

Syllabus.

FEDERAL TRADE COMMISSION

v.

MELHUISH & COMPANY ET AL.

COMPLAINT IN THE MATTER OF THE ALLEGED VIOLATION OF SECTION 5
OF AN ACT OF CONGRESS APPROVED SEPTEMBER 26, 1914.

Docket 872—May 17, 1923.

SYLLABUS.

Where a corporation, individuals responsible for the organization and management thereof and officers therein, and a firm engaged as fiscal agents of said corporation; jointly and severally, in promoting the sale of said corporation's stock, and as a part of a campaign directed to that end,

- (a) Made false and misleading statements in advertising and offering said stock, in that they
- (1) Featured the alleged earnings of the corporation's refinery or refineries, their capacities and business, and their enlargement from time to time, the fact being that earnings from said refineries were at no time sufficient for the payment of dividends in any amount, that one of said refineries was "nothing but an aggregation of junk to which no one had any claim or title," and that no enlargements were made at any time in the three refineries owned in whole or part by said corporation;
- (2) Featured the steady payment of monthly dividends and also the payment of extra stock and cash dividends, the fact being that during said dividend period the corporation with an income of approximately \$20,000 properly available for the payment of dividends paid out as pretended dividends approximately \$183,000;
- (3) Exaggerated and magnified production from its holdings, and its net earnings;
- (4) Misrepresented the location and character of its holdings; and
- (5) Falsely represented that it was engaged in the complete cycle of the oil industry, to wit, "producing, refining, and marketing," and that the net earnings from each were so considerably in excess of dividend requirements on outstanding stock as to give that element of safety of investment which every investor should seek;
- (b) Agreed to, and did, pay, during the period covered by the contract with its fiscal agents, a pretended dividend of 2 per cent of the par value of its stock each month, notwithstanding the fact that during said period funds were not properly available therefor;
- (c) At the request of said fiscal agents agreed to, and did, supplement said pretended monthly dividends; and
- (d) Made use of false and fraudulent devices, such as fictitious and collusive sales, purchases, and leases in order to show on the books items purporting to represent income;

All for the purpose and with the effect of deceiving and misleading the purchasing public into buying large amounts of said stock:

Held, That such practices, substantially as described, constituted unfair methods of competition.

Complaint.

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COMPLAINT.

The Federal Trade Commission having reason to believe, from a preliminary investigation made by it, that William F. Melhuish, jr., and Henry Clay Silver, doing business under the firm name and style of Melhuish & Company, T. A. Edmonds, Y. E. Hildreth, W. E. Weathers, J. W. Mastin, and the Edmonds Oil & Refining Corporation, hereinafter referred to as respondents, have been and are using unfair methods of competition in 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 upon information and belief, as follows:

PARAGRAPH 1. That respondents, William F. Melhuish, jr., and Henry Clay Silver, are residents of the State of New York, and are copartners under the firm name and style of Melhuish & Company, with their principal office and place of business at No. 40 Wall Street, in the city of New York, in said State of New York;

That respondents, T. A. Edmonds, Y. E. Hildreth, W. E. Weathers, and J. W. Mastin, are residents of the State of Texas, each having his principal office and place of business at Fort Worth, in said State;

That respondent Edmonds Oil & Refining Corporation is now, and at all times hereinafter mentioned was, a corporation organized, existing, and doing business under and by virtue of the laws of the State of Louisiana, with a capitalization of 2,000,000 shares of the par value of \$1 each, and maintains a statutory office at Shreveport, in said State, with its executive office at Fort Worth, in the State of Texas.

PAR. 2. That the individual respondents, and each of them, for more than a year last past, each for and on behalf of himself and for and on behalf of the Edmonds Oil & Refining Corporation, and in conjunction with and on behalf of each other, have been engaged in promoting the said respondent Edmonds Oil & Refining Corporation, and in connection therewith have transported or caused to be transported, through the mails and otherwise, large quantities of letters, circulars, and advertising matter, into and through the various States and Territories of the United States, and have advertised and procured subscriptions for and sold stock in said corporation, and transported or caused to be transported such shares of stocks, or certificates of same, from the city of Fort Worth, in the State of

Texas, to purchasers thereof in various other States and Territories of the United States, particularly to the city of New York, in the State of New York, from which place respondent William F. Melhuish, jr., and Henry Clay Silver, trading as Melhuish & Company, for themselves and in conjunction with and on behalf of the other respondents herein, have transported or caused to be transported said stock or certificates thereof to purchasers in various other States of the United States, in competition with other persons, co-partnerships, and corporations engaged in the sale and distribution of stocks and securities.

