

Complaint.

FEDERAL TRADE COMMISSION

v.

SWIFT & COMPANY.

COMPLAINT IN THE MATTER OF THE ALLEGED VIOLATION OF SECTION 7
OF AN ACT OF CONGRESS APPROVED OCTOBER 15, 1914, AND SECTION 5
OF AN ACT OF CONGRESS APPROVED SEPTEMBER 28, 1914.

Docket 453—August 3, 1922.¹

SYLLABUS.

Where a corporation engaged in the purchase of live stock and the manufacture, distribution, and sale of meat and meat products, purchased the capital stock of two competing packing plants, assumed the operation of said competing businesses, caused said stock to be issued in the names of certain of its officers and employees to be held for its use and benefit, and caused said officers and employees as officers and stockholders of said competing businesses to convey to it the respective businesses and properties for a nominal consideration; with the result that (1) existing competition between said packing plants and between said corporation and said packing plants in the sale of meat and meat products, and (2) increasing, prospective, and potential competition between said plants in the purchase of live stock, was suppressed and eliminated, and (3) commerce in a section or community was restrained:

Held, That such acquisition of stock, under the circumstances set forth, constituted a violation of Section 7 of the Clayton Act, and unfair methods of competition in violation of Section 5 of the Federal Trade Commission Act.

AMENDED COMPLAINT.

I.

The Federal Trade Commission, having reason to believe from a preliminary investigation made by it that Swift & Company, hereinafter referred to as the respondent, has been and is violating the provisions of Section 7 of an Act of Congress approved October 15, 1914, entitled "An Act to supplement existing laws against unlawful restraint and monopolies, and for other purposes," issues this complaint, stating its charges in that respect on information and belief as follows:

PARAGRAPH 1. That the respondent, Swift & Company, is a corporation organized, existing and doing business under and by virtue of the laws of the State of Illinois, with its principal office and place of business located at the City of Chicago, in said State, and has been and is now and at all times hereinafter mentioned engaged in

¹ Findings printed as very slightly modified by the Commission on November 17, 1922.

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the business of slaughtering live stock, and of producing and dealing in meats and all kinds of products and by-products arising out of the slaughtering of live stock; including leather; said products, by-products and commodities being sold by respondent in the various States of the United States, the territories thereof, and the District of Columbia, and when sold respondent causes same to be transported from one or more of said States and territories through and into other States and Territories of the United States and the District of Columbia.

PAR. 2. That the Moultrie Packing Company at all the times hereinafter mentioned, was a corporation organized and existing under the laws of the State of Georgia, with its principal place of business at Moultrie, in said State, and was engaged in the business of slaughtering live stock and of producing and dealing in meats and all kinds of products and by-products arising out of the slaughtering of live stock, causing said products and by-products to be transported when sold, from the State of Georgia, through and into other States of the United States, the territories thereof and to the District of Columbia, and prior to June 1, 1917, was in direct competition with respondent and other persons, partnerships and corporations similarly engaged.

PAR. 3. That Section 7 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," is and provides, in part, as follows:

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.

PAR. 4. That on or about June 1, 1917, the respondent purchased 956 shares of the total of 966 shares of the capital stock of said Moultrie Packing Company issued and outstanding, and caused the same to be transferred on the books of said company and reissued to certain officers and employees of the respondent, who thereby became and remained record holders of said stock, but who held the same for the use and benefit of the respondent; that thereafter, on or about the 13th day of August, 1917, the respondent caused its said officers and employees who held the said stock to hold a stockholders' meeting of said company and at such meeting to elect as directors of said Moultrie Packing Company certain officers and employees of the respondent; that thereafter the respondent arranged to acquire the physical

assets and properties of the said Moultrie Packing Company, and caused its said officers and employees, who were the directors and stockholders thereof, to accept an offer of purchase from the respondent and to pass a resolution directing a division of the surplus assets of the Moultrie Packing Company among the stockholders of said company, and a sale of the remaining assets, including the plant, fixtures, machinery and good-will of said company to the respondent; that said sale and transfer was authorized by the Board of Directors of said Moultrie Packing Company composed of officers and employees of the respondent, on or about November 3, 1917, and was ratified at a special meeting of the stockholders of said company, all of whom were officers and employees of the respondent, on or about January 5, 1918; and that since the acquisition of said capital stock by respondent, as above set out, respondent has continuously owned said stock in the manner above stated, and does now own same, and has, through its agents, officers and employees, continuously operated, and controlled the operations of, the plant and business of the said Moultrie Packing Company, whose stock it so acquired, which plant and business respondent operated as the plant and business of the Moultrie Packing Company from about the time of the acquisition of the capital stock as above set out, up to November 3, 1917, and that from about November 3, 1917, respondent has operated said plant and business as the plant and business of Swift & Company, and does now so operate same. That the effect of all the foregoing was to substantially lessen competition between respondent and said Moultrie Packing Company; to restrain commerce in the section and community of and adjacent to Moultrie, Ga., and elsewhere; and to tend to create a monopoly of the lines of commerce carried on by the respondent and said Moultrie Packing Company.

PAR. 5. That the transfer and issue of said stock of the said Moultrie Packing Company to officers and employees of the respondent, the election of employees and officers of respondent as directors and officers of said Moultrie Packing Company, and the pretended sale by such officers of the physical assets and properties of said Moultrie Packing Company to the respondent, were intended by the respondent to conceal the acquisition by it of the said stock of said Moultrie Packing Company, and were intended as a device to evade the provisions of Section 7 of the said Act of Congress approved October 15, 1914.

II.

And the Federal Trade Commission, having reason to believe from a preliminary investigation made by it, that Swift & Company, hereinafter referred to as respondent, has been and is using unfair

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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 it appearing that a proceeding by it in respect thereof would be to the interest of the public, issues this complaint stating its charges in that respect on information and belief as follows:

PARAGRAPH 1. As grounds for said complaint, said Commission relies upon the matters and things set out in paragraphs 1, 2 and 4 of count I of this complaint, to the same extent as though the allegations thereof were set out at length herein, and said paragraphs 1, 2 and 4 are incorporated herein by reference and adopted as a part of the allegations of this count.

III.

The Federal Trade Commission, having reason to believe from a preliminary investigation made by it that Swift & Company, hereinafter referred to as the respondent, has been and is violating the provisions of Section 7 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," issues this complaint, stating its charges in that respect on information and belief as follows:

PARAGRAPH 1. As grounds for said complaint, said Commission relies upon the matters and things set out in paragraph 1 of count I of this complaint, to the same extent as though the allegations thereof were set out at length herein, and said paragraph 1 is incorporated herein by reference and adopted as a part of the allegations of this count.

PAR. 2. That the Andalusia Packing Company at all the times hereinafter mentioned, was a corporation organized and existing under the laws of the State of Alabama, with principal place of business at Andalusia, in said State, having capital stock of \$133,250, divided into shares of par value of \$50 each, and was engaged in the business of slaughtering live stock and of producing and dealing in meats and all kinds of products and by-products arising out of the slaughtering of live stock, causing said products to be transported when sold, from the State of Alabama, through and into other States of the United States, and the territories thereof and the District of Columbia, and prior to July 24, 1917, was in direct competition with respondent and other persons, partnerships and corporations, similarly engaged.

PAR. 3. That section 7 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," is and provides, in part, as follows:

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.

