PANY.

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

Docket 1069—October 30, 1923.

SYLLABUS.

Where a corporation under the name "U-Glu, Inc." manufactured and sold a millinery glue packed and marketed in cans the labels of which prominently displayed its registered trade-mark consisting of the word "U-Glu" surrounded by a wreath in connection with the word "Trade-Mark", which labels also contained a statement in respect of the purposes, characteristics, and use of said product; and thereafter a competitor, which had never registered any trade name or trade-mark with the United States Patent Office,

(*a*) Adopted and placed the name "Glu" surrounded by a wreath, in connection with the words "Trade-Mark", upon the labels of its product, which it marketed and sold in containers similar in shape and size to those of said corporation; and

(*b*) Used labels which also in size and design, in the use of a practically identical statement of purposes, characteristics and use, and in the arrangement thereof upon the labels, closely resembled those of said corporation:

Held, That such simulation of trade-mark and label of a competitor, under the circumstances set forth, constituted an unfair method of competition.

COMPLAINT.

Acting in the public interest pursuant to 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," the Federal Trade Commission charges that Herman M. Neuschatz and I. M. Halpern, partners doing business under the trade name and style of Peruvian Rubber Cement Company, hereinafter referred to as respondent, have been and are using unfair methods of competition in interstate commerce in violation of the provisions of Section 5 of said Act, and states its charges in that respect as follows:

PARAGRAPH 1. Respondents are partners doing business under the trade name and style "Peruvian Rubber Cement Company" with their principal place of business in the City and State of New York. They are engaged in the manufacture of a certain glue or cement,

hereinafter called millinery glue, adapted for and used in the manufacture of millinery, and the sale of said millinery glue to persons, partnerships and corporations engaged in the millinery trade, including wholesalers and retailers of millinery supplies, and located at points in the various States of the United States. They cause said product when so sold to be transported from their aforesaid place of business in the City and State of New York into and through other States of the United States to said purchasers at their respective points of location. In the course and conduct of their said business respondents are in competition with other individuals, partnerships and corporations engaged in the manufacture and/or sale of millinery glue and similar products in interstate commerce.

PAR. 2. Among the aforesaid competitors of respondents is U-Glu, Incorporated, a corporation organized under the laws of the State of New York with its principal place of business in the City of New York in said State. Said competitor is hereinafter referred to as the "corporation." For more than two years last past the corporation has manufactured and sold in interstate commerce, and still manufactures and so sells, a millinery glue named by the corporation "U-Glu." During said time the corporation has used as a trademark under and in connection with which to market its said millinery glue, a device consisting of the word U-Glu surrounded by a wreath in connection with the words "trade-mark." During aforesaid time the corporation has packed and marketed its said millinery glue in cans upon which it has caused to be placed certain labels bearing the word U-Glu and aforesaid trademark prominently displayed together with certain statements and assertions concerning the purposes to which said millinery glue is adapted, certain characteristics possessed by it and directions for its use. The corporation still markets its said millinery glue packed and labelled as above set out.

PAR. 3. In about the beginning of the year 1922 respondents adopted for their aforesaid millinery glue the name "G L U" and have continuously since marketed their said millinery glue under and in connection with said name. During said time respondents have packed and marketed their said millinery glue in cans similar in shape and size to the cans of the corporation referred to in paragraph 2 hereof, and during said time have caused certain labels to be placed upon said cans, which said labels closely resemble aforesaid labels of the corporation in size and design. Upon their said labels respondents caused to be placed the word G L U in quotation marks, and a device consisting of the word G L U surrounded by a wreath and in connection with the words "trade mark", all in form and design closely resembling the aforesaid trade-mark of the cor-

poration. Respondents further caused to be printed upon their said labels certain statements and assertions concerning the purposes to which their said millinery glue is adapted, certain characteristics possessed by it and directions for its use, all practically identical with the statements appearing upon the labels of the corporation as set out in paragraph 2 hereof. Respondents still market their said millinery glue packed and labeled as above set out.

PAR. 4. The aforesaid labels attached by respondents to the cans in which they market their millinery glue, all as set out in paragraph 3 hereof, have the capacity and tendency to mislead and deceive the millinery trade and other purchasers and users of millinery glue into the erroneous belief that the millinery glue manufactured and sold by respondents is the millinery glue manufactured and sold by the corporation, and to cause the millinery trade and said other purchasers and users, acting in said belief, to purchase the millinery glue of respondents as and for the millinery glue of the corporation.

PAR. 5. The above alleged acts and things done by respondents are all to the prejudice of the public and of respondents' competitors and constitute unfair methods of competition 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 and served a complaint upon the respondents, Herman M. Neuschatz and I. M. Halpern, copartners doing business under the trade name and style of Peruvian Rubber Cement Company, charging them with the use of unfair methods of competition in commerce, in violation of the provisions of said act.

The respondents having made, executed and filed an agreed statement of facts in which it is stipulated and agreed by respondents that the Federal Trade Commission shall take such agreed statement of facts as the facts in this case and in lieu of testimony, and proceed forthwith upon such agreed statement of facts to make its findings as to the facts and such order as it may deem proper to enter therein, without the introduction of testimony or the presentation of argument in support of same, the Federal Trade Commission being now fully advised in the premises, makes this its findings as to the facts and conclusion:

FINDINGS AS TO THE FACTS.

PARAGRAPH 1. That respondents are copartners doing business under the trade name and style of "Peruvian Rubber Cement Company," having an office and principal place of business at No. 73 Fourth Avenue, Borough of Manhattan, City, County and State of New York, and their factory at 340 Hamilton Street, Long Island City, New York. They are engaged in the manufacture of a certain glue or cement, sometimes called millinery glue and adapted for and used in the manufacture of millinery, and respondents are engaged in the sale of the said millinery glue to persons, partnerships and corporations, including wholesale and retail dealers in millinery supplies located at points in the various states of the United States of America, some of whom are located in states other than the State of New York. Respondents cause said millinery glue when so sold by them to be transported from their aforesaid place of business or factory in the State of New York to, into and through other states of the said United States to the purchasers of said millinery glue at their respective points of location in said other states. In the course and conduct of their said business respondents are in competition with other individuals, persons and corporations engaged in the manufacture and sale of millinery glue and similar products in interstate commerce.

PAR. 2. That among the aforesaid competitors of respondents is "U-Glu Inc.", a corporation organized under the laws of the State of New York, with its principal place of business in the City of New York in said State. Said "U-Glu Inc." for more than three years prior to the 19th day of September 1923, has manufactured and sold, and still manufactures and sells to purchasers located in various states of the said United States other than in the State of New York, a millinery glue called "U-Glu", and during aforesaid time has caused and still causes said millinery glue called "U-Glue" when so sold by it to be transported from the State of New York to, into and through said other states to the said purchasers of the said "U-Glu" at their respective points of location. Prior to, and during the aforesaid time said corporation has used the name "U-Glue" as a trade name, and said corporation caused this trade name to be registered as a trade-mark in its said business at the United States Patent Office in the early part of 1922, said trade-mark consisting of the said word "U-Glu" surrounded by a wreath in connection with the word "Trade-Mark". During the aforesaid time the said corporation has packed and marketed its said millinery glue as aforesaid in cans upon which it has caused and still causes to be placed certain labels bearing the said word "U-Glu" or the said trade-mark

prominently displayed, together with certain statements and assertions concerning the purposes to which said millinery glue is adapted and certain characteristics possessed by it, with directions for the use of the said millinery glue.

PAR. 3. That subsequent to the use by the said corporation, "U-Glu Inc.", of the trade name "U-Glu" and the trade mark "U-Glu" as above set forth the respondents in about the beginning of the year 1922 adopted for the millinery glue manufactured and sold by them as aforesaid the name "Glu" and have since said time caused to be placed upon cans in which it has marketed and sold its said millinery glue as aforesaid certain labels bearing the said word "Glu" and also the said word "Glu" surrounded by a wreath in connection with the words "Trade-Mark." The said respondents have not now nor during any of the aforesaid times registered the device consisting of the word "Glu" surrounded by a wreath, used by them in connection with the words "Trade-Mark" with the United States Patent Office, and respondents have no trade name or trade mark whatsoever registered with the United States Patent Office in connection with their sale of millinery glue as aforesaid. During the aforesaid time the respondents have packed and marketed their said millinery glue in cans similar in shape and size to the cans of the corporation above named, and since the early part of the year 1922 have caused certain labels to be placed upon said cans closely resembling the aforesaid labels of the corporation in size and design. Besides the use upon their labels of the said pretended trade mark by the respondents, and the said word "Glu", respondents cause their said labels to be printed closely resembling the labels of the aforesaid corporation in size and design. Respondents cause the statement of the purposes for which their millinery glue is used and the statement of the directions for its use to be printed upon their said labels practically identical with the statements of the aforesaid corporation which it has upon its labels regarding the purposes and the directions for the use of its product, and the respondents have caused the said statements and assertions to be placed upon their labels so that their location on the labels correspond to the location of the said similar statements of the said corporation on its labels. Annexed to this statement of facts is one of the said labels of the aforesaid corporation marked "Commission's Exhibit No. 1"[1] and one of the labels aforesaid used by the respondents marked "Commission's Exhibit No. 2".[1]

CONCLUSION.

The practices of the said respondents, under the conditions and circumstances described in the foregoing findings, are unfair methods

[1] Not published.

of competition in commerce, and constitute a violation 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 complaint of the Commission and agreed statement of facts made and executed by the respondents and filed herein, and the Commission having made its findings as to the facts and its conclusion that the respondents 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 now ordered, That the respondents, Herman M. Neuschatz and I. M. Halpern, individually and as copartners doing business under the trade name and style of Peruvian Rubber Cement Company and/or National Rubber Mfg. Co., their agents, representatives, servants and employees, do cease and desist from describing the commodity known as millinery glue, manufactured and sold by respondents, by or with the name spelled "Glu" either alone or surrounded by a wreath or other device with or without connection with the words "Trade-Mark" on any labels attached to a container or containers or in connection with any printed matter relating to the said commodity, dealt in by respondents known as millinery glue.

Respondents shall cease and desist from using labels on a container or containers of their said product which are printed closely resembling the labels of the corporation known as "U-Glu" Inc.", in color, size and design, and from printing upon the said labels any statement of the purposes of the use of said millinery glue or directions for its use, the words of which statement or the manner of their arrangement are identical or substantially identical with such statements heretofore used upon the labels of the aforesaid corporation "U-Glu Inc."

It is further ordered, That the respondents, Herman M. Neuschatz and I. M. Halpern, shall, within sixty (60) days after the service upon them of this order, file with the Commission a report in writing setting forth in detail the manner and form in which they have complied with the order to cease and desist hereinbefore set forth.

CASES IN WHICH ORDERS FOR DISCONTINUANCE OR DISMISSAL HAVE BEEN ENTERED.

Date of order.	Docket No.	Respondents.	Commodities.	Charges.	Answer, stipulation, or trial.	Reasons for discontinuance or dismissal.
1923. Mar. 12	727	Austin Bond, doing business under the trade name and style of Bond Bros. & Co., New York.	Overissued or unused newspapers.	Appropriation of trade name, trade-mark, and code address of competitor.	Answer.....	No reasons assigned.
24	838	Gypsum Industries Association, its officers, committees, and members.[1]	Gypsum products.....	Conspiring to hamper competition by restricting customer dealers to the territory in which they may sell and by limiting sales to those customer dealers who observe such limitations, "thereby hampering and obstructing the business of dealers who sell such products upon mail orders or otherwise for delivery at points other than those at which they maintain retail establishments."	.....do.....	"It appearing that on Jan. 3, 1923, the District Court of the United States for the Southern District of New York entered a decree in an action then pending therein in which the United States of America was complainant and Gypsum Industries Association et al. were defendants, by which decree the issues in the above-entitled proceeding were adjudicated and disposed of: "*It is ordered*, That the complaint herein be and the same hereby is dismissed."
Apr. 10	869	Baltimore & Philadelphia Steamboat Co.	Transportation service.	Selling below cost for the purpose of eliminating a competitor.	Trial.....	No reasons assigned; dismissed without prejudice, Commissioner Gaskill dissenting.
11	215	Minerals Separation, Ltd.; Minerals Separation American Syndicate, Ltd.; Minerals Separation American Syndicate (1913) Ltd.; Beer, Sondheimer & Company; Beer, Sondheimer & Company, Inc.; Minerals Separation North American Corporation; Benno Elkan, Otto Frohnknecht, Harry Falck.	Paraphernalia, supplies, etc., having to do with the separation and concentration of ores by flotation.	With the intent and effect of stifling competition and of tending to create a monopoly; agreeing to prevent dealings in competitive apparatus, processes, commodities, etc., except upon permission, granted only upon payment of an exorbitant commission; to discriminate in the matter of such commissions between favored independent concerns dealing in such competitive apparatus and those whom it was desired to discipline and make examples of; to exact from and impose upon mine operators, metallurgists, engineers, etc., both within and without respondents' employ, exorbitant royalties and burdensome and unfair agreements, terms, and conditions both in connection with the use of respondents' apparatus, paraphernalia, processes, etc., and in connection with the use of competitive appa-	.....do.....	Dismissed "for lack of appearance of interstate commerce," Commissioner Thompson, in concurring therein, however, filing the following statement: "I agree with my associates that interstate commerce appears to be lacking in this case, and have, therefore, voted that the complaint should be dismissed. However, I believe it to be my duty, in view of the public interest involved to state that in my opinion the Minerals Separation, Ltd., of London, exceeded its authority in promiscuously sending out under its

					ratus, paraphernalia, processes, etc.; to discriminate in the matter of royalties between mine operators favored and those whom it was desired to discipline or make examples of; disparaging competitors and their products; making false and malicious patent claims and threats of infringement suits; intimidating and coercing competitors and their customers or prospective customers; espionage; discrimination in price in violation of section 2 of the Clayton Act; and tying or exclusive contracts or dealings in violation of section 3 thereof.		attorneys' signatures, to over four hundred mine operators a letter charging them with 'infringement of' its 'clients' patents for froth flotation concentration of ores,' and it acted unfairly and negligently when, without any first-hand knowledge of whether the recipients were actually using flotation or violating respondents' patent rights, ordered them in the said letter as follows: 'You are therefore hereby directed to send me a full statement of your infringing operations in accordance with the interrogatories inclosed herewith, in default whereof I am directed to commence suit against you for an injunction, profits, and damage, including a preliminary injunction at the commencement of the suit to immediately stop your infringing operations.' "
Apr	18	207	The Cleveland Macaroni Co.	Macaroni, noodles, and kindred products.	Subsidizing salesmen	Answer and trial	"Dismissed for the reason that respondent, Cleveland Macaroni Co., was adjudicated a bankrupt and now out of business."
	18	520	Procter & Gamble Distributing Co.	Soaps	Guarantee against price decline	do	No reasons assigned.
	18	850	Goheen Manufacturing Co.	Paints	Advertising falsely and misleadingly	Answer	Respondent "was adjudicated a bankrupt and now out of business."
	18	939	Braden's California Products, Inc., and A. Claude Braden.	Jams, preserves, and marmalades.	Simulating corporate name and labels of competitor.	do	No reasons assigned.
	28	624	Autographic Register Co.	Supplies for registers	Tying or exclusive contracts	Answer and trial	Do.

