exclude diseases as compensable, the trend of the decisions of the Supreme Court of Texas had construed the act to intend industrial accidents apart from occupational diseases. It quoted with approval from the opinion delivered by Judge Bishop in *Texas Employers' Insurance Association v. Jackson* (1924, 265 S. W. 1027; see Bul. No. 391, p. 460), where it was held that the employee who, while making a long trip with his employer's truck, was exposed to rain which wetted him several different times, resulting in pneumonia, was not the victim of an accident within the meaning of the act.

The opinion continued:

It is clear to us that, so far as our supreme court has spoken, it has shown its approval of the rule, well-nigh universal elsewhere, that recovery cannot be had for what is termed an occupational or industrial disease. We think the industrial accident board correctly decided the case at bar.

The commission recommended that the judgments of the district court and court of civil appeals be reversed and judgment rendered by the supreme court in favor of plaintiff in error.

WORKMEN'S COMPENSATION—"ACCIDENT"—VIOLATION OF STATUTE—TIMBERMAN OPERATING MINE CAR—*Pokis v. Buck Coal Co., Supreme Court of Pennsylvania (March 15, 1926), 132 Atlantic Reporter, page 795.*—John Pokis was employed by the defendant as a timberman in its mines. It was the custom of the employees when leaving the mine either to walk or to ride down the plane to the bottom and from there to be hoisted to the surface. At the time in question, when the deceased and another had reached the top of the plane, the employee who usually operated the hoisting machine had quit work, and the deceased started the engine and hoisted the car to the top of the plane. He then manipulated the switch that started the car downward and jumped on it to ride down. He was later found dead at the bottom of the plane by his fellow employee. His widow was granted an award by the compensation authorities, but this was reversed by the court below and came to this court on appeal.

The facts were not in dispute. The court considered only the question of whether or not the action of the deceased was a violation of rules 25 and 48 of article 12 of mine laws enacted June 2, 1891. Rule 25 provides in effect that any persons handling or disturbing machinery or cars in or about a mine without proper authority,

whereby the lives and health of persons or the security of the property in or about the mine is endangered, shall be guilty of an offense against the act. Rule 48 provides that no miner or laborer shall run cars on any gravity road unless employed by the mine foreman for that particular work. The court below found that the deceased had violated both of the foregoing rules and therefore his widow should not be allowed compensation. The judgment of the lower court was therefore affirmed.

The Court of Appeals of Maryland reached a like conclusion in a case where death followed the disobedience of workmen instructed by their foreman not to reenter a ditch which they were digging until shoring had been placed. The foreman was not present at the time, but one of the workmen refused to go into the ditch, reminding the others of the orders given. Disregard was held to be "willful misconduct" by the commission, which the courts supported. (*Harris v. Harris et al.* (1926), 132 Atl. 374.)

WORKMEN'S COMPENSATION—ACCIDENT ARISING OUT OF EMPLOYMENT—EMANCIPATION OF MINOR—DEPENDENTS—EVIDENCE—*Smith v. Leslie, Appellate Court of Indiana (March 10, 1926), 151 Northeastern Reporter, page 17.*—Kahel Leslie, 20 years of age, an employee of J. P. Smith, was killed while hauling lumber from defendant's lumber yard to a garage in the same town. It appeared that there was a muddy stretch of road near where the lumber was to be unloaded, and at the time in question decedent's truck became mired. He procured a tractor from a garage, attached the tractor to the truck by means of a rope, and pulled the truck out of the mire to the place where it was to be unloaded. He stopped the tractor, but the truck had been given such momentum that it did not stop simultaneously with the tractor, but ran forward against it, the collision resulting in the fatal injury to the decedent. The evidence given at the hearing showed that the decedent was receiving \$15 per week from his employer, and that after paying for his own clothes and furnishing his own spending money he gave his mother from \$5 to \$7 per week, the greater part of which was used for buying clothes and school books for his sisters. The industrial board made an award to his mother and sisters, and defendant appealed on the ground that since the use of the tractor to pull the truck had been strictly forbidden the accident did not arise out of his employment, and that he had been emancipated by his parents, and therefore they should not be considered dependent upon him. The court, in affirming the findings of the board, said in part:

An accident is said to arise "out of the employment, when there is apparent to the rational mind, upon a consideration of all the circumstances, a causal connection between the conditions under which the

work was required to be performed and the resulting injury." [Cases cited.]

In the case at bar the decedent at the time of his injury was engaged in operating the tractor in an endeavor to accomplish the work to which he was assigned. Clearly there is some evidence to support the finding of the board that the death of the employee was the result of an accident which arose out of his employment.

The question of the boy's emancipation becomes important. Emancipation will not be presumed. It must be established by competent evidence.

In the case at bar there is evidence from which the industrial board might have found that the emancipation of Kahel Leslie was but partial; that there had been no emancipation from parental custody and control; and that the boy was merely permitted to collect and spend his own wages. If such was the finding, there was, of course, no legal liability on his part to pay for his board and lodging, the cost of which the industrial board was not required to deduct from his wages in determining the question of dependency.

We hold that there is sufficient evidence to sustain the finding of the industrial board that the mother and sisters of the employee were his dependents at the time of his death.

The award was therefore affirmed.

WORKMEN'S COMPENSATION—ADMIRALTY—JURISDICTION—AGREEMENT UNDER STATE LAW—STATUS OF DIVER—*Millers' Indemnity Underwriters v. Braud et al.*, *United States Supreme Court* (February 1, 1926), *46 Supreme Court Reporter*, page 194.—O. O. Boudreaux, employed by the National Ship Building Co. as a diver, died of suffocation when his air supply failed while under water in the course of his employment. The employer carried insurance in compliance with the Texas workmen's compensation law. In an action by the sister of the deceased, an award of compensation was granted by the State industrial board. The court of civil appeals affirmed the award, as did likewise the Supreme Court of Texas, whereupon error was brought to the United States Supreme Court.

It was the contention of the insurance carrier that the claim arose out of a maritime tort; that the rights and obligations of the parties were fixed by maritime law, and that therefore the State had no power to change them by statute or otherwise. In reviewing the record, the Supreme Court of the United States observed that the Texas compensation law as applied to employees engaged in removing obstructions to navigation in waters within the State works no material prejudice to rules of maritime law; and where the employer, as in this case, elected to come within the act, and the employee did not give statutory notice rejecting it, the remedy provided was therefore exclusive and the right of either party to sue in admiralty was eliminated. It appeared from the evidence that Boudreaux at the

time of his death was engaged in sawing off the timbers of an "abandoned set of ways, once used for launching ships, which had become an obstruction to navigation."

Mr. Justice McReynolds, delivering the opinion of the court, said in conclusion:

The record discloses facts sufficient to show a maritime tort to which the general admiralty jurisdiction would extend save for the provisions of the State compensation act; but the matter is of mere local concern and its regulation by the State will work no material prejudice to any characteristic feature of the general maritime law. The act prescribes the only remedy; its exclusive features abrogate the right to resort to the admiralty court which otherwise would exist.

The judgment was therefore affirmed.

WORKMEN'S COMPENSATION—ADMIRALTY—JURISDICTION—"MARITIME CONTRACT"—UPHOLSTERER ON RIVER BOAT—*Johnson v. Swonder*, Appellate Court of Indiana (January 28, 1926), 150 *Northeastern Reporter*, page 615.—John Johnson, who was employed by the defendant as an upholsterer's helper in a mattress factory, was sent by his employer to help upholster a motor boat that was tied up to the Indiana bank of the Ohio River, and while in the course of his employment met with an accident which caused his death. His widow made application to the Indiana Industrial Board for compensation on account of his death. The application was dismissed for want of jurisdiction, and claimant appealed. The court, in reversing the action of the board, said in part:

There is but one question for our consideration, and that is as to whether the industrial board had jurisdiction over the subject matter of the contract of employment, and to determine this we are called upon to determine whether the contract of employment was a maritime contract, or such a maritime contract that it can only be recognized in an admiralty court.

The court, after examining a number of authorities on the question of maritime contracts, cited several cases in which the question had been adjudicated and said: "We see nothing in the employment here involved that would bring it within the scope of these definitions of a maritime contract."

The opinion concludes:

It is well established that generally Federal courts have exclusive jurisdiction of admiralty matters, but where, as here, the enforcement of the State statute works no material prejudice to the characteristic features of the general maritime law, nor interferes with the proper harmony or uniformity of that law in its international or interstate relations, the general rule does not apply.

That appellee had contracted with appellants' decedent with reference to the compensation law of Indiana is evidenced by the fact that

he promptly reported the accident to the industrial board in due form. We hold that the industrial board erred in holding that it did not have jurisdiction of the matter here involved.

The order of dismissal was therefore reversed, with instructions to hear and determine the action on its merits.

WORKMEN'S COMPENSATION — ADMIRALTY — JURISDICTION — WAIVER OF RIGHTS UNDER ADMIRALTY LAW—CONSTITUTIONALITY OF STATUTE—*Christensen v. Morse Dry Dock & Repair Co., Supreme Court of New York, Appellate Division (March 19, 1926), 214 New York Supplement, page 732.*—Fred Christensen was employed by the defendant in making repairs on the steamship *President Arthur*, lying at the plant of the defendant in the navigable waters of New York Harbor, and while in the performance of his work he was dragged from the ship by a repair tackle into the waters of the harbor and thereby injured. He brought action in the supreme court of Kings County, N. Y., to recover for his injuries under maritime law. From a judgment dismissing the complaint, plaintiff appealed to the appellate division of the supreme court. The question presented was whether or not the supreme court had jurisdiction of the cause of action because of a contract entered into by the plaintiff and the defendant. The contract was signed by both of the contracting parties before the plaintiff entered into the employ of the defendant. By the terms of the contract the plaintiff agreed to waive any rights to himself, his heirs, etc., that he or they might have in any admiralty court or State court, limiting such rights to those granted by the provisions of the workmen's compensation law.

The court referred to Article III, section 2, of the Constitution of the United States, which extends the judicial power of the United States to all cases of admiralty and maritime jurisdiction. Judge Kapper, who delivered the opinion of the court, after citing a number of cases, said in part:

As we have seen, the cases in the United States Supreme Court disclose the zealotry with which that court clings to the jurisdiction of the Federal courts over maritime torts, and the tenaciousness with which they seek to preserve the essential and characteristic features and the uniform operation of the maritime law. That this jurisdiction may be encroached upon, or the essential features of the maritime law changed or modified, any more effectively through the medium of optional rather than compulsory legislation, does not seem to me possible. The fact of usurpation and encroachment, not the medium of its accomplishment, is the vital consideration.

The optional provision in section 113 (of the compensation act, authorizing waivers of the admiralty law and acceptance of compensation by agreement), if utilized by employer and employee, is effective to divest the Federal courts of jurisdiction by substituting therefor

the jurisdiction of a State tribunal exercising functions unknown to the common law, and is effective also to work a material change in the maritime law by substituting for the rights and remedies there recognized and administered new rights and remedies unknown to the common law, and not embraced within the scope of the maritime law. And the jurisdiction of which the Federal courts are thus divested is jurisdiction of subject matter—i. e., jurisdiction over a maritime tort. It seems to me that this may not be done, either directly by compulsory legislation or indirectly through the medium of optional provisions.

It is suggested that the plaintiff could have given a general release, and therefore the parties could effectuate the agreement now involved. The distinction between a release of a right of action, either before or after suit brought, and the agreement before us, seems marked. In the case of a release, the parties put an end to litigation by steps that are sanctioned by the common law and are in harmony with the principles of the maritime law. In the case of the agreement to submit their maritime rights, obligations, and liabilities to the State industrial board, the parties are consenting to confer jurisdiction of subject matter upon a tribunal in which such jurisdiction can not be lodged. That such board is a judicial tribunal (created by the legislature), in view of its determining powers and the right of review of its findings by our appellate courts, seems to me to admit of no question.

The discussion in which I have indulged leads me to the conclusion that, where a suitor claiming a personal injury to have resulted from what is known as a maritime tort resorts to a State court for the purpose of having his right of action determined pursuant to the rules of law fixed by maritime jurisprudence, he can not be ousted because of an agreement voluntarily entered into by him to substitute a State workmen's compensation law in the place and stead of his common-law remedy saved to him by the Federal statute.

If the views expressed are correct, it follows that the dismissal of the complaint was error, and that the judgment should be reversed upon the law and a new trial granted, costs to abide the event.

The judgment was therefore reversed and a new trial granted.

In *Argentino v. F. Jarka Co (Inc)* (1925, 214 N. Y. Supp. 218), the Supreme Court of New York, special term, ruled against a plea that a rule of the industrial board of the State provided for an acceptance by the parties, making the compensation act the exclusive remedy. Citing *Southern Pacific Co. v. Jensen* (244 U. S. 205, 37 Sup. Ct. 524), the court pointed out the impossibility of the State assuming jurisdiction by act of legislature, adding that surely the industrial board could not do so.

WORKMEN'S COMPENSATION—ADMIRALTY—LONGSHOREMEN—INJURY ON DOCK—*Shea v. State Industrial Accident Commission, Supreme Court of Oregon (July 13, 1926), 247 Pacific Reporter, page 770.*—James W. Shea was employed by the Nelson Steamship Co., a corporation duly licensed to do business within the State of Oregon, and was on November 19, 1925, engaged in unloading freight from the steamship *Grifidu* onto one of the docks in the city of Portland, when a load of

freight he was trucking on the dock fell and caught and severely injured his hand. His claim for compensation was rejected by the State industrial accident commission. He then proceeded under the workmen's compensation law in the district court and recovered judgment. From that judgment the commission appealed. It was contended that the plaintiff was not entitled to compensation under the workmen's compensation law, but that his case was governed by the maritime law.

The court, speaking of the provisions of Oregon's workmen's compensation act, said in part:

All persons, firms, and corporations engaged as employers in the hazardous occupations specified in the act may accept or reject the benefits thereof. All workmen in the employ of such persons, firms, or corporations subject to the act, may likewise elect to accept or reject its benefits. Stevedoring and longshoring are defined as hazardous occupations within the meaning of the act. At the time the plaintiff suffered his injuries, the Nelson Steamship Co. was an employer, and plaintiff was an employee, as these terms are defined by the act. The provisions of this act, when applied to the facts in the case at bar, are not in conflict with any superior law. Therefore, we conclude that, both the employer and the employee having accepted the terms of the workmen's compensation law of the State of Oregon, its protective features embrace the injury sustained by the plaintiff. Both the agreed statement of facts and the findings of the court locate the site of the longshoreman's injury upon the land.

The case of *State Industrial Commission v. Nordenholt Corp.* (259 U. S. 263, 42 Sup. Ct. 473; see Bul. No. 344, p. 285) was cited by the court, and the opinion of Mr. Justice McReynolds quoted from with approval as follows:

When an employee, working on board a vessel in navigable waters, sustains personal injuries there, and seeks damages from the employer, the applicable legal principles are very different from those which would control if he had been injured on land while unloading the vessel. In the former situation the liability of employer must be determined under the maritime law; in the latter no general maritime rule prescribes the liability, and the local law has always been applied. The liability of the employer for damages on account of injuries received on shipboard by an employee under a maritime contract is matter within the admiralty jurisdiction; but not so when the accident occurs on land.

The commission claimed that its rejection of the claim of Shea was supported by the supreme court's decision in *Spitzer v. Annette Rolfe* (110 Oreg. 461, 218 Pac. 748, 223 Pac. 253). The court pointed out, however, that here the owner was a foreign corporation which had never complied with the corporation laws of Oregon nor taken steps to come under the State compensation law, but sought protection under the automatic features of that law when proceeded against

under another statute, though "it had never contributed, nor sought to contribute, a dollar to the industrial accident fund of the State."

While the workmen's compensation law, being remedial in its nature, is to be liberally construed, yet, when it becomes our duty to apply the act to a given set of facts, we must keep in mind that it was not the intention of the lawmakers, in providing for the creation of an industrial accident fund, to compensate workmen injured abroad, but that the act is essentially an Oregon act, designed to accumulate a fund to compensate Oregon workmen sustaining accidental injuries in Oregon industries.

In the instant case, the parties being under the act and the injury being received on the land, the compensation law was applicable, and the judgment of the circuit court so holding was affirmed.

WORKMEN'S COMPENSATION—AGREEMENT—WAIVER OF PROVISIONS OF LAW—REVIEW—*Hartford Accident & Indemnity Co. v. Industrial Commission, Supreme Court of Illinois (April 23, 1926), 151 Northeastern Reporter, page 495.*—John Wahlstrom was injured while in the employ of A. Knight. Knight and Wahlstrom, together with the insurance company, plaintiff in the instant case, entered into an agreement in settlement of Wahlstrom's claim for compensation, whereby he was to be paid \$1,650 for injuries received, at the rate of \$12 per week for 291 weeks and \$8 for one week, with a pension of \$23.33 per month for life, neither of the parties to seek to diminish or increase the agreed amounts. The agreement was approved by the industrial commission, and payments were made under the agreement until the death of Wahlstrom. Subsequent to the death of Wahlstrom, Knight died, and the insurer stopped payment and filed a petition with the industrial commission praying relief from further payments, its contention being that under section 21 of the workmen's compensation act its liability ceased on the death of Wahlstrom. The commission found that, under the terms of the agreement, the right to compensation was not extinguished by the death of Wahlstrom, and this finding was approved by the circuit court of Cook County. The company brought error, and the supreme court reversed the finding and approval, remanding the case with directions.

The law provides that the death of a beneficiary extinguishes his right to receive compensation; also that any agreement or award may be reviewed by the commission at any time within 18 months after it is made. Here, the agreement was made in April preceding the death of Wahlstrom in September of the same year. The court held that the rule as to termination of benefits controlled in spite of the agreement, and that the power of the commission to review was

not subject to waiver by the agreement, so that "the circuit court erred in confirming the finding of the industrial commission" to the contrary. The jurisdiction of the commission was said to continue in the case of an agreement the same as in case of an award, and could not be waived. The judgment below was therefore reversed and the case remanded.

WORKMEN'S COMPENSATION—ALIEN BENEFICIARIES—APPEAL TO COURTS—CONSTITUTIONALITY OF STATUTE—*Liimatainen v. State Industrial Accident Commission et al., Supreme Court of Oregon (June 1, 1926), 246 Pacific Reporter, page 741.*—The deceased, known as Herman Alto, while in the employ of the Murphy Timber Co., sustained an injury in an accident arising out of and in the course of his employment on June 19, 1922, which resulted in his death two days thereafter. Wilhelmiina Liimatainen, alleged widow of the deceased, made a claim for compensation under the workmen's compensation law. Her claim was rejected by the commission, from whose order she appealed to the circuit court of Marion County, Oreg. That court found and determined that inasmuch as the claimant was not and never had been a resident of Marion County or of the State of Oregon, no appeal was authorized by law, and on that account dismissed the appeal. An appeal was then brought to the Supreme Court of Oregon.

The supreme court in affirming the judgment of the circuit court said in part:

There is no question but that in proper cases compensation may be awarded to the widow of a deceased employee who is subject to the workmen's compensation act, although the widow may be a non-resident. The question is as to the extent of her remedy in case the commission refuses her claim.

The laws of this State are made primarily for the benefit of its own people, and the present law under its terms relating to industrial accidents is avowedly made with that end in view. The State is under no obligation to provide largess for nonresident aliens, and may limit their access to its courts to narrower bounds than those accorded to residents.

The claimant contended that to deny her the right of appeal was forbidden by sections 20 and 31 of article 1 of the State constitution. The sections invoked in support of that contention read thus:

SECTION 20. No law shall be passed granting to any citizen or class of citizens privileges or immunities which, upon the same terms, shall not equally belong to all citizens.

SEC. 31. White foreigners who are or may hereafter become residents of this State shall enjoy the same rights in respect to the possession, enjoyment, and descent of property as native-born citizens.

The court held that section 20 referred only to citizens of the State, while section 31 applied alone to white foreigners who were residents of the State, and that neither section applied to the claimant since she was neither a citizen of the State nor a white foreigner residing therein. It was also held that the action of the court below in dismissing the appeal did not violate the due process of law provision of the Constitution of the United States. Judge Burnett, speaking of this, said in part:

In a due process of law devised by the industrial accident commission statute she applied to the commission for an allowance. She had a hearing before that legally constituted tribunal, and by it her claim was denied.

The claimant was at all times a resident and inhabitant of a foreign country, seeking to take advantage of the law, and must take it not only with its benefits, but with its restrictions. She had her day in court, so to speak, before the commission, which is vested with the authority to determine such things in the first instance. She had her hearing before that tribunal, and if she would appeal she must bring herself clearly within the terms of the statute by appeal to the circuit court of the county in which she resides. There being no "county in which she resides," she does not come within the category of those who can appeal.

Operating, as she has attempted to do, solely under the workmen's compensation law, the claimant is bound by all its conditions, one of which is that if she desires to appeal she must appeal to the circuit court of the county in which she resides.

The circuit court had no jurisdiction over the subject matter because that was vested primarily in the industrial accident commission. Jurisdiction on appeal could not be conferred upon the circuit court by stipulation, and it made a correct disposition of the case by dismissing the appeal.

The judgment was therefore affirmed.

WORKMEN'S COMPENSATION—ALIEN BENEFICIARIES—TREATY RIGHTS—CONSTITUTIONALITY OF STATUTE—*Liberato v. Royer* (April 12, 1926), 46 *Supreme Court Reporter*, page 373.—This case came up to the Supreme Court of the United States on a writ of error. Plaintiffs, who were natives and residents of Italy, were by a decision of the Court of Common Pleas of Pennsylvania awarded \$820 for the death of their son while he was employed by the defendants S. A. Royer and Albert Herr, trading as Royer & Herr. The award was reversed by the superior court on the ground that the statute expressly provided that "alien * * * parents * * * not residents of the United States, shall not be entitled to any compensation" (Pa. Stat. 1920, sec. 22007), and that the treaty of 1913 with Italy did not cover the case. The judgment was affirmed by the supreme court of the State. (See Bul. No. 391, p. 358.)

The question before the Supreme Court was whether or not the treaty with Italy invalidated the above clause of the statute law and gave the plaintiffs a right to recover. That portion of article 3 of the treaty, as amended in 1913, relied on for recovery is in substance as follows:

The citizens of the contracting countries shall receive constant security and protection for their persons and property and shall be granted the same civil responsibility for injuries or death caused by negligence or fault as is granted to nationals, provided they submit themselves to the conditions imposed on the latter.

Mr. Justice Holmes, delivering the opinion of the court, said in part:

The words of the amendment, if taken literally, deal only with death caused by negligence or fault. The statutes of Pennsylvania accord with this view of the treaty. They give to alien nonresident dependent parents the same right to recover damages for death due to fault that they give to citizens and residents. Then the compensation act offers a plan different from the common law and the workman is free not to come in under it. If he does, of course all benefits dependent on the new arrangement are matters of agreement and statutory consequences of agreement and cannot be carried further than the contract and statute go.

We are of the opinion that the treaty was construed rightly by the courts below.

The judgment was therefore affirmed

The Court of Appeals of Kentucky cited the *Liberato* decision in a case before it involving a like provision of law, the compensation board having assumed that such provision was in conflict with the treaty. The award made was reversed by the circuit court, this ruling being sustained by the court of appeals, where it was said that not only did the reasoning in the *Liberato* case accord with the views of the court, but the Supreme Court's interpretation of the treaty was binding. (*Norella v. Maryland Casualty Co.* (1926), 287 S. W. 18.)

The law of New York allows payments to certain alien dependents, but permits commutation of "future installments" at a rate of one-half their commuted value. This was held by the court of appeals of the State not to permit any revision of past payments or those already due, but "only such installments as might accrue periodically thereafter." An order of the industrial commission, affirmed by the appellate division, modifying a previous award, was therefore reversed and the case remanded. (*Perino v. Lackawanna Steel Co.* (1925), 150 N. E. 127.)

The Utah compensation act gives nonresident aliens one-half benefits. Where an alien was killed, his family being at the time residents of the State, and an award made as to residents, the family afterward leaving the United States, it was held by the Supreme Court of the State that the status of the beneficiaries was changed by their removal, so that the award should be reduced to the amount provided by law for nonresidents. (*Continental Casualty Co. v. Industrial Commission* (1926), 250 Pac. 145.) One judge dissented, saying that he did not think that the amount to be awarded should be based on any inquiry as to a contemplated change of residence of the dependent during the period of the award.

WORKMEN'S COMPENSATION—AWARD—ADDITIONAL AWARD FOR RETRAINING—*Tibbitts v. E. G. Staude Mfg. Co. et al.*, *Supreme Court of Minnesota (February 5, 1926)*, *207 Northwestern Reporter*, page 202.—Minnesota has a law which provides for an additional award for reeducating or retraining those persons whose capacity to earn a living has been destroyed or impaired through industrial accident or otherwise, so as to restore their capacity to earn a livelihood, if the industrial commission shall find such retraining is necessary.

Millard Tibbitts, employed as a lathe worker by the E. G. Staude Manufacturing Co., received an accidental injury which resulted in the loss of one of his eyes, for which he was awarded full compensation. Some time after that he made application for an additional award in order that he might receive training as a trombone player. The application was approved by the board of vocational education, but was not approved by the industrial commission, for the reason that the evidence was not sufficient to show that the retraining sought would materially aid in earning a livelihood. Claimant brought a writ of certiorari to the supreme court. The action of the industrial commission was affirmed. The court held that in determining whether or not an employee who has accidentally suffered the loss of a member of his body is entitled to additional compensation for retraining under the provisions of the statute, the word "necessary" should not be construed as "indispensable," but such-compensation should be found necessary if it appears that the training sought would materially assist the employee in restoring his impaired capacity to earn a livelihood. Judge Holt, speaking for the court, said in part:

Notwithstanding the persuasive arguments presented by the division in its support of Mr. Tibbitts' application, the record is not such as to demand a finding that retraining is necessary. This court can not reverse unless the evidence submitted by the parties requires a finding contrary to the one made, or reveals the decision to be arbitrary or arrived at by misconception of the law, or upon an erroneous theory of the proofs required.

In this instance the memorandum accompanying the decision indicates the chief reason for denying the compensation asked for was that retraining as a trombone player was not shown likely to amount to a restoring of an impaired capacity to earn a livelihood, but rather to the acquisition of an accomplishment.

There should be some evidence that the retraining sought will probably result in at least aiding the applicant to earn a living or improving his impaired earning capacity. It ought not to be required to show that the occupation to which a training is sought will give a better living, or that it alone will furnish an adequate living, but it should be shown that it will substantially aid the workman in gaining a livelihood.

We think the evidence is not such as to compel a finding that the retraining asked for and approved by the division was necessary.

The decision was therefore affirmed.

WORKMEN'S COMPENSATION—AWARD—BASIS—CONCURRENT EMPLOYMENT—AVERAGE WEEKLY EARNINGS—*Juan's Case, Supreme Judicial Court of Maine (July 28, 1926), 134 Atlantic Reporter, page 161.*—Walter H. Juan, concurrently employed by several employers, was killed on November 7, 1922, while serving the Pejepsco Paper Co. His widow was granted an award of \$16 a week for the statutory period, and this was confirmed by a single justice sitting in equity. The paper company appealed. The question presented to the court was, Could the weekly earnings of the deceased in his several employments be combined as a basis on which to compute the award? The facts in the case were substantially as follows: The deceased had been employed for the full year preceding his death as a caretaker by the Pejepsco Paper Co. at \$10 a week, as janitor for a fuel company at \$1.50 a week, and as a member of the Belfast Fire Department at \$2.58 a week, and for over 16 weeks just prior to his death he had been employed by Forgione & Romano Co., contractors, as mason's tender, etc., at a weekly wage of \$31.50. The case was before the court for the second time.

It was the contention of the paper company that the \$31.50 earned as mason's tender should not be considered in computing the amount of the award.

The court, in its opinion, said:

The case is of novel impression in this court, and industry of counsel has failed to suggest a decision by another court in a like case.

It then held that under the provisions of section 12, chapter 50, of the Revised Statutes, a duty was placed upon the industrial accident commission of finding the artificial average of weekly earnings under the conditions prevailing in the employment of the workman, before and up to the time of the accident, if concurrent employment is proved.

In concluding its opinion the court said in part:

It remains only to be considered whether the chairman erred as a matter of law when he included employment by the Forgione & Romano Co. with other concurrent employment, in determining the average weekly earnings.

Led by the decision after the former hearing in this case, and with the additional light obtained from facts elicited in accordance with the previous mandate of this court, the commissioner found that the employment as mason's tender, in which this workman had been regularly employed for more than three months before the accident, was employment concurrent with that by him rendered to the appellant. Then, in compliance with the provision of the statute last quoted, the commissioner apparently found that of his earnings as mason's tender so great a sum was to be considered "average weekly earnings" as would bring the earnings from all concurrent employments above the sum of \$24 per week.

Hence he awarded compensation in the amount of \$16 weekly, and we can not say this finding is contrary to law.

The appeal was dismissed and the decree below accordingly affirmed.

In a case before the Supreme Court of Kansas involving concurrent employments the court held that only such wages should be considered as were earned in employments under the compensation act. In this case one of the employers was an electric company and the other a city not operating under the act. On the death of the workman from an accident in the course of employment with the electric company it was held that the amount awarded the widow could be based on the earnings with that company alone, for the reason stated. (*Walton v. Electric Service Co.* (1926), 247 Pac. 846.)

The Illinois Supreme Court found the employment of a night watchman by two companies whose properties adjoined to be joint and not concurrent, so that they were jointly liable for the payment of compensation due for his death caused by accident on the property of one, the wage basis being his annual earnings. The workman was employed under a single contract, and was paid an equal wage by each employer, taking his orders from the foreman of each, so that an arbitrator's finding of liability of but one employer was held to have been properly modified to apply to both. (*Page Engineering Co. v. Industrial Commission* (1926), 152 N. E. 483.)

Where the death of a watchman employed by two persons was caused by an explosion while he was attempting to protect from fire the property of both his employers, it would follow that this court would sustain an award against the two employers jointly. (*Frederick v. Stresenreuter (Inc.)*, (1926), 152 N. E. 548.)

WORKMEN'S COMPENSATION—AWARD—BASIS—MULTIPLE INJURIES—PERCENTAGE OF DISABILITY—PERMANENT PARTIAL FOLLOWING TEMPORARY TOTAL DISABILITY—*Mills v. Mills & Connelly, Court of Appeals of Kentucky (May 21, 1926)*, 283 *Southwestern Reporter*, page 1010.—Charles C. Mills was employed by Mills & Connelly, and on November 8, 1923, while operating a concrete mixer, he sustained an injury for which he made a claim for compensation. A hearing was had before the compensation board on the following agreed statement of facts:

- (1) Foot cut off by cable of concrete mixer, necessitating immediate amputation of right leg 9 inches below knee, leg measure 16½ to 17 inches from knee to ankle.
- (2) First and second fingers of left hand torn off between knuckle and first joint.
- (3) Fracture of middle third of radius of left arm.

The agreed statement also showed that the plaintiff was confined to a hospital for a period of 30 days and after his release was under the care of a doctor until March 23, 1924; that on July 4, 1924, he was able to put on an artificial leg for the first time, and that during the first 60 days thereafter he was able to wear it only occasionally due to the tender and unhealed condition of the stump, since which time he had been able to wear it approximately two-thirds of the time.

The compensation board awarded the claimant \$15 per week for total disability from November 15, 1923, to September 8, 1924, and in addition \$12 per week for 145 weeks for the amputation and loss of his right leg, and further \$12 per week for the loss of an index finger of his left hand and \$12 per week for 30 weeks for the loss of a second finger of his left hand. Medical services not to exceed \$100 were also allowed. The circuit court on review modified the award and allowed the claimant \$12 per week for 125 weeks for the loss of his right foot and set aside the award of \$15 per week from November 15, 1923, to September 8, 1924. From that judgment the claimant appealed.

The question for the court was whether claimant's disability was caused by the loss of a leg as was found by the board or by the loss of a foot as adjudged by the circuit court, or whether it should be determined under section 4899, the concluding clause of which provides that all other cases of permanent partial disability not specifically set out in the section shall be determined by the percentage of such disability.

It was held by the court that the claimant's rights should be determined under the concluding clause of the section above referred to, the court saying, in part, as follows:

Our conclusion is that the injury in this case is more than the loss of a foot and less than the loss of a leg, and seems to be necessarily embraced in that class of "all other cases of permanent partial disability" provided for in the concluding clause of section 4899.

It results on this branch of the case that neither the award of the board for the loss of a leg nor the judgment of the circuit court for the loss of a foot only can be sustained; but the circuit court should have remanded the case to the board, with directions to fix the compensation according to the provisions of the concluding clause of that section, but to so fix it that the compensation for such injury in the aggregate would be less than for the loss of a leg, and greater than that for the loss of a foot, according to the percentage of disability and the other considerations mentioned in that clause.

It was also held by the court that, under the ruling in the Nelson case, the circuit court erred in striking out the allowance made by the board for temporary total disability.

The judgment of the circuit court was reversed with directions for it to enter a judgment upholding the award of the board except as to the award for the loss of a leg.

Where a miner was injured by a fall of slate, fracturing a femur and injuring his hip and back, causing permanent partial disability, an award to this effect was sustained by the Supreme Court of Tennessee over the contention that the injury to the leg, for which the act provided a specific benefit, being the one causing the longest disability, was the only basis for an award. The court held

that there was not a question of distinct, concurrent disabilities, the minor merging into the major, but a single injury affecting the use of the body, causing a permanent partial disability, to be compensated on the ground of reduced earning capacity. (*Bon Air Coal & Iron Corp. v. Johnson* (1926), 283 S. W. 447.)

WORKMEN'S COMPENSATION—AWARD—BASIS—PERMANENT PARTIAL DISABILITY—MULTIPLE INJURIES—CONSECUTIVE AWARDS—*Hinley v. Brooklyn Heights R. Co., New York Supreme Court, Appellate Division (January 15, 1926), 213 New York Supplement, page 321.*—Florence Hinley, an employee of the Brooklyn Heights R. Co., received injuries to her legs which made it necessary to have the left leg amputated. The State industrial board awarded her compensation for permanent partial disability for the loss of her left leg, which amounted to more than \$3,500; it also awarded compensation for temporary disability for injury to the right leg, to run consecutively with the first award. The company appealed from this last award. In reversing the award and dismissing the claim, the court said in part:

The injury to the claimant's right leg was not proven or found to be other than a temporary disability; that this disability was present during the period when claimant was being paid compensation for the loss of her left leg; that an award for the right leg can not be appended to an award for the left leg, the former to begin when the latter ended; that the two injuries constituted but one disability to work; that the award for the left leg was for more than \$3,500; that the sum so awarded and paid must be considered in connection with the injury to the right leg; that, so considered, the claimant may not receive further compensation on account of such temporary disability; that the case of *Marhoffer v. Marhoffer* (220 N. Y. 543, 116 N. E. 379 [see Bul. No. 246, p. 289]), precludes the claimant from receiving compensation for the injury to her right leg.

WORKMEN'S COMPENSATION—AWARD—BASIS—PERMANENT TOTAL DISABILITY—COMMUTATION OF BENEFITS TO DISEASED WORKMAN—LIFE EXPECTANCY—*Pettinelli v. Degnon Contracting Co., Supreme Court of New York, Appellate Division (1926), 217 New York Supplement, page 679.*—The claimant in this case had suffered an injury to his head in October, 1916, resulting in mental derangement. He was committed to an asylum for the insane in September, 1917, as he was then suffering from dementia præcox. Compensation was paid until a final determination in February, 1926, that the claimant was totally and permanently disabled. A commutation was made at that time, covering future payments and a proportionate amount of the administrative expenses, in accordance with the terms of the law, the amount being \$13,662.55. Under the terms of the law this sum would go into an aggregate trust fund, the employer, a self-insurer, being discharged from further liability on the payment thereof.

From the award thus made an appeal was taken on the ground of the use of an improper basis for determining the amount. The commutation had been made in accordance with the testimony of an actuary, who employed the Danish survivorship annuitants' tables of mortality in making his calculations. The actuary admitted that the figures used were based on the life of a normal man, without reference to the actual condition of the individual claimant in this case. Judge Henry T. Kellogg, speaking for the court, stated that:

The superintendent of the asylum in which the claimant was confined testified that the average length of life of a dementia præcox patient was 16 years from the date of his admission to an insane hospital; that he considered that 16 years from such time was a fair and reasonable estimate of the life expectancy of the claimant. As the claimant was admitted to an insane hospital in September, 1917, his expectancy at the time of the order of commutation, according to experience among dementia præcox patients, was less than eight years. We are not told what his expectancy under the Danish tables might have been, for the proof was excluded by the presiding commissioner. We may take judicial notice, however, that it was far greater than eight years. The question to be determined is whether or not the facts of the case justified the commutation made.

Attention was called to the fact that moneys paid in as directed in this case went into an "aggregate and indivisible fund," from which payments for the specific object were to be made; but if a beneficiary outlived his expectancy payments would continue from this fund, while, on the other hand, if death occurred at an earlier date, no reimbursement would be made to the contributor. In other words, this is a special insurance fund for general distribution to all cases coming within its purview.

While the law requires all commutations made by the board to be upon the basis of the survivorship annuitants' table of mortality, it is not required to make commutation in any case. Supposing a case of imminent death and commutation notwithstanding, an unjust and oppressive result would follow. The present case was said to present a situation comparable to that in the assumed case.

This claimant, under the expert proof given, will not live more than eight years. Yet the award in his favor has been commuted on a basis of a life expectancy which is perhaps more than double that number of years. We think that the industrial board did not properly exercise its discretion herein, and that the award should not be permitted to stand.

The award was reversed and the claim remitted.

