

Syllabus

IN THE MATTER OF

S. F. SHEPARD, ROCKWOOD BROWN, A. L. TODD, R. ALLYN LEWIS, R. J. WISWELL, D. M. LEOPOLD, H. P. HANSON, E. H. ESHLEMAN, F. L. MOORMAN, AND E. H. McARTHUR

COMPLAINT (SYNOPSIS), FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914

Docket 857. Complaint, Dec. 8, 1921—Decision, Aug. 19, 1927

Where an individual interested in certain oil companies promoted and organized by him in pursuance of certain declarations of trust, to which companies he had conveyed their various holdings and leases in return for one-half of their capital stock, retaining a financial interest in the sale of the remaining stock, an interest in oil and gas produced from various properties so conveyed, and an interest in the management of the companies through his power under the so-called declarations of trust to name the trustees; in promoting the sale of the stock or shares in various companies organized by him as above set forth,

- (a) Represented said different companies, as the case might be, in prospectuses, and other advertising matter as owners of various specified holdings in the Texas "Burkburnett" oil-producing district, omitting from his aforesaid advertising and withholding and concealing from purchasers and prospective purchasers any and all information concerning the real origin of the companies so promoted by him, the source from and conditions or circumstances under which their various properties were acquired, the method of selecting trustees, officers or members, his own connection therewith, and the reservations, profits and advantages derived and to be derived by him from the sale of the several stocks, and from the development and production of the various properties represented by him as the valuable holdings of the company;
- (b) Represented that a certain $2\frac{1}{2}$ acres of one of the companies was surrounded by producing wells and that another acre owned by it in a certain tract was in the center of big production, the fact being that such tracts were respectively not surrounded by production, and some distance from producing wells; and
- (c) Represented that "the officers and directors" of one of the companies specified, would "be elected by the stockholders, therefore, this company will be controlled by and for the benefit of the stockholders through men selected by themselves and not by promoters, as is usually the case with corporations", the fact being that the trustees to administer the affairs of all companies were selected by the aforesaid individual and were controlled and directed by him and were at no time controlled by or for the benefit of the stockholders;

With the effect of misleading and deceiving a substantial portion of the public into purchasing stock in the various companies in the belief that they owned valuable properties, the administration of which would be controlled by their stockholders, who would be entitled to the undivided earnings or profits of the companies, instead of only a part thereof:

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Held, That such false and misleading advertising, under the circumstances set forth, constituted unfair methods of competition.

Mr. James M. Brinson and *Mr. John M. Burkett* for the Commission.

Mr. Horace P. Babson, of Fort Worth, Tex., for respondents, *A. L. Todd* and *F. L. Moorman*.

Mr. Will C. Moody, of Chicago, Ill., together with *Mr. Horace P. Babson*, of Fort Worth, Tex., for *S. F. Shepard*.

Grimstad & Brown, of Billings, Mont., for *Rockwood Brown*.

SYNOPSIS OF COMPLAINT

Reciting the public interest involved, the Commission charged respondents with withholding and concealing material information, misrepresenting offerings, and advertising falsely or misleadingly, in violation of the provisions of section 5 of the Federal Trade Commission Act, prohibiting the use of unfair methods of competition in interstate commerce.

The matters involved have to do, as charged, with the sale of stock in various voluntary unincorporated associations promoted and organized by respondent Shepard, namely, The Burkley Oil Co., the Burk Crest Oil Co., the Burk Bethel Oil Co., and the Gypsy Burk Oil Co., organized, according to the various declarations of trust, primarily for the development of oil and gas on the properties described in such instruments, which further recited that the stock should be so sold as to net the various estates not less than 85 cents (80 in the case of one) per share. Various respondent individuals were named trustees for the different companies or were associated therewith in the advertisement, offer and sale of their stock to purchasers and subscribers in the various States. In the course of organization and promotion of said companies respondent Shepard received and retained, with the consent of the trustees and in consideration of his transfer to the companies of properties described in the several declarations of trust, one-half of the capital stock of each and all of them, \$7,500 of the proceeds from the sale of the other one-half of their capital stock, with the exception of two, in which he received and retained \$20,000 out of the proceeds from the sale of their remaining one-half of their stock, and also received and retained by and with the active cooperation and consent of the various respondent trustees, the right to a substantial interest in all oils produced or to be produced from the properties.

