plied with and conformed to.

FEDERAL TRADE COMMISSION

v.

FRUIT GROWERS' EXPRESS.

COMPLAINT IN THE MATTER OF THE ALLEGED VIOLATION OF SECTION 3 OF AN ACT OF CONGRESS APPROVED OCTOBER 15, 1914.

Docket 271—May 7, 1920.

SYLLABUS.

Where a corporation engaged in leasing to various railroads refrigerator cars used in the transportation of fresh fruits and vegetables, and in furnishing ice, repairs, and other services in connection with such leasing, doing 95 per cent of such business on certain railroads until taken over by the Government, and doing all the business in the territory served by such railroads in a number of the Southern States—

Operated under contracts entered into by its assignor according to the terms of which contracts the lessee obligated itself to use said corporation's "equipment exclusively in the movement of fruits and vegetables under refrigeration in carloads from points on the lines of railway owned or operated by the railroad during the life of this contract":

Held, That the effect of such leases, under the circumstances set forth, might be to substantially lessen competition and tend to create a monopoly in the transportation of fresh fruits and vegetables under refrigeration in the territories served by the railroads involved, and that the use of the same constituted a violation of section 3 of the act of October 15, 1914.

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COMPLAINT.

The Federal Trade Commission having reason to believe from a preliminary investigation made by it, that the Fruit Growers' Express, hereinafter referred to as respondent, has violated and is violating the provisions 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," hereinafter referred to as the Clayton Act, issues this complaint, stating its charges in that respect on information and belief as follows:

PARAGRAPH 1. That the respondent, Fruit Growers' Express, is now and was at all times hereinafter mentioned a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, having its principal office and place of business at the city of Chicago, State of Illinois, and extensively engaged in the business of leasing to various railroad companies, refrigerator cars used in the transportation of fresh fruits and vegetables, in commerce through and among the several States of the United States and the Territories thereof, and the District of Columbia. That among the railroads to which such cars are leased are: Atlantic Coast Line, Seaboard Air Line, Florida East Coast, Charlotte Harbor & Northern, Aberdeen & Rockfish, Baltimore, Chesapeake & Atlantic, New York, Philadelphia & Norfolk.

PAR. 2. That the leasing contracts entered into by respondent, with the various railroads for the use of refrigerator cars as aforesaid, contain the following clause:

> The railroad shall use the car line's equipment exclusively in the movement of fruits and vegetables under refrigeration in carloads from points on the lines of railway owned or operated by the railroad during the life of this contract.

That said clause is inserted in said contracts by respondent with the purpose and intent of substantially lessening competition in the interstate transportation of fresh fruits and vegetables and the creation of a monopoly in such transportation, and the effect of such contracts has been and is to prevent other and competing car lines from competing

in the interstate service of the transportation of fresh fruits and vegetables under refrigeration in carloads, in the several States reached by the lines of said railroad companies, and to prevent shippers who own their own refrigerator cars from transporting fresh fruits and vegetables in such cars over the lines of railway owned or operated by said railroad companies, and has enabled the respondent to acquire a complete monopoly in the transportation of such commodities over such lines of railway.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER.

The Federal Trade Commission having issued and served its complaint herein, wherein it is alleged that the above-named respondent, Fruit Growers' Express, had been and was violating the provisions 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," commonly known as the Clayton Act; and the respondent having filed its answer to said complaint, and the issues so raised having pursuant to due notice given said respondent come on for a hearing before the Commission; and the Commission having appeared therein and introduced its evidence in support of its charges, and the respondent having appeared and introduced testimony in support of its answer; and all testimony so taken at said hearing having been reduced to writing and together with all other evidence introduced at said hearing having been filed in the office of the Commission, and the Commission being fully advised in the premises, upon consideration thereof, now makes this its report and findings as to the facts and its conclusions thereon:

FINDINGS AS TO THE FACTS.

PARAGRAPH 1. That the respondent, Fruit Growers' Express, is now and was at all of the times hereinafter mentioned a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware,

having its principal office in the city of Chicago, in the State of Illinois, and is now and for more than one year last past has been extensively engaged in the business of leasing to railroad companies refrigerator cars used in the transportation of fresh fruits and vegetables in commerce through and among the several States of the United States and Territories thereof and the District of Columbia. That among the railroads to which said cars are leased are the following:
Atlantic Coast Line, Seaboard Air Line, Florida East Coast, Charlotte Harbor & Northern, Aberdeen & Rockfish, Baltimore, Philadelphia & Norfolk.