WORKMEN'S COMPENSATION—AWARD—COMMUTATION—JURISDICTION OF COURTS—CONSTRUCTION OF STATUTE—*Edwards v. Doster-Northington Drug Co.*, *Supreme Court of Alabama (May 27, 1926)*, 108

Southern Reporter, page 862.—Fannie Edwards brought a writ of certiorari to have the judgment of the circuit court of Jefferson County reviewed. Under the provisions of the workmen's compensation act, she had been awarded compensation for the death of her husband by the circuit court, which the defendant offered to pay in installments, but she demanded that the award be paid in a lump sum. The trial court refused to accede to the plaintiff's demand, holding that, in the absence of an agreement between the parties, it had no jurisdiction to order a lump-sum payment in lieu of installments to fall due.

Section 7573 of the Code of 1923 provides for lump-sum settlements under the workmen's compensation act substantially as follows: The amounts of compensation payable periodically thereunder, either by agreement of the parties approved by the court or by decisions of the court, may be commuted to one or more lump-sum payments, except compensation due for death, etc. This may be commuted only with the consent of the circuit court. Of this the circuit court said:

The act permits commutation only when the court consents. The use of the word "consent" implies the presentation of an agreed stipulation or order. It negatives the idea of * * * initiatory action on the part of the court.

Numerous cases were cited holding in general that the act should be liberally construed. It was insisted that the circumstances in this case were unusual in that the plaintiff was more than 60 years of age, infirm, and somewhat melancholy; that the weekly payments would be suggestions of her sorrow and would serve greatly to depress her and work harm to her physically; and that a lump-sum payment would enable her to make an investment that would be more valuable in a financial way than periodical payments.

The supreme court, on review of the case, held that the statute was liberally construed to effectuate its general purpose and design, and quoted from the language used in the workmen's compensation act of New Jersey, as being applicable here, as follows:

It is the intention of this act that the compensation payments are in lieu of wages, and are to be received by the injured employee or his dependents in the same manner in which wages are ordinarily paid.

The court concluded its opinion by saying:

The idea seems to be to provide for the continuance for a time of the ordinary means of support and to protect the rights of dependents who are inexperienced in business matters and unable to protect themselves. At any rate, the statute in plain language requires that compensation in cases like this may be commuted only upon the agreement of the parties, which agreement must have the approval of the court. So then, whatever impression the peculiar

merits of appellant's claim for compensation may have made upon the trial court, that court correctly ruled that it had no jurisdiction to order a lump-sum settlement in the absence of agreement by the defendant.

The judgment was therefore affirmed.

WORKMEN'S COMPENSATION—AWARD—DEATH OF BENEFICIARY—SUBSEQUENT AND VESTED RIGHTS—*Sea Gull Specialty Co. et al. v. Snyder, Court of Appeals of Maryland (June 11, 1926), 134 Atlantic Reporter, page 133.*—The construction of the compensation law of Maryland was involved in a case where an injured workman died as a result of injuries after having received compensation for 87 weeks in the sum of \$1,566.

The law provides that a widow, who is the sole dependent of an injured employee whose death occurred within three years from the date of his injury, shall be entitled to 66 $\frac{2}{3}$ per cent of his average weekly wages, not to exceed \$18 per week nor to be less than \$8 per week, said compensation to continue for the remainder of the period between the death of the injured employee and 416 weeks from the date of the injury, but in no event to exceed \$5,000 nor to be less than \$1,000. Following the death of the workman, his widow filed her claim with the industrial accident commission, which ordered that she be paid compensation at the rate of \$18 per week for a period of 277 $\frac{1}{2}$ weeks, amounting to a total of \$5,000, in addition to the usual allowances for funeral expenses. The employer and insurer appealed from the order to the superior court of Baltimore City, praying that the court modify the order of the commission by limiting the period of compensation payments to 190 $\frac{1}{2}$ weeks. The prayer was refused and the order appealed from affirmed. From that decision the defendants again appealed, contending that the \$1,566 awarded and paid to the deceased in his lifetime should be deducted from the maximum amount that might be awarded to his widow. The court held that it was clear that the legislature created two separate and distinct classes of persons to whom compensation might be awarded: (1) The injured employee, and (2), in case of his death within three years, his dependents. The court held that the second of these classes is in no wise made dependent upon compensation having already been awarded to the injured party.

Judge Diggs, speaking for the court, then said in part:

After a careful examination of the entire statute, we are unable to find language which could lead us to the conclusion that the legislative intent was to make the limit of liability for one injury \$5,000, and require us to deduct from what under the law would otherwise be awarded to the widow such an amount as had been paid to the injured party before his death.

Entertaining the views herein expressed, we find no error in the action of the lower court in refusing the prayer of the appellants, and the judgment must be affirmed.

In line with the foregoing is a decision by the Supreme Judicial Court of Maine in a case in which a workman died as the result of an injury which caused total disability, for which he had received compensation for some 15 months before his death. The insurer contended that the payments to the deceased should be deducted from those made the widow under the then existing limitation of \$3,500 for a death benefit. The court held that the two benefits were independent and that payments made to the employee could not be deducted from the award to the widow, and affirmed the finding below. (*Nickerson's Case* (1926), 133 Atl. 161.)

The Court of Civil Appeals of Texas held that where parents had been awarded benefits under the compensation law of that State, the death of the father during litigation to set aside the award did not disturb the mother's right to one-half the benefits, and that the father had an interest which vested on his death, passing in this instance to the widow by will of the deceased husband and father. (*Texas Employers' Insurance Assn. v. McDonnell* (1925), 278 S. W. 294.)

Under the law of Rhode Island, death benefits continue 300 weeks after the date of the fatal injury. Where a widow was awarded benefits and died during the term of 300 weeks, the award was transferred to her two dependent sons. One of them died before the period expired, and payment as to him was terminated, the survivor continuing to receive the portion allotted to him on his mother's death. He subsequently made claim to the full portion, including the allowance to the deceased brother. This the supreme court of the State sustained, saying that the amount to be paid dependents was fixed by the statute, and was the same whether they be many or one, so that the lapse of the right of one for whatever reason would increase the amount payable to survivors during the compensation period. (*Gallagher v. United Electric Rys. Co.* (1926), 134 Atl. 8.)

Where a workman suffered an injury for which compensation was awarded on the basis of a permanent partial disability, the Supreme Court of Wisconsin held that his death from a later compensable accident occurring during the benefit term left to the widow a right to the unpaid portions of the disability award. (*Klug & Smith Co. v. Kreiner* (1925), 206 N. W. 53.) No question of the death benefit was involved in this proceeding, but the employer contested the widow's claim on the ground that Kreiner had been guilty of perjury and fraudulent concealment of facts in applying for the disability benefit. The court held that the question of Kreiner's disability or otherwise was not before the court, but only the disposition under the law of the unpaid balance of the award, which properly belonged to the widow.

WORKMEN'S COMPENSATION—AWARD—FACTORY REGULATIONS—VIOLATION—PENALTY—*Cream City Foundry Co. v. Industrial Commission, Supreme Court of Wisconsin (January 12, 1926), 206 Northwestern Reporter, page 875.*—The State of Wisconsin has a law which provides that the State industrial commission may grant 15 per cent increase in an award where the death of an employee is proximately caused by failure of the employer to comply with the provisions of that law. In the instant case an award was made to the widow of one Felix Czajkowska, who met his death while in the employ of the Cream City Foundry Co. as a fireman, presumably from electric

shock from a brass shell socket on an electric-light extension cord which was in his hand when his body was found. The award was paid, and thereafter the commission found that the death of Czajkowska was proximately caused by the failure of the company to comply with certain orders promulgated under the statute and made an award of 15 per cent increase in the death benefit, which was affirmed by the circuit court of Dane County. The company appealed. Justice Owen, speaking for the supreme court, in reversing the judgment, said in part:

It appears without dispute that every department of the employer's plant was equipped with a portable electric light complying in every respect with the order under consideration. A portable electric light was provided for the boiler room. Modlinski [the engineer] had instructed Czajkowska that whenever he had occasion to use a portable light, to use the one which was kept in the compressor room. Some time prior to the date of Czajkowska's death Modlinski had had occasion to use an electric drill requiring an extension cord of about 30 feet. The drill had an extension cord of only 5 feet. He rigged up a temporary cord for use on this particular job, and after he was through using the cord he put it in a tool box and locked it up. It appears that Czajkowska had access to this tool box and was privileged to use tools therein contained as necessity therefor arose in the prosecution of his duties. Having occasion to use an extension light, he evidently took this cord from the box, attached thereto an electric light bulb, and was using the same at the time of his death.

The cord locked in the tool box was not intended to be used in connection with the portable light, and it is not reasonable to lay upon an employer the duty of specifically instructing employees with respect to every conceivable device which their ingenuity may enable them to rig up and use for purposes for which the same is not intended. To require the employer to negative the use of every other device is to demand an anticipation as fertile and prolific as human ingenuity, and lays upon the employer a well-nigh impossible burden.

The judgment was therefore reversed, and the award directed set aside.

WORKMEN'S COMPENSATION—AWARD—PENALTY FOR NONPAYMENT—ENFORCEMENT—CONSTITUTIONALITY OF STATUTE—*Robinson v. State ex rel. Taylor, Supreme Court of Oklahoma (December 22, 1925), 244 Pacific Reporter, page 44.*—The Industrial Commission of Oklahoma granted an award to one Basil D. McClain for injuries received by him on or about February 18, 1920, while employed by E. L. Robinson. The award was affirmed on appeal to the supreme court of the State. At the same time awards were made to Dr. Ralph V. Smith and the Oklahoma hospital for treatment and care of McClain in the amounts of \$5.40 and \$311.95, respectively. The employer and his insurance carrier failed and refused to pay the amounts so awarded, and on October 2, 1922, the State industrial

commission commenced an action, in the name of the State of Oklahoma, in the district court of Tulsa County to enforce payment of the items of the award, and for 50 per cent thereof in addition, as is provided in section 7300 of the Compiled Statutes of 1921.

The defendants demurred to the plaintiff's petition upon the following grounds: (1) That the court had no jurisdiction of the defendants or of the subject matter; (2) that the plaintiff had no legal capacity to sue upon the subject matter; (3) that there was a defect of parties plaintiff; (4) that several causes of action were improperly joined; and (5) that the petition did not state facts sufficient to constitute a cause of action against the defendant. The demurrer was overruled and defendants excepted and stood upon the demurrer. From judgment for the plaintiff the defendants appealed to the Supreme Court of Oklahoma for review. The court, after discussing at some length the points taken in the defendants' demurrer, said in part:

Since the legislature of 1923 saw fit to amend section 7300, supra [Laws of 1923, ch 61, sec. 9], so as to entirely change the procedure for enforcing awards of the State industrial commission, we think it unnecessary to discuss at any great length the effect of striking down the said section, or striking down the penalty clause therein contained, further than to say that, without the provisions of the said section, including the penalty clause, as the act existed prior to the amendment, there was no effective means of enforcing the award in a case where the employer and insurance carrier ignored it, or refused to comply with it.

The penalty clause was the very teeth of the act, and no doubt went far in getting prompt compliance with the orders of the commission, or prompt prosecution of an original action for review. We think that, unless the penalty clause invaded some constitutional right of the defendants, it should be held valid.

In support of the foregoing the court cited the case of *DeWitt v. State* (108 Ohio St. 513, 141 N. E. 551; see Bul. No. 391, p. 434), and numerous other cases in various States wherein the penalty provisions of workmen's compensation laws have been upheld.

The opinion continued:

A study of the cases cited leads to the conclusion that the penalty clause in section 7300, supra, did not contravene any constitutional right of the defendants. The enforcement of the penalty clause in a proper case constituted due process of law. Its enforcement tends to give, rather than take from, the parties, equal protection of the law. We unhesitatingly say that the act in its entirety, or section 7300, supra, in particular, before the amendment, was not special or local legislation. It seems to have been most general in its character and coextensive with the State. The penalty clause is constitutional and valid, and should be given effect in a proper case.

The judgment of the lower court was therefore affirmed.

WORKMEN'S COMPENSATION—AWARD—PENALTY FOR WILLFUL MISCONDUCT OF EMPLOYER—REPRESENTATION—CONSTRUCTION OF STATUTE—*Gordon v. Industrial Accident Commission, Supreme Court of California (September 30, 1926), 249 Pacific Reporter, page 849.*—A workman by the name of Findley was employed by Thomas Gordon and others, doing business as Gordon & Harrison, to work in their gravel pit. While in the course of his employment the bank where he was working caved in on him and injured him to such an extent that he died soon thereafter. The industrial accident commission made an award in favor of the deceased employee's widow and minor children and against the insurer in the total sum of \$5,000 and a further award in favor of said dependents and against the individual members of the copartnership in a total sum of \$2,500 for the willful misconduct of a managing representative of the firm. The authority of the commission to award additional compensation is contained in section (b) of the Statutes of 1917, as amended by Statutes of 1919, and Statutes of 1923, as follows:

* * * Where the employee is injured by reason of the serious and willful misconduct of the employer, or his managing representative, or if the employer be a partnership, on the part of one of the partners (or a managing representative or general superintendent thereof), or if a corporation, on the part of an executive or managing officer or general superintendent thereof, the amount of compensation otherwise recoverable for injury or death, as hereinafter provided, shall be increased one-half, any of the provisions of this act as to maximum payments or otherwise to the contrary notwithstanding; provided, however, that said increase of award shall in no event exceed \$2,500.

The defendants, Gordon, Harrison, and Russell, brought proceedings to review the order of the commission. The principal objection raised to the award was that the commission acted in excess of its powers when it made the award of \$2,500 against the individual members of the copartnership.

It appeared from the evidence that Russell, one of the partners, had charge of the production end of the business and that a Mr. Cobb was managing representative. Walter J. Schienle, appointed foreman by Cobb, had complete charge of the gravel pit where Findley was killed. The district court held that under the terms of the statute the serious and willful misconduct of the foreman did not bind the individual members of the firm, as he was neither managing representative nor general superintendent. It therefore annulled the award of \$2,500 and affirmed that of \$5,000 (249 Pac. 844). The case came up to the supreme court by transfer, on petition of the commission. The court, after reviewing all phases of the case before it, said in part:

Schienle had full charge of the work of excavating the gravel out of the pit where the accident occurred. At times he was visited by

both Russell and Cobb, who came to see how the work was getting along and often gave him instructions or suggestions as to the manner of operation of the plant. At all other times, however, he was in full charge and control of the operations, exercising his own discretionary powers as to the operation of the cable and the bucket and as to the time, place, and circumstances under which the work of blasting the rock and sides of the pit was carried on. On the morning of the accident neither of his superior officers had been at the pit, and Schienle had been in full charge and control of the work, and he alone gave the orders to the workmen which resulted in the accident. Under such circumstances, we are satisfied the evidence fully justifies the finding of the respondent commission that Schienle was a "managing representative," as that term is used in the workmen's compensation act.

The order of the commission granting the increased award was therefore affirmed.

WORKMEN'S COMPENSATION—AWARD—PERMANENT PARTIAL DISABILITY—ABILITY TO WORK—EVIDENCE—*St. Louis & O'Fallon Coal Co. v. Industrial Commission, Supreme Court of Illinois (April 23, 1926), 151 Northeastern Reporter, page 606.*—James McManemy proceeded under the workmen's compensation act for an award for injuries he was alleged to have suffered while in the employ of the St. Louis & O'Fallon Coal Co. on October 27, 1922. He testified before the arbitrator that on the day in question he was engaged in lifting an electric cutting machine when the bar he was using for a lever slipped and let the weight of the machine down suddenly upon it, and consequently upon his hands and arms, and caused a shooting pain in the lower part of his back; that he went home and consulted a physician who gave him first-aid treatment; that he was under treatment for about four months; that he had his tonsils removed in August, 1923, and seven teeth extracted in January following; and that he did not return to work because he could not lift anything. The arbitrator awarded him \$17 per week for 250 weeks and a pension of \$28.83 per month for life.

On review by the industrial commission additional testimony was heard. Dr. A. B. McQuillan, a specialist in orthopedic surgery, who examined McManemy on January 23, 1923, and again on September 3, 1923, testified that on the first examination he had bad teeth and gums and bad tonsils, but that pressure disclosed no tenderness in the spine or vertebrae and there were no muscular spasms and no evidence of injury which would account for the pain complained of. He exhibited X-ray pictures taken by Doctor Young, a Röntgenologist, which showed that a small linear fracture of the lamina of the fifth lumbar vertebra had perfectly healed. On cross-examination McManemy admitted that he had worked at several physical labor jobs subsequent to his alleged injury. On this hearing the industrial

commission set aside the award of the arbitrator and ordered the employer to pay McManemy \$17 per week for 49 weeks and thereafter \$7.05 for 368 weeks. The circuit court affirmed that award and the company brought a writ of error. It was argued that the evidence did not establish permanent partial disability, and that it furnished no proper or legitimate basis for the amount of the award made by the commission. The court, on review of the evidence, said in part:

The applicant claims that his disability is permanent. His only complaint is that he suffers from pain in his back. No evidence of any character other than his own testimony was adduced in his behalf. The only expert testimony was offered by the plaintiff in error, and it was to the effect that the small linear fracture of the lamina of the fifth lumbar vertebra shown by the X-ray pictures had healed; that there was no evidence of any injury to which the pain of which the applicant complained could be ascribed; that it was not the result of the strain, caused by the slipping of the bar, but of focal infection, and that the pain would gradually disappear after the infection had been removed. Moreover, on cross-examination the applicant reluctantly admitted that immediately prior to the hearing before the commission he had leveled a place with a rake, had handled empty chicken crates for a commission house, had loaded and hauled lumber, and had shoveled dirt, and assisted in operating an air machine for a public utility company in laying underground cables in a street. These employments, though brief, show that the applicant was able to perform physical labor, and that his statement, on direct examination before the commission, that he had been unable to work and had not worked since the arbitrator's hearing is entitled to little credence. The evidence fails to sustain applicant's claim that the accident permanently disabled him to perform his usual and customary work. Before a claimant can recover compensation he must prove by a preponderance of competent evidence all the facts necessary to justify an award.

The judgment was reversed and the cause remanded to the circuit court of St. Clair County, with directions to set aside the award and to remand the cause to the industrial commission for a further hearing on any competent testimony offered by either party.

The same court, on the same day, rendered another opinion involving similar facts and results. An employee of a coal company had been awarded benefits as for permanent total disability, but subsequently took employment at which he earned from \$21 to \$25 per week, as against an average of \$32.22 weekly while working for the coal company. The industrial commission held that the disability had not decreased, and refused to modify the award made, the circuit court sustaining this position. The supreme court of the State found that there was a change as shown by the employment, even though at a reduced rate, and reversed the court and commission with directions to the latter to review its award. (*Superior Coal Co. v. Industrial Commission* (1926), 151 N. E. 890.)

In a case before the Court of Civil Appeals of Texas the question was raised as to compensating permanent partial disability where the injured man was given lighter employment by his employer, but at the same wages as before the injury.

The point was said to be a novel one in the State, and the conclusion was reached that the law intended compensation for the injury, regardless of the amount of wages paid on return to work. "The fact that the injured employee may obtain temporary employment at the same or greater wages is not conclusive that his disability has ceased or that he is not disabled." (*Dohman v. Texas Employers' Insurance Assn.* (1926), 285 S. W. 848.)

WORKMEN'S COMPENSATION—AWARD—PERMANENT PARTIAL DISABILITY—DEGREE OF IMPAIRMENT—*Gross v. Hudson Reade Corporation, Supreme Court of New York, Appellate Division (March 3, 1926), 214 New York Supplement, page 449.*—This action was for a review of an award of the State industrial commission on the ground that it was excessive. Philip J. Gross, an employee of the Hudson Reade Corporation, while in the course of his employment had his left hand crushed and mangled, resulting in the amputation of the thumb at the distal joint, almost complete loss of the use of the thumb and index finger, partial loss of the middle finger, and impairment of the grasping power. Doctor Doyle expressed the opinion that the injuries were permanent and that the loss was equivalent to the loss of one-half of the hand. On this basis the commissioner made the award for 50 per cent loss of the hand. The defendants appealed from the award and contended that under section 15, subdivision 3, of the workmen's compensation law the award was excessive, in that under that section there must be a loss of two or more digits or one or more phalanges of two or more digits before an award for a proportionate loss of a hand can be made. The award was affirmed, the court saying in part:

We do not think this provision describes the only condition under which an award for a proportionate loss of use of the hand may be allowed. It refers to cases where the injury is limited to the fingers or thumb, and where portions thereof have been taken off by the accident or by amputation. In this case the hand itself was considerably lacerated. Not only has there been amputation of the distal phalanx of the thumb, but there is ankylosis of joints of the thumb and index finger. While the doctor does not describe particularly to what the loss of grasping power is due, a description of the injury discloses that it is not solely due to the loss of part of the thumb. There is an almost complete loss of use of the thumb and of the index finger, together with a partial loss of use of the middle finger. Section 15, subdivision 3-s, provides:

"Compensation for permanent partial loss or loss of use of a member may be for proportionate loss or loss of use of the member."

The hand is a member, and there has been a partial loss of use of the hand. The only evidence as to the percentage of loss of use is that given by Doctor Doyle.

The award was therefore affirmed, with costs to the State industrial board.

WORKMEN'S COMPENSATION—AWARD—RELEASE—REVIEW—CONSTRUCTION OF STATUTE—*United States Casualty Co. et al. v. Smith, Supreme Court of Georgia (April 15, 1926), 133 Southeastern Reporter, page 851.*—C. L. Smith, while in the course of his employment, suffered burns on the back of his neck by steam and was poisoned by ammonia gas. He made a claim for compensation for temporary total disability, and while his claim was pending he entered into a written agreement with his employer whereby the employer was to pay him \$12 per week beginning September 5, 1921, and to continue such payments during his disability. The agreement was in accordance with the compensation law. There was a further stipulation that such other amounts as might be determined from the nature, extent, and result of the injury therein described would be paid. On December 29, 1921, the employee signed a settlement receipt, which was approved by the commission. On August 18, 1923, he applied to the commission to review its former award and to grant him additional compensation for the loss of an arm which was amputated on July 4, 1922, and which he alleged was brought about by the disease of blastomycosis caused by a vegetable germ entering his body through a break in the skin due to the burns. A review of the case was opposed by the employer and the insurer, who set up as a defense the release signed by the employee. They also contended that a review was barred by section 25 of the workmen's compensation act.

The commission on review found for the employee, and its finding was affirmed by the court of appeals. The employer and insurer brought certiorari for a review of the order of the commission and the judgment of the appellate court.

Section 25 of the act relied upon by the defendants declares that—

The right to compensation under this act shall be forever barred, unless a claim be filed with the industrial commission within one year after the accident and if death results from the accident, unless a claim therefor is filed with the commission within one year thereafter.

The court of appeals in its opinion held that a proceeding for review brought by an employee to review an award or settlement under section 45 of that act was not limited by section 25.

Section 45 of the act provides that—

Upon its own motion before judicial determination or upon the application of any party in interest on the ground of a change in condition; the industrial commission may at any time review any award or any settlement made between the parties and filed with the commission, and, on such review, may make an award ending, diminishing, or increasing the compensation previously awarded or agreed upon, subject to the maximum or minimum provided in this act. * * * No such review shall affect such award as regards any moneys paid.

The court in affirming the judgment of the court of appeals said in part:

Section 45 of this act expressly provides for compensation in a case where there has been a change in the condition of the employee, and this necessarily extends the jurisdiction of the commission to review a settlement agreement or its original award. In the settlement agreement between the employer and the employee the parties agreed to receive and to pay compensation and such other amounts as might be determined to be due the employees by the nature, extent, duration, and result of the injury described in the original claim, and this agreement was approved by the commission and merged in its award. In reviewing its original award the commission was proceeding strictly in compliance with the lines left open by express reservation in the original award.

In concluding its opinion the court said:

The question which has given us most trouble is whether the above finding of the court of appeals is supported by the evidence. The commissioner, the full commission, the judge of the superior court, and the court of appeals have all found that there was evidence authorizing the finding that the employee suffered from blastomycosis, which resulted naturally and unavoidably from the original injury sustained by the employee, and after a careful examination of the evidence we cannot say that this finding of these tribunals, who are specially charged by law with the ascertainment of the facts in cases of this kind, is wholly without evidence to support it.

The judgment was therefore affirmed.

Where a workman fell, suffering injuries for which he signed a release for the sum of \$120, but afterward developed serious disability from the same cause, an award was affirmed by the Supreme Court of Kansas, the court saying: "The evidence is ample to show a mutual mistake by plaintiff and physicians of the defendant, and it is not contended but that \$120 was a grossly inadequate amount for such an injury." (*Brown v. Kansas Buff Brick & Mfg. Co.* (1926), 243 Pac. 304.)

WORKMEN'S COMPENSATION—AWARD—REMARriage OF WIDOW—EFFECT OF VOID MARRIAGE—*Gulf States Steel Co. v. Witherspoon*, Supreme Court of Alabama (May 27, 1926), 108 Southern Reporter, page 573.—Cornelia Witherspoon brought an action under the workmen's compensation act of the State in the circuit court of Jefferson County, and recovered judgment for the death of her husband. From that judgment the defendants brought certiorari to have the proceedings reviewed by the Supreme Court of Alabama. It was alleged by the defendants that since the award to the plaintiff she had married one Rowe, and that under section 7564 of the code her compensation should cease. The court on review of the case found that her marriage to Rowe was void because he was under disability to contract marriage, and that her relation with him had been discontinued. It held that as she had no one on whom she could

lawfully depend for support, the decree to continue in the receipt of the compensation allowed by the court was proper.

The judgment was therefore affirmed.

WORKMEN'S COMPENSATION—AWARD—REMARriage OF WIDOW—EFFECT ON RIGHT OF CHILD—*Sumner Sollitt Co. v. Sheely, Appellate Court of Indiana (November 18, 1926), 153 Northeastern Reporter, page 894.*—Guy Sheely died July 6, 1920, as the result of an injury received while in the employ of the Sumner Sollit Co. He was survived by a wife and a daughter under 18 years of age.

Mrs. Sheely in her individual capacity and as guardian and the employer entered into an agreement whereby it was agreed that the widow and daughter should each receive \$6.60 per week during dependency, not to exceed 300 weeks. This agreement was approved by the industrial board. On July 20, 1921, the widow remarried, and soon thereafter the board ordered that payments to her cease. The employer thereafter continued to pay compensation at the rate of \$6.60 to the minor child. In July, 1925, and before the minor child reached the age of 18, her guardian filed an application with the industrial board asking that the defendant be ordered to pay the whole of the \$13.20 per week to the said child from and after the date when the mother remarried. The application was opposed by the defendant. It set up the fact that no appeal was taken from the order of the board terminating the award to the widow, and alleged that the present application was barred by the time limitation fixed in the workmen's compensation act. (Burns' Ann. St. 1926, secs. 9446-9524.)

The board ordered the defendant to pay compensation to the guardian of the minor child at the rate of \$13.20 per week from and after the marriage of the mother until the child became 18, credit to be given for the \$6.60 theretofore paid. Defendant appealed.

The court, in affirming the award, said in part:

Neither the guardian nor the minor child was before the industrial board when the order was made terminating payment of compensation to the widow. That order was a matter affecting the widow in her individual capacity. Neither the guardian nor the minor child was required to appeal, from the order terminating payment of compensation to the widow, in order not to release appellants from their liability to pay the whole of the compensation to such child. Neither were they required to file an application for a modification of the order within a year from the marriage of the widow. The fact that a guardian had been appointed for the minor did not affect the right of the child to have the whole of the compensation paid to her under the application filed herein by the guardian.

Another phase of the question of the rights of beneficiaries remaining after the marriage of the widow arose under the law of New York, passed upon by the supreme court, appellate division. The compensation law of New York gives

to a widow on remarriage a lump sum equal to two years' benefits. Payment of this allowance was made, her allowance being 30 per cent of her deceased husband's earnings. Two children were then allowed 15 per cent each, and a dependent mother 25 per cent, making a total of 85 per cent. This award was protested as exceeding the 66 $\frac{2}{3}$ per cent maximum fixed by the law. The award was reversed, the computation of benefits being reduced for the two years affected by the widow's lump-sum payment, the mother receiving but 6 $\frac{2}{3}$ per cent, her rights being subsequent to those of the widow and children. (*Ziegler v. Pictorial Review Co.* (1926), 215 N. Y. Supp. 513.)

WORKMEN'S COMPENSATION — AWARD — REVIEW — CONCLUSIVE-
NESS OF COMMISSION'S FINDINGS — CONSTITUTIONALITY OF STATUTE
— *Booth Fisheries Co. v. Industrial Commission of Wisconsin, United
States Supreme Court (May 24, 1926), 46 Supreme Court Reporter, page
491.*—The Industrial Commission of Wisconsin made an award to
Mary McLaughlin for the death of her husband, alleged to have been
due to personal injuries sustained while in the employ of the Booth
Fisheries Co. On appeal, both the circuit and the supreme court of
the State affirmed the findings of the commission. The case came
up to the Supreme Court of the United States on the constitutionality
of the workmen's compensation act of Wisconsin in its limitation of
the judicial review of the findings of fact of the industrial commission
to cases in which the findings of fact by the commission do not sup-
port the order or award. The plaintiff in error contended that under
the act he was entitled under the fourteenth amendment to submit
to a court the question of the preponderance of evidence on the issues
raised. Mr. Chief Justice Taft, who delivered the opinion of the
court, said in part:

A complete answer to this claim is found in the elective or voluntary
character of the Wisconsin compensation act. That act provides that
every employer who has elected to do so shall become subject to the
act, that such election shall be made by filing a written statement
with the commission, which shall subject him to the terms of the law
for a year until July 1st following and to successive terms of one year
unless he withdraws. If the employer elects not to accept the pro-
visions of the compensation act, he is not bound to respond in a pro-
ceeding before the industrial commission under the act, but may
await a suit for damages for injuries or wrongful death by the person
claiming recovery therefor, and make his defense at law before a
court in which the issues of fact and law are to be tried by jury. In
view of such an opportunity for choice, the employer who elects to
accept the law may not complain that in the plan for assessing the
employer's compensation for injury sustained, there is no particular
form of judicial review. This is clearly settled by the decision of this
court in *Hawkins v. Bleakly* (243 U. S. 210, 216, 37 Sup. Ct. 255 [Bul.
No. 224, p. 243]).

Plaintiff in error relied chiefly on the case of *Ohio Valley Water
Co. v. Ben Avon Borough* (253 U. S. 287, 40 Sup. Ct. 257). The
court stated the facts in that case and the opinion continued:

But in that case the water company was denied opportunity to resort to a court to test the question of the confiscatory character of its rates and of its right to earn an adequate income. Here the employer was given an election to defend against a full court proceeding but accepted the alternative of the compensation act.

The judgment was therefore affirmed.

WORKMEN'S COMPENSATION—AWARD—REVIEW—JURISDICTION OF COMMISSION—RES JUDICATA—*Klum v. Lutes-Sinclair Co., Supreme Court of Michigan (October 4, 1926), 210 Northwestern Reporter, page 251.*—Philip Klum, a carpenter employed by the Lutes-Sinclair Co., was seriously injured by a fall on October 12, 1918. The commissioner awarded him compensation for temporary total disability for a period of 45 weeks and 4 days. He thereafter filed a petition for further compensation, and an award was made granting him payment for partial disability at the rate of \$5 per week from August 28, 1919, to July 4, 1924. On October 31, 1924, he petitioned for additional compensation, alleging that his disability had become total. The commissioner found that there had been a change for the worse in the plaintiff's condition and awarded him compensation for total disability from July 18, 1924, "the end of 300 weeks," at the rate of \$10 per week during a period not to exceed the limit fixed by statute (500 weeks).

The defendants brought certiorari. Their claim was that the commission was without jurisdiction to award compensation beyond the expiration of the 300 weeks awarded by a previous order not appealed from and therefore res judicata; that there was no testimony to support the finding of the commission that the plaintiff had on July 18, 1924, been totally disabled as a result of the accident, and that the evidence did not support its finding that there was a physical change in the plaintiff's condition for the worse since that date.

The award was affirmed by the court, which, speaking through Judge Steere, said in part:

Conceding that the deputy commissioner's unappealed-from order of July 14, 1923, was res judicata as to all the essentials leading up to that award, plaintiff's physical condition yet remained open to subsequent inquiry under the provisions of the act (2 Comp. Laws 1915, sec. 5467) authorizing the industrial accident board (now commission of the department of labor and industry) on application of either party to review any weekly payment, "and on such review it may be ended, diminished, or increased, subject to the maximum and minimum amounts above provided, if the board finds that the facts warrant such action."

As heretofore more than once pointed out by this court, at a hearing by the commission of a petition for review of an award under section 5467, all essentials leading up to that award are to be taken as res

judicata, except the physical condition of the injured petitioner imputable to the accident. If there is no competent proof that it has changed since the award, the commission is powerless to act. If there is evidence of a change either for better or worse, the commission may then increase, decrease, or end the award as it finds the facts to be. This court can only review and reverse its findings of fact if the record is destitute of any evidence to support them.

The res judicata award of July 14, 1923, found plaintiff but partially incapacitated, and fixed his compensation accordingly to the exclusion of further inquiry up to that time. The commission in this inquiry had ample evidence of a change from that condition and to support its finding of total incapacity traceable to the accident.

WORKMEN'S COMPENSATION—AWARD—TEMPORARY TOTAL DISABILITY—PERMANENT PARTIAL DISABILITY—*Texas Employers' Ins. Assn. v. Moreno, Commission of Appeals of Texas (November 4, 1925), 277 Southwestern Reporter, page 84.*—Bartelo Moreno received an injury in an accident arising out of his employment. He presented a claim to the industrial accident board, but, being dissatisfied with the award, filed a suit to set it aside and recover adequate judgment. The district court awarded the plaintiff a judgment for the lump-sum value of 200 weeks at \$3.65 and a like value of 200 weeks at \$4.32 a week. The jury found that Moreno was totally disabled for 200 weeks and that he suffered a permanent 50 per cent disability in the use of his arm. The court of civil appeals, upon appeal, reformed the judgment and provided that Moreno should recover "compensation for 200 weeks at \$3.65 a week and for 200 weeks thereafter at the rate of \$4.32 a week." Against this change in the judgment Moreno did not complain. The insurance association, however, applied for a writ of error and obtained it upon the statement that the sole basis for the verdict of the jury was an injury to Moreno's arm, and that the court had allowed a larger recovery for a partial injury than the employee could have recovered for the complete loss of his arm.

The commission of appeals on reviewing the record observed that the findings of fact of the district court and the court of civil appeals as to the conflicting testimony were binding upon the supreme court. If there be any evidence to sustain the finding, the function of the jury is to decide the facts and the supreme court will not overrule its finding.

Judge Powell, speaking for the commission of appeals, said:

The main purpose of legislation of this kind is to compensate a man while unable to work. Sections 10 and 11 were written for that purpose. But certain injuries were so serious and their permanency so easily established that the lawmakers decided to allow definite recovery for those injuries, regardless of other circumstances. At

the same time they clearly showed their intention not to permit that action to deprive an employee of his rights under sections 10 and 11.

We have a judgment under section 10 for 200 weeks because of total inability to work, due to other injuries. Then we have also a recovery for 200 weeks under the last paragraph of section 12 for partial loss of usefulness of the arm. Under the verdict of the jury this latter recovery could have been for 300 weeks instead of 200 weeks. But the court evidently limited it to 200 weeks so that the entire recovery for both kinds of incapacity would not be more than 401 weeks, as provided at the end of section 11.

We think this recovery proper and within the statute. There has been no effort here to recover for partial incapacity for work under section 11. It is not necessary for us to decide whether or not one could recover under that section and also for partial incapacity under the last paragraph of section 12. But we think they could not.

Section 10 of the employers' liability act provides compensation for total disability resulting from injuries not specified in section 12, which provides compensation for specific injuries, and it was held by the commission of appeals that allowance of compensation under section 10, and not specified in section 12, did not preclude an allowance under the last section for the partial incapacity due to partial loss of usefulness of the arm. Section 12 contains no provision that recovery should be "in lieu of" any other recovery. Under this construction of the act, it was thought that no double recovery was anywhere allowed.

It was recommended that the judgment of the court of civil appeals be affirmed and the judgment was so affirmed and entered by the supreme court.

The construction of the compensation act of Tennessee was before the supreme court of that State in respect to quite a similar case. Here, a workman suffered injuries to his leg and ankle, causing total disability, followed by permanent partial disability. From an award for the two successive injuries the employer appealed, but the court sustained the award, saying that the injuries were not concurrent, though having a common cause, "at first total and reduced through healing to a permanent partial disability," for which distinct provisions are made by the statute. An award of \$12 per week for 36 weeks, followed by one for \$3.90 for 139 weeks was therefore affirmed. (*Cherokee Sand Co. v. Green* (1925), 277 S. W. 905.)

WORKMEN'S COMPENSATION—AWARD—UNCOORDINATED VISION—
LOSS OF SIGHT—*Suggs v. Ternstedt Mfg. Co.*, *Supreme Court of Michigan* (December 22, 1925), 206 *Northwestern Reporter*, page 490.—
Andrew Suggs was employed by the Ternstedt Manufacturing Co., and while in the course of his employment received an injury to his right eye which resulted in reducing its vision to one-sixtieth of the former power, though with lenses the injured eye was normal as to visual capacity, but would not coordinate with the uninjured eye. Doctor Campbell, an eye specialist, stated that the vision of the eye

could not be utilized in correlation with the uninjured eye and that industrially he had lost the vision of it. An award for the loss of an eye was granted by the commission, and the defendant brought certiorari to have the facts reviewed. In affirming the action of the commission, the court cited decisions of the Illinois and New York courts, and concluded:

The weight of authority sustains the findings of the commission, and we are persuaded that the reasoning of the majority cases is fundamentally sound.