PAR. 3. That the individual respondents, each for himself and in conjunction with and on behalf of each other, and the said respondent corporation, have published, advertised, and circulated false and misleading reports, false statements, and false representations regarding the plan of the organization, assets, resources, business progress, good will, and prospects of the Edmonds Oil & Refining Corporation, and of the standing, ability, and integrity of the individual respondents associated therewith in the promotion thereof, and, more particularly, they and each of them have advertised, published, and circulated the following statements and representations as inducements to the sale of the stock of the respondent Edmonds Oil & Refining Corporation, to wit:

That a well had been brought in, one mile south of the lease of said corporate respondent, in the so-called Caddo field of Louisiana, producing 5,000 barrels of oil daily;

That contracts had been made by respondent corporation for drilling three wells upon its lease in said field, and that wells in such field came in with production of 2,000 barrels and thereafter usually settled to production of 300 to 400 barrels daily;

That its holdings or leases in the so-called Homer field in said State were surrounded by producing and drilling wells;

That an offset well to its so-called Bull Bayou lease was making 1,700 barrels daily;

That the dividends of the Edmonds Oil & Refining Corporation were not dependent on the uncertainty of drilling operations, but on the operation of refineries as efficient as could be found in the entire oil industry, refineries whose earnings in yearly rate were estimated to be \$1,305,605.

That the capacity of the refinery operated by the Edmonds Oil & Refining Corporation at Fort Worth had been increased from 2,000 to 3,000, and was being increased to 4,000, barrels daily, and of the refinery at Burkburnett from 1,000 to 2,000 barrels daily, and that a refinery at Bridgeport, with a capacity

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of 1,000 barrels, and which was being increased to 2,000 barrels, had been acquired by respondent corporation, and had an adequate, dependable supply of oil under contract, and the additional capacity would enable the exact and known increase in earnings to be determined, so that from refinery operations alone, earnings of \$2,000,000, an amount equal to the entire capitalization of said corporate respondent, might be expected;

That the respondent, the Edmonds Oil & Refining Corporation, had agreed with the respondent Melhuish & Company, that one-third of the net earnings of the former would be devoted to dividends;

That the sure and independent earnings of refineries operated by respondent Edmonds Oil & Refining Corporation warranted extra cash dividends in addition to the regular monthly dividends; that one such cash dividend of 5 per cent has been actually paid February 28, 1921;

That "the efficient Edmonds management had already increased the output and earnings of the Red River Refinery to \$952.50 net per day, or, in yearly rate, \$347,562.50";

That "Your Edmonds stock is today all protected by ample surplus earnings above dividend requirements."

Whereas the facts were:

That the said 5,000-barrel well was 4 miles to the west, in addition to being 1 mile south, of the so-called Edmonds lease;

That instead of wells with initial production of 2,000 barrels daily in the Caddo field usually diminishing to settled production of 300 to 400 barrels, such settled production usually averaged no more than 30 barrels, and the said lease of Edmonds Oil & Refining Corporation was itself acquired by said corporate respondent on a purchasing basis of 55 barrels of daily production from the two wells then producing thereon;

That the holdings or leases of said corporate respondent in the so-called Homer field, represented as surrounded by producing and drilling wells, were, in fact separated from production of any character by distances ranging from 6 to 16 miles;

That the nearest producing wells to the so-called Bull Bayou lease of said corporate respondent were two small pumpers more than one-half mile distant;

That the refineries were at all times operated at a substantial loss, and at no time heretofore have they, or any or either of them, produced returns sufficient to authorize a dividend in any amount whatever, but, contrariwise, their operations during the

twelve months preceding June 30, 1921, disclosed a net loss of approximately \$8,000;

That the said corporate respondent received from its production of oil approximately \$22,000 for the entire year preceding June 30, 1921, and has been and was at all times unable and unauthorized, from said oil returns or any returns either from production or refinery operations or any other source, to pay a legitimate dividend of any kind or amount;

That during the period covered by the representations that the Edmonds management had increased the output and earnings of the Red River refinery, such refinery was neither under the control nor under the supervision, direction, or management of the respondents, or any or either of them;

That the advertised dividend of 5 per cent paid in February, 1921, by respondent, Edmonds Oil & Refining Corporation, was falsely so called, and was derived from the pretended profits of a fictitious sale of certain oil leases of little or no value, or from collusive, misleading, and deceptive arrangements in respect thereto by and between said respondent corporation and its correspondent, the copartnership Melhuish & Company, who thereupon proceeded, for themselves, and in conjunction with and on behalf of the other respondents, further to represent, through advertisements, pamphlets, circulars, and otherwise, to the investing public and to purchasers and prospective purchasers, the alleged advantages of investment in the stock of said corporate respondent, and particularly inviting attention to the so-called dividend of 5 per cent, and other dividends, past and prospective, of said Edmonds Oil & Refining Corporation, the said respondents, and each and all of them, then and there well knowing that said corporation never had enjoyed net earnings or returns or profits from any source, lawfully applicable to, or that would enable or justify the payment of, any dividend by said respondent company.

