

Syllabus.

FEDERAL TRADE COMMISSION

v.

CHAMBER OF COMMERCE OF MINNEAPOLIS ET AL.

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

Docket 694—December 28, 1923.

SYLLABUS.

Where a nonstock corporation engaged in conducting a grain exchange which constituted the largest wheat market in the United States and an important center for dealings in other grain, and was operated for the exclusive use and profit of its members; its officers and members, composed chiefly of individuals and concerns engaged in the terminal elevator, line elevator, and cash and future commission business, dealing in a very large proportion of all grain received in their city, and engaged in competition with a cooperative organization and its stockholders, composed of many thousands of farmer grain growers, and with the members of an exchange, established by said organization and others, and located in a near-by city; a company engaged in the publication of a grain trade periodical sent to farmer elevator companies, independent grain dealers, farmer grain growers, and others interested in the grain trade, and captioned the "Co-operative Manager and Farmer"; and stockholders thereof, and editors of said paper; in pursuance of a conspiracy to injure and destroy the business of said cooperative organization and exchange,

- (a) Published and circulated false and misleading statements concerning the financial standing, the business, and the business methods, of said cooperative organization and exchange, and their officers and members, by means of articles in said "Co-operative Manager and Farmer," in the "International Grain Grower and Equity Farm News", theretofore the "Official Organ" of a farmers cooperative association with which the aforesaid cooperative organization had been affiliated, and which legend the paper still bore while carrying such articles, by means of articles in other trade periodicals and daily newspapers, and by means of reprints, pamphlets, and otherwise; and
- (b) Instituted vexatious and unfounded suits against said cooperative organization, with the intent to destroy the business of members of said exchange, and to eliminate the competition of those engaged in the cooperative marketing of grain in the city of said corporation and its members and in the surrounding territory, and with the effect of causing it expenses running into many thousands of dollars and of injuring and hindering its business; and

Where the aforesaid corporation, and its officers and members,

- (c) Combined and conspired among themselves and with others to induce and compel its members to refuse to deal with said cooperative organization or its stockholders, or with the members of said exchange, with the intent to embarrass and destroy the business of said organization and that of its members as competitive grain dealers;

Complaint.

7 F. T. C.

- (d) Declined to permit the telegraph companies to furnish quotations on grain transactions in the exchange room of said corporation, to such cooperative organization or exchange;
- (e) Passed and enforced regulations and usages prohibiting the members from conducting their business in accordance with the cooperative method of marketing grain;
- (f) Denied admission to membership to representatives of farmer grain growers or shippers, on account of their aforesaid method of doing business;
- (g) Passed and enforced rules and regulations which resulted in compelling shippers of grain from country points or from the aforesaid near-by city, to pay commissions and other charges not exacted of shippers from other markets; and
- (h) Passed and enforced rules and regulations which prohibited the members from paying more for grain purchased on track at country points or from farmers or country shippers, than the market price in the city of said corporation and members, or market price of similar grain then prevailing in the exchange room of said corporation, less freight, commissions, and other charges;

With the result that said corporation, its officers and members secured and maintained a monopoly of the grain trade at said city and within one hundred miles thereof, as they conspired to do, and competition between said members and said cooperative organization and exchange, and the stockholders and members thereof, was unduly hindered and restrained; Held, That such practices, substantially as described, constituted unfair methods of competition.

Mr. M. Markham Flannery for the Commission.

Mr. David F. Simpson of Lancaster, Simpson, Junell & Dorsey of Minneapolis, Minn., for respondents.

COMPLAINT.

I.

The Federal Trade Commission, having reason to believe, from a preliminary investigation made by it, that the Chamber of Commerce of Minneapolis; the officers, board of directors, and members of the Chamber of Commerce of Minneapolis, Manager Publishing Company; John H. Adams; and John F. Flemming, all hereinafter referred to and named as respondents herein, have been, and are, using unfair methods of competition in interstate commerce in violation of 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," and it appearing that a proceeding by it in respect thereof would be to the interest of the public, issues this complaint, stating its charges in that respect on information and belief, as follows:

PARAGRAPH 1. That the respondent, the Chamber of Commerce of Minneapolis, hereinafter referred to as Chamber of Commerce, is a nonstock or membership corporation, organized and existing for the profit of its members under and by virtue of the laws of the State of Minnesota, and engaged in the business of conducting a grain exchange, or market, for the exclusive use of its members, wherein approximately 200,000,000 bushels of grain are bought, sold and exchanged annually by and between such members dealing on their own account and for the account of others; that said Chamber of Commerce is also engaged in the business of buying, selling and exchanging valuable business and commercial information consisting chiefly of price quotations of various kinds of grains and other market news which it causes to be transported by means of mail, telephone, telegraph and otherwise, to and from its said exchange located at its principal office and place of business at the City of Minneapolis, in the State of Minnesota; and to, from and among numerous other so-called regular grain exchanges and members thereof located throughout numerous States of the United States, and to and among its said members and to thousands of the general public who are not members of said exchange and who are located throughout the various States of the United States; that the Government of the respondent, Chamber of Commerce is vested in a board of thirteen directors, including its president and two vice presidents; that as a condition precedent to and in consideration for membership in said Chamber of Commerce, members are required to agree to be governed by the charter, rules, regulations, usages and customs of said Chamber of Commerce and by all amendments and additions to said rules and regulations and to bind by such agreement their heirs, executors, administrators, and assigns; that said rules provide penalties which may be imposed for violation thereof in the nature of fines, censure, suspension or expulsion; that said rules, resolutions, regulations, customs and usages of respondent Chamber of Commerce, are opposed to and prohibit members thereof from conducting their business, hereinafter described, on the principle of cooperative grain marketing providing for the payment of patronage dividends in proportion to sales and purchases on the basis of value and quantity of patronage, and prohibit admission to membership of any person or organization conducting its business on said principle of cooperative grain marketing; that the said members of the respondent Chamber of Commerce, are possessed of great financial power and that by the use thereof, and with community of stock ownership, interlocking interests, and directorates among themselves, together with the assistance of said Chamber of Commerce and other so-called

Complaint.

7 F. T. C.

regular grain exchanges with interlocking memberships and intimate community rules, purposes and action, now have, and for several years have had, a monopoly in the selling, buying, and distributing of grain, at Minneapolis, Minnesota, and within a radius of 100 miles thereof.

PAR. 2. That the members of the respondent, Chamber of Commerce, are individuals, firms, copartnerships and corporations, who are located in the State of Minnesota and in numerous other States of the United States; that many of said members act as grain commission merchants and many others operate mills and line and terminal elevators in several States of the United States, while others are engaged in banking and various other lines of business; that among the said members are both those who buy and those who sell grain on commission, those who are actually purchasers and sellers thereof and also those who are members of firms and corporations engaged in dealing in grain, both on commission and as actual purchasers and sellers thereof and who, as members of said Chamber of Commerce, are bound in the conduct of their business and the business of said firms and corporations with which they are connected to observance of and compliance with the rules of said Chamber of Commerce; that practically all of said members in carrying on their said business, now are, and during all the times herein mentioned have been, on their own account and for the account of others, engaged in storing or otherwise handling, caring for, purchasing, selling and shipping various kinds of grain throughout the States and territories of the United States in competition with others so engaged; that the business methods, practices, and relations of the said members while so engaged in said commerce are dictated, regulated, and controlled by the rules, resolutions, customs, and usages prescribed, maintained and enforced by the respondent, Chamber of Commerce; that by reason of the size of its membership and the large number of firms and corporations with which its members are connected and which, by virtue of such connection, transact their business in accordance with the rules of said Chamber of Commerce, said Chamber of Commerce has become and is a commercial center for the transaction of business in wheat, corn, oats, rye, and other grain wherein none but said members are permitted to transact such business; that a large portion of said business is in grain purchased in States other than Minnesota for shipment to and delivery at Minneapolis, and in grain shipped from points in States other than Minnesota, to Minneapolis for sale at Minneapolis, which said grain is an article of commerce among the States and that a large part of the business transacted upon said exchange maintained by

said Chamber of Commerce is in connection with the purchase, sale and handling of such interstate shipments of grain; that many members of respondent, Chamber of Commerce, and many firms and corporations with which said members are connected, purchase and deal in grain throughout the territory tributary to Minneapolis, which includes the States of Wisconsin, Minnesota, North Dakota, South Dakota, Montana, and Wyoming, for shipment to and delivery at Minneapolis; that such members, firms and corporations purchase grain which has been shipped to Minneapolis from points within said territory upon its arrival at Minneapolis, sell and ship such grain to points in States other than the State of Minnesota and purchase and deal in grain which is in transit to Minneapolis upon the lines of the various carriers entering said city.

PAR. 3. That the respondents, C. A. Magnuson, C. M. Case, William Dalrymple, and John J. McHugh, reside at Minneapolis, Minn., and are respectively president, first vice president, second vice president, and secretary of said Chamber of Commerce; that with the exception of John J. McHugh the said respondents together with the respondents A. C. Andrews, B. F. Benson, W. F. Fraser, H. P. Gallaher, J. B. Gilfillan, Jr., H. S. Helm, Asher Howard, John McLeod, J. H. MacMillan, and F. C. Van Dusen who also reside at Minneapolis, Minnesota, are directors and members of said Chamber of Commerce.

PAR. 4. That there are approximately five hundred and fifty of respondent members of said Chamber of Commerce, nearly all of whom are engaged in business as hereinbefore described; that many of such members reside at the city of Minneapolis in the State of Minnesota, while some reside at other cities in said State and others reside at cities located in various other states of the United States; that all of such members are subject in the conduct of their said business to the rules, regulations, customs and usages of said Chamber of Commerce when buying, shipping or otherwise dealing in various kinds of grain and seeds shipped to, or intended for shipment to, Minneapolis, Minnesota, or when dealing in various kinds of grain and seeds at Minneapolis, Minnesota; and that said respondent members constitute a class so numerous as to make it impractical to name them all as parties respondent herein, but those designated herein are fairly representative of the whole.

PAR. 5. That the respondent, Manager Publishing Company, is a corporation organized and existing under and by virtue of the laws of the State of Maine, having its principal office and place of business at the city of Minneapolis, in the State of Minnesota, and is the owner and publisher of a periodical or grain trade paper known

Complaint.

7 F. T. C.

as "The Co-Operative Manager and Farmer," published at the said city of Minneapolis, State of Minnesota, and circulated among farmers, grain growers, and persons engaged in the grain trade throughout the Northwestern States and elsewhere among the States of the United States; that the respondent, John H. Adams, who resides at the city of Minneapolis, in the State of Minnesota, was a stockholder and an officer of the said Manager Publishing Company and the Editor of the said "The Co-Operative Manager and Farmer" during the time hereinafter alleged; and the respondent, John F. Fleming, who also resides at the city of Minneapolis, in the State of Minnesota, was, during the time hereinafter alleged, and still is, a stockholder and managing officer of the said Manager Publishing Company and the Editor of the said "The Co-Operative Manager and Farmer."