Quite similar circumstances were involved in a case before the Superior Court of Delaware in which the workman lost 80 per cent of the vision of an eye, but with the use of a corrective lens only 10 per cent was found to be lost. From an award for the 80 per cent loss the employer appealed. The court held that the matter to be compensated for was the loss of vision due to the injury which it declared to be 80 per cent. The use of mechanisms might "allow a member to function with entire normality, yet it can not obliterate the effect of the accident causing the injury." (*Alessandro Petrillo Co. v. Marioni* (1925), 131 Atl. 164.)

Another aspect of the question of loss of vision was before the Supreme Judicial Court of Maine in a case in which there was a destruction of all effective vision in an eye that had been, prior to the injury, but 64 per cent normal. From an award as for the loss of an eye the insurance carrier appealed, the appeal resulting in a finding that the workman had lost a serviceable member, even though impaired, and that he was entitled to compensation as awarded by the commission. (*Borello's Case* (1926), 134 Atl. 374.)

WORKMEN'S COMPENSATION—AWARD TO MINOR—JURISDICTION OF INDUSTRIAL ACCIDENT BOARD—ACCORD AND SATISFACTION—SUIT BY FATHER—CONSTITUTIONALITY OF STATUTE—*Keller v. Texas Employers' Ins. Assn.*, *Court of Civil Appeals of Texas* (January 12, 1926), 279 *Southwestern Reporter*, page 1113.—J. M. Keller, a minor, aged 19, while employed by the River Oil Co. on or about June 14, 1922, received an injury to his right leg which necessitated its amputation. Liability was admitted by the insurance carrier. It was agreed by and between Keller and the insurance carrier that it would pay him in a lump sum in full settlement of his claim the sum of \$1,789.73, which was approved by the industrial accident board under authority of article 5246-31, Compiled Texas Statutes, 1920. The money was paid and receipted for. No notice was given by Keller nor by anyone acting for him that he would not abide by the award and the decree of the board, nor was there any suit brought to set same aside; neither was there any motion made to the board for a review of the order or to reopen the same for any purpose. The settlement was approved October 10, 1922, and on June 27, 1923, R. O. Keller, father of J. M. Keller, filed suit as next friend of J. M. Keller, to recover the sum awarded to J. M. Keller

by the board together with 12 per cent penalty and attorneys' fees in the sum of \$500. He alleged that the defendant had not paid the amount of the award to any person authorized by law to receive it. There was judgment for the defendant and the plaintiff brought error. It was contended that the industrial accident board was without power to authorize a settlement of compensation due Keller by authorizing the money to be paid direct to him, and therefore the payment of compensation as made did not discharge the obligation of the insurance company, and that such action on the part of the board was in violation of article 3, section 56, of the constitution, forbidding the legislature to pass any special law affecting the estates of minors, etc., and article 5, section 16, providing what courts shall have jurisdiction of such estates.

The court, in affirming the judgment of the lower court, said in part:

While the industrial board is not a court, yet it is an administrative board, created by the State to administer the workmen's compensation act in the first instance, and is clothed with all necessary powers to hear and determine the matters coming before it; therefore it has authority to investigate matters for determination and has jurisdiction over the persons and subject matter involved. Its decrees are in the nature of judgments, and therefore the board, in the investigations and decisions it is called upon to make, exercises both administrative and judicial functions. This being true, its orders and judgments, when not appealed from, or rather which have not been set aside in the manner provided in said act (art. 8307, sec. 5, Revised Civil Statutes, 1925, old art. 5246-44), become final and binding upon all parties thereto, and can not be collaterally attacked.

We do not think that plaintiff in error's contention in either instance should be sustained. (1) The statute (art. 8306, par. 13, Revised Civil Statutes, 1925, old art. 5246-31) is in no sense a special law. Technically, a special law is a law which applies to an individual or individuals, or to some individuals of a class, and not to all of a class.

The statute in question relates to a class of persons, minors, and not to individuals of that class. (2) The statute (art. 5235-31) was not enacted for the purpose of affecting the estates of minors in the sense in which they are mentioned in article 5, section 16, of the constitution, but was enacted for the purpose of giving minors entitled to compensation under the law the right, by and with the approval of the industrial accident board, to receive directly the compensation due them for an injury, and therefore is not in conflict with section 16 of article 5 of the constitution. The award of compensation to the minor, J. M. Keller, and its payment made to him direct, under authority and sanction of the board, was not a probate proceeding, nor the transaction of any business growing out of an administration of his estate, within the meaning of article 5, section 16, of the constitution.

The judgment of the court below was accordingly affirmed.

WORKMEN'S COMPENSATION—CASUAL EMPLOYMENT—AVERAGE WEEKLY WAGE—*Flynn v. Carson et al.*, *Supreme Court of Idaho* (February 2, 1926), 243 *Pacific Reporter*, page 818.—Dorothy Flynn proceeded under the workmen's compensation law of Idaho for compensation on account of the death of her husband, who was killed February 2, 1924, while in the employ of the defendants, who operated a motor-bus line from Mullan to Wallace. The evidence showed that the deceased had been employed by the defendants as a regular driver of their busses up to and including January 27, 1924, and from that date until his death he was employed by them as an extra driver to make one or more trips each week, for which he was paid \$1 per round trip. At the time he was killed he was on his way from Mullan to Wallace to bring back a bus for the defendants, when the one he was riding on left the road and he was instantly killed. The industrial accident board found that the average weekly wage of the deceased was \$35, and awarded the plaintiff \$12 per week for herself and infant daughter for a period of 400 weeks, with a proviso that should she remarry or die during such period the daughter should be entitled to 25 per cent of the average weekly earnings of the deceased, the sum of \$8.75 per week, until she reached the age of 18 years.

The defendants appealed. Of the several assignments of error, only two are considered here: (1) It was contended that the employment of the deceased was casual and therefore excepted from the workmen's compensation law; and (2) that the evidence was insufficient to sustain the findings that the deceased's average wage was \$35 per week or anything in excess of \$1 per week.

The court, in granting a rehearing of the cause, said in part:

Appellants in their brief confuse the statute when they say that the exclusion is of those "who are casually employed." The exclusion is of the "casual employment," not necessarily the casual "employee"; not those "persons" but those "employments" are necessarily excluded which are "casual." C. S., sections 6213, 6216, 6217, 6221, and 6225, may be paraphrased thus: If a workman receives personal injury by accident arising out of and in the course of any employment in a trade or occupation which is carried on by the employer for the sake of pecuniary gain, and such employment is not casual employment, his employer or the surety shall pay compensation. C. S., section 6216, does not exclude persons, but employments.

The board was in error in its finding that the average weekly wages or earnings of the deceased during the year next preceding the injury were \$35 per week. There is no proof of what his earnings were, with the exception that, for the time between December 16 and January 27 his pay seems to have been evidenced in two \$50 checks. Counsel for respondent are in error when they contend that the claimant pleaded, and appellants admitted, that her deceased husband was earning \$150 per month. The pleading was that he earned, from December 16 to February 2, \$150, which was not proven.

It might not be grievous error if the award were simply \$12 per week to the widow, on a basis of the maximum under C. S., section 6228; but the award goes further, and in case of the death or marriage of the widow, allows the infant child 25 per cent of a weekly wage of \$35, \$8.75, until she arrives at the age of 18 years. This, a substantial part of the award which might become vital and material, is based upon the wrong premise. What limited accounts of the defendant employers are in evidence show that neither the deceased nor regular or special drivers worked from December 16 on every day, which would be necessary to show an earning of \$35 a week at \$5 a day. In fact, \$35 a week was the maximum that could have been earned, and to average this for a year the deceased would have had to work every day, which the proof discloses he did not, nor did others, either extra or regular drivers.

The judgment was reversed, and the cause remanded to the district court with directions to remit the cause to the industrial accident board for further proceedings to ascertain and determine the average weekly wages of deceased and enter an award accordingly. No costs were allowed.

WORKMEN'S COMPENSATION—CASUAL EMPLOYMENT—COURSE OF EMPLOYMENT—CONSTRUCTION OF INSURANCE POLICY—*Oilmen's Reciprocal Assn. v. Gilleland, Court of Civil Appeals of Texas (April 21, 1926), 285 Southwestern Reporter, page 648.*—Ed Gilleland was employed by the City Laundry Co. of Wichita Falls Tex., to wall with brick a pit 16 feet deep, which it intended to use in supplying water to its laundry plant, and on December 23, 1924, while he was so engaged, the side of the pit caved in, causing his immediate death. His father made application to the industrial accident board for compensation, which was denied. Appeal was taken to the district court of Wichita County, where judgment was rendered for the plaintiff at the rate of \$20 per week for 360 weeks, and the insurer appealed. It was contended that the deceased was not an employee within the meaning of the law governing workmen's compensation cases.

This defines an employee in part as follows:

"Employee" shall mean every person in the service of another under any contract of hire, express or implied, oral or written, * * * except one whose employment is not in the usual course of trade, business, profession or occupation of his employer.

It appeared that the company held a policy of insurance insuring and indemnifying it against liability for injuries to its employees arising in the course of their employment.

The judgment of the district court was affirmed, the court speaking of the terms of the policy saying in part:

It will be observed that the terms of the policy did not limit the liability of the appellant to injuries suffered by an employee while he was working "in the usual course of trade, business, profession or

occupation of his employer," as is provided by the statute, but the liability arises under its terms if the injured party is an employee of the assured and is injured in the course of the workmen's employment.

The condition of the policy as set out in the above quotation from the statement of facts extends the liability of the insurer beyond that contemplated by the statute. The general rule seems to be that the subscriber and the insurer are not permitted to enter into such a contract of indemnity as will restrict the rights of an employee as they are declared by the compensation act. (In re Cox, 225 Mass. 220, 114 N. E. 281; see Bul. No. 224, p. 266.) But there is nothing in the Texas statute which forbids the indemnity company and the subscriber from broadening the scope of the contract so as to cover liabilities and parties not within the compensation act of Texas.

Since the terms of the policy clearly included all employees while in the performance of their duties without regard to whether they were employed in the usual course of the company's business, we deem it unnecessary to discuss the phase of the case presented by the statute.¹

Quite similar circumstances, so far as the nature of the work was concerned, were involved in a case before the Appellate Court of Indiana, in which the claimant was engaged in constructing a toilet at a public garage. Over the representation by the employers that the work was casual within the meaning of that term as used in the law of Indiana, the industrial board allowed compensation, which action the court affirmed. Inasmuch as the toilet was for the use of the employer's employees and customers, and was reasonably necessary in the operation of a public garage, the employment was properly held to be in the "usual course" of the employer's business as the law intended. (Wagner et al. v. Wooley (1926), 152 N. E. 856.)

In a case decided by the Supreme Court of Wyoming the question was raised as to the status of a single act as constituting an occupation or business, as well as the nature of the employment. One Ocnas, a plasterer and mason, agreed to move a building under contract, and employed Frank Karos to assist. In the performance of the work Karos was injured and sought compensation.

Ocnas contended that the single act did not constitute an occupation but the courts held that the work was undertaken for gain, was an independent undertaking, not incidental to some other business, and that the employer was therefore under the act. Even if the employee's services were casual, they were none the less for the purpose of the employer's trade or business, which sufficed to give the law control of the case. The award was accordingly affirmed. (Karos v. Ocnas (1926), 243 Pac. 593.)

WORKMEN'S COMPENSATION—CASUAL EMPLOYMENT—LOANED EMPLOYEE—*Lecker v. Valentine et al., Supreme Court of Pennsylvania (May 26, 1926), 133 Atlantic Reporter, page 792.*—Louis Lecker was a regular employee of Stanley M. Stader. T. J. Valentine had a contract to excavate for a foundation. He was using a piece of machinery called a "crab," which Stader wished to borrow. He agreed to furnish Valentine with a man and a horse to take its place and transferred Lecker to Valentine. Lecker while working for Valentine,

¹Judgment reversed and compensation denied. Same case (1927), 291 S. W. 197.

sustained an injury and brought a claim against both Stader and Valentine. The referee made an award against the latter, finding that—

Louis Lecker was injured on July 25, 1923, while at work in the employ of T. J. Valentine. * * * Stanley M. Stader * * * hired the claimant * * * and loaned him to defendant [Valentine]. * * * The claimant was placed upon the pay roll of * * * Stader, [but] his work was under the direct control of the defendant [Valentine], and at the time of the accident he was furthering the business and affairs of the said defendant.

Valentine appealed from the finding to the compensation board on the ground that under the terms of the employment the relation of employer and employee did not exist between the claimant and himself. The board reversed the finding of the referee and made an award against Stader. On appeal to the court of common pleas the finding of the board was reversed and the award against Valentine reinstated. From that judgment the State workmen's insurance fund appealed to the Supreme Court of Pennsylvania.

The court in affirming the judgment of the lower court quoted with approval from the opinion in the case of *Tarr v. Hecla Coal & Coke Co.* (265 Pa. 519, 522, 109 Atl. 224, 225; see Bul. No. 290, p. 322), as follows:

A master may loan his servant, with the latter's consent, to another under such circumstances as to create for the time a new relation of master and servant; the regular servant of one may thus for the time being become the special servant of another, and that was done here. "Where one person lends his servant to another for a particular employment, the servant, for anything done in that particular employment, must be dealt with as a servant of the man to whom he is lent, although he remains the general servant of the person who lent him. The test is whether, in the particular service which he is engaged to perform, he continued subject to the direction and control of his master, or becomes subject to that of the party to whom he is lent or hired."

The court held that in the instant case the law was correctly applied by the referee, and since the court below had properly sustained the award, it was not necessary for it to review the theory on which that tribunal acted.

The judgment was therefore affirmed.

The same court sustained an award on the authority of the *Tarr* case, above cited, where the private chauffeur of the president of a corporation was at times called on to assist in the business of his employer's establishment. On an occasion of such service the employee was fatally injured and the workmen's compensation board allowed the widow's claim against the company. The company appealed, claiming that the decedent was the employee of the president individually and that the company was not liable as an employer.

The court overruled this contention, holding that there was evidence of temporary employment by the company, although there was at the same time a general employment by the president. The law defining an employee as one

who performs services for another "for a valuable consideration" does not specify who shall pay such consideration; "and its language is not to be construed as conditioning liability to meet a claim for compensation on payment of wages by the person against whom the claim is made, or on the existence of an obligation to so pay wages." (*Atherholt v. William Stoddart Co.* (1926), 133 Atl. 504.)

Conversely to the foregoing, the Supreme Court of Minnesota found a corporation liable for the death of its employee who was directed by the president of the employing corporation to go to his farm and dig up a number of cedar trees for an undesignated purpose. The injured man had frequently gone to the president's farm for other purposes, and the court found no evidence that the deceased had any reason to believe that the farm was not operated as a part of the business of the corporation. A referee had found the president individually liable and made an award. The latter appealed to the board, which reversed this finding and dismissed the claim on the ground that the employment in which deceased met his death was not covered by the act. The supreme court, on review, admitted that, in the absence of election and notice, a farm laborer would be outside the act; but in view of the circumstances in the case, there was an apparent compliance with the orders of the person to whom he had been accustomed to render service, and in whose customary employment he was under the compensation act. The case was remanded to the commission with directions to make the proper award against the employing corporation and not against the president as an individual, since the orders obeyed had been those of the usual director of the workman's actions. (*O'Rourke v. Percy Vittum Co.* et al. (1926), 207 N. W. 636.)

WORKMEN'S COMPENSATION—CLAIM—LIMITATION—DEATH OF BENEFICIARY—RIGHTS OF DEPENDENTS—*Moss v. Standridge*, Supreme Court of Alabama (June 17, 1926), 110 Southern Reporter, page 17.—Jane Standridge filed a claim in the circuit court of Jefferson County for compensation on account of the death of her husband, who died on March 25, 1925, as the result of injuries he received on January 12, 1921, while in the employ of C. L. Moss and G. B. McCormack. He was paid all compensation due him from the date of his injury to and including the date of his death. The facts in the case were undisputed, and upon a hearing thereof the court granted a decree allowing the petitioner compensation, deducting therefrom the amounts theretofore paid to the deceased. The defendants petitioned the supreme court for a writ of certiorari to review the judgment and finding of the circuit court. Their claim was that the plaintiff was barred in her action by the provisions of section 7554, Code of 1923. That portion of said section relied upon reads as follows:

In death cases, where the death results proximately from the accident within three years, compensation payable to dependents shall be computed on the following basis, and shall be paid to the persons entitled thereto without administration.

The court cited section 7570 of the Code of 1923 which deals specifically with the question of limitations, and quoted that portion which is here pertinent:

In case of death, all claims for compensation shall be forever barred unless within one year after death, when the death results proximately from the accident within three years, the parties shall have agreed upon the compensation under articles 1 and 2 of this chapter, or unless within one year after such death one of the parties shall have filed a verified complaint, as provided in section 7578 hereof. Where, however, payments of compensation have been made in any case, said limitations shall not take effect until the expiration of one year from the time of making the last payment.

Judge Gardner, who delivered the opinion of the court, then said in part:

Here payment of compensation had been made to the employee extending over a period of more than three years, and continuing to the time of his death. The above-cited statute expressly states that, when payments of compensation have been made in any case, the limitations referred to shall not take effect until the expiration of one year from the time of making the last payment. The words "any case" refer to cases of death, as well as those in which the injuries do not prove fatal.

Therefore the statute has provided that in such cases, where payments of compensation have been made and liability thus acknowledged, the further period of one year from the last payment is provided. Nor does this work any injustice to the employer as, under subdivision (f) of section 7551, Code of 1923, all payments made to the employee, while disabled, are to be deducted from the compensation due on account of his death which was done in the instant case.

The writ was therefore denied and the judgment affirmed.

WORKMEN'S COMPENSATION—CLAIM—LIMITATION—DISEASE—*Campbell v. Industrial Commission of Ohio, Court of Appeals of Ohio (June 7, 1926), 153 Northeastern Reporter, page 276.*—William A. Campbell, who had been employed by the Allis Chalmers Manufacturing Co. and its predecessor for a period of 15 years prior to April 12, 1922, made a claim for compensation based on the date of May 1, 1925, for injuries alleged to have been sustained on April 12, 1922. His claim was denied by the industrial commission, and on appeal to the court of common pleas judgment was rendered in favor of the commission and the claimant brought error. In his petition he alleged that he was gassed on the date above named by the fumes from a solution of nitric and sulphuric acid, used by his employer in its business, by the carelessness of a fellow employee in opening a window and allowing the fumes to blow toward him. He further alleged that at various times after the accident he suffered what

appeared to be a slight cold, but did not know he was injured as a result of gassing until about May 1, 1925, when his medical examiner discovered and informed him for the first time that pulmonary tuberculosis had set in as a result thereof.

The court, in disposing of the case, said in part:

If the date of the accident, which was April 12, 1922, was the date of the injury, the claim was barred under section 1465-72a, General Code, which requires that in all cases of injury or death claims for compensation shall be forever barred unless within two years after the injury or death application shall have been made to the industrial commissioner of Ohio; if the claim is based on the date of May 1, 1925, and is one for tuberculosis, the claim is not compensable.

The judgment of the court of common pleas was therefore affirmed.

WORKMEN'S COMPENSATION—CLAIM—LIMITATION—PROGRESSIVE INJURY—SETTLEMENT—*City of Hastings v. Saunders, Supreme Court of Nebraska (March 19, 1926), 208 Northwestern Reporter, page 122.*—William Saunders received an accidental injury while in the employ of the city of Hastings, Nebr. He brought action for compensation in the district court of Adams County, and from a judgment in his favor the defendant appealed. Recovery by the plaintiff was challenged on two grounds: (1) That the claimant did not file his claim within one year after the accident; and (2) that settlement of all damages was had between the parties prior to the filing of such claim.

The court found that the plaintiff's injury was of a progressive nature and did not fully culminate until within 11 months before the claim was filed with the commission; that the city, the insurance company, and the claimant recognized that compensation was due the claimant by reason of the accident; and that the city and insurance company so dealt with the claimant up until about five months before his claim was filed. The court then said in part:

Considering the above facts, together with others reflected by the record, to hold with the city that this claim was barred by reason of not having been filed with the commissioner within a year from the date of the accident would be a denial of justice, and would be to give the act a strict rather than a liberal construction, as the act provides, and as we have held, should be done.

As to the defendant's claim of settlement, the court held that the conflicting testimony would have warranted the court below in finding for or against such contention, and that as that court had found for the claimant the finding should not be disturbed. It accordingly affirmed the judgment of the lower court in all things.

WORKMEN'S COMPENSATION—CLAIM—“NEW AND FURTHER DISABILITY”—REPRESENTATIONS BY INSURER'S PHYSICIAN—*Hutchinson Lumber Co. v. Industrial Accident Commission of California, District Court of Appeal of California (March 18, 1926), 246 Pacific Reporter, page 118.*—John Bohan sustained a severe injury to his knee on October 23, 1923, while in the employ of the plaintiff company. He was furnished with medical and surgical treatment by the employer and its insurance carrier, and was also paid compensation up to April, 1924. He was under the care of the insurance company's physicians, who led him to believe that his injury was of a temporary nature and advised him not to go to the commission—that the insurance company would take care of him. When he was dismissed from the hospital on March 26, 1924, the doctor gave him an elastic band to wear on his knee, telling him that he would be all right and requested that Bohan write to him how he was getting along. In July Bohan accepted employment with another company, but after working a few days was forced to quit. He thereupon wrote the insurance company's physician that he was not getting well and asked for additional compensation. After waiting until December of that year and having received no reply he visited the commission and was there examined by the assistant medical director, who pronounced the injury to the knee permanent. He was given a new rating, which the insurance company refused to recognize, also refusing to pay further insurance. On May 12, 1925, formal application for further compensation was filed with the commission. The application was opposed by the employer and the insurance carrier, who at the hearing urged that Bohan's claim was barred by lapse of time, and cited section 11 of the workmen's compensation act, which provides that a claim based upon a new and further disability must be filed within six months after the date on which the new and further disability is ascertainable. They contended that Bohan knew in July, 1924, that he was no better, and could have ascertained the true character of his injury.

It was pointed out by the court that subdivision (e) of section 11 of the said act confers upon the commission continuing jurisdiction for a period of 224 weeks to grant additional compensation for a new and further disability, and that it contains no requirement that an application for compensation based upon that ground shall be filed within a period of six months after the nature of the disability is ascertainable.

Judge Knight, speaking for the court, then said, in part:

There is no contention made by petitioners that prior to December, 1924, Bohan knew that his injury was permanent; and obviously, in view of the statements made to him in March by the insurance company's doctor, the only reasonable impression Bohan could have

formed in regard to his condition in July was that his injury was still of a temporary nature, requiring only further medical treatment. This he endeavored to obtain by writing as directed to said doctor, but his letter, so far as the evidence discloses, was ignored, and after vainly waiting a reasonable length of time, in the apparent hope that the doctor's statement to him that he "would be all right" would prove true, went to San Francisco in December where he was told for the first time the true extent of his disability. The delay thereafter in filing the application was attributed by Bohan to the fact that he still depended upon the insurance company to carry out its promises made to him in November, 1923, that they would take complete care of him and pay him everything that was coming to him. Their refusal to do so did not take place until February, 1925, and, in any event, Bohan's application for further compensation was filed within six months after he learned of his condition.

In view of the foregoing facts, it is our opinion that the commission's conclusion that the situation presented was not a proper one for the application of the doctrine of laches must be sustained.

The award was therefore affirmed.

WORKMEN'S COMPENSATION—CLAIM—NOTICE—PAYMENT OF BURIAL EXPENSES—CONSTRUCTION OF STATUTE—*Barber v. Estey Organ Co., Supreme Court of Vermont (November 4, 1926), 135 Atlantic Reporter, page 1.*—Margaret C. Barber made claim for compensation on account of the death of George Cottrill, who was instantly killed while employed by the Estey Organ Co., and on whom she was partially dependent. On being denied compensation by the commissioner of industries, she appealed to the Supreme Court of Vermont. The case turned on the question whether the plaintiff was required to give the defendant written notice, as specified in General Laws, sections 5796, 5797.

It was argued that the payment of the \$100 for burial expenses as required by General Laws, section 5777, amounted to a voluntary payment of compensation and therefore dispensed with the necessity of such notice.

The court, in affirming the order appealed from, said in part:

But we can not accept her theory that the payment of burial expenses is a payment of compensation. We recently held in *Petraska v. National Acme Co.* (95 Vt. 76, 113 Atl. 536; see Bul. No. 309, p. 246) that the payment of medical expenses, as required by G. L. 5784, was not a payment of compensation, and therefore did not excuse the failure to give the written notice required by the statute. The reasoning of that case applies here and controls our decision. The workmen's compensation statute, taken as a whole, divides the benefits to be received thereunder by those entitled into three distinct classes: Medical services, burial expenses, and compensation. Neither medical services nor burial expenses are compensation in a statutory sense. The fact that the former is covered by a separate section of the statute, while the latter is included in

the section providing for compensation, is not controlling against this construction. The structure and language of G. L. 5777, indicates that the legislature understood that "death benefits" and "compensation" were not the same thing.

WORKMEN'S COMPENSATION—CONTRACTOR—LIABILITY OF PRINCIPAL—"THIRD PARTY"—*Catalano v. George F. Watts Corporation, Supreme Judicial Court of Massachusetts (May 27, 1926), 152 Northwestern Reporter, page 46.*—A general contractor had sublet portions of the construction work on a building to the George F. Watts Corporation, a subcontractor. Joseph Catalano, an employee of the general contractor, was injured by reason of the negligence of an employee of the subcontractor, and was paid compensation by the Travelers' Insurance Co., the insurer of his employer. He brought this action against the defendant subcontractor for the benefit of the insurance company of his employer.

The defendant demurred to the plaintiff's declaration on the ground that, since the plaintiff had been paid compensation by the insurer of his employer, he could not, under chapter 152, section 15, of the General Laws of Massachusetts, maintain this action against him. The demurrer was sustained by the superior court, and the plaintiff appealed from the ruling. The supreme court, in the course of its opinion affirming the action below, cited the case of *Bindbeutel v. L. D. Willcutt & Sons Co.* (244 Mass. 195, 198, 138 N. E. 239, 240; see Bul. No. 391, p. 392). In that case it was held that where both contractors were insured under the workmen's compensation act the servant of a subcontractor could not recover against the general contractor when he has been paid compensation by the insurer of his employer. It was said in that case that all employees were to receive the same compensation "and no advantage was given the employees of the subcontractor over the employees of the general contractor." The court held that the ruling in that case applied equally to the employees of a general contractor under the act, and that the ruling in the instant case sustaining the demurrer was correct.

Judgment was therefore ordered for the defendant.

WORKMEN'S COMPENSATION—COVERAGE—EMPLOYMENT OF THREE OR MORE PERSONS—CONSTRUCTION OF STATUTE—*Guse v. Industrial Commission et al., Supreme Court of Wisconsin (April 6, 1926), 203 Northwestern Reporter, page 493.*—This was the second time that this case was before the supreme court of the State, first on an appeal from the circuit court when it reversed the judgment of that court, and now on a motion for rehearing on its own judgment.

The facts in the case were that Arthur Zuehlke, on February 13, 1923, while in the employ of Albert Guse, received certain injuries for which he was granted an award of compensation by the industrial commission. It appeared that the defendant ordinarily had but one employee, Zuehlke, and that he was not regularly employed throughout the year, other men being employed for very short times as occasion arose.

The plaintiff appealed from the order of the commission on the ground that he was not subject to the provisions of the statute which provided that:

If any employer shall at any time after August 31, 1917, have three or more employees in a common employment he shall be deemed to have elected to accept the provisions of sections 2394-3 to 2394-31, inclusive, unless prior to that date such employer shall have filed with the industrial commission a notice in writing to the effect that he elects not to accept the provisions thereof.

The circuit court held that the statute applied to the defendant and affirmed the order of the commission on defendant's appeal. The supreme court held that the case of *Kelley v. Haylock* (163 Wis 325, 157 N.W. 1094; see Bul. No. 224, p. 277) was controlling, and that it was not the intention of the law to bring employers having three or more persons in their employ for a brief period of time within the act. The judgment of the circuit court was accordingly reversed, but on rehearing the court reversed its former opinion and affirmed the judgment of the circuit court, holding that the statute in question should be construed literally as it reads. To hold otherwise "works a hardship to the employee if he is unable to ascertain whether or not his employer is within or without the act." The employer could claim to be within or without, as his interest might appear, "the proof in most cases being wholly in the possession of the employer."

WORKMEN'S COMPENSATION — COVERAGE — FARM LABORER — INSURANCE POLICY—*Hillman v. Eighmy*, *Supreme Court of Wisconsin* (May 11, 1926), 208 *Northwestern Reporter*, page 928.—Isaac Hillman was employed by Percy Eighmy and was injured while working as a member of a crew operating defendant's corn shredder. He made application for compensation. The industrial commission found that at the time of his injury he was engaged in farming labor and therefore not under the compensation act, and dismissed the application. On appeal the circuit court affirmed the order of the commission and the plaintiff appealed to the supreme court of the State, where the judgment below was reversed.

Judge Stevens delivered the opinion of that court, saying in part:

It is not necessary for the court to determine whether applicant was engaged as a farm laborer at the time he sustained the injury in

question. Appellant's employer elected to accept the provisions of the workmen's compensation act when he entered into the contract of insurance with the defendant company. Such election brought appellant, a regular member of the shredding crew, under the act, even if it be held that he was a farm laborer at the time of injury, because the intent clearly appears from the terms of the policy to insure the members of the shredding crew.

The judgment was reversed and the cause remanded, with directions to render judgment in accordance with the opinion, the appellant to recover costs against defendants Eighmy and the Wisconsin Brotherhood of Threshermen Insurance Co.

WORKMEN'S COMPENSATION—COVERAGE—"HAZARDOUS OCCUPATION"—SAWING WOOD FOR FUEL—FARM LABOR—*Freeman v. State Industrial Accident Commission, Supreme Court of Oregon (December 15, 1925), 241 Pacific Reporter, page 385.*—The workmen's compensation law of Oregon applies to hazardous occupations, and classifies "farming and all work incidental thereto," excepting the construction of buildings, as nonhazardous. Farming is said to include wood sawing and wood cutting, whether carried on by the owner of the farm or commercially or under contract. However, the courts of the State reversed the action of the commission in interpreting the law so as to exclude therefrom a man injured while working with a crew, his immediate employer having a contract with the farm owner at an agreed rate per hour. It was found that "under the facts in the cause at issue the claimant, in helping to operate the wood saw, was not engaged in an employment incidental to the farming operations of Smith," the owner of the farm. The commission cited decisions in which the injured workman was a farm hand diverted from agricultural pursuits to the cutting of firewood or the filling of an ice house with ice. These cases were rejected as precedents, the opinion concluding:

The cases cited by appellants are clearly distinguishable from the case at bar, because the employees therein were farm laborers engaged in performing their duties as such. In the case at issue the employees of McCarthy were not engaged in farming or in labor incidental thereto. When they were sawing wood for John Jones, an attorney at law, and for John Brown, a physician, they were under the protection of the workmen's compensation act. The fact that they moved their operations down to farmer Smith does not change the hazardous nature of their employment.

The judgment of the trial court in reversing the action of the commission and directing an allowance of the claim was therefore affirmed.

WORKMEN'S COMPENSATION — COVERAGE — MUNICIPAL CORPORATION—CONSTRUCTION OF STATUTE—Texas Employers' Ins. Assn. v. City of Tyler, Court of Civil Appeals of Texas (March 25, 1926), 283 Southwestern Reporter, page 929.—Suit was brought by the Texas Employers' Insurance Association in the district court of Smith County against the city of Tyler to recover \$634.98 claimed as unpaid premiums on an employer's policy of insurance issued to the city of Tyler and the further sum of \$6,349.70 as penalties incurred by the city for misrepresenting its pay roll. The petition alleged that the policy was issued on November 19, 1919, and accepted by the city, which paid a cash deposit premium and agreed to pay additional premiums, that the contract was renewed from time to time by the parties, and that the contract remained in full force and effect from the date of its issuance until the 1st day of March, 1924, at which time it was canceled by the city. The defendant pleaded a general demurrer, which was sustained by the trial court, and, upon the plaintiff's refusal to amend, the suit was dismissed, that court holding that an incorporated city or town can not under the terms of the workman's compensation act (Acts of 1917, ch. 103) become a subscribing member of an employers' insurance association.

The particular question presented in the appeal was: Can an incorporated city or town become a subscribing member of an employers' insurance company? The court of appeals answered this question in the affirmative, reversing the judgment below, and remanding the case for a trial on its merits.

Among other arguments for its position, the following language was used:

If any portion of the workmen's compensation law applies to or includes incorporated cities and towns, when exercising the functions of private corporations, then all of its provisions apply. It is unbelievable that the legislature would deprive those municipalities of valuable common-law defenses and at the same time withhold from them the benefits conferred by the act upon others who employ hired labor. There does not exist any reason why such a discrimination should have been made. Its manifest unfairness is sufficient to justify the inference that none was intended.

Following the rendition of the above opinion, the case was brought before the Commission of Appeals of Texas on a writ of error. This body examined the provisions of the law in the light, especially, of the provision of the State constitution which declares that the legislature shall have no power to authorize any city or town, etc., to become a stockholder in any corporation, association, or company. The plaintiff association was a creature of the compensation act, being a mutual insurance association made up of its subscribing members. Under the terms of the constitution quoted, it was held that no such membership could exist on the part of any city or town.

As to the loss of the common-law defenses, the commission held that, as to employers not eligible to the benefits of the act, it was inoperative as to all its terms. "The act simply has no application, one way or another, to any employer except one eligible to its burdens and benefits."

This determination of the commission was accepted, and the judgment of the court of civil appeals reversed, and that of the district court affirmed. (Same case (Nov. 17, 1926), 288 S. W. 409.)

WORKMEN'S COMPENSATION—DEATH FOLLOWING DISABILITY—PROXIMATE CAUSE—EVIDENCE—FAILURE TO FILE CLAIM—REASONABLE EXCUSE—LUMP SUM—*Georgia Casualty Co. v. Little, Court of Civil Appeals of Texas (February 17, 1926), 281 Southwestern Reporter, page 1092.*—Manuel (or Emanuel) Brown was employed by Metcalf & Son as a cement mixer, and while so employed he sustained injuries about the head and his right clavicle which totally incapacitated him from further labor, on account of which he was paid compensation in the sum of \$12.11 per week and remained under the care of the casualty company's physician. Several weeks after the injury he developed a case of diabetes and died some eight months thereafter. The industrial accident board, after deducting the amount already paid to the deceased, awarded his widow a lump sum in the amount of \$3,587.55, on the ground that the death was due to the injury. The Georgia Casualty Co. brought suit in the district court of Navarro County, Tex., to set aside the award. From a judgment sustaining the award the plaintiff appealed and alleged that the evidence was insufficient to show that the injuries received by the decedent were the proximate cause of his death, or that the defendant was the wife of the deceased, or to authorize a lump-sum judgment, and that the defendant by not bringing her claim within six months after the death of the deceased was barred from recovery.

The court on review found that the evidence relied upon to connect the disease and death of the decedent was that of the physician under whose care he was while receiving compensation, whose testimony was that an injury such as that received by the decedent might cause diabetes, and that it was his opinion that the injury in the instant case was so caused. It was the opinion of the court that the evidence, which was uncontradicted, was sufficient to show that the defendant was the wife of the deceased. As to the lump-sum judgment, the court found that the defendant was nearly 50 years old, in poor circumstances, depending upon her own labor to take care of her present ailing husband and a ten-year-old grandchild, and held that the payment of a lump sum is a matter addressed largely to the discretion of the trial court, and that there was no evidence

in the record that showed the abuse of such discretion. Of the remaining alleged error, that of failure to file claim within six months, the court found that the deceased and his wife were both typical ignorant negroes, not able to read or write; that he worked about from place to place where he could find employment; that the people with whom he was staying knew where his wife lived but failed to notify her of his death; and that she did not know of his death until about a month after it occurred. It was also found that several months had elapsed after the death of the decedent before his wife learned that he was insured.

In view of these facts and circumstances, the court held that it was not prepared to disturb the holding of the board and of the trial court.

The judgment of the trial court was therefore affirmed.

WORKMEN'S COMPENSATION—DEPENDENCY—RIGHTS OF WIDOW AND AFTER-DISCOVERED CHILD BY PRIOR MARRIAGE—REVIEW—RETROACTIVE AWARD—*Parker v. Industrial Commission, Supreme Court of Utah (December 1, 1925), 241 Pacific Reporter, page 362.*—A workman known as Albert Parker, was killed under circumstances entitling his widow to compensation. An award in her favor was made, including a lump-sum payment up to the time of the decision. Weekly payments continued until another woman claiming as widow applied for compensation. Payments were suspended in the first case until it was determined that the second claim was without foundation. In the meantime letters were filed supporting the view that a son by a former wife was entitled to benefits. The informality of the application and the elapsed time were offered as objections to the claim, but the commission overruled or disregarded these objections, and found that there had been a legitimate marriage, that a son was born, and a divorce followed, the wife receiving the custody of the child. She afterwards abandoned him, and the father placed him in the care of his own mother, contributing to his support.

The widow beneficiary knew nothing of the prior marriage or of the existence of such a child, but the commission decided that the award to her should be revised so as to make provision for the child, but not barring her claim as widow. The fact that she was wholly dependent was said by the court not to "prevent the commission from finding and deciding that he [the deceased] also left surviving him a minor child which was also dependent upon him for support." Compensation had been awarded, and by taking under consideration the rights of the minor child "nothing was invoked except the continuing jurisdiction of the commission which it has a right to exercise by virtue of the provisions of section 3144" of the compensation law.

In making its award the commission had undertaken to date the payments to the child back to the time of his father's death, requiring, indirectly at least, that the widow make restitution of a part of the compensation which had been paid to her. The court found the question "not wholly free from doubt or difficulty"; but, in the absence of any fraud or collusion on the part of the plaintiff, "we think, that, where compensation has been lawfully paid to one justly entitled thereto, the commission is powerless to require the recipient to pay it back." That part of the award was therefore annulled, but from the date of the suspension the divided award was approved.