PAR. 4. That the said representations and each and all of them had the capacity to mislead and deceive, and the natural and probable tendency of each and all of them, so made to the public by respondents, was to mislead and deceive the public and thereby to induce subscriptions for and purchases of stock in said corporation.

PAR. 5. That by reason of the facts recited, the respondents have been and are using unfair methods of competition in commerce within the intent and meaning of Section 5 of an Act of Congress entitled "An Act to create a Federal Trade Commission, to define its powers and duties and for other purposes," approved September 26, 1914.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER.

Pursuant to the provisions of an Act of Congress approved September 26, 1914, the Federal Trade Commission issued a complaint against William F. Melhuish, jr., and Henry Clay Silver, doing business under the firm name and style of Melhuish & Company, T. A. Edmonds, Y. E. Hildreth, W. E. Weathers, J. W. Mastin, and the Edmonds Oil & Refining Corporation, charging them with the use of unfair methods of competition in commerce in violation of the provisions of said act and served its complaint upon each and all of said respondents.

The respondents, with the exception of Edmonds Oil & Refining Corporation, filed answers and entered appearance by their attorneys, hearings were had before an examiner of the Federal Trade Commission theretofore duly appointed and testimony introduced in support of the allegations of the complaint by the Commission and by respondents, William F. Melhuish, jr., T. A. Edmonds, Y. E. Hildreth, W. E. Weathers, and J. W. Mastin in support of their answer. The testimony so taken was reduced to writing and filed in the office of the Federal Trade Commission.

And thereupon this proceeding came on for final hearing before the Federal Trade Commission, and the Commission having heard argument of counsel, and having duly considered the record, and being now fully advised in the premises, makes this its findings as to the facts and conclusion.

FINDINGS AS TO THE FACTS.

PARAGRAPH 1. Respondents, William F. Melhuish, jr., and Henry Clay Silver, are residents of the city of New York, in the State of New York, and at the times hereinafter mentioned, until on or about November 1, 1921, were engaged at No. 41 Wall Street, in the city, in a general brokerage business under the firm name and style of Melhuish & Company. Respondent, the Edmonds Oil & Refining Corporation, is now and at all times hereinafter mentioned was a corporation organized and existing under and by virtue of the laws of the State of Louisiana with a capitalization of 2,000,000 shares of the par value of \$1 each, maintaining a principal office and place of business at Fort Worth, Tex. Respondents, T. A. Edmonds, Y. E. Hildreth, and W. E. Weathers, organized and promoted, prior to 1920, certain oil companies, known as the Waurika Oil Companies One, Two, and Three, the properties of which were acquired by the Great Eastern Oil & Refining Corporation, another corporation organized and promoted by said last named individual

respondents under the laws of Louisiana in February, 1920, and in August, 1920, the Great Eastern Oil & Refining Company became, by change of name, The Edmonds Oil and Refining Corporation. Respondents, T. A. Edmonds, Y. E. Hildreth, and W. E. Weathers, were, from the time of its organization, the active and responsible officers of respondent corporation, prescribed its policies, directed and controlled its operations, and completely dominated its active life until March, 1921, when respondent J. W. Mastin succeeded respondent W. E. Weathers as a director and thereafter until December, 1921, performed the duties of such office, and cooperated with respondents Edmonds and Hildreth in controlling and directing said company.