PAR. 6. That the Equity Co-Operative Exchange hereinafter referred to as the Co-Operative Association, is a cooperative association or corporation, organized and existing under and by virtue of the laws of the State of North Dakota, with its principal office at the city of St. Paul, in the State of Minnesota, and other offices at Fargo, N. D., Superior, Wis., and Great Falls, Mont.; that the said Co-Operative Association has approximately seven thousand stockholders, none of whom are members of the said Chamber of Commerce, and practically all of whom reside in the States of North Dakota, South Dakota, Montana, and other Northwestern States, and are engaged in the business of raising various kinds of grain and in selling and shipping it from points in said Northwestern States to the said Co-Operative Association; that much of said grain is shipped to said Co-Operative Association at St. Paul, Minn., at which place and under which circumstances the said cooperative association acts as the selling agent for its said stockholders; that much of said grain so sold is immediately shipped to points in states other than Minnesota; that while so engaged said stockholders are in direct competition with many of the respondent members of said Chamber of Commerce; that the said cooperative association is also engaged in competition with many of the respondent members of said Chamber of Commerce in the business of operating terminal elevators and elevators located at country points in states other than Minnesota, and in shipping and selling for others and on its own account, various kinds of grain bought by it and consigned to it from various States of the United States by others than its said stockholders, and in disseminating market news; that said Co-Operative Association is also engaged in generally promoting the interests and principles of cooperation; that the rules and by-laws in con-

formity with which said cooperative association conducts its business, provide for the payment of patronage dividends, or dividends based on apportionment among its patrons in proportion to patronage given, of any earnings or profits in excess of the amount required to conduct its said business; that the rules of said respondent, Chamber of Commerce, and the rules of other so-called organized or regular grain exchanges prohibit membership to any association or other organization which returns, or proposes to return, any part of its earnings or prospective earnings to patrons on the basis of such patronage dividends; that being thus barred from representation on the market controlled by said Chamber of Commerce and from representation on markets controlled by other so-called organized or regular exchanges, said Co-Operative Association opened a market at the city of Minneapolis in the State of Minnesota about the year 1912; that in the month of August, 1914, said Co-Operative Association moved to St. Paul, Minn., where in conjunction with others, it established the St. Paul Grain Exchange and became a member thereof; that during all of the time herein mentioned respondents have by means and methods hereinafter described, harassed, embarrassed, and attempted to destroy the said Co-Operative Association and the hereinafter mentioned St. Paul Grain Exchange.

PAR. 7. That the St. Paul Grain Exchange, hereinafter referred to as Competing Exchange, is a nonstock or membership corporation, organized and existing under and by virtue of the laws of the State of Minnesota, and is engaged in conducting a grain exchange, or market, for the use of its members and all persons who desire to make use thereof, at its principal office and place of business in the city of St. Paul, State of Minnesota; that the rules and regulations of the said Competing Exchange are not opposed to, neither do they prohibit, the members thereof, when engaged in their business as hereinafter described, from conducting the same on the principle of cooperative grain marketing or the payment of patronage dividends; that the members of said competing exchange are individual, firms, copartnerships, and corporations, a number of which are engaged in the business of grain commission merchants, operating mills, line and terminal elevators, and various other lines of business; that many of said members, in carrying on their said business, now are, and during all the times hereinafter mentioned have been, engaged in purchasing, selling, shipping, storing, or otherwise handling, caring for, dealing in, and merchandizing various kinds of grain on their own account and for the account of others; that said members when

Complaint.

7 F. T. C.

engaged in their said business, are in competition with the members of said respondent, Chamber of Commerce.

PAR. 8. That a great portion of the grain sold, purchased, shipped, stored or otherwise handled, cared for, dealt in and merchandised as aforesaid by the members of said respondent, Chamber of Commerce, by the members of said Competing Exchange, and by said other competitors not members of said Chamber of Commerce or of said Competing Exchange, consists of grain which has been shipped from various places in the State of Minnesota and from various places in states other than the State of Minnesota with the expectation on the part of the owners, shippers, sellers, and purchasers thereof, that such grain will end its transit, after it has been so sold and purchased, in states other than the state from which such grain was shipped; that such grain does in effect end its transit, with only the interruptions necessary to find a purchaser and to consummate such sale and purchase, in states other than the states from which such grain is shipped; that this is the typical constantly recurring course of the grain sold, purchased, shipped, stored or otherwise handled, cared for, dealt in and merchandised as aforesaid, and that the current thus existing is a current of commerce among the States of the United States and the selling, purchasing, shipping, storing, or otherwise handling, caring for, dealing in and merchandising of such grain as aforesaid is a part and incident of such commerce.

PAR. 9. That the said respondents are, and for more than three years last past have been, engaged in a confederation and conspiracy among themselves, entered into, carried out, and conducted with the purpose and effect of annoying, embarrassing and destroying the business of said Competing Exchange, whose rules, customs and purposes are not opposed to the cooperative plan of marketing, and to the payment of patronage dividends to producers of grain; and with the purpose and effect of annoying, embarrassing and destroying the business of said Cooperative Association and other members of said Competing Exchange and other competitors who are not members of said Chamber of Commerce, or of said Competing Exchange, thereby securing and perpetuating to the said members of said respondent, Chamber of Commerce, a monopoly of the grain trade at Minneapolis, Minnesota, and within a radius of one hundred miles thereof.

PAR. 10. That in pursuance of such conspiracy and as part thereof, respondents instituted and for more than three years last past have maintained a campaign of defamation against said Competing Exchange, said Co-Operative Association and other members thereof by printing, publishing, circulating and distributing, or causing to be printed, published, circulated and distributed, to and among

patrons and customers and prospective patrons and customers of members of said Competing Exchange, and to and among the public generally, false, misleading, and unfair statements concerning such Competing Exchange, its officers and members and the officers and stockholders of said Co-Operative Association, and their financial responsibility and methods of transacting their said business; that such statements were so published from time to time in various newspapers, periodicals and pamphlets and circulated and distributed through the various states and territories of the United States, particularly in the regular and special issues of said "The Co-Operative Manager and Farmer" and in the form of reprints therefrom and in issues of the Northwestern Grain Grower, the same being a grain trade paper published at the city of Fargo in the State of North Dakota.

PAR. 11. That as part of said campaign of defamation many of the respondents, members of said Chamber of Commerce, by and through the instrumentality and agency of their traveling solicitors, agents and employees, have made to patrons and customers, and to prospective patrons and customers, of the members of the said Competing Exchange false, misleading, and unfair statements concerning the said Competing Exchange, its officers, and members, and the officers and stockholders of said members, and their financial responsibility and methods of transacting their said business.

PAR. 12. That respondents in further pursuance of said conspiracy and as a part thereof and for the purpose and with the effect of annoying, harassing and embarrassing the said Co-Operative Association, and other members of said Competing Exchange, in the conduct of their said business, submitting them to great expense, injuring their credit and standing generally, and rendering them less able to compete with the said respondents, members of the said Chamber of Commerce, instigated and caused to be prepared for trial, and to be instituted and carried on almost entirely at their expense during the years 1914 and 1915, that certain action in the United States District Court, Fourth Division, District of Minnesota, wherein J. Emerson Greenfield and Samuel Crumpton copartners doing business as Greenfield & Crumpton, were plaintiffs; also that certain proceeding in the District Court, Third Judicial District, North Dakota, wherein Fred Schmidt, J. Emerson Greenfield and Samuel Crumpton were plaintiffs; and that certain other proceeding in the said District Court, Third Judicial District, North Dakota, wherein the State of North Dakota ex rel. Henry J. Linde, its attorney general, was plaintiff.

PAR. 13. That one of the objects and purposes of the incorporation of respondent Chamber of Commerce is "to acquire and disseminate

Complaint.

7 F. T. C.

valuable commercial information"; that in partially carrying out such purpose it supplies telegraphic market quotations to its members and to many thousands of brokers, hotels, restaurants, and persons who are not its members; that pursuant to the said conspiracy and as part of a general plan to embarrass said Competing Exchange, its members and patrons, and to prevent its growth as a grain market, respondents Chamber of Commerce, its officers, directors, and members have continuously and persistently refused and still refuse to allow said Competing Exchange and its members to have such telegraphic quotations from the grain market which respondent, Chamber of Commerce and its members control and have influenced and induced other Chambers of Commerce and Boards of Trade and their members, to aid said respondents in preventing said Competing Exchange and its members from securing such quotations from any terminal grain market.

PAR. 14. That in pursuance of said conspiracy and as part of such general plan to embarrass said Competing Exchange and its members in the course of its and their said business and for the purpose and with the effect of destroying said Competing Exchange as a grain market and destroying the business of its members as competitive grain dealers, respondents, Chamber of Commerce, its said officers, directors and members, have boycotted and continuously and persistently refused to buy grain from the said Co-Operative Association, member of said Competing Exchange; that said boycott is sought to be maintained among other ways, by the adoption, enforcement and interpretation of certain resolutions, or special rules, directed against, and prohibiting certain classes of members from dealing with the said Co-Operative Association, member of said Competing Exchange; that said resolutions or special rules read in part as follows:

CIRCULAR No. 405.

OCTOBER 8, 1912.

Whereas, From time to time certain individuals, firms, and corporations, not members of the Chamber of Commerce, engage in business in the Cities of Minneapolis, St. Paul, or elsewhere, and solicit shipments of grain from farmers and others; and

Whereas, The above mentioned individuals, firms, and corporations in many cases employ members of the Chamber of Commerce to sell the grain so received for them, for which the regular commission is charged; and

Whereas, In many cases the shipments are secured from the country shipper entirely as result of false statements made by the individuals, firms, and corporations above mentioned, to the effect that by shipping to said individuals, firms, or corporations (not members of the Chamber of Commerce), the shipper would avoid the payment of any commission whatever, and would have his grain sold for as high a price as could be secured in the Exchange Room of the Chamber of Commerce; or that a less commission would be charged for selling the grain than that provided by the rules of the Chamber of Commerce; and

Whereas, In fact, the shipper in many cases pays two commissions, which fact is entirely concealed from him by various methods; and

Whereas, The action of the members of the Chamber of Commerce in selling the grain for the above mentioned individuals, firms or corporations on the floor of the Exchange Room assists them in carrying on such fraudulent business; and

Whereas, The Chamber of Commerce has no control over such fraudulent conduct or such representations, except to regulate its own members in the furtherance of such schemes, and

Whereas, This Association is willing for its members and all others to do legitimate trading in the grain business, and does not wish to curtail the trade of individuals outside of its Association where not done in fraud or on misrepresentations to the shippers; and

Whereas, It is the opinion of the Board of Directors of this Association that the members of this Association should be regulated so as not to allow them to handle grain of any kind which is procured under circumstances such as are above mentioned, or any other circumstances which mislead the shipper into believing that he is getting the advantages of this Association when in fact he is not getting such advantages; and

Whereas, It is quite necessary that this Association keep complete control of its members to require them, and all who represent them to transact business with the shippers in perfect good faith;

Now, therefore be it resolved, That members of the Chamber of Commerce are hereby forbidden to act in any manner as the agent or representative of any individuals, firms or corporations, in the cities of Minneapolis, St. Paul or elsewhere, not members of the Chamber of Commerce, who are soliciting shipments of grain from the farmers or country shippers in the manner above mentioned, or through any scheme, artifice or device, by which this Association is falsely represented, either in its dealing or in the right which the shippers get with respect thereto, or at all, unless the person so soliciting such shipment can show a written statement of the shipper to the effect that he realizes that the person receiving such shipment is not a member of the Chamber and can not get advantages out of the Chamber which he could not himself get.