WORKMEN'S COMPENSATION—DEPENDENCY—SUSPENSION OF CONTRIBUTIONS TO WIFE—*American Smelting & Refining Co. v. Industrial Commission of Utah, Supreme Court of Utah (November 5, 1926), 250 Pacific Reporter, page 651.*—This action was brought by the American Smelting & Refining Co. to review an order of the industrial commission granting an award to the widow of Imazo Kawate, who was accidentally killed while in the employ of the company. The facts upon which the award was based were not in dispute and were substantially as follows: The deceased came to the United States in 1900, leaving his family, consisting of his wife, two small daughters, his mother, and a sister, in Japan. Soon after arriving in this country the deceased commenced sending money to his wife. He continued to send her money with regularity until 1916 or 1917, when for some unexplained reason the contributions ceased until January, 1922, when he sent \$500, and after that, in 1924, he sent an additional sum of \$135.

It was contended by the employer that in view of the fact that no contribution was made by the deceased from 1916 to 1922, the finding of the commission that the applicant was dependent upon the deceased for support was not supported by the evidence; that as a matter of law it should be held that contributions wholly failed; and that the applicant, within the purview of the industrial act, received no support whatever from the deceased. The award was affirmed with costs. Judge Frick, speaking for the court, said in part:

It seems to us, however, that the mere fact that contributions may cease for a time, and even for a considerable period of time, standing alone, is not conclusive that a man with a family in a foreign country has necessarily abandoned his family and left them to shift for themselves. The evidence is to the effect that the deceased frequently wrote to his wife, and especially during the last two years of his life, that he expected to return to Japan and in the near future. There is, therefore, nothing in the record from which it can be inferred that the deceased had abandoned or intended to abandon his family.

The inference is reasonably clear, therefore, that there must have been some cause or circumstances over which the deceased had no

control which caused the long interval between the regular remittances from 1900 to 1916 and the large one in January, 1922.

We are of the opinion that, in view of the facts and circumstances, it can not be said that the award made by the commission is not supported by some substantial evidence; nor can we hold as a matter of law that the award is contrary to law.

The same court had decided at a somewhat earlier date that a wife who had lived apart from her husband most of their wedded life, receiving no support from him at any time, without any communication with or from him for a period of nearly two years prior to his death, during which time he made substantial contribution toward the support of his mother, while the wife had supported herself by her own efforts, was entitled to no benefits, her claim of dependence being without evidence to support it. (*Utah Apex Mining Co. v. Industrial Commission* (1926), 244 Pac. 656.)

WORKMEN'S COMPENSATION—DEPENDENCY—"WHOLLY DEPENDENT"—CONSTRUCTION OF STATUTE—*London Guarantee & Accident Co. (Ltd.) et al. v. Industrial Commission, Supreme Court of Colorado* (December 28, 1925), 242 Pacific Reporter, page 680.—James K. Keys and his son, 16 years of age, were both killed in the same accident. The commission found that the widow and the surviving children were wholly dependent upon the deceased husband and father for their support and made an award accordingly. The widow then applied for compensation for the death of her son. The commission found that she was 20 per cent dependent upon him and made an award to that effect, which was affirmed by the district court. The defendant brought error. The court, in reversing the judgment of the district court, said in part:

The second award and the judgment of the district court were wrong, not only wrong, but logically impossible. The commission rightly found that the widow and children were wholly dependent on the father. They could not find otherwise, because the statute (C. L. sec. 4426) is that they "shall be conclusively presumed to be wholly dependent" on the father. "Wholly dependent" on him means that they are dependent on no one else; it has no other meaning.

The argument that claimants might thus lose an award for the greater part of their actual support, would be forceful if addressed to the legislature, as we hope it will be, but the statute is explicit, and we cannot add to it or take from it.

The court found itself unable to adopt a meaning that might be "more agreeable to us," since it could not ignore express terms, even though unforeseen, undesirable consequences might have ensued. It was said that "the English statute, with those of some States is wiser—i. e., that dependency is a question of fact"—citing an English case on this point, and concluding:

The ground of the decision was, quoting one of the opinions, that "the question of dependency was not a question of law at all; it is purely a question of fact." That proposition, as we have shown, is

not true in Colorado, but in case of widow and children the contrary is true. It is purely a question of law.

The judgment of the district court was reversed with directions to disaffirm the award of the commission.

WORKMEN'S COMPENSATION—DEPENDENTS—FAMILY STATUS—SUBSEQUENT MARRIAGE—*Casady v. State Industrial Accident Commission, Supreme Court of Oregon (January 15, 1926), 242 Pacific Reporter, page 598.*—George J. Casady was awarded compensation for permanent partial disability by the industrial accident commission and later was granted an increased allowance for permanent total disability. At the time of his injury he was a widower with one child under 16 years of age, but later remarried and by this marriage had two children. He brought mandamus proceedings against the industrial accident commission to compel it to grant him an additional allowance on account of his wife and children. The court, after quoting section 6626, Oregon Laws, as it stood at the time of the accident and citing adjudicated cases in point, stated in part:

The matter is judicable according to the family status of the claimant at the time the injury happened, which, by the section of the statute just quoted, is fixed for a man then unmarried at the sum of \$30 per month, and for each child at that time under the age of 16 years the payment must be increased by \$8 per month. The case of *Crockett v. International Railway Co.* (176 App. Div. 45, 162 N. Y. Supp. 357), cited by the claimant, has to do only with a surviving wife, and not with a dependent wife. It has no relation to a case where the claimant and his wife are both alive, whenever married. The present wife of the claimant is not a survivor.

The court held that though a child legally adopted prior to an injury and a posthumous child are considered as dependents under Oregon Laws, section 6619, neither the wife to whom the claimant was married subsequent to his injury nor the children of such a marriage are included within section 6626. The plaintiff relied upon *Chebot v. State Industrial Accident Commission* (106 Oreg. 660, 627, 212 Pac. 792, 795), in which it was said:

Such a construction, however, ignores the plain provisions of the statute which impose upon the commission a legal duty to regulate the compensation to be awarded the injured workman by the development of his disability or change in his family status.

Mr. Judge Burnett, speaking for the court, said:

In the first place, the language about "change in his family status" was not necessary to the decision in that case, because *Chebot* was not a married man, so far as the record discloses, and had no family; secondly, it might be referable in a proper case to the birth of a posthumous child, which would be a change in the family status between the time of the happening of the accident and the application for relief.

The writ was therefore dismissed.

WORKMEN'S COMPENSATION—ELECTION—NOTICE TO EMPLOYEES—
Holland v. Stuckey, Court of Civil Appeals of Texas (January 30, 1926), 282 Southwestern Reporter, page 951.—T. Holland was employed by W. A. Stuckey & Son and was engaged in laying a pipe line in Wichita County, Tex. During the course of his employment he sustained personal injury, for which he brought an action in damages in the amount of \$3,500. The defendants answered and contended, among other things, that they were subscribers under the workmen's compensation act, that they had given notice to the Industrial Accident Board of Texas of the fact, and that they had fully complied with the requirements of such law. The cause was tried before a jury on special issues. The jury found for the plaintiff on all the issues involved and returned a verdict in his favor in the amount sued for. The court, however, found that the defendants were subscribers under the workmen's compensation act, with which they had complied, and even though that fact was unknown to the plaintiff until after he had filed his suit it constituted a bar to his recovery. Judgment was accordingly rendered for the defendant and the plaintiff appealed.

The defendants were engaged at Wichita Falls in the "tank-car business" and in the "pipe-line business," operating as the Lone Star Tank Co. At their plant at Wichita Falls they had posted notices of their subscription under the workmen's compensation act. The evidence was uncontradicted that the plaintiff was hired in the town of Electra, some 30 miles from Wichita, and about 4 miles from where the accident occurred. There was no evidence that he had ever been informed that the defendants carried insurance under the compensation act. The question for the court was whether or not such notice as herein set out was sufficient, under the terms of the workmen's compensation act, to constitute notice in fact. The court in the course of its opinion cited the case of *Producers' Oil Co. v. Daniels* (244 S. W. 117, 112 Tex. 45; see Bul. No. 344, p. 327), in which it was held that "in order to relieve the employer of liability notice must be given the employee personally." The opinion continued:

One of the purposes of the law is to give an employee offering to work for an employer who is a subscriber an opportunity to determine whether or not such employee will rely, in case of accident, on the damages awarded under the workmen's compensation act, or whether he desires to retain his common-law right to sue for damages. We do not think that one doing a business of a particular kind at one place, and posting notices in his plant, informing his employees that he is a subscriber and has insurance to compensate such employee under the act in question, can carry on another business of a different kind, and under a different name, at a distant place, and employ laborers, and never inform such employees of the fact that he has insurance under

the act, may exempt himself from liability by reason of the posting of the notices in such distant plant.

We do not think that, under the facts shown, the defendants should be held to have given notice, either actual or constructive, to plaintiff of the fact that they were subscribers. The evidence shows that in payment for the labor done in laying pipe near Electra they gave checks signed by W. A. Stuckey & Son.

It was ordered that the judgment below be reversed and that judgment be rendered for the plaintiff in the sum of \$3,500 with costs of suit and with interest at 6 per cent from date of judgment, and costs of appeal were adjudged against appellees.

WORKMEN'S COMPENSATION—EMPLOYEE—ASSISTING IN MAKING EMERGENCY REPAIRS TO HIGHWAY—*Yourzak v. Town of Platte, Supreme Court of Minnesota (July 16, 1926), 209 Northwestern Reporter, page 910.*—Joseph Yourzak was employed by the road overseer of the town of Platte, Minn., to assist in installing a culvert in the highway at a point that had become impassable. In doing the work Yourzak accidentally received an injury to his leg which resulted in blood poisoning and death. His widow and children were awarded compensation by the industrial commission for his death, and the defendant brought a writ of certiorari for review. The court, in affirming the order of the commission, said in part:

The right to compensation turns upon the authority of the overseer to employ help on this occasion. The decision of the industrial commission cannot stand unless the authority to employ Yourzak for the town is given its road overseer by the last paragraph of section 2575, G. S., 1923, reading:

"Whenever any public road in a town becomes obstructed or unsafe from any cause, the overseer shall immediately repair such road and render his account therefor to the town board, in case of a town or county road, and to the county board in case of a State aid road."

Only emergencies give the overseer authority to employ help, and to a certain extent he is the one to determine whether one has arisen. In this case he deemed it such. The chairman of the town board, though he claims that Yourzak was to aid without pay, thought speedy repairs necessary, for he furnished the culvert which the board allowed him to furnish for road purposes, the town board paid the overseer for his work in installing the culvert, and the industrial commission, in order to grant compensation, must have found that there was an obstruction or unsafe condition in the highway which required the overseer to act for the town under the provision mentioned, and that it was such repair that he could not well do it alone.

Within the above interpretation of the quoted provision of the statute, there is evidence supporting the decision of the industrial commission, and it must be affirmed, with attorney's fees of \$75 to the respondents.

WORKMEN'S COMPENSATION—EMPLOYEE—COVERAGE—WORKING PARTNER—*Lyle v. H. P. Lyle Cider and Vinegar Co. et al.*, *Court of Appeals of New York (July 9, 1926)*, 153 *Northeastern Reporter*, page 67.—This is an action brought by Vinnie M. Lyle for the death of her husband. The evidence shows that claimant's husband was a member of a copartnership engaged in carrying on a business of limited proportions, and while engaged in performing labor incidental to his occupation he received an injury which resulted in his death. The State industrial board awarded compensation, but on appeal to the appellate division the award was reversed, and claimant and the board appealed.

Plaintiff contended that the policy of insurance covered the decedent both as an employer and employee, insuring him therefore against the accident suffered by him while engaged as an employer in the performance of work carried on by the copartnership.

The court held that under the provisions of section 54, subdivision 6, of the workmen's compensation law, a policy might be taken out which would cover employers performing work incidental to their employment, and that this provision should be construed liberally, but that all the facts in the present case tended to oppose rather than support the claim that decedent was insured as an employer. Furthermore, the court maintained that if a policy was intended to insure employers performing labor under the workmen's compensation law, that purpose should be indicated by its terms. The policy under consideration not only did not provide insurance for employers, but by its terms was unmistakably limited to employees. The findings of the industrial board in favor of claimant and binding upon her were to the effect that decedent was injured while engaged as an employee at work for his employer.

Thus we are compelled to decide against the claim on this theory of insurance for an employer and are relegated to the question whether under the circumstances an award can be sustained because of injuries received by the decedent while engaged as an employee. Carrying this question farther, it becomes the one whether a copartner can become the employee of himself and his partners as employers, and we think that a negative answer must be made to this question. The copartners, of course, are the principals and employers, and we do not think that it is within the contemplation of the workman's compensation act that one of them may become the employee of himself and his associates, and thus at the same time occupy the inconsistent attitudes of employer and employee.

It was the opinion of the court that the workmen's compensation law did not contemplate that a "partner should have a claim against himself and his copartners for an accident springing out of the work of the copartnership and for the conduct of which he is responsible." Many cases were cited in support of this contention, and the court

quoted with approval from the case of *Matter of Skouitchi v. Chic Cloak & Suit Co.* (230 N. Y. 296, 130 N. E. 299), where it was said, in discussing the effect of the provisions of subdivision 6 of section 54, that they were—

intended to cover the case of an employer who maintained his status as such, but who, nevertheless, did some work of the character usually performed by an employee. * * * He would remain an employer and obviously could not become an employee of himself as an employer.

The court in the instant case added that—

The obvious course to be pursued by persons like the decedent, who, although employers, are engaged in performing labor contemplated by the statute and desire insurance, is to secure a policy which by its terms properly insures them as such employers.

The order appealed from was therefore reversed with costs against the State industrial board.

An amendment to the compensation act of California, 1917, authorizes the payment of compensation to a working partner receiving wages irrespective of profits. This called for a reversal of the position taken by the supreme court of that State in *Cooper v. Ind. Acc. Com.* (1916, 177 Cal. 685, 171 Pac. 684; see *Bul. No. 258*, p. 184), where the contrary was held under the law as it then stood. The amendment was held constitutional, and an adverse finding by the commission was set aside where a member of a firm was working at a fixed rate monthly, plus one-half the profits, and the case remanded for proceedings in keeping with the conclusion announced. (*Johnson v. Industrial Accident Commission* (1926), 244 Pac. 321.)

The Supreme Court of Oklahoma was previously on record as supporting the view that a working partner was entitled to compensation for injury received in the employment of the partnership. (*Ohio Drilling Co. v. State Ind. Com.*, 86 Okla. 139, 207 Pac. 314.) This position was reaffirmed in the recent case of *Knox & Shouse v. Knox* (1925, 250 Pac. 783), in which an award by the State commission was challenged by the firm of which the injured workman was a member. It may be noted that this position of the court is not dependent on special legislation, but on the construction put by the court on the law and facts, in direct opposition to the conclusions of the New York Court of Appeals.

WORKMEN'S COMPENSATION—EMPLOYEE—DEPUTY SHERIFF—
CONSTRUCTION OF STATUTE—*Monterey County v. Rader, Supreme Court of California (August 13, 1926), 248 Pacific Reporter, page 912.*—The county of Monterey and the State compensation insurance fund petitioned the Supreme Court of California for a writ of review to annul an award of compensation by the industrial accident commission to Nellie Pearl Rader for the death of N. H. Rader, employee.

As N. H. Rader, father of Nellie Pearl Rader, was, on the night of July 6, 1925, returning to his home at about 11 o'clock p. m., he was commanded by the sheriff of Monterey County to assist him in arresting certain violators of the law, and while in the performance of this

duty he was fired upon by the persons whom he was attempting to arrest and instantly killed. The industrial accident commission awarded his daughter, 14 years old and wholly dependent, a death benefit of \$4,900 and \$100 burial expenses. The petitioners insisted that the commission exceeded its jurisdiction in making the award, for the reason that the deceased could not be regarded as an employee within the terms and meaning of the workmen's compensation act, but that he was commanded by the sheriff by virtue of the statutory law of the State to perform a duty which every citizen owes to his sovereign State.

Section 7 of the workmen's compensation insurance and safety act, statutes and amendments of 1917, defines an employer to mean the State, each county, city and county, etc., who has any person in service under any appointment or contract of hire, or apprenticeship, express or implied. Section 8 (a) defines the term "employee" to mean every person in the service of an employer as defined in section 7, under any appointment or contract of hire or apprenticeship, express or implied, oral or written. Persons holding an appointment under this provision of the law as deputy sheriff for the purpose of their own convenience are excluded from the benefits of compensation.

The court, in affirming the award, said in part:

The decedent in the instant case was compelled by the sheriff of the county of Monterey to perform the service of a deputy sheriff of that county (Pen. Code, sec. 150), and was charged with the performance of the same duty that would have rested upon a regularly appointed deputy sheriff under like circumstances, and, while so acting, he was killed. Under such circumstances he will be held to be within the protection of the law in assuming the risks incident to his office. We feel satisfied that, when killed, he was performing the service of a deputy sheriff within the contemplation of the workmen's compensation insurance and safety act of this State.

The Court of Appeals of Maryland had before it a case involving the status of a park policeman employed by the city of Baltimore who was killed by being struck by an automobile while crossing a road in the park. The accident commission had ruled that he was not a "workman" within the terms of the law, and denied his widow's claim for compensation. The court held that the "great weight of authority" sustained this view; that neither policemen, firemen, nor members of the State militia were "workmen for wages" in the sense that manual laborers in the industries are, and that it was for persons of these classes that the law was enacted, so that compensation was properly denied. (*Harris v. Mayor, etc., of Baltimore* (1926), 133 Atl. 888.)

WORKMEN'S COMPENSATION—EMPLOYEE—INDEPENDENT CONTRACTOR—CASUAL EMPLOYMENT—*Bosel v. Henderson Holding Co., Supreme Court of Minnesota (April 9, 1926), 208 Northwestern Reporter, page 421.*—August H. Bosel was granted an order of award by

the industrial commission for injuries received by him while in the employ of the Henderson Holding Co., and from that order the employer brought a writ of certiorari to have it reviewed. The employer alleged that at the time of his injury the plaintiff was an independent contractor and that in any event the employment was casual and not in the usual course of the trade or business of the employer. It appeared that at the time of his alleged injury the plaintiff was engaged in painting the roof of a factory building owned by the defendant; that he was furnishing his own brushes and doing all the work himself, but the paint was furnished by the defendant. It also appeared that there was no express contract as to compensation or duration of the work and no express undertaking on the part of the plaintiff to finish the job. He stated in his testimony that the defendant "could have told me to quit at any time."

The court on review of the record found that the plaintiff was under the control of the defendant, and in its opinion, speaking through Judge Stone, said in part:

An important "test of the relationship [of an independent contractor] is the right to control. It is not the fact of actual interference with the control, but the right to interfere, that makes the difference between an independent contractor and a servant or agent." The case is clearly open to the view that respondent was under the control of relator. Therefore the finding that respondent was an employee rather than an independent contractor can not be disturbed.

The contention as to the nature of the employment was also resolved against the appellant. To be exempt, it must be both casual and not in the usual course of the trade or business of the employer. The company acquired and rented buildings, of which the one on which the plaintiff worked was one, so that the employment was not excluded.

The writ of review was therefore discharged, leaving the award undisturbed.

WORKMEN'S COMPENSATION—EMPLOYEE—LIABILITY OF PARTNERS—INJURY—EVIDENCE—*Klemmens v. North Dakota Workmen's Compensation Bureau, Supreme Court of North Dakota (July 27, 1926), 209 Northwestern Reporter, page 972.*—Anton Klemmens made claim to the workmen's compensation bureau for compensation for injuries he alleged that he received on January 9, 1924, while employed by the Farmers' Garage. His claim was dismissed by the bureau. On appeal to the district court of Ward County he was given judgment for the sum of \$332.50 and \$78 attorneys' fees and costs. From that judgment the bureau appealed. It relied upon two propositions for the reversal of the judgment:

(1) That the evidence fails to support the finding that claimant received any injury of sufficient severity, and suffered any disability in fact, of sufficient period of time to entitle him to compensation.

(2) That at the time of the alleged injury the claimant was not an employee of the Farmers' Garage.

It appeared that the Farmers' Garage, a copartnership, was owned by one Hanson and Birdie Klemmens, wife of the plaintiff; that she hired her husband to work at the garage to balance the work and time of Hanson, and that she paid him his salary out of her interest in the partnership earnings. It was shown by the evidence that the plaintiff after his alleged injury was treated at his home by Doctor Fisk from the date of his injury until January 21, when he was taken to a hospital where he was under the care of Doctor Peterson for 11 days. Both the physicians testified that they could not discover any injury or organic trouble, and it was the belief of Doctor Fisk that the plaintiff feigned injury.

The court, in disposing of the case, said in part:

While it is true that the doctors testified that they could find no injury or organic trouble, it is also true that Doctor Fisk called at the home of the claimant about every day and sometimes twice a day, until he was taken to Minot. On one occasion he called at four in the morning. It may be said that this was in response to a call from claimant's wife. Even so, it would seem exceedingly strange for a doctor to leave his bed at that hour of the morning to respond to a sick call when he knew that the patient was not sick or injured. The evidence also shows that both Doctors Fisk and Peterson advised claimant to rest.

The facts and circumstances in the case are of such a nature that the minds of reasonable men might readily differ thereon and draw different conclusions therefrom. This being so, under the well-established rule, this court is in no position to disturb the findings made by the trial court on the facts.

That claimant performed partnership work exclusively is admitted. Mr. Hanson, one of the partners, was in the actual charge of the business and directed the work. The tools and machinery used by claimant belonged to and were the property of the partnership. His work and duties were to further the interests of the partnership. Both partners profited by his labors. The earnings from his labor went into the common partnership fund. The profits were divided equally between the partners. The partnership was in control of the Farmers' Garage, where the claimant worked, and not Mrs. Klemmens. The claimant was actually controlled by the firm. It was the master. While in the course of its work and business, claimant was injured.

In *Dale v. Saunders Bros.* (171 App. Div. 528, 157 N. Y. Supp. 1062; see Bul. No. 224, p. 273), the court of the appellate division said:

"It is not a question of hiring, or of master and servant, but of using and putting the man in the hazardous employment which the act has in view. The name of the act, 'workmen's compensation law,' indicates that it is not to be limited to cases where the actual relation of master and servant exists, but to workmen and those employing or

using them in the manner stated. When it appears that a person is carrying on such hazardous employment for profit and that a person in his service who he is employing or using therein receives an injury, compensation follows."

The claimant was insured in the workmen's compensation fund, and the premium was paid. He was doing the work of the Farmers' Garage, for which he was employed, and in the course of that employment he was injured.

The judgment was therefore affirmed, with costs.

WORKMEN'S COMPENSATION—EMPLOYEE—VOLUNTEER—*Ross v. Independent School District No. 1 of Madison et al., Supreme Court of South Dakota (February 24, 1926), 207 Northwestern Reporter, page 446.*—One Ross, who was employed by the Madison high school as assistant janitor, was killed while in the act of assisting an independent contractor in the erection of a flagpole on the school grounds. It appeared that Nickle, superintendent of the school, by authority of the board of education, contracted with one Robertson to erect a flagpole on the school grounds and to have entire charge of the work of raising it. In placing the pole preparatory to raising some of the paint on it became marred, and Nickle, desiring to repaint the marred spots, called upon Ross to assist in holding up the pole so that he could paint the marred places. When the painting was finished, Ross started forward toward the base of the pole, apparently to assist in placing it in the hole, whereupon he was struck upon the head by a piece of timber that was being used by Robertson's men, which injury resulted in his death. His widow was awarded compensation, which was affirmed by the circuit court. The defendants appealed on the ground that the award was based upon a conclusion of law. In reversing the order appealed from, Judge Campbell, speaking for the court, said in part:

The raising of the flagpole and locating it securely in the excavation prepared was a matter with which the board of education and its employees had no concern. It had been given over entirely to the independent contractor Robertson. We are compelled to the conclusion that the injury suffered by decedent did not arise out of and in the course of employment, and that at the time the injury was received the decedent was not acting in the course of his employment, but solely as a volunteer, going to the assistance of the independent contractor, and that such action, on his part, was not connected with or incident to the performance of his duties.

The findings of the court recite that the decedent received the injury in question, arising out of and in the course of his employment, which is not a finding of fact at all, but a conclusion of law, and in our opinion, in this case, an erroneous conclusion of law. The facts found by the court, which are properly findings of fact, and not conclusions of law, will support only one judgment, a judgment of nonliability.

The order and judgment appealed from were therefore reversed, and the cause remanded, with directions to enter a judgment in favor of appellants and against respondent, reversing the order and award of the industrial commissioner and dismissing respondent's petition with prejudice.

WORKMEN'S COMPENSATION—EMPLOYERS' LIABILITY—INTERSTATE COMMERCE—TRAIN RIDER—*Michigan Central R. Co. v. Industrial Commission, Supreme Court of Illinois (June 16, 1926), 152 Northeastern Reporter, page 594.*—Nellie Rogers made claim for compensation under the workmen's compensation act for the death of her husband, Charles J. Rogers, who was killed on February 16, 1924, while in the employ of the Michigan Central Railroad Co. She was granted an award by an arbitrator, whose order was approved by the industrial commission and confirmed by the circuit court of Cook County. The employer brought error. The points involved were whether or not the injury arose out of and in the course of decedent's employment, and whether he was at the time employed in interstate commerce.

It appeared that for some time prior to his death the deceased had been employed by the railroad company as a train rider, whose duty it was to protect the train from car thieves. At the time in question, while he was on his way to the railroad yards to go out on the scheduled run of the train he was to ride, he was struck by an Illinois Central train, proceeding north on a track adjacent to the track his train was to pass over, and killed.

In reversing the judgment of the lower court, Judge Heard, delivering the opinion of the court, said in part:

On the first question the facts are not in dispute. Rogers was employed by the Michigan Central Railroad Co., and the place where he commenced performing his duties was in the railroad yard of that company about Monroe Street, just east of the Illinois Central right of way and immediately west of Lake Michigan, in the city of Chicago.

If the accident which resulted in the death of Rogers arose out of and in the course of his employment by plaintiff in error, then at the time of the accident he must have been engaged in interstate commerce, as the only duties which the evidence shows he had, as an employee of plaintiff in error, were duties pertaining to interstate commerce.

If an employee of a railroad, while engaged in interstate commerce, is killed in the course of his employment, his injuries arise out of the employment, and the case is within the scope of the Federal employers' liability act (U. S. Comp. St., secs. 8659-8665) and not the workmen's compensation act. [Cases cited.]

The order of the circuit court was therefore reversed.

WORKMEN'S COMPENSATION—EMPLOYERS' LIABILITY—OCCUPATIONAL DISEASE—*Gordon v. Travelers' Ins. Co., Court of Civil Appeals of Texas (October 27, 1926), 287 Southwestern Reporter, page 911.*—G. E. Gordan was employed by the Tidal Western Oil Corporation in various kinds of work. From time to time he used paints, oil, and gasoline of high specific gravity, stood in crude oil, and inhaled fumes of gasoline and refuse oil in poorly ventilated work places. He was made ill at times, and finally became affected with nephritis, suffering permanent impairment of health. He submitted a claim for compensation, or if this should be found not available, damages were sought in an action at law.

The industrial accident board construed the compensation law as limited to accidental injuries, citing cases decided by the courts of last resort. No compensation for a disease could therefore be allowed, as the disease "developed gradually, thus eliminating the accidental element necessary to make the injury received compensable."

As to the alternative claim for damages, the court said:

Under the facts set up in the petition, appellant's employer was a subscriber under our compensation law, and he, by his conduct, had waived his right of action at common law against such employer.

The appellant could not recover at common law against his employer, for the additional reason that no recovery was allowed at common law for occupational or industrial diseases.⁴

Judgment for the defendant insurer and employer was therefore affirmed, the plaintiff being found without redress.

This court in another district allowed compensation for death from anthrax in case of a workman employed at skinning cattle, saying that the weight of authority regarded such death as due to accidental contact with the anthrax germ, and compensable. (*Houston Packing Co. v. Mason (1926), 236 S. W. 862.*)

WORKMEN'S COMPENSATION—EMPLOYERS' LIABILITY—SUITS FOR DAMAGES—TRANSITORY ACTIONS—NONRESIDENT SUITOR—RIGHT OF ACTION—*Herrmann v. Franklin Ice Cream Co., Supreme Court of Nebraska (March 19, 1926), 208 Northwestern Reporter, page 141.*—This action was brought by Lewis H. Herrmann, a resident of Missouri, against the Franklin Ice Cream Co., a Nebraska corporation, having its principal place of business at Lincoln, Nebr., and also operating a plant at Kansas City, Mo. The plaintiff alleged that he

⁴This position does not accord with that taken by the courts of New York, Pennsylvania, Wisconsin, and others, either as respects the right to recover at common law for diseases due to occupation, or as to the surrender of all right to sue in case of a noncompensable injury. The statement by the Texas commission of appeals (p. 181) that "the act simply has no application, one way or another, to any employer except one eligible to its burdens and benefits" also seems to point to a different conclusion as to the withdrawal of one right without another being granted.

sustained injuries while working at the company's plant at Kansas City, and sought to recover damages therefor in a Nebraska court. Objection by the defendant to the jurisdiction of the court was sustained and the action dismissed with prejudice to a future action in that State. Plaintiff appealed.

It was contended by the defendant that the State of Nebraska, by enacting its workmen's compensation law, had abrogated common-law actions by an employee for personal injuries arising out of and in the course of his employment, and that they were therefore contrary to the public policy of the State; also that it was discretionary with the Nebraska courts as to whether or not they entertained such actions by nonresidents. The court held that since by the terms of the workmen's compensation act all employers and employees were not subject to its provisions, the right to a common-law action by an injured employee occasioned by negligence of the employer had not been abolished in the State. Judge Good, who delivered the opinion of the court, said in part:

It appears that, at the time plaintiff sustained the injuries of which he complains, Missouri had no workmen's compensation law, and that plaintiff could have maintained in the courts of that State such an action as in the instant case. He had a right of action which was enforceable in Missouri. Such action not being contrary to the laws of our State and not being contrary to public policy or good morals, it follows that the action may properly be maintained.

The question of the court's discretion to entertain transitory actions was then considered by the court and the opinion continued:

Whether the courts of this State, in their discretion, may entertain or refuse to entertain jurisdiction in a transitory action brought by a nonresident must be determined by statutory and constitutional provisions. Plaintiff is a resident and presumably a citizen of the State of Missouri. Section 2, article 4, of the Federal Constitution provides:

"The citizens of each State shall be entitled to all privileges and immunities of citizens in the several States."

Section 1034, Comp. St. 1922, provides:

"The district courts shall have and exercise general, original, and appellate jurisdiction in all matters, both civil and criminal, except where otherwise provided."

The statute above quoted does not purport to vest any discretion in the court, and even if it did so we have no doubt that it would be invalid, as contravening the above-quoted provision of the Federal Constitution. The statute is mandatory that the district court shall exercise jurisdiction and it is not in its power to discriminate between residents and nonresidents.

The judgment of the district court was therefore reversed and the cause remanded for further proceedings.

WORKMEN'S COMPENSATION—EMPLOYMENT—PREMISES OF EMPLOYER—*Bristow v. Department of Labor and Industries of State of Washington, Supreme Court of Washington (June 1, 1926), 246 Pacific Reporter, page 573.*—Toby Bristow, prior to April 10, 1925, had been employed by the Mutual Lumber Co. His regular hours were from 8 to 12 a. m. and from 1 to 5 p. m. On the morning of April 10 he came to work in his automobile and punched the clock at 7.25 a. m. After punching the clock he passed through the plant where he worked and went to a dam some 400 feet away. The dam was owned by his employer and was used in connection with its plant. On his way he met two of his fellow employees, whom he told he was going fishing. He was never thereafter seen alive. His body was recovered some 75 feet below the dam and 30 or 40 feet out in the river. His pockets contained some fish line, a gaff hook, and his watch, which had stopped at 7.40 a. m. Compensation was denied to his widow by the department of labor and industries, and she appealed. The superior court reversed the action of the department and gave judgment in favor of the widow. The department then appealed and assigned as error two grounds: (1) That the decedent at the time of his death was not in the employment of an employer, and (2) that he was not upon the premises of any employer.

The court, on review, ruled that there was no error, holding that the arrival of the deceased at the employer's plant 35 minutes before time for commencing work was not so premature that he could not be considered as an employee as a matter of law. It found from the evidence that the deceased was killed on the premises of the employer, and that being true, recovery could not be denied under the provisions of the workmen's compensation act. "Our statute does not require that compensation for injury received on the employer's premises arise out of, or in the course of, his employment." (Rem. Comp. Stata. 7673-7796.)

The judgment of the court was therefore affirmed.

WORKMAN'S COMPENSATION—EXTRATERRITORIALITY—JURISDICTION—CONTRACT FOR SERVICE OUTSIDE STATE—*Krekelberg v. M. A. Floyd Co., Supreme Court of Minnesota (February 5, 1926), 207 Northwestern Reporter, page 193.*—William H. Krekelberg, a resident of Minneapolis, was employed by M. A. Floyd Co. of that city to work for it in Burlington, Iowa. In the course of his employment he sustained injuries for which he was awarded compensation under the Minnesota law. The company conceded liability for compensation, but insisted that its obligation should be governed by the Iowa law, and brought certiorari to the Supreme Court of Minnesota to have the action of the industrial commission reviewed.

In sustaining the action of the commission the court said in part:

The facts are admitted, and liability is conceded. The sole question in dispute is whether the claimant is entitled to compensation under the Minnesota compensation act or under the Iowa act (Laws, 1913, ch. 147). Under the Minnesota act he would receive \$20 per week; under the Iowa act \$15 per week.

The court held that although "there is authority for the claim that where a contract of employment is to be performed in another State the compensation law of that State applies," the facts in the instant case brought it within the doctrine applied in several cases that had been adjudicated in that State, holding that—

Where a business is localized in this State, an employee performing services pertaining to that business is within the protection of our compensation law, although his services may be performed outside the State.

The decision of the commission was therefore declared correct, and was affirmed.

WORKMAN'S COMPENSATION — EXTRATERRITORIALITY — JURISDICTION—PLACE OF MAKING CONTRACT AND OF SERVICE—*Norman v. Hartman Furniture & Carpet Co., Appellate Court of Indiana (February 4, 1926), 150 Northeastern Reporter, page 416*—Raleigh H. Norman, a resident of Chicago, whose contract of employment was made there, was employed as buyer by the Hartman Furniture & Carpet Co., a corporation organized under the laws of Illinois and having its principal place of business in Chicago. By the terms of his employment he was required to make trips to other States, and while on such a trip he was killed in an automobile accident in Indiana. His widow filed claim for compensation before the industrial board of Indiana. There was an agreed statement of facts, but the claim was disallowed for want of jurisdiction. The claimant appealed.

The court, after citing the case of *Darsch v. Thearle Duffield etc. Co.* (77 Ind. App. 357, 133 N. E. 525; see Bul. No. 344, p. 343), in which the facts were very similar to those in the instant case, said in part:

In the instant case the agreed statement of facts shows that appellant and appellee were residents of Chicago, Ill., and that the contract of employment was entered into in Illinois, that appellee had not localized in Indiana, and that Raleigh H. Norman, at the time of his injury and death, was in Indiana, temporarily engaged in his master's business.

We hold that the case does not come under the provisions of the workmen's compensation act of this State (Laws, 1915, ch. 106), and that the industrial board did not have jurisdiction.

The award was accordingly affirmed.

The same court reached a similar conclusion where an Indiana corporation engaged the services of a "freehold resident" of the State, at the time temporarily living in Illinois, to render services in Arkansas, in which State he was injured. Inasmuch as the contract was neither made in the State nor to be performed therein, the fact of citizenship and that the employer's principal place of business was in Indiana did not suffice to bring the injury within the Indiana law. (*Bement Oil Corp. v. Cubbison* (1925), 149 N. E. 919.)

Similarly, a salesman working in the State of Georgia under a contract with an Indiana corporation, concluded by correspondence while the employee was in South Carolina, was said to be under the law of the State in which the service was to be rendered, though it was within the power and right of the parties to have stipulated, when making the contract, that the law of Indiana would apply. In the absence of such action "the law presumes that the parties contracted with reference to the laws of Georgia, where said contract was to be performed." (*Leader Specialty Co. v. Chapman* (1926), 152 N. E. 872.)

WORKMEN'S COMPENSATION—EXTRATERRITORIALITY—JURISDICTION—PROCEEDINGS IN STATE WITHOUT COMPENSATION ACT—*Johnson v. Carolina, Clinchfield & Ohio Ry. Co., Supreme Court of North Carolina (January 27, 1926), 131 Southeastern Reporter, page 390.*—R. W. Johnson, a citizen of North Carolina, was employed by the Carolina, Clinchfield & Ohio Railway Co. in Tennessee under a contract of employment made in that State, and while in the course of his employment as carpenter in a repair yard he received injuries for which he brought action for damages in a court of North Carolina. Tennessee has a workmen's compensation law with which the employer had complied. North Carolina, however, has no such law, and actions for damages in that State are governed by the common-law rule. It was argued by counsel for plaintiff that the case should be tried under the common law or under the Federal employers' liability act. Counsel for the defendant contended that the case was not in interstate commerce, and should be tried under the Tennessee act, and if tried thereunder the plaintiff's cause of action was barred by the statute of limitations; he therefore moved for a nonsuit, which motion was overruled. The plaintiff, in his pleadings, tendered the following issue: "What damages, if any, is plaintiff entitled to recover of the defendant by reason of the negligence of the defendant, as alleged?" The case was tried on the theory that the Tennessee workmen's compensation act applied, and the issues were submitted to a jury to determine what the damages should be under that act. The jury found for the plaintiff in the amount of \$4,300 and the defendant appealed.