PAR. 2. In August, 1920, respondents, T. A. Edmonds, Y. E. Hildreth, and W. E. Weathers, as officers and directors, caused the respondent Edmonds Oil & Refining Corporation to consent to the assignment to respondent Melhuish & Company of a contract held by the Authorized Security Company of Fort Worth, Tex., to sell the stock of Edmonds Oil & Refining Corporation to the public. Thereupon respondent Melhuish & Company caused to be published and circulated throughout the United States, preparatory to the sale of such stock, exaggerated accounts of the operations and resources of the Edmonds Oil & Refining Corporation, and at the same time initiated negotiations with respondents, T. A. Edmonds, Y. E. Hildreth, and W. E. Weathers, who then controlled the respondent Edmonds Oil & Refining Corporation, for the execution of another agreement for the sale of stock of respondent corporation to supersede the agreement assigned to it as aforesaid by the Authorized Security Company. These negotiations culminated on September 14, 1920, in a new agreement between Melhuish & Company and the Edmonds Oil & Refining Corporation. It constituted Melhuish & Company the exclusive fiscal agent for the sale of 1,383,000 shares of the stock of the Edmonds Oil & Refining Corporation, which, it was agreed, would be furnished it for such purpose on the following terms, to wit, 70 cents per share to be paid by the Melhuish company to Edmonds Oil & Refining Corporation for the first 500,000 shares when so furnished, 85 cents per share for the second 500,000, and 95 cents per share for the balance. It was also agreed that Melhuish & Company should have the exclusive right to establish the retail price for which the stock would be sold to the public and a bonus of 10,000 shares was promised to Melhuish & Company upon the completion of its contract for the sale of the 1,383,000 shares. On September 17, 1920, respondent Melhuish & Company distributed among prospective purchasers in the various

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States and Territories of the United States from the city of New York, State of New York, a circular in which reference was made to the dividends being paid by the respondent, Edmonds Oil & Refining Corporation, which it was declared, were based upon the steady earning power of a splendid refinery. At this time one refinery only was owned or claimed on behalf of the Edmonds Oil & Refining Corporation, and this was operated at a loss of \$12,341.31 for period ending June 30, 1920, when such circular was sent out. The respondent company at the time had no earnings or profits from which dividends might be properly paid. On October 2, 1920, however, a meeting of the board of directors of respondent corporation was held which was attended by its dominant majority, respondents T. A. Edmonds, Y. E. Hildreth, and W. E. Weathers, at which it was resolved that the company would pay a dividend of 2 per cent of the par value of its stock on the 16th of each month, except on certain stock then held in escrow. It was further agreed by resolution that as soon as the contract hereinbefore mentioned with Melhuish & Company, executed on September 14, 1920, was in full force and effect, they would not change or alter the rate of dividends, or the dates whereon the same would be paid.

PAR. 3. Respondents, Melhuish & Company, thereupon proceeded in pursuance of and in accordance with said agreement, to offer for sale and to sell the stock of the respondent, Edmonds Oil & Refining Corporation. So-called information regarding the properties, resources, operations, and prospects of the company was from time to time furnished respondent, Melhuish & Company, to be used or incorporated in the advertising matter distributed in the campaign to sell the stock. This campaign, including the preparation and circulation of the advertising literature, was prosecuted entirely by Melhuish & Company, but respondents, T. A. Edmonds, Y. E. Hildreth, and W. E. Weathers, supplied it with the false and misleading matter which composed a conspicuous and effective part of the statements and representations in the prospectuses, pamphlets, and other circulars by which the public was influenced to buy the stock. After its commencement the campaign to sell such stock was conducted by Melhuish & Company, assisted, as aforesaid, by respondents Edmonds, Hildreth, and Weathers continuously until November, 1921, during which period respondent Melhuish & Company actually sold 848,125 shares for \$1.50 per share. The certificates of such stock were transmitted from Fort Worth, Tex., to New York City and from thence to the purchasers thereof in the various States and Territories of the United States. The stock was sold by means, and as the effect, of certain statements and representations, in large quan-

tities of advertising matter consisting of circulars, newspapers, pamphlets, letters, and other forms of printed matter, relative to the assets, resources, production, earnings, and prospects of Edmonds Oil & Refining Corporation, which respondent, Melhuish & Company, with the knowledge and consent of respondents Edmonds, Hildreth, Weathers, and Mastin, transported or caused to be transported through the mails and otherwise into and through the various States and Territories of the United States from the city of New York in the State of New York, and distributed among purchasers and prospective purchasers of stocks and securities. In substantially all of the literature so distributed and used to induce the public to purchase the said stock, false and misleading statements and representations were made which had the capacity to mislead and deceive and their probable tendency and effect was to and they did mislead and deceive the purchasing public among which the following are typical:

These 30% cash dividends are not dependent upon any sort of speculative drilling but on the steady earning power of a splendid refinery.

Assuming, however, that the well should prove disappointing, you will, at the very worst, have purchased a safe security, now paying 24% dividends. The safety of these continued dividends is not dependent on any drilling operation, but on earnings of two as fine, efficient and well-managed Refineries as can be found in the entire Oil Industry. The earnings of the Refineries alone, without including present producing wells, should total, for the next 12 months, a sum over three times dividend requirements on this total issue of Treasury Stock.