PAR. 4. That on or about July 24, 1917, the respondent purchased all of the capital stock of said Andalusia Packing Company, issued and outstanding, and caused the same to be transferred on the books of said company, and issued to certain officers and employees of the respondent who thereby became and remained record holders of said stock, but who held the same for the use and benefit of the respondent; that thereafter, on or about the 24th day of July, 1917, the respondent caused its said officers and employees who held such stock to hold a stockholders' meeting of said company, and at such meeting to elect as directors of said Andalusia Packing Company certain officers and employees of the respondent; that thereafter the respondent arranged to acquire the physical assets and properties of the said Andalusia Packing Company and caused its officers and employees who were the directors and stockholders thereof to accept an offer of purchase from the respondent and to pass a resolution directing a division of the surplus assets of said Andalusia Packing Company among the stockholders of said company, and the sale of the remaining assets, including the plant, fixtures, machinery, and good will of said company to the respondent; that said sale and transfer were authorized by the board of directors of said Andalusia Packing Company, composed of officers and employees of the respondent, on or about March 30, 1918; that on or about June 29, 1918, said board of directors, composed as aforesaid of officers and employees of respondent, resolved to liquidate said Andalusia Packing Company, and that since the time of the acquisition of said capital stock by respondent, as above set out, respondent has continuously owned said stock in the manner above stated, and does now so own same, and has, through its agents, officers and employees, continuously operated, and controlled the operations, of the plant and business of the said Andalusia Packing Company, whose capital stock it so acquired, which it operated from about July 24, 1917, the time of the acquisition of the capital stock, up to about March 30, 1918, as the plant and business of the Andalusia Packing Company, and from about March 30, 1918, respondent has

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operated said plant and business as the plant and business of Swift & Company, and does now so operate same. That the effect of all the foregoing was to substantially lessen competition between the respondent and said Andalusia Packing Company; to restrain commerce in the section and community of and adjacent to Andalusia, Ala., and elsewhere; and to tend to create a monopoly of the lines of commerce carried on by respondent and said Andalusia Packing Company.

PAR. 5. That the transfer and issue of said stock of said Andalusia Packing Company to officers and employees of the respondent, the election of officers and employees of respondent as directors and officers of the said Andalusia Packing Company, and the pretended sale by such officers of the physical assets and properties of the said Andalusia Packing Company, were intended by the respondent to conceal the acquisition by it of the said stock of said Andalusia Packing Company, and were intended as a device to evade the provisions of Section 7 of said Act of Congress approved October 15, 1914.

IV.

And the Federal Trade Commission having reason to believe, from a preliminary investigation made by it, that Swift & Company, hereinafter referred to as respondent, has been and is using 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 it appearing that a proceeding by it in respect thereof would be to the interest of the public, issues this complaint, stating its charges in that respect on information and belief, as follows:

PARAGRAPH 1. As grounds for said complaint, said Commission relies upon the matters and things set out in paragraph 1 of Count I, and paragraphs 2 and 4 of Count III of this complaint, to the same extent as though the allegations thereon were set out at length herein, and said paragraphs are incorporated herein by reference, and adopted as part of the allegations of this count.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER.

The Federal Trade Commission having issued and served its complaint herein, wherein it is alleged that it had reason to believe that the above named respondent, Swift & Company, has been and now is using unfair methods of competition in interstate commerce, in violation 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 that said respondent, Swift & Company, has been and is violating the provisions of Section 7 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"; and that a proceeding by it as to such alleged violation of Section 5 of the Act of September 26, 1914, would be to the interest of the public; and fully stating its charges in that respect; and respondent having entered its appearance by Messrs. Albert H. and Henry Veeder, of Chicago, Ill., its attorneys, and having duly filed its answer, admitting certain of the allegations of said complaint and denying others, and hearings in said proceeding having taken place before an Examiner of the Commission, and the Commission having offered evidence in support of the charges of said complaint, and respondent having offered evidence in its own defense, and both parties to this proceeding having rested, and the attorneys of both parties having fully argued the issues in the proceeding, and having presented said issues herein to the Commission for final consideration and determination, and the Commission having duly considered the record herein, and being fully advised in the premises, now makes its report and findings as to the facts and conclusion:

FINDINGS AS TO THE FACTS.¹

PARAGRAPH 1. That respondent, Swift & Co., organized in 1885, is a corporation organized, existing and doing business under and by virtue of the laws of the State of Illinois, with its principal office and place of business located in the City of Chicago, Ill., and respondent during all of said time has been and now is engaged in the meat-packing industry and trade, including the purchasing and slaughtering of live stock and in the converting and producing of meat and meat products and by-products, and in the sale and shipment and distribution thereof into and through the various States of the United States, the Territories thereof and the District of Columbia, selling, shipping, and distributing same through its various branch houses; and respondent, during said period, has been and now is in direct competition with other persons, partnerships and corporations similarly engaged (except as respondent may have been self-restrained by illegal pools, agreements or understandings) and respondent was thus engaged in competition with the Moultrie Packing Co., of Moultrie, Ga., from about December, 1914, up to the time respondent acquired the capital stock of said company, about June 1, 1917; and respondent was likewise thus engaged in competition with the Andalusia Packing Co., of Andalusia, Ala., from about May,

¹ Printed as very slightly modified by the Commission on November 17, 1922.

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1916, to the time when respondent acquired the capital stock of the said company, about July 24, 1917.

PAR. 2. That the Moultrie Packing Company, organized in 1913, is a corporation organized, existing and doing business under and by virtue of the laws of the State of Georgia, with its principal office and place of business in the city of Moultrie, Ga., and that said Moultrie Packing Co., from about December, 1914, up to about June, 1917, was continuously engaged in the meat-packing industry and trade, including the purchasing and slaughtering of live stock and the converting and preparation therefrom of meat and meat products and by-products, and in the sale, shipment and distribution of said commodities throughout the State of Georgia, and of a substantial portion of said products, estimated at one-third, from the State of Georgia through and into other States of the United States, and more particularly through and into the States of Florida and Alabama; and in said business of sale, shipment and distribution said Moultrie Packing Company was, prior to June 1, 1917, in direct competition in interstate commerce with respondent and other persons, partnerships and corporations similarly engaged.

PAR. 3. That the Andalusia Packing Company, organized in October, 1915, is a corporation organized and existing under and by virtue of the laws of the State of Alabama, with its principal office and place of business in the city of Andalusia, Ala., and said Andalusia Packing Co., from about May or June, 1916, up to about July 24, 1917, was continuously engaged in the meat-packing industry and trade, including the purchasing and slaughtering of live stock and the converting and preparation therefrom of meat and meat products and by-products, and in the sale, shipment and distribution of said commodities throughout the State of Alabama, and of a substantial portion of said products, estimated at one-fourth, from the State of Alabama through and into other States of the United States, and, more particularly, through the States of Georgia and Florida; and in said business of sale, shipment and distribution, said Andalusia Packing Co. was, prior to about July 24, 1917, in direct competition in interstate commerce with respondent and other persons, partnerships and corporations similarly engaged.