[1] The members of such association (and joined as respondents), according to the complaint, are as follows: Acme Cement Plaster Company, Illinois; American Cement Plaster Company, Kansas; American Gypsum Company, Ohio; Cardiff Gypsum Plaster Company, Iowa; Centerville Gypsum Company, Iowa; Colorado Portland Cement Company, Colorado Connecticut Adamant Plaster Company, Connecticut; Dakota Plaster Company, South Dakota; Ebsary Gypsum Company, New York; Empire Gypsum Company, New Jersey; Grand Rapids Plaster Company, Michigan; Higginson Manufacturing Company, New York; Kelley Plaster Company, Pennsylvania; J. B. King & Company, New York; Alabastine Company (which carries on a portion of its business under the name and style of the Michigan Gypsum Company), Michigan; Nephi Plaster & Manufacturing Company, Utah; Niagara Gypsum Company, New York; Overland Cement Plaster Company, Wyoming; Pacific Coast Gypsum Company, Washington; Plymouth Gypsum Company, Iowa; Rock Plaster Manufacturing Company, New York; Southern Gypsum Company (Inc.,) Virginia; United States Gypsum Company, New Jersey; Wasem Plaster Company, Iowa.

The executive officers and the members of certain standing committees of the respondent Gypsum Industries Association (joined as respondents), are as follows: Ray C. Haynes, president and member of the executive committee, which committee is ex officio the board of directiors of said association; James Leenhouts, vice president and member of the executive and trade relations committee; R. G. Bear, treasurer and member of the executive and trade relations committee; H. H. McDonald, secretary; M. A. Reeb, member of the executive and trade relations committees: A. R. Black, L. E. Armstrong, A. A. Wolf, J. C. Seguine, and W. E. Shearer, members of the executive committee; H. W. Blacksom, Warren Henley, E. G. West, H. C. Hamilton, and F. G. Ebsary, members of the trade relations committee.

Cases in which orders for discontinuance or dismissal have been entered—Continued.

Date of order.	Docket No.	Respondents.	Commodities.	Charges.	Answer, stipulation, or trial.	Reasons for discontinuance or dismissal.
1923. May 7	989	Paul E. Peck and Richard K. Peck, copartners doing business under the name of Paul E. Peck & Son.	Steamship supplies....	Commercial bribery.....	Answer.....	Dismissed "for the reasons that the respondents have been adjudicated bankrupts; that the respondent Paul E. Peck is now deceased, and said partnership is dissolved and no longer doing business."
14	131	Atlantic Refining Co.....	Oil pumps, tanks, and outfits.	Misrepresenting competitors' products and prices; inducing and attempting to induce breach of competitors' contract; selling and loaning equipment below cost with the intent and effect of suppressing and stifling competition; intimidating or threatening customers of competitors; and falsely representing self as agent for or dealer in both the products of competitor and the products actually handled and quoting exorbitant prices on the former; all in violation of Section 5; and price discrimination in violation of Section 2 of the Clayton Act.	Answer and trial..	"*It is ordered, that the complaint* herein be and the same is hereby dismissed, by reason of the decision of the Supreme Court of the United States in the Pump and Tank cases, Federal Trade Commission *v.* Sinclair Refining Co. et al." (261 U. S. 463).
14	308	Ohio Cities Gas Co.....	.....do.....	Leasing oil tanks, pumps, and devices for nominal consideration, based on exclusive or tying contracts or dealings in violation of Sections 5 and 3 of the Federal Trade Commission and Clayton Acts respectively.	.....do.....	Do.
14	324	Factory Oil Co.....	.....do.....	.....do.....	.....do.....	Do.
15	227	Helvetia Milk Condensing Co. et al.[1]	Evaporated milk.....	Guarantee against price decline.....	.....do.....	Dismissed without prejudice; no reasons assigned; Commissioners Thompson and Nugent dissenting.
15	372	Standard Oil Co. of Kentucky....	Oil pumps, tanks, and outfits.	Leasing oil tanks, pumps, and devices for nominal consideration, based on exclusive or tying contracts or dealings in violation of Sections 5 and 3 of the Federal Trade Commission and Clayton Acts respectively.	.....do.....	"*It is ordered, that the complaint* herein be and the same is hereby dismissed, by reason of the decision of the Supreme Court of the United States in the Pump and Tank cases, Federal Trade Commission *v.* Sinclair Refining Co. et al." (261 U. S. 463).
15	544	Valvoline Oil Co.....	.....do.....	.....do.....	Answer.....	Do.
15	587	Tidewater Oil Co., Tidewater Oil Sales Corporation and Tidewater Oil Co. of Mass.	.....do.....	.....do.....	.....do.....	Do.

18	800	Herbert W. Brand, Harry C. Oppenheimer, and Edwin W. Brand, partners, doing business under the name and style of Brand & Oppenheimer.	Linings for clothing	Advertising falsely and misleadingly, misbranding or mislabeling, and misrepresenting products.	do	No reasons assigned; dismissed without prejudice, Commissioner Nugent dissenting.
23	710	Tidewater Oil Co., Tidewater Oil Sales Corporation.	Lubricating oil	Advertising falsely and misleadingly	Trial	No reasons assigned.
June 4	695	Associated Oil Co., Inc., Adey-Johnston Co., Inc., E. A. Adey, Jr., S. B. Coleman, and B. V. Johnston.	Oil stock	do	do	Do.
4	820	Carnick Bros. Co	Iron and steel specialties.	Misrepresenting products.[1]	do	Respondent has gone out of business.
4	953	C. C Cannan	Oil stocks or shares	Advertising falsely and misleadingly	do	No reasons assigned.
22	895	Otto Eisenlohr & Bros. (Inc.)	Cigars	Resale price maintenance	Stipulation	No reasons assigned. Commissioner Nugent dissents.
25	897	M. T. K. Products Co., a Trust; J. A. Menard, John E. Burkheimer, B. G. Raymond, H. P. Vogt, R. G. Townsend, and their successors, trustees under said trust; M. T. K. Sales Corporations, and Beckley-Ralston Co.	Abrasive bearing-fitting compound.	Intimidating customers and prospective customers of competitors through vague and general infringement claims and threatened suits	Answer	"Charges of the complaint are not supported by the proof."
July 7	807	Athol Manufacturing Co	Cotton fabric	Naming product misleadingly and advertising falsely and misleadingly.	do	No reasons assigned.
17	767	Wichita-Engle Oil Co., E. U. Engle, C. T. Engle, and W. S. Pratt.	Oil shares	Advertising falsely and misleadingly	Trial	Do.

[1] In addition to the Helvetia Milk Condensing Co., there were joined in this case as intervening respondents the following concerns: Northfield Milk Products Co., Waverly Condensed Milk Co., Whitehouse Milk Products Co., Valecia Evaporated Milk Co., Van Camp Packing Co., Snohomish Dairy Products Co., Sturtevant, Wright & Wagner Dairy Co., Rogers Milk Corporation, Pennsylvania Milk Products Co., Perry Packing Co., Ohio Dairy Co., Middle States Creamery Co., Litchfield Creamery Co., Larimer County Cooperative Milk Condensery Co., John F. Jelke Co., Hope Condensed Milk Co., Goshen Milk Condensing Co., Badger Condensed Milk Co., Diamond Creamery Co., Dewart Milk Products Co., Continental Condensed Milk Co., Cremo Milk Co., Brownback Condensed Milk Co., Aviston Condensed Milk Co., American Milk Co., St. Lawrence Condensed Milk Corporation, P. E. Sharpless Co., Oatman Condensed Milk Co., Morey Condensery, Mohawk Condensed Milk Co., Libby, McNeil & Libby, Indiana Condensed Milk Co., Armour & Co., Grand Ledge Milk Co., Colorado Condensed Milk Co., Alpine Evaporated Cream Co., Carnation Milk Products Co., Borden's Condensed Milk Co., Danish Pride Milk Products Co., F. C. Mansfield Co., Lake Mills Condensed Milk Co., Waterloo Creamery Co., Wisconsin Dairy Products Co., Wisconsin Condensed Milk Co., Wisconsin Butter & Cheese Co.

Respondent is engaged in the export business, the complaint being under Section 5 of the Federal Trade Commission Act, as extended by Section 4 of the Webb Act.

Cases in which orders for discontinuance or dismissal have been entered—Continued.

Date of order.	Docket No.	Respondents.	Commodities.	Charges.	Answer, stipulation, or trial.	Reasons for discontinuance or dismissal.
1923. July 31	729	South Bend Bait Co.	Fishing tackle, artificial bait, etc.	Discriminating in price in violation of Sections 5 and 2 of the F. T. C., and Clayton Acts, respectively.	Answer and trial.	This matter being before the Commission for consideration in connection with the denial by the Supreme Court of the United States of a writ of certiorari in the case of the Commission against The Mennen Company, Docket No. 606 [*Federal Trade Commission* v. *Mennen Co.*, 262 U. S. 759, refusing to review the decision of the lower court in *Mennen Co.* v. *Federal Trade Commission*, 288 Fed. 774]; and it appearing that the subject matter of the complaint herein falls within the judgment of the Circuit Court of Appeals for the Second Circuit in said case [*Mennen Co.* v. *Federal Trade Commission*, 288 Fed. 774]. "It is hereby ordered on the Commission's own motion, that the order to cease and desist herein, dated March 14, 1922 [3 F. T. C. 355], be and the same is hereby, revoked and that the complaint herein be, and the same is hereby, dismissed."
Sept. 12	1008	S. A. Samuels, L. E. Samuels, L. H. Samuels, Harry H. Samuels, doing business under the name and style of Cocoa Products Co.	Cocoa and chocolate preparations.	Securing business through unauthorized alteration of customers orders.	Answer.	No reasons assigned.
14	728	American Safety Razor Corp.	Shaving brushes.	Advertising falsely and misleadingly and mislabeling.	Answer and trial.	Do.
27	1057	Abner Frankel and Alexander Frankel, partners doing business under the trade name and style of The Willard Tailoring Co.	Men's clothing.	Holding out false and misleading prospects of future price concessions on articles contracted for, and meeting contract obligations unfairly.	Answer.	Dismissed without prejudice; no reasons assigned.

Oct 9	966	*J. B. Harris-Mexia Trust, J. B. Harris-Mexia Trust No. 2, J. B. Harris.*	*Oil shares and securities.*	*Advertising falsely and misleadingly and misrepresentations.*	Answer and trial.	*No reasons assigned.*
24	551	*Armour & Co*	Butterine, oleomargarine, and nut margarine.	Tying or exclusive contracts or dealings in violation of Sections 5 and 3 of the F. T. C. and Clayton Acts, respectively.	Answer	The above entitled proceeding coming on to be heard upon the pleadings and the Commission having considered the matter and being advised in the premises: "*It is ordered*, That by reason of the decision and order of the Circuit Court of Appeals for the Seventh Circuit, in the matter of B. S. Pearsall Butter Company, petitioner, *vs.* Federal Trade Commission, respondent (October Term, 1922, April session, 1923 [292 Fed. 720]), the complaint in the above entitled proceeding be and the same is hereby dismissed without prejudice."
24	552	Swift & Co	Oleomargarine and butterine.	do	do	Do.
24	553	Downey-Farrell Co	do	do	do	Do.
24	554	Wm. J. Moxley, Inc	do	do	do	Do.
24	555	Ed. S. Vail Butterine Co	do	do	do	Do.
24	559	Troco Nut Butter Co	do	do	do	Do.
24	560	Friedman Manufacturing Co	do	do	do	Do.
24	778	Tide Water Oil Co. and Tide Water Oil Sales Corporation.	Petroleum products	Cumulative rebates or discounts and price discrimination (the latter charged as in violation of Section 2 of the Clayton Act as well as Section 5 of the F. T. C. Act).	do	Dismissed without prejudice, no reasons assigned, Commissioner Thompson dissenting.

APPENDIX I.

ACTS OF CONGRESS FROM WHICH THE COMMISSION DERIVES ITS POWERS.

FEDERAL TRADE COMMISSION ACT.[1]

[Approved Sept. 26, 1914.]

[PUBLIC—No. 203—63D CONGRESS.]

[H. R. 15613.]

AN ACT To create a Federal Trade Commission, to define its powers and duties, and for other purposes.

Sec. 1. CREATION AND ESTABLISHMENT OF THE COMMISSION.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That a commission is hereby created and established, to be known as the Federal Trade Commission (hereinafter referred to as the commission), which shall be composed of five commissioners, who shall be appointed by the President, by and with the advice and consent of the Senate. Not more than three of the commissioners shall be members of the same political party. The first commissioners appointed shall continue in office for terms of three, four, five, six, and seven years, respectively, from the date of the taking effect of this Act, the term of

Five commissioners. Appointed by President, by and with, etc. Not more than three from same political party.

[1] This act has been annotated up to July 1, 1921, and may be found, so annotated, in Volume III of the Commission's Reports. Reported decisions of the courts for the period covered by this volume (Feb. 14, 1923, to Nov. 4, 1923) and arising under this act are printed in full in Appendix II hereof (see *infra*, p. 559 et seq.). Previously reported decisions will be found set forth in Appendix II of Volumes II, III, IV, and V of the Commission's Reports.

It should be noted that the jurisdiction of the Commission is limited by the "Packers and Stockyards Act, 1921," approved Aug. 15, 1921, ch. 64, 42 Stat. 159, sec. 406 of said Act providing that "on and after the enactment of this Act and so long as it remains in effect the Federal Trade Commission shall have no power or jurisdiction so far as relating to any matter which by this Act is made subject to the jurisdiction of the Secretary [of Agriculture] except in cases in which, before the enactment of this Act, complaint has been served under sec. 5 of the Act, entitled 'An Act to create a Federal Trade Commission, to define its powers and

Sec. 1. CREATION AND ESTABLISHMENT OF THE COMMISSION—Continued.

Term, seven years.

each to be designated by the President, but their successors shall be appointed for terms of seven years, except that any person chosen to fill a vacancy shall be appointed only for the unexpired term of the commissioner whom he shall succeed. The commission shall choose a chairman from its own membership. No commissioner shall engage in any other business, vocation, or employment. Any commissioner may be removed by the President for inefficiency, neglect of duty, or malfeasance in office. A vacancy in the commission shall not impair the right of the remaining commissioners to exercise all the powers of the commission.

Chairman to be chosen by commission.

Pursuit other business prohibited.

Removal by President.

Vacancy not to impair exercise of powers by remaining commissioners.

The commission shall have an official seal, which shall be judicially noticed.

Seal judicially noticed.

Sec. 2. SALARIES. SECRETARY. OTHER EMPLOYEES. EXPENSES OF THE COMMISSION. OFFICES.

Commissioner's salary, $10,000.

SEC. 2. That each commissioner shall receive a salary of $10,000 a year, payable in the same manner as the salaries of the judges of the courts of the United States. The

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duties, and for other purposes,' approved Sept. 26, 1914, or under sec. 11 of the Act, entitled 'An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes,' approved Oct. 15, 1914, and except when the Secretary of Agriculture, in the exercise of his duties hereunder, shall request of the said Federal Trade Commission that it make investigations and report in any case."