But entirely aside from any drilling operations whatsoever your funds will be safely invested in this issue from Refinery earnings alone. These are estimated to be approximately \$1,305,605 for the next twelve months, or practically 100 per cent of the 1,375,624 shares of this offering of Treasury Stock. Dividend requirements on the entire issue are only \$330,150.

We have just received word that the Red River Refinery of the Edmonds Company, which has averaged 600 barrels daily at a net profit of \$1.25 per barrel, has increased its production until for the two weeks period ending Nov. 12th, its output averaged 762 barrels daily, with daily net earnings of \$952.50. This indicates earnings for the year of \$347,562.50.

Thus the indicated earnings for the next twelve months of the two efficient Edmonds refineries are:

Fort Worth Refinery	\$1, 031, 855. 00
Red River Refinery	347, 562. 50
	\$1, 379, 417. 50

These refinery earnings alone, which are in addition to earnings from the present producing wells, are more than FOUR times 24 per cent dividend requirements of \$320,149.76 on this entire issue of 1,375,624 shares of Treasury Stock.

Dividends from refinery earnings are something which we are sure of and which enable us to place this Edmonds Treasury stock with our customers as a safe investment, yielding, moreover, a very high dividend return.

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The production of the Texas wells of the Edmonds Company is handled by the Edmonds Burkburnett refinery. This production, therefore, is neither injured nor benefited. The refinery makes the same profits on this production as formerly.

Edmonds earnings are increasing. Refinery earnings are so safe, consistent, and valuable a source of revenue, and Edmonds refinery earnings are so far in excess of dividend requirements that this offering of Treasury Stock may be considered by any investor as a security of highest grade and complete safety.

In August, 1921, after Melhuish & Company had sold more than 650,000 shares at \$1.50 per share as a result of said false and misleading representations, they sent out and circulated advertising matter containing the following false and misleading statements:

The current net earnings of the company are at the rate of six times present dividend requirements.

Regular cash dividends of 24% were paid during 1920, and during 1921 regular monthly cash dividends of 2% have been paid, also extra dividends of 5% cash and 5% stock. The company has never passed nor reduced its regular dividends of 2% monthly.

Although only 17,494 shares were sold in July, this representation was followed by sale of 42,241 in August, 52,638 in September, and 96,974 in October.

From time to time in the course of the campaign to sell the stock the advertising matter contained representations to the effect that the refinery at Fort Worth had a capacity of 2,000 barrels per day, which later it was announced had been increased to 3,000 barrels per day. In May, 1921, the public was informed in circular letters issued and distributed among purchasers and prospective purchasers by Melhuish & Company that the capacity of the Fort Worth refinery, already increased to 3,000 barrels per day, was being still further increased to 4,000 per day. In June, 1921, the statement was circulated among prospective purchasers that the capacity of the Red River and Bridgeport refineries was being increased from 1,000 to 2,000 barrels per day.

The facts are that the Edmonds Oil & Refining Corporation had no interest except leasehold upon the land on which its Fort Worth refinery was situated, and the capacity of such refinery was no more than 1,500 barrels of oil per day. Such capacity was not increased to 3,000 barrels as represented to the public, nor were any steps taken to equip it for the treatment of 4,000 barrels per day or more than 1,500 barrels per day. It owned only a two-thirds interest in the refinery at Bridgeport, and neither the Edmonds Oil & Refining Corporation nor respondent W. E. Weathers ever owned or had any interest in the land on which the River Bottom or Red River refinery was situated. The capacity of the said Red River refinery was at no

time increased nor that of the refinery at Bridgeport, and neither of them was capable of treating 1,000 barrels of oil per day. In December, 1921, the Red River refinery was nothing but an aggregation of junk to which no one asserted any claim or title. The capacity and efficiency of each and all of these refineries was grossly exaggerated in the advertising matter circulated by the respondents in connection with the sale of stock of the respondent corporation.

The earnings from its refineries were at no time sufficient for the payment of dividends in any amount, and instead of realizing from such source profits far in excess of the dividend requirements of 2 per cent a month, from the time the company began to operate, the Fort Worth refinery or its other refineries to December 24, 1921, according to the books of the company the profit was only \$9,000. Yet the respondent company distributed among its stockholders, and widely advertised the fact, as so-called dividends, prior to June 30, 1921, \$95,944.11, and between June 30 and December 24, 1921, \$86,928.26, or a total of \$182,872.37.