PAR. 4. That—

(a) Between March 15, and August 2, 1917, respondent, Swift & Company, acquired by purchase, the entire then outstanding capital stock of said Moultrie Packing Company, and caused such capital stock, except twenty shares thereof not then delivered, to be issued in the names of certain of its officers and employes, and to be held for the use and benefit of said respondent. In the course of the months of June, July and August, 1917, respondent, through said

stock ownership, assumed full possession and control of the plant, assets and business of said Moultrie Packing Company, and at all times thereafter retained and exercised such control. Details of said acquisition and control are substantially as follows:

(b) Moultrie Packing Company, a corporation mentioned in Paragraph 2 hereof, was organized under the laws of the State of Georgia, on or about October 8, 1913, by W. C. Vereen and other persons in and about the City of Moultrie, in said State, for the purpose of conducting a general packing business, dealing in live stock, meats of all kinds, cold storage of meats, vegetables and other articles, and in the manufacturing of ice. Said Moultrie Packing Company had an authorized capital stock of \$300,000, divided into shares of \$100 each. A plant was constructed at the City of Moultrie, Ga., and was opened for business in the Autumn of 1914, and from about December, 1914, up to about June 1, 1917, said Moultrie Packing Company continued in increasing volume its operations of purchasing and slaughtering live stock and in preparing and converting of meat and meat products and by-products therefrom, and in their general sale and distribution. In the course of the next year it secured more live stock than it could slaughter, and extended the market for its products to Atlanta, Ga.; Jacksonville, Fla.; Birmingham, Ala., and to other cities and to other States. Sales by said Moultrie Packing Company were made chiefly through brokers, although it also employed salesmen.

(c) F. A. Hunter, of St. Louis, Missouri, General Manager of respondent, Swift & Company, at National Stock Yards, East St. Louis, Illinois, in the early spring of 1917, visited the plant of said Moultrie Packing Company, of Moultrie, Georgia, and introduced himself to said W. C. Vereen, then President of said Moultrie Packing Company, whom he found at said plant. Said Hunter stated that he represented Swift & Company, and asked permission to inspect the plant of said Moultrie Packing Company. He was given such permission and made such inspection.

(d) Several weeks later, said Hunter called upon said Vereen in the Piedmont Hotel, in Atlanta, Georgia. At this time said Hunter asked said Vereen if he would not sell the Moultrie Packing Company. Said Hunter said he would try to make the sale of said company to Swift & Company.

(e) Several weeks later, May 14, 1917, said Hunter called said Vereen on long distance telephone from Montgomery, Alabama, and made an appointment for said Vereen to meet Louis F. Swift, an

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Executive Officer of Swift & Company, respondent herein, at Jacksonville, Florida, the next morning. Said Vereen and said Swift met at the Windsor Hotel, in Jacksonville, May 15, 1917. Said Swift and said Vereen talked over the business of said Moultrie Packing Company, and the source of its supply of live stock, referring to a map as they did so. Said Vereen told Swift that said Vereen would sell his stock in the Moultrie Packing Company for \$150 a share, and could probably get all the other stock of said Moultrie Packing Company for the same price. Said Swift offered said Vereen \$125 a share for said stock of said Moultrie Packing Company and said Vereen objected that that was not enough, basing his objection upon the earnings of said Moultrie Packing Company. Then said Swift remarked:

Don't you believe, if I were to go to Albany or to Valdosta, Ga., and tell them I would put up a packing plant there twice as large as the Moultrie plant, that they would give me \$50,000 or \$75,000?

Mr. Vereen stated in his testimony:

I thought a moment, and I said, "Yes, Mr. Swift, I believe they would"; for the reason that I knew that Albany and Valdosta, at that time, were very, very anxious to have a packing plant.

(Testimony of W. C. Vereen, Transcript p. 556.)

There was some further discussion and said Vereen agreed to give said Swift an option till June 1, 1917, on the stock that he owned personally in said Moultrie Packing Company, and to buy up for him at the same price the stock held by others. An option of the above tenor was given at that time by the said Vereen to said Swift, the price of said stock being named as \$125 per share. Said Swift reduced said option to writing and it was signed in duplicate at once by said Vereen, and dated May 15, 1917. The option as prepared by said Swift was taken in the name of said F. A. Hunter, and recited that outstanding stock was about \$97,000 par, and that the books of the Company showed a profit of about \$90,000. Said Swift told said Vereen that if any correspondence became necessary to address Mr. H. J. Nelson, Swift & Company, Union Stock Yards, Chicago.

(f) Said Vereen, on his return to Moultrie, called a meeting of the Board of Directors of said Moultrie Packing Company, told them of his conversation with said Swift, and they agreed to accept \$125 per share for their holdings of stock in said Moultrie Packing Company, and to take up with all stockholders of said Moultrie Packing Company the matter of getting them to sell their stock at

the same price. Said option expired June 1, 1917, and was extended by said Vereen until July 1, 1917. Said Vereen succeeded, early in June, 1917, in getting all of the outstanding capital stock of Moultrie Packing Company, 966 shares in all, except 20 shares which at that time was located but not available for various reasons, and sent said stock to the Fort Dearborn National Bank, at Chicago, with instructions to said bank to deliver said stock to Swift & Company, respondent herein, on payment for it of \$125 a share. The stock was afterwards paid for and delivered to respondent, Swift & Company, and the 20 additional shares were later secured and delivered to respondent, Swift & Company.

(g) A financial statement of said Moultrie Packing Company, submitted to its president by its auditor, May 15, 1917, showed net profits of said Company from January 1, 1917, to April 30, 1917, of \$62,843.76 and a surplus of \$92,170.79.

(h) Prior to May 28, 1917, respondent, Swift & Company, after a meeting of certain of its officers and employes in its Board room in Chicago, acting for and on behalf of respondent, caused O. C. E. Matthies, its Auditor, to proceed to Moultrie, Ga., and make an audit of the books of said Moultrie Packing Company. This audit as reported June 1, 1917, to H. J. Nelson, an officer of Swift & Company, respondent, set forth among other things, that "As a result of this investigation, I am of the firm conviction that the capital stock of this concern is worth \$165 per share as a going concern, and recommend its purchase. * * *"

(i) As of the same date, W. A. Burnett was also sent to Moultrie, Ga., by respondent, to make a physical inspection of the plant of said Moultrie Packing Company. He reported thereafter upon its condition and the estimated cost of changes which were recommended. His report indicated that the physical plant was worth about \$202,500.

(j) In June, 1917, Swift & Company sent H. C. Wallow, its employee at Chicago, to take charge of the office of said Moultrie Packing Company, and sent F. A. Luchsinger to "watch things" and work with Mr. Brooks, then Manager of said Moultrie Packing Company. Mr. Luchsinger was to be the representative of the respondent, Swift & Company, at said plant. Mr. Brooks remained with said Moultrie Packing Company until about November 1, 1917, but after the coming to Moultrie of said Luchsinger Mr. Brooks was under the direction of respondent, Swift & Company, in his activities at said plant.

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(k) August 13, 1917, stockholders of said Moultrie Packing Company held an adjourned annual meeting at Moultrie, Ga., at which said W. C. Vereen and said C. H. Wallow, each credited with five shares of the capital stock of said Moultrie Packing Company, were present in person, and W. B. Traynor, C. A. Peacock, J. J. McGuire, T. H. Ingwersen, H. C. Carr and E. B. Kixmiller were represented by proxies. In all, 798 shares were there represented. All stockholders represented or present at said meeting, except said W. C. Vereen, were then officers or employees of respondent, Swift & Company, and held the stock of said Moultrie Packing Company for the use and benefit of said respondent. Said W. C. Vereen was given five shares of stock, to qualify him as an officer and director, which stock he at once upon securing indorsed in blank and returned to Swift & Company. At said stockholders' meeting of August 13, 1917, T. H. Ingwersen, F. J. King, H. C. Carr, A. B. Kixmiller, O. C. E. Matthies and F. A. Luchsinger, all employees or officers of Swift & Company, were elected directors of said Moultrie Packing Company. W. C. Vereen, then without pecuniary interest in said Moultrie Packing Company, was also elected a director. Said stockholders, at said meeting of August 13, 1917, also elected the following officers:

T. H. Ingwersen, President; O. C. E. Matthies, Vice President; C. H. Wallow, Secretary and Treasurer; C. A. Peacock, Assistant Secretary; J. J. McGuire, Assistant Treasurer. All of said officers were then officers or employees of Swift & Company.