Respondent Shepard, acting as promoter and organizer for the aforesaid companies, and in his and their behalf, and respondent individuals acting in conjunction with one another and for them-

selves and under the direction and control of respondent Shepard and in connection with the particular company or companies herein concerned, with the sale of stock in which they were particularly identified, "have deceived and defrauded the public, particularly that part thereof who have purchased or contracted to purchase stock in said companies, by inducing it or them to purchase or contract to purchase such stock by means of false and misleading advertisements, false representations and false pretenses, and by making, publishing, advertising and circulating false and misleading reports, false statements and false representations regarding the plan of organization, assets, resources, business progress, good will and prospects of the various companies aforesaid, and of the standing, ability and integrity of respondent, S. F. Shepard * * *."

The numerous false representations made by respondents in connection with the different companies may be suggested as follows:

Burkley Oil Co.—That it was the owner of three holdings in the Burkburnett oil-producing district of Texas, that a well in a certain specified place had been drilled to the oil sand, would be drilled in within a few hours, would produce approximately 1,500 to 2,000 barrels of oil a day; that it, the well was completed and swabbing at the rate of 1,800 barrels a day, the fact being that none of its properties was in the center of production of the Burkburnett oil fields, but were so far removed therefrom as to be of doubtful, if any real value and that it never had to exceed one oil well, which would not produce and was incapable of producing to exceed 5 barrels of oil a day and that the other statements relative to its well were false.

Burk Crest, Burk Imperial, Burk Consolidated, and Gypsy Burk, Oil Companies.—Similar false statements as to the location, value, production and prospects were made with reference to these various companies. For example, that the Burk Imperial Oil Co. owned two oil wells and seven holdings in the center of the famous Burkburnett oil fields, one of which had come in to the tune of about 3,000 barrels a day, shooting a 6-inch stream of oil 15 feet over the top of the derrick, and that 2,900 barrels of oil therefrom was on hand and in storage, the fact being that such company did not own two oil wells or any oil well producing sufficient oil to pay expenses of operation and that none of the properties were in the center of production of the famous Burkburnett oil fields, but were located far outside and were all in known dry territory or so far removed from known and proven oil territory as to be of little or no value.

Respondent Shepard, further, as charged, with the consent of the various trustees and in conjunction with the various respondents concerned "as associated with him in the organization or promotion

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of such particular company, deceived and defrauded the public or that portion of the public who purchased shares in the said companies or any of them by withholding and concealing material information, to wit, that the said S. F. Shepard had received such a large proportion of the capital stock of the said companies and of the proceeds from the sale of their remaining capital stock, and that the said companies and each of them would be compelled to share with him a substantial proportion of any production derived or to be derived from any of their several properties."

The complaint finally charged "that the respondents above named each for himself and in conjunction with each other, and particularly under the direction of respondent, S. F. Shepard, made false and misleading statements, false representations and false advertisements hereinbefore set forth and made numerous other false and misleading statements and false representations relative to the organization, assets, resources, business, progress, good will and prospects of said companies, and caused the same to be published in various magazines and other publications, and to be transported through the mails and by other means to prospective purchasers of stock in said companies, and by personal efforts and the efforts of their agents, committed numerous other acts of like character, knowing their falsity and tendency to deceive the public, with the effect of deceiving and misleading the public and causing the public to purchase stock and subscribe for stock in the said companies, and that numerous persons, relying upon said false and misleading statements, false representations and false advertisements, did buy stock and subscribe for stock in said companies, and each and all of them, to their injury and that of respondents' competitors."

Upon the foregoing complaint, the Commission made the following

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of an act of Congress (the Federal Trade Commission Act) approved September 26, 1914, the Federal Trade Commission issued and served its complaint upon the respondents, charging them, and each of them, with the use of unfair methods of competition in violation of law.

Thereupon respondents, S. F. Shepard, Rockwood Brown, A. L. Todd, R. Allyn Lewis, E. H. Eshleman, and F. L. Moorman, filed answers and appeared by their attorney. Formal hearing was had, testimony and evidence introduced in support of the complaint and on behalf of respondents, brief filed by counsel for the Commission, respondents having failed to file brief within the time prescribed, or at all, and this matter having come on regularly for final decision