The total income of the Edmonds Oil & Refining Corporation to June 30, 1921, was \$178,000, and its total income from organization to December 24, 1921, was \$206,000, including the \$178,000. Its expenses during the entire period were \$91,590 and it had only an ostensible profit of \$114,410. It distributed among its stockholders as dividends during the period when respondent, Melhuish & Company, was engaged in the sale of its stock to the public, \$68,186.13 more than it received from any and all sources, other than the sale of its stock, as shown by its own books. The principal part of the money described as ostensible profits, to wit, \$114,410, consisted of false and fictitious items or sums improperly claimed or credited as income, on which no valid or legitimate dividend could be declared. Respondent corporation received from the production of crude oil only \$17,641.99 during its entire history, from dividends from Wade Oil Company a portion of whose stock it owned, \$4,868.90, and from the operation of a refinery at Bridgeport in which it owned a two-thirds interest, \$1,179.73. Its other so-called income or profit was mainly derived from said fictitious transactions, carried on its books as actual and profitable operations of the company. These included items of \$27,773.59 described as rentals from refineries, \$54,597.73 as profits from the sale of oil leases, and alleged miscellaneous profits of \$68,840.65. In order to carry the item of \$27,773.59 as rental from refineries, the Edmonds Oil & Refining Corporation, at a special meeting of the board of directors, attended by respondents Edmonds, Hildreth, and Weathers, held October 9, 1920, at Fort Worth, Tex., agreed to purchase from respondent and director W. E. Weathers a

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so-called River Bottom or Red River refinery located at Burkburnett, Tex., for the sum of \$50,000, \$6,000 to be paid in cash and notes to be executed by the company in favor of respondent Weathers for \$44,000. Respondent and director Weathers duly executed and delivered to the respondent corporation a bill of sale, whereupon, and in the course of the same meeting of the directors, a motion was adopted to lease this refinery to respondent and director W. E. Weathers for a sum equal to 50 cents a barrel for every barrel of crude oil run by lessee, provided that a minimum rental of 50 cents a barrel on 350 barrels should be collected for each 24 hours. Six thousand dollars in cash were paid to respondent and director Weathers by the respondent corporation and subsequently another \$6,000. There was charged against respondent and director W. E. Weathers on the books of the company \$175 a day for and on account of his rental of said refinery, which he had nominally sold to and immediately thereafter leased from the Edmonds Oil & Refining Corporation. This rental in the course of the eight months during which the lease was to run, equalled the purchase price for which he had sold the plant, to wit, \$50,000. This procedure was followed in the books of the company until there remained as a balance of the purchase price of \$50,000 due respondent and director W. E. Weathers the sum of \$12,635.65, which debt was thereafter cancelled by him about the time he resigned as director. The Edmonds Oil & Refining Corporation never obtained possession of the refinery or operated it at any time. When respondent and director Weathers went through the form of selling it to the respondent corporation and in turn it went through the form of leasing it to respondent and director Weathers, it was in the possession of Frederick Delano, a receiver appointed by the Supreme Court of the United States to hold and operate certain disputed areas involved in litigation between the States of Texas and Oklahoma. During the entire time when respondent and director Weathers was being charged on the books of the company \$175 a day on account of his lease of said refinery, it was operated by said receiver and the sum of \$752 was received by respondent company for its use by Delano, although its books showed receipt of \$27,773.59 from Weathers as rental.

The Edmonds Oil & Refining Corporation at no time refined or caused to be refined any oil in this River Bottom or Red River refinery and at no time enjoyed any income of any kind or character from it other than \$752 paid by said receiver, except the false and fictitious item of \$175 a day carried upon its books as a profit by reason of the aforesaid collusive arrangement with respondent and director W. E. Weathers.

The so-called profits from the sale of oil leases, to wit, \$54,497.73, were derived from transactions equally false and fictitious. For instance, the Edmonds Oil & Refining Corporation owned an oil lease on 10,000 acres of land in Mississippi acquired by it for 50,000 shares of its stock. It transferred a one-tenth interest in this lease to one of its directors, respondent J. W. Mastin, in consideration of which he executed and delivered to respondent corporation his promissory notes for the principal sum of \$40,000. These notes were never paid either in whole or in part and the said sum of \$40,000 was carried, on account of such transaction on the books of the company and included as a profit under the item "sales of oil leases, \$54,497.73."

In the month of February, 1921, respondent Henry Clay Silver urged correspondents T. A. Edmonds, Y. E. Hildreth, and W. E. Weathers, directors, and the Edmonds Oil & Refining Corporation to declare an extra cash dividend of 5 per cent in order to facilitate the sale of stock in the Edmonds Oil & Refining Corporation and otherwise promote the campaign then in progress by Melhuish & Company for the sale, in the various States and Territories of the United States, of 1,383,000 shares of such stock covered by the agreement of September 14, 1920.