The court held that in view of the fact that North Carolina had no workmen's compensation law and there was no provision in the State for the enforcement of an act similar to that in Tennessee which by its language could be enforced only in that State, there

could be no judicial comity. It also held that considering the conflict between the judicial decisions of the different States, such decisions could have but little controlling influence on the courts of North Carolina, and that the instant case should have been tried under the common law as administered in the courts of North Carolina. The verdict as rendered was said to be not sufficient to support a judgment for damages based on a common-law action for negligence. In this connection the court, said in part:

To hold that a citizen of this State, under such circumstances, had no remedy, except that provided by the Tennessee compensation act in force in the State in which he was injured, having been induced to go there to work in an emergency, would be a denial of any remedy in the courts of this State. This court can not so hold.

We have held in *Farr v. Babcock Lumber Co.* (182 N. C. 725, 109 S. E. 833), that, where the contract of employment was made in Tennessee and the employee was injured while working in North Carolina, the Tennessee compensation act did not interfere with the jurisdiction of the superior court in North Carolina.

For the reasons stated, a new trial was ordered.

WORKMEN'S COMPENSATION—FEDERAL STATUTE—INJURY OF FEDERAL EMPLOYEE—RIGHT OF ACTION AGAINST THIRD PARTY—EFFECT OF RECEIPT OF COMPENSATION—*Lassel v. City of Gloversville, Supreme Court of New York, Appellate Division (July 2, 1926), 217 New York Supplement, page 128.*—Hiram J. Lassel was employed by the Federal Government as a mail carrier, and while in the performance of his duties he was injured through the negligence of an agent of the defendant in operating an automobile. He was awarded and paid compensation under the Federal compensation act of September 7, 1916. He then brought action against the defendant to recover damages for personal injuries. The defendant denied the material allegations of the plaintiff and set up two affirmative defenses numbered second and third. In the second defense it was alleged that the plaintiff was injured while in the performance of his duties as a mail carrier and that he was compensated therefor under the Federal compensation act. The third defense reasserted the facts set up in the second defense and further asserted that the plaintiff, by accepting compensation under the Federal act, made an election of remedies inconsistent with the remedy now sought to be enforced. The plaintiff moved to strike out the second and third defenses, but the motion was overruled and the plaintiff appealed.

The court referred to the Federal compensation act of September 7, 1916, and quoted therefrom as follows:

If an injury * * * for which compensation is payable under this act is caused under circumstances creating a legal liability upon some person other than the United States to pay damages therefor,

the commission may require the beneficiary to assign to the United States any right of action he may have to enforce such liability of such other person or any right which he may have to share in any money or other property received in satisfaction of such liability of such other person, or the commission may require said beneficiary to prosecute said action in his own name.

Then, speaking of the plaintiff's right to bring this suit, the court said, in part:

The plaintiff in this case was never ordered by the commission to assign, and has never in fact assigned, his right of action to the United States. Obviously the act contains no provision which would debar the plaintiff from maintaining this action. On the contrary, the act, by providing that the injured employee must, from moneys recovered from a third party as the result of a suit brought by him, reimburse the United States for compensation previously received, necessarily, by implication, sanctions the bringing of such an action by an employee upon his own initiative.

The defendant also contended that, independently of the statute, it was entitled to set up the payment of compensation to the plaintiff by the United States in reduction or mitigation of damages, but the court held that such an argument was not tenable, and in support of its position quoted from the opinion in the case of *Drinkwater v. Dinsmore* (80 N. Y. 390), as follows:

In such cases, proof of the insurance actually paid would not tend to show that the damage claimed was not actually occasioned by the wrongdoer; but it would simply show that compensation had been received by the injured party in whole or in part from some other person—not that the wrongdoer had made satisfaction, which alone could give him a defense.

The court then concluded:

We think that the matter set up in the second and third defenses constituted no defense and was wholly irrelevant.

The order was reversed, with \$10 costs and disbursements, and the motion to strike out granted.

WORKMEN'S COMPENSATION—HAZARDS OF BUSINESS—INJURY TO CLERICAL EMPLOYEE—PROXIMATE CAUSE—*Kent v. Kent et al.*, *Supreme Court of Iowa* (April 6, 1926), 203 *Northwestern Reporter*, page 709.—The plaintiff in this case was employed by the defendant in his grocery store as cashier and bookkeeper only. Her duties were performed on a platform some 8 feet above the main floor of the store, reached by a steep flight of steps with no risers between the steps. A platform scale was standing on the floor of the store beneath the stairway with its arm projecting through, partially covering one of the steps. At the time in question plaintiff, in coming down the steps to answer a telephone call, tripped on the arm of the

scale and was injured. Her claim for compensation under the workmen's compensation act was denied by the deputy commissioner, which order was affirmed by the commissioner. On appeal to the district court, the order was reversed and compensation awarded, from which judgment the defendant appealed. The court in affirming the award, speaking through Judge Vermillion, said in part:

Section 2477m16, Code Supplement of 1913, in force at the time of the injury, provided, in part, as follows:

"In this act unless the context otherwise requires: * * * 'Workman' is used synonymously with 'employee,' and means any person who has entered into the employment of, or works * * * for any employer except * * * those engaged in clerical work only, but clerical work shall not include one who may be subjected to the hazards of the business. * * *"

The statute is not happily worded; but its evident purpose was, and its effect is, to first exclude from the operation of the compensation law as a class employees engaged in clerical work only, and then to extend the benefits of the law to those of the excluded class who, notwithstanding their employment is clerical only, are, nevertheless, subjected to the hazards of the business of the employer.

The inquiry is, therefore, whether appellee's injury was proximately caused by a hazard of her employer's business of conducting a grocery store, as distinguished from a hazard incident merely to her clerical employment.

Appellee's injury was not caused by the stairway alone, but by the combination of the open steps in the stairway and the projecting arm of the platform scale. The scale was a thing in no matter connected with appellee's clerical employment. Obviously, its use was confined to the operation of the grocery business. If or when the scale, in combination with the stairway, constituted or became a hazard, it was a hazard, not of the appellee's clerical employment, but of the grocery business conducted by the employer.

The stairway afforded the only means of reaching or leaving the place where appellee was employed.

Her descent of the stairway with the obstructing scale arm subjected her to a hazard of the employer's business. The mere fact that the telephone call may have been for her personally had no causal connection with her injury.

The judgment was therefore affirmed.

WORKMEN'S COMPENSATION—INJURY—DEATH FROM INTERVENING CAUSE—*Schafer & Olson v. Varney, Supreme Court of Wisconsin (October 12, 1926), 210 Northwestern Reporter, page 359.*—A. F. Varney, a carpenter employed by Schafer & Olson, while in the course of his employment received injuries resulting in a broken leg. He was taken to a hospital, where defective setting necessitated rebreaking and continued treatment. After several weeks he developed smallpox. He was immediately taken home and cared for by his wife, but death from smallpox resulted a short time thereafter.

There was testimony of the physician in charge that the deceased's death was partially induced by his lowered vitality owing to his previous accident. The industrial commission awarded his widow compensation, and the defendants brought an action in the circuit court to review the award. The award was affirmed and the defendant appealed.

Six members of the the supreme court participated in the consideration of the appeal, one having been the circuit judge presiding in the trial below. The six were equally divided as to the conclusion to be reached. Under the established rule, this left the judgment below undisturbed, and it was accordingly held to be affirmed.

WORKMEN'S COMPENSATION—INJURY—GROSS NEGLIGENCE—EX-EMPLARY DAMAGES—COMMON-LAW RIGHTS—*Castleberry v. Frost-Johnson Lumber Co., Commission of Appeals of Texas (April 28, 1926), 283 Southwestern Reporter, page 141.*—J. S. Castleberry sustained injuries while in the course of his employment with the Frost-Johnson Lumber Co., which resulted in the loss of his foot. In due course of administration he was awarded compensation, which he accepted, and thereafter instituted suit in the district court against his employer to recover exemplary damages for alleged negligence. There was judgment for the defendant in the district court, which was affirmed by the court of civil appeals. That court held that the right at common law of an injured employee to recover exemplary damages arising from gross negligence of his employer was by express legislation as well as necessary implication abrogated, and affirmed the judgment of the trial court. The plaintiff brought error. It was contended that the court erred in its holding, for such common-law right was saved to the plaintiff by the last clause of section 7 of article 5246, act of 1917, as follows:

And in such suit brought by the employee or his legal heirs or representatives against such association or employer, such award, ruling, or finding shall neither be pleaded nor introduced in evidence.

The commission of appeals, in its opinion, pointed out that since the civil court of appeals wrote its opinion in the instant case the Legislature of Texas had construed the more or less indefinite and meaningless language of the statute through codifiers appointed by it to iron out such provisions, and as corrected the clause depended upon for recovery by the plaintiff is in part as follows: "Nothing in this law shall be taken or held to prohibit the recovery of exemplary damages by the surviving husband, wife, heirs of his or her body * * *." The word "employee" used in the act was eliminated.

The court referred to the compensation laws of many of the States and cited numerous cases that have arisen therein wherein the facts were similar to those here considered. It then said in part:

The courts of all the States, so far as we have been able to ascertain, seem to hold that all rights of action at common law are abrogated by these compensation acts except where expressly provided otherwise; that is to say, some of the States make definite exceptions in certain respects. But we have found none which authorizes the recovery of exemplary damages by an injured employee arising out of gross negligence.

Under our Texas law employees have all of their original rights when injured through willful acts or omissions. As in other States, when injured by negligence, either ordinary or gross, another plan of compensation has been substituted. We think this has been true under every act of this kind passed in Texas.

For the reason stated the judgments of the district court and court of civil appeals were affirmed.

WORKMEN'S COMPENSATION—"INJURY"—INJURY TO WOODEN LEG—*London Guarantee & Accident Co. (Ltd.) v. Industrial Commission, Supreme Court of Colorado (October 4, 1926), 249 Pacific Reporter, page 642.*—William Chambers, an employee of the Weicker Transfer & Storage Co., was awarded compensation for the accidental injury of his wooden leg. From that award the defendant appealed to the district court, which affirmed the award. The employer and insurer brought a writ of error.

The Supreme Court of Colorado reversed the judgment of the lower court with directions to disaffirm the award. Judge Denison said that "compensation can be awarded for personal injuries only, which means injury to the person. A wooden leg is a man's property, not part of his person, and no compensation can be awarded for its injuries."

Judgment reversed with directions to disaffirm the award.

WORKMEN'S COMPENSATION—INJURY—LOSS OF EYE—DISFIGUREMENT—INDEPENDENT AWARDS—*Sustar v. Penn Smokeless Coal Co., Supreme Court of Pennsylvania (February 8, 1926), 132 Atlantic Reporter, page 345.*—Clause (c) of section 306 of the workmen's compensation act of 1915, establishing a specific and exclusive schedule of compensation for all disabilities or permanent injuries resulting from the loss of certain members of the body, such as a hand, an arm, a foot, a leg or an eye, was amended by the act of May 20, 1921, section 1, so as to provide for serious and permanent disfigurement of the head and face of such a character as to produce an unsightly appearance, and such as is not usually incident to the employment, 60 per cent of the wages, for not to exceed 150 weeks.

Andy Sustar suffered an injury in the course of his employment on March 1, 1922, which resulted in the loss of his right eye and the serious disfigurement of his face, wholly apart from the injury to the eye. The referee awarded him compensation for 275 weeks—125 weeks for the loss of the eye and 150 weeks for the disfigurement. The board reduced the allowance for disfigurement to 75 weeks, and on appeal to the court of common pleas it was disallowed altogether. The plaintiff then appealed to the superior court. The question presented was whether or not the new paragraph above referred to applied to and provided for additional compensation for serious and permanent disfigurement when in the same accident which caused the loss of a body member.

The court held that the new paragraph did apply in such cases and in its opinion said in part:

Under our view of the law, the legislature classified certain permanent injuries under section 306 (c) and provided that for an injury included therein the employee should be paid compensation for either a specific number of weeks (as for the loss of a member), or a period to be determined by the board, according to the extent of the injury, not exceeding 150 weeks (as for permanent disfigurement); that each injury was thus valued, irrespective of the actual loss of earnings or incapacity to labor, and that for two or more such injuries occurring at the same accident the employee is entitled to be paid for the aggregate of the periods so specified or determined.

The judgment of the court of common pleas is reversed, and the record is remitted to said court with directions to enter judgment in favor of the claimant for \$2,400, representing 125 weeks for the loss of the right eye and 75 weeks for permanent disfigurement, at \$12 per week; payments heretofore made to apply thereon; costs to be paid by appellees,

The defendant appealed to the supreme court, which adopted the opinion of the superior court and affirmed the judgment rendered therein.

The fact that an eye is useless from an industrial standpoint is held by the Supreme Court of Minnesota to be no bar to an award under the compensation act of that State, which prescribes a fixed benefit for the loss of specified members. In the instant case the employers had paid full compensation for the loss of use of the eye, and contended that they could be required to make no further payments, but the court held the language of the law to be "plain," so that it was "constrained to give effect" thereto, and affirmed the award made by the industrial commission. (*Shaughnessy v. Diamond Iron Works* (1926), 203 N. W. 183.)

Where an eye was defective but of measurable usefulness in avoiding objects between the workman and the light, being rated as "of some considerable and practical use industrially," an injury causing its enucleation was compensable without modification on account of the previous condition of defective vision. In so holding, the Supreme Court of Michigan affirmed an award made by the department of labor and industry of the State. (*Hayes v. Motor Wheel Corp.* (1926), 203 N. W. 44.)

In connection with the foregoing case may be noted a decision of even date handed down by the same court. Here a workman suffered injury to an eye, causing 87 per cent loss, and was awarded compensation during disability. He returned to work at the same wages, and the employer asked to have payments stopped, while the employee asked to be compensated as for the loss of an eye. An award was made by a deputy but reversed by the department, and payment under the agreement was stopped. The supreme court affirmed the latter finding, saying that it would be "fallacious" to hold that the plaintiff had lost an eye, that it "still renders him service, and he still has vision to lose before it can be said he has lost his eye." (*Crane v. Aetna Portland Cement Co.* (1926), 208 N. W. 45.)

WORKMEN'S COMPENSATION—INJURY—LOSS OF ONE PHALANX OF FINGER—CONSTRUCTION OF STATUTE—*Bell v. Merchants' Cotton Oil Co., In re Bell, Supreme Court of Louisiana (February 1, 1926), 107 Southern Reporter, page 436.*—Fred Bell, an employee of the Merchants' Oil Co., suffered the loss of one phalanx of the third finger and recovered judgment under the workmen's compensation act. The judgment was reversed by the court of appeal and the suit dismissed. The claimant applied for certiorari or writ of review.

The question in the case was whether or not the act allowed compensation for the loss of only one phalanx of a finger. Subsection (d) of section 8 of the act provides for compensation for the loss of a finger or fingers and for the loss of two phalanges of any one finger. Subsection (e) of the same section makes provision for injuries not falling within any of the provisions already made, specifying that if an employee is seriously permanently disfigured about the face or head, or if the usefulness of a member or physical function is seriously permanently impaired, the court may allow such compensation as is reasonable in proportion to the compensation theretofore specifically provided for the disability specified, not to exceed 65 per cent of the weekly wages for 100 weeks. Subsection 3 of the same section declares that the maximum compensation shall be \$20 and the minimum \$3 per week, notwithstanding anything to the contrary in the statute.

It appears that the lower court undertook to allow under subsection (e) such compensation as was reasonable in proportion to the compensation specifically provided in cases of specific disability named in the act. This would have been proportionately less than \$87.75 specifically provided for the loss of two phalanges of the finger.

The supreme court, in its opinion delivered by Judge O'Niell, held that the court could not under subsection (e) fix the compensation at less than \$300, since according to subsection 3 the minimum allowance was \$3 per week, and under subsection (e) the term of payment was fixed at 100 weeks. The court then said in part:

Our conclusion is that subsection (e) does not allow compensation for the loss of only one phalanx of a finger, even though compensation

for such injury is not provided for in any previous provision of the statute, and even though the case is one where the usefulness of a member, or a physical function, is seriously impaired. In a sense, the case is one "not falling within any of the provisions already made" in the statute. But the case is one in which, by necessary implication, the previous and specific provisions of the statute do not allow compensation. The provisions of subsection (e), which are general in character, were not intended to allow compensation for an injury for which other and specific provisions of the statute, by necessary implication, denied compensation. The language of subsection (e) is not peremptory, for it says:

"The court may allow such compensation as is reasonable in proportion to the compensation herein above specifically provided in cases of specific disability above named," etc.

If the court cannot allow such compensation as is reasonable in proportion to the compensation specifically provided for the disabilities named without violating other and mandatory provisions of the law, and without producing an anomalous result, the statute does not compel it.

Our conclusion is that the judgment of the court of appeal is correct.

The judgment was therefore affirmed, at relator's cost.

WORKMEN'S COMPENSATION—INJURY—NOTICE—LIMITATION—PREJUDICE—*Itzkowitz v. Finer & Bachrach, Supreme Court of New York, Appellate Division (November 23, 1926), 218 New York Supplement, page 272.*—Section 18 (as amended by ch. 634, Acts of 1918) of the workmen's compensation law of New York provides that notice in writing of an injury for which compensation is payable shall be given to the commission and to the employer within 30 days after the accident causing such injury. In the instant case the board excused the failure of the claimant to give the required notice as follows:

The employer was not prejudiced because, at a hearing held upon the claim for compensation filed by Abraham Itzkowitz, Jacob Finer, one of the employers in the copartnership that employed him, testified that the employer was not prejudiced by the failure to give written notice of injury and that he excused the failure to give written notice of injury.

From an order of the board in favor of the claimant the employer and insurance carrier appealed.

The court held that the somewhat prevalent practice of some referees of asking the employer or his agent if the employer has been prejudiced by the failure to give the statutory notice could not be sustained. Judge Cochrane, speaking for the court, said in part:

A further reason why such testimony is improper is because the question of prejudice depends on a determination of the facts in each particular case, and of the law applicable to such facts, and it is not

the province of a witness to determine either the facts or the law. It is for the board, and not the witness, to draw the inference of prejudice or want thereof.

The award was reversed and the claim remitted, with costs against the State industrial board to abide the event.

The Supreme Court of Tennessee excused a workman from the consequences of delay in giving notice where he had called his foreman's attention to a supposed trivial injury, and had been directed by the latter to the employee in charge of first aid, which he received. Serious conditions developed, requiring amputation of a finger, but compensation was denied in the trial court on account of failure to give notice. The law excuses failure if a reasonable excuse appears, and the supreme court of the State found such excuse in the circumstances stated above, and the ignorance, without apparent fault, of the seriousness of the injury. (*Ware v. Illinois Central R. Co.* (1926), 281 S. W. 927.)

Where the results of an injury to an eye became apparent only after several months, the Supreme Court of Washington held that the limitation for giving notice ran from the development of the injury and not from the date of the accident causing it, affirming the superior court's decision which reversed the industrial commission, which had held the claim to be barred by lapse of time since the accident. (*Stolp v. Department of Labor and Industries* (1926), 245 Pac. 20.)

WORKMEN'S COMPENSATION—INJURY—OCCUPATIONAL DISEASE—
 INHALING FOREIGN MATTER—PREEXISTING DISEASE—*Dumbrowski v. Jennings & Griffin Co.*, *Supreme Court of Errors of Connecticut* (January 28, 1926), 131 *Atlantic Reporter*, page 745.—Carl Dumbrowski had been employed by the defendant company for 18 years, all of which time his work consisted of grinding steel implements upon a wet sandstone wheel. In the course of his employment, and arising out of it, the claimant inhaled particles of foreign matter flying from the wheel, and these became embedded in his lung tissue, causing a condition of pneumoconiosis, which was first discovered in October, 1923. As a result of the pneumoconiosis the resistance of the claimant to infection was lowered, and as a result of the lowered resistance pulmonary tuberculosis developed sometime between October, 1923, and April, 1924, totally incapacitating claimant. The commissioner awarded full compensation under the occupational disease amendment of chapter 142, Acts of 1919, as amended by chapter 306, Acts of 1921. Defendant appealed on the ground that the commissioner erred in so ruling as to place on it the burden of proving that the pneumoconiosis developed prior to July 1, 1919 (effective date of act); in not ruling that claimant, to get full compensation, must prove that the lowered resistance to infection from which the tuberculosis developed began to exist at a date on or after July 1, 1919; in allowing any compensation; in treating the act of 1919 as retroactive; and in denying defendant's motion to correct the finding.

In affirming the award the court said that under the workmen's compensation act of July 1, 1919, negligence and assumption of risk, etc., were abolished, and all that is required of the plaintiff to entitle him prima facie to full compensation is to establish the following facts: (1) An abnormal condition of his body arising after July 1, 1919, out of and in the course of his employment; (2) that this condition produced an incapacity to work for the requisite statutory period; (3) that this condition of incapacity to work was caused by accident or disease, which, however, need not be traced to a definite happening or event.

The finding and award disclosed that these essentials were established by plaintiff.

This ruling places the burden of proof upon the defendant, after a prima facie case has been established, to show such facts as will defeat or diminish recovery. It was said that this is in accord with reason and justice, is supported by the great weight of authority, and is in harmony with General Statutes, paragraph 5364, as to the conduct of compensation cases before a commissioner.

We hold, therefore, that the burden of proof rested upon the defendants to prove that a preexisting disease existed in the plaintiff prior to July 1, 1919, which barred him from the recovery of full compensation.

The superior court was advised to sustain the award of the commissioner.

WORKMEN'S COMPENSATION—INJURY—PREEXISTING CONDITION—CAUSAL CONNECTION—EVIDENCE—*Gausman v. R. T. Pearson Co.*, *Supreme Court of Pennsylvania (November 23, 1925)*, *131 Atlantic Reporter*, page 247.—David H. Gausman was awarded compensation for personal injuries alleged to have been sustained in the course of his employment. The award was affirmed by the court of common pleas of Allegheny County, and defendant appealed. Gausman, who was 74 years old and afflicted with chronic nephritis and arteriosclerosis, was engaged by the defendant in laying a floor on the morning of July 14, 1923, and about noon of that day was found wandering around outside of the building in an abnormal condition. He soon recovered sufficiently to care for his tools, and, it being quitting time (Saturday noon), he went home by street car. Later in the day, while returning home from the barber shop he was stricken with apoplexy, which it was claimed resulted from heat exhaustion suffered on the morning of the day in question. It appeared that the day was not excessively hot, that the plaintiff was working alone at light work and that he was not subjected to any unusual exertion. It also appeared that about five days previously he was found in a condition similar to that suffered on the day he was stricken. The court reversed the award, and in the course of its opinion said in part:

Before one ailment can be attributed to another, the existence of the latter must be shown. Here claimant's case fails, for the finding of heat exhaustion is not sustained by the proof. The evidence relied upon to support this finding is that of Doctor Frederick, and while he testified he diagnosed the case "as hemiplegia [paralysis of one side], following a heat exhaustion," he did not see claimant until after the latter had been stricken in the evening, and knew nothing of his condition at noon except by report. The doctor further said, in effect, that claimant's entire affliction that day may have been of apoplectic origin. As to that, he testified:

"Q. In your opinion, was this a sunstroke, or heat exhaustion, or stroke of apoplexy? A. The apoplexy very suddenly followed it [the heat exhaustion] very promptly; or the apoplexy may have been right with it. It may have been the apoplexy instead of heat exhaustion, that produced it."

The doctor also mentioned the presence of certain symptoms as common to both, and said he discovered no paralysis until the next day (Sunday). From his evidence it is equally probable that the disability suffered by claimant at the noon hour was apoplectic as that it was heat exhaustion, and, from all the other evidence in the case, even much more so. Furthermore, the burden of proof is not met by the testimony of a witness when so conflicting as to render any inference drawn therefrom a mere guess.

Treating what happened to claimant that Saturday noon as the beginning of the apoplectic disturbance and a part thereof, it was not shown to have been an accident within the meaning of the workmen's compensation law. To constitute an accident, there must be some untoward occurrence aside from the usual course of events. Such stroke will be treated as an accident when resulting from a shock, strain, or other injury to the physical structure of the body [citing cases].

The judgment was therefore reversed, and the award of the referee set aside.

A similar conclusion was reached by the Court of Appeals of Kentucky in a case (*Wallins Creek Collieries Co. v. Williams* (1925), 277 S. W. 234) where a mine superintendent assisted a blacksmith to shoe a recalcitrant mule, becoming quite warm in the effort. He soon complained of being sick, was taken home, and a physician called, who found him suffering from pains in his heart. He died that evening. The industrial board held that the death was the result of an accident arising out of and in the course of the employment, and the circuit court affirmed the award. The employer claimed that the death was due to angina pectoris, a well-defined and certain symptom of a diseased condition of the heart. The court of appeals found no evidence to support the claim of accidental injury, there certainly being nothing of a traumatic nature, and the judgment was reversed, with directions to dismiss the claim.

On the other hand, the Supreme Court of New York, appellate division affirmed an award allowed a school janitor who hastened to the schoolhouse, in his care on the occasion of an alarm of fire. Haste and excitement caused an acute dilation of the heart, already weakened by chronic myocarditis, death following. Over the contention that there was no accident, the court ruled in the claimant's favor, saying that the case presented the elements of an accidental injury—a mishap unlooked for, unexpected, and without design on the part of the deceased. "The excitement to which Thompson was subjected and

his activity undoubtedly hastened his death, brought his diseased heart condition to the climax. The overexcitement and exertion were the real proximate cause of his death. The acute dilation of the heart was the accidental injury." (*Thompson v. City of Binghamton* (1926), 218 N. Y. Supp. 355.)

The Supreme Court of Utah sustained an award allowed in the case of a workman who struck his knee with a hammer, causing no visible abrasion, but followed by discoloration and swelling. An abscess later developed in the knee, and afterwards one in the hip, which incapacitated him. It was found that the hip contained the same kind of bacteria as found in the knee. Medical opinions as to the causal connection differed, one contention being that the claimant's condition was due to boils, from which he had suffered some months prior to the injury. However, the award was made as applied for, and affirmed by the court on the ground that the facts as to the infections and the expert opinion evidence furnished a substantial basis, a "satisfactory foundation," for the finding that the injury was the cause of the disability. (*Denver & R. G. W. Ry. System v. Industrial Commission* (1926), 243 Pac. 800.)

WORKMEN'S COMPENSATION—INJURY—PREEXISTING DISEASE—NOTICE—EVIDENCE—APPORTIONMENT OF AWARD—*Elkhorn Coal Co. v. Combs, Court of Appeals of Kentucky* (May 21, 1926), 283 *Southwestern Reporter*, page 1007.—Harlan Combs was employed by the Elkhorn Coal Co. On November 14, 1923, while engaged in snaking logs down the mountain side with a team, a large rock that had been dislodged by one of the logs came crashing down the hillside and struck him, knocking him down. His foreman, Town Hall, and also some of his colaborers, were present at the time and saw the accident. They went to where Combs was lying and assisted him to his feet. After a half hour or so he went ahead with his work. He worked the whole day following the accident and returned to work on the succeeding day, but quit before night and never returned to his labor. He was examined by the defendant's physician, who made a written report of the accident. In the latter part of December or the first part of January Combs became quite ill, his vision was much affected, and he suffered greatly with his back. He was examined jointly by his personal physician, Doctor Sumner, the company's doctor, Doctor Pigman, and a Doctor Bach. They recommended that Combs go to Louisville at once for an examination and treatment in a hospital. The examination made at the hospital showed that he was suffering from an acute stage of Bright's disease. He died in the early part of February following his injury. A post-mortem examination made by Dr. P. Y. Pursiful and Doctor Sumner showed the right kidney considerably discolored in its lower half and containing a lot of pus. They decided that these conditions brought about the death of Combs. The compensation board made an award to his widow and infant children, which was affirmed by the circuit court, and the defendant appealed. Two grounds were urged for

reversal: (1) That there was no evidence in the record to sustain the findings of the board that Combs' death was caused by the blow he received in November, and (2) that notice was not given to the company in accordance with sections 4914 and 4915 of the statutes.

It was also suggested by the defendant that if the court concluded that there was some evidence to support the board's finding then it should conclude that such evidence demonstrated that Combs' death was caused in part by the injury he received and partly by a pre-existing disease and that the award be apportioned accordingly. The court in affirming the judgment of the lower court said in part:

As to the first contention, it is settled that, if there is any competent evidence to sustain the findings of fact by the compensation board, such findings are conclusive in the absence of a claim of fraud or mistake. There being no such claim here, the only question to determine is whether or not there was any competent evidence to sustain the board's findings.

After citing the facts as set forth above, the opinion continued:

Although appellant introduced a great deal of evidence to the contrary of what appellee had proved, yet there being some competent evidence, as shown, on which the board could rest its findings of fact, such finding is conclusive.

The evidence did not show that Combs' death was caused by a combination of a preexisting disease and a traumatic injury. Appellee's evidence established the sole cause as a traumatic injury. Appellant's evidence established the sole cause as a disease unaccompanied by traumatic injury. Under the proof it was either one or the other, but there was no proof that it was a combination of both. But, had there been, there was, as above shown, evidence to establish that the sole cause of Combs' death was the traumatic injury, and, the board so finding, its finding is conclusive.

So far as the notice of Combs' injury to his employer is concerned, the evidence shows that Town Hall, the foreman of Combs, witnessed the accident and gave him immediate help, and that on the succeeding day the superintendent learned of it. Dr. Owen Pigman made a written report of this accident for appellant on blanks furnished the compensation board. A copy of this report is in the record, and bears date December 3, 1923, just two weeks after the accident. The blank in this report headed, "Give an accurate description of the nature and extent of injury," is filled out: "Bruise in right lumbar region followed by acute nephritis."

In considering sections 4914 and 4915 of the Statutes of Kentucky relied upon by the defendants, the court cited *Wilburn v. Auto Exchange* (198 Ky. 29, 247 S. W. 1109) and *Bates & Rogers Construction Co. v. Emmons* (205 Ky. 21, 265 S. W. 447), wherein these sections were construed and held in effect to mean that any fact or circumstance which brings to the attention of the employer or his principal representative knowledge that the employee has received an injury will be sufficient notice.

The opinion concluded as follows:

All this being true, as appellant clearly had knowledge of the accident and injury, the want of immediate notice to it by Combs was not a bar to these proceedings.

It results, therefore, that the judgment of the lower court, affirming the award of the workmen's compensation board, is correct, and it is hereby affirmed.

A case involving the same principle was before the same court (Wallins Creek Collieries Co. v. Jones et al. (1926), 283 S. W. 1067), where the employee, Jones, was injured while lifting a heavy car. The evidence disclosed that he was "a well and able-bodied man before the accident," but that subsequent thereto he was found to be suffering with tuberculosis. The board found that he was suffering from a preexisting disease that had been lighted up by the accident, and granted an apportioned award based on the two causes, which was affirmed by the court.

WORKMEN'S COMPENSATION—INJURY ARISING OUT OF EMPLOYMENT—EMPLOYEE KILLED BY POLICEMAN—*Sure Pure Ice Co. v. Industrial Commission et al., Supreme Court of Illinois (February 18, 1926), 150 Northeastern Reporter, page 909.*—Frank Manthey was employed by the Sure Pure Ice Co. as chief engineer. His regular hours were from 8 o'clock a. m. to 4 o'clock p. m., but he also worked at any hour when called or when there was a breakdown of the machinery. He was frequently at the plant at night in the discharge of his duties. On the night of his death the regular night engineer was off duty, and along about 1 or 2 o'clock Manthey went to the plant to see if everything was all right. He went into the building and remained there until some time after 3 o'clock when he came out, and was standing on the sidewalk talking to a Mr. Fountain, who had come to the plant with him. About this time a squad of policemen drove up in an automobile, and Manthey started to walk away toward the plant; the officers called him to halt when he was about 10 feet away, but he kept on walking. One of the officers called on him to halt and fired into a pile of salt near him. Officer Kennedy then called on him to halt, but he walked on to the door of the plant. Kennedy then shot and killed him. His widow was granted an award by the industrial commission, which was affirmed by the circuit court of Cook County. The defendant appealed on the ground that the commission and the court erred in their findings that the deceased met his death by an accident arising out of his employment. Chief Justice Dunn delivered the opinion of the court and said in part:

The injury must be incidental to the nature of the employment, and it is not enough that the presence of the injured person at the place of the injury is because of his employment, unless the injury itself is the result of some risk of the employment. If the injury is sustained by reason of some cause having no relation to the nature of the employment, it does not arise out of the employment.

After citing the case of *City of Chicago v. Industrial Commission* (127 N. E. 49; 292 Ill. 406; see Bul. No. 309, p. 275), the court said:

In the case last cited we held that the injury there received at the hands of a fellow workman did not arise out of the work, but as the result of a quarrel over a private matter which was not connected with the employment, and therefore there could be no award of compensation.

The opinion continued:

There was no causal connection between the duties of Manthey and his shooting by the policeman. Manthey's duties required him to be at the place where he was at the time he was killed. The duties of the policemen required them to guard and protect from thieves, robbers, and burglars their section of the city, including the plant of the plaintiff in error. Their attention, as the evidence shows, had been particularly called to the plant of the Certified Ice Cream Co., adjoining the plant of the plaintiff in error, because of four complaints which had been received by the police of stealing from that company, but their duty extended to guarding the whole district. What happened to Manthey might as well have happened to any man employed at night anywhere in the section guarded by these policemen. The cause of his death arose from an agency which was entirely outside of his employment, and there was no causal connection between the agency and the employment. Had he walked away anywhere in this police district from these officers after they had ordered him to halt he would probably have been shot as he walked. He was only about 13 feet distant from the policeman who shot him, and was walking and not running. The officers were in sufficient force to overpower him, but such considerations have no place in this case.

The judgment was reversed and the award set aside:

The Supreme Court of Alabama affirmed an award in behalf of the widow of a truck driver who was killed while in the course of his employment by an accidental shot by a boy who was shooting at sparrows. To the contention that the injury did not arise out of the employment the court replied that, while the risk may have been external to the employment, still the employment caused the exposure to the risk, so that the award was justified. (*Boris Const. Co. v. Haywood* (1925), 106 So. 799.)

WORKMEN'S COMPENSATION—INJURY ARISING OUT OF EMPLOYMENT—ERYSIPELAS—PROXIMATE CAUSE—*Bagley's Case*, *Supreme Judicial Court of Massachusetts* (June 30, 1926), 152 *Northeastern Reporter*, page 882.—Charles A. Bagley, 80 years of age, was employed as a night watchman by the Marine Hardware Co. It was his duty among other services to sweep the floors every night and deposit the sweepings in an old coal bin near the boiler room. The boiler room was dimly lighted and the bin was dark. On April 27, 1925, the sweeping having been completed and the refuse deposited, the decedent fell on the floor and suffered abrasions from which erysipelas

developed, causing his death May 2, 1925. Harry G. Bagley made claim for compensation under the workmen's compensation act for the death of his father. He was granted an award by the industrial accident board, which was affirmed by the superior court. The insurer appealed, contending that the accident did not arise out of the decedent's employment. The court, on review, quoted from the evidence adduced at the hearing before the board as follows:

The only medical evidence was presented by the claimant, and the doctor testified that he examined decedent's face and noticed that there were marked abrasions and that blebs had formed on his face. The deceased gave the doctor a history, saying "he fell or tripped over—or something—at the shop; he fell, striking on his face on the floor of the room." The doctor further testified that the decedent got the infection when he fell on the dirty floor and that that was a typical case of what would cause erysipelas. There was no direct evidence as to what caused the deceased to fall except his own statement before he died that he tripped and fell.

The question, whether the fall was entirely due to natural weakness because of age, as the insurer asserts, was on record one of fact, and the general finding in favor of the dependent must stand.

The decree was therefore affirmed.

WORKMEN'S COMPENSATION—INJURY ARISING OUT OF EMPLOYMENT—PREEXISTING CONDITION—EPILEPSY—*Marion Machine Foundry & Supply Co. v. Redd, Supreme Court of Oklahoma (November 10, 1925), 241 Pacific Reporter, page 175.*—The claimant in this case was an employee of the company named, engaged at work near which a gas flame was burning for the comfort of the claimant and other workmen. "Being seized with an epileptic fit, to which he was subject, he fell in such way that his hand was burned by the flame before he could be removed by other workmen."

This was the finding of the commission, and it was held by the court to be sustained by the evidence. However, the commission had granted an award on account of the resultant disability, and the company brought proceedings to vacate the award. The court reversed the commission on the ground that the injury did not arise out of the employment. "But for the epileptic seizure there would have been no injury."

The commission was consequently directed to vacate the award and dismiss the proceedings.

The Supreme Court of New York, Appellate Division, had before it a case in which a workman receiving benefits for permanent total disability was killed by falling from a ladder which he was climbing as a matter of curiosity or interest in a building in course of construction, but with which he was in no way employed. It was held that the death was due to vertigo, and if this was due to his prior

injury it would be compensable. The denial of the widow's claim was accordingly reversed, and the case remanded to the industrial board for a determination of the matter of causal connection. (*Colvin v. Emmons & Whitehead* (1926), 215 N. Y. Supp. 562.)

(A memorandum furnished by the board stated that the causal connection was found to exist, and benefits were allowed accordingly.)

WORKMEN'S COMPENSATION—INJURY ARISING OUT OF EMPLOYMENT—VISITING DURING LUNCH TIME—*Babineau's Case*, Supreme Judicial Court of Massachusetts (January 5, 1926), 150 Northeastern Reporter, page 4.—Antoine Babineau was employed by the New Bedford Spinning Co. as a sweeper in the spinning room located on the third floor of the building. The boiler room was located on the first floor of the building, and deceased and other employees were accustomed to congregate in that room during the lunch period. On March 6, 1923, the deceased, while sitting in the boiler room, was injured by the explosion of a boiler and died from the result of his injuries. His widow was awarded compensation and the superior court of Suffolk County affirmed the award, from which judgment the defendant appealed.