THE CHAMBER OF COMMERCE

Secretary's Office.

CIRCULAR No. 634.

JANUARY 11, 1916.

To members:

Your very careful attention is called to the following resolution which was unanimously adopted by the Board of Directors at a meeting held this date, and made effective immediately.

Yours respectfully,

JOHN G. McHUGH, *Secretary.*

Whereas there are persons in the grain trade, not members of this Association, still using the practices prohibited to members of this Association by the resolution of October 8, 1912, (Circular No. 405), and

Whereas, Some of such persons use various schemes and pretenses to fraudulently conceal the fact that the farmers and other shippers pay more than reasonable amounts to market their grain through them, and

Complaint.

7 F. T. C.

Whereas, Some of such parties have induced some members of this Association to make purchases of that grain outside of the Exchange at prices so low that the member of the Chamber of Commerce can sell it in the Exchange room of the Chamber of Commerce at unreasonable gains to himself, thus causing the shipper to pay, in form but one commission, but in effect, the equivalent of from two to ten commissions, and

Whereas, the farmers and country shippers are, in the average cases unable to either know or ascertain the real truth with respect thereto, and

Whereas, It is the policy of this Association to prevent its members from dealing for bucket-shops or others carrying on schemes whereby the public is defrauded in grain matters,

Now therefore be it resolved, That no member of this Association, either as owner or commission merchant or at all, shall hereafter sell any grain in the Exchange Room of the Chamber of Commerce of Minneapolis, which such member knows, or has reason to believe was originally consigned to any one either as commission merchant, or otherwise, from either farmers or country shippers as the result of any of the fraudulent or wrongful practices or methods described in said Resolution of October 8, 1912, or herein.

Be it further Resolved, That it is the opinion of the Board of Directors of this Association that the making of either profits or commissions which directly or indirectly result from deception practiced upon shippers in the marketing of their grain can not be too strongly condemned at all times, by all people, and in all places.

PAR. 15. That said respondents, Chamber of Commerce, its said officers, directors and members, have for more than three years last past promulgated and effectively enforced by means of severe penalties, and otherwise, rules, resolutions, regulations, customs, and usages other than the rules referred to in paragraph 14 hereof, which aid said respondents in maintaining said monopoly and in carrying out said conspiracy and in furthering their general plan of destroying said Competing Exchange as a grain market and in destroying the business of the members of the said Competing Exchange; that among others thereof is Rule VIII of the general rules of the respondent Chamber of Commerce, otherwise known as the "Uniform Commission Rule"; that said rule suppresses and destroys competition between said respondents, members of said Chamber of Commerce, in the conduct of their aforesaid business, discriminates against nonmembers in favor of members, depresses prices paid for grain bought by said respondents, members, from producers and other shippers, compels said respondent members when purchasing grain "on track" at country points for shipment to Minneapolis to impose an arbitrary charge on grain in the guise of a commission when no commission or other service is rendered the seller thereof, for the purpose and with the effect of eliminating competition between such purchasers and respondent members acting as commission merchants, discriminates against producers and country shippers by requiring the regularly prescribed commission rates to be charged on

grain shipped to Minneapolis from country points and from certain terminal markets while exempting from the payment of such commission rates grain so shipped from other favored terminal markets, establishes unreasonably high rates not justified by the service rendered, with the purpose and effect of arbitrarily keeping more members in the commission business than competition would justify if competition were allowed to exist, and by arbitrary interpretation of such rule prohibits and prevents said members from transacting their said business on the principle of cooperative marketing or the payment of patronage dividends hereinbefore described and renders ineligible to membership in respondent Chamber of Commerce all individuals, firms, copartnerships and corporations conducting their business on such cooperative or patronage dividend principle; that said rule is in part as follows:

SEC. 10. In addition to the above, there shall be charged such legitimate expenses as are necessarily incurred in caring for the property and guarding the interests of both consignor and consignee, including interest on advances at the legal rate then in force in Minnesota. Nothing in this rule shall be so construed as to prevent any special agreement between consignor and consignee by which a higher rate of commission may be charged in special cases.

Every member of this Association, and every person, firm and corporation admitted to trade or to do business therein, hereafter buying directly or indirectly, for his, their or its own account or otherwise, any grain or seeds dealt in upon this exchange, in car load lots on track at country points, for shipment to Minneapolis, or buying any of the same to be delivered at Minneapolis, shall make their bids, offers and purchases therefor on the basis of the Minneapolis market values less commission or a profit at least equal to the established rates of commission on said grain or seeds; and in addition such bids, offers or purchases shall be made subject to the usual and the same charges of this Association, to include, and they shall include, switching, inspection, weighing, freight—if a “delivered” bid and freight on dockage if a “track” bid—interest on advances, and all other charges according to the rules of this Association, the same as if said grain or seeds were handled on commission through said Association, and they shall render an account to the seller for all such purchases, including said charges separately stated in detail; and any person, firm or corporation who shall violate any of the provisions of this section shall be liable and subject to the same penalties as are provided in Section II of Rule VIII and Section 7 of Rule IV of the General Rules of this Association.

SEC. 11. Every member of the Association, and every person, firm and corporation admitted to trade, or to do business therein who shall charge less than the regular rates of commission established by the rules of the Association; or shall assume, or rebate, any portion of the same; or shall, with intent to evade in any way directly or indirectly, the regular rates of commission established by the rules of the Association, purchase, or offer to purchase, any grain or seed consigned to him, them, or it, for sale; or shall, with intent to cut, or to evade in any way directly or indirectly the regular rates of commission established by the rules of the Association, purchase, or offer to purchase any grain, or seed on track, at any railway station outside of, and for delivery at the city of Minneapolis; or shall make or report any false or fictitious

Complaint.

7 F. T. C.

sales or purchases; or shall resort to any method of accounting directly or indirectly in violation of, or contrary in purpose and effect to a strict adherence to the regular established rates of commission of the Association; or shall, with intent to evade the regular rates of commission established by the rules of the Association, directly or indirectly pay, or give, or offer so to do, any money, or other consideration of whatsoever nature to any person, to procure or influence shipments or consignments of grain or seed in any form; or shall, with intent to cut or to evade in any way directly or indirectly the regular rates of commission established by the rules of the Association, make use of any shift or device whatsoever, shall be deemed guilty of violating the rules of the Association establishing rates of commission, and, on conviction thereof, shall be fined by the Association not less than \$250.00, nor more than \$1,000 as the Board of Directors may determine, such sum to be paid into the general fund of the Association.

Any charge of violation of the foregoing provision, or any part thereof, shall be by complaint in writing, filed with the Secretary of the Association. The party charged shall be summoned by written notice from the Secretary, and shall appear before the Board of Directors of the Association, who shall investigate and try the charge.

The enforcement of the provisions of this section of this rule shall not in any manner prevent the enforcement of additional penalty for the violation of any rules as provided for in Section 7, of Rule IV, of these rules and by-laws.

The board of directors shall offer a reward not exceeding \$1,000 to any person who shall furnish evidence that does convict any member of the Chamber of Commerce, or any firm, corporation, or party admitted to trade or to do business in the Chamber of Commerce, of a violation of the established rates of commission; the object of this rule being to prevent the demoralization resulting from the giving, either directly or indirectly, of compensation to station agents, elevator agents, bankers, brokers, merchants, or any other parties, at any locality whatsoever, to influence shipments of consignments of grain. But this rule shall not prevent the regular employment by members of this Association of travelling men, but shall prohibit a division of commissions with such travelling men who are not resident members of this Association.

PAR. 16. That respondents, Chamber of Commerce, its officers, directors, and members are materially aided in carrying out said conspiracy and general plan to destroy said Competing Exchange as a grain market and said members of said Competing Exchange as competing grain dealers by means of contracts and arrangements binding country shippers to ship all or the greater part of their grain to the said Chamber of Commerce members financing such shippers; that such contracts and arrangements are made possible and effective by reason of said respondents' control of great financial power and by interlocking interests within and without said Chamber of Commerce and used for the purpose and with the effect of unduly controlling country shippers in the manner and method of both purchasing and disposing of grain. '

PAR. 17. That by reason of the foregoing facts, respondents have been, and are, using unfair methods of competition in commerce

within the intent and meaning of Section 5 of an Act of Congress entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," approved September 26, 1914.

II.

The Federal Trade Commission, having reason to believe from a preliminary investigation made by it, that the Chamber of Commerce of Minneapolis; the Officers, Board of Directors, and Members of The Chamber of Commerce of Minneapolis; all hereinafter referred to and named as respondents herein, have been, and are, using unfair methods of competition in interstate commerce in violation of 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," and it appearing that a proceeding by it in respect thereof would be to the interests of the public, issues this complaint, stating its charges in that respect on information and belief, as follows:

PARAGRAPH 1. That the several recitals in paragraphs 1, 2, 3, 4, 6, 7, and 8 of Count I, hereof, are herein charged as fully and completely as though the several paragraphs were repeated verbatim.

PAR. 2. That respondents instituted and for more than three years last past have maintained a campaign of defamation against competitors by printing, publishing, circulating, and distributing, or causing to be printed, published, circulated, and distributed, to and among patrons and customers, and prospective patrons and customers, of said competitors and to, and among, the public generally, false, misleading and unfair statements concerning such competitors and their financial responsibility and methods of transacting their said business; that such statements were so published from time to time in various newspapers, periodicals and pamphlets and circulated and distributed through the various States and Territories of the United States, particularly in the regular and special issues of said "The Co-Operative Manager and Farmer" and in the form of reprints therefrom and in issues of the Northwestern Grain Grower, the same being a grain trade paper published at the city of Fargo, in the State of North Dakota.