On February 8, 1921, a meeting of the board of directors of the Edmonds Oil & Refining Corporation was held which was attended by the dominant majority, respondents T. A. Edmonds, Y. E. Hildreth, and W. E. Weathers. It was agreed to sell to respondent Henry Clay Silver a one-half interest in and to certain undeveloped leases of the respondent company in the State of Louisiana for the sum of \$22,500, payable \$1,000 cash, \$10,750 February 8, 1921, and \$10,750 March 10, 1921. It was pretended that this action was taken because of the representation of Melhuish & Company that it would make a special effort to sell the securities of the Edmonds Oil & Refining Corporation during the month of February, and as an additional inducement to such activity it was agreed by the board of directors that the price of the stock to be furnished Melhuish & Company for sale during the month of February, 1921, would be reduced from 75 cents to 70 cents a share. Thereupon it was resolved by said board of directors that a stock dividend of 5 per cent and an extra cash dividend of 5 per cent should be paid to all stockholders on March 16 in addition to the regular February dividend of 2 per cent. It thus appears that not only was the so-called sale of this undeveloped property in Louisiana to respondent Henry Clay Silver utilized to create the appearance of profit to warrant an extra dividend, but was also the basis upon which the extra cash dividend of

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5 per cent was declared as aforesaid on February 8. It was a false and fraudulent dividend, the plan of which was conceived for the purpose of misleading investors as to the resources and earnings of respondent company, and distributed in furtherance of a collusive and deceptive arrangement between respondent H. C. Silver and respondents and directors T. A. Edmonds, Y. E. Hildreth, and W. E. Weathers, to induce the investing public to purchase more extensively securities of the Edmonds Oil & Refining Corporation. This money was among the alleged miscellaneous profits of \$68,840.65, consisting of profits from a collusive sale of leases of little or no value.

Another large item of alleged income clearly reflected the policy and illustrated the false and fraudulent devices adopted by respondents in their effort to induce the public to buy stock of the Edmonds Oil & Refining Corporation in the belief that the earnings of the respondent company were substantially increasing. Respondent W. E. Weathers was the owner of 151,021 shares of Edmonds stock and some time in February, 1921, as he was about to retire from active connection with the company as director, he entered into an agreement with respondents and directors T. A. Edmonds and Y. E. Hildreth to purchase his stock at 30 cents per share. Thereafter, on April 4, 1921, at a meeting of the board of directors of respondent company, attended by respondents and directors T. A. Edmonds, Y. E. Hildreth, and J. W. Mastin, the successor to respondent W. E. Weathers in such office, it was agreed that the respondent Edmonds Oil & Refining Corporation would purchase one-half interest in the contract of respondents and directors Edmonds and Hildreth with respondent and retiring director Weathers for the purchase of said 151,021 shares of stock, and the respondent corporation advanced \$16,000 as the first payment to respondent and retiring director Weathers on such stock. Thereafter this stock so purchased from respondent and retiring director W. E. Weathers was furnished to respondent Melhuish & Company for the sum of 75 cents a share and sold to the public for \$1.50 a share, as treasury stock of the Edmonds Oil & Refining Corporation. Approximately \$30,000 derived by the Edmonds Oil & Refining Corporation from this operation, in conjunction with its respondent directors, was carried on the books of the company as a miscellaneous profit. Instead therefore of actual profits of \$114,686.24 with dividend payments, \$68,186.13 in excess of earnings, the \$182,872.37 paid as dividend exceeded by \$163,000 the earnings of the company. In other words, respondent company with an income of approximately \$20,000, paid in dividends approximately \$183,000.

PAR. 4. In respect to the production of oil, it was falsely represented by Respondent Melhuish & Company in the circulars and other advertising matter distributed by it in connection with the sale of stock of Edmonds Oil & Refining Corporation, as follows:

1. That a well producing 5,000 barrels of oil daily was situated within 1 mile of its lease in the Pine Island field of Louisiana, whereas in truth the well to which this representation related was 4 miles from said lease. It did not produce 5,000 barrels daily, or at all, during its brief period of existence. It did produce a large quantity of fluid consisting chiefly of water. After a short time during which it yielded only \$1,048 in oil it was abandoned as worthless.