The court held that the deceased had no contract of employment whereby his presence was required in the boiler room, but that he was there during his lunch period, a time that he was free to go and come as he pleased, free from the control of his employer, and therefore the employer could have no reasonable cause to expect that he would meet with such an accident. The court, speaking through Judge Sanderson, said in part:

The mere fact that the accident occurred on the employer's premises is not enough to establish liability. (*Hallett's Case*, 230 Mass. 326, 119 N. E. 673.) The employee voluntarily went to the boiler room for his own comfort or pleasure at a time when, so far as the evidence discloses, the employer had no control over him, and the employment cannot be said to be a proximate contributing cause of the injury [citing cases].

The decree awarding compensation was therefore reversed and a decree entered in favor of the insurer.

A salesman who used his own automobile in his business went hunting early one morning, and afterwards went about his daily duty. At lunch time he noticed the gun still in the car and started to remove it, when he shot himself, injuring his hand. The trial court denied compensation, but the court of civil appeals allowed it. The Commission of Appeals of Texas reversed this allowance, saying that the presence of the gun was in no way related to the employer's business, and the entire incident was disconnected therewith. (*Etna Life Ins. Co. v. Burnett* (1926), 283 S. W. 783.)

WORKMEN'S COMPENSATION—INJURY ARISING OUT OF AND IN THE COURSE OF EMPLOYMENT—ACCIDENT—DEATH FROM HEMORRHAGE—PREEXISTING CONDITION—*Frandila v. Department of Labor and Industries, Supreme Court of Washington (February 4, 1926), 243 Pacific Reporter, page 5.*—Gust Frandila who was 60 years old at the time of his death, had been a coal miner, but had been out of employment for some eight months, his only work during that period consisting of chopping firewood for his home. On the 2d day of June, 1924, he was employed in digging a ditch for a sewer in the streets of Hoquiam. He went to work at 1 o'clock in the afternoon and about three hours later was seen by the foreman to stop chopping on a root at the bottom of a ditch 4½ feet deep, lean against the side of the ditch, and collapse. He was assisted to the sidewalk, where he died in about 15 minutes. His widow made claim for compensation under the workmen's compensation act, which was disallowed by the department of labor and industries. Its decision was reversed by the superior court, and from that decision the department of labor and industries appealed on the ground that the death of the deceased was not the result of a fortuitous event but was occasioned by the hardening of the arteries sufficiently advanced to have caused death under ordinary exertion.

The court, in disposing of this case, said in part:

The question, then, is whether the testimony in this case shows a fortuitous event.

It is plain from the evidence that the hardened arteries, coupled with overexercise in the course of employment, caused either the hemorrhage or embolism. The chopping of the root was a definite and particular occurrence which was the contributing, proximate cause of the death. The question of whether an injury has been the result of an accident or an accident arising out of the employment, which are narrower terms than fortuitous event, has been considered by many courts, and the result of these decisions seems to be that an accident exists when a man undertaking work is unable to withstand the exertion required to do it, whatever may be the degree of exertion used or the condition of the workman's health.

It is not necessary in order for a person to recover compensation as an injured workman that he must have been in perfect health at the time he received the injury. That is not the intent of the act, and it cannot reasonably be given any such interpretation. Where a workman, not in perfect health, during the course of his employment makes an extra exertion, which, in addition to his infirmity, causes an injury, such injury is a fortuitous event and brings him within the operation of the compensation.

The judgment was affirmed.

On the same day the court had before it for review a similar case (*Cole v. Department of Labor and Industries, 243 Pac. 7*), involving the same principles, in which an award had been granted by the superior court. Here a man, "not conscious of being seriously afflicted physically," caused a rupture in the region of his heart by exerting himself to the utmost in pushing a piece of timber, permanent partial disability following. The award was contested mainly on the

grounds that the injury to Cole was not the result of an accident but was caused by a culmination of a progressive affliction consisting of a diseased heart and arteries, accompanied by high blood pressure. The court affirmed the judgment of the superior court that the disability was caused by accident, citing the case of *Frandila v. Department of Labor and Industries*, *supra*, as controlling.

WORKMEN'S COMPENSATION—INJURY ARISING OUT OF AND IN THE COURSE OF EMPLOYMENT—ACCIDENTAL DISCHARGE OF OFFICER'S REVOLVER—HEARSAY EVIDENCE—*McDaniel v. City of Benson et al.*, *Supreme Court of Minnesota (May 28, 1926)*, 209 *Northwestern Reporter*, page 26.—Leith H. McDaniel was a police officer of the city of Benson, Minn., and although designated as chief, he was in fact the only police officer of the city. At about 4 o'clock in the afternoon of May 26, 1925, he went to his home to get his revolver. He placed it in a shoulder holster and in stooping over for some purpose the revolver fell out of the holster to the floor and was discharged, the ball shattering the bones of his right leg between the knee and the ankle. He died three weeks later from blood poisoning resulting from the wound. His widow was awarded compensation by the referee, whose award was affirmed by the industrial commission. The defendant brought certiorari to have the findings of the referee and the board reviewed. It contended that it was error to admit testimony of statements made by the deceased as to the manner in which the accident happened. It also objected to the findings that the injuries of the deceased arose out of and in the course of his employment.

It appeared that McDaniel was alone at the time of the accident; that he dragged himself to the telephone and called a doctor and then called Mrs. Minikas, who lived two or three blocks away, and asked her to call his wife, saying that he had shot himself. She called Mrs. McDaniel and then ran to the McDaniel home. While the doctor dressed the wound and stopped the flow of blood McDaniel told them briefly how the accident happened. He also told attendants at the hospital how it happened. It was the testimony of these persons that was objected to.

The court, in affirming the findings of the referee as affirmed by the commission, said in part:

How much of this testimony offended the hearsay rule is not important, for the statements were all to the same general effect, and at least those made to the doctor and Mrs. Minikas immediately following the accident were properly received in evidence. Furthermore, there is nothing which would justify saying that the injuries were intentionally self-inflicted, and the presumption is to the contrary.

That the deceased sustained his injuries during the hours of service is beyond question. He was the sole police officer of the city, and his service required him to perform all the duties usually performed

by such officers. His field of service embraced the entire city. At times such officers have occasion to use weapons, and may properly carry them at any time. The deceased kept his weapons at his home when not carrying them. If, when on duty unarmed, he concluded that he ought to have his revolver, it cannot well be said that he was outside the line of duty in going to the place where it was kept to get it.

The award was therefore affirmed.

In a case before the Supreme Court of Utah, a compensation award was affirmed where an officer dropped his revolver into a ditch while on duty, and was cleaning it at home, during which operation it was accidentally discharged, injuring his knee. The city contended that the officer was not at the time on duty or acting as an officer. The court suggested that this contention would not be good if he had undertaken at once to clean the gun where he was, nor if he had gone to the town hall, if there was one, and there done the work. There being no other place convenient than the one chosen, "we thus do not see wherein, in cleaning the gun at his house, the officer was any less in the course of his employment than if he had undertaken to clean it at some other place." (*Beaver City v. Industrial Commission* (1926), 245 Pac. 378.)

WORKMEN'S COMPENSATION—INJURY ARISING OUT OF AND IN THE COURSE OF EMPLOYMENT—ACT OF GOD—EMPLOYEE KILLED BY LIGHTNING—*United States Fidelity & Guaranty Co. v. Rochester et al.*, *Court of Civil Appeals of Texas* (February 20, 1926), 281 *Southwestern Reporter*, page 306.—W. C. Rochester was employed by the Lone Star Gas Co. On July 30, 1924, while engaged along with several other employees of the company in excavating a pipe line, and while using a steel shovel, he was struck by lightning and instantly killed. The industrial accident board granted his widow and two minor children an award, and the insurance carrier appealed to the district court, which affirmed the findings of the board, and the insurer again appealed. It was not disputed that the employee's death was caused by being struck by lightning, but it was contended by the insurer that he was killed by an act of God and it was not therefore liable under the terms of article 5246-82 of the workmen's compensation act of the State of Texas, which, so far as is here pertinent, reads as follows:

The term "injury sustained in the course of employment," as used in this act, shall not include: (1) An injury caused by the act of God, unless the employee is at the time engaged in the performance of duties that subject him to a greater hazard from the act of God responsible for the injury than ordinarily applies to the general public.

It was testified that the place where the deceased was working was flat open country with the exception of a few trees 150 to 200 yards away; that the pipe line was 18 inches under ground; that it was dry, and that there was no warning evidence of lightning or rain, but that suddenly a bolt of lightning struck the deceased, splitting the handle of the shovel he was working with and causing his death. The testimony of J. L. Kelley, an expert witness, was to the effect that

one standing over a pipe line with a steel shovel in his hands, as was the deceased, would be in a more hazardous position and more liable to be struck by it than would others who were several feet away from him. The admission of Kelley's testimony was objected to, and the action of the court in overruling the objection was made the basis of this appeal.

The court, in affirming the judgment of the lower court, said in part:

Under the rules so indicated, we feel unable to say that the witness Kelley was incompetent and that the trial court erred in overruling appellant's objection to his want of qualification; and, if we are correct in this, we think we must further hold that the evidence and facts of which we may take judicial notice are sufficient to sustain the jury's finding and support the trial court's judgment following it.

It is to be observed that in the case before us there is a distinct finding by both the accident board and the jury to the effect that the deceased at the time of his injury "was engaged in the performance of duties that subjected him to a greater hazard from the act of God, responsible for the injury, than ordinarily applies to the general public." And this finding, under the authorities and under well-recognized rules that we must follow, cannot, we think, be said to be unsupported by the evidence, or set aside.

Where a workman painting buildings in an amusement park sought refuge from a storm in a building that was blown over and he received fatal injuries, the Supreme Court of Nebraska reversed an award in the widow's favor, saying that, in the absence of special hazard, risks to which the general public is exposed do not furnish grounds for compensation, and no special hazard appearing in the instant case compensation could not be allowed. (*Gale v. Krug Park Amusement Co.* (1926), 207 N. W. 677.)

In a case before the Court of Appeals of Kentucky in which claim was made for the death of a workman from heat stroke, a reversal of the board's award was affirmed, the court saying that even if it should concede that the heat stroke accidentally arose out of the employment, "it still follows that it is not compensable under our statute because it is a disease and not resultant from traumatic injury." (*Smith v. Standard Sanitary Mfg. Co.* (1925), 277 S. W. 805.)

WORKMEN'S COMPENSATION—INJURY ARISING OUT OF AND IN THE COURSE OF EMPLOYMENT—ASPHYXIATION—EVIDENCE—INFERENCES—*Public Service Co. of Colorado v. Industrial Commission, Supreme Court of Colorado (October 11, 1926), 249 Pacific Reporter, page 1094.*—For two years prior to his death Ralph Clark was employed by the Public Service Co. of Colorado. His usual employment was digging and filling ditches for laying gas pipes; he would sometimes connect a pipe and put in a coupling or cap to keep the dirt out. On June 15, 1925, Clark was working with a gang on a job at No. 801 East Eighteenth Avenue, Denver. That night the work was completed (unless possibly the plug hereinafter mentioned was not placed), and on the next morning Clark assembled with the gang

at the tool box near No. 801 and tools were taken out to begin another job about a block away. It appeared from the testimony that Clark, after taking some material to the new location, was seen to go away again toward the tool box. About 15 minutes later the foreman went to the tool box and was there told by one Blumberg that there was a bad gas leak at No. 801. The foreman, on verifying that statement, called an employee to bring a plug, which he did, and in putting it in he stepped on Clark who was lying unconscious on the floor near the open pipe. A wrench and plug were on the floor, the wrench almost under Clark and the plug some 5 or 6 feet away. All efforts to revive him failed and he died of asphyxiation by gas. The industrial commission awarded his widow compensation, and the award was affirmed by the district court.

The case came up to the supreme court on a writ of review. It was contended by the defendants that the evidence did not justify the making of an award. The court, on considering the three conceivable explanations for the deceased's conduct which resulted in his death, rejected the theories of suicide and wanton mischief as lacking in evidence or probable cause, and held that the third explanation—that of attempting to mend a fault in the pipe—was the most likely. Of this the court said in part:

The most probable purpose with which he went to the house was for the toilet. He had leave the previous day to use it. Something diverted him, perhaps the smell of gas, which led him to the cellar, if he had not perhaps gone there to look for a water-closet. At all events, it is certain that something led him to go to the tool box (perhaps back from the cellar to the tool box as the foreman later did) and get a wrench and to go to the cellar and to do something with reference to the gas pipe. If it had been left with a rag only, he may have been overcome before he could put a plug in; he may have taken a plug from the tool box as well as the wrench, dropped it, and have been overcome before he could find it. All these suggestions are mere probabilities, it is true, but they or something more or less like them may be fairly inferred from the evidence, and if the deceased was in the cellar for the honest purpose of doing some such thing for his employer it was within the course of his employment, and if so, his accidental asphyxiation arose out of that employment.

We cannot say that the conclusion of the commission that the accident was in the course of and arose out of his employment had no evidence to justify it.

The judgment was therefore affirmed.

WORKMEN'S COMPENSATION—INJURY ARISING OUT OF AND IN THE COURSE OF EMPLOYMENT—CAUSAL CONNECTION—EVIDENCE—LIMITATION—*Smith v. Primrose Tapestry Co. (Maryland Casualty Co., intervener), Supreme Court of Pennsylvania (January 4, 1926), 131 Atlantic Reporter, page 703.*—George Smith was employed by the

Primrose Tapestry Co. On December 9, 1921, while unloading a box from a truck it slipped and fell against him, bruising his side, causing the injury which, it was claimed, resulted in his death. On the day of his injury Smith was placed in the care of his family physician, who gave him such treatment as was believed necessary. Though previously in good health, Smith became progressively worse, and his incapacity to further labor became complete. He was treated at a hospital in April, 1923, and in August and September at a second institution in charge of another physician, but no improvement resulted. On October 1 his family physician resumed control, and remained in charge until his death, October 30, 1924. A post-mortem examination showed the existence of a sarcoma at a point below where the bruise occurred. No claim for compensation had been made by Smith, but within one year from his decease a petition was filed on behalf of his dependents and an award granted against the employer and the Maryland Casualty Co., the insurance carrier, which had intervened as a party defendant. From an award sustained by the board and the court of common pleas the Maryland Casualty Co. appealed.

To the contention of the defendants that Smith's death was not the result of the injury, the court held that there was a causal connection between the injury and death, as it had been proven that Smith was in good health prior to the accident and that no other intervening cause for his sudden breakdown appeared. The doctor who was in charge of the patient testified that he believed that "the cancer, as a result of which death ensued, arose from the injury. Of all persons he was best qualified to give a professional opinion."

It was further contended that the claim for compensation was not within the statutory limits and that the statute could not be extended to cover cases not within its words. The court held that there were no words in section 315 of Pennsylvania Statutes of 1920, paragraph 21984, which justified the construction contended for. Judge Sadler, speaking for the court, said:

Whether the death is immediate, or follows later, so long as it occurs within 300 weeks of the injury, the right of the widow to make claim accrues, and continues for one year thereafter. There is no statutory bar to filing a petition within the limits mentioned. In so deciding, under the facts here presented, there was no error.

The judgment was affirmed.

WORKMEN'S COMPENSATION—INJURY ARISING OUT OF AND IN THE COURSE OF EMPLOYMENT—CITY EMPLOYEE BITTEN BY DOG—*Ryan v. City of Port Huron et al.*, *Supreme Court of Michigan (June 7, 1926)*, 209 *Northwestern Reporter*, page 101.—James Ryan was employed by the city of Port Huron as foreman of a gang of street

cleaners, and on August 4, 1924, while seeking shelter from a rain-storm in a near-by private garage he was attacked by a dog and bitten on the leg. He died from the effect of the injury on September 16, 1925. Catherine Ryan, widow of the deceased, was awarded compensation by a deputy commissioner, and defendant appealed to the board. A daughter, Helen, was subsequently granted an award by the deputy commissioner on the ground that she was wholly dependent upon the deceased, and the defendant also appealed to the board from that award. While the appeals were pending Catherine Ryan died.

On a hearing the board reversed both awards, holding—

(1) That the accident to the decedent, James H. Ryan, did not arise out of and in the course of his employment.

(2) That the plaintiff, Helen Ryan, was not a dependent upon the decedent, James H. Ryan, at the time of the happening of the accident.

The claimant brought certiorari. The only question considered by the court was whether the accident arose out of and in the course of the deceased's employment.

The court, in the course of its opinion, declared:

It is well settled that, to justify an award, the accident must have arisen out of as well as "in the course of" the employment, and the two are separate questions to be determined by different tests.

It then said in part:

So, in the instant case, if it may be said that the workman's act, in seeking shelter from the storm, did not break the employment, and that he was then still in the course of his employment, it does not follow that the accident arose out of the employment. To justify a finding that it arose out of the employment it must appear that the injury received was a risk to which he was exposed by the nature of his employment.

Being bitten by a dog can not be traceable to the nature of the employment in which Mr. Ryan was engaged. There was not the slightest causal connection between them. The risk of being bitten by a dog was not greater to him because of his employment than it was to any member of the public who chanced to be in the locality.

The order of the board was therefore affirmed, and the writ dismissed.

WORKMEN'S COMPENSATION—INJURY ARISING OUT OF AND IN THE COURSE OF EMPLOYMENT—DISOBEDIENCE OF ORDERS—*Tiralongo v. Stanley Works, Supreme Court of Errors of Connecticut (April 8, 1926), 133 Atlantic Reporter, page 98.*—This was a claim for compensation arising out of the death of a workman employed by the Stanley Works. The decedent was a helper on a flat machine; it was an oily job and he used a burlap bag tied around his waist, apron fashion, to protect his clothing from the oil. On January 30, 1925, he left

his work and went into the toilet room. When he came out his clothes were on fire, and as a result of his burns and the shock he died that evening. The origin of the fire was not determined by the commissioner, but it was brought out at the hearing that the duties of decedent did not require him to use fire, and there was no flame or fire anywhere about the toilet room or the room where he worked. The decedent was seen to take a lighted cigarette from his mouth, crush it, and throw it on the floor while his clothes were burning. The rules of the factory forbade smoking during working hours, and notices to that effect were posted in the toilets and lavatory.

The commissioner concluded that the injuries sustained by the deceased did not arise out of his employment and refused an award to claimant, who thereupon appealed to the superior court, which affirmed the action of the commissioner. Plaintiff then appealed to the supreme court of errors on the ground that the court below had erred in holding that the decedent's injuries did not arise out of his employment.

The court held that the question raised by the plaintiff's appeal was to be determined by applying to the facts found the rule stated in *Marchiatello v. Lynch Realty Co.* (94 Conn. 260, 263; 108 Atl. 799):

An injury arises out of an employment when it occurs in the course of the employment and is the result of a risk involved in the employment or incident to it, or to the conditions under which it is required to be performed. The injury is thus a natural or necessary consequence or incident of the employment or of the conditions under which it is carried on. Sometimes the employment will be found to directly cause the injury, but more often it arises out of the conditions incident to the employment. But in every case there must be apparent some causal connection between the injury and the employment or the conditions under which it is required to be performed, before the injury can be found to arise out of the employment.

Judge Wheeler then said in part:

There is in the facts found no causal connection between the injury and the employment or the conditions under which it is required to be performed. The absence of fire or any means of setting the clothing of the decedent on fire, and the fact that the decedent was smoking in the toilet room, makes the conclusion from the facts found inevitable that it originated from his own act in smoking in the toilet. It was not a risk in the employment or incident to it, or to the conditions under which it was required to be performed and arising through decedent's negligence.

There is no error.

The question of disobedience to orders was raised in a case that came before the Supreme Court of New York, Appellate Division, but unsuccessfully for the employer. A boy about 4 feet 4 or 5 inches tall, was employed at washing cloths in a print works, using vats of almost equal height. The cloths became clogged in a vat, and he mounted the rim to stir them with a stick, when he fell in and

was fatally scalded. From an award to his mother an appeal was taken on the ground that the boy had been forbidden to climb upon the vats, so that he was outside the course of his employment in doing so. The court rejected this contention, saying that even if disobeying the order he was nevertheless doing the work at which he was set, at the proper place and time. "On account of his low stature, compared to the height of the tank, it was reasonably necessary for him to mount the tank in order to do his work." Such disobedience as might be charged against him in the circumstances "did not place the employee outside the sphere of his employment." (*Erdberg v. United Textile Print Works* (1926), 216 N. Y. Supp. 275.)

WORKMEN'S COMPENSATION—INJURY ARISING OUT OF AND IN THE COURSE OF EMPLOYMENT—EMPLOYEE SHOT BY FELLOW WORKER—CAUSAL CONNECTION—*Franklin Coal & Coke Co. v. Industrial Commission, Supreme Court of Illinois (June 16, 1926), 152 North-eastern Reporter, page 498.*—Emitt Trott, an employee of the Franklin Coal & Coke Co., was shot on October 3, 1922, by Athern Beam, another employee of the same company, who had on that day terminated his employment with the company and collected all wages due him. It was brought out in the testimony at the hearing that Trott had accused Beam of not treating him fairly in the work they were doing for the company, and also that they had quarreled violently a few days before the shooting occurred. The board proceeded against the company under the workmen's compensation act for compensation. The arbitrator awarded Trott \$15 per week for a period of 30 weeks for temporary total incapacity, \$15 per week for 175 weeks for complete loss of the left leg, and \$664 for medical, etc., treatment. That order was affirmed by the industrial commission and the company brought certiorari. The circuit court, on review, quashed the writ of certiorari and confirmed the award. Thereupon the company brought error. It contended that the injury on which the award was based did not arise out of Trott's employment; that there was no causal connection established between the shooting resulting in the injury and Trott's employment. Judge Duncan, rendering the opinion of the court, said in part:

We think the evidence shows clearly that the injury in question arose out of Trott's employment. It was the direct and final result of the quarrel that the two employees had over the question of whether or not Beam was treating Trott fairly in designating the hauls or trips that Trott should make for him and on his run as a driver. This appears from the last words that were passed between them as Beam stood, with his coat and all his clothes on, under the shower while looking at Trott. In this final meeting when he was shot, Trott was not the aggressor and had not done anything that would provoke a quarrel out of any reasonable man on that day and time. The whole evidence tends to show that Beam was still harboring malice against Trott that was engendered by reason of the quarrel over the question of the division of work a few days previous, and

that he had quit the employment and received his final pay with the expectation and intention of taking revenge on Trott, so that he could make his escape without having any further occasion to delay his flight by collecting what was due him.

This court held in *Pekin Cooperage Co. v. Industrial Com.* (285 Ill. 31, 120 N. E. 530 [see Bul. No. 258, p. 191]), that where one is injured by another employee because of a dispute about the manner of doing the work he was employed to do, the accident to the injured employee grows out of the employment and is compensable.

It is also a prerequisite in all the cases that the injured employee who seeks compensation, or whose representatives or wife and children seek compensation by reason of his death, shall not have been the aggressor in the fight or conflict in which he was injured, so that he may be said to be at fault or the cause of his injury at the time of the conflict. The case now in hand comes clearly within the rulings laid down in those cases and the court did not err in confirming the award.

The Court of Civil Appeals of Texas affirmed an award in behalf of a widow whose husband was shot while advancing in a threatening attitude, with a large, sharp knife in his hand, toward a fellow workman against whom he had a grievance on account of an incident for which he apparently held the fellow workman responsible, though mentioning no names. The offense complained of, if committed, constituted a gross insult, amounting in law to an aggravated assault and battery. The court held that, on the evidence, the aggrieved man was not chargeable with willful intention unlawfully to injure his fellow, and that the latter in shooting him, with fatal results, inflicted an injury which "had to do with and originated in the work," and was compensable. (*Indemnity Ins. Co of North America v. Scott* (1925), 278 S. W. 346.)

Where the decedent had been employed under a superintendent against whom he developed a grievance, and kicked at him, threw an open knife at him, and approached him with threats and menaces while armed with a deadly weapon, the Supreme Court of Pennsylvania held that the aggressor, by such conduct "voluntarily abandoned his status as an employee and became a criminal, obstructing and not furthering his master's business," so that there could be no compensation as for an injury in course of employment when the superintendent shot the man in self-defense. (*Curran v. Vang Const. Co.* (1926), 133 Atl. 261.)

The Supreme Court of Minnesota affirmed an award in the case of a workman fatally shot by an unknown man while the former was carrying a bag of money from the cash registers of the store in which he was employed to the cashier's office. There was evidence of an apparent attempt to rob, though unsuccessful. The court held that if the killing was from a personal motive no compensation was due; but as the commission found justifiable grounds for deciding that there was an attempt to rob, the conclusion that the killing arose out of the employment and was compensable was correct. (*Davis v. S. S. Kresge & Co.* (1926), 210 N. W. 1003.)

WORKMEN'S COMPENSATION—INJURY ARISING OUT OF AND IN THE COURSE OF EMPLOYMENT—FREEZING—PROXIMATE CAUSE—*Brady v. Oregon Lumber Co.*, Supreme Court of Oregon (February 9, 1926), 243 Pacific Reporter, page 96.—The defendant was engaged in logging and the manufacture of lumber. Its sawmill was at Dee, a station on the Hood River Valley Railroad, and its logging camp was

some 16 miles away, and between the camp and Dee it operated a logging railroad. On November 19, 1921, it closed its logging camp on account of heavy snows, notifying the plaintiff, Harry Elmer Brady, and the other employees that the camp was closed. The defendant's foreman, Charles Blanding, told the men that a train would come up and take them out of the camp that day and that their board had been reduced from \$1.20 to 50 cents per day. The train failed to arrive at the camp as promised, so on the following day the plaintiff and four others started out to walk to the Hood River Valley Railroad. The snow was four feet deep. They failed to reach the "old camp," a point about half-way between the termini of the road which they had planned to make their first stop, and were forced to spend the night in the snow. During the night it became bitter cold. On the second day they reached a farmhouse some 2½ miles from the railway above referred to, where the plaintiff and some others found shelter. On reaching the farmhouse the plaintiff found that his feet were frozen. He was taken to a hospital at Hood River, where it was found necessary to amputate the toes of his right foot and his left leg below the knee. He brought action against the defendant to recover damages for injuries resulting from the freezing of his feet while wading through the snow. He averred that the company was negligent in failing to anticipate the storm and to take precautions to protect the employees and also in failing to operate the train from Dee to the logging camp. There was a judgment of nonsuit for the defendants and plaintiff appealed on the ground that the trial court erred in determining as a matter of law that the logging camp, on Sunday, November 20, 1921, was a safe place to remain.

The court examined a number of cases in which the question of "accidents arising out of and in the course of employment" had been decided. It quoted from the opinion given in the case of *Coronado Beach Co. v. Pillsbury* (172 Cal. 682, 158 Pac. 212; see Bul. No. 224, p. 308), as follows:

The accidents arising out of the employment of the person injured are those in which it is possible to trace the injury to the nature of the employee's work or to the risks to which the employer's business exposes the employee. The accident must be one resulting from a risk reasonably incident to the employment.

Judge Brown, speaking for the court, said in part:

We have carefully read the evidence and the authorities cited by plaintiff in support of his various contentions. There came a time when the plaintiff ceased to be an employee of the Oregon Lumber Co. Had that time come before he sustained his personal injury? When his feet were frozen he was not in the woods engaged in

logging. He was neither going to nor returning from his labors, nor was he performing some act incidental to logging. To hold that he was injured in the course of his employment by an accident arising out of his employment as a logger would be to go beyond any case that we have been able to find in the books, and we have examined many decisions in addition to those cited by respective counsel. We are compelled to reject the contention that he was engaged in logging when injured, or in performing any service incidental thereto.

If it be conceded that the company's train could have made a run from Dee to the logging camp on Saturday, but that it neglected to do so, under the facts of record this, of itself, does not render the company liable to the plaintiff for an omission of duty as alleged. Notwithstanding the train was not run to the camp on that day, the plaintiff remained safe and uninjured. He does not pretend to offer any evidence that the camp where he was situated was without food, shelter, or warmth, and the learned judge granted the motion for a nonsuit upon the ground that plaintiff abandoned a place of safety and willfully plunged into a situation that proved to be dangerous.

We fully appreciate the fact that the plaintiff has suffered serious injuries, and that his cause has been presented to this court with much zeal and ability. But we can not follow counsel in the application of the law to the facts involved herein.

The judgment was therefore affirmed.

WORKMEN'S COMPENSATION—INJURY ARISING OUT OF AND IN THE COURSE OF EMPLOYMENT—GOING TO AND FROM WORK—*Thetford v. London Guarantee & Accident Co. (Ltd.)*, *Court of Civil Appeals of Texas (June 16, 1926)*, 286 *Southwestern Reporter*, page 1113.—N. J. Thetford, employed by the Mutual Oil Co., was killed on April 30, 1924, as a result of a collision between the automobile on which he was riding and one driven by R. D. Underwood. His widow instituted suit in the district court of Wichita County against the insurer of the company to recover under the State compensation act for the death of her husband. The case was tried before a jury, and at the conclusion of the testimony the trial judge directed a verdict in favor of the defendant. The plaintiff appealed. The evidence tended to show that the company named was operating on a lease some 25 miles from Wichita Falls, Tex., that it procured its supplies from the latter place and transported them to the lease on trucks and automobiles owned by it, and that some of its employees who stayed at Wichita Falls were permitted to ride to and from their work on such vehicles. There was also testimony which tended to show that the assistant superintendent of the company agreed with the deceased, who lived at Wichita Falls, that he might stay at home nights and ride to and from his work in some one of the company's machines, as he would be needed many times in loading and unloading tools into and out of the machines; that on the evening preceding the accident in question,

M. Marshall, the truck driver, not caring to drive the company's truck, took the deceased home in his own private car, and the next morning when they were returning to work in the said private car, the accident occurred which cost the deceased his life.

The court held that the evidence was sufficient to raise a question of fact and said in part:

If the transportation was a part of the contract of employment, the deceased was in the employ of the Mutual Oil Co. from the time he left Wichita Falls until he returned by the transportation provided.

If the contract to transport existed, whether express or implied, and as a part thereof the deceased was expected and it was his duty to assist in loading the machines of his employer at Wichita Falls, the fact that M. Marshall, the truck driver, and who had charge of his employer's truck, elected, on the occasion of the fatal accident, to use his own car with which to perform the service for the employer, instead of the truck furnished, would not, in our opinion, defeat a recovery.

Under the facts disclosed by this record, we are of the opinion that the trial court committed error in directing a verdict against appellants, for which reason the judgment is reversed and the cause remanded.

The Supreme Court of Massachusetts affirmed awards in a case in which it appeared that 11 workmen were being carried from a construction job to their homes on a truck owned by their employer and operated by his chauffeur, when the truck was struck by a car, three being killed and the others injured. Transportation to and from work was a part of the contract of the employment, and "receiving their injuries while being so carried, they were protected by the act." (Vogel's Case (1926), 153 N. E. 175.)

WORKMEN'S COMPENSATION—INJURY ARISING OUT OF AND IN THE COURSE OF EMPLOYMENT—HERNIA—EVIDENCE—*Wilkins v. Ben's Home Oil Co.*, Supreme Court of Minnesota (January 22, 1926), 207 Northwestern Reporter, page 183.—N. J. Wilkins was employed by Ben's Home Oil Co. as helper about its filling station, and while assisting a driver in unloading a barrel of oil which weighed about 450 pounds it slipped and fell, throwing the full weight of the barrel on him. He went about his work for a while after the accident, but when he attempted to move a barrel of oil he felt such a severe pain that he could work no more that day. On being examined by a doctor the next day he was found to be suffering from inguinal hernia, for which he was operated on two days later. The surgeon who operated on Wilkins and another doctor who was present at the operation testified at the hearing before the commissioner that the hernia was a recent one and that they believed it was caused by the accident. A surgeon and physician called by the company, but who made no examination of Wilkins, on being asked a hypothetical question as to whether or not in his opinion the accident caused the hernia, stated in effect, that in the absence of evidence of ecchymosis, a blow

to that particular point, vomiting or nausea, it did not. Award was denied, and the plaintiff brought a writ of certiorari to the supreme court of the State.

Judge Holt, who wrote the opinion of the court reversing the commission, said in part:

The triers of fact, who fail to find on such evidence as presented by this record that the accident to Wilkins did cause his hernia, must have proceeded upon an erroneous theory concerning the proof of such injury, in that they accept as an indisputable medical fact that it is impossible that an accident can produce an inguinal hernia unless there is inflicted an external blow sufficient to rupture the tissues, leaving some visible indications thereof, or else producing such immediate prostration and acute pain as to amount to objective symptoms.

Compensation claims are not to be determined on preconceived medical theories, but are to be considered on the evidence presented in the individual case, with a view to determine whether, under the definition of an accidental injury under the letter and spirit of the workmen's compensation act, the particular claim has been established by a fair preponderance of proof. There was nothing inherently improbable in the testimony of Mr. Wilkins or his witnesses, and we regard the employer's expert to rather support than otherwise a finding of a compensable injury under the law.

We therefore think the evidence in this case demanded findings in favor of the employee, and the decision to the contrary is reversed, and the case remitted to the industrial commission, with direction to make proper findings awarding compensation for the injury. An attorney's fee of \$50 on this appeal is allowed.

The judgment was therefore reversed and the case remanded.

WORKMEN'S COMPENSATION—INJURY ARISING OUT OF AND IN THE COURSE OF EMPLOYMENT—PREEXISTING DISEASE—DEATH—STATUS OF WIDOW'S CLAIM—*Biederzycki v. Farrell Foundry & Machine Co.*, *Supreme Court of Errors of Connecticut (January 8, 1926)*, *131 Atlantic Reporter*, page 739.—Chester Biederzycki, an employee of the defendant company, sustained an injury while in the course of his employment. "The injury so suffered was from a diseased condition of his heart, due in part to preexisting disease and in part to aggravation of a preexisting disease." The defendant company was adjudged, on June 19, 1923, to pay him an award. He died August 12, 1924, whereupon the widow submitted her claim for a death benefit; the commission ordered that the company pay her compensation for a period not to exceed 312 weeks from the date of his death. The company appealed from the award to the widow on the ground that the conclusion reached, that deceased received a compensable injury, was erroneous; that the case of the widow was separate and distinct from that of her husband; that it was entitled at its option (Gen. Stat., par. 5355) to retry de novo in whole or in part the facts

as found in the case of the employee, and that the award to the widow should have been apportioned in accordance with the provisions of the General Statutes, paragraph 5341, as amended. The court held that the grounds of appeal were not well taken, and said in part:

The commissioner's power to modify or reopen an award is governed by General Statutes, paragraph 5355, that any award or voluntary agreement for compensation under the workmen's compensation act (Gen. Stat. 1918, pars. 5339-5414), shall be subject to modification upon the request of either party, "whenever it shall appear to the compensation commissioner that the incapacity of an injured employee has increased, decreased, or ceased, or that the measure of dependence, on account of which the compensation is paid, has changed, or that changed conditions of fact have arisen which necessitate a change of such agreement or award in order properly to carry out the spirit of this chapter."

The point raised by defendants that the claim of deceased and that of his dependent are separate and distinct was settled in the construction of this statute by the court in *Hayden & Malstre v. Wallace & Sons* (100 Conn. 180, 123 Atl. 9), wherein it was held that all that the dependent must prove is the employee's death, the dependence, and the causal connection between the injury compensated and the death.

Section 5341, as amended by Public Acts, 1919, chapter 142, paragraph 1, as amended by Public Acts, 1921, chapter 306, paragraph 1, provides that—

In any case of aggravation of a disease existing prior to such injury, compensation shall be allowed only for such proportion of the disability due to the aggravation of such prior disease as may reasonably be attributed to the injury.

The court held that where the amendment used the term "disability" it used it in the sense of incapacity, and referred to the living, since death was a fixed fact which could not be apportioned in the manner provided in the amendment to this section of the General Statutes.

A final contention considered was to the effect that the amendment of 1919 permitting compensation for disease related only to occupational diseases, and did not invalidate earlier decisions excluding diseases of a general nature. The court had held in the case of *Dupre v. Atlantic Refining Co.* (98 Conn. 646, 120 Atl. 288) that a compensable personal injury was an abnormal condition of a living body which arose out of and in the course of the employment and produced an incapacity to work for the statutory period whether the disease was occupational or otherwise. This ruling was affirmed in *De la Pena v. Jackson Stone Co.* (103 Conn. 93, 130 Atl. 89), "and these decisions must control while the present statute remains unchanged."

Judgment was accordingly entered dismissing the appeal.

The same court a few months later reversed an award in the case of a dry grinder whose disability after employment for two years was diagnosed as pulmonary tuberculosis. The trade was said to be one that tends to cause this disease, and a commissioner allowed a claim. On appeal, it was shown that the workman was suffering from it when he entered the employment, and the court held that the employment had no more injurious effect "in any way other than a similar amount of exertion or bodily exercise would have aggravated it." There was said to be a failure to establish the necessary causal connection between the disability and the occupation, so that no compensation could be paid. (*Madore v. New Departure Mfg. Co.* (1926), 134 Atl. 259.)

WORKMEN'S COMPENSATION—INJURY ARISING OUT OF AND IN THE COURSE OF EMPLOYMENT—PARESIS—PREEXISTING DISEASE—REVIEW BY COURT—*Walker v. Minnesota Steel Co., Supreme Court of Minnesota (June 11, 1926), 209 Northwestern Reporter, page 635.*—Charles A. Walker was employed as a millwright and from November 29, 1923, to February 14, 1924, he sustained three injuries to his head. Soon after November, 1923, he became mentally depressed and in June, 1924, was committed to the State Hospital for the insane. The result of his mental decline was general paresis. History disclosed dormant syphilis. His wife made claim for compensation under the workmen's compensation law in her own right and on behalf of Louis H. Walker and others, his dependent children. The claim was denied by order of the industrial commission and claimant brought certiorari to review the order.