PAR. 3. That said respondents by and through the instrumentality and agency of their traveling solicitors, agents and employees, are now making and for more than three years last past have made to patrons and customers, and to prospective patrons and customers, of competitors, false, misleading and unfair statements concerning said competitors, and their financial responsibility and methods of transacting their said business.

Complaint.

7 F. T. C.

PAR. 4. That respondents, for the purpose and with the effect of annoying, harrassing and embarrassing competitors in the conduct of their said business, submitting them to great expense, injuring their credit and standing generally, and rendering them unable to compete with the said respondents, members of the said Chamber of Commerce, instigated and caused to be prepared for trial, and to be instituted and carried on almost entirely at their expense certain legal actions or proceedings recited and described in paragraph 12 of Count I of this complaint and the said commission relies on said recital and description to the same extent as though the allegations thereof were set out at length herein, and said recitals are incorporated herein by reference and adoption as part of the allegations of this count.

PAR. 5. That one of the objects and purposes of the incorporation of respondent Chamber of Commerce is "to acquire and disseminate valuable commercial information"; that in partially carrying out such purpose it supplies telegraphic market quotations to its members and to many thousands of brokers, hotels, restaurants and persons who are not its members; that for the purpose and with the effect of annoying and embarrassing said Competing Exchange, its members and patrons, and to prevent its growth as a grain market, respondent Chamber of Commerce, its officers, directors, and members have continuously and persistently refused and still refuse to allow said Competing Exchange and its members to have such telegraphic quotations from the grain market which respondent, Chamber of Commerce and its members control and have influenced and induced other Chambers of Commerce and Boards of Trade and their members, to aid said respondents in preventing said Competing Exchange and its members from securing such quotations from any terminal grain market.

PAR. 6. That said respondents for the purpose and with the effect of annoying and embarrassing said Competing Exchange and its members in the course of its and their said business and for the purpose and with the effect of destroying said Competing Exchange as a grain market and destroying the business of its members as competitive grain dealers, respondents have adopted, and are now enforcing certain resolutions, or special rules, directed against, and prohibiting certain classes of members from dealing with, the said Cooperative Association, member of said Competing Exchange; that said resolutions or special rules are set out in part in paragraph 14 of count or division I of this complaint and said Commission relies thereon to the same extent as though said parts of such resolutions or special rules were set out at length herein, and said

parts of such resolutions or special rules, are incorporated herein by reference and adopted as part of the allegations of this count or division.

PAR. 7. That said respondents have for more than three years last past promulgated and effectively enforced by means of severe penalties, and otherwise, rules, resolutions, regulations, customs, and usages, other than the rules referred to in paragraph 6 hereof, which suppress and destroy competition; that among others thereof is Rule VIII of the General Rules of respondent Chamber of Commerce, otherwise known as the "Uniform Commission Rule"; that said rule suppresses and destroys competition between said respondents, members of said Chamber of Commerce, in the conduct of their aforesaid business, discriminates against nonmembers in favor of members, depresses prices paid for grain bought by said respondents' members, from producers and other shippers, compels said respondents' members, when purchasing grain "on track" at country points for shipment to Minnéapolis to impose an arbitrary charge on grain in the guise of a commission when no commission or other service is rendered the seller thereof, for the purpose and with the effect of eliminating competition between such purchasers and respondent members acting as commission merchants, discriminates against producers and country shippers by requiring the regularly prescribed commission rates to be charged on grain shipped to Minnéapolis from country points and from certain terminal markets while exempting from the payment of such commission rates grain so shipped from other favored terminal markets, establishes unreasonably high rates not justified by the service rendered, with the purpose and effect of arbitrarily keeping more members in the commission business than competition would justify if competition were allowed to exist, and by arbitrary interpretation of such rule prohibits and prevents said members from transacting their business on the principle of cooperative marketing or the payment of patronage dividends hereinbefore described and renders ineligible to membership in respondent Chamber of Commerce all individuals, firms, co-partnerships, and corporations conducting their business on such cooperative or patronage dividend principle; that said rule is set out in part in paragraph 15 of count or division I of this complaint and said Commission relies thereon to the same extent as though said part of such rule was set out at length herein, and said part of such rule is incorporated herein by reference and adoption as part of the allegations of this count or division.

PAR. 8. That said respondents, members of said Chamber of Commerce, in the course of their said business are now and for more than

Findings.

7 F. T. C.

three years last past have been, by means of contracts and arrangements, binding country shippers to ship all or the greater part of their grain to the said Chamber of Commerce members financing such shippers; that said contracts and arrangements are made possible and effective by reason of said respondents' control of great financial power and by interlocking interests within and without said Chamber of Commerce and used for the purpose and with the effect of unduly controlling country shippers in the manner and method of both purchasing and disposing of grain.

PAR. 9. That by reason of the foregoing facts, respondents have been, and are, using unfair methods of competition in commerce within the intent and meaning of Section 5 of an Act of Congress entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," approved September 26, 1914.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER.

Pursuant to the provisions of an Act of Congress approved September 26, 1914, the Federal Trade Commission issued and served a complaint upon the respondents, the Chamber of Commerce of Minneapolis, the officers, board of directors, and certain members as fairly representative of the whole number of members as a class so numerous as to make it impractical to name them all as parties respondent herein; Manager Publishing Company, John H. Adams, and John F. Flemming, charging them with unfair methods of competition in commerce in violation of the provisions of said act.

Respondents, The Chamber of Commerce of Minneapolis; C. A. Magnuson, C. M. Case, William Dalrymple, A. C. Andrews, B. F. Benson, W. T. Frasier, H. P. Gallaher, J. B. Gilfillan, jr., H. S. Helm, Asher Howard, John McLeod, N. H. MacMillan, and F. C. Van Dusen, named in the complaint as representative of the whole number of members; and as officers and directors of said Chamber of Commerce; John G. McHugh; Manager Publishing Company; John H. Adams and John F. Flemming, each of them having entered their appearance by their attorneys and having each filed their answers to said complaint, and having entered into a stipulation in writing as to the facts, thereupon this proceeding came on for final hearing, and the Commission being fully advised in the premises and upon consideration thereof, makes this its report, stating its findings as to the facts and conclusion.

FINDINGS AS TO THE FACTS.

PARAGRAPH 1. That in 1881, the respondent, the Chamber of Commerce of Minneapolis, was incorporated under the laws of the State of Minnesota; that continuously ever since said date it was, and is now, a nonstock or membership corporation engaged in the business of conducting a grain exchange for the exclusive use and profit of its members. The said grain exchange was at all times mentioned in the complaint the largest wheat market in the United States. Within it about two hundred millions of bushels of grain grown in the States of the Northwest are annually bought, sold and dealt in in said exchange room, by said members. It has bought, sold and exchanged with others, commercial information consisting, among other things, of price quotations. These it caused to be transmitted from its place of business in Minneapolis to other grain exchanges and members thereof located in various States of the Union, and the said chamber received similar price quotations from other grain exchanges located in other States. During all of the times mentioned in the complaint in this case it neither bought nor sold grain. That at all times herein mentioned it has had its office and principal place of business in the city of Minneapolis, State of Minnesota.

PAR. 2. That the business, government, policies and control of the said Chamber, during all the times mentioned herein was, and is now, vested in a board of directors, including a president, and two vice presidents; that as a condition precedent to admission to membership in said Chamber and in consideration for membership therein, all applicants have been required by said Chamber to agree, and those admitted did agree, to be governed by the charter, rules, regulations, usages and customs of said Chamber and by all the amendments thereto, and to bind their heirs, executors, administrators and assigns to be so governed.

PAR. 3. That the business, practices and methods of the said members, while engaged in buying, selling, shipping, storing and otherwise handling grain, have been and are regulated and controlled by said charter, rules, regulations, usages and customs. That the size, power and influence of the individual members themselves, and their various business connections were such that the said Chamber became and was during the times named herein an important center for the transaction of business in wheat, corn, oats, rye and other grain.

PAR. 4. That until about 1915 the number of members in said Chamber was limited, and the average price in Minneapolis for membership ranged from \$3,500 to \$4,000; that since said date the num-

Findings.

7 F. T. C.

ber of members has been unlimited, and the membership fee has been raised to \$15,000, so that at the time of the filing and issuance of the complaint herein, the members of the said Chamber were so numerous that all of them could not, at that time without manifest inconvenience and oppressive delay, be made parties therein; that the respondents, C. A. Magnuson, C. M. Case, William Dalrymple, and John G. McHugh, were for the fiscal year of 1917-1918, respectively, president, first vice president, second vice president, and secretary of said Chamber of Commerce; and with the exception of said John G. McHugh, the said respondents, together with the respondents, A. C. Andrews, B. F. Benson, W. T. Frasier, H. P. Gallaher, J. B. Gilfillan, Jr., H. S. Helm, Asher Howard, John McLeod, J. H. MacMillan and F. C. Van Dusen, were directors and members of said Chamber of Commerce and were all residents of the city of Minneapolis and were each and all of them, fairly representative of the entire membership of said Chamber; that many of the above-named parties are members of said Chamber, and are now, and were at the time of and for some time preceding the issuance of the complaint herein, engaged personally or as an executive officer of a corporation which did trade as a member of the Chamber of Commerce as aforesaid in buying, selling and handling grain in interstate commerce in the city of Minneapolis, State of Minnesota, and throughout adjoining States.

PAR. 5. That the membership of the said Chamber is composed chiefly of individuals, firms and corporations engaged in the terminal elevator, line elevator, and cash and future commission business. Besides these groups the said Chamber numbered among its members several representative millers, and other grain converters, and also those not engaged in the grain trade.

The terminal elevator members, with some exceptions, are those who purchased grain in carload lots either in the Minneapolis market, or outside that market, to arrive or to be shipped to that destination, or on track f. o. b. at the shipping point, from country elevators and other shippers in the States of Minnesota, North Dakota, South Dakota and Montana. Part of the grain thus purchased was sold by them locally at Minneapolis, and part of it sold and shipped to mills, grain dealers and others located in various States and Territories outside of Minnesota.

The line elevator members of said Chamber, were those engaged in the business of buying grain upon their own account through lines or chains of grain elevators located at various country shipping points in Minnesota and also, with exceptions, in North and South Dakota, Montana and other States. The grain thus purchased was shipped by them from these elevators, located in numer-

ous instances outside the State of Minnesota, to commission houses located in Minneapolis, where it was sold by them on a commission basis or was sold on track or to arrive, and then shipped either to members of the said Chamber, or to grain dealers located in Minnesota or outside of said State.