2. That the Edmonds Oil & Refining Corporation had two producing wells in the Caddo oil field of Louisiana in which the initial production of wells was declared to be usually 2,000 barrels of oil daily followed by a settled production of 300 to 400 barrels. The wells in question were purchased by the Edmonds Oil & Refining Corporation on the representation that they produced 55 barrels daily instead of 300 to 400 and in July, 1920, long prior to the above and foregoing representation to the public. The Great Eastern Oil & Refining Corporation, predecessor of respondent corporation in ownership of said wells, had refused to pay a balance of \$25,000 due on the purchase price of said wells because the production had declined within three months after their purchase on March 1, 1920, to one-sixth of the reputed production of 55 barrels per day. This condition of the wells and each and all of the steps taken to avoid payment of the balance of said purchase price, were well known to respondents T. A. Edmonds, Y. E. Hildreth, and W. E. Weathers long prior to the acquirement of the wells by Edmonds Oil & Refining Corporation, and to the above and foregoing false and misleading representation to the public in connection with the sale of stock, in pursuance of information communicated by them to Melhuish & Company.

3. That the Edmonds Oil & Refining Corporation was engaged in the complete cycle of the oil industry—Producing, Refining, and Marketing—and that the net earnings from each of these three divisions were so considerably in excess of dividend requirements on the total stock outstanding as to give from each or any one of these three sources of income that element of safety of investment which every investor should seek, whereas in truth and fact the only returns or income the respondent corporation derived from the production of oil during its entire existence was the sum of \$17,641.99, aforesaid, and dividends from the Wade Oil Company in the sum of \$4,688.90.

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PAR. 4. That the respondent corporation owned outright or had an interest in production exceeding a total of 6,000 barrels of oil per day and in August of same year stated that it owned entirely or in part producing leases yielding 10,000 barrels of oil daily derived from fourteen producing wells, whereas in truth and fact, its income from production of oil for its entire life, approximately \$22,000, failed to equal income of two or three days from such production as the public was led to believe respondent corporation was enjoying.

PAR. 5. In the years 1920 and 1921, when respondents were soliciting purchasers for and selling the stock of the Edmonds Oil & Refining Corporation, they and each of them were engaged in direct competition with numerous persons, copartnerships, associations, and corporations in Texas, New York, and other States and Territories of the United States, selling or attempting to sell, in interstate commerce, the stock or other securities of corporations and associations engaged in the production of oil, or the exploration and development of prospective oil-producing territory.

CONCLUSION.

The practices of the respondents, under the conditions and circumstances described in the foregoing findings, are unfair methods of competition in interstate commerce and constitute a violation of 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."

ORDER TO CEASE AND DESIST.

This proceeding having been heard by the Federal Trade Commission upon the pleadings and the testimony and evidence received by an examiner of the Commission, and the Commission having made its findings as to the facts and its conclusion that the respondents, William F. Melhuish, jr., and Henry Clay Silver, doing business under the firm name and style of Melhuish & Company; T. A. Edmonds, Y. E. Hildreth, W. E. Weathers, J. W. Mastin, and the Edmonds Oil & Refining Corporation have violated the provisions 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,"

It is ordered, That William F. Melhuish, jr., and Henry Clay Silver, as individuals and as copartners, doing business under the firm name and style of Melhuish & Company, T. A. Edmonds, Y. E. Hildreth, W. E. Weathers, and J. W. Mastin, as individuals or

as officers, shareholders, or agents of the respondent Edmonds Oil & Refining Corporation, or as officers, shareholders, or agents of any other corporation, association, or partnership, and the respondent Edmonds Oil & Refining Corporation, its officers, agents, or trustees do cease and desist from directly or indirectly—

Publishing, circulating, or distributing, or causing to be published, circulated, or distributed, any newspaper, pamphlet, circular, letter, advertisement, or any other printed or written matter whatsoever, in connection with the sale or offering for sale in interstate commerce of stock or securities wherein is printed or set forth any false or misleading statement or representation to the effect that the property or operation of any corporation, association, or partnership is near, or surrounded by, producing oil wells, or any other false or misleading statement or representation concerning the promotion, organization, character, history, resources, and assets, oil production, earnings, income, dividends, progress, or prospect of any corporation, association, or partnership.

It is further ordered, That respondents, William F. Melhuish, jr., Henry Clay Silver, T. A. Edmonds, Y. E. Hildreth, W. E. Weathers, and J. W. Mastin, shall, within forty (40) days from the date of the service of this order, file with the Commission a report setting forth in detail the manner and form in which they have complied with the order of the Commission herein set forth.

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FEDERAL TRADE COMMISSION DECISIONS.

Complaint.

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FEDERAL TRADE COMMISSION

v.

DUDLEY D. GESSLER.