

IN THE MATTER OF

A. W. PERRYMAN, DOING BUSINESS UNDER THE NAME
AND STYLE PERRYMAN INVESTMENT COMPANY,
ET AL.COMPLAINT (SYNOPSIS), FINDINGS, AND ORDER IN REGARD TO THE ALLEGED
VIOLATION OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 871. Complaint, Mar. 25, 1922—Decision, Aug. 19, 1927*

Where an individual, president and controlling spirit in a company organized by him under a declaration of trust; in promoting the sale of its stock or shares,

- (a) Represented through circular letters and other advertising matter that the aforesaid company was organized with sufficient funds to start development, was not dependent on the sale of stock for its operations, owned leases and holdings of great value in eleven great and proven fields and, in many instances, adjacent to producing wells, some of which were large producers, the fact being that the company was unable to complete the drilling of a well started by it, due to lack of funds, after expending thousands of dollars thereon, chiefly derived from the sale of stock, and was compelled to call upon another company to finish the same, that said well and other wells drilled for it under an arrangement entered into with said company were not successful, that none of its leases proved to be of real or permanent value, and that none were located in proven or producing portions of the oil fields concerned, but were located from three-fourths of a mile to four miles from producing wells or active operations, with the exception that one lease adjoined land with a gas well; and
- (b) Represented that the company was a joint association organized under the stringent laws of Texas, the fact being that the company was a so-called common-law trust, created by a deed and declaration of trust with full and absolute authority over its property lodged in the trustees, consisting of the aforesaid individual and two others associated with him;

With the effect of misleading and deceiving numerous persons into purchasing the stock of said company in the belief that it had sufficient funds with which to prosecute the development of leases owned by it in proven and productive oil fields, and that such stock was the stock of a joint association organized under the stringent laws of Texas:

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.

Carothers & Brown, of Houston, Tex., for respondents.

SYNOPSIS OF COMPLAINT

Acting in the public interest, the Commission charged respondent A. W. Perryman, engaged