(l) November 3, 1917, T. H. Ingwersen, F. J. King, H. C. Carr, E. B. Kixmiller, and O. C. E. Matthies, all then officers or employees of respondent, met in Chicago as directors of said Moultrie Packing Company; C. A. Peacock, also an officer of respondent, was also present and acted as Secretary and said officers and employees, acting at the same time as such directors of said Moultrie Packing Company, at the instance and direction of respondent, at said meeting of November 3, 1917, adopted a resolution to sell all the business and property of said Moultrie Packing Company to Swift & Company, of Illinois, respondent herein, authorizing and directing the President to carry such sale into effect, and providing that the Company be wound up and liquidated and its assets be distributed among the stockholders in proportion to their holdings.

(m) At a special meeting of stockholders held at Moultrie, Ga., January 5, 1918, at which F. A. Luchsinger, W. C. Vereen and C. H. Wallow were present in person, and T. H. Ingwersen, F. J. King, H. C. Carr, E. B. Kixmiller, O. C. E. Matthies, W. B. Traynor, C. A.

Peacock and J. J. McGuire were represented by proxy, said action of said Board of Directors, at its meeting November 3, 1917, selling the property and business of the said Moultrie Packing Company was, at the instance and direction of the respondent, confirmed, and said Moultrie Packing Company was ordered wound up and liquidated, and its assets distributed to stockholders in proportion to their holdings. At said stockholders' meeting of January 5, 1918, 956 shares of the capital stock of said Moultrie Packing Company were represented, being all the outstanding stock except ten shares. All stockholders at said meeting of January 5, 1918, were officers and employees of respondent, Swift & Company, except the said W. C. Vereen, who had no pecuniary interest in the five shares of stock which he then held.

(n) A written instrument, dated November 3, 1917, evidences the sale by said Moultrie Packing Company to Swift & Company, of Illinois, respondent herein, of its entire business and plant except real estate, and a deed dated November 24, 1917, evidences the sale by said Moultrie Packing Company of its real estate at Moultrie, Ga., to Swift & Company. Said written instrument and deed were without consideration (other than nominal) moving to said Moultrie Packing Company corporation, and constituted and were mere paper transfers to respondent in the carrying out of the intent and purpose of respondent, following, and as a result of, respondent's prior illegal acquisition of the capital stock of the said Moultrie Packing Company.

PAR. 5. That—

(a) On or about July 24, 1917, respondent, Swift & Company, acquired by purchase the entire outstanding capital stock of said Andalusia Packing Company, and caused said capital stock to be reissued to numerous persons who were then officers or employees of respondent, which persons held such stock for the use and benefit of respondent. In the month of August, 1917, respondent, through such stock ownership, assumed complete possession and control of the plant, assets and business of said Andalusia Packing Company, and at all times thereafter retained said possession and control. Details of such acquisition and control are in substance as follows:

(b) On or about October 8, 1915, T. E. Henderson, and other residents of Andalusia, Alabama, and in the neighborhood thereof, organized said Andalusia Packing Company, under the laws of the State of Alabama, with power to build, operate and maintain a packing house or packing plant or cold storage buildings and to

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engage in, carry on and operate a general packing-house and cold-storage business. Said Andalusia Packing Company had an authorized capital stock of \$250,000, all of one class, divided into 5,000 shares of \$50 each, par value. Said stock was sold to about 150 to 200 subscribers in the City of Andalusia and the neighborhood thereof, until about 2,665 shares of such stock were outstanding.

(c) After the organization of said Andalusia Packing Company, and prior to July, 1916, said corporation constructed a packing plant in said City of Andalusia.

(d) About June, 1916, said plant began the operations of purchasing and slaughtering livestock and conducting a general packing and cold storage business, although the volume of said business was not large until October, 1916, and thereafter. Said Andalusia Packing Company secured its livestock principally in the surrounding territory, and found a market for its goods in the State of Alabama, Georgia and Florida, and other States. Its principal output was pork and pork products. Its business grew rapidly and it found a ready and profitable market for its products.

(e) Late in May, or early in June, 1917, F. A. Hunter, of St. Louis, General Manager of respondent, Swift & Company, of National Stock Yards, East St. Louis, Illinois, and H. C. Carr, of the livestock-buying and dressed beef department of respondent, Swift & Company, visited Andalusia, Ala.; and inspected the plant of said Andalusia Packing Company. They had met President T. E. Henderson, and after the inspection of said plant called upon him at his office in a bank in Andalusia, in which he was also an officer. Livestock and packinghouse conditions were discussed, and said Hunter, before leaving, asked said Henderson if he and his associates wanted to sell their plant. Said Henderson replied that he had not thought of it, and anticipated that there might be trouble with stockholders if such a sale were attempted. Said Hunter finally told said Henderson that if he and his associates wished to sell said Andalusia plant to write said Carr at Chicago. Said Henderson replied that he would prefer to put it in this way: "If you gentlemen take a notion that you want to buy this plant, you let me know." That ended the conversation at the time.

(f) Ten days or two weeks thereafter, said Carr wrote said Henderson a letter concerning the purchase of said Andalusia Packing Company plant, and said Henderson replied by telegram, dated June 5, 1917, advising said Carr to send a representative to "discuss matter." Said Carr wired said Henderson, June 6, 1917, that he

would be in Andalusia June 8, 1917, and said Henderson by wire made an appointment with said Carr at said Henderson's office in Andalusia on that date.

(g) Said Carr kept said appointment, meeting said Henderson at Andalusia, June 8, 1917, and also meeting A. C. Darling, a stockholder, and then Secretary of said Andalusia Packing Company. As a result, said Henderson and said Darling gave said Carr an agreement in writing, running to H. C. Carr, "for Swift and Company," amounting to a sort of option at \$75 per share, par value \$50, until June 27, 1917, upon the capital stock held individually by said Henderson, and said Darling, in said Andalusia Packing Company, being 144 shares owned by said Darling and 130 shares owned by said Henderson. Said Darling and said Henderson agreed, also, to use their best efforts toward buying the remaining shares of stock in said Andalusia Packing Company at \$75 per share, for respondent. In the event of their failing to secure the other stock, the option upon their own stock was not to bind them.

(h) Telegrams were exchanged thereafter between said Carr and said Henderson, resulting in a telegraphic confirmation by said Henderson, June 26, 1917, of the sale of said 2,665 shares of the capital stock of said Andalusia Packing Company, at \$70 a share. The facts developed in this proceeding do not fully reveal the reason why the price for said capital stock was finally fixed at \$70, rather than \$75, per share, the price named in said option; but there were some indications that respondent let it be known to said Henderson and said Darling that an alternative proposition was then being considered by respondent of establishing a packing plant in Montgomery, Ala. Said Carr and said Henderson also corresponded as to details of such sale, such as the assumption of debts of said Andalusia Packing Company by respondent; in relation to outstanding accounts; inventory files and other details, having exchanged letters June 28 and July 2 and 9, 1917.