and the Commission having considered the record and being now advised in the premises, makes this its report, stating its findings as to the facts and conclusion:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, S. F. Shepard, during the months of February, March, April, and May, 1919, promoted and caused to be organized under and in pursuance of certain declarations of trust, the Burkley Oil Co., the Burk Crest Oil Co., and the Burk Bethel Oil Co., each with a capitalization of 100,000 shares of the par value of \$1 each, and the Burk Imperial Oil Co. and the Burk Consolidated Oil Co., each with a capitalization of 150,000 shares of the par value of \$1 each. Respondent, A. L. Todd, was named as a trustee of the Burkley Oil Co. and of the Burk Crest Oil Co., while in connection with the Burk Imperial Co. he acted as trustee with respondent R. J. Wiswell, and in the same capacity with respondent, R. Allyn Lewis, in connection with the Burk Bethel Oil Co. The various declarations of trust under which these companies were organized provided, among other things, that the primary purpose of the several companies was the development of oil and gas, on property described in said respective instruments as the property of the company, to which they severally related. In the organization of these companies by respondent, S. F. Shepard, respondents, A. L. Todd and R. Allyn Lewis, were associated with him in connection with the Burkley Oil Co., respondents, A. L. Todd and R. J. Wiswell with the Burk Imperial Oil Co., respondents, D. M. Leopold and R. J. Wiswell, with the Burk Consolidated Oil Co., and respondents, A. L. Todd and R. Allyn Lewis, with the Burk Bethel Oil Co.

PAR. 2. After the organization of the companies mentioned in paragraph 1 hereof, respondent, S. F. Shepard, advertised, offered for sale and sold the stock of the Burkley, Burk Imperial, Burk Consolidated and the Burk Crest Oil companies, under the trade name and style of Shepard & Co., by means of prospectuses, pamphlets, circulars and circular letters, which he caused to be distributed in the various States of the United States, among prospective purchasers of stocks and securities, wherein were set forth, among others, the following misleading and deceptive statements and representations:

That the said Burkley Oil Co. was the owner of three holdings in what is known as the Burk-Burnett Oil Producing District of Texas; held leases of 5 acres each in blocks 10 and 11 of Knight's subdivision of block 72, Red River Valley lands, 2.5 acres in the so-called Maxwell tract, and 1 acre in the Van Cleave tract, all in Wichita County, Tex., and that the Burk Crest Oil Co. was the owner of oil leases on

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5 acres in block 8 of Knight's subdivision of the north half of block 72, Red River Valley lands, the east 2.5 acres of block 18 of Knight's subdivision of blocks 96, 97 and 98, Red River Valley lands, the west 1 acre of block 8 of the Couch, Winfrey and Simmons subdivision in the so-called Hardin tract, 5 acres in block 68, Red River Valley lands, all in Wichita County.

That the said Burk Imperial Oil Co. was the owner of several holdings in the Burk-Burnett oil field, consisting of 25 acres, all located in or near the Burk-Burnett oil fields, being 2.5 acres out of the south end of block 86, Red River Valley lands, a drilling site in the Hardin tract, Dubois survey, adjoining the original town site of Burk-Burnett, 5 acres in block 65, Red River Valley lands, 2.5 acres out of block 18 of Knight's subdivision of blocks 96, 97 and 98, Red River Valley lands; 5 acres out of block 19, in block 821, all located in Wichita County, Tex., and in addition thereto 10 acres in Tillman County, Okla.

That the Burk Consolidated Oil Co. was the owner of 5 holdings in the Burk-Burnett oil field, consisting of 2.5 acres out of the south end of block 86, northwest extension, and adjoining block 84; 2.5 acres out of the southwest corner J. B. Evans tract; 10 acres, being the south half of lot 3, block 5, Sam Sparks subdivision, all in the Wichita County, Tex.; and in addition thereto 5 acres in section 35; and 5 acres out of the northwest quarter of section 28, township 4, range 14 west, Tillman County, Okla.

Whereas, in truth and in fact the said oil companies acquired their interests in the leases or other lands hereinbefore described through assignment from the respondent, S. F. Shepard and in the instruments by which such interests were transferred to the several oil companies, said respondent, S. F. Shepard, reserved to himself the following, which he described as a consideration for the various transfers, to wit:

One-half of the capital stock of each and all of said companies, and the sum of \$7,500 of the proceeds from the sale of the other half of the capital stock, except that in the organization of the Burk Imperial and Burk Consolidated Oil Companies it was agreed that he was to receive \$20,000 out of the proceeds from the sale of the remaining half of the capital stock, and in truth and in fact said respondent, S. F. Shepard, as further consideration for his transfers of leases to the said companies, received or retained the right to a very substantial interest in the oil produced or to be produced from the properties or leases which he had so assigned to these companies, to wit:

A seven-sixteenths interest in all oil and gas produced from the following properties of the Burkley Oil Co.; 2.5 acres of the Maxwell tract, 5 acres in block 10, and block 72 as above described, and in connection with the Van Cleave tract there was a reservation of seven-sixteenths interest to a prior grantor other than S. F. Shepard, a grantor who is a stranger to this proceeding; seven-sixteenths interest of all oil and gas to be produced from the following holdings of the Burk Crest Oil Co.; lot 6 in block 72, 5 acres, and the west half of block 6 of the Couch, Winfrey and Simmons subdivision of the so-called Hardin tract, and seven-sixteenths of all oil and gas to be produced from the following property of the Burk Imperial Oil Co.; 2.5 acres out of the south end of block 86, Red River lands and 2.5 acres out of block 18, Knight's subdivision of blocks 96, 97 and 98, Red River Valley lands; and a seven-sixteenths interest in the following properties transferred by him to the Burk Consolidated Oil Co., to wit: 2.5 acres out of the southeast corner of the J. B. Evans tract, and six-sixteenths interest from 2.5 acres out of the south end of block 86, northwest extension, adjoining block 84, Red River Valley lands, two-sixteenths thereof having been reserved to a prior vendor who is a stranger to this proceeding; and in truth and in fact the principal drilling operations for oil, prosecuted by each of the said companies, were conducted at the instance of respondent, S. F. Shepard, upon those portions of their several holdings, in connection with which he had reserved a substantial interest, thereby enabling him, in addition to one-half of the capital stock received by him and the money consideration from each of the said companies, to procure development by them of holdings, in the production of which he would share with them the profits by means of his reserved interests of seven-sixteenths in such holdings.

Respondent, S. F. Shepard, omitted from all of the advertising matter used by him or Shepard & Co., in advertising and offering the various stocks of said companies for sale and in effect withheld and concealed from purchasers and prospective purchasers any and all information concerning the real origin of the companies so promoted by him, the source from and conditions or circumstances under which their various properties were acquired by them, the method of selecting trustees, officers or managers of the companies, his own connection therewith and the reservations, profits and advantages derived and to be derived by him from the sale of the several stocks and the development or production of the various properties represented by him as the valuable holdings of said companies.

It was further represented by respondent, S. F. Shepard through Shepard & Co., in the advertising matter circulated by him as afore-

said that 2.5 acres of the Burkley Oil Co. located in the so-called Maxwell tract in Wichita County, Tex., was surrounded by producing wells, and that its one acre in the so-called Van Cleave tract in the county and State aforesaid was in the center of big production.

Whereas, in truth and in fact the said lease of the Burkley Oil Co. in the so-called Maxwell tract was not surrounded by production. There was one producing well a mile and a quarter to the north and west of it, and one of the same distance to the south or southwest of it, while the Van Cleave tract was not in the center of big production, and there were no producing wells in any other direction therefrom except to the north and west, ranging from 600 feet to 2,000 feet from such tract.

It was further represented by respondent, S. F. Shepard, through Shepard & Co. in connection with the offering for sale of the stock of the Burkley Oil Co. as follows:

The officers and directors of the Burkley Oil Co. will be elected by the stockholders; therefore, this company will be controlled by and for the benefit of the stockholders through men selected by themselves and not by promoters, as is usually the case with corporations.

In truth and in fact, however, the trustees to administer the affairs of all of these companies were selected by the respondent, S. F. Shepard, and were controlled and directed by him, and were at no time controlled by or for the benefit of the stockholders.

PAR. 3. The stock of the several companies mentioned in the foregoing paragraphs hereof was offered for sale and sold by respondent, S. F. Shepard, as Shepard & Co., from Fort Worth, Tex., in competition with individuals, partnerships, corporations and associations engaged in the sale, in interstate commerce, of oil stocks and securities, and certificates therefor when sold, were transported by him, or at his instance or under his direction, to purchasers thereof in the various States of the United States. The prospectuses, leaflets, circulars and other advertising matter were distributed by him or under his supervision and direction and his correspondents herein had no connection with or responsibility for the false and misleading statements and representations set forth, as aforesaid, in the advertising literature used in selling the stocks hereinbefore mentioned in the various States of the United States.

PAR. 4. The false and misleading statements and representations concerning the location of certain leases of the Burkley Oil Co. on the Maxwell and Van Cleave tracts, and the control of the trustees by and for the stockholders, and each of them, and the concealment from prospective purchasers and purchasers of stock of the unusual interests of respondent, S. F. Shepard, in the properties of each and

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all of said companies, and of his control and direction of them for the advancement of his individual interests, had the capacity and tendency to mislead and deceive and did mislead and deceive a substantial portion of the public into the purchase of stock in each of the several companies aforesaid in the belief induced by such representations, or one or more of them, that the said companies owned valuable properties, the administration of which would be controlled by their stockholders who would be entitled to the undivided earnings or profits of the said company instead of seven-sixteenths thereof.