In connection with the history in Congress of the Federal Trade Commission Act, see address of President Wilson delivered at a joint session on Jan. 20, 1914 (Congressional Record, vol. 51, pt. 2, pp. 1962–1964, 63d Cong., 2d sess.); report of Senator Cummins from the Committee on Interstate Commerce on Control of Corporations, Persons, and Firms engaged in Interstate Commerce (Feb. 26, 1913, 62d Cong., 3d sess., Rept. No. 1326); Hearings on Interstate Trade Commission before Committee on Interstate and Foreign Commerce of the House, Jan. 30 to Feb. 16, 1914, 63d Cong., 2d sess.; Interstate Trade, Hearings on Bills relating to Trust Legislation before Senate Committee on Interstate Commerce, 2 vols., 63d Cong., 2d sess.; report of Mr. Covington from the House Committee on Interstate and Foreign Commerce on Interstate Trade Commission (Apr. 14, 1914, 63d Cong., 2d sess., Rept. No. 533); also parts 2 and 3 of said report presenting the minority views respectively of Messrs. Stevens and Lafferty; report of Senator Newlands from the Committee on Interstate Commerce on Federal Trade Commission (June 13, 1914, 63d Cong., 2d sess., Rept. No. 597) and debates and speeches, among others, of Congressmen Covington for (references to Congressional Record, 63d Cong., 2d sess., vol. 51), part 9, pp. 8840–8849; 9068; 14925–14933 (part 15); Dickinson for, part 9, pp. 9189–9190; Mann against, part 15, pp. 14939–14940; Morgan, part 9, 8854–8857, 9063–9064, 14941–14943 (part 15); Sims for, 14940–14941; Stevens of N. H. for, 9063 (part 9); 14941 (part 15); Stevens of Minn. for, 8849–8853 (part 9); 14933–14939 (part 15); and of Senators Borah against, 11186–11189 (part 11); 11232–11237, 11298–11302, 11600–11601 (part 12); Brandegee against, 12217–12218, 12220–12222, 12261–12262, 12410–12411, 12792–12804 (part 13), 13103–13105, 13299–13301; Clapp against, 11872–11873 (part 12), 13061–13065 (part 13), 13143–13146, 13301–13302; Cummins for, 11102–11106 (part 11), 11379–11389, 11447–11458 (part 12), 11528–11539,

commission shall appoint a secretary, who shall receive a salary of $5,000 a year, payable in like manner, and it shall have authority to employ and fix the compensation of such attorneys, special experts, examiners, clerks, and other employees as it may from time to time find necessary for the proper performance of its duties and as may be from time to time appropriated for by Congress.

Appointment of secretary. Salary, $5,000.

Other employees. Salaries fixed by Commission.

With the exception of the secretary, a clerk to each commissioner, the attorneys, and such special experts and examiners as the commission may from time to time find necessary for the conduct of its work, all employees of the commission shall be a part of the classified civil service, and shall enter the service under such rules and regulations as may be prescribed by the commission and by the Civil Service Commission.

Except for secretary, commissioners' clerks, and such special experts and examiners as Commission may find necessary, all employees part of classified service.

All of the expenses of the commission, including all necessary expenses for transportation incurred by the commissioners or by their employees under their orders, in making any investigation, or upon official business in any other places than in the city of Washington, shall be allowed and paid on the presentation of itemized vouchers therefor approved by the commission.

Expenses of commission allowed and paid on presentation of itemized approved vouchers.

12873–12875 (part 13), 12912–12924, 12987–12992, 13045–13052, 14708–14770 (part 15); Hollis for, 11177–11180 (part 11), 12141–12149 (part 12), 12151–12152; Kenyon for, 13155–13160 (part 13); Lewis for, 11302–11307 (part 11), 12924–12933 (part 13); Lippit against, 11111–11112 (part 11), 13210–13219 (part 13); Newlands for, 9930 (part 10), 10376–10378 (part 11), 11081–11101, 11106–11116, 11594–11597 (part 12); Pomerene for, 12870–12873 (part 13), 12993–12996, 13102–13103; Reed against, 11112–11116 (part 11), 11874–11876 (part 12), 12022–12029, 12150–12151, 12539–12551 (part 13), 12933–12939, 13224–13234, 14787–14791 (part 15); Robinson for, 11107 (part 11), 11228–11232; Saulsbury for, 11185, 11591–11594 (part 12); Shields against, 13056–13061 (part 13), 13146–13148; Sutherland against, 11601–11604 (part 12), 12805–12817 (part 13), 12855–12862, 12980–12986, 13055–13056, 13109–13111; Thomas against, 11181–11185 (part 11), 11598–11600 (part 12), 12862–12869 (part 13), 12978–12980; Townsend against, 11870–11872 (part 12); and Walsh for, 13052–13054 (part 13).

See also Letters from the Interstate Commerce Commission to the chairman of the Committee on Interstate Commerce, submitting certain suggestions to the bill creating an Interstate Trade Commission, the first being a letter from Hon. C. A. Prouty dated Apr. 9, 1914 (printed for the use of the Committee on Interstate Commerce, 63d Cong., 2d sess.); letter from the Commissioner of Corporations to the chairman of the Committee on Interstate Commerce, transmitting certain suggestions relative to the bill (H. R. 15613) to create a Federal Trade Commission, first letter dated July 8, 1914 (printed for the use of the Committee on Interstate Commerce, 63d Cong., 2d sess.); brief by the Bureau of Corporations, relative to sec. 5 of the bill (H. R. 15613) to create a Federal Trade Commission, dated Aug. 20, 1914 (printed for the use of the Committee on Interstate Commerce, 63d Cong., 2d sess.); brief by George Rublee relative to the court review in the bill (H. R. 15613) to create a Federal Trade Commission, dated Aug. 25, 1914 (printed for the use of the Committee on Interstate Commerce, 63d Cong., 2d sess.); and dissenting opinion of Justice Brandeis in *Federal Trade Commission* v. *Gratz*, 253 U. S. 421, 429–442. (See case also in Vol. II of Commission's Decisions, p. 564 at pp. 570–579.)

Sec. 2. SALARIES. SECRETARY. OTHER EMPLOYEES. EXPENSES OF THE COMMISSION. OFFICES—Continued.

Commission may rent suitable offices.

Until otherwise provided by law, the commission may rent suitable offices for its use.

Auditing of accounts.

The Auditor for the State and Other Departments shall receive and examine all accounts of expenditures of the commission.

Sec. 3. BUREAU OF CORPORATIONS. OFFICE OF THE COMMISSION. PROSECUTION OF INQUIRIES.

Bureau of Corporations absorbed by Commission.

SEC. 3. That upon the organization of the commission and election of its chairman, the Bureau of Corporations and the offices of Commissioner and Deputy Commissioner of Corporations shall cease to exist; and all pending investigations and proceedings of the Bureau of Corporations shall be continued by the commission.

Clerks, employees, records, papers, property, appropriations, transferred to Commission.

All clerks and employees of the said bureau shall be transferred to and become clerks and employees of the commission at their present grades and salaries. All records, papers, and property of the said bureau shall become records, papers, and property of the commission, and all unexpended funds and appropriations for the use and maintenance of the said bureau, including any allotment already made to it by the Secretary of Commerce from the contingent appropriation for the Department of Commerce for the fiscal year nineteen hundred and fifteen, or from the departmental printing fund for the fiscal year nineteen hundred and fifteen, shall become funds and appropriations available to be expended by the commission in the exercise of the powers, authority, and duties conferred on it by this Act.

Principal office in Washington, but Commission may meet elsewhere.

The principal office of the commission shall be in the city of Washington, but it may meet and exercise all its powers at any other place. The commission may, by one

May prosecute any inquiry anywhere in United States.

or more of its members, or by such examiners as it may designate, prosecute any inquiry necessary to its duties in any part of the United States.

Sec. 4. DEFINITIONS.

SEC. 4. That the words defined in this section shall have the following meaning when found in this Act, to wit:

"Commerce."

"Commerce" means commerce among the several States or with foreign nations, or in any Territory of the United States or in the District of Columbia, or between any such Territory and another, or between any

such Territory and any State or foreign nation, or between the District of Columbia and any State or Territory or foreign nation.

"Corporation" means any company or association incorporated or unincorporated, which is organized to carry on business for profit and has shares of capital or capital stock, and any company or association, incorporated or unincorporated, without shares of capital or capital stock, except partnerships, which is organized to carry on business for its own profit or that of its members. "Corporation."

"Documentary evidence" means all documents, papers, and correspondence in existence at and after the passage of this Act. "Documentary evidence."

"Acts to regulate commerce" means the Act entitled "An Act to regulate commerce," approved February fourteenth, eighteen hundred and eighty-seven, and all Acts amendatory thereof and supplementary thereto. "Acts to regulate commerce."

"Antitrust acts" means the Act entitled "An Act to protect trade and commerce against unlawful restraints and monopolies," approved July second, eighteen hundred and ninety;[2] also the sections seventy-three to seventy-seven, inclusive, of an Act entitled "An Act to reduce taxation, to provide revenue for the Government, and for other purposes," approved August twenty-seventh, eighteen hundred and ninety-four; and also the Act entitled "An Act to amend sections seventy-three and seventy-six of the Act of August twenty-seventh, eighteen hundred and ninety-four, entitled 'An Act to reduce taxation, to provide revenue for the Government, and for other purposes,'" approved February twelfth, nineteen hundred and thirteen. "Antitrust acts."

Sec. 5. UNFAIR COMPETITION. COMPLAINTS, FINDINGS, AND ORDERS OF COMMISSION. APPEALS. SERVICE.[3]

SEC. 5. That unfair methods of competition in commerce are hereby declared unlawful. Unfair methods unlawful.

The commission is hereby empowered and directed to prevent persons, partnerships, or corporations, except banks, and common carriers subject to the Acts to regulate commerce, from using unfair methods of competition in commerce. Commission to prevent. Banks and common carriers excepted.

[2] For text of Sherman Act, see footnote on pp. 533–535.

[3] Jurisdiction of Commission under this section limited by sec. 406 of the "Packers and Stockyards Act, 1921," approved Aug. 15, 1921, ch. 64, 42 Stat. 159. See second paragraph of footnote on p. 519.

Sec. 5. UNFAIR COMPETITION. COMPLAINTS, FINDINGS, AND ORDERS OF COMMISSION. APPEALS. SERVICE—Continued.

Commission to issue complaint when unfair method used and to public interest.

Whenever the commission shall have reason to believe that any such person, partnership, or corporation has been or is using any unfair method of competition in commerce, and if it shall appear to the commission that a proceeding by it in respect thereof would be to the interest of the public, it shall issue and serve upon such person, partnership, or corporation a complaint stating its charges in that respect, and containing a notice of a hearing upon a day and at a place therein fixed at least thirty days after the service of said complaint. The person, partnership, or corporation so complained of shall have the right to appear at the place and time so fixed and show cause why an order should not be entered by the commission requiring such person, partnership, or corporation to cease and desist from the violation of the law so charged in said complaint. Any person, partnership, or corporation may make application, and upon good cause shown may be allowed by the commission, to intervene and appear in said proceeding by counsel or in person. The testimony in any such proceeding shall be reduced to writing and filed in the office of the commission. If upon such hearing the commission shall be of the opinion that the method of competition in question is prohibited by this Act, it shall make a report in writing in which it shall state its findings as to the facts, and shall issue and cause to be served on such person, partnership, or corporation an order requiring such person, partnership, or corporation to cease and desist from using such method of competition. Until a transcript of the record in such hearing shall have been filed in a circuit court of appeals of the United States, as hereinafter provided, the commission may at any time, upon such notice and in such manner as it shall deem proper, modify or set aside, in whole or in part, any report or any order made or issued by it under this section.

To serve same on respondent with notice of hearing.

Respondent to have right to appear and show cause, etc.

Intervention allowed on application and good cause.

Testimony to be reduced to writing and filed.

If method prohibited, Commission to make written report stating findings, and to issue and serve order to cease and desist on respondent.

Modification or setting aside by the Commission of its order.

Disobedience of order. Application to Circuit Court of Appeals by Commission.

If such person, partnership, or corporation fails or neglects to obey such order of the commission while the same is in effect, the commission may apply to the circuit court of appeals of the United States, within any circuit where the method of competition in question was used or where such person, partnership, or corporation resides or carries on business, for the enforcement of its order, and shall certify and file with its applica-

tion a transcript of the entire record in the proceeding, including all the testimony taken and the report and order of the commission. Upon such filing of the application and transcript the court shall cause notice thereof to be served upon such person, partnership, or corporation and thereupon shall have jurisdiction of the proceeding and of the question determined therein, and shall have power to make and enter upon the pleadings, testimony, and proceedings set forth in such transcript a decree affirming, modifying, or setting aside the order of the commission. The findings of the commission as to the facts, if supported by testimony, shall be conclusive. If either party shall apply to the court for leave to adduce additional evidence, and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the proceeding before the commission, the court may order such additional evidence to be taken before the commission and to be adduced upon the hearing in such manner and upon such terms and conditions as to the court may seem proper. The commission may modify its findings as to the facts, or make new findings, by reason of the additional evidence so taken, and it shall file such modified or new findings, which, if supported by testimony, shall be conclusive, and its recommendation, if any, for the modification or setting aside of its original order, with the return of such additional evidence. The judgment and decree of the court shall be final, except that the same shall be subject to review by the Supreme Court upon certiorari as provided in section two hundred and forty of the Judicial Code.

Action by Court. Notice to respondent. Decree affirming modifying, or setting aside Commission's order.

Commission's findings. Conclusive if supported by testimony.

Introduction of additional evidence, if reasonable grounds for failure to adduce theretofore.

May be taken before Commission.

Commission may make new or modified findings by reason thereof.

Judgment and decree subject to review upon certiorari, but otherwise final.

Any party required by such order of the commission to cease and desist from using such method of competition may obtain a review of such order in said circuit court of appeals by filing in the court a written petition praying that the order of the commission be set aside. A copy of such petition shall be forthwith served upon the commission, and thereupon the commission forthwith shall certify and file in the court a transcript of the record as hereinbefore provided. Upon the filing of the transcript the court shall have the same jurisdiction to affirm, set aside, or modify the order of the commission as in the case of an application by the commission for the enforcement of its order, and the findings of the commission as to the facts, if supported by testimony, shall in like manner be conclusive.

Petition by respondent to review order to cease and desist.

To be served on Commission.

Jurisdiction of Court of Appeals same as on application by Commission, and Commission's findings similarly conclusive.

Sec. 5. UNFAIR COMPETITION, COMPLAINTS, FINDINGS, AND ORDERS OF COMMISSION. APPEALS. SERVICE—Continued.

Jurisdiction of Court exclusive.

The jurisdiction of the circuit court of appeals of the United States to enforce, set aside, or modify orders of the commission shall be exclusive.

Proceedings to have precedence over other cases.