(i) Respondent, Swift & Company, sent its attorney, R. E. Fisher to Andalusia, Ala., prior to July 11, 1917, and said attorney examined the corporate records of said Andalusia Packing Company and the titles to its properties, and reported favorably by telegram to Swift & Company's attorneys in Chicago, July 11, 1917, and to Louis F. Swift, President of respondent in Chicago, by letter of July 14, 1917. Respondent, Swift & Company, also sent its auditor, O. C. E. Matthies, to Andalusia, who checked up inventories and accounts

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and made a report thereon; and the construction department of respondent inspected and reported upon the plant of said Andalusia Packing Company. All these matters are summarized in a memorandum dated July 20, 1917, signed by said Carr and addressed by initials to several officers of respondent. At this time said Andalusia Packing Company showed a surplus of \$62,724.32, as a result of operations up to May 1, 1917.

(j) Certain agreements of guarantee dated July 24, 1917, fixing definitely outstanding notes of said Andalusia Packing Company, and certifying that the shares of capital stock sold were the only shares outstanding, were made by said Henderson and said Darling with the officers of respondent, Swift & Company.

(k) Assignments in blank of certificates covering all the shares of capital stock of said Andalusia Packing Company then outstanding were secured from all the stockholders by said Henderson and Darling, in the course of a few weeks following their giving of an option on their capital stock to respondent.

(l) After all said stock had been thus secured, said Henderson and said Darling proceeded with the certificates thereof to Chicago, and on July 24, 1917, said certificates of said stock were delivered by said Henderson and Darling in the Directors' room of respondent in Chicago, assigned in blank, to a representative of respondent, Swift & Company, said H. C. Carr, T. H. Ingwersen and L. A. Carton, of respondent, being present at the time.

(m) Respondent, Swift & Company, by its check, paid said Henderson \$186,550 for said 2,665 shares of capital stock of said Andalusia Packing Company, and said payment was entered in the investment ledgers of respondent, Swift & Company.

(n) Said Swift & Company sent to Andalusia, Ala., to take control of the business and property of said Andalusia Packing Company, about July 16, 1917, G. D. Rogers and C. B. Colt, both then employees of respondent, and said Rogers and said Colt, immediately upon the acquisition of said stock by respondent, July 24, 1917, assumed such control on behalf of respondent. T. G. Conner, former superintendent of said plant at Andalusia remained in the employ of said Andalusia Packing Company until about November, 1917, but during that time worked under the direction of respondent.

(o) While in said Directors' room, said Henderson, as President, and said Darling, as Secretary, of said Andalusia Packing Company, signed new certificates of stock in said Andalusia Packing Company to T. H. Ingwersen, for 820 shares; to G. D. Rogers, for 100 shares. to H. C. Carr for 820 shares, to W. B. Traynor for 825 shares, to

T. E. Henderson for 100 shares—being in all 2,665 shares, the total capital stock of said Andalusia Packing Company then outstanding. All persons to whom said stock was then so assigned were then officers or employees of respondent, except said T. E. Henderson, and said Henderson immediately assigned his said certificate of stock in blank and returned it to a representative of Swift & Company, respondent. The stock was then placed nominally in the name of said Henderson, to qualify him as a director and as Vice President of said Andalusia Packing Company, at the request of said Carr, of respondent, Swift & Company.

(p) T. E. Henderson, T. H. Ingwersen and G. D. Rogers, represented by proxy to H. C. Carr; H. C. Carr and W. B. Traynor, holding 2,665 shares of stock of said Andalusia Packing Company, being all of said stock then outstanding, met at the Northeast corner of Exchange and Packers Avenues, Chicago, July 24, 1917, and amended the by-laws of said Andalusia Packing Company as to the places at which corporate business of said Andalusia Packing Company might thereafter be transacted, and as to other points. Said Henderson, who had secured in advance resignations of officers and directors of said Andalusia Packing Company in office before said stock had been acquired by respondent, presented such resignations at said meeting; said resignations were accepted and the following directors were elected: W. B. Traynor, T. H. Ingwersen, G. D. Rogers, H. C. Carr—all officers or employees of respondent. Said Henderson was permitted to remain a director, at the request of said Carr.

(q) Said directors held a special meeting, at the same place, immediately after said stockholders' meeting, all except said Rogers being present, and after having accepted the resignation of the former officers of said Andalusia Packing Company, elected the following officers: T. H. Ingwersen, President; T. E. Henderson, First Vice President; C. A. Peacock, Secretary; C. M. Williamson, Treasurer, and J. J. McGuire, Assistant Treasurer—all of said officers so elected being the officers or employees of respondent, except said Henderson, who accepted his office at the request of said Carr, of respondent, Swift & Company. It was resolved by said directors that said G. D. Rogers should thereafter countersign all checks of said Andalusia Packing Company drawn against its funds in bank, and C. B. Colt, also an employe of respondent, was made statutory agent of said corporation in Alabama.

(r) At a special meeting of the Board of Directors of said Andalusia Packing Company, held at Union Stock Yards, Chicago, August

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7, 1917, C. M. Williamson, as Treasurer, was authorized to sign checks against the funds in bank of said corporation, and said checks were to be countersigned by said G. D. Rogers.

(s) At a special meeting of the directors of said Andalusia Packing Company at Union Stock Yards, Chicago, August 14, 1917, C. B. Colt was elected and designated to succeed to the functions of C. M. Williamson, Treasurer of said corporation.

(t) Stockholders of said Andalusia Packing Company, including said H. C. Carr, W. B. Traynor and T. E. Henderson, representing the capital stock of said corporation to the number of 1745 shares, met at Union Stock Yards, Chicago, in annual meeting, October 8, 1917, and reelected the directors elected July 24, 1917.

(u) T. H. Ingwersen, H. C. Carr and W. B. Traynor, being a majority of the then directors of the Andalusia Packing Co., met October 29, 1917, at Union Stock Yards, Chicago, and reelected the officers of said corporation then holding.

(v) Directors of said Andalusia Packing Company met at Union Stock Yards, Chicago, March 26, 1918, T. H. Ingwersen, W. B. Traynor and H. C. Carr being present, with C. A. Peacock acting as Secretary, and resolved that a dividend of \$97,276.14 be declared, payable March 30, 1918, to stockholders of record on the books of the Company on that date.

(w) T. H. Ingwersen, H. C. Carr and W. B. Traynor, being a majority of the board of directors, with C. A. Peacock, secretary, of the Andalusia Packing Co., all being officers or employees of respondent, and acting, at the same time, as directors and secretary of said Andalusia Packing Co., purported to meet at the office of said company in Chicago, March 30, 1918, and at the instance and for the benefit of respondent, beneficial owners of all the stock of said Andalusia Packing Co., declared a dividend of \$97,276.14; and at the same meeting, acting in the above dual capacity, said persons purported to accept an offer "to purchase all the property and business of this company," and purported to authorize and instruct "the proper officers of this company" "to convey, assign and transfer to said Swift & Co., all of the property and business of this company by proper instruments of conveyance." Such instruments of transfer were executed, and each bears date both as to execution and acknowledgment, as of March 30, 1918. (Coms. Exs. 187 and 188.) Respondent directed the record of said alleged meeting of March 30, 1918, and the instruments of transfer designated, to be prepared by respondent's general counsel, in a letter dated April 9, 1918, and such record and such instrument were in fact executed between April 8, 1918.

and April 23, 1918, the date when the executed instruments were returned to respondent's counsel by respondent's secretary.