CONCLUSION

The acts and practices set forth in the foregoing findings as to the facts, constitute under the circumstances therein stated unfair methods of competition in interstate commerce, in violation of the provisions of the said act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes".

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission and upon the answers of respondents, S. F. Shepard, Rockwood Brown, A. L. Todd, R. Allyn Lewis, E. H. Eshleman, and F. L. Moorman, the testimony and evidence and brief of counsel for the Commission, respondents having failed to file brief, and the matter having come on regularly for decision and the Commission having made its report stating its findings as to the facts with its conclusion that respondent, S. F. Shepard, operating under the trade name and style of Shepard and Company, has violated the provisions of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes",

It is now ordered, That the respondent, S. F. Shepard, doing business under the trade name and style of Shepard & Co., individually, or otherwise, cease and desist from publishing, distributing or circulating among prospective purchasers of stocks and securities, magazines, newspapers, pamphlets, prospectuses, circulars, circular letters, or any other printed or written matter in connection with the sale of or offering to sell in interstate commerce, stock of the Burkley Oil Co., the Burk Crest Oil Co., the Burk Imperial Oil Co., or the Burk Consolidated Oil Co., or of any other corporation, association, or partnership, containing any false or misleading statement or representation, either expressed or implied, concerning his connection with or relationship to said companies, or any of them, or any other

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corporation, association or partnership, or the management, resources, properties, assets, production, income, progress or prospects of said companies, or any of them, or any other corporation, association, or partnership.

It is further ordered, That the complaint be and the same hereby is dismissed as to respondents, Rockwood Brown, A. L. Todd, R. Allyn Lewis, R. J. Wiswell, D. M. Leopold, H. P. Hanson, E. H. Eshleman, F. L. Moorman, and E. H. McArthur.

It is further ordered, That said respondent shall within 60 days from the date of the service of this order file with the Federal Trade Commission a report setting forth in detail the manner and form in which he has complied therewith.

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IN THE MATTER OF

HENRY H. HOFFMAN, R. C. RUSSELL, J. H. CAIN, R. V. WILSON, B. BAERNSTEIN, THE RANGER-BURKBURNETT OIL COMPANY, THE RANGER-COMANCHE OIL COMPANY, AND THE UNION NATIONAL OIL COMPANY

COMPLAINT (SYNOPSIS), FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914

Docket 865. Complaint, Jan. 26, 1922—Decision, Aug. 19, 1927

Where an individual, in promoting the sale of the stock of several oil companies organized by him,

- (a) Used the name Union Trust Company as his trade name and displayed the same in his advertising matter and upon his letterheads, together with the words "Capital Stock \$500,000, Henry H. Hoffman, President", and solicited and secured subscriptions for and sold stock in said companies under the aforesaid name, through prospectuses, pamphlets, leaflets, circulars, newspapers and letters;
- (b) Made numerous false and misleading statements and representations in the aforesaid prospectuses, etc., relative to his alleged successful activities theretofore in the Texas oil industry, employing such phrases as "Hoffman's Past Envious Record", "Hoffman Makes Good", together with such statements, variously captioned "RECORD NO. 2", "RECORD NO. 3", etc., as "The Banker's Oil and Gas Company is the second of 'HENRY HOFFMAN'S list of big successes, and has paid 100 per cent in dividends", "RECORD NO. 4, 1,100 PER CENT DIVIDENDS. The fourth on the list of 'HENRY HOFFMAN'S PREMIER ACHIEVEMENTS—Great Southern Oil Company—first paid shareholders 240 per cent dividends, and has since paid a total of 900 per cent dividends, and is still a good dividend producer," the fact being that said individual's connection with the companies referred to ceased after his organization and partial development thereof, and that in no instance, with one or two exceptions, were dividends paid or financial returns of any kind made to shareholders in any of the companies represented as his successes, while under his control, management or direction; and
- (c) Represented in his prospectuses, pamphlets and other advertising matter that a well had been brought in on a lease of one of the companies, producing 5,000 barrels daily, that it owned a lease of 12½ acres in the Burk Burnett field, only a few hundred feet from "big gushers", that it owned many valuable leases comprising several thousand acres, for the development of which its stock was being sold to the public, and that another one of the companies herein concerned owned a 10-acre tract adjoining the so-called Goss Well, producing 500 barrels of oil daily, the fact being that the first named lease at no time averaged any such production, that the 12½-acre tract was not situated near "big gushers" nor within a mile and a half of any producing wells, that the many thousands of acres of so-called valuable leases were in "wild cat" territory and of no substantial or prospective value, and that the Goss Well was situated more than a mile from the 10-acre tract above referred to, and produced no oil whatever;