It was not claimed that the injuries caused the paresis but that they aggravated and lighted up the dormant syphilitic condition and hastened its onset. The employer contended that the injuries in no way accelerated the development of the unfortunate condition. The court reviewed and cited numerous cases wherein the question of pre-existing condition had been in issue, and speaking of the instant case said in part:

The claim for compensation in this case depends upon whether or not the paresis, which was primarily caused by syphilis, was lighted up or accelerated by the injuries to employee's head. This is a simple question of fact. If answered in the affirmative, it is compensable; otherwise not. We have consistently held that the determination by the commission of controverted questions of fact must be sustained. Relator's claim is supported by competent medical witnesses and other evidence. It is directly met by other circumstances and experts who apparently recognize the correctness of relator's theory but say that the injuries were not serious enough to produce the result claimed. The evidence would support a finding either way. The commission has spoken, and their word is final.

The order of the commission was therefore affirmed.

The Supreme Judicial Court of Maine took quite similar grounds where a workman who was, so far as he knew, a well man, and had lost but nine days'

time in 40 years, was found suffering from diseased conditions of heart and spine after injury from a fall. The court affirmed an award in his favor, saying that: "While causal connection between the accident and disability must be shown, the accident need not be proved to be the sole or even the primary cause of disability"; and the commissioner's conclusion "must stand if rational and natural." (Swett's Case (1926), 134 Atl. 200.)

To the foregoing may be added recent decisions by the Supreme Court of New Jersey (*Pisko v. Nelson* (1926), 132 Atl. 301), and the Appellate Court of Indiana (*Owens v. McWilliams* (1926), 152 N. E. 841). In both these death followed injury by runaway horses. Pisko lived about two months, and was found to be affected with heart trouble and a hypertrophied liver; but as it was found that "the accident produced his death at the time at which it occurred," it was chargeable therewith, and the widow's claim was affirmed. The case had been "warmly contested," two trials being had, and an allowance of \$500 attorney's fee was held not excessive.

In the *Owens* case the employer claimed that death was due to the condition of the arteries, causing heart failure. Death was not instantaneous, and the prevalent opinion was that the death was due to shock from the fall. Owens' head was bruised, and blood ran from his mouth. In sustaining the award, the court said: "This court has uniformly held that, where the employment hastens an existing disease to its final culmination in death, it is an accident within the meaning of the statute."

In a nonfatal case before the Supreme Court of Illinois an award as for permanent total disability was reversed where a workman received such an award on account of hernia. It appeared that a previous operation had left the muscle walls of the abdomen weakened, but inasmuch as the workman was employed at the time of the injury complained of he "was entitled to compensation notwithstanding the fact that a former operation was a contributing cause." But since it appeared that an operation would restore the claimant's earning capacity, the award as for permanent total disability could not stand, there being no basis in the record for a life benefit. Further hearing was therefore directed for a determination on the basis indicated. (*O'Gara Coal Co. v. Industrial Commission* (1926), 150 N. E. 640.)

WORKMEN'S COMPENSATION—INJURY ARISING OUT OF AND IN THE COURSE OF EMPLOYMENT—PROXIMATE CAUSE—REVIEW BY COURT—*United States Casualty Co. v. Matthews, Court of Appeals of Georgia (June 16, 1926), 133 Southeastern Reporter, page 875.*—Mrs. R. A. Matthews proceeded under the workmen's compensation act to recover compensation for the death of her husband, who, on November 26, 1924, while in the employ of the defendant, sustained a severe physical injury by which his ankle was dislocated and certain ligaments torn. It appeared that prior to the injury the deceased was in vigorous health; that the injury caused continued swelling of the ankle, pain and loss of sleep, resulting in an enfeebled and weakened condition of health, until finally on December 22 he was confined to his bed, complaining of pain in his eyes. He became unconscious soon after this and died two days later of acute illness. The attending physicians testified that it was their opinion that the death of the deceased was due to apoplexy, to which the injured foot might have

been a contributing cause; that if the foot had brought on apoplexy it would have been caused by the pain and the poison that his system absorbed from the foot. The claimant was awarded compensation by the commission; this was affirmed by the superior court, and the insurance carrier brought error to have the case reviewed. There was no dispute as to the injury, but it was argued that the judgment of the superior court affirming the findings of the commission was not supported by sufficient evidence.

The court, on review, speaking through Judge Jenkins, said in part:

The finding of the industrial commission upon the facts can not be set aside, if there is evidence to support it. It "is conclusive and binding upon all the courts."

Under the evidence submitted in this case, it was for the commission to say, in the light of all the proved facts and surrounding circumstances, including the expert testimony, whether or not the injury set forth was the proximate cause of the death. In arriving at a conclusion upon this question they were privileged, but not compelled, to accept the expert testimony tending to show that the immediate cause of death was something akin to apoplexy. Even if, under the expert testimony, the condition of the decedent must have been such as would predispose him to such an attack from such a cause, if such result followed naturally and unavoidably from the injury, the original injury, and not the forces thus put into operation by it, could be accounted as the active, proximate cause of the final result.

If the original act be such as to put other forces in operation so as to naturally and unavoidably bring about the existence of the intervening agency, its effect, or result, can still be properly attributed to the original cause as the proximate cause.

The judgment was accordingly affirmed.

WORKMEN'S COMPENSATION—INJURY BY THIRD PARTY—ACTION BY DEPENDENTS—LIMITATION—*Clough & Molloy v. Shilling, Court of Appeals of Maryland (December 4, 1925), 131 Atlantic Reporter, page 343.*—Frainie Bros. & Haigley were general contractors in charge of the work of building a dormitory for the Johns Hopkins University, Baltimore, Md. The Pen-Mar Co., employer of John Edgar Shilling, and Clough & Molloy, defendants in this suit, were subcontractors for certain of the construction work. It appears that on March 28, 1923, the employees of Clough & Molloy were working on a scaffold and were using pieces of scantling to extend it upward when one of the pieces of scantling fell and in falling struck John Edgar Shilling upon the head and killed him. He left surviving him a widow and four minor children. The State industrial commission granted them an award of \$5,000 and \$125 funeral expenses against the Pen-Mar Co. and the Indemnity Insurance Co. of North America, the insurer. A statute of Maryland provides that where the death of the employee creates legal liability in some person other than the employer, and

the insurer or employer fails to enforce such liability within two months after the award under the compensation act, the dependents may enforce such liability. Under this provision of the law the widow of the deceased instituted her suit to collect damages against Clough & Molloy in behalf of herself and her minor children, and to the use of the Indemnity Insurance Co. of North America. She was awarded a verdict for \$15,000, to be apportioned among the insurer, the widow, and the minor children. From this judgment the defendants appealed, their contention being that the plaintiffs did not have a right to maintain the action in its present form and that there was not sufficient evidence to go to the jury.

The court of appeals sustained the judgment, citing first the provisions of the compensation act authorizing the dependents to bring action in default of its prosecution by the employer or insurer, with distribution of any recovery to cover disbursements of the employer or insurer. It then found that the law had been complied with, so that no grounds for the appeal existed. There was also found to be sufficient evidence for consideration by the jury, and the judgment was affirmed, with costs.

The same law was before the same court in a question in which another aspect of the right to sue was considered. The employer delayed action for reimbursement until after the two months' period following the award, but subsequently began proceedings. The third party demurred, claiming that with the expiration of two months after the award, the right to sue vested exclusively in the injured person or his dependents. The court ruled otherwise, finding that while the employer's right was exclusive during this period, on its expiration such right was shared with the employee or his dependents, but was not absolutely taken away from the employer. The decision of the court below, sustaining the demurrer, was therefore overruled, and a new trial granted. (*State v. Francis* (1926), 134 Atl. 26.)

WORKMEN'S COMPENSATION—INJURY BY THIRD PARTY—ELECTION—SUBROGATION—RIGHTS OF INJURED MINOR AFTER REACHING MAJORITY—LIMITATIONS—*McKee v. White*, *Supreme Court of New York, Appellate Division* (November 11, 1926), 218 *New York Supplement*, page 215.—William P. McKee, 19 years of age, while in the employ of Charles White on September 18, 1922, was injured by the negligence of a third party. He filed an election to pursue his remedy against the third party and began an action for damages. The case was called for trial on May 14, 1925, but no one appeared for the plaintiff and the action was dismissed for default. Claimant then made a claim for compensation before the industrial board, which granted him an award on June 25, 1926. The defendants appealed on the ground that the failure to prosecute his action, after electing to sue the third party, deprived them of their right of subrogation to the

claimant's remedy against the third party provided for in section 29 of the workmen's compensation law.

The court, in disposing of the case, said in part:

The carrier could not be subrogated to claimant's remedy while claimant's election was in force and his action was pending; and the statute of limitations had run against that action on September 18, 1925, and before the carrier knew that claimant's action was dismissed. Since claimant was a minor when his cause of action accrued, the time of his disability is not a part of the time limited for beginning the action, "except that the time so limited can not be extended * * * more than one year after the disability ceases." (Civil Practice Act, sec. 60.) The claimant reached his majority more than one year before the period limited in the statute for beginning his action against the third party. The infancy then does not extend the three-year period. The claimant, having reached his majority before the three-year limitation had expired, was required to commence his action either before the expiration of that period or within one year after he attained his majority, whichever would be the longer period.

We think the appellants' rights have been sacrificed, and that the claimant is estopped from asserting a claim for compensation against them.

The award was therefore reversed and the claim dismissed, with costs against the State industrial board.

WORKMEN'S COMPENSATION—INJURY BY THIRD PARTY—INEFFECTIVE SUIT—LOSS OF RIGHT OF SUBROGATION—IGNORANCE AS EXCUSE—*Employers' Indemnity Corporation v. Felter, Commission of Appeals of Texas (December 2, 1925), 277 Southwestern Reporter, page 376.*—George R. Felter, while employed as a meter reader in the water and light department of the city of Austin, Tex., and while engaged in the course of his employment, received injuries in an automobile collision which resulted in his death a few days later. Four years later, on March 30, 1923, the industrial accident board awarded compensation to the widow and two children at the rate of \$15 a week for 360 weeks from the date of the accident in 1918. The Employers' Indemnity Co., insurance carrier, gave due notice of its unwillingness to abide by the award and filed suit to set it aside. A judgment for the claimants was affirmed by the court of civil appeals and the company brought error to the commission of appeals.

On reviewing the evidence it was found that Mrs. Felter had filed suit in 1920 to recover damages in the total sum of \$50,000 as guardian of her children and executrix of the estate of her husband for the alleged negligent killing of her husband by Mrs. Jeffie Barkley and Edgar J. Barkley, her husband. April 7, 1922, judgment was entered in the court for the defendants. The counsel for the indemnity corporation in the instant case requested an instruction based on the

fact that the Felters had proceeded to final judgment against the tort-feasors, third parties, that they were precluded from later seeking compensation under the compensation act for the same injury, and, in addition, because the proceeding for compensation was not instituted for more than four years after the accident occurred. The action of the trial court in refusing this peremptory instruction was said by the commission of appeals to be erroneous.

Under the facts, it appeared that the indemnity company had been absolutely deprived of its right of subrogation. "So it is quite clear that, as a result of the conduct of the Felters, plaintiff in error has been deprived of its valuable right, in its own way * * * to sue the alleged tort-feasors and attempt to recoup the amount of compensation it was being called upon to pay."

It also appeared from the evidence that the widow was in complete ignorance of the fact that the city carried an insurance policy for its employees, and this was offered as a reason why her claim should be allowed. In the course of the opinion denying this ground as valid, it was said that:

In all cases, compensation or otherwise, the rule is recognized that ignorance of facts will not relieve against an election of remedies where such relief would injure an innocent party. We find no authorities to the contrary. In other words, equity will not, in its generosity, permit one to profit at the contemporaneous expense of another. The company in this case violated no rule and neglected no duty. It is blameless. On the other hand, Mrs. Felter did violate the subrogation statute as well as section 4a. Upon the broad grounds of equity, she asks that her ignorance be excused. Her request can not be granted when its granting deprives the company, a thoroughly innocent party, of its valuable right of subrogation.

Mrs. Felter by her action had placed the insurance company in a disadvantageous position where it could not recover against the third party causing the injury because as to them *res adjudicata* was a complete defense. In a situation of this kind the commission of appeals said:

We hold that defendants in error can not recover compensation. * * * The construction of the lower courts in the case at bar renders totally ineffective the subrogation section of the law. This should not be done. Under the holdings of the lower courts, a person might be ignorant for 20 or 30 years and still recover compensation, even though the insurance company had in the meantime entirely lost its right of subrogation.

It was recommended that the judgments of the district court and the court of civil appeals be reversed and that judgment be rendered by the supreme court in favor of the plaintiff in error.

The judgment was accordingly reversed and judgment was entered for the plaintiff in error.

WORKMEN'S COMPENSATION—INJURY BY THIRD PARTY—SUBROGATION—SETTLEMENT—*Wisconsin Mutual Liability Co. v. Industrial Commission, Supreme Court of Wisconsin (June 21, 1926), 209 Northwestern Reporter, page 697.*—Section 102.29 of the compensation act of Wisconsin provides that the making of a lawful claim against the employer or compensation insurer for compensation shall operate as an assignment of any cause of action in tort which the employee may have against any other person on account of the accident, and the employer or insurer may enforce such liability in its own name, with provision as to the distribution of any amounts recovered. Any settlement of any such claim, if in litigation, must have the approval of the court in which the matter is pending; otherwise the settlement must be approved by the industrial commission.

One Perkins, an employee of the Oshkosh Motor Truck Co., while in the course of his employment received injuries when attempting to drive a motor truck owned by his employer across the railroad track of the Soo Railway, the truck being struck by the engine of said railway company. Perkins was awarded compensation against his employer. The award was paid by the employer's insurance carrier, which thereby became subrogated under its policy to the rights of the employee against any third-party liability for damages to Perkins. The railway company denied any liability to Perkins, but paid him \$1,000 and took from him an acknowledgment of settlement of his claim for damages by reason of the accident. The insurance company petitioned the industrial commission to make an order approving the settlement of the claim of Perkins with the railway company and for an order of distribution of the proceeds. The commission entered an order directing Perkins to account to the insurance company for \$666.67. The insurance company then brought action in the circuit court for review of the order of the commission, and demanded judgment that the railway company be directed to pay the amount ordered by the commission. The circuit court held that the commission had no jurisdiction over the railway company, and the court had no jurisdiction on review. It therefore affirmed the order of the commission and denied further relief. From such judgment the insurance company appealed. The supreme court, in disposing of the case, said in part:

The settlement of Perkins was null so far as his employer or the appellant was concerned, because his claim against the railroad company was assigned by operation of the statute to the employer, as soon as he made a valid claim for compensation against the employer. This being so, there was no settlement so far as the appellant or the employer was concerned, and there was nothing upon which the industrial commission could act. It follows that its order was void. The jurisdiction of the circuit court to review the proceedings of the commission likewise depends on the statute (section 102.23). By its

judgment it could only affirm said order or set it aside. The circuit court was therefore in error in affirming the order of the commission.

The judgment of the circuit court was reversed, with directions to enter judgment setting aside the order of the industrial commission, the appellant to pay clerk's fees.

WORKMEN'S COMPENSATION—INJURY IN COURSE OF EMPLOYMENT—INFECTION OF OPEN SORE—CONSTRUCTION OF STATUTE—*Jasionowski v. Industrial Commission of Ohio, Court of Appeals of Ohio (May 17, 1926), 153 Northeastern Reporter, page 247.*—Wanda Jasionowski was employed by Tiedtke Bros. Co. on October 22, 1924, and was engaged in handling large sheets of blue carbon paper used in tabulating accounts. In the course of her employment she wiped or rubbed her face with her hands, and having a slight cold sore near the corner of her mouth through which her blood became infected, cellulitis developed into acute blood poisoning, which caused her death. Her mother, asserting dependency, filed a claim with the industrial commission for compensation. The claim was rejected and an appeal was taken to the court of common pleas, where the case was tried by a jury, but at the close of the evidence the court directed a verdict for the defendant and entered judgment thereon. The plaintiff brought error.

It was contended on behalf of the defendant that the evidence did not show an injury within the meaning of the workmen's compensation law, and that if the decedent was injured such injury was not suffered in the course of her employment.

Taking up the sequence of events as set forth above, the court said:

If this condition should be found by the jury to be sustained by the evidence, it would amount to an injury within the meaning of the workmen's compensation law [citing English and American cases].

Ohio decisions were said to agree, making a distinction between occupational diseases "developed in the usual and ordinary manner because of the occupation, and an injury happening suddenly from the same cause."

As to whether the injury was received in the course of the employment, it was admitted that part of the physician's affidavit was hearsay, as he could not have had personal knowledge of all the facts therein set forth; but as the commission is not bound by the usual rules as to evidence, the statement was properly before the jury on the appeal. The injury being found to be within the statute, the judgment for the defendant must be reversed, and a new trial granted, and it was so ordered.

WORKMEN'S COMPENSATION—INJURY IN COURSE OF EMPLOYMENT—RETURNING HOME FROM WORK—*Cymbor v. Binder Coal Co.*, *Supreme Court of Pennsylvania (February 8, 1926)*, 132 *Atlantic Reporter*, page 363.—J. Stanley Cymbor was employed by the defendant as an electrician and was paid by the hour for that work. It was also his duty to start the pumps in the mine sometime during the night, for which he received extra pay. On the night in question he had gone from his home to the mines to start the pumps, and was returning on the tracks of the Pennsylvania Railroad, his usual route, when he was killed by an engine. His widow was awarded compensation by the referee and workmen's compensation board. This award was reversed by the court of common pleas on the question of course of employment, and she brought appeal. In reversing the lower court and holding that the death occurred in the course of the employment, the court cited *Haddock v. Edgewater Steel Co.* (263 Pa. 120, 106 *Atl.* 196; see *Bul. No. 290*, p. 426), and said in part:

In the instant case the nightly trip to the mine was in furtherance of the master's business to do an errand for the master, and he was properly on the latter's time not merely at the moment of starting the pumps, but going and coming as well. The case is not analogous to that of a day laborer whose work and pay being when he arrives in the morning and ends when he quits in the afternoon. His furtherance of the master's business begins and ends with the work of the day. In the instant case to hold the employee was furthering the master's business only after reaching the mine or while starting the pumps is drawing too fine a sight on a statute which must be liberally construed. If Cymbor was paid only for the actual time engaged in turning the button or otherwise starting the pumps, it would practically amount to nothing, although in a month he would travel miles in the dark to enable him to perform that duty.

The judgment appealed from was therefore reversed, and the record remitted to the lower court that judgment may be there entered in favor of claimant on the award.

The compensation law of Utah uses the disjunctive "or" in the clause, "arising out of or in the course of employment." This was held by the supreme court of that State to warrant compensation to a workman leaving the place of his employment by a path along which a cable was used to move trams. This cable accidentally became charged with electricity, and contact therewith caused death. The court was of opinion that the time, place, circumstances, and death were all within the course of the decedent's employment, and affirmed an award to his widow. (*Utah Apex Mining Co. v. Industrial Commission* (1926), 248 *Pac.* 490.)

WORKMEN'S COMPENSATION—INJURY "IN OR ABOUT" FACTORY—REPAIRING TRUCK USED IN BUSINESS—*Wise v. Central Dairy Co.*, *Supreme Court of Kansas (June 12, 1926)*, 246 *Pacific Reporter*, page 501.—Hobart M. Wise was awarded compensation by the district court of Wyandotte County for injury received in the employ of the

company named. The company appealed from the judgment on the ground that the plaintiff was not injured by reason of an accident "in, on, or about" its place of business.

Wise was employed by the defendant to repair trucks used in its dairy business. At the time in question the starter on one of the trucks had become stuck, and the plaintiff and other employees were directed by the foreman to push the truck into a street down a grade and try to force the starter loose. That was done and the starter was forced loose. The car was stopped on the street some 200 feet from the plant. While plaintiff was examining it to see what caused the trouble, he was struck and injured by an automobile driven by someone who was not an employee of the defendant.

There was no controversy over the extent of the injury, nor the amount of compensation allowed, but the question was whether under the circumstances the plaintiff was entitled to compensation. To the defendant's contention that the plaintiff's injuries were not received "in, on, or about the factory" of the defendant within the meaning of the statute (R. S. 44-505, 48-508); that the car was on a public street 200 feet from its factory when the accident occurred; and that the word "about" as used in the statute was one of locality, the court said:

This was near the factory; the particular place for this work to be done was selected by the defendant's foreman when he directed that the car be pushed into the street for that purpose, and hence was adopted by defendant as the place for making such repairs, and was within the danger zone of the factory as then being conducted by defendant.

Finding no error in the record, the judgment of the court below was affirmed.

WORKMEN'S COMPENSATION—"INJURY SUSTAINED IN THE COURSE OF EMPLOYMENT"—HORSEPLAY—*Cassell v. United States Fidelity & Guaranty Co., Supreme Court of Texas (April 7, 1926), 283 Southwestern Reporter, page 127.*—L. P. Cassell was employed by the Wichita Theater Co. as a stage hand, and at the time in question was engaged in his regular duties. The employer's stage manager, one Shaver, went onto the stage and in fun snapped a pistol kept by the company for use during theatrical performances and supposed to be unloaded at other employees and at Cassell, when the pistol fired and injured Cassell. He was awarded compensation for his injuries by the district court. The civil court of appeals reversed that judgment and entered judgment for the defendants, whereupon the plaintiff brought error. The question for the court was whether or not the injury received by the plaintiff was compensable under the workmen's compensation act.

The facts in the case were undisputed and the district court held as a matter of law that Cassell was entitled to compensation. Upon the same state of facts the civil court of appeals held as a matter of law that Cassell was not entitled to compensation and rendered final judgment accordingly.

The supreme court cited a number of cases in which questions similar to that in the instant case were involved, in most of which the courts held that injury sustained under such circumstances as herein set forth were compensable.

Judge Greenwood, speaking for the court, then said in part:

We think, with the decisions already quoted, that it is a matter of common knowledge that in groups of employees horseplay of some kind is an incident that should be expected. If that be true, then we submit that the particular kind of horseplay indulged in, in the case at bar, was the most natural kind. The facts show that Shaver was in the habit of "creating atmosphere" by shooting blank cartridges during performances. Furthermore, the stage is a place where pranks are practiced perhaps more than any other. While the court finds that the practice of snapping pistols at each other had not occurred until about 15 minutes before this accident, still the record shows that pistols were commonly used by the employees at this theater at various times and that they were fooled with by these employees in various ways, including the creating of atmosphere by firing. Therefore, we submit that, if horseplay of any kind was a reasonable incident to this employment, it certainly should have been anticipated that it would grow out of the use of a pistol in some way. We are of the view that the horseplay indulged in here was a reasonable incident of this particular employment.

The judgment of the court of civil appeals was accordingly reversed and the judgment of the district court awarding compensation affirmed.

A court of the same class as that reversed above (Texas Civil Appeals) affirmed an award in a case in which a workman was rendered totally blind by an accidental shooting by a revolver in the hands of the foreman. There had been habitual and reckless shooting going on, which the court held could have been ascertained by the employer's agents by the exercise of reasonable diligence. Under the circumstances the injured man suffered by reason of a "risk created by the conditions under which the business was carried on," and was entitled to compensation. (*Standard Accident Co. v. Stanaland* (1926), 235 S. W. 878.)

WORKMEN'S COMPENSATION—JURISDICTION—ENFORCEMENT OF LAW BY COURTS OF OTHER STATES—*Texas Pipe Line Co. v. Ware, United States Circuit Court of Appeals, Eighth Circuit* (1926), 15 *Federal Reporter* (2d), page 171.—J. L. Ware received an injury while employed in the State of Louisiana, his employer operating under the compensation law of that State. An action was subsequently brought in the circuit court of Fayette County, Ark., to recover damages for the injury. On petition of the employer the case was

removed to the United States District Court for the Western District of Arkansas (presumably on the ground of diversity of citizenship). In that court the employer moved to require the plaintiff to state whether or not a contract had been entered into with reference to the compensation law of Louisiana, and whether or not he was seeking to enforce the liability prescribed by that statute. Ware replied "that the suit was brought in a double aspect, but, if required so to do, he would elect that the case should be governed by the workmen's compensation law of Louisiana." The employer then moved for a dismissal of the case on the ground that the provisions of said act could not be enforced by any court outside the State. The trial court rejected this motion and proceeded to hear the case without a jury, entering a judgment for an award. The employer thereupon brought error, submitting the question of the power of any court other than those of the State of Louisiana to administer the compensation law.

Circuit Judge Kenyon, speaking for the court, stated the facts as above, and then declared that there was no question that the district court had jurisdiction when the case was removed to it from the State court on petition of the employer. The question remained whether the plea by way of amendment electing that the case should be governed by the compensation law of Louisiana deprived the court of jurisdiction. This question was discussed at length, citing several cases in which legislatures had undertaken to limit the forum in which cases under a prescribed statute could be tried, but without success. "Such statutes can not prevent the exercise of jurisdiction by the Federal courts, where the facts exist which under the Constitution and the statutes of Congress give jurisdiction to such Federal courts." A citation was made from a decision of the Supreme Court to the effect that "an action for personal injuries is universally held to be transitory, and maintainable wherever a court may be found that has jurisdiction of the parties and the subject matter."

The Louisiana law provides for enforcement of its provisions by the courts, and uses terminology appropriate therefor. In a majority of the States having compensation laws administration is by a board or commission or other special agency with prescribed methods of procedure. The Supreme Court of Arkansas had declined to undertake to enforce rights given by the Oklahoma compensation law on that ground. (*Logan v. Missouri Valley Bridge & Iron Co.*, 152 Ark. 529, 249 S. W. 21.) Judge Kenyon found this decision not a guide in the instant case, saying "such act provided for an administrative board to which the claims were to be presented. There was no provision for any court action or judgment of the court. The rights

asserted were to be determined by a board. That case bears no similarity to this."

It was admitted that "there may be difficulties in enforcing in the Federal courts the workmen's compensation acts," but they should not be regarded as insuperable unless they are in fact so." No such obstacles were found in the instant case, the right being prescribed and conditioned by the law of the State where granted, and the remedy governed by the law of the forum.

The judgment below in favor of the plaintiff was therefore affirmed.

The Supreme Court of North Carolina reversed an award given by way of judgment in a county court of the State, in which a workman injured in Tennessee was held to be entitled to the benefits of the compensation law of the latter State. The supreme court found no provision in the laws of North Carolina, which has no compensation statute, for the enforcement of a compensation law such as that of Tennessee, so that there was no comity between the State in respect of such remedy. (*Johnson v. Carolina, C. & O. R. Co.* (1926), 131 S. E. 390.)

WORKMEN'S COMPENSATION—LUMP-SUM JUDGMENT—OBJECTIVE EXAMINATION—USE OF X RAY—*Reeder v. Thompson et al.*, *Supreme Court of Kansas* (April 10, 1926), 245 *Pacific Reporter*, page 127.—Edward Reeder was employed by F. M. Thompson and others, doing business as the T. R. & G. Coal Co., as a hoist engineer in its mine. On March 20, 1923, an explosion occurred in the mine, which filled it with flames and carbon monoxide gas. Plaintiff was badly burned about his hands, face, mouth, throat, and lungs, which permanently disabled him. He was paid compensation up to and including November 26, 1924, when it was discontinued. He then brought action in the District Court of Kansas, alleging permanent disability, and recovered a lump-sum judgment in the amount of \$4,935. The defendants appealed on the ground that the radiograph pictures introduced in evidence did not constitute an objective examination within the meaning of the statute and were therefore insufficient on which to base a lump-sum judgment.

The statute on which the objection was based is in part as follows:

In no case shall a lump-sum judgment be rendered for any injury not ascertainable by objective examination, but in such cases the court may order periodical payments during incapacity. [R. S., 44-534.]

The court on review found that the physician who examined the plaintiff at the time of his injuries had testified that he found him suffering from pulmonary burns and carbon monoxide poisoning; that his examination with the X ray showed that his lungs were badly affected; that he had a slight enlargement of the heart; and that the radiograph pictures taken of his chest showed scars on the lungs and

a marked fibrous condition. This testimony was affirmed by another physician who was an authority on radiograph pictures and who had examined the plaintiff a short time before the trial.

The opinion of the court, as delivered by Judge Johnston, was in part as follows:

Objective symptoms are those which the physician by the ordinary use of his senses discovers from a physical examination. What he discovers through his vision, aided by magnifying glasses or an X-ray instrument, are objective symptoms. By the use of the X ray a view may be had of internal conditions not perceivable by the ordinary or unaided senses. The sense of sight is enlarged by its use, and, although a recent invention, its use is now common, and what it reveals is generally recognized and accepted. (1 Wigmore on Evidence, 795.) Of course, the instrument should be one that is trustworthy and the operator competent.

The court found no material error in the proceeding, and the judgment was therefore affirmed.

WORKMEN'S COMPENSATION—LUMP-SUM SETTLEMENT—"COMPENSATION"—MEDICAL SERVICES—*Melcher's Case, Supreme Judicial Court of Maine (September 28, 1926), 134 Atlantic Reporter, page 542.*—One Melcher, employed in Wyman's café, was injured in the course of her employment and was awarded compensation. After compensation had been paid for more than six months, but before the plaintiff had paid the physician who ministered to her during convalescence, she filed a request for commutation of future payments into a lump sum, which was ascertained and paid. Within 60 days thereafter the plaintiff filed a petition with the industrial accident commission for determination of a sum to be paid by her employer to defray the expense of medical and surgical aid incurred immediately after the accident. Upon her petition being denied, she appealed to the supreme judicial court, Cumberland County, which dismissed the petition, and she again appealed to the supreme judicial court of the State. That court held that the question was purely legal, and that its solution is found in section 28 of chapter 233 of the Public Laws of 1919, reading in part as follows:

In case payments have continued for not less than six months either party may, upon due notice to the other party petition the commission for an order commuting the future payments to a lump sum. Upon payment of such amount the employer shall be discharged from all further liability on account of the injury or death, and be entitled to a duly executed release, upon filing which, or other due proof of payment, the liability of such employer under any agreement, award, findings, or decree shall be discharged of record, and the employee accepting the lump-sum settlement as aforesaid shall receive no future compensation under the provisions of this act.

Speaking of this section, the court said:

The wording of the phrase under inspection is entirely unambiguous, and its meaning must be held to be that, after paying the amount of the settlement ordered by the commission, the employer shall not be called upon for further or other payments.

We hold that the services, restoratives, and aids required by statute to be supplied are "compensation," within the meaning of the act, and our conclusion, therefore, is that, after payment to him under a lump-sum settlement order, regularly arrived at, the injured workman can no longer, as of right, demand of the employer any contribution of any sort.

The decree was affirmed and the appeal dismissed.

WORKMEN'S COMPENSATION—MEDICAL AND SURGICAL AID—REFUSING OPERATION—*Palloni v. Brooklyn-Manhattan Transit Corporation, Supreme Court of New York, Appellate Division (March 3, 1926), 214 New York Supplement, page 430.*—Parlo Palloni, who was known to be suffering with a hernia of the left side, was employed by the defendant, and while in the course of his employment he received an injury which produced a right inguinal hernia and aggravated the preexisting one. It appeared that some time prior to the injury in question the plaintiff had been severely burned, and when sent to the hospital for treatment of the hernia he was not, in the opinion of the doctors, in condition to be operated on, although he consented to an operation. Four months later he was advised to have an operation and was told by the referee that unless he consented he could not receive compensation. He was also told that he would not have to meet any of the expenses incident to the operation. The hospital physicians and his own doctor assured him that there was practically no danger from the operation and there might be serious results from strangulation if he attempted to work in his present condition, but he declined to submit. He alleged as a reason fear that he would be killed, and it was upon that ground that the referee based his award. The defendant appealed. The court, in reversing the award said in part:

The attention of the court has not been called to any reported case in this State defining the duty of a claimant with reference to an operation. It has been generally recognized, however, that, when such claim arises on a hearing in compensation court, it is the duty of the court to make a finding as to whether or not the claimant unreasonably refused. This in effect is a recognition of the fact that, if the refusal was unreasonable, compensation should be denied.

Reference was made by the court to several cases in which the facts involved were very similar to those in the instant case, and it

quoted from the opinion given in *McNally v. Hudson & Manhattan R. Co.* (95 Atl. 122, 87 N. J. L. 455), as follows:

It is true that, whether a workman reasonably refuses to have an operation performed is one of fact for the trial judge to determine. It can not, however, be properly said that, where it appears, as it does in the present case, that a risk of life is involved, the refusal of the prosecutor to submit to an operation is unreasonable.

The opinion continued:

The question of reasonableness may be one of fact, and, if so found, is binding on this court, but in this case there is no dispute of fact. There is a single question, Was unjustifiable fright a reasonable ground for refusal to submit to an operation which had been recommended by physicians representing the claimant, the employer, and the industrial board, and consequently presumed to be for the best interests of the claimant, especially where there is not proof that such operation is fatal or even dangerous? As a matter of law, it must be held that such fright alone was not a reasonable ground for refusal.

The award was reversed, and the matter remitted to the State industrial board to give claimant an opportunity to submit to an operation, with costs against the State industrial board to abide the event.

The Supreme Court of Alabama affirmed an award to a man whose eye was injured, causing cataract, his employer contending that unless an operation was submitted to compensation should be suspended. The operation had not before been tendered, and the court held that the employee was entitled to "reasonable opportunity to be properly advised" as to the nature and probable success of the operation, and whether free from serious danger. (*Gulf States Steel Co. v. Cross* (1926), 106 So. 870.)

WORKMEN'S COMPENSATION—MEDICAL AND SURGICAL AID—REFUSING OPERATION—DISCONTINUANCE OF COMPENSATION—JUDICIAL NOTICE—*Southern California Edison Co. v. Industrial Accident Commission of State of California et al.*, *District Court of Appeal of California* (December 22, 1925), 243 *Pacific Reporter*, page 455.—The Industrial Commission of California awarded compensation to Oliver R. Harris for disability resulting from injuries received nearly two years prior thereto. The award was opposed by the employing company, which brought a writ of certiorari to have the order of the commission reviewed.

Harris on March 6, 1923, fell from an electric light pole and thereby sustained an injury to his back. Within three weeks he had recovered sufficiently to do light work for his employer, which he continued to do for some four weeks, when he suffered a wrench to his back which caused him to desist from further labor. From that time until the date of the hearing before the commissioners, some two

years later, he was unable to work, due to the condition of his back. He was examined at intervals during that period by some four or five surgical experts and received more or less medical and surgical treatment.

All the surgeons who examined him in the earlier period of his disability advised him that a surgical operation would greatly relieve him, some of them expressing an opinion that he could be entirely cured. Two methods of treatment were recommended, the "Albee" and the "Hibbs" treatment. The report of Dr. John C. Wilson, who examined Harris some 22 months after his injury, corresponded with that of the other surgeons, except that he expressed some doubt as to a complete recovery, and Doctor Southworth also qualified his report in the following words:

It must be borne in mind that a Hibbs or Albee operation is not always followed by prompt and satisfactory relief.

It appeared that the company repeatedly offered to provide and urged the recommended operation, but from the outset Harris refused to consent to it. The commission found that the refusal was not unreasonable. The company contended that the refusal to submit to an operation was unreasonable and therefore it was not liable for the continued disability of Harris. Subdivision (e), section 11, of the workmen's compensation insurance and safety act of 1917, upon which the company relied reads as follows:

No compensation shall be payable in case of the death or disability of an employee if his death is caused, or if and so far as his disability is caused, continued or aggravated, by an unreasonable refusal to submit to medical treatment, or to any surgical treatment, the risk of which is, in the opinion of the commission, based upon expert medical or surgical advice, inconsiderable in view of the seriousness of the injury.

The court, on review of the commission's findings, said in part:

It must be admitted that there is nothing in the record which can support the conclusion that there was any risk involved in the proposed operation. Doctor Wilson's report, while recommending the operation, does throw some doubt upon the probability of beneficial results, but it must be kept in mind that the doubt is based upon the fact that some 22 months had elapsed between the time of the injury and Doctor Wilson's examination, and the fact that an operation had not been performed previous to Doctor Wilson's examination is wholly due to the refusal of Harris.

We cannot agree with respondent's contention that the commission may take judicial cognizance of what is involved in the "Hibbs" or "Albee" treatment. The rules of evidence which obtain in hearings before the industrial accident commission, so far as the present instance is concerned, are the same as those which prevail in the trial courts of this State.

Where the issue pertains to medical or surgical treatment, the nature, effect, or result of which are the subjects of common knowledge, such matters are within the rule of judicial knowledge, as for

instance, the court will take judicial notice of the nature, purpose, and effects of vaccination. Also that syphilis is a serious disease. But where the matter is not one of common knowledge, but known generally only to medical experts, it must be proven by competent evidence just as any other issue of fact.

It was held by the court that there was no competent evidence offered before the commissioners as to the character of risk involved in either the "Albee" or "Hibbs" treatment from which it could properly find that the employee's refusal to submit to an operation was not unreasonable. The award was therefore annulled and the case referred back to the commission with instructions to exclude any compensation for disability in so far as it was caused, continued, or aggravated by unreasonable refusal of the employee to undergo the recommended operation.