(y) By a certain deed in writing, and a certain other instrument in writing, both dated March 30, 1918, said Andalusia Packing Company, through its President, T. H. Ingwersen, and its Secretary, C. A. Peacock, transferred to respondent, Swift & Company, respectively, the real estate at Andalusia, Ala., of said Andalusia Packing Company, and the business and physical assets of said Andalusia Packing Company, wherever situated. Said written instrument of sale and deed were without consideration (other than nominal) moving from respondent to said Andalusia Packing Company corporation, and they constituted, and were, mere paper transfers to respondent in the carrying out of the intent and purpose of respondent, following, and as a result of respondent's prior illegal acquisition of the capital stock of the said Andalusia Packing Company.

PAR. 6. That said acquisition by purchase of the capital stock of said Moultrie Packing Company and of said Andalusia Packing Company by respondent, Swift & Company, as set forth in Paragraphs 4 and 5 hereof, respectively, was fully consummated, and full control of the business and property of said Moultrie Packing Company and of said Andalusia Packing Company by respondent was secured by means of said acquisition of stock before the physical assets of said Moultrie Packing Company and said Andalusia Packing Company, as such, were nominally transferred to respondent.

PAR. 7. That—

(a) Prior to the acquisition of said stock of said Moultrie Packing Company and said Andalusia Packing Company by respondent, as set forth in Paragraphs 4 and 5 hereof, said corporations whose stock was so acquired were in direct competition with each other and with the respondent, in the sale of meat and meat products in interstate commerce; but within a few weeks after said acquisition of said stock, said competition of said Moultrie Packing Company, and said competition of Andalusia Packing Company, with each other and with respondent wholly ceased and has not since been resumed. Instances of said competition may be noted as follows:

(b) Beginning late in 1914, or early in 1915, said Moultrie Packing Company sold its said meats and meat products in Atlanta, Ga., and many other cities and towns in the State of Georgia, to the same dealers to whom the respondent at the same time sold or endeavored to sell similar products shipped into Atlanta and said other cities and towns in the State of Georgia, in interstate commerce, and sold and offered for sale in interstate commerce in said cities and towns.

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(c) M. M. Stanaland, for many months (18 months or more), prior to October 22, 1917, was a broker in meats and meat products whose principal place of business was in Atlanta, Ga., and who represented said Moultrie Packing Company. Prior to August, 1917, said Stanaland sold and delivered in Atlanta, Ga., and the neighborhood thereof, meats and meat products manufactured by said Moultrie Packing Company, aggregating many scores of thousands of dollars in value, and estimated in volume at one to three carloads per week; and in such sale of said products, prior to August, 1917, met from day to day, in competition, the salesmen of said respondent, who were selling or endeavoring to sell similar products of respondent, shipped into Atlanta in interstate commerce.

(d) Immediately following the taking over of the stock and control of said Moultrie Packing Company, by respondent, said Stanaland experienced difficulties in securing from the said Moultrie Packing Company his usual supplies of meat and meat products, and prices of said meat and of some of said products were gradually advanced by said Moultrie Packing Company under the direction of respondent, so as to make it more and more difficult for said Stanaland to market said meats and meat products to his customers; such prices so fixed by said Moultrie Packing Company for said Stanaland being at times higher than the prices at which the branch house of respondent in Atlanta was permitted at the same time to sell identical products in the same territory. On October 22, 1917, the account of said Moultrie Packing Company was entirely withdrawn from said Stanaland, and said Stanaland ceased to be a broker for said Moultrie Packing Company, and competition between said Moultrie Packing Company and respondent, which had been nominal since July, 1917, wholly ceased in Atlanta and in the neighborhood thereof immediately upon said Stanaland's dismissal.

(e) Before said respondent had acquired the stock of said Moultrie Packing Company, the sale of meat and meat products of said Moultrie Packing Company by said Stanaland tended to lower the prices secured by respondent for similar products in Atlanta and in the neighborhood thereof, since the said Stanaland, for said Moultrie Packing Company, sold largely what is known as "soft pork," or peanut-fed pork, which could be produced and sold at a lower price in that locality than could the Western, or corn-fed pork, shipped long distances and sold by respondent at that time in that territory. Said peanut-fed pork was generally considered of a lower grade than Western, or corn-fed pork, and was sold in that market at a

differential of 1 to 5 cents, or an average differential of about 2 cents a pound lower than Western pork; at the same time, its flavor was liked by consumers in that locality, and said peanut-fed pork was in such active demand that it was difficult to secure a supply sufficient to meet such demand.

(f) From and after September, 1916, and up to July 24, 1917, J. W. Clarke Company, then brokers in Atlanta, Ga., dealing in meat and meat products, sold as brokers the products of said Andalusia Packing Company, in Atlanta and the neighborhood thereof, to the same dealers to whom respondent sold or endeavored to sell similar products, also shipped to and sold in Atlanta in interstate commerce; and said Andalusia Packing Company, through its broker, J. W. Clarke Company, was likewise, at this time, in competition with said Moultrie Packing Company in Atlanta and the neighborhood thereof, in the sale of meats and meat products. Said J. W. Clarke Company, during the period from September, 1916, to July 24, 1917, sold in Atlanta and the neighborhood thereof, meats and meat products, largely soft, or peanut-fed pork products, and shipped to them in interstate commerce by said Andalusia Packing Company, of the value of many thousands of dollars, estimated at \$4,000 or more per week. Said pork was usually sold at a differential below Western, or corn-fed pork, but was in active demand in said territory.

(g) Immediately after respondent had acquired the stock of said Andalusia Packing Company, and assumed, through the acquisition of said stock, control thereof, said J. W. Clarke Company found it increasingly difficult to get meat and meat products from said Andalusia Packing Company to fill its orders; prices of said products were advanced by said Andalusia Packing Company, at the instance of respondent, so as to make their sale increasingly difficult, and said prices were at times higher than the prices at which the branch house of respondent in Atlanta was permitted to sell identical products in the same territory.

(h) Immediately after the acquisition by respondent of the capital stock of said Andalusia Packing Company, July 24, 1917, the Manager in charge of said Andalusia Packing Company for respondent, adopted the policy of selling the products of said Andalusia Packing Company through respondent's branch houses in Atlanta and elsewhere. As a consequence, said J. W. Clarke Company was gradually eliminated from the business, and about October, 1917, was cut off from shipments by and receipts from said Andalusia Packing Company. Competition of said Andalusia Packing Company with respondent and with said Moultrie Packing Company in Atlanta, Ga.,

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and the neighborhood thereof, which was nominal after July 24, 1917, wholly ceased about October, 1917.

(i) Between October, 1916, and July, 1917, said Moultrie Packing Company sold and shipped its meat and meat products in interstate commerce, to Jacksonville, Fla., in competition with respondent. Such sales were made through Samuel T. Smith, broker for said Moultrie Packing Company, who sold in Jacksonville, Fla., and the neighborhood thereof, to the same dealers to whom respondent sold or endeavored to sell similar products at the same time, in interstate commerce. The sales of said Samuel T. Smith of the products of said Moultrie Packing Company had amounted, during the period he so represented said Company in Jacksonville, to many thousands of dollars, and estimated at a volume of two carloads of said products per week.