The cash commission members of said Chamber were engaged in the business of receiving grain on consignment from country shippers located primarily in North and South Dakota, Montana and Minnesota, and in handling of to arrive sales for such shippers. In connection with such operations many, if not all of the cash commission members solicited the business of such country shippers through travelling solicitors. Through these travelling solicitors the said cash commission members sought the grain business of such shippers, financed by loans of money, the grain buying operations of such of them as became their customers, bought and sold futures for such customers, supplied price quotations and other market news and supervised the operations and account of such shippers.

The future commission house members executed buying and selling orders for grain for future delivery at Minneapolis received by them from country and terminal elevators, mills, exporters, mills and converters, and others. The execution of these orders by such members of the said chamber was made in its exchange room and affected the cash and future prices of grain within the State of Minnesota and in other States where grain is bought and sold either for spot or future delivery. That in all of these kinds of grain business transactions the said members were in competition with others not members of said chamber and especially were in competition with the equity Cooperative Exchange and its stockholders, save in the matter of dealing in futures, and with the members of the St. Paul Grain Exchange.

Many of the respondents herein engaged in two or more of the various above-described activities.

That during the times mentioned in the complaint about 90 per cent or more of all grain received at Minneapolis was shipped to and dealt in by members of the respondent Chamber. Over 60 per cent was, during that time, shipped into Minneapolis from states other than Minnesota. About 44 per cent was ground at Minneapolis into flour and other grain products by members of the respondent Chamber, and the greater part of such flour or products was shipped to various states of the United States and into foreign countries. Much grain while in transit from other states than Minnesota to points in states other than its place of origin was bought and sold in the exchange room of the respondent Chamber. Some of this grain was bought by respondent members "on track" at country points

Findings.

7 F. T. C.

either within or without Minnesota and shipped to Minneapolis, and contracts were made in the exchange room for the purchase and sale of grain to be shipped from other states to Minnesota at a future date or within a specified time. About 65 per cent of all grain received at Minneapolis was shipped on the consignment basis during the years 1913-1917. More than one-half of the grain dealt in on the floor of the respondent chamber was permitted a "stop over" at Minneapolis for the purpose of finding a purchaser or to be cleaned, stored or mixed with other grain, or converted into flour or other grain products, and then either in its original, improved or converted condition, moved on its journey to its final destination.

PAR. 6. That on or about February 17, 1911, the Equity Cooperative Exchange was incorporated under the laws of the State of North Dakota to buy, sell, ship, store and otherwise handle grain, seed, etc., in state and interstate commerce, and on or about August 1, 1912, opened an office and place of business in Minneapolis, Minn.; that thereafter and in August, 1914, it moved to St. Paul, Minn., where in conjunction with others it established the St. Paul Grain Exchange, and then became and ever since has been a member thereof. Since August, 1914, it has had its principal office and place of business at St. Paul, Minn., and other offices and places of business at Fargo, N. D., Superior, Wis., and Great Falls, Mont. As a cooperative association its regulations required it, after all of its expenses and stock dividends were paid, to distribute the balance of the moneys derived from sales and commissions, if any, among its stockholders in proportion to the patronage it received from them.

The stockholders of the said Equity Cooperative Exchange numbered about 7,000 in May, 1917, and this number had increased to about 17,500 in September, 1922. None of them were members of the said Chamber. Practically all of these stockholders resided in North Dakota, South Dakota, Wisconsin, Minnesota, and Montana. They were engaged in raising wheat, corn, oats, rye and other grain in said States and in shipping the same to the said places of business of the Equity Cooperative Exchange to be sold by it as agent for its said stockholders, or to be bought and sold by it on its own account. A great deal of said grain is sold and shipped by it for said stockholders or itself to purchasers located in places outside of Minnesota.

The Equity Cooperative Exchange itself owned and operated about seventy-five line and terminal local grain elevators located at various points in Minnesota, and North and South Dakota. At these elevators it bought and received grain, shipped it to St. Paul, Minn., and Superior, Wis., and there sold the grain on its own account. For the convenience of itself and stockholders it owned and operated at St. Paul a terminal elevator with a capacity of 750,000

bushels, in which it stored grain for itself and stockholders. About 90 per cent of the stock of the said Exchange was owned by individuals who were actively engaged in the production of grain. That, based upon its financial statement, the application of the Equity Cooperative Exchange to the Duluth Board of Trade for membership therein was favorably passed upon by that body, and the said exchange was, on or about October 15, 1922, made a member of said board of trade.

In the above mentioned transactions of buying and selling grain as agent for its stockholders and others and on its own account, and in its operation of its line and its terminal elevators, the said Equity Cooperative Exchange and its stockholders were engaged in intrastate and interstate commerce in competition with many of the members of the said Chamber of Commerce as set forth in paragraph 5 hereof.

PAR. 7. The St. Paul Grain Exchange was a nonstock membership corporation organized August 1, 1914, under the laws of Minnesota to conduct a grain exchange and trading place for the use of its members and other growers of grain. It neither buys nor sells grain. Its office and principal place of business was at St. Paul, Minn. Its membership consisted of individuals, copartnerships and corporations, many of whom were in competition with members of the respondent Chamber of Commerce engaged in buying, selling, shipping and warehousing of grain in interstate commerce. The rules and regulations, by which it and its members were governed in said commerce, did not prohibit, as did the rules of the said Chamber, cooperative marketing, but did permit its members, after all expenses were paid, to distribute the balance, if any, of moneys received from sales and commissions, among their members in proportion to the patronage it received from them.

PAR. 8. The respondent Manager Publishing Company was a Maine corporation organized in 1910 and its office and principal place of business in Minneapolis. Since then it has owned and published at Minneapolis a grain trade periodical entitled the "Cooperative Manager and Farmer" which it sent to farmer elevator companies, independent grain dealers, farmer grain growers and other persons interested in the grain trade of the United States and especially in the Northwest.

The respondent John H. Adams and John F. Flemming were at all of said times residents of Minneapolis and stockholders of the said Manager Publishing Company, and the said Adams was editor of the "Cooperative Manager and Farmer" until October 1916, when the said Flemming succeeded him as editor. The policy of the

Findings.

7 F. T. C.

"Cooperative Manager and Farmer" during all of said time was dominated and controlled by the Secretary of the respondent Chamber who furnished the data and material for a great number of articles showing the policy hereinafter described.

PAR. 9. For the guidance and control of its members the Chamber of Commerce passed certain rules and regulations called General Rules. Of these, Rule VIII, usually known as the "Uniform Commission Rule," was first passed in 1882. This rule with its amendments required at the times mentioned in complaint all members to charge for their services, for which commissions are charged not less than certain minimum prescribed rates stated therein, when dealing in specified kinds of grain. The said rule required in Section 10 that:

Every member of this Association, and every person, firm and corporation admitted to trade or to do business therein, hereafter buying directly or indirectly, for his, their or its own account or otherwise, any grain or seeds dealt in upon this exchange, in carload lots on track at country points, for shipment to Minneapolis, or buying any of the same to be delivered at Minneapolis, shall make their bids, offers and purchases therefor on the basis of the Minneapolis market values less commission or a profit at least equal to the established rates of commission on said grain or seeds; and in addition such bids, offers or purchases shall be made subject to the usual and the same charges of this Association, to include, and they shall include, switching, inspection, weighing, freight—if a "delivered" bid and freight on dockage if a "track" bid—interest on advances and all other charges according to the rules of this Association, the same as if said grain or seeds were handled on commission through said Association; and they shall render an account to the seller for all such purchases, including said charges separately stated in detail; and any person, firm or corporation who shall violate any of the provisions of this section shall be liable and subject to the same penalties as are provided in Section 11 of Rule VIII and Section 7 of Rule IV of the General Rules of this Association.

PAR. 10. Rule VIII required all members when buying grain "on track" at country or other points, for shipment to Minneapolis, to pay no more than the price of the same grain made by the respondent members in the exchange room of the respondent Chamber (called "Minneapolis base price") less the regularly prescribed commission rate, or a profit equal to said rate exclusive of freight and other charges. This rule in this respect did not apply to the purchase of grain from Omaha, Kansas City, and other terminal markets, except at St. Paul, Minnesota.

It did not, however, prevent the members from paying less than the said base price for such grain but prohibited them from paying more, and had a tendency to depress grain prices. The rule prohibited a member when buying on his own account car load lots of grain "on track" at country points from paying more than the

Minneapolis base price, less freight and other charges, including the amount of the commission rate prescribed by the said rule. That is, the rule required the said member, in said purchases, to make a charge against the grain in the guise of a commission when no commission service was rendered, and prohibited the members, under a heavy penalty, from paying more for grain "on track" in car load lots at country points for shipment to Minneapolis than the shipper would receive for his grain were it being sold at that time in the exchange room of the said Chamber in a commission transaction. The effect of this was to place "on track" purchases of grain precisely upon the same basis as commission transactions in Minneapolis, and gave to the shipper of grain in car load lots at country points to Minneapolis the same amount for his grain whether he consigned it to Minneapolis to be sold on commission by a member of the Chamber, or whether he sold it outright "on track" at country points or "to arrive" to a member of the respondent Chamber.

To enforce its provisions on this point the rule offered a reward of \$1,000 to any informant that would furnish evidence that would convict a member or a concern represented by membership of a violation thereof. The penalty provision of the said rule has been enforced by the said chamber in a number of instances and the penalty imposed.

PAR. 11. Rule VIII in section 11 forbade any person doing business in the chamber to charge less than, or to evade directly or indirectly, the regular commission rates established by the rules of the chamber, or to assume or rebate any part thereof and punished a violation thereof by a fine of not less than \$250 or more than \$1,000. The penalty provision of this portion of the rule has also been enforced and the penalty imposed.

Under this rule, and additional special rules passed for the purpose, the chamber refused membership in it to cooperative associations such as the Equity Cooperative Exchange, which returned to the shipper earnings or surplus in proportion to the amount of patronage received, and prohibited the respondent members from dealing with the said Equity Cooperative Exchange.

This action on the part of the chamber hindered and suppressed competition from the cooperative terminal marketing of grain in the Northwest, and protected members of the respondent chamber from the competition of cooperative associations.

PAR. 12. One of the main functions of the said chamber was to maintain an exchange room and trading facilities for the exclusive use of its members. In this room the members made sales and purchases of cash grain and grain futures either upon their own account or for others as stated in paragraph 5 of these findings.

Findings.

7 F. T. C.

PAR. 13. To the floor of this exchange room the chamber invited and admitted public telegraph companies to gather the continuous quotations of prices on the sales of grain offered and accepted as aforesaid in the exchange room during its business hours. These quotations, as soon as made, were received by the telegraph companies in the said room and were immediately sent by telegraph lines and instruments to all of the principal towns and cities, and by means of ticker circuits to the places of business of all who desired to receive and pay for the same. The quotations consisted of two kinds, to wit, "continuous" quotations which meant a telegraphic service supplying price quotations oftener than ten minute intervals, and "periodical" or "interval" service, which consisted of supplying price quotations at intervals of more than ten minutes.