WORKMEN'S COMPENSATION—MEDICAL AND SURGICAL AID—
"UNUSUAL CASES"—CONSTRUCTION OF MASSACHUSETTS LAW—
Moore's Case, Supreme Judicial Court of Massachusetts (May 26, 1926),
152 Northeastern Reporter, page 66.—Galen Moore, an employee of
the Bethlehem Shipbuilding Corporation, was injured in May, 1920,
by an accident arising out of and in the course of his employment,
and tuberculosis resulted from the injury. He was discharged from a
hospital in 1923 to enter a sanatorium for lung tuberculosis where he
could receive proper treatment. The industrial accident board
ordered the insurer of his employer to repay him what he had paid
out to physicians and hospitals for services rendered after the two
weeks following his injury. It appears that the legislature had by
statute given the board authority to require employers to extend
medical treatment, etc., beyond the first two weeks in "unusual" cases.
In *Rys' Case* (254 Mass. 244, 139 N. E. 505; see Bul. No. 391,
p. 502), classed as "unusual," complications arose after an operation
which resulted in degeneration of the skin, necrosis of the bones and
tissues, and hemorrhage. After citing this case and quoting from
the opinion delivered therein as follows:

Among the "unusual" cases would ordinarily be included, for
example, those requiring major operations, spinal injuries calling for
expensive special apparatus, and serious injuries to the eye or brain
demanding the services of specialists. It is equally clear that the
statute is not applicable to the common minor injury, calling for
ordinary medical treatment

Judge Carroll, speaking for the court, said in part:

There was nothing unusual in the case at bar. The plaintiff is
afflicted with tuberculosis as a result of his injury, but the statute
did not intend to put the expense of his cure on the insurer, as no
unusual result or complication, no unexpected accident or symptom,

intervened to bring the case within the statute. It follows that the decree must be reversed and a decree entered for the insurer.

The decree was accordingly reversed and a decree entered for the insurer.

WORKMEN'S COMPENSATION—MEDICAL FEE—REQUIRING PAYMENT—JUDICIAL POWERS OF COMMISSION—*Bee Hive Mining Co. et al. v. Industrial Commission of Virginia, Supreme Court of Appeals of Virginia (March 18, 1926), 132 Southeastern Reporter, page 177.*—The Industrial Commission of Virginia undertook to require the Bee Hive Mining Co. and its insurer to pay Dr. S. M. Ford \$275 for medical attention to an injured employee of that company prior to the assertion of the claim before the industrial commission. The employer and insurer appealed. The appeal was dismissed because the amount involved was less than \$300, the statutory amount necessary to give the court jurisdiction in cases of this nature. (*Bee Hive Mining Co. et al. v. Ford*, 131 S. E. 203.)

The instant hearing was on a petition for a writ of prohibition by the mining company and the insurer to restrain the industrial commission from issuing a certified copy of an award and proceeding further. The court, in awarding the writ, said in part:

Whatever control the commission has over fees of physicians it gets from section 65 of the workmen's compensation act, which is as follows:

"Fees of attorneys and physicians and charges of hospitals for services under this act shall be subject to the approval of the commission; but no physician shall be entitled to collect fees from an employer or insurance carrier until he has made the reports required by the industrial commission in connection with the case."

This section was intended, as we construe it, to give the industrial commission the power to pass on attorneys' fees and physicians' charges when rendered—in other words, it was the intent of the act not to allow an attorney or a physician to overcharge for their services. There is nothing in this section that could be construed to give authority to the industrial commission to make a money award against an employer and insurance carrier and in favor of a physician, who, at their request had rendered services to an injured employee.

Of course, if in accordance with the provisions of the workmen's compensation law, the employer or its insurance carrier had ordered the services of a physician, and refused to pay for them, the physician would have a right to maintain an action at law, but the industrial commission has no authority under the law to require the employer or its insurance carrier to pay a physician ordered by them.

A writ of prohibition will therefore issue, prohibiting the Industrial Commission of Virginia from further proceeding in the matter of the award of a fee to Dr. S. M. Ford, and particularly from issuing a certified copy of the award.

WORKMEN'S COMPENSATION—MEDICAL SERVICES—EMPLOYMENT BY CLAIMANT—*Koch v. Lehigh Valley R. Co., Supreme Court of New York, Appellate Division (July 2, 1926), 216 New York Supplement, page 609.*—George Koch, an employee of the Lehigh Valley Railroad Co., while in the course of his employment on March 2, 1921, cut his finger, blood poisoning resulting. He consulted his own physician, Dr. David Brumberg, who lanced the finger on March 3, and saw Koch daily until March 10, at which time incisions were made in the finger and hand to drain them. Thereafter claimant was delirious most of the time until July, 1921. During this period and until September 30, 1921, Doctor Brumberg saw his patient every day and sometimes twice a day, either at his office or at Koch's house. Thereafter calls were made nearly every other day by the physician upon the patient or vice versa until February, 1925. Meanwhile, Dr. Joseph Brumberg, Dr. David Brumberg's brother, had been employed to give claimant X-ray treatments. From an award by the industrial board to claimant in the sum of \$1,622 on account of medical services of Dr. David Brumberg and \$150 on account of the services of Dr. Joseph Brumberg, the employer appealed.

Judge Henry T. Kellogg, rendering the opinion of the court, said in part:

It will be seen that the Brumbergs had in claimant an excellent patient, had his employer been responsible for his bills. We do not think the employer was so liable. Section 13 of the workmen's compensation law (amended by Laws 1918, ch. 634, sec. 3), as it read in March, 1921, provided as follows:

"The employee shall not be entitled to recover any amount expended by him for such treatment or services unless he shall have requested the employer to furnish the same and the employer shall have refused or neglected to do so, or unless the nature of the injury required such treatment and services and the employer or his superintendent or foreman having knowledge of such injury shall have neglected to provide the same."

Inasmuch as the claimant had not requested the employer to furnish medical services, nor notified the employer of his injury until nine days after it occurred, it was held that such employer could not be held liable for medical services rendered.

The award was therefore reversed and the claim dismissed with costs against the State industrial board.

WORKMEN'S COMPENSATION—MINOR ILLEGALLY EMPLOYED—ACTION FOR DAMAGES—DEFENSES—*William B. Tilghman Co. (Inc.) v. Conway, Court of Appeals of Maryland (April 15, 1926), 133 Atlantic Reporter, page 593.*—Harry L. Conway, a minor under the age of 14 years, was employed by William B. Tilghman Co. (Inc.) on July

1, 1923. On August 15, 1923, being then slightly above the age of 14, he was injured in the course of his employment by being hit in the eye by a piece of timber which broke his glasses and caused an injury which resulted in total blindness of his right eye. He was awarded compensation by the industrial accident commission on September 22, 1923, and on November 22, 1923, the order was annulled for the reason that the claimant was at the time of his employment and the accident under 16 years of age. The plaintiff then instituted a suit in the circuit court of Wicomico County to recover damages for his injury, and in his declaration charged the defendant with illegal employment and negligence. The common-law defenses were held barred by the terms of the compensation act. From judgment for the plaintiff the defendant appealed.

The appeal presented three questions for the consideration of the court of appeals: (1) Was the employment of the plaintiff, although prohibited by article 100 of the Code of Public General Laws, illegal under the provisions of article 101 of the workmen's compensation law? (2) If such employment was not illegal, could the plaintiff bring a common-law action for damages caused by an injury due to the negligence of the employer, etc.? and (3) if such action be brought could the defendant plead the common-law defenses?

The court, after reviewing article 100, Code of Public General Laws, relative to the employment of children under the age of 14, and article 101, workmen's compensation act, stipulating the conditions under which children between the age of 14 and 16 years may be employed, held that the employment of the plaintiff was illegal. Judge Diggs, speaking for the court, said in part:

It could not have been the intention of the legislature to include within the provisions of the workmen's compensation law those persons who by the child labor law were forbidden from engaging in certain employments and were prohibited from being employed except when conditions, specifically set forth, had been complied with; in other words, the legislative branch of the State could not have intended by one law to prohibit the employment of minors, and by another law provide for compensation to such minors injured while engaged in the prohibited employment or occupation.

To the second and third questions and the contention that the plaintiff had elected to apply for compensation and could not therefore bring his suit at common law, Judge Diggs said:

But in the present case the plaintiff here has made no election, for the reason that he could not make an election, not coming under the provisions of the workmen's compensation law. It therefore follows that he is at liberty, upon the industrial accident board's decision that he was not entitled to compensation because of his being outside of the provisions of the act, to bring this action at common law. Upon bringing the action at law, and not being embraced within the provisions of the workmen's compensation law, he can not avail himself of

any of the provisions of that law, and therefore the defendant in this action is entitled to plead and set up the common-law defenses of assumption of risk, fellow servant, and contributory negligence; in other words, the plaintiff and defendant in this case have the same rights and remedies as they would have had in case the workmen's compensation article had never been enacted.

The judgment of the trial court was reversed and a new trial awarded with costs to the appellant.

WORKMEN'S COMPENSATION—MINOR ILLEGALLY EMPLOYED—TREBLE DAMAGES—CONSTITUTIONALITY OF STATUTE—*Town of New Holstein v. Daun, Supreme Court of Wisconsin (June 21, 1926), 209 Northwestern Reporter, page 695.*—Subsection 7 of section 102.09 of the workmen's compensation act of Wisconsin provides that "compensation and death benefits, as provided in sections 102.03 to 102.34, inclusive, shall, in the following cases, be treble the amount otherwise recoverable: (a) If the injured employee be a minor of permit age and at the time of the accident is employed, required, suffered or permitted to work without a written permit issued pursuant to section 103.05."

The industrial commission, proceeding under the provisions of that statute, awarded George Daun, a minor of permit age, employed by the town of New Holstein on road work without a permit, treble damages. Daun was employed to load stone on wagons. One Ridgeway, not a coworker, struck a large stone with a hammer and a piece of the stone or hammer flew off and hit Daun's eye and destroyed his sight. The commission found that Daun, who was 16 years old at the time of the injury and earning an average wage of \$945 per year, would probably earn an average wage of \$1,400 after arriving at the age of 21 years, and therefore assessed the normal compensation at \$2,750.03, payable by the town or its insurance carrier, and the further sum of \$5,500.06, primarily payable by the town. From a judgment affirming the award the town appealed on the ground that the evidence did not sustain the finding that after reaching the age of 21 years Daun would probably earn \$1,400 per year, and also that the statute was unconstitutional because it places upon the employer the burden of proving that the minor would probably not earn \$1,400 after his majority.

The court held that there was sufficient evidence to justify the commission's findings as to the probable future earning power of Daun to give it that conclusiveness which the statute requires. It also held that the argument against the constitutionality of the statute was met by the opinion of the Supreme Court of the United States in *Booth Fisheries Co. v. Industrial Commission* (46 Sup. Ct. 491), and quoted from that opinion as follows:

More than this, the employer in this case having elected to accept the provisions of the law, and such benefits and immunities as it gives, may not escape its burdens by asserting that it is unconstitutional. The election is a waiver and estops such complaint.

The court concluded its opinion by saying:

As to subdivisions of the State that come under the compensation law by force of statute, as the plaintiff did in this case, it is clear that the State may prescribe reasonable regulations as to their liabilities under the law. The placing upon them the burden of showing that a minor would probably not earn \$1,400 after majority cannot be said to be so unreasonable as to be unconstitutional, assuming that a subdivision of a State can question the constitutionality of liabilities placed upon it by the State.

The judgment was therefore affirmed.

WORKMEN'S COMPENSATION—PAYMENT OF DEBTS OUT OF COMMUTED AWARD—POWER OF COMMISSION—CONSTRUCTION OF STATUTE—*Los Angeles County v. Industrial Accident Commission et al.*, *District Court of Appeal of California (February 25, 1926)*, 245 *Pacific Reporter*, page 796.—The industrial accident commission made an award to Jennie C. Lowe, widow of an employee of the County of Los Angeles, which employee was killed in the course of his employment. By order of the commission the award was commuted and the county was ordered to pay to each of several creditors of the deceased, or of the widow, a fixed sum of money, the aggregate amount thereof to be deducted from the total award and the balance thereof to be paid to the widow. The county of Los Angeles objected to the order and sued out a writ of certiorari to have the award reviewed on the ground that under the workmen's compensation insurance and safety act the commission had no authority to make the order complained of.

The act contains a general prohibition against awards being taken for the debts of the parties, but lists certain charges that may be made liens thereon. From this the commission had assumed an implied power to make the distribution complained of. The court held that the power of the commission was limited to the definite provisions of the law, and since the debts allowed in the order were not included in the terms of the act the award must be annulled.

Another question raised was as to the interest of Los Angeles County in the disposition of the award; but the court held that as it was the employer, and part of its money would be used in making the payments under consideration, it was a party in interest and could properly bring the proceedings.

WORKMEN'S COMPENSATION—"PLANT"—CITY EMPLOYEE—INJURY BY THIRD PARTY—CONSTRUCTION OF STATUTE—*Shockey v. Royal Baking Powder Mfg. Co. et al.*, Supreme Court of Washington (March 26, 1926), 244 Pacific Reporter, page 549.—George F. M. Shockey was employed by the city of Seattle to work upon the public streets of the city. While so employed he was run into and injured by an automobile operated by E. G. Fredbloom for the Royal Baking Powder Manufacturing Co. and the Royal Distributing Co. Shockey brought his action against the companies named. The case was dismissed on the ground that the facts did not constitute a cause of action against the defendants, and plaintiff appealed from the judgment.

The supreme court found the "sole question" before it to be whether the injured man was at the time of his injury working at the plant of his employer. If so, only the compensation right existed; otherwise, he might sue the third parties. In affirming the judgment of the lower court, the court reviewed several of its prior decisions in which the facts and circumstances were virtually the same as those in the present case and referred especially to the word "plant" as it had construed it in the former cases. In *Carlson v. Mock* (102 Wash. 557, 173 Pac. 637), the court held that the word "plant" was intended by the legislature to include no more than that part of the employer's fixed property over which he has exclusive control. Since the city had exclusive control of its streets, and could for the purpose of repair take any and every necessary step to insure the safety of its employees while engaged thereon, it must, under the terms of the statute, be held to be a part of the plant or premises of the city. Of this Judge Fullerton, speaking for the court, said in part:

We may say here, however, as we have said in similar instances, it is a rule with which we are without sympathy. It permits a person guilty of wrong to charge a fund to which he neither contributes nor has an interest with the consequences of the wrong. But the evil is for legislative correction. The courts must administer the statute as as they find it.

The judgment was therefore affirmed, relegating the employee to his remedy against the industrial fund.

WORKMEN'S COMPENSATION—SECOND INJURY—LOSS OF SECOND MEMBER—TOTAL DISABILITY—*Nease v. Hughes Stone Co.*, Supreme Court of Oklahoma (September 15, 1925), 244 Pacific Reporter, page 778—W. A. Nease was employed by the defendant and on September 13, 1922, in the course of his employment and arising out of the same, lost the sight of his right eye by an explosion. Prior to his employment by the defendant he had lost the sight of his left eye, and

as a result of the latter accident he was permanently and totally disabled. At a hearing before the commission he was granted an award for the loss of an eye and allowed compensation for 100 weeks. He brought action in the supreme court to reverse and vacate the award under the terms of the act that declare that the loss of both eyes constitutes permanent total disability. In so doing the court stated that the employer and insurer "must have known" that the employee had but one sound eye when he was employed, and that "he was presumably paid the wages which a man in that impaired condition was worth in that service." Such earning capacity as he had being totally destroyed, he was entitled to compensation for permanent total disability, and it was so ordered.

The Supreme Court of Illinois took the same view in the case of a coal miner who had been blind in one eye for eight years and had then lost 75 per cent of the use of the other eye. The result was that "it would be exceedingly difficult, if not impossible," for the injured man to find gainful employment or successfully to perform its duties. The award of the State commission as for permanent total disability was accordingly affirmed. (*Superior Coal Co. v. Industrial Commission* (1926), 152 N. E. 535.)

A like construction was put upon the compensation law of Alaska by a United States Circuit Court of Appeals, which affirmed the judgment of the District Court for the Territory of Alaska awarding total disability benefits in the case of a man losing a second eye by accident. (*Killisnoo Packing Co. v. Scott* (1926), 14 Fed. (2d) 86.)

The law of Iowa contains a schedule for specific injuries, and provides that, in case of successive injuries, compensation shall be awarded for the effects of of each independently. The supreme court of the State upheld an award allowing the schedule amount only in the case of a man whose right arm was off at the shoulder on account of a prior injury, and who then lost the lower third of his left arm, rejecting a claim as for permanent total disability. (*Pappas v. North Iowa Brick & Tile Co.* (1925), 206 N. W. 146.)

WORKMEN'S COMPENSATION—SECOND INJURY—PRIOR PARTIAL INCAPACITY—*American Mutual Liability Ins. Co. et al. v. Brock, Court of Appeals of Georgia* (September 25, 1926), 135 *Southeastern Reporter*, page 103.—E. E. Brock lost a foot and his right leg up to within 3 inches of the knee joint when he was eight years of age. On June 25, 1924, while in the performance of his duties with the Gainsville Cotton Mills, a bale of cotton rolled on his right knee, spraining his hip and knee. His weekly wage at the time of the accident was \$9.07. He was paid compensation for 10 weeks' temporary total incapacity in accordance with the laws of Georgia. He returned to work on September 6, 1924, and continued to work until April 20, 1925, when he was discharged. Shortly thereafter he applied for additional compensation on the ground of a change in condition. On a hearing the commission found from medical testimony that

there was a 50 per cent loss of the use of that portion of the claimant's leg which had not been destroyed previous to June 25, 1924. It then proceeded to make its award on the basis that the loss previously suffered by the plaintiff was equal to 150 weeks of compensation and, deducting this from 175 weeks, the period for which compensation is allowable for the loss of a leg, the remaining usefulness would be equal to 25 weeks. Since there was a 50 per cent disability to the remaining portion of the leg, the commission held that plaintiff was entitled to compensation for $12\frac{1}{2}$ weeks at the prescribed rate for a good leg. On plaintiff's appeal to the superior court he was awarded judgment as for a 50 per cent loss of a whole leg without deducting 150 weeks, and the court ordered payments to be made at one-fourth the weekly wages he had been receiving for 175 weeks. The defendants appealed for a review.

The court, on review, said in part:

The employee in this case was wearing an artificial limb and was making out with the piece of leg that he had. Presumably he was charged with the disability in the price of his labor. Since he was not a whole man, and was receiving less for his work because of that fact, he ought not to be charged with the disability again in adjusting the matter of compensation for injury. Compensation being based upon wages, the reduction made in wages on account of the crippled service automatically guaranteed a corresponding reduction in compensation, and to charge the claimant with his prior disability at both ends of the transaction would be manifestly unfair.

He had lost a little more than his foot. The employer accepted him as he was, and paid him as he was, and for the purposes of this case he will be regarded as a two-legged man. If he had lost all the remaining portion of the abbreviated member, or all of the use of it, he would have received compensation at the rate of 50 per cent of his average weekly wages for 175 weeks. Having lost 50 per cent of the use of such remaining portion, he is entitled * * * to be paid 50 per cent of the amount which he would have received for a total loss of use.

The findings made in the instant case remanded the judgment which the superior court rendered, and it was not necessary to commit the case on sustaining the appeal. The court, in awarding 50 per cent of the compensation to which the employee would have been entitled as for the total loss, or total loss of use, of a leg, should have proportioned the period of the weekly payments rather than the amount of such payments, ordering that the payments be made at one-half the average weekly wages, for $87\frac{1}{2}$ weeks, less credit for payments already made, instead of requiring them to be made at the rate of one-fourth of such wages, for 175 weeks, less such credit.

Under the judge's order the weekly payments would have been less than \$4, whereas they can not be less than this amount, except when the weekly wage is less. The judgment will be affirmed, with direction that it be amended to accord with the statute.

The judgment was therefore affirmed with directions.

WORKMEN'S COMPENSATION—SETTLEMENT AND RELEASE—CONTINUING DISABILITY—MINOR—*Evansville Pure Milk Co. v. Allen, Appellate Court of Indiana (February 18, 1926), 150 Northeastern Reporter, page 793.*—Estelle Allen, a minor 17 years of age, was injured while in the employ of the defendant. On June 6, 1923, the parties entered into an agreement whereby the defendant agreed to pay her compensation at a certain rate during her disability. That agreement was approved by the industrial board, and compensation was paid accordingly to August 21, 1923. On August 28, 1923, the defendant secured a receipt from the plaintiff for \$26.40, which made in all \$66, in final settlement of all compensation due her under the compensation law, and also a statement from her that her disability ceased on August 21, 1923. Then followed a statement indicating that the amount received was for total disability. On May 27, 1925, she filed an application for compensation for partial disability, and from an award in her favor the defendant appealed. It set up in defense the receipt given by the plaintiff, and alleged that she had been paid in accordance with the agreement approved by the board and that the claim was barred by lapse of time. It was shown by the evidence that the plaintiff was suffering from a partial disability and that the defendant had on numerous occasions since the date of the receipt furnished her with medical care.

The court, in disposing of the case, said in part:

The award might well be affirmed on the authority of *Standard etc. Mfg. Co. v. Liff* (119 N. E. 479, 67 Ind. App. 508), and would be so affirmed were it not for the fact that we desire to express our emphatic disapproval of the action of the insurance carrier in its action in securing the receipt in question from a 17-year-old child, and then, through a technicality, attempting to prevent the payment of compensation under one of its policies, when it at all times knew appellee had not recovered from the effect of her injuries, and when it had been furnishing her with medical and surgical care.

There is no merit or justice in this appeal.

The award was therefore affirmed, with 5 per cent penalty.

WORKMEN'S COMPENSATION INSURANCE—SURETY ON CONTRACTOR'S BOND—LIABILITY FOR INSURANCE PREMIUM—*State v. Padgett et al., Supreme Court of North Dakota (May 26, 1926), 209 Northwestern Reporter, page 388.*—This action was brought in the name of the State of North Dakota against the Northern Trust Co., surety on the bond of C. M. Padgett and the Padgett Co. to compel them to pay to the workmen's compensation fund premiums alleged to have been due and unpaid. The surety company demurred on the ground that the complaint did not state facts sufficient to constitute

a cause of action against it. The demurrer was overruled and the surety company appealed.

It appeared that C. M. Padgett and the Padgett Co. were road contractors, and as such had given bonds to the North Dakota State Highway Commission with the Northern Trust Co. as surety thereon. These bonds provide that neither the State nor any person performing labor or services or furnishing material to be used in the performance of the agreement shall suffer loss. It was alleged on behalf of the State that in each of the contractor's agreements the following proposal appeared and was a part of the contract:

To comply with the requirements of the workmen's compensation act (known as H. B. 56) enacted by the sixteenth legislative assembly, in 1919.

It was contended that the phrase "labor, services, or materials" which appeared in the contractor's bond included premiums payable by the contractor to the workmen's compensation fund.

The supreme court, in reversing the trial court, said in part:

The workmen's compensation fund is not synonymous with the State of North Dakota, nor is the bureau the State of North Dakota. The claims against the fund are not claims against the State, and the fund itself is not a State fund. (*Bordson v. N. D. W. C. Bureau*, 49 N. D. 534, 191 N. W. 839, 842; see *Bul. No. 391*, p. 492.)

There is no express promise by the surety to pay the premium now claimed due. The promise is to pay those who furnish labor, services, and materials, and to protect the State of North Dakota from loss. The bureau now says that the contract was made expressly for its benefit, within section 5841, C. L. 1913, and that it may recover the premium just as any laborer or materialman might recover against the surety had payment for labor or materials not been made.

It must not be overlooked that the surety is a favorite of the law and has the right to stand upon the strict terms of his obligation when such terms have been ascertained. This rule is generally recognized by the courts and is applicable in all circumstances.

We are satisfied that the benefit to the bureau from the stipulation in the contractor's agreement with the highway commission was incidental, within the above rule, and was not within the contemplation of the parties at the time of the execution of that instrument. We think it would be a wholly unjustifiable perversion of language to construe the terms of the undertaking so as to obligate the surety to pay the premium to the bureau in the circumstances disclosed in the record.

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A complete list of the reports and bulletins issued prior to July, 1912, as well as the bulletins published since that date, will be furnished on application. Bulletins marked thus () are out of print.*

Conciliation and Arbitration (including strikes and lockouts).

- *No. 124. Conciliation and arbitration in the building trades of Greater New York. [1913.]
- *No. 133. Report of the industrial council of the British Board of Trade in its inquiry into industrial agreements. [1913.]
- *No. 139. Michigan copper district strike. [1914]
- No. 144. Industrial court of the cloak, suit, and skirt industry of New York City. [1914.]
- No. 145. Conciliation, arbitration, and sanitation in the dress and waist industry of New York City. [1914]
- *No. 191. Collective bargaining in the anthracite coal industry. [1916]
- *No. 199. Collective agreements in the men's clothing industry. [1916.]
- No. 233. Operation of the industrial disputes investigation act of Canada. [1918.]
- No. 255. Joint industrial councils in Great Britain. [1919.]
- No. 283. History of the Shipbuilding Labor Adjustment Board, 1917 to 1919.
- No. 287. National War Labor Board: History of its formation, activities, etc. [1921.]
- No. 303. Use of Federal power in settlement of railway labor disputes. [1922.]
- No. 341. Trade agreement in the silk-ribbon industry of New York City. [1923.]
- No. 402. Collective bargaining by actors. [1925.]
- No. 419. Trade agreements, 1935.

Cooperation.

- No. 313. Consumers' cooperative societies in the United States in 1920.
- No. 314. Cooperative credit societies in America and in foreign countries. [1922.]
- No. 437. Cooperative movement in the United States in 1925 (other than agricultural).

Employment and Unemployment.

- *No. 109. Statistics of unemployment and the work of employment offices in the United States, [1913]
- No. 172. Unemployment in New York City, N. Y. [1915.]
- *No. 183. Regularity of employment in the women's ready-to-wear garment industries. [1915.]
- *No. 195. Unemployment in the United States. [1916.]
- No. 196. Proceedings of the Employment Managers' Conference held at Minneapolis, Minn., January, 1916.
- *No. 202. Proceedings of the conference of Employment Managers' Association, Boston, Mass., held May 10, 1916.
- No. 206. The British system of labor exchanges. [1916.]
- *No. 227. Proceedings of the Employment Managers' Conference, Philadelphia, Pa., April 2 and 3, 1917.
- No. 235. Employment system of the Lake Carriers' Association. [1915.]
- *No. 241. Public employment offices in the United States. [1914.]
- No. 247. Proceedings of Employment Managers' Conference, Rochester, N. Y., May 9-11, 1915.
- No. 310. Industrial unemployment; A statistical study of its extent and causes. [1922.]
- No. 409. Unemployment in Columbus, Ohio, 1921 to 1925.

Foreign Labor Laws.

- *No. 142. Administration of labor laws and factory inspection in certain European countries. [1914.]

Housing.

- *No. 158. Government aid to home owning and housing of working people in foreign countries. [1914.]
- No. 263. Housing by employees in the United States. [1920.]
- No. 295. Building operations in representative cities in 1920.
- No. 424. Building permits in the principal cities of the United States, 1923.

Industrial Accidents and Hygiene.

- *No. 104. Lead poisoning in potteries, tile works, and porcelain enameled sanitary ware factories. [1912]
 - No. 120. Hygiene of the painters' trade. [1913.]
- *No. 127. Dangers to workers from dusts and fumes, and methods of protection. [1913.]
- *No. 141. Lead poisoning in the smelting and refining of lead. [1914.]
- *No. 157. Industrial accident statistics [1915.]
- *No. 165. Lead poisoning in the manufacture of storage batteries. [1914]
- *No. 179. Industrial poisons used in the rubber industry. [1915]
- No. 188. Report of British departmental committee on the danger in the use of lead in the painting of buildings [1916]
- *No. 201. Report of committee on statistics and compensation-insurance cost of the International Association of Industrial Accident Boards and Commissions. [1916.]
- *No. 207. Causes of death by occupation [1917]
- *No. 209. Hygiene of the printing trades [1917]
- No. 219. Industrial poisons used or produced in the manufacture of explosives. [1917.]
- No. 221. Hours, fatigue, and health in British munition factories. [1917.]
- No. 230. Industrial efficiency and fatigue in British munition factories [1917.]
- *No. 231. Mortality from respiratory diseases in dusty trades (inorganic dusts). [1918.]
- No. 234. Safety movement in the iron and steel industry, 1907 to 1917.
- *No. 236. Effect of the air hammer on the hands of stonecutters. [1918]
- No. 249. Industrial health and efficiency. Final report of British Health of Munition Workers Committee. [1919.]
- *No. 251. Preventable death in the cotton-manufacturing industry. [1919.]
- No. 256. Accidents and accident prevention in machine building. [1919]
- No. 267. Anthrax as an occupational disease. [1920.]
- No. 276. Standardization of industrial accident statistics. [1920.]
- No. 280. Industrial poisoning in making coal-tar dyes and dye intermediates. [1921.]
- No. 291. Carbon monoxide poisoning. [1921.]
- No. 293. The problem of dust phthisis in the granite-stone industry. [1922]
- No. 298. Causes and prevention of accidents in the iron and steel industry, 1916 to 1919.
- No. 306. Occupational hazards and diagnostic signs: A guide to impairments to be looked for in hazardous occupations. [1922.]
- No. 339. Statistics of industrial accidents in the United States. [1923]
- No. 392. Survey of hygienic conditions in the printing trades. [1925]
- No. 405. Phosphorus necrosis in the manufacture of fireworks and in the preparation of phosphorus [1926]
- No. 425. Record of industrial accidents in the United States to 1925.
- No. 426. Deaths from lead poisoning. [1926]
- No. 427. Health survey of the printing trades, 1922 to 1925.
- No. 428. Proceedings of the Industrial Accident Prevention Conference, held at Washington, D. C., July 14-16, 1926.

Industrial Relations and Labor Conditions.

- No. 237. Industrial unrest in Great Britain. [1917.]
- No. 340. Chinese migrations, with special reference to labor conditions. [1923.]
- No. 349. Industrial relations in the West Coast lumber industry. [1923]
- No. 361. Labor relations in the Fairmont (W. Va.) bituminous coal field. [1924.]
- No. 380. Postwar labor conditions in Germany [1925.]
- No. 383. Works council movement in Germany. [1925.]
- No. 384. Labor conditions in the shoe industry in Massachusetts, 1920 to 1924.
- No. 399. Labor relations in the lace and lace-curtain industries in the United States. [1925.]

Labor Laws of the United States (including decisions of courts relating to labor).

- No. 211. Labor laws and their administration in the Pacific States. [1917.]
- No. 229. Wage-payment legislation in the United States [1917]
- No. 285. Minimum-wage legislation in the United States. [1921.]
- No. 321. Labor laws that have been declared unconstitutional. [1922.]
- No. 322. Kansas Court of Industrial Relations. [1923.]
- No. 343. Laws providing for bureaus of labor statistics, etc. [1923]
- No. 370. Labor laws of the United States, with decisions of courts relating thereto. [1925.]
- No. 408. Laws relating to payment of wages. [1926.]
- No. 417. Decisions of courts and opinions affecting labor, 1925.
- No. 434. Labor legislation of 1926.

Proceedings of Annual Conventions of the Association of Governmental Labor Officials of the United States and Canada.

- No. 266. Seventh, Seattle, Wash., July 12-15, 1920.
- No. 307. Eighth, New Orleans, La., May 2-6, 1921.

Proceedings of Annual Conventions of the Association of Government Labor Officials of the United States and Canada—Continued.

- *No. 323. Ninth, Harrisburg, Pa., May 22-26, 1922.
- No. 352. Tenth, Richmond, Va., May 1-4, 1923.
- No. 389. Eleventh, Chicago, Ill., May 19-23, 1924.
- No. 411. Twelfth, Salt Lake City, Utah, August 13-15, 1925.
- No. 429. Thirteenth, Columbus Ohio, June 7-10, 1926

Proceedings of Annual Meetings of International Association of Industrial Accident Boards and Commissions.

- *No. 210. Third, Columbus, Ohio, April 25-28, 1916.
- No. 248. Fourth, Boston, Mass., August 21-25, 1917.
- No. 264. Fifth, Madison, Wis., September 24-27, 1918.
- *No. 273. Sixth, Toronto, Canada, September 23-26, 1919.
- No. 281. Seventh, San Francisco, Calif., September 20-24, 1920.
- No. 304. Eighth, Chicago, Ill., September 19-23, 1921.
- No. 333. Ninth, Baltimore, Md., October 9-13, 1922.
- No. 359. Tenth, St. Paul, Minn., September 24-28, 1923.
- No. 385. Eleventh, Halifax, Nova Scotia, August 26-28, 1924.
- No. 395. Index to proceedings, 1914-1924.
- No. 406. Twelfth, Salt Lake City, Utah, August 17-20, 1925.
- No. 432. Thirteenth, Hartford, Conn., September 14-17, 1926.

Proceedings of Annual Meetings of International Association of Public Employment Services.

- No. 192. First, Chicago, December 19 and 20, 1913; Second, Indianapolis, September 24 and 25, 1914, Third, Detroit, July 1 and 2, 1915.
- No. 220. Fourth, Buffalo, N. Y., July 20 and 21, 1916.
- No. 311. Ninth, Buffalo, N. Y., September 7-9, 1921.
- No. 337. Tenth, Washington, D. C., September 11-13, 1922.
- No. 355. Eleventh, Toronto, Canada, September 4-7, 1923.
- No. 400. Twelfth, Chicago, Ill., May 19-23, 1924.
- No. 414. Thirteenth, Rochester, N. Y., September 15-17, 1925.

Productivity of labor.

- No. 356. Productivity costs in the common-brick industry [1924]
- No. 360. Time and labor costs in manufacturing 100 pairs of shoes [1924]
- No. 407. Labor cost of production and wages and hours of labor in the paper box-board industry. [1925.]
- No. 412. Wages, hours, and productivity in the pottery industry, 1925.
- No. 441. Productivity of labor in the glass industry. [1927.]

Retail Prices and Cost of Living.

- *No. 121. Sugar prices, from refiner to consumer. [1913.]
- *No. 130. Wheat and flour prices, from farmer to consumer. [1913.]
- *No. 164. Butter prices, from producer to consumer. [1914.]
- No. 170. Foreign food prices as affected by the war. [1915]
- No. 357. Cost of living in the United States. [1924.]
- No. 369. The use of cost-of-living figures in wage adjustments. [1925.]
- No. 418. Retail prices, 1899 to 1926.

Safety Codes.

- No. 331. Code of lighting factories, mills, and other work places.
- No. 336. Safety code for the protection of industrial workers in foundries.
- No. 350. Specifications of laboratory tests for approval of electric headlighting devices for motor vehicles.
- No. 351. Safety code for the construction, care, and use of ladders.
- No. 364. Safety code for the mechanical power-transmission apparatus.
- No. 376. Safety code for laundry machinery and operation.
- No. 378. Safety code for woodworking plants.
- No. 382. Code of lighting school buildings.
- No. 410. Safety code for paper and pulp mills.
- No. 430. Safety code for power presses and foot and hand presses.
- No. 433. Safety code for the prevention of dust explosions.
- No. 436. Safety code for the use, care, and protection of abrasive wheels.

Vocational and Workers' Education.

- *No. 159. Short-unit courses for wage earners, and a factory school experiment. [1915.]
- *No. 162. Vocational education survey of Richmond, Va. [1915]
- No. 199. Vocational education survey of Minneapolis, Minn. [1916.]
- No. 271. Adult working-class education in Great Britain and the United States. [1920.]

Wages and Hours of Labor.

- *No. 146 Wages and regularity of employment and standardization of piece rates in the dress and waist industry of New York City. [1914]
- *No 147. Wages and regularity of employment in the cloak, suit, and skirt industry. [1914]
- No 161 Wages and hours of labor in the clothing and cigar industries, 1911 to 1913.
- No 163 Wages and hours of labor in the building and repairing of steam railroad cars, 1907 to 1913.
- *No 190. Wages and hours of labor in the cotton, woolen, and silk industries, 1907 to 1914
- No 204. Street railway employment in the United States [1917]
- No 225. Wages and hours of labor in the lumber, millwork, and furniture industries, 1915.
- No 265. Industrial survey in selected industries in the United States, 1919.
- No 297. Wages and hours of labor in the petroleum industry, 1920.
- No. 356. Productivity costs in the common-brick industry. [1924]
- No. 358 Wages and hours of labor in the automobile-tire industry, 1923.
- No. 360. Time and labor costs in manufacturing 100 pairs of shoes. [1924.]
- No. 365. Wages and hours of labor in the paper and pulp industry, 1923
- No. 371. Wages and hours of labor in cotton-goods manufacturing, 1924.
- No 374 Wages and hours of labor in the boot and shoe industry, 1907 to 1924.
- No 376. Wages and hours of labor in the hosiery and underwear industry, 1907 to 1924.
- No 394 Wages and hours of labor in metalliferous mines, 1924.
- No. 407. Labor cost of production, and wages and hours of labor in the paper box-board industry, [1925]
- No. 412. Wages, hours, and productivity in the pottery industry, 1925.
- No. 413. Wages and hours of labor in the lumber industry in the United States, 1925.
- No. 416 Hours and earnings in anthracite and bituminous coal mining, 1922 and 1924.
- No. 421. Wages and hours of labor in the slaughtering and meat-packing industry, 1925.
- No 422. Wages and hours of labor in foundries and machine shops, 1925
- No. 431. Union scale of wages and hours of labor, May 15, 1926.
- No 435 Wages and hours of labor in the men's clothing industry, 1911 to 1926.
- No. 438 Wages and hours of labor in the motor vehicle industry, 1925
- No. 442 Wages and hours of labor in the iron and steel industry, 1907 to 1925.
- No 443. Wages and hours of labor in woolen and worsted goods manufacturing, 1910 to 1926.

Welfare work.

- *No 123 Employers' welfare work. [1913]
- No 222. Welfare work in British munitions factories. [1917.]
- *No. 250. Welfare work for employees in industrial establishments in the United States [1919]

Wholesale Prices.

- No 284. Index numbers of wholesale prices in the United States and foreign countries [1921]
- No 440. Wholesale prices, 1896 to 1926.

Women and Children in Industry.

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