(j) After respondent had acquired the capital stock of said Moultrie Packing Company, said Smith found it increasingly difficult to get the meats and meat products of said Moultrie Packing Company at prices at which they could be sold in Jacksonville and the neighborhood thereof, and, at times, respondent, through its branch house in Jacksonville, sold said products at prices substantially lower than said Smith was permitted to make to his customers. After July, 1917, said Smith sold but nominal amounts of said products of said Moultrie Packing Company in Jacksonville and the neighborhood thereof, and in September, 1917, his sales of said products wholly ceased and he ceased to represent said Moultrie Packing Company in the sale of its products in said territory. Thereafter, the products of said Moultrie Packing Company, when sold at all in Jacksonville and the neighborhood thereof, were sold only through the branch house of respondent and competition between respondent and said Moultrie Packing Company in the sale of meat products wholly ceased after September, 1917, in Jacksonville and the neighborhood thereof.

(k) Between September, 1916, and July 24, 1917, said Andalusia Packing Company sold and shipped its meats and meat products to Birmingham, Ala., and the neighborhood thereof, to the same dealers to whom, at the same time, respondent sold and endeavored to sell similar products shipped into Birmingham, Ala., and the neighborhood thereof, in interstate commerce.

(l) During said period, from October, 1916, to July 24, 1917, E. P. Allen & Company, brokers dealing in meats and meat products, represented said Andalusia Packing Company in the sale of its said products in Birmingham and the neighborhood thereof, where said

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E. P. Allen and his salesmen during said period constantly met in competition salesmen of respondent selling similar products. Said Allen and his salesmen in said period solicited the same customers and sold similar products to the same dealers as respondent. Said E. P. Allen & Company sold during said period such products of said Andalusia Packing Company to the volume of many thousands of dollars, the volume being estimated at two to three carloads a week. Said products were of soft, or peanut-fed pork and were sold at a differential lower than Western pork, but were in active demand in said territory.

(m) After respondent had acquired the capital stock of said Andalusia Packing Company, July 24, 1917, said E. P. Allen & Company found it increasingly difficult to secure the products of said Andalusia Packing Company to supply its customers, and in many instances the prices which said E. P. Allen & Company were instructed to secure for said products by said Andalusia Packing Company were substantially higher than the prices at which the branch house of respondent in Birmingham, Ala., was permitted to sell the same products in Birmingham and the neighborhood thereof. About the latter part of October, 1917, said Andalusia Packing Company ceased to sell its said products through said E. P. Allen & Company, and thereafter sold said products solely through the branch house or other sales organization of respondent, and competition between said Andalusia Packing Company and respondent, which had been nominal after July 24, 1917, wholly ceased in Birmingham, Ala., and the neighborhood thereof, as well as elsewhere.

(n) Similar competition between respondent, said Andalusia Packing Company and said Moultrie Packing Company, prior to said acquisition by respondent of the stock of said Andalusia Packing Company and said Moultrie Packing Company, took place in scores of cities and towns in the State of Georgia, Florida and Alabama, and wholly ceased soon after said acquisition of said stock, and before the purchase by respondent of the physical assets, as such, of said Andalusia Packing Company and said Moultrie Packing Company.

PAR. 8. For many years prior to the times that said Moultrie Packing Company and said Andalusia Packing Company began business many dealers in meats and meat products, including respondent, offered their products for sale to dealers in the territory in which said Moultrie Packing Company and said Andalusia Packing Company did the bulk of their business—namely, in the States of Georgia, Florida and Alabama. Sale in said territory of said products of said Moultrie Packing Company and said Andalusia Packing Com-

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pany, from the autumn of 1916 to July, 1917, materially increased competition in said territory in said products, especially in soft or oily pork products. For a time after the acquisition by the respondent of the stock of said Moultrie Packing Company and said Andalusia Packing Company, there was a substantial lessening of competition in said territory in the sale of said oily pork products, and a complete elimination of competition in said products and other meat and meat products between respondent and said Moultrie Packing Company and said Andalusia Packing Company, and between said Moultrie Packing Company and said Andalusia Packing Company.

PAR. 8½. Respondent, in the spring of 1917, decided to enter the southern field in the packing industry, wherein the Moultrie Packing Company and the Andalusia Packing Company were operating, either by building or acquiring a packing plant, after respondent's representatives had reported that at that time, on account of the increasing live-stock production, respondent might profitably enter such field. Respondent's said representative had reported adversely to such entry for the previous two years. Respondent, by its acquisition of the capital stock and control of the said two operating competitive concerns, to wit, the Moultrie Packing Company and the Andalusia Packing Company, rather than building a plant of its own, not only eliminated the then existing competition between respondent and the concerns whose capital stocks were acquired, but also eliminated all increasing, prospective and potential competition from such concerns, particularly in the purchase of live stock.

PAR. 9. That—

(a) Moultrie Packing Company, in 1914, slaughtered 53 head of cattle of a dressed weight of 24,739 pounds, and 2,032 hogs, of an aggregate dressed weight of 200,598 pounds; in 1915, said Company slaughtered 1,629 cattle of a dressed weight of 396,748 pounds and 32,658 hogs of a dressed weight of 2,199,441 pounds; in 1916, said Packing Company slaughtered 701 cattle of a dressed weight of 196,333 pounds, and 78,125 hogs of a dressed weight of 7,305,506 pounds; for the first six months of 1917, said Company slaughtered 901 cattle of a dressed weight of 252,280 pounds, and 42,421 hogs of a dressed weight of 3,907,909 pounds; in 1914 said Company produced 20,320 pounds of lard; in 1915, 326,580 pounds; in 1916, 1,171,875 pounds, and for the first six months of 1917, 827,575 pounds. It had ample supply of hogs except in three or four summer months, at times many more than it could handle. Said Company found ready sale for its products and its business was highly profitable and grow-

ing rapidly; up to the time that respondent acquired its capital stock it was marketing its product through salesmen and brokers.

(b) Andalusia Packing Company, in 1916 slaughtered 21 cattle of a dressed weight of 6,426 pounds and 31,439 hogs of a dressed weight of 3,065,341 pounds; from January 1, 1917, to May 1, 1917, said Company slaughtered 549 cattle of a live weight of 432,195 pounds and 26,438 hogs of a dressed weight of 2,914,692 pounds. It produced 383,774 pounds of lard in 1916, and 564,293 pounds of lard from January 1, 1917, to May 1, 1917. It had ample supply of live stock, especially hogs, except during three or four summer months. Said Company found a ready sale for its products, and its business was highly profitable and was growing rapidly at the time respondent acquired its capital stock.

(c) Respondent greatly enlarged the capacity of the plant of said Moultrie Packing Company, after having acquired its stock; its slaughter of beef cattle was increased radically, but, except in 1919, its slaughter of hogs at said plant had decreased since the acquisition of the capital stock of said plant by respondent. In the last six months of 1917, at the plant of said Moultrie Packing Company there were slaughtered 2,573 cattle and 26,566 hogs; in 1918, at said plant there were slaughtered 18,008 cattle and 72,666 hogs; in 1919, there were slaughtered at said plant, 10,381 cattle and 103,099 hogs; in 1920, at said plant there were slaughtered 8,578 cattle and 65,281 hogs; in the first six months of 1921, there were slaughtered at said plant, 3,626 cattle and 36,080 hogs.