PAR. 14. Grain exchanges have, for many years past, by trade usage and custom, been accustomed to permit telegraph companies to furnish, and, in accord with such usage and custom, the said telegraph companies did furnish continuous and interval service to other grain exchanges. By the same usage and custom each exchange also permitted its members to furnish its own quotations to their customers upon terms and regulations agreeable to the exchange, irrespective of the importance or the volume of the business done, provided the exchange and its members and their customers did not publish or make a wrongful use of such quotations. And the respondent chamber has at all times permitted telegraph companies to furnish its "periodical" quotations to many thousands of nonmembers, some of whom were not in the grain business.

PAR. 15. Until October 6, 1902, the respondent chamber permitted the telegraph companies operating on its said exchange floor to distribute both kinds of its price quotations without requiring them to obtain its approval in respect to the parties who sought them. On that date the chamber for the first time claimed that the quotations were its property and it then directed the telegraph companies to send out "continuous" quotations to such persons only as the said chamber thereafter approved.

PAR. 16. Beginning with July 21, 1914, the said chamber, by contract with the said telegraph companies, thereafter exercised control over all its price quotations, and by it claimed the right at any time to stop deliveries of all said price quotations, without any excuse therefor, by simply notifying "the telegraph companies to stop sending them to any particular person named." This contract also required the telegraph companies to submit to the chamber for its approval all applications of their subscribers for periodical quotations, and the chamber agreed therein to hold the telegraph companies

harmless from any damages arising from the refusal on the part of the telegraph companies to furnish them to an applicant.

PAR. 17. After said date both the Equity Cooperative Exchange and the St. Paul Grain Exchange made applications at different times to the said telegraph companies for service in respect to both kinds of said quotations. But the respondent chamber refused each time to permit the telegraph companies to furnish either the Equity Cooperative Exchange or the St. Paul Grain Exchange with such quotations. Both these exchanges were able, ready, and willing to pay for such quotations and to abide by and to agree to all of the rules and regulations required by the chamber of all applicants and subscribers for its said quotations, and nothing in the conduct of the business of either of them prevented them from obeying such regulations.

PAR. 18. These quotations were at all times and are now necessary to any one dealing in grain in car load lots. No grain in car load lots could at said times or can be sold intelligently without the knowledge of the said quotations.

PAR. 19. By means of boycott and threats of boycott the said chamber and the members thereof conspired and agreed among themselves and with others to induce its members and others to refuse to buy from, sell to, or otherwise deal with, the said Equity Cooperative Exchange, its stockholders, or the members of the St. Paul Grain Exchange. The said respondents for more than ten years last past have been engaged in a conspiracy and agreement among themselves and with others to annoy, embarrass and destroy the business of the said Equity Cooperative Exchange, its stockholders, and the St. Paul Grain Exchange and its members, with the purpose and the intent of the said Chamber, its officers and members, to secure and maintain for it and its members a monopoly of the grain trade at Minneapolis, Minnesota, and within a hundred miles thereof. That all these activities mentioned herein in these findings on the part of the said chamber, its officers and members, secured and retained for them a monopoly of the grain trade at Minneapolis and within a hundred miles thereof, and unduly hindered and restrained competition in interstate commerce between the members of the said chamber on the one hand and the said Equity Cooperative Exchange and its stockholders and the members of the St. Paul Grain Exchange on the other.

PAR. 20. The said Equity Cooperative Exchange at Minneapolis, from the time it commenced operating in 1907 until August 1, 1912, marketed its grain through a non-member of the said chamber, who, without objection, sold most of the said grain to members of the

Findings.

7 F. T. C.

said chamber. This amount of grain sold by the said Equity Cooperative Exchange through the said non-member until August 1, 1912, was small. On or about that date the said Equity Cooperative Exchange ceased to sell grain through the said non-member and established its own office in Minneapolis and attempted to operate an independent market wherein its members might purchase, sell, and handle grain in interstate commerce. Thereupon, in order to hinder, embarrass, and destroy the business of the said Equity Cooperative Exchange and that of its members as competitive grain dealers, the said Chamber of Commerce, its officers, directors, and members instituted said boycott and thereupon continuously refused to buy grain from the said Equity Cooperative Exchange.

PAR. 21. The said chamber and its members maintained said boycott, among other ways, by the adoption, enforcement, and interpretation of certain resolutions, which were printed by said chamber and sent to all its members in the form of Circular No. 405, passed October 8, 1912, and Circular No. 634, passed January 11, 1916.

Circular No. 405 falsely charged, among other things, that in many cases wherein non-members of the said chamber solicited shipments of grain and employed members of the said chamber to sell it, the shipments were obtained by the said non-members by various false statements, and closed with the following resolution:

Now, therefore, be it resolved, That members of the Chamber of Commerce are hereby forbidden to act in any manner as the agent or representative of any individuals, firms or corporations, in the cities of Minneapolis, St. Paul, or elsewhere, not members of the Chamber of Commerce, who are soliciting shipments of grain from the farmers or country shippers in the manner above mentioned, or through any scheme, artifice, or device, by which this Association is falsely represented, either in its dealings or in the right which the shippers get with respect thereto, or at all, unless the person so soliciting such shipment can show a written statement of the shipper to the effect that he realizes that the person receiving such shipment is not a member of the Chamber and can not get advantages out of the Chamber which he could not himself get.

The effect of this circular was to compel competitors of the members of the chamber to hold grain consigned to them until they received the written statement from the shipper required by the resolution above. This was intended to cause expense, delay and loss of the business, to said competitors.

PAR. 22. About January 11, 1916, and with the same purpose, intent, and effect, the said chamber and its members printed and published and sent to all its members broadcast a second resolution named by it, Circular No. 634. This circular falsely charged, among other things, the following: That there were persons in the grain trade (meaning the Equity Cooperative Exchange and its members,

and the members of the St. Paul Grain Exchange), who were still doing the things charged in said Circular No. 405; that some such persons were then using various schemes and pretenses to fraudulently conceal the fact that the farmers and other shippers pay more than reasonable amounts to market their grain through them, and that some of such parties induced some members of the said chamber to make purchases of that grain outside of the exchange room of the said chamber and sell it in the said exchange room at unreasonable gains to said members and caused the said shipper to pay from two to ten commissions, and closed with the following resolutions.

Now, therefore, be it resolved, That no member of this Association, either as owner or commission merchant or at all, shall hereafter sell any grain in the Exchange room of the Chamber of Commerce of Minneapolis, which such member knows or has reason to believe was originally consigned to any one either as commission merchant or otherwise, from either farmers or country shippers as the result of any of the fraudulent or wrongful practices or methods described in said Resolution of October 8, 1912, or herein.

Be it further resolved, That it is the opinion of the Board of Directors of this Association that the making of either profits or commissions which directly or indirectly result from deception practiced upon shippers in the marketing of their grain can not be too strongly condemned at all times by all people and in all places.

These circulars containing such rules and resolutions were interpreted by the chamber as forbidding its members to act in any manner for the Equity Cooperative Exchange and its stockholders; and the secretary for the chamber in writing to members of the chamber so interpreted them, and in order to enforce the observance of these rules and resolutions the chamber required and received from members of its disclosures of transactions had by them with the Equity Cooperative Exchange or its stockholders.

PAR. 23. The respondents, between May 1912 and May 1917, with the plan and purpose of injuring and destroying the business of the said Equity Cooperative Exchange and the said St. Paul Grain Exchange, published, in trade and daily newspapers, false and misleading statements concerning their financial responsibility and the methods used by them and their officers and members in transacting business in grain. Among these trade and daily newspapers were the "Cooperative Manager and Farmer," the "National Grain Grower and Equity Farm News," the "Fargo Forum," and the "Fargo Daily Courier News." These publications the respondents circulated and distributed to and among customers and prospective customers of the members of the said Exchanges. They likewise distributed the said articles in reprints, pamphlets and official correspondence, and through traveling grain solicitors in the employ of the respondent members of the said chamber. In these articles the respondents

Findings.

7 F. T. C.

vigorously attacked the said Equity Cooperative Exchange and the said St. Paul Grain Exchange, especially so in the "Cooperative Manager and Farmer"; they attacked editors who published comments and articles favorable to the said Equity Cooperative Exchange; they advised country elevator directors not to interfere with the managers of the said country elevators in the matter of choosing the persons and places to which their grain should be shipped; they pretended to offer expert advice on cooperative marketing of grain while at the same time they conducted a campaign against cooperative terminal marketing; and they attacked country elevators which shipped grain to the said Equity Cooperative Exchange.

PAR. 24. The said "National Grain Grower and Equity Farm News" prior to July 1913 was the "Official Organ" of the American Society of Equity, an association of farmers with which the Equity Cooperative Exchange during the first years of its existence was affiliated, and it supported the Equity Cooperative Exchange and advocated cooperative methods of doing business. In that month the said Chamber persuaded owners of the "National Grain Grower and Equity Farm News" to refuse to support any longer the said Equity Cooperative Exchange and its methods and to give it any more space therein. During the following year the said "National Grain Grower and Equity Farm News" published articles in condemnation of the said Equity Cooperative Exchange, and in praise of organized exchanges, particularly the said respondent Chamber, which during that time paid the "National Grain Grower and Equity Farm News" at least \$2,500 for extra copies. In the same year many thousands of extra copies of the said "National Grain Grower and Equity Farm News," containing said articles defamatory of the said Equity Cooperative Exchange were circulated and paid for by the respondent Chamber while the issues of the said "National Grain Grower and Equity Farm News" still bore the legend "Official Organ" of the American Society of Equity, notwithstanding this paper had ceased to be such official organ after July 1913.