PAR. 2. That respondent furnishes to each of the several railroads mentioned in paragraph 1 hereof, refrigerator cars for the transportation of fruits and vegetables and similar products under refrigeration, in carloads pursuant to the terms of a written contract entered into by the Armour Car Lines with said several railroads, which provides, among other things:

> The railroad shall use the car line's equipment exclusively in the movement of fruits and vegetables under refrigeration in carloads from points on the lines of railway owned or operated by the railroad during the life of this contract.

PAR. 3. That each of said contracts was originally entered into with each of said railroad companies by Armour Car Lines, and respondent became a party to such contracts on November 5, 1914, by assignment from Armour Car Lines, of all its right, title, and interest in said contracts, which said assignments were accepted by respondent in writing, and formal consent given thereto by each of said railroad companies, in writing.

PAR. 4. That by the terms of said contracts so entered into with each of said railroad companies respondent agreed to furnish, and does furnish and supply, each of said railroad companies a sufficient number of refrigerator cars for the transportation of all fruits and vegetables and similar products which are tendered to said several railroad companies by shippers at stations on the respective lines owned or operated by said railroad companies, for transportation under refrigeration to the markets of the United States.

PAR. 5. That by the terms of said contracts respondent agreed to furnish and put into said cars all the ice necessary for the suitable and proper refrigeration of said cars, for the preservation of fruits and vegetables and similar products contained in the same, and ices and reices the same while in transit and keeps the same iced and cared for so as to insure safety and protection to said products and the preservation thereof while in transit.

PAR. 6. That in the performance of the terms of said contracts, each of said several railroad companies agrees to collect, and does collect, and pay to respondent at the end of each month all moneys earned by respondent for refrigeration, and handling under its supervision the business moving from its rails during the preceding month, at rates named by respondent, not exceeding the maximum provided for in said contracts, and also pays to respondent for the use of its refrigerator cars three-fourths of 1 cent per mile run on the lines of its railroad, both loaded and empty.

PAR. 7. That in the performance of the terms of its contracts with said several lines of railroad, respondent's refrigerator cars, both loaded and empty, are moved from one State to another, and said cars when loaded move generally from, into, and through the States of Florida, Georgia, Alabama, South Carolina, North Carolina, Virginia, the District of Columbia, Maryland, Delaware, Pennsylvania, New Jersey, and New York.

PAR. 8. That the said several lines of railroads referred to in paragraph 1 hereof, are located in, and at the times mentioned herein served, and still serve, one or more of the following States: Florida, Georgia, Alabama, South Carolina, North Carolina, Virginia and District of Columbia.

PAR. 9. That prior to the taking over of said railroads by the United States Government, by reason of the contracts hereinbefore mentioned, at least 95 per cent of all of the fruits and vegetables and similar products originating on the lines of the railroads mentioned in paragraph 1 hereof was handled by respondent by means of its refrigerator cars.

PAR. 10. That in the territories served by said railroads, comprising the States of Florida, Georgia, and part of Ala-

bama, North Carolina, South Carolina, and Virginia, respondent is the only refrigerator car company furnishing refrigerator cars for the transportation of fruits and vegetables under refrigeration.

PAR. 11. That in the discharge of its obligation under said contracts with said several lines of railroad, respondent before the shipping season opens ascertains as near as may be what the requirements of each station in the territory served by said railroads will be; when the crops will move, and their general condition. Upon such information respondent arranges for a sufficient ice supply to be stored in advance, to protect the crop when it moves, and a sufficient number of refrigerator cars to handle the business are assembled at convenient points in such territory in advance of the actual crop movement.

PAR. 12. That respondent furnishes to each of the several railroads mentioned in paragraph 1 hereof, for the shippers, cars as ordered by the railroad. Such cars before delivery to the railroad are repaired, if the physical condition of cars demands repairs, cleaned, and filled with approximately 5 tons of ice to each car. After the car is loaded it is reiced in loading territory and at other points in transit, under the supervision of respondent.