(d) The respondent somewhat enlarged the capacity of said Andalusia Packing Company plant after having acquired its stock, or at least made some improvements in said plant. The slaughter of beef cattle was greatly increased after respondent had acquired the stock of said Andalusia Packing Company, but its slaughter of hogs at said plant, after such acquisition, decreased as compared with the slaughter of hogs at said plant before such acquisition. In the last five months of 1917, there were slaughtered at the plant of the Andalusia Packing Company, 21,186 cattle and 63,976 hogs; in 1919, there were slaughtered at said plant, 11,759 cattle and 61,676 hogs; and in 1920, there were slaughtered at said plant 8,687 cattle and 39,523 hogs; for the first six months of 1921, there were slaughtered at said plant 4,552 cattle and 29,313 hogs.

(e) Respondent Company, in its various plants, in 1917, slaughtered 2,153,908 cattle, 846,472 calves, 3,162,930 sheep and 7,288,159 hogs; in 1919, the year of its largest production, respondent slaughtered in its various plants, 2,337,124 cattle, 1,231,262 calves,

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4,044,719 sheep and 8,662,824 hogs. Its production fell off radically in 1920. Respondent is one of the largest two of the meat packers and does business through branches, salesmen and car routes, all over the United States.

(f) In 1919, there were slaughtered in the United States, under federal inspection, as reported officially: 10,989,984 cattle, 3,969,019 calves, 12,691,117 sheep and lambs, 87,380 goats, and 41,611,830 hogs; so that respondent slaughtered more than one-fifth of the cattle and hogs and about one-third of the calves and sheep slaughtered under federal inspection in the year 1919.

PAR. 10. That the acquisition of said capital stock of said Moultrie Packing Company and of said Andalusia Packing Company by respondent, as described in Paragraphs 4 and 5 hereof, was not solely for investment, nor acquired in forming a subsidiary corporation under the permissive provisions prescribed in Section 7 of the Act of Congress approved October 15, 1914, entitled, "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes."

PAR. 11. That Section 7 of the Act of Congress approved October 15, 1914, entitled, "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," is and provides in part as follows:

That no corporation engaged in commerce shall acquire, directly or indirectly, the whole or any part of the stock or share capital of another corporation engaged also in commerce, where the effect of such acquisition may be to substantially lessen competition between the corporation making the acquisition, or to restrain such commerce in any section or community, or tend to create a monopoly in any line of commerce.

PAR. 12. That the acquisition and continued control and ownership of the capital stock of said Moultrie Packing Company corporation, and of said Andalusia Packing Company corporation, by respondent, and the subsequent continued control and operation of the packing plants and businesses of said corporations by respondent, and the nominal transfers to respondent of the physical assets and businesses of said corporations, following respondent's acquisition of such capital stock and control of said corporations, and the total suppression of competition between the Moultrie Packing Company and the Andalusia Packing Company, and the total suppression of competition between respondent and each of said named companies, resulting from such control and operation by respondent under the conditions and circumstances set forth in the foregoing findings as to the facts, were and are in violation of the provisions of Section 7 of an Act of

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Congress approved October 15, 1914, entitled, "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes"; and were and are unfair methods of competition within the meaning 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."

CONCLUSION.

The acquisition and continued control and ownership of the capital stock of said Moultrie Packing Company corporation, and of said Andalusia Packing Company corporation, by respondent, and the subsequent continued control and operation of the packing plants and businesses of said corporations by respondent, and the nominal transfers to respondent of the physical assets and businesses, following respondent's acquisition of such capital stock and control of said corporations, and the total suppression of competition between the Moultrie Packing Company and the Andalusia Packing Company, and the total suppression of competition between respondent and each of said named companies, resulting from such control and operation by respondent, under the conditions and circumstances set forth in the foregoing findings as to the facts, were and are in violation of the provisions of Section 7 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"; and were and are unfair methods of competition within the meaning 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."

ORDER.

The Federal Trade Commission having issued and served its complaint herein, and respondent, Swift & Company, having entered its appearance by its attorneys, Messrs. A. N. and Henry Veeder, James M. Sheenan, Esq., and Frank L. Horton, Esq., of Chicago, Ill., duly authorized and empowered to act in the premises, and having filed its answer; and thereafter, hearings in this proceeding having taken place before an Examiner of the Commission; and evidence having been presented before said Examiner on behalf of the Commission and on behalf of respondent; and the presentation of such evidence having been closed, respectively, by the attorneys for the Commission and by the attorneys for the respondent; and thereafter, the

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attorneys for the Commission and the attorneys for respondent having duly filed their briefs in this proceeding with the Commission, and having fully argued and presented to the Commission the issues in this proceeding, and having submitted said issues for consideration and determination; and the Commission having fully considered the record, and having been fully advised in the premises, has heretofore made and entered its report and its conclusion that respondent has violated the provisions of Section 5 of the 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 also the provisions of Section 7 of the Act of Congress approved October 15, 1914, entitled, "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," which said report and findings are hereby referred to and made part hereof,

Now, therefore, it is ordered, That respondent, Swift & Company, within six calendar months from and after the date of the service of a copy of this order upon it, shall:

(1) Cease and desist from further violating Section 7 of the Clayton Act by continuing to own or hold, either directly or indirectly, by itself or by anyone for its use and benefit, any of the capital stock of the Moultrie Packing Company and of the Andalusia Packing Company, or either of them, and cease and desist from holding, controlling and/or operating, or causing to be held, controlled and/or operated by others for its use and benefit, the former property and business either of the said Moultrie Packing Company or of the said Andalusia Packing Company, which have been held, controlled and operated by respondent and its employees and agents, following and as a result of respondent's unlawful acquisition of the capital stocks of said named corporations; and to that end, respondent shall

(2) So divest itself of all the capital stocks heretofore acquired by respondent, including all the fruits of such acquisitions, in whatever form they now are, whether held by respondent or by anyone for its use and benefit, of the Moultrie Packing Company, a corporation, and of the Andalusia Packing Company, a corporation, or either of them, in such manner that there shall not remain to respondent, either directly or indirectly, any of the fruits of said acquisitions, including the control and/or operations of said corporations, or either of them, resulting from such acquisitions and/or holdings of such capital stocks.

(3) In so divesting itself of such capital stocks respondent shall not sell or transfer, either directly or indirectly, any of such capital

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stocks to any officer, director, stockholder, employee or agent of respondent, or to any person under the control of respondent, or to any partnership or corporation either directly or indirectly owned or controlled by respondent.

(4) Cease and desist from further engagements in unfair methods of competition in violation 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 in so ceasing and desisting, shall cease and desist from further suppressing the competition in trade heretofore existing between the Moultrie Packing Company and the Andalusia Packing Company, and between each of said corporations and the respondent, and also cease and desist from further holding, owning, controlling and/or operating, directly or indirectly, the plants and businesses of the said Moultrie Packing Company and the Andalusia Packing Company, or either of them, either through direct or indirect ownership and/or control of the capital stock of either said Moultrie Packing Company or said Andalusia Packing Company and/or through the control and/or ownership of the properties, physical assets and businesses of either of said named corporations.

It is further ordered, That the said respondent, Swift and Company, shall within ninety (90) days from the date of service of this order, file with the Commission a report setting forth in detail the manner and form in which it has complied with the order of the Commission herein set forth.

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Complaint.

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FEDERAL TRADE COMMISSION

v.

CHARLES GOODMAN, TRADING UNDER THE NAME AND
STYLE OF EAGLE SAFETY RAZOR COMPANY.