Such proceedings in the circuit court of appeals shall be given precedence over other cases pending therein, and shall be in every way expedited. No order of the commission or judgment of the court to enforce the same

Liability under antitrust acts not affected.

shall in any wise relieve or absolve any person, partnership, or corporation from any liability under the antitrust acts.[3]

Service of Commission's complaints, orders, and other processes.

Complaints, orders, and other processes of the commission under this section may be served by anyone duly authorized by the commission, either (a) by delivering

Personal; or

a copy thereof to the person to be served, or to a member of the partnership to be served, or to the president, secretary, or other executive officer or a director of the cor-

At office or place of business; or

poration to be served; or (b) by leaving a copy thereof at the principal office or place of business of such person,

By registered mail.

partnership, or corporation; or (c) by registering and mailing a copy thereof addressed to such person, partnership, or corporation at his or its principal office or

Verified return by person serving, and return post-office receipt, proof of service.

place of business. The verified return by the person so serving said complaint, order, or other process setting forth the manner of said service shall be proof of the same, and the return post-office receipt for said complaint, order, or other process registered and mailed as aforesaid shall be proof of the service of the same.

Sec. 6. FURTHER POWERS.[4]

To gather and compile information, and to investigate with reference to organization, business, etc., of corporations, except banks and common carriers.

SEC. 6. That the commission shall also have power—

(a) To gather and compile information concerning, and to investigate from time to time the organization, business, conduct, practices, and management of any corporation engaged in commerce, excepting banks and common carriers subject to the Act to regulate commerce, and its relation to other corporations and to individuals, associations, and partnerships.

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[3] For text of Sherman Act, see footnote on pp. 533–535. As enumerated in last paragraph of sec. 4 of this act, see p. 523.

[4] Provisions and penalties of secs. 6, 8, 9, and 10 of this act made applicable to the jurisdiction, powers, and duties conferred and imposed upon the Secretary of Agriculture by sec. 402 of the "Packers and Stockyards Act, 1921," approved Aug. 15, 1921, ch. 64, 42 Stat. 159.

To require annual or special reports from corporations, except banks and common carriers.

(b) To require, by general or special orders, corporations engaged in commerce, excepting banks, and common carriers subject to the Act to regulate commerce, or any class of them, or any of them, respectively, to file with the commission in such form as the commission may prescribe annual or special, or both annual and special, reports or answers in writing to specific questions, furnishing to the commission such information as it may require as to the organization, business, conduct, practices, management, and relation to other corporations, partnerships, and individuals of the respective corporations filing such reports or answers in writing. Such reports and answers shall be made under oath, or otherwise, as the commission may prescribe, and shall be filed with the commission within such reasonable period as the commission may prescribe, unless additional time be granted in any case by the commission.

Such reports to be under oath, or otherwise, and filed within such reasonable period as commission may prescribe.

To investigate, either on own initiative or application of Attorney General, observance of final decree entered under antitrust acts.

(c) Whenever a final decree has been entered against any defendant corporation in any suit brought by the United States to prevent and restrain any violation of the antitrust Acts,[5] to make investigation, upon its own initiative, of the manner in which the decree has been or is being carried out, and upon the application of the Attorney General it shall be its duty to make such investigation. It shall transmit to the Attorney General a report embodying its findings and recommendations as a result of any such investigation, and the report shall be made public in the discretion of the commission.

To transmit findings and recommendations to Attorney General.

To investigate, on direction President or either House, alleged violations of antitrust acts.

(d) Upon the direction of the President or either House of Congress to investigate and report the facts relating to any alleged violations of the antitrust Acts[5] by any corporation.

To investigate and make recommendations, on application of Attorney General, for readjustment of business of alleged violator of antitrust acts.

(e) Upon the application of the Attorney General to investigate and make recommendations for the readjustment of the business of any corporation alleged to be violating the antitrust Acts[5] in order that the corporation may thereafter maintain its organization, management, and conduct of business in accordance with law.

To make public, as it deems expedient, portions of information obtained.

(f) To make public from time to time such portions of the information obtained by it hereunder, except trade secrets and names of customers, as it shall deem expedient

[5] For text of Sherman Act, see footnote on pp. 533–535. As enumerated in last paragraph of sec. 4 of this act, see p. 523.

Sec. 6. FURTHER POWERS—Continued.

To make reports to Congress, together with recommendations for new legislation.

To provide for publication of its reports and decisions.

in the public interest; and to make annual and special reports to the Congress and to submit therewith recommendations for additional legislation; and to provide for the publication of its reports and decisions in such form and manner as may be best adapted for public information and use.

To classify corporations, and make rules and regulations incidental to administration of Act.

(g) From time to time to classify corporations and to make rules and regulations for the purpose of carrying out the provisions of this Act.

To investigate foreign trade conditions involving foreign trade of United States, reporting to Congress with recommendations deemed advisable.

(h) To investigate, from time to time, trade conditions in and with foreign countries where associations, combinations, or practices of manufacturers, merchants, or traders, or other conditions, may affect the foreign trade of the United States, and to report to Congress thereon, with such recommendations as it deems advisable.

Sec. 7. SUITS IN EQUITY UNDER ANTITRUST ACTS. COMMISSION AS MASTER IN CHANCERY.

Court may refer suit to Commission.

SEC. 7. That in any suit in equity brought by or under the direction of the Attorney General as provided in the antitrust Acts,[6] the court may, upon the conclusion of the testimony therein, if it shall be then of opinion that the complainant is entitled to relief, refer said suit to the commission, as a master in chancery, to ascertain and report an appropriate form of decree therein. The commission shall proceed upon such notice to the parties and under such rules of procedure as the court may prescribe, and upon the coming in of such report such exceptions may be filed and such proceedings had in relation thereto as upon the report of a master in other equity causes, but the court may adopt or reject such report, in whole or in part, and enter such decree as the nature of the case may in its judgment require.

To ascertain and report an appropriate form of decree.

Commission to proceed on notice to parties and as prescribed by court. Exceptions. Proceedings as in other equity causes.

Court may adopt or reject report in whole or in part.

Sec. 8. COOPERATION OF OTHER DEPARTMENTS AND BUREAUS.[7]

To furnish, when directed by President, records, papers, and information, and to detail officials and employees.

SEC. 8. That the several departments and bureaus of the Government when directed by the President shall furnish the commission, upon its request, all records, papers, and information in their possession relating to any corporation subject to any of the provisions of this Act, and

[6] For text of Sherman Act, see footnote on pp. 533–535. As enumerated in last paragraph of sec. 4 of this act, see p. 523.

[7] Provisions and penalties of secs. 6, 8, 9, and 10 of this Act made applicable to the jurisdiction, powers, and duties conferred and imposed upon the Secretary of Agriculture by sec. 402 of the "Packers and Stockyards Act, 1921," approved Aug. 15, 1921, ch. 64, 42 Stat. 159.

shall detail from time to time such officials and employees to the commission as he may direct.

Sec. 9. EVIDENCE. WITNESSES. TESTIMONY. MANDAMUS TO ENFORCE OBEDIENCE TO ACT.[78]

Commission to have access to documentary evidence and right to copy same.

SEC. 9. That for the purposes of this Act the commission, or its duly authorized agent or agents, shall at all reasonable times have access to, for the purpose of examination, and the right to copy any documentary evidence of any corporation being investigated or proceeded against; and the commission shall have power to require by subpœna the attendance and testimony of witnesses and the production of all such documentary evidence relating to any matter under investigation. Any members of the commission may sign subpœnas, and members and examiners of the commission may administer oaths and affirmations, examine witnesses, and receive evidence.

May require attendance of witnesses and production of evidence.

Subpœnas, oaths, affirmations, examination of witnesses. Reception of evidence.

Such attendance of witnesses, and the production of such documentary evidence, may be required from any place in the United States, at any designated place of hearing. And in case of disobedience to a subpœna the commission may invoke the aid of any court of the United States in requiring the attendance and testimony of witnesses and the production of documentary evidence.

Witnesses and evidence may be required from any place in United States.

Disobedience to a subpœna. Commission may invoke aid of any United States court.

Any of the district courts of the United States within the jurisdiction of which such inquiry is carried on may, in case of contumacy or refusal to obey a subpœna issued to any corporation or other person, issue an order requiring such corporation or other person to appear before the commission, or to produce documentary evidence if so ordered, or to give evidence touching the matter in question; and any failure to obey such order of the court may be punished by such court as a contempt thereof.

In case of contumacy or disobedience of subpœna, any district court in jurisdiction involved may order obedience.

Disobedience thereafter punishable as contempt.

Upon the application of the Attorney General of the United States, at the request of the commission, the district courts of the United States shall have jurisdiction to issue writs of mandamus commanding any person or corporation to comply with the provisions of this Act or any order of the commission made in pursuance thereof.

Mandamus from District Courts on application of Attorney General to enforce compliance with Act.

The commission may order testimony to be taken by deposition in any proceeding or investigation pending under this Act at any stage of such proceeding or investi-

Commission may order depositions at any stage.

[78] Provisions and penalties of secs. 6, 8, 9, and 10 of this act made applicable to the jurisdiction, powers, and duties conferred and imposed upon the Secretary of Agriculture by sec. 402 of the "Packers and Stockyards Act, 1921," approved Aug. 15, 1921, ch. 64, 42 Stat. 159.

Sec. 9. EVIDENCE. WITNESSES. TESTIMONY. MANDAMUS TO ENFORCE OBEDIENCE TO ACT—Continued.

May be taken before person designated by Commission.

Testimony to be reduced to writing, etc.

Appearance, testimony, and production of evidence may be compelled as in proceeding before Commission.

Witness fees, same as paid for like services in United States courts.

Incriminating testimony or evidence no excuse for failure to testify or produce.

But natural person shall not be prosecuted with respect to matters involved.

Perjury excepted.

gation. Such depositions may be taken before any person designated by the commission and having power to administer oaths. Such testimony shall be reduced to writing by the person taking the deposition, or under his direction, and shall then be subscribed by the deponent. Any person may be compelled to appear and depose and to produce documentary evidence in the same manner as witnesses may be compelled to appear and testify and produce documentary evidence before the commission as hereinbefore provided.

Witnesses summoned before the commission shall be paid the same fees and mileage that are paid witnesses in the courts of the United States, and witnesses whose depositions are taken and the persons taking the same shall severally be entitled to the same fees as are paid for like services in the courts of the United States.

No person shall be excused from attending and testifying or from producing documentary evidence before the commission or in obedience to the subpœna of the commission on the ground or for the reason that the testimony or evidence, documentary or otherwise, required of him may tend to criminate him or subject him to a penalty or forfeiture. But no natural person shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he may testify, or produce evidence, documentary or otherwise, before the commission in obedience to a subpœna issued by it: *Provided*, That no natural person so testifying shall be exempt from prosecution and punishment for perjury committed in so testifying.

Sec. 10. PENALTIES.*

Failure to testify or to produce documentary evidence. Offender subject to fine or imprisonment, or both.

SEC. 10. That any person who shall neglect or refuse to attend and testify, or to answer any lawful inquiry, or to produce documentary evidence, if in his power to do so, in obedience to the subpœna or lawful requirement of the commission, shall be guilty of an offense and upon conviction thereof by a court of competent jurisdiction shall be punished by a fine of not less than $1,000 nor more than $5,000, or by imprisonment for not more than one year, or by both such fine and imprisonment.

* Provisions and penalties of secs. 6, 8, 9, and 10 of this Act made applicable to the jurisdiction, powers, and duties conferred and imposed upon the Secretary of Agriculture by sec. 402 of the "Packers and Stockyards Act, 1921," approved Aug. 15, 1921, ch. 64, 42 Stat. 159.

Any person who shall willfully make, or cause to be made, any false entry or statement of fact in any report required to be made under this Act, or who shall willfully make, or cause to be made, any false entry in any account, record, or memorandum kept by any corporation subject to this Act, or who shall willfully neglect or fail to make, or to cause to be made, full, true, and correct entries in such accounts, records, or memoranda of all facts and transactions appertaining to the business of such corporation, or who shall willfully remove out of the jurisdiction of the United States, or willfully mutilate, alter, or by any other means falsify any documentary evidence of such corporation, or who shall willfully refuse to submit to the commission or to any of its authorized agents, for the purpose of inspection and taking copies, any documentary evidence of such corporation in his possession or within his control, shall be deemed guilty of an offense against the United States, and shall be subject, upon conviction in any court of the United States of competent jurisdiction, to a fine of not less than $1,000 nor more than $5,000, or to imprisonment for a term of not more than three years, or to both such fine and imprisonment.

False entries, statements, or tampering with accounts, records, or other documentary evidence, or willful failure to make entries, etc., or

Willful refusal to submit documentary evidence to Commission.

Offender subject to fine or imprisonment, or both.

If any corporation required by this Act to file any annual or special report shall fail so to do within the time fixed by the commission for filing the same, and such failure shall continue for thirty days after notice of such default, the corporation shall forfeit to the United States the sum of $100 for each and every day of the continuance of such failure, which forfeiture shall be payable into the Treasury of the United States, and shall be recoverable in a civil suit in the name of the United States brought in the district where the corporation has its principal office or in any district in which it shall do business. It shall be the duty of the various district attorneys, under the direction of the Attorney General of the United States, to prosecute for the recovery of forfeitures. The costs and expenses of such prosecution shall be paid out of the appropriation for the expenses of the courts of the United States.

Failure of corporation to file required report.

Forfeiture for each day's continued failure.

Recoverable in civil suit in district where corporation has principal office, or does business.

Various district attorneys to prosecute for recovery.

Any officer or employee of the commission who shall make public any information obtained by the commission without its authority, unless directed by a court, shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be punished by a fine not exceeding $5,000,

Unauthorized divulgence of information by employee of Commission punishable by fine or imprisonment or both.

Sec. 10. PENALTIES—Continued.

or by imprisonment not exceeding one year, or by fine and imprisonment, in the discretion of the court.

Sec. 11. ANTITRUST ACTS AND ACT TO REGULATE COMMERCE.

Not affected by this act.

SEC. 11. Nothing contained in this Act shall be construed to prevent or interfere with the enforcement of the provisions of the antitrust Acts[9] or the Acts to regulate commerce, nor shall anything contained in the Act be construed to alter, modify, or repeal the said antitrust Acts or the Acts to regulate commerce or any part or parts thereof.

Approved, September 26, 1914.

THE CLAYTON ACT.[1]

[Approved Oct. 15, 1914.]

[PUBLIC—No. 212—63D CONGRESS.]

[H. R. 15657.]

AN ACT To supplement existing laws against unlawful restraints and monopolies, and for other purposes.

Sec. 1. DEFINITIONS.

"Antitrust laws."

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That "antitrust laws," as used herein, includes the Act entitled "An Act to protect trade and commerce against unlawful restraints and monopolies," approved

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[9] For text of Sherman Act, see footnote on pp. 533–535. As enumerated in last paragraph of sec. 4 of this act, see p. 523.