PAR. 13. That the transportation of fruits and vegetables and other similar products, under refrigeration, from the territory comprising the States of Florida, Georgia, Alabama, South Carolina, North Carolina, and Virginia, commenced about 1894, at which time the railroads operating in such territory were furnished refrigerator cars for the transportation of said fruits and vegetables by Armour Car Lines, the California Fruit & Vegetable Co., the McArthur Refrigerator Co., and possible others.

PAR. 14. That Armour Car Lines commenced securing exclusive contracts for furnishing refrigerator cars and refrigeration service with the several railroads operating in the States mentioned in paragraph 13 hereof for the transportation of fruits and vegetables under refrigeration, in 1901, beginning with the Atlantic Coast Line, or the Sea-

board Air Line, and continued gradually to secure such exclusive contracts until about 1903 when Armour Car Lines had secured all of the business of furnishing refrigerator cars and refrigeration service to the railroads operating in said territory for the transportation of fruits and vegetables and similar products under refrigeration.

PAR. 15. That respondent enters into no contractual relation with shippers of fruits and vegetables for the transportation thereof under refrigeration or otherwise. Its sole business is furnishing the several railroads with which it has such contracts refrigerator cars for the shipment of fruits and vegetables and other similar products under refrigeration, and furnishing refrigeration for such fruits and vegetables while the same are loading and in transit.

CONCLUSIONS.

That the contracts entered into by respondent with the several railroad companies mentioned in the findings as to the facts hereof for the furnishing of refrigerator cars and refrigeration service are made on the condition, agreement, and understanding that each of said railroad companies shall use respondent's refrigerator cars exclusively in the movement of fruits and vegetables under refrigeration in carloads from points on the lines of railroads owned or operated by each of said railroad companies during the life of each of said contracts and shall not use the equipment of a competitor of respondent for the purpose mentioned in said contract; and the effect of such condition, agreement, and understanding may be to substantially lessen competition and tend to create a monopoly in the transportation of fresh fruits and vegetables under refrigeration in the territory served by the several lines of railroad mentioned in paragraph 1 of the findings as to the facts hereof; and that the use of such contracts is 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."

ORDER TO CEASE AND DESIST.

The Federal Trade Commission having issued and served its complaint herein upon the above-named respondent, Fruit Growers' Express, and the respondent having entered its appearance by Charles J. Faulkner, Jr., and H. K. Crafts, its attorneys, and having filed its answer admitting certain of the allegations of the complaint and denying others thereof, and the Commission having offered testimony in support of its complaint, and the respondent having offered testimony in support of its answer; and the attorneys for the Commission and for the respondent having submitted briefs as to the law and facts in this proceeding, and the Commission having made and filed its report and findings as to the facts and conclusions that the respondent has violated 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," which report is herein adopted as part hereof as fully as if the same were set forth at large herein: Now, therefore,

It is ordered, That the respondent, Fruit Growers' Express, its officers, servants, and agents cease and desist from directly or indirectly making any lease for the use of its refrigerator cars for the transportation of fruits and vegetables and similar products under refrigeration with any railroad company on the condition, agreement, or understanding that said railroad company shall use the respondent's equipment exclusively in the movement of fruits and vegetables under refrigeration in carloads from points on the lines of railway owned or operated by it; or that said railroad company shall not use the equipment of a competitor of respondent for like purposes; and from requiring the performance by the lessee of such refrigerator cars of the conditions, agreements, or understandings on which such leases have been heretofore made.

Provided, That respondent, Fruit Growers' Express, is hereby granted not to exceed 60 days from the date of service hereof within which to readjust and make such changes in the methods of leasing its refrigerator cars to the several

railroad companies mentioned in the complaint herein as will make its conduct and practices in that behalf conform to the requirements of this order.

And respondent is further ordered to file a report in writing with the Commission within three months from notice hereof, stating in detail the manner in which this order has been complied with and conformed to.

FEDERAL TRADE COMMISSION

v.

JOSEPH L. BERK AND LEON G. BERK, DOING BUSINESS UNDER THE FIRM NAME AND STYLE