PAR. 25. Among the defamatory articles was one that appeared in the May 1912 issue of the said "Cooperative Manager and Farmer" and republished therein in 1914. This article falsely accused the Equity Cooperative Exchange of conducting a fraudulent transaction and of charging a shipper "double commission" on certain carloads of grain shipped to said Exchange by the "Farmers Elevator Company" of Glenburn, N. D. Upon investigation the Railroad and Warehouse Commission of Minnesota found, and stated that no fraud had been committed by the Equity Cooperative Exchange or its sales agent P. E. Cooper, in respect to such transaction. P. E. Cooper thereupon demanded retraction by the respondent Chamber,

but it again referred to this matter as a fraudulent transaction in an article entitled "History of Equity Cooperative Exchange," published in June 1914 issue of the "Cooperative Manager and Farmer." In 1917 the Chamber also printed and circulated it in a pamphlet entitled "Equity Cooperative Exchange Question Book." These articles aroused the Equity Cooperative Exchange to the adoption of a more aggressive attitude in carrying out the policy of cooperative marketing. Among other things it changed its management at Minneapolis. In June 1914 the "Cooperative Manager and Farmer" stated as follows:

This instance of the Glenburn Farmers Elevator Company in shipping to the Equity Cooperative Exchange was made public in May, 1912, issue of the Cooperative Manager and Farmer, and the publication of this fraud upon the Glenburn Farmers Elevator Company resulted in a very great uproar in Equity society circles. In order to satisfy the outcry which resulted, Mr. P. E. Cooper was made the "goat" and the Equity Cooperative Exchange proceeded, on August 1, 1912, to employ Mr. George F. Loftus, representing the Loftus-Hubbard Company as sales agent. (Com's Ex. 37, p. 30, 2nd Col., 2nd Par.)

PAR. 26. The said Chamber collected and furnished to the said "Cooperative Manager and Farmer" practically all of the copy and data used in the articles it published detrimental to the said Equity Cooperative Exchange.

PAR. 27. Upon the appointment of Loftus on August 1, 1912, as manager, the Equity Cooperative Exchange attempted to carry out the principles of cooperative marketing by opening at Minneapolis for the said Exchange a terminal market called the "Independent Grain Exchange." As soon as this was done the respondent Chamber established a system of espionage. The secretary of the Chamber, to-wit: respondent John G. McHugh, on August 10, 1912, wrote to respondent Timmerman, at that time president of the Commission Merchants Association, as follows:

Loftus is now agent for the Equity in place of Cooper * * * we believe it might be to interest of Commission Merchants' Association to keep an eye on operations of Farmers' Equity Union mentioned in their letter of the 17th.

With this letter he enclosed an advertisement of the Equity Cooperative Exchange. On August 23, 1912, the said respondent, John G. McHugh, sent a second letter to respondent Timmerman, enclosing a letter from the Gould Grain Company and also a letter from the travelling representative of the Gould Grain Company stating as follows:

Since Loftus has taken over the management of the Equity it is probable that their operations will be pushed most aggressively and we believe the commission merchants, thru their representatives, should keep our office closely advised regarding any information as to shipments to this Company—We be-

Findings.

7 F. T. C.

lieve the matter deserves the careful consideration of the Commission Merchants' Association.

PAR. 28. The respondent, John G. McHugh, as secretary for the said Chamber, wrote other letters which were intended to destroy, and which did injure the credit and standing of the Equity Cooperative Exchange with banks, farmers and customers and the public generally. The following letter dated August 17, 1904, and written by J. M. Withrow, an attorney for the respondent Chamber to P. L. Howe, at that time a member of the said Chamber is an example:

The information which I am receiving at present tends to show that the Farmers Elevators which have previously given them accommodation notes are becoming alarmed over them and the credits which they thus created, and I am of the opinion that if inquiries were made by a number of banks at the terminals of some of the local banks where these elevators were located asking whether the elevator companies were good for obligations for specific sums of from five thousand to ten thousand dollars that the officers of these banks would be very likely to let the information leak around as to inquiries being made, more particularly would that be true in cases where the local officers are Scandinavians, and they would undoubtedly begin to worry as to the reasons why such inquiries were being made and anxious to secure the return of their obligations. If the same thing were done with reference to the individuals who signed the fifty thousand dollar guarantee which Loftus is using as a basis of credit, I think you would find that these men would be anxious to get out from under.

My private advice is that that is the present condition with Mr. Leum of Maysville, who, I understand, has the best financial rating of anyone on that particular guarantee. My understanding is that his business competitors and associates have joshed him so much about it that he is very much worried over the matter and a few inquiries to his bank would, I think, tend to increase his anxiety. * * *

I am writing this matter very fully to you because I consider it advisable not to communicate with any other associative (sic) parties at present besides I know that you will understand how to handle the information. (Com's Ex. 145, p. 27.)

The suggestions made in the above letter were carried out with injurious effect as shown in the portion of the letter quoted on page 24¹ of these findings.

PAR. 29. Another course of espionage conducted by the respondents consisted of tracing shipments of individual cars of grain consigned to the Equity Cooperative Exchange. Based upon the data so secured the respondents then published articles containing false, unfair and misleading statements. Thus in one article respondents listed 428 such cars shipped to the said Exchange and purported to give the correct prices received by the shipper from the said Exchange. Concerning this list the respondents published in 1914, and republished in substance in 1917, the following statement:

¹ Page 150, as reported herein.

The Equity Cooperative Exchange then accounted to the shipper for these cars, as sold at the net price received by them, and then charged ANOTHER commission to the shipper * * *.

Whereas the fact was that on 381 of the said 428 cars the Equity Cooperative Exchange charged the shippers no commission at all, and furthermore the prices received by the shipper from the said Exchange for the sales enumerated therein were higher than the prices indicated by the respondents in the said list which accompanied and was a part of the said article.

Another article published during 1917 contains a list of cars sold in 1915 and was entitled "A List of Cars Showing Recent Sales Made at a Loss to Shippers." The sales so published were not recent nor were they made at a loss to shippers. The list is incomplete and purports to show the profit made by the resale of the cars, while the said list in fact neither exactly nor approximately represents the profit so made. The article takes no consideration of market changes during the time which elapsed between the purchase and sale of the cars. In some instances no consideration of the condition of the grain was made. In other instances prices purporting to have been received by the shipper were inaccurate, and in many instances, where the shipper received more than the grain actually brought at resale, such cars were published in a manner and in connection with statements which made it appear that the shipper lost money by not consigning such grain to respondent members when in fact the shipper received more than any price officially reported by respondent chamber for the same grade and quality of grain sold on respondent chamber on the day of such sale.

PAR. 30. Respondents, during the years 1914 to 1917, frequently published statements to the effect that grain consigned to the Equity Cooperative Exchange cost the shipper additional commissions for each cent of profit made on the resale of grain, and published at the same time and in connection therewith that any member of the Chamber of Commerce who would charge more than one commission would be expelled from membership while over 11% of the grain consigned to respondent members was resold by them, usually at a profit. Some of this grain was sold by the consignee, a member, to another member at $\frac{1}{2}\text{¢}$ per bushel, and by that member to another, and by him still to another, each making a half cent per bushel thereon, and then repurchased by the consignee, who, after passing the title through others and back to himself bought it at a profit in some instances as high as 14¢ a bushel. Cars published by respondent as having been sold by the Equity below "Chamber of Commerce values" actually sold at prices higher than any officially published "Chamber of Commerce values" on the date of the sale.

Findings.

7 F. T. C.

Many other prices received for such cars were well within such reported values. In general the prices received by the Equity Cooperative Exchange for grain consigned to it were as high as those prices received for consigned grain by members of respondent Chamber. A publication known as the "Market Record," published at Minneapolis, was the official organ of the respondent Chamber for the purpose of publishing the prices at which various kinds of grain are sold on respondent Chamber's floor. Such prices were published daily and held out to the public as the prices at which grain in truth was actually sold. The fact is these prices so published were incomplete, in that all sales were not reported by respondent members, therefore the "Chamber of Commerce values" could not be mathematically determined.

PAR. 31. This same false, unfair and misleading matter was thereafter constantly used to the injury and disadvantage of the Equity Cooperative Exchange. Though campaign of defamation ceased officially in 1917, the matter so circulated during the preceding 5 years has been and is now used by farmers, bankers, country elevator officials and shippers to the financial injury of the Equity Cooperative Exchange.

PAR. 32. Respondents published in December, 1914, or within two or three months of the organization of the St. Paul Grain Exchange, an illustrated article derogatory to the St. Paul Grain Exchange and entitled:

EQUITY EXCHANGE MOVES TO ST. PAUL.

The St. Paul-Department-Store-Mail
Order-Grain-Exchange.

At page 51 this article states:

Department stores and barber supply houses and retail merchants of St. Paul are not justified in assisting in this deception by supporting a make-believe grain exchange such as the so-called St. Paul Grain Exchange, even though the activities of the St. Paul newspapers in supporting the St. Paul Grain Exchange does bring in a few farmers to St. Paul taking the business away from their local merchants; even this does not justify the wrong done and the deceptions practiced upon the farmers and farmers' elevator companies in the Northwest by the so-called Equity Cooperative Exchange.

Respondent published many other articles containing statements defamatory of the St. Paul Grain Exchange during the period 1914 to 1917.

PAR. 33. To eliminate the competition of those engaged in cooperative methods of marketing grain at Minneapolis and surrounding territory, the said respondents combined and conspired among themselves and with each other to destroy the said Equity Cooperative Exchange and to destroy the business of the St. Paul Grain Ex-

change and that of some of its members. As a part of their plan to carry out this purpose, the respondents persuaded Fred Schmidt, J. Emerson Greenfield and Samuel Crumpton, holders of one share each of the capital stock of the said Equity Cooperative Exchange, to bring in their own names as plaintiffs, against the president and secretary of the said Exchange, a proceeding by mandamus to obtain data from the books of the said Cooperative Exchange upon which to base another subsequent action to have the said Equity Cooperative Exchange, declared insolvent, adjudicated a bankrupt, to have a receiver appointed and its charter annulled.

PAR. 34. Accordingly and on or about July 24, 1914, and in the District Court of the Third Judicial District for the State of North Dakota, the three said stockholders, by an attorney named Edward Engerud, brought a proceeding by mandamus against the President and the Secretary and Treasurer of the said Equity Cooperative Exchange to compel them, as such officers of the Exchange, and the said Exchange to permit an examination of the books of the said Equity Cooperative Exchange. After a hearing the said District Court granted the petition of mandamus commanding the Cooperative Exchange and its said President and Secretary and Treasurer to permit an examination of said books. On or about December 15, 1914, the Supreme Court of North Dakota affirmed the decision of the District Court and on February 2, 1915, denied a petition of the said Equity Cooperative Exchange for a rehearing. In consequence of this decision the respondents examined the books of the said Exchange. All of the costs and disbursements of these suits, including the fees of said Edward Engerud, attorney for the petitioners, plus the expense attendant upon the examination of the said books, were paid by the respondent Chamber.

PAR. 35. Based upon an examination of the said books, made under authority of said writ of mandamus, and upon about fifty affidavits made by as many members of respondent Chamber of Commerce and at the instance of said respondents, the State of North Dakota on the relation of Henry L. Linde, the Attorney General of said State, on or about April 23, 1915, brought suit to annul the charter of the said Equity Cooperative Exchange, to have it declared insolvent and a bankrupt, and to have a receiver appointed for it. The suit was tried by said Engerud, who was appointed a Deputy Attorney General to said Attorney General by the State of North Dakota, for the purpose of conducting this case. This proceeding seeking the appointment of a receiver and the annulment of the charter of the Equity Cooperative Exchange was dismissed by the court on the ground that the Exchange was not insolvent.

Findings.

7 F. T. C.

PAR. 36. Until the said date of the beginning of the proceeding by mandamus the said Greenfield and Crumpton, two of the three plaintiff's shareholders named above, were partners doing business as a commission house located at Superior, Wisconsin, and were acting there as sales agents for the said Equity Cooperative Exchange. On that date, however, and at the instance of the said Chamber of Commerce they brought in the United States District Court, for the Fourth Division, District of Minnesota, against said Exchange a suit for damages arising from an alleged breach of contract with said firm. This suit was conducted by an attorney named J. M. Witherow, whose services therein were paid by the said respondents. The action was dismissed by the court for lack of jurisdiction and nothing was ever further done to recover the amount claimed. The said suit was instituted and prosecuted by said respondents in bad faith with purpose, intent and effect of hindering and obstructing the business of the said Equity Cooperative Exchange, and of injuring its credit and reputation.

The said Witherow in reporting to P. L. Howe, a respondent member of said Chamber, on August 4, 1914, states:

The publicity which we have been giving them in the newspapers has had a very unfavorable effect upon them and is making many of the farmers suspicious of their actions. When I am able to make public the affidavit which I yesterday secured from Mr. Smith of Voltaire and also the fact that they were securing accommodation notes from the farmers in large amounts which are being pledged to terminal banks, I think you will find the farmers will be very much more frightened.

PAR. 37. To further injure the credit and standing of the Equity Cooperative Exchange, the respondent Chamber caused inquiries and investigations to be made at banks and other financial backers of the said Exchange and stockholders therein in order to create in them a suspicion that all was not well financially with the said Exchange and its stockholders.

The following letter is illustrative of this practice:

THE CHAMBER OF COMMERCE OF MINNEAPOLIS.

SECRETARY'S OFFICE.

JULY 20, 1914.

MR. EDWARD ENGERUD,
Fargo, N. D.

DEAR SIR:

Your letter of recent date addressed to the Cooperative Managing Farmer, with reference to the results which developed from your partial examination of the books of the Equity Exchange at Fargo was presented to the undersigned this morning and read with much interest.

I enclose herewith a memorandum which explains itself. The data furnished in this memorandum was furnished in a very confidential manner and I desire it

115

Conclusion.

to be so treated. An examination of the books and records of the Scandinavian-American National Bank, however, would disclose the situation to be as set forth in this memorandum. It occurred to me that if you were acquainted with the facts and knew where information was to be had and what that information would be, that it would be possible for you to secure it either by securing authority from the Equity Exchange to a chartered accountant to examine the records of the Scandinavian-American National Bank of Minneapolis or otherwise.

The names of the farmers' elevator companies whose notes are held by the bank as collateral and the amount of these notes would be very interesting and desirable but this information we were not able to secure at the time, although it is possible that this may be secured later. We consider this very important, as it is entirely possible that the amount of the notes of farmers' elevator companies put up as collateral by the Equity Cooperative Exchange might exceed many times the amount due the Equity Exchange from the farmers' elevator companies.

We felt that with this information in your hands you would be able to take such action as would secure its disclosure without causing the undersigned or his informant any embarrassment.

I believe that the Mr. J. C. Berg, of Hindrum, Minnesota, mentioned on the memorandum enclosed herewith is quite a friend of your partner, Mr. Frame.

Very truly yours,

(Signed) JOHN G. McHUGH, Sec'y.

Acting under this direction Attorney Engerud "without causing the undersigned or his informant embarrassment," secured by means of deposition much information "concerning farmers' elevator companies whose notes were held by the Scandinavian-American National Bank of Minneapolis" and other information of a confidential character.

PAR. 38. These actions cost the said Exchange for attorney's fees, witness fees, court costs, and other expenses, including loss of time of its officials and employees, not less than \$20,000. They injured greatly its credit and standing with the public generally and with shippers of grain. In addition to the direct outlay necessitated by this litigation, the credit of the Equity Cooperative Exchange was seriously affected thereby and the confidence of the public generally, and the grain shippers in particular, was greatly weakened by the charges and allegations of unfair and dishonest conduct made and published by the plaintiffs in connection with the litigation and proceedings in question.

CONCLUSION.

That by reason of the facts set forth above, the respondents and all of them, have committed acts to the prejudice of the public and competitors of respondent Chamber and competitors of the members of respondent Chamber, and which acts constitute unfair methods of competition in commerce within the intent and meaning of Sec-

Order.

7 F. T. C.

tion 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.

ORDER TO CEASE AND DESIST.

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answers of the respondents, and the stipulations as to the facts entered into by counsel representing the Commission and counsel representing respondents, and the Commission having made its findings as to the facts with its conclusion that the respondents have violated the provisions 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";

Now, therefore, it is ordered, That the respondents: The Chamber of Commerce of Minneapolis; C. A. Magnuson, C. M. Case, William Dalrymple, A. C. Andrews, B. F. Benson, W. T. Frasier, H. P. Gallaher, J. B. Gillsillan, Jr., H. S. Helm, Asher Howard, John McLeod, J. H. MacMillan, F. C. Van Dusen, John G. McHugh, and all other members, officers, directors, agents, servants and employees of the Chamber of Commerce of Minneapolis; Manager Publishing Company; John H. Adams, and John T. Flemming, and each of them and their or its officers, agents, solicitors, representatives, servants, and employees and all other persons acting under, through, by or in behalf of them or any of them, forever cease and desist:

From combining and conspiring among themselves or with others, directly or indirectly, to interfere with, or injure, or destroy the business or the reputation of the St. Paul Grain Exchange, or its officers and members, or the Equity Cooperative Exchange, or its officers and stockholders (or other competitors of the respondent Chamber and its members), by:

(1) Publishing or causing to be published in any newspaper, periodical, pamphlet or otherwise, or circulating, or causing to be circulated orally or otherwise, among the customers or prospective customers of the members of the St. Paul Grain Exchange, or the public generally, any false or misleading statements concerning the financial standing, the business or the business methods of the said Exchange, its officers or members, or concerning the said Equity Cooperative Exchange, its officers or stockholders.

(2) Instituting vexatious or unfounded suits either at law or in equity against said Equity Cooperative Exchange with the purpose or intent, or with the effect of hindering or obstructing the business of the said Equity Cooperative Exchange or injuring its credit and reputation.

It is further ordered, That the respondents: The Chamber of Commerce of Minneapolis; C. A. Magnuson, C. M. Case, William Dalrymple, A. C. Andrews, B. F. Benson, W. T. Frasier, H. P. Gallaher, J. B. Gilfillan, jr., H. S. Helm, Asher Howard, John McLeod, J. H. MacMillan, F. C. Van Dusen, John G. McHugh, and all other members, officers, directors, agents, servants, and employees of the Chamber of Commerce of Minneapolis, and each of them, and their or its officers, agents, solicitors, representatives, servants, and employees and all persons acting under, through, by or in behalf of it or them, or any of them, forever cease and desist from:

(1) Combining and conspiring among themselves or with others directly or indirectly to induce, persuade or compel and from inducing, persuading or compelling any of the members of said Chamber, their agents or employees, to refuse to buy from, sell to, or otherwise deal with the St. Paul Grain Exchange or its members or the Equity Cooperative Exchange, or its stockholders, or the customers of any of them, because of the patronage dividend plan of doing business adopted by the said Equity Cooperative Exchange, or by any of the members of the said St. Paul Grain Exchange, as more particularly set forth in paragraph 4 *infra* of this order.

(2) Hindering, obstructing or preventing any telegraph company or other distributing agent from furnishing continuous or periodical price quotations of grains to the St. Paul Grain Exchange, or its members, or to the Equity Cooperative Exchange or its stockholders.

(3) Passing or enforcing any rule or regulation, or enforcing any usage or custom, that prohibits or prevents members of the respondent chamber from conducting their business of dealing in grain according to the cooperative method of marketing grain or according to the patronage dividend plan, like or similar to the method or plan adopted by the Equity Cooperative Exchange.

(4) Denying to any duly accredited representatives of any organization or association of farmer grain growers or shippers admission to membership in said respondent chamber, with full and equal privileges enjoyed by any or all of its members or by any or all concerns represented by membership in said respondent Chamber of Commerce, because of the plan or purpose on the part of such organization or association to pay or purpose to pay patronage dividends or to operate or purpose to operate according to the cooperative plan of marketing grain, namely, the plan of returning any portion or all of its earnings or surplus to its patrons or members on the basis of patronage, whether such earnings or surplus is derived from charging patrons or members commissions or otherwise.

Order.

7 F. T. C.

(5) Passing or enforcing any rule or regulation or enforcing any usage or custom, that compels shippers of grain to Minneapolis, Minnesota, from country points or from St. Paul, Minnesota, to pay commission or other charges, unless and until like commissions and charges are paid by shippers of grain to Minneapolis from Omaha, Nebraska, or from Kansas City, Missouri, or other such favored markets.

(6) Passing or enforcing any rule or regulation, or enforcing any usage or custom, that prohibits members of the respondent chamber, when buying grain on track at country points from paying therefor more than the market price of similar grain prevailing at that time in the Exchange Room of the respondent Chamber, less freight, commissions and other charges.

(7) Promulgating, interpreting or enforcing any rule, custom, regulation or usage in such a manner as to require any member of respondent Chamber to pay to the farmer, or country shipper or other person, a price for grain limited to a price equivalent to or identical with the Minneapolis market price, or otherwise limit the exercise of free will and individual independent judgment of any such member as to the price which he shall pay, or which he desires to pay farmers, country shippers, or others for grain on track at country points.

It is further ordered, That the respondents, The Chamber of Commerce of Minneapolis; C. A. Magnuson, C. M. Case, William Dalrymple, A. C. Andrews, B. F. Benson, W. T. Frasier, H. P. Gallaher, J. B. Gilfillan, Jr., H. S. Helm, Asher Howard, John McLeod, J. H. MacMillan, F. C. Van Dusen, John G. McHugh, Manager Publishing Company, John H. Adams, and John H. Fleming shall within sixty (60) days after the service upon them of a copy of this order, file with the Commission a report in writing setting forth in detail the manner and form in which they have complied with the order to cease and desist heretofore set forth.

By order of the Commission: Commissioners Van Fleet and Gaskill dissenting.

PACIFIC STATES PAPER TRADE ASSN. ET AL.

155

Syllabus.

FEDERAL TRADE COMMISSION

v.

PACIFIC STATES PAPER TRADE ASSOCIATION ET AL.