[1] This act has been annotated up to July 1, 1921, and may be found, so annotated, in Volume III of the Commission's Reports. Subsequent reported decisions for the period covered by this and the preceding volumes (July 1, 1921, to Nov. 4, 1923) and bearing on the provisions of this act affecting the Commission are: *Canfield Oil Co.* v. *Federal Trade Commission*, 274 Fed. 571 (see opinion set forth in Appendix II of Volume IV at p. 542 et seq.); *Sinclair Refining Co.* v. *Federal Trade Commission*, 276 Fed. 686 (see opinion set forth in Appendix II of Volume IV at p. 552 et seq.); *Auto Acetylene Light Co.* v. *Prest-O-Lite Co., Inc.*, 276 Fed. 537; *Standard Fashion Co.* v. *Magrane-Houston Co.*, 258 U. S. 346, 42 Sup. Ct. 360, and *United Shoe Machinery Corporation* v. *United States*, 258 U. S. 451, 42 Sup. Ct. 363; *Aluminum Co. of America* v. *Federal Trade Commission*, 284 Fed. 401 (see opinion set forth in Appendix II of Volume V at p. 529 et seq.); *Standard Oil of N. J. et al.* v. *Federal Trade Commission*, 282 Fed. 81 (see opinion set forth in Appendix II of Volume V at p. 542 et seq.); *Federal Trade Commission* v. *Curtis Publishing Co.*, 260 U. S. 568 (see opinion set forth in Appendix II of Volume V at p. 599 et seq.); and *Mennen Co.* v. *Federal Trade Commission*, 288 Fed. 774 (see opinion and decision set forth in Appendix II of this volume at p. 579 et seq.); *Federal Trade Commission* v. *Sinclair Refining Co. et al.*, 261 U. S. 463 (see opinion and decision set forth in Appendix II of this volume at p. 587 et seq.); and *B. S. Pearsall Butter Co.*, 292 Fed. 720 (see opinion and decision set forth in Appendix II of this volume at p. 605 et seq.).

It should be noted in connection with this law—

That the so-called Shipping Board Act (sec. 15, ch. 451, 64th Cong., 1st sess.) provides that "every agreement, modification, or cancellation lawful under this section shall be excepted from the provisions of the Act approved July 2, 1890, entitled 'An Act to protect trade and commerce against unlawful restraints and monopolies,' and amendments and acts supplementary thereto * * *";

That the jurisdiction of the Commission is limited by the "Packers and Stockyards Act, 1921," approved Aug. 15, 1921, ch. 64, 42 Stat. 169, sec.

July second, eighteen hundred and ninety[2]; sections seventy-three to seventy-seven, inclusive, of an Act entitled "An Act to reduce taxation, to provide revenue for the Government, and for other purposes," of August twenty-seventh, eighteen hundred and ninety-four; an Act entitled "An Act to amend sections seventy-three and seventy-six of the Act of August twenty-seventh, eighteen hundred and ninety-four, entitled 'An Act to reduce taxation, to provide revenue for the Government,

406 of said Act providing that "on and after the enactment of this Act and so long as it remains in effect the Federal Trade Commission shall have no power or jurisdiction so far as relating to any matter which by this Act is made subject to the jurisdiction of the Secretary [of Agriculture], except in cases in which, before the enactment of this Act, complaint has been served under sec. 5 of the Act entitled 'An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes,' approved Sept. 26, 1914, or under sec. 11 of the Act entitled 'An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes,' approved October 15, 1914, and except when the Secretary of Agriculture, in the exercise of his duties hereunder, shall request of the said Federal Trade Commission that it make investigations and report in any case"; and

That by the last paragraph of sec. 407 of the Transportation Act, approved Feb. 28, 1920, ch. 91, 41 Stat. 456 at 482, the provisions of the Clayton Act and of all other restraints or prohibitions, State or Federal, are made inapplicable to carriers, in so far as the provisions of the section in question, which relate to division of traffic, acquisition by a carrier of control of other carriers and consolidation of railroad systems or railroads, are concerned.

That Public No. 146, Sixty-seventh Congress, approved Feb. 18, 1922 (42 Stat. 388), permits, subject to the provisions set forth, associations of producers of agricultural products for the purpose of "preparing for market, handling, and marketing in interstate and foreign commerce such products * * *." (See also in this general connection the limitation imposed in connection with the appropriations for enforcing the Sherman Act as set forth in the following note.)

[2] The Sherman Act (26 Stat. 209), which, as a matter of convenience, is printed herewith. While the Act itself has not been amended, appropriations for the fiscal years ending June 30, 1920, 1921, 1922, and 1923 (Sundry Civil Appropriation Act, July 19, 1919, ch. 24, 41 Stat. 208, Sundry Civil Appropriation Act, June 5, 1920, ch. 235, 41 Stat. 922, Sundry Civil Appropriation Act, Mar. 4, 1921, ch. 161, 41 Stat. 1411, and State, Justice, and Judiciary Appropriation Acts, June 1, 1922, ch. 204, sess. II, 42 Stat. 613, and Jan. 3, 1923, 42 Stat. 1080, respectively), were made contingent upon no part of the moneys being—

"Spent in the prosecution of any organization or individual for entering into any combination or agreement having in view the increasing of wages, shortening of hours or bettering the conditions of labor, or for any act done in furtherance thereof, not in itself unlawful: *Provided further*, That no part of this appropriation shall be expended for the prosecution of producers of farm products and associations of farmers who cooperate and organize in an effort to and for the purpose to obtain and maintain a fair and reasonable price for their products."

The act, omitting the usual formal "*Be it enacted*," etc., follows:

CONTRACTS, COMBINATIONS, ETC., IN RESTRAINT OF TRADE ILLEGAL.

SECTION 1. Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is hereby declared to be illegal. Every person who shall make any such contract or engage in any such combination or conspiracy, shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be punished by fine not exceeding five thousand

Sec. 1. DEFINITIONS—Continued.

and for other purposes,'" approved February twelfth, nineteen hundred and thirteen; and also this Act.

"Commerce." "Commerce," as used herein, means trade or commerce among the several States and with foreign nations, or between the District of Columbia or any Territory of the United States and any State, Territory, or foreign nation, or between any insular possessions or other places under the jurisdiction of the United States, or between any such possession or place and any State or Territory of the United States or the District of Columbia or any foreign nation, or within the District of Columbia or any Territory or any insular possession or other place under the jurisdiction of the United States: *Provided*, That nothing in this Act contained shall apply to the Philippine Islands.

"Person or persons." The word "person" or "persons" wherever used in this Act shall be deemed to include corporations and associations existing under or authorized by the laws of

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dollars, or by imprisonment not exceeding one year, or by both said punishments, in the discretion of the court.

PERSON MONOPOLIZING TRADE GUILTY OF MISDEMEANOR—PENALTY.

SEC. 2. Every person who shall monopolize, or attempt to monopolize, or combine or conspire with any other person or persons, to monopolize any part of the trade or commerce among the several States, or with foreign nations, shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be punished by fine not exceeding five thousand dollars, or by imprisonment not exceeding one year, or by both said punishments, in the discretion of the court.

COMBINATIONS IN TERRITORIES OR DISTRICT OF COLUMBIA ILLEGAL—PENALTY.

SEC. 3. Every contract, combination in form of trust or otherwise, or conspiracy, in restraint of trade or commerce in any Territory of the United States or of the District of Columbia, or in restraint of trade or commerce between any such Territory and another, or between any such Territory or Territories and any State or States or the District of Columbia, or with foreign nations, or between the District of Columbia and any State or States or foreign nations, is hereby declared illegal. Every person who shall make any such contract or engage in any such combination or conspiracy, shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be punished by fine not exceeding five thousand dollars, or by imprisonment not exceeding one year, or by both said punishments, in the discretion of the court.

ENFORCEMENT.

SEC. 4. The several circuit courts of the United States are hereby invested with jurisdiction to prevent and restrain violations of this act, and it shall be the duty of the several district attorneys of the United States, in their respective districts, under the direction of the Attorney General, to institute proceedings in equity to prevent and restrain such violations. Such proceedings may be by way of petition setting forth the case and praying that such violation shall be enjoined or otherwise prohibited. When the parties complained of shall have been duly notified of such

either the United States, the laws of any of the Territories, the laws of any State, or the laws of any foreign country.

Sec. 2. PRICE DISCRIMINATION.[a]

SEC. 2. That it shall be unlawful for any person engaged in commerce, in the course of such commerce, either directly or indirectly to discriminate in price between different purchasers of commodities, which commodities are sold for use, consumption, or resale within the United States or any Territory thereof or the District of Columbia or any insular possession or other place under the jurisdiction of the United States, where the effect of such discrimination may be to substantially lessen competition or tend to create a monopoly in any line of com-

Unlawful where effect may be to substantially lessen competition or tend to create a monopoly.

petition the court shall proceed, as soon as may be, to the hearing and determination of the case; and pending such petition and before final decree, the court may at any time make such temporary restraining order or prohibition as shall be deemed just in the premises.

ADDITIONAL PARTIES.

SEC. 5. Whenever it shall appear to the court before which any proceeding under section four of this act may be pending, that the ends of justice require that other parties should be brought before the court, the court may cause them to be summoned, whether they reside in the district in which the court is held or not; and subpœnas to that end may be served in any district by the marshal thereof.

FORFEITURE OF PROPERTY.

SEC. 6. Any property owned under any contract or by any combination, or pursuant to any conspiracy (and being the subject thereof) mentioned in section one of this act, and being in the course of transportation from one State to another, or to a foreign country, shall be forfeited to the United States, and may be seized and condemned by like proceedings as those provided by law for the forfeiture, seizure, and condemnation of property imported into the United States contrary to law.

SUITS—RECOVERY.

SEC. 7. Any person who shall be injured in his business or property by any other person or corporation by reason of anything forbidden or declared to be unlawful by this act, may sue therefor in any circuit court of the United States, in the district in which the defendant resides or is found, without respect to the amount in controversy, and shall recover threefold the damages by him sustained, and the costs of suit, including a reasonable attorney's fee.

"PERSON" OR "PERSONS" DEFINED.

SEC. 8. That the word "person," or "persons," wherever used in this act shall be deemed to include corporations and associations existing under or authorized by the laws of either the United States, the laws of any of the Territories, the laws of any State or the laws of any foreign country.

[a] On provisions of the Shipping Board Act, Packers and Stockyards Act, 1921, and Transportation Act, limiting the scope of the Clayton Act in certain cases, see footnote on p. 532.

Sec. 2. PRICE DISCRIMINATION—Continued.

But permissible if based on difference in grade, quality, or quantity, or in selling or transportation cost, or if made to meet competition, and

merce: *Provided*, That nothing herein contained shall prevent discrimination in price between purchasers of commodities on account of differences in the grade, quality, or quantity of the commodity sold, or that makes only due allowance for difference in the cost of selling or transportation, or discrimination in price in the same or different communities made in good faith to meet competition: *And provided further*, That nothing herein contained shall prevent persons engaged in selling goods, wares, or merchandise in commerce from selecting their own customers in bona fide transactions and not in restraint of trade.

Vendor may select own customers if not in restraint of trade.

Sec. 3. TYING OR EXCLUSIVE LEASES, SALES OR CONTRACTS.[4]

Unlawful where effect may be to substantially lessen competition.

SEC. 3. That it shall be unlawful for any person engaged in commerce, in the course of such commerce, to lease or make a sale or contract for sale of goods, wares, merchandise, machinery, supplies or other commodities, whether patented or unpatented, for use, consumption or resale within the United States or any Territory thereof or the District of Columbia or any insular possession or other place under the jurisdiction of the United States, or fix a price charged therefor, or discount from, or rebate upon, such price, on the condition, agreement or understanding that the lessee or purchaser thereof shall not use or deal in the goods, wares, merchandise, machinery, supplies or other commodities of a competitor or competitors of the lessor or seller, where the effect of such lease, sale, or contract for sale or such condition, agreement or understanding may be to substantially lessen competition or tend to create a monopoly in any line of commerce.

Sec. 4. VIOLATION OF ANTITRUST LAWS—DAMAGES TO PERSON INJURED.

May sue in any United States district court, and recover threefold damages, including cost of suit.

SEC. 4. That any person who shall be injured in his business or property by reason of anything forbidden in the antitrust laws[5] may sue therefor in any district court of the United States in the district in which the defendant resides or is found or has an agent, without respect

[4] On provisions of the Shipping Board Act, Packers and Stockyards Act, 1921, and Transportation Act, limiting the scope of the Clayton Act in certain cases, see footnote on p. 532.

[5] For text of Sherman Act, see footnote on pp. 533–535. As enumerated in Clayton Act, see first paragraph thereof on p. 532.

to the amount in controversy, and shall recover threefold the damages by him sustained, and the cost of suit, including a reasonable attorney's fee.

Sec. 5. PROCEEDINGS BY OR IN BEHALF OF UNITED STATES UNDER ANTITRUST LAWS. FINAL JUDGMENTS OR DECREES THEREIN AS EVIDENCE IN PRIVATE LITIGATION. INSTITUTION THEREOF AS SUSPENDING STATUTE OF LIMITATIONS.

Prima facie evidence against same defendant in private litigation.

SEC. 5. That a final judgment or decree hereafter rendered in any criminal prosecution or in any suit or proceeding in equity brought by or on behalf of the United States under the antitrust[6] laws to the effect that a defendant has violated said laws shall be prima facie evidence against such defendant in any suit or proceeding brought by any other party against such defendant under said laws as to all matters respecting which said judgment or decree would be an estoppel as between the parties thereto: *Provided*, This section shall not apply to consent judgments or decrees entered before any testimony has been taken: *Provided further*, This section shall not apply to consent judgments or decrees rendered in criminal proceedings or suits in equity, now pending, in which the taking of testimony has been commenced but has not been concluded, provided such judgments or decrees are rendered before any further testimony is taken.

Consent judgments or decrees excepted.

Running of statute of limitations with respect to private rights suspended pending proceeding by the United States under antitrust laws.

Whenever any suit or proceeding in equity or criminal prosecution is instituted by the United States to prevent, restrain or punish violations of any of the antitrust laws, the running of the statute of limitations in respect of each and every private right of action arising under said laws and based in whole or in part on any matter complained of in said suit or proceeding shall be suspended during the pendency thereof.

Sec. 6. LABOR OF HUMAN BEINGS NOT A COMMODITY OR ARTICLE OF COMMERCE.

Labor, agricultural, or horticultural organizations and their members, organized for mutual help and without capital stock, not affected by antitrust laws with respect to their legitimate objects.

SEC. 6. That the labor of a human being is not a commodity or article of commerce. Nothing contained in the antitrust laws[6] shall be construed to forbid the existence and operation of labor, agricultural, or horticultural organizations, instituted for the purposes of mutual help, and not having capital stock or conducted for profit, or to forbid or restrain individual members of such organizations from lawfully carrying out the legitimate objects

[6] For text of Sherman Act, see footnote on pp. 533–535. As enumerated in Clayton Act, see first paragraph thereof on p. 532.

Sec. 6. LABOR OF HUMAN BEINGS NOT A COMMODITY OR ARTICLE OF COMMERCE—Continued.

thereof; nor shall such organizations, or the members thereof, be held or construed to be illegal combinations or conspiracies in restraint of trade, under the antitrust laws.

Sec. 7. ACQUISITION BY CORPORATION OF STOCK OR OTHER SHARE CAPITAL OF OTHER CORPORATION OR CORPORATIONS.[1]

Of other corporation. Prohibited where effect may be to substantially lessen competition, restrain commerce, or tend to create a monopoly.

SEC. 7. That no corporation engaged in commerce shall acquire, directly or indirectly, the whole or any part of the stock or other share capital of another corporation engaged also in commerce, where the effect of such acquisition may be to substantially lessen competition between the corporation whose stock is so acquired and the corporation making the acquisition, or to restrain such commerce in any section or community, or tend to create a monopoly of any line of commerce.

Of two or more other corporations. Prohibited where effect may be to substantially lessen competition, restrain commerce, or tend to create a monopoly.

No corporation shall acquire, directly or indirectly, the whole or any part of the stock or other share capital of two or more corporations engaged in commerce where the effect of such acquisition, or the use of such stock by the voting or granting of proxies or otherwise, may be to substantially lessen competition between such corporations, or any of them, whose stock or other share capital is so acquired, or to restrain such commerce in any section or community, or tend to create a monopoly of any line of commerce.

Purchase solely for investment excepted.

This section shall not apply to corporations purchasing such stock solely for investment and not using the same by voting or otherwise to bring about, or in attempting to bring about, the substantial lessening of competition. Nor shall anything contained in this section prevent a corporation engaged in commerce from causing the formation of subsidiary corporations for the actual carrying on of their immediate lawful business, or the natural and legitimate branches or extensions thereof, or from owning and holding all or a part of the stock of such subsidiary corporations, when the effect of such formation is not to substantially lessen competition.

Formation of subsidiary corporations for immediate lawful business also excepted.

[1] On provisions of the Shipping Board Act, Packers and Stockyards Act, 1921, and Transportation Act, limiting the scope of the Clayton Act in certain cases, see footnote on p. 532.

It should be noted also that corporations for export trade are excepted from the provisions of this section. (See p. 556, sec. 8.)

Common carriers excepted with reference to branch or tap lines where no substantial competition.

Nor shall anything herein contained be construed to prohibit any common carrier subject to the laws to regulate commerce from aiding in the construction of branches or short lines so located as to become feeders to the main line of the company so aiding in such construction or from acquiring or owning all or any part of the stock of such branch lines, nor to prevent any such common carrier from acquiring and owning all or any part of the stock of a branch or short line constructed by an independent company where there is no substantial competition between the company owning the branch line so constructed and the company owning the main line acquiring the property or an interest therein, nor to prevent such common carrier from extending any of its lines through the medium of the acquisition of stock or otherwise of any other such common carrier where there is no substantial competition between the company extending its lines and the company whose stock, property, or an interest therein is so acquired.

Existing rights heretofore lawfully acquired not affected.

Nothing contained in this section shall be held to affect or impair any right heretofore legally acquired: *Provided*, That nothing in this section shall be held or construed to authorize or make lawful anything heretofore prohibited or made illegal by the antitrust laws,[8] nor to exempt any person from the penal provisions thereof or the civil remedies therein provided.

Sec. 8. DIRECTORS, OFFICERS, OR EMPLOYEES OF BANKS, BANKING ASSOCIATIONS, OR TRUST COMPANIES OPERATING UNDER LAWS OF UNITED STATES AND DIRECTORS OF OTHER CORPORATIONS.[9]

Not to serve more than one bank, banking association, or trust company if deposits, capital, surplus, and undivided profits aggregate over $5,000,000.

SEC. 8. That from and after two years from the date of the approval of this Act no person shall at the same time be a director or other officer or employee of more than one bank, banking association or trust company, organized or operating under the laws of the United States, either of which has deposits, capital, surplus, and undivided profits aggregating more than $5,000,000; and no private banker or person who is a director in any bank

[8] For text of Sherman Act, see footnote on pp. 533–535. As enumerated in Clayton Act, see first paragraph thereof on p. 532.

[9] By the last paragraph of the Act of Sept. 7, 1916, amending the Federal Reserve Act, ch. 461, 39 Stat. 752 at 756, it is provided that the provisions of sec. 8 shall not apply to "A director or other officer, agent or employee of any member bank" who may, "with the approval of the Federal Reserve Board be a director or other officer, agent or employee of any" bank or corporation, "chartered or incorporated under the laws of the United States or of any State thereof, and principally

Sec. 8. DIRECTORS, OFFICERS, OR EMPLOYEES OF BANKS, BANKING ASSOCIATIONS, OR TRUST COMPANIES OPERATING UNDER LAWS OF UNITED STATES AND DIRECTORS OF OTHER CORPORATIONS—Contd.

or trust company, organized and operating under the laws of a State, having deposits, capital, surplus, and undivided profits aggregating more than $5,000,000, shall be eligible to be a director in any bank or banking association organized or operating under the laws of the United States. The eligibility of a director, officer, or employee under the foregoing provisions shall be determined by the average amount of deposits, capital, surplus, and undivided profits as shown in the official statements of such bank, banking association, or trust company filed as provided by law during the fiscal year next preceding the date set for the annual election of directors, and when a director, officer, or employee has been elected or selected in accordance with the provisions of this Act it shall be lawful for him to continue as such for one year thereafter under said election or employment.

How eligibility determined.

Not to serve more than one bank, banking association, or trust company located in city or incorporated town or village of more than 200,000 inhabitants.

No bank, banking association or trust company, organized or operating under the laws of the United States, in any city or incorporated town or village of more than two hundred thousand inhabitants, as shown by the last preceding decennial census of the United States, shall have as a director or other officer or employee any private banker or any director or other officer or employee of any other bank, banking association or trust company located in the same place: *Provided*, That nothing in this section shall apply to mutual savings banks not having a capital stock represented by shares: *Provided further*, That a director or other officer or employee of such bank, banking association, or trust company may be a director or other officer or employee of not more than one other bank or trust company organized under the laws of the United States or any State where the entire capital stock of one is owned by stockholders in the other: *And provided further*, That nothing contained in this section shall forbid

Savings banks without capital (share) stock excepted.

Where entire stock of one bank, etc., owned by stockholders of other, also excepted.

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engaged in international or foreign banking, or banking in a dependency or insular possession of the United States," in the capital stock of which such member bank may have invested under the conditions and circumstances set forth in the Act.

On provisions of the Shipping Board Act, Packers and Stockyards Act, 1921, and Transportation Act, limiting the scope of the Clayton Act in certain cases, see footnote on p. 532.

a director of class A of a Federal reserve bank, as defined in the Federal Reserve Act from being an officer or director or both an officer and director in one member bank: *And provided further*, That nothing in this Act shall prohibit any private banker or any officer, director, or employee of any member bank or class A director of a Federal reserve bank, who shall first procure the consent of the Federal Reserve Board, which board is hereby authorized, at its discretion, to grant, withhold, or revoke such consent, from being an officer, director, or employee of not more than two other banks, banking associations, or trust companies, whether organized under the laws of the United States or any State, if such other bank, banking association, or trust company is not in substantial competition with such banker or member bank.

Class A director of Federal reserve bank excepted, and

Private banker or officer, etc., of member bank, or class A director may serve, with consent of Federal Reserve Board, not more than two other banks, etc., where no substantial competition.

The consent of the Federal Reserve Board may be procured before the person applying therefor has been elected as a class A director of a Federal reserve bank or as a director of any member bank.[10]

Consent may be secured before applicant elected director.

That from and after two years from the date of the approval of this Act no person at the same time shall be a director in any two or more corporations, any one of which has capital, surplus, and undivided profits aggregating more than $1,000,000, engaged in whole or in part in commerce, other than banks, banking associations, trust companies and common carriers subject to the Act to regulate commerce, approved February fourth, eighteen hundred and eighty-seven, if such corporations are or shall have been theretofore, by virtue of their business and location of operation, competitors, so that the elimination of competition by agreement between them would constitute a violation of any of the provisions of any of the antitrust laws.[11] The eligibility of a director under the foregoing provision shall be determined by the aggregate amount of the capital, surplus, and undivided profits, exclusive of dividends declared but not paid to stockholders, at the end of the fiscal year of said corporation next preceding the election of directors, and when a director has been elected in accordance with the provisions of this Act it shall be lawful for him to continue as such for one year thereafter.

Not to serve two or more presently or previously competing corporations if capital, surplus, and undivided profits aggregate more than $1,000,000, and elimination of competition by agreement would violate antitrust laws.

How eligibility determined.

[10] The part of the section immediately preceding beginning with, "*And provided further*, That nothing in this Act" to this point, amendments made by act May 15, 1916, ch. 120, and act May 26, 1920, ch. 206.

[11] For text of Sherman Act, see footnote on pp. 533–535. As enumerated in Clayton Act, see first paragraph thereof on p. 532.

Sec. 8. DIRECTORS, OFFICERS, OR EMPLOYEES OF BANKS, BANKING ASSOCIATIONS, OR TRUST COMPANIES OPERATING UNDER LAWS OF UNITED STATES AND DIRECTORS OF OTHER CORPORATIONS—Contd.

Eligibility at time of election or selection not changed for one year.

When any person elected or chosen as a director or officer or selected as an employee of any bank or other corporation subject to the provisions of this Act is eligible at the time of his election or selection to act for such bank or other corporation in such capacity his eligibility to act in such capacity shall not be affected and he shall not become or be deemed amenable to any of the provisions hereof by reason of any change in the affairs of such bank or other corporation from whatsoever cause, whether specifically excepted by any of the provisions hereof or not, until the expiration of one year from the date of his election or employment.

Sec. 9. WILLFUL MISAPPLICATION, EMBEZZLEMENT, ETC., OF MONEYS, FUNDS, ETC., OF COMMON CARRIER A FELONY.

SEC. 9. Every president, director, officer or manager of any firm, association or corporation engaged in commerce as a common carrier, who embezzles, steals, abstracts or willfully misapplies, or willfully permits to be misapplied, any of the moneys, funds, credits, securities, property or assets of such firm, association or corporation, arising or accruing from, or used in, such commerce, in whole or in part, or willfully or knowingly converts the same to his own use or to the use of another, shall be deemed guilty of a felony and upon conviction shall be fined not less than $500 or confined in the penitentiary not less than one year nor more than ten years, or both, in the discretion of the court.

Penalty, fine, or imprisonment, or both.

May prosecute in district court of United States for district where offense committed.

Prosecutions hereunder may be in the district court of the United States for the district wherein the offense may have been committed.

Jurisdiction of State courts not affected. Their judgments a bar to prosecution hereunder.

That nothing in this section shall be held to take away or impair the jurisdiction of the courts of the several States under the laws thereof; and a judgment of conviction or acquittal on the merits under the laws of any State shall be a bar to any prosecution hereunder for the same act or acts.

Sec. 10. LIMITATIONS UPON DEALINGS AND CONTRACTS OF COMMON CARRIERS.

Dealings in securities, etc., and contracts for construction or maintenance, aggregating more than $50,000 a year to be by bid in case director, etc., of common carrier, also director, etc., of other party or has a substantial interest therein.

SEC. 10. That after two years from the approval of this Act no common carrier engaged in commerce shall have any dealings in securities, supplies or other articles of commerce, or shall make or have any contracts for construction or maintenance of any kind, to the amount of more than $50,000, in the aggregate, in any one year, with another corporation, firm, partnership or association when the said common carrier shall have upon its board of directors or as its president, manager or as its purchasing or selling officer, or agent in the particular transaction, any person who is at the same time a director, manager, or purchasing or selling officer of, or who has any substantial interest in, such other corporation, firm, partnership or association, unless and except such purchases shall be made from, or such dealings shall be with, the bidder whose bid is the most favorable to such common carrier, to be ascertained by competitive bidding under regulations to be prescribed by rule or otherwise by the Interstate Commerce Commission. No bid shall be received unless the name and address of the bidder or the names and addresses of the officers, directors and general managers thereof, if the bidder be a corporation, or of the members. if it be a partnership or firm, be given with the bid.

Bidding to be competitive under regulations prescribed by Interstate Commerce Commission, and to show names and addresses of bidder, officers, etc.

Any person who shall, directly or indirectly, do or attempt to do anything to prevent anyone from bidding or shall do any act to prevent free and fair competition among the bidders or those desiring to bid shall be punished as prescribed in this section in the case of an officer or director.

Penalty for preventing or attempting to prevent free and fair competition in bidding.

Every such common carrier having any such transactions or making any such purchases shall within thirty days after making the same file with the Interstate Commerce Commission a full and detailed statement of the transaction showing the manner of the competitive bidding, who were the bidders, and the names and addresses of the directors and officers of the corporations and the members of the firm or partnership bidding; and whenever the said commission shall, after investigation or hearing, have reason to believe that the law has been violated in and about the said purchases or transactions it shall transmit all papers and documents and its own views or findings regarding the transaction to the Attorney General.

Carrier to report transactions hereunder to Interstate Commerce Commission.

Commission to report violations, and its own findings to Attorney General.

Sec. 10. LIMITATIONS UPON DEALINGS AND CONTRACTS OF COMMON CARRIERS—Continued.

Misdemeanor for director, etc., to knowingly vote for, direct, aid, etc., in violation of this section.

If any common carrier shall violate this section it shall be fined not exceeding $25,000; and every such director, agent, manager or officer thereof who shall have knowingly voted for or directed the act constituting such violation or who shall have aided or abetted in such violation shall be deemed guilty of a misdemeanor and shall be fined not exceeding $5,000, or confined in jail not exceeding one year, or both, in the discretion of the court.

Penalty.

Effective date extended to Jan. 1, 1921.

The effective date on and after which the provisions of section 10 of the Act entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," approved October fifteenth, nineteen hundred and fourteen, shall become and be effective is hereby deferred and extended to January first, nineteen hundred and twenty-one: *Provided*, That such extension shall not apply in the case of any corporation organized after January twelfth, nineteen hundred and eighteen.[12]

Except as to corporations organized after Jan. 12, 1918.

Sec. 11. JURISDICTION TO ENFORCE COMPLIANCE. COMPLAINTS, FINDINGS, AND ORDERS. APPEALS. SERVICE.[13]

Jurisdiction as respectively applicable vested in—

Interstate Commerce Commission;

Federal Reserve Board; and

Federal Trade Commission.

SEC. 11. That authority to enforce compliance with sections two, three, seven and eight of this Act by the persons respectively subject thereto is hereby vested: in the Interstate Commerce Commission where applicable to common carriers, in the Federal Reserve Board where applicable to banks, banking associations and trust companies, and in the Federal Trade Commission where applicable to all other character of commerce, to be exercised as follows:

Commission or board to issue complaint if believes secs. 2, 3, 7, or 8 violated, and serve same with notice of hearing on respondent or defendant.

Whenever the commission or board vested with jurisdiction thereof shall have reason to believe that any person is violating or has violated any of the provisions of sections two, three, seven and eight of this Act, it shall issue and serve upon such person a complaint stating its charges in that respect, and containing a notice of a hearing upon a day and at a place therein fixed at least thirty days after the service of said complaint. The person so

[12] Above paragraph, sec. 501 of the Transportation Act, Feb. 28, 1920, ch. 91, 41 Stat. 456 at 499.

[13] On provisions of the Shipping Board Act, Packers and Stockyards Act, 1921, and Transportation Act, limiting the scope of the Clayton Act in certain cases, see footnote on p. 532.

complained of shall have the right to appear at the place and time so fixed and show cause why an order should not be entered by the commission or board requiring such person to cease and desist from the violation of the law so charged in said complaint. Any person may make application, and upon good cause shown may be allowed by the commission or board, to intervene and appear in said proceeding by counsel or in person. The testimony in any such proceeding shall be reduced to writing and filed in the office of the commission or board. If upon such hearing the commission or board, as the case may be, shall be of the opinion that any of the provisions of said sections have been or are being violated, it shall make a report in writing in which it shall state its findings as to the facts, and shall issue and cause to be served on such person an order requiring such person to cease and desist from such violations, and divest itself of the stock held or rid itself of the directors chosen contrary to the provisions of sections seven and eight of this Act, if any there be, in the manner and within the time fixed by said order. Until a transcript of the record in such hearing shall have been filed in a circuit court of appeals of the United States, as hereinafter provided, the commission or board may at any time, upon such notice and in such manner as it shall deem proper, modify or set aside, in whole or in part, any report or any order made or issued by it under this section.

Respondent to have right to appear and show cause, etc.

Intervention may be permitted for good cause.

Transcript of testimony to be filed.

In case of violation commission or board to make written report stating findings, and to issue and serve order to cease and desist on respondent.

Commission or board may modify or set aside its order until transcript of record filed in Circuit Court of Appeals.

If such person fails or neglects to obey such order of the commission or board while the same is in effect, the commission or board may apply to the circuit court of appeals of the United States, within any circuit where the violation complained of was or is being committed or where such person resides or carries on business, for the enforcement of its order, and shall certify and file with its application a transcript of the entire record in the proceeding, including all the testimony taken and the report and order of the commission or board. Upon such filing of the application and transcript the court shall cause notice thereof to be served upon such person and thereupon shall have jurisdiction of the proceeding and of the question determined therein, and shall have power to make and enter upon the pleadings, testimony, and proceedings set forth in such transcript a decree affirming, modifying, or setting aside the order of the commis-

In case of disobedience of its order, commission or board may apply to Circuit Court of Appeals for enforcement of its order, and file transcript of record.

Court to cause notice thereof to be served on respondent and to have power to enter decree affirming, modifying, or setting aside order of commission or board.

Sec. 11. JURISDICTION TO ENFORCE COMPLIANCE. COMPLAINTS, FINDINGS, AND ORDERS. APPEALS. SERVICE—Continued.

Findings of commission or board conclusive if supported by testimony.

sion or board. The findings of the commission or board as to the facts, if supported by testimony, shall be conclusive. If either party shall apply to the court for leave

Introduction of additional evidence may be permitted on application, and showing of reasonable ground for failure to adduce theretofore.

to adduce additional evidence, and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the proceeding before the commission or board, the court may order such additional evidence to be taken before the commission or board and to be adduced upon the hearing in such manner and upon such terms and conditions as to the court may

Commission or board may make new or modified findings by reason thereof.

seem proper. The commission or board may modify its findings as to the facts, or make new findings, by reason of the additional evidence so taken, and it shall file such modified or new findings, which, if supported by testimony, shall be conclusive, and its recommendation, if any, for the modification or setting aside of its original

Judgment and decree subject to review upon certiorari, but otherwise final.

order, with the return of such additional evidence. The judgment and decree of the court shall be final, except that the same shall be subject to review by the Supreme Court upon certiorari as provided in section two hundred and forty of the Judicial Code.

Petition by respondent to review order to cease and desist.

Any party required by such order of the commission or board to cease and desist from a violation charged may obtain a review of such order in said circuit court of appeals by filing in the court a written petition praying that the order of the commission or board be set aside. A

To be served on commission or board which thereupon to certify and file transcript of record in the court.

copy of such petition shall be forthwith served upon the commission or board, and thereupon the commission or board forthwith shall certify and file in the court a transcript of the record as hereinbefore provided. Upon the filing of the transcript the court shall have the same

Jurisdiction of Court of Appeals same as on application by commission or board and commission's or board's findings similarly conclusive.

jurisdiction to affirm, set aside, or modify the order of the commission or board as in the case of an application by the commission or board for the enforcement of its order, and the findings of the commission or board as to the facts, if supported by testimony, shall in like manner be conclusive.

Jurisdiction of Court of Appeals exclusive.

The jurisdiction of the circuit court of appeals of the United States to enforce, set aside, or modify orders of the commission or board shall be exclusive.

Such proceedings in the circuit court of appeals shall be given precedence over other cases pending therein, and shall be in every way expedited. No order of the commission or board or the judgment of the court to enforce the same shall in any wise relieve or absolve any person from any liability under the antitrust Acts.[14]

Proceedings to have precedence over other cases, and to be expedited.

Liability under antitrust acts not affected.

Complaints, orders, and other processes of the commission or board under this section may be served by anyone duly authorized by the commission or board, either (a) by delivering a copy thereof to the person to be served, or to a member of the partnership to be served, or to the president, secretary, or other executive officer or a director of the corporation to be served; or (b) by leaving a copy thereof at the principal office or place of business of such person; or (c) by registering and mailing a copy thereof addressed to such person at his principal office or place of business. The verified return by the person so serving said complaint, order, or other process setting forth the manner of said service shall be proof of the same, and the return post-office receipt for said complaint, order, or other process registered and mailed as aforesaid shall be proof of the service of the same.

Service of commission's or board's complaints, orders, and other processes.

Personal; or

At office or place of business; or

By registered mail.

Verified return of person serving, and return post-office receipt, proof of service.

Sec. 12. PLACE OF PROCEEDINGS UNDER ANTITRUST LAWS. SERVICE OF PROCESS.

SEC. 12. That any suit, action, or proceeding under the antitrust laws[14] against a corporation may be brought not only in the judicial district whereof it is an inhabitant, but also in any district wherein it may be found or transacts business; and all process in such cases may be served in the district of which it is an inhabitant, or wherever it may be found.

Proceeding may be instituted or process served in district of which corporation an inhabitant or wherever it may be found.

Sec. 13. SUBPŒNAS FOR WITNESSES IN PROCEEDINGS BY OR ON BEHALF OF THE UNITED STATES UNDER ANTITRUST LAWS.

SEC. 13. That in any suit, action, or proceeding brought by or on behalf of the United States subpœnas for witnesses who are required to attend a court of the United States in any judicial district in any case, civil or crimi-

[14] For text of Sherman Act, see footnote on pp. 533–535. For Antitrust Acts as enumerated in Clayton Act, see first paragraph thereof on p. 532.

Sec. 13. SUBPŒNAS FOR WITNESSES IN PROCEEDINGS BY OR ON BEHALF OF THE UNITED STATES UNDER ANTITRUST LAWS—Continued.

May run into any district, but permission of trial court necessary in civil cases if witness lives out of district and more than 100 miles distant.

nal, arising under the antitrust laws[15] may run into any other district: *Provided*, That in civil cases no writ of subpœna shall issue for witnesses living out of the district in which the court is held at a greater distance than one hundred miles from the place of holding the same without the permission of the trial court being first had upon proper application and cause shown.

Sec. 14. VIOLATION BY CORPORATION OF PENAL PROVISIONS OF ANTITRUST LAWS.

Deemed also that of individual directors, officers, etc.

SEC. 14. That whenever a corporation shall violate any of the penal provisions of the antitrust laws,[15] such violation shall be deemed to be also that of the individual directors, officers, or agents of such corporation who shall have authorized, ordered, or done any of the acts constituting in whole or in part such violation, and such violation shall be deemed a misdemeanor, and upon conviction therefor of any such director, officer, or agent he shall be punished by a fine of not exceeding $5,000 or by imprisonment for not exceeding one year, or by both, in the discretion of the court.

A misdemeanor.

Penalty, fine or imprisonment, or both.

Sec. 15. JURISDICTION OF UNITED STATES DISTRICT COURTS TO PREVENT AND RESTRAIN VIOLATIONS OF THIS ACT.

SEC. 15. That the several district courts of the United States are hereby invested with jurisdiction to prevent and restrain violations of this Act, and it shall be the duty of the several district attorneys of the United States, in their respective districts, under the direction of the Attorney General, to institute proceedings in equity to prevent and restrain such violations. Such proceedings may be by way of petition setting forth the case and praying that such violation shall be enjoined or otherwise prohibited. When the parties complained of shall have been duly notified of such petition, the court shall proceed, as soon as may be, to the hearing and determination of the case; and pending such petition, and before final decree, the court may at any time make such temporary restraining order or prohibition as shall be deemed just in the premises. Whenever it shall appear to the court before which any such proceeding may be pending that the ends

District attorneys, under direction of Attorney General, to institute proceedings.

Proceedings may be by way of petition setting forth the case, etc.

After due notice, Court to proceed to hearing and determination as soon as may be.

Pending petition instituting proceeding Court may make temporary restraining order or prohibition.

[15] For text of Sherman Act, see footnote on pp. 533–535. For Antitrust Acts as enumerated in Clayton Act, see first paragraph thereof on p. 532.

of justice require that other parties should be brought before the court, the court may cause them to be summoned whether they reside in the district in which the court is held or not, and subpœnas to that end may be served in any district by the marshal thereof.

Court may summon other parties.

Sec. 16. INJUNCTIVE RELIEF AGAINST THREATENED LOSS BY VIOLATION OF ANTITRUST LAWS.

SEC. 16. That any person, firm, corporation, or association shall be entitled to sue for and have injunctive relief, in any court of the United States having jurisdiction over the parties, against threatened loss or damage by a violation of the antitrust laws,[16] including sections two, three, seven and eight of this Act, when and under the same conditions and principles as injunctive relief against threatened conduct that will cause loss or damage is granted by courts of equity, under the rules governing such proceedings, and upon the execution of proper bond against damages for an injunction improvidently granted and a showing that the danger of irreparable loss or damage is immediate, a preliminary injunction may issue: *Provided*, That nothing herein contained shall be construed to entitle any person, firm, corporation, or association, except the United States, to bring suit in equity for injunctive relief against any common carrier subject to the provisions of the Act to regulate commerce approved February fourth, eighteen hundred and eighty-seven, in respect of any matter subject to the regulation, supervision, or other jurisdiction of the Interstate Commerce Commission.

Open to any person, firm, etc., on same conditions and principles as other injunctive relief by courts of equity against threatened conduct that will cause loss or damage.

Preliminary injunction may issue upon proper bond and showing.

But United States alone may sue for injunctive relief against common carrier subject to Act to Regulate Commerce.

Sec. 17. PRELIMINARY INJUNCTIONS. TEMPORARY RESTRAINING ORDERS.

SEC. 17. That no preliminary injunction shall be issued without notice to the opposite party.

No preliminary injunction without notice.

No temporary restraining order shall be granted without notice to the opposite party unless it shall clearly appear from specific facts shown by affidavit or by the verified bill that immediate and irreparable injury, loss, or damage will result to the applicant before notice can be served and a hearing had thereon. Every such temporary restraining order shall be indorsed with the date and hour of issuance, shall be forthwith filed in the clerk's office and entered of record, shall define the in-

No temporary restraining order in absence of a showing of immediate and irreparable injury or loss.

Temporary restraining order, to show date and hour of issue, define injury, etc.

[16] For text of Sherman Act, see footnote on pp. 533-535. For Antitrust Acts as enumerated in Clayton Act, see first paragraph thereof on p. 532.

Sec. 17. PRELIMINARY INJUNCTIONS. TEMPORARY RESTRAINING ORDERS—Continued.

jury and state why it is irreparable and why the order was granted without notice, and shall by its terms expire within such time after entry, not to exceed ten days, as the court or judge may fix, unless within the time so fixed the order is extended for a like period for good cause shown, and the reasons for such extension shall be entered of record. In case a temporary restraining order shall be granted without notice in the contingency specified, the matter of the issuance of a preliminary injunction shall be set down for a hearing at the earliest possible time and shall take precedence of all matters except older matters of the same character; and when the same comes up for hearing the party obtaining the temporary restraining order shall proceed with the application for a preliminary injunction, and if he does not do so the court shall dissolve the temporary restraining order. Upon two days' notice to the party obtaining such temporary restraining order the opposite party may appear and move the dissolution or modification of the order, and in that event the court or judge shall proceed to hear and determine the motion as expeditiously as the ends of justice may require.

If without notice, issuance of preliminary injunction to be disposed of at earliest possible moment.

Opposite party may move dissolution or modification on two days' notice.

Sec. 263 of Judicial Code repealed.

Section two hundred and sixty-three of an Act entitled "An Act to codify, revise, and amend the laws relating to the judiciary," approved March third, nineteen hundred and eleven, is hereby repealed.

Sec. 266 not affected.

Nothing in this section contained shall be deemed to alter, repeal, or amend section two hundred and sixty-six of an Act entitled "An Act to codify, revise, and amend the laws relating to the judiciary," approved March third, nineteen hundred and eleven.

Sec. 18. NO RESTRAINING ORDER OR INTERLOCUTORY ORDER OF INJUNCTION WITHOUT GIVING SECURITY.

Except as provided in sec. 16 of this act.

SEC. 18. That, except as otherwise provided in section 16 of this Act, no restraining order or interlocutory order of injunction shall issue, except upon the giving of security by the applicant in such sum as the court or judge may deem proper, conditioned upon the payment of such costs and damages as may be incurred or suffered by any party who may be found to have been wrongfully enjoined or restrained thereby.

Sec. 19. ORDERS OF INJUNCTION OR RESTRAINING ORDERS—REQUIREMENTS.

SEC. 19. That every order of injunction or restraining order shall set forth the reasons for the issuance of the same, shall be specific in terms, and shall describe in reasonable detail, and not by reference to the bill of complaint or other document, the act or acts sought to be restrained, and shall be binding only upon the parties to the suit, their officers, agents, servants, employees, and attorneys, or those in active concert or participating with them, and who shall, by personal service or otherwise, have received actual notice of the same.

Must set forth reasons, be specific, and describe acts to be restrained.

Binding only on parties to suit, their officers, etc.

Sec. 20. RESTRAINING ORDERS OR INJUNCTIONS BETWEEN AN EMPLOYER AND EMPLOYEES, EMPLOYERS AND EMPLOYEES, ETC., INVOLVING OR GROWING OUT OF TERMS OR CONDITIONS OF EMPLOYMENT.

SEC. 20. That no restraining order or injunction shall be granted by any court of the United States, or a judge or the judges thereof, in any case between an employer and employees, or between employers and employees, or between employees, or between persons employed and persons seeking employment, involving, or growing out of, a dispute concerning terms or conditions of employment, unless necessary to prevent irreparable injury to property, or to a property right, of the party making the application, for which injury there is no adequate remedy at law, and such property or property right must be described with particularity in the application, which must be in writing and sworn to by the applicant or by his agent or attorney.

Not to issue unless necessary to prevent irreparable injury.

Threatened property or property rights must be described with particularity.

And no such restraining order or injunction shall prohibit any person or persons, whether singly or in concert, from terminating any relation of employment, or from ceasing to perform any work or labor, or from recommending, advising, or persuading others by peaceful means so to do; or from attending at any place where any such person or persons may lawfully be, for the purpose of peacefully obtaining or communicating information, or from peacefully persuading any person to work or to abstain from working; or from ceasing to patronize or to employ any party to such dispute, or from recommending, advising, or persuading others by peaceful and lawful means so to do; or from paying or giving to, or withholding from, any person engaged in such dispute,

Not to prohibit any person or persons from terminating any relation of employment, recommending others by peaceful means so to do, etc.

Sec. 20. RESTRAINING ORDERS OR INJUNCTIONS BETWEEN AN EMPLOYER AND EMPLOYEES, EMPLOYERS AND EMPLOYEES, ETC., INVOLVING OR GROWING OUT OF TERMS OR CONDITIONS OF EMPLOYMENT—Contd.

any strike benefits or other moneys or things of value; or from peaceably assembling in a lawful manner, and for lawful purposes; or from doing any act or thing which might lawfully be done in the absence of such dispute by any party thereto; nor shall any of the acts specified in this paragraph be considered or held to be violations of any law of the United States.

Acts specified in this paragraph not to be considered violations of any law of the United States.

Sec. 21. DISOBEDIENCE OF ANY LAWFUL WRIT, PROCESS, ETC., OF ANY UNITED STATES DISTRICT COURT, OR ANY DISTRICT OF COLUMBIA COURT.

SEC. 21. That any person who shall willfully disobey any lawful writ, process, order, rule, decree, or command of any district court of the United States or any court of the District of Columbia by doing any act or thing therein, or thereby forbidden to be done by him, if the act or thing so done by him be of such character as to constitute also a criminal offense under any statute of the United States, or under the laws of any State in which the act was committed, shall be proceeded against for his said contempt as hereinafter provided.

If act done also a criminal offense under laws of United States or of State in which committed, person to be proceeded against as hereinafter provided.

Sec. 22. RULE TO SHOW CAUSE OR ARREST. TRIAL. PENALTIES.

SEC. 22. That whenever it shall be made to appear to any district court or judge thereof, or to any judge therein sitting, by the return of a proper officer on lawful process, or upon the affidavit of some credible person, or by information filed by any district attorney, that there is reasonable ground to believe that any person has been guilty of such contempt, the court or judge thereof, or any judge therein sitting, may issue a rule requiring the said person so charged to show cause upon a day certain why he should not be punished therefor, which rule, together with a copy of the affidavit or information, shall be served upon the person charged, with sufficient promptness to enable him to prepare for and make return to the order at the time fixed therein. If upon or by such return, in the judgment of the court, the alleged contempt be not sufficiently purged, a trial shall be directed at a time and place fixed by the court: *Provided, however,*

Court or judge may issue rule to show cause why person charged should not be punished.

Trial if alleged contempt not sufficiently purged by return.

That if the accused, being a natural person, fail or refuse to make return to the rule to show cause, an attachment may issue against his person to compel an answer, and in case of his continued failure or refusal, or if for any reason it be impracticable to dispose of the matter on the return day, he may be required to give reasonable bail for his attendance at the trial and his submission to the final judgment of the court. Where the accused is a body corporate, an attachment for the sequestration of its property may be issued upon like refusal or failure to answer.

Failure of natural person to make return. Attachment against person.

If body corporate, attachment for sequestration of its property.

In all cases within the purview of this Act such trial may be by the court, or, upon demand of the accused, by a jury; in which latter event the court may impanel a jury from the jurors then in attendance, or the court or the judge thereof in chambers may cause a sufficient number of jurors to be selected and summoned, as provided by law, to attend at the time and place of trial, at which time a jury shall be selected and impaneled as upon a trial for misdeameanor; and such trial shall conform, as near as may be, to the practice in criminal cases prosecuted by indictment or upon information.

Trial may be by court or, upon demand of accused, by jury.

Trial to conform to practice in criminal cases prosecuted by indictment or upon information.

If the accused be found guilty, judgment shall be entered accordingly, prescribing the punishment, either by fine or imprisonment, or both, in the discretion of the court. Such fine shall be paid to the United States or to the complainant or other party injured by the act constituting the contempt, or may, where more than one is so damaged, be divided or apportioned among them as the court may direct, but in no case shall the fine to be paid to the United States exceed, in case the accused is a natural person, the sum of $1,000, nor shall such imprisonment exceed the term of six months: *Provided*, That in any case the court or a judge thereof may, for good cause shown, by affidavit or proof taken in open court or before such judge and filed with the papers in the case, dispense with the rule to show cause, and may issue an attachment for the arrest of the person charged with contempt; in which event such person, when arrested, shall be brought before such court or a judge thereof without unnecessary delay and shall be admitted to bail in a reasonable penalty for his appearance to answer to the charge or for trial for the contempt; and thereafter the proceedings shall be the same as provided herein in case the rule had issued in the first instance.

Penalty, fine or imprisonment, or both.

Fine paid to United States or complainant or other party injured. If accused natural person, fine to United States not to exceed $1,000.

Court or judge may dispense with rule and issue attachment for arrest.

Accused to be brought before judge promptly and admitted to bail. Proceedings thereafter same as if rule had issued.

Sec. 23. EVIDENCE. APPEALS.

Evidence may be preserved by bill of exceptions.

Judgment reviewable upon writ of error.

Granting of writ to stay execution, and

Accused to be admitted to bail.

SEC. 23. That the evidence taken upon the trial of any persons so accused may be preserved by bill of exceptions, and any judgment of conviction may be reviewed upon writ of error in all respects as now provided by law in criminal cases, and may be affirmed, reversed, or modified as justice may require. Upon the granting of such writ of error, execution of judgment shall be stayed, and the accused, if thereby sentenced to imprisonment, shall be admitted to bail in such reasonable sum as may be required by the court, or by any justice, or any judge of any district court of the United States or any court of the District of Columbia.

Sec. 24. CASES OF CONTEMPT NOT SPECIFICALLY EMBRACED IN SEC. 21 NOT AFFECTED.

Committed in or near presence of court, or

In disobedience of any lawful writ or process in suit or action by or in behalf of United States,

And other cases not in sec. 21.

Punished in conformity with prevailing usages at law and in equity.

SEC. 24. That nothing herein contained shall be construed to relate to contempts committed in the presence of the court, or so near thereto as to obstruct the administration of justice, nor to contempts committed in disobedience of any lawful writ, process, order, rule, decree, or command entered in any suit or action brought or prosecuted in the name of, or on behalf of, the United States, but the same, and all other cases of contempt not specifically embraced within section twenty-one of this Act, may be punished in conformity to the usages at law and in equity now prevailing.

Sec. 25. PROCEEDINGS FOR CONTEMPT. LIMITATIONS.

Must be instituted within one year.

Not a bar to criminal prosecution.

Pending proceedings not affected.

SEC. 25. That no proceeding for contempt shall be instituted against any person unless begun within one year from the date of the act complained of; nor shall any such proceeding be a bar to any criminal prosecution for the same act or acts; but nothing herein contained shall affect any proceedings in contempt pending at the time of the passage of this Act.

Sec. 26. INVALIDITY OF ANY CLAUSE, SENTENCE, ETC., NOT TO IMPAIR REMAINDER OF ACT.

But to be confined to clause, sentence, etc., directly involved.

SEC. 26. If any clause, sentence, paragraph, or part of this Act shall, for any reason, be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair, or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, or part thereof directly involved in the controversy in which such judgment shall have been rendered.

Approved, October 15, 1914.

WEBB ACT.[1]

[Approved Apr. 10, 1918.]

[PUBLIC—No. 126—65TH CONGRESS.]

[H. R. 2316.]

AN ACT To promote export trade, and for other purposes.

Sec. 1. DEFINITIONS.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the words "export trade" wherever used in this Act mean solely trade or commerce in goods, wares, or merchandise exported, or in the course of being exported from the United States or any Territory thereof to any foreign nation; but the words "export trade" shall not be deemed to include the production, manufacture, or selling for consumption or for resale, within the United States or any Territory thereof, of such goods, wares, or merchandise, or any act in the course of such production, manufacture, or selling for consumption or for resale. "Export trade."

That the words "trade within the United States" wherever used in this Act mean trade or commerce among the several States or in any Territory of the United States, or in the District of Columbia, or between any such Territory and another, or between any such Territory or Territories and any State or States or the District of Columbia, or between the District of Columbia and any State or States. "Trade within the United States."

That the word "Association" wherever used in this Act means any corporation or combination, by contract or otherwise, of two or more persons, partnerships, or corporations. "Association."

Sec. 2. ASSOCIATION FOR OR AGREEMENT OR ACT MADE OR DONE IN COURSE OF EXPORT TRADE—STATUS UNDER SHERMAN ANTITRUST LAW.

SEC. 2. That nothing contained in the Act entitled "An Act to protect trade and commerce against unlawful restraints and monopolies," approved July second, eighteen hundred and ninety,[2] shall be construed as declaring to be illegal an association entered into for the sole purpose of engaging in export trade and actually engaged solely in Association not illegal if organized for and engaged in export trade solely.

[1] With the exception of a reference thereto in the case of *United States* v. *United States Steel Corporation*, 251 U. S. 417 at 453, and in *Ex Parte Lamar*, 274 Fed. 160 at 171, this act appears as yet neither to have been involved in nor referred to in any reported case.

[2] For text of Sherman Act, see footnote on pp. 533–535.

Sec. 2. ASSOCIATION FOR OR AGREEMENT OR ACT MADE OR DONE IN COURSE OF EXPORT TRADE—STATUS UNDER SHERMAN ANTITRUST LAW—Continued.

Nor agreement nor act, if not in restraint of trade within the United States, or of the export trade of any domestic competitor, and

such export trade, or an agreement made or act done in the course of export trade by such association, provided such association, agreement, or act is not in restraint of trade within the United States, and is not in restraint of the export trade of any domestic competitor of such association: *And provided further*, That such association does not, either in the United States or elsewhere, enter into any agreement, understanding, or conspiracy, or do any act which artificially or intentionally enhances or depresses prices within the United States of commodities of the class exported by such association, or which substantially lessens competition within the United States or otherwise restrains trade therein.

If such association does not artificially or intentionally enhance or depress prices of, or substantially lessen competition, or restrain trade in commodities of class exported.

Sec. 3. ACQUISITION BY EXPORT TRADE CORPORATION OF STOCK OR CAPITAL OF OTHER CORPORATION.

SEC. 3. That nothing contained in section seven of the Act entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," approved October fifteenth, nineteen hundred and fourteen,[3] shall be construed to forbid the acquisition or ownership by any corporation of the whole or any part of the stock or other capital of any corporation organized solely for the purpose of engaging in export trade, and actually engaged solely in such export trade, unless the effect of such acquisition or ownership may be to restrain trade or substantially lessen competition within the United States.

Lawful under Clayton Act unless effect may be to restrain trade or substantially lessen competition within United States.

Sec. 4. FEDERAL TRADE COMMISSION ACT EXTENDED TO EXPORT TRADE COMPETITORS.

SEC. 4. That the prohibition against "unfair methods of competition" and the remedies provided for enforcing said prohibition contained in the Act entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," approved September twenty-sixth, nineteen hundred and fourteen,[4] shall be construed as extending to unfair methods of competition used in export trade against competitors engaged in ex-

[3] See *ante*, p. 532 et seq.
[4] See *ante*, p. 519 et seq.

port trade, even though the acts constituting such unfair methods are done without the territorial jurisdiction of the United States.

Even though acts involved done without territorial jurisdiction of United States.

Sec. 5. OBLIGATIONS OF EXPORT TRADE ASSOCIATIONS UNDER THIS ACT. PENALTIES FOR FAILURE TO COMPLY. DUTIES AND POWERS OF COMMISSION.

SEC. 5. That every association now engaged solely in export trade, within sixty days after the passage of this Act, and every association entered into hereafter which engages solely in export trade, within thirty days after its creation, shall file with the Federal Trade Commission a verified written statement setting forth the location of its offices or places of business and the names and addresses of all its officers and of all its stockholders or members, and if a corporation, a copy of its certificate or articles of incorporation and by-laws, and if unincorporated, a copy of its articles or contract of association, and on the first day of January of each year thereafter it shall make a like statement of the location of its offices or places of business and the names and addresses of all its officers and of all its stockholders or members and of all amendments to and changes in its articles or certificate of incorporation or in its articles or contract of association. It shall also furnish to the commission such information as the commission may require as to its organization, business, conduct, practices, management, and relation to other associations, corporations, partnerships, and individuals. Any association which shall fail so to do shall not have the benefit of the provisions of section two and section three of this Act, and it shall also forfeit to the United States the sum of $100 for each and every day of the continuance of such failure, which forfeiture shall be payable into the Treasury of the United States, and shall be recoverable in a civil suit in the name of the United States brought in the district where the association has its principal office, or in any district in which it shall do business. It shall be the duty of the various district attorneys, under the direction of the Attorney General of the United States, to prosecute for the recovery of the forfeiture. The costs and expenses of such prosecution shall be paid out of the appropriation for the expenses of the courts of the United States.

Export trade associations or corporations to file statement with Federal Trade Commission showing location of offices, names, and addresses of officers, etc., and also articles of incorporation or contract of association, etc.

To furnish also information as to organization, business, etc.

Penalties, loss of benefit of secs. 2 and 3, and fine.

District attorneys to prosecute for recovery of forfeiture.

Sec. 5. OBLIGATIONS OF EXPORT TRADE ASSOCIATIONS UNDER THIS ACT. PENALTIES FOR FAILURE TO COMPLY. DUTIES AND POWERS OF COMMISSION—Continued.

Federal Trade Commission to investigate restraint of trade, artificial or intentional enhancement or depression of prices or substantial lessening of competition by association.

Whenever the Federal Trade Commission shall have reason to believe that an association or any agreement made or act done by such association is in restraint of trade within the United States or in restraint of the export trade of any domestic competitor of such association, or that an association either in the United States or elsewhere has entered into any agreement, understanding, or conspiracy, or done any act which artificially or intentionally enhances or depresses prices within the United States of commodities of the class exported by such association, or which substantially lessens competition within the United States or otherwise restrains trade therein, it shall summon such association, its officers, and agents to appear before it, and thereafter conduct an investigation into the alleged violations of law. Upon investigation, if it shall conclude that the law has been violated, it may make to such association recommendations for the readjustment of its business, in order that it may thereafter maintain its organization and mangement and conduct its business in accordance with law. If such association fails to comply with the recommendations of the Federal Trade Commission, said commission shall refer its findings and recommendations to the Attorney General of the United States for such action thereon as he may deem proper.

May recommend readjustment in case of violation.

To refer findings and recommendations to Attorney General if association fails to comply with recommendation.

Commission given same powers as under Federal Trade Commission Act so far as applicable.

For the purpose of enforcing these provisions the Federal Trade Commission shall have all the powers, so far as applicable, given it in "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."[5]

Approved, April 10, 1918.

[5] See *ante*, p. 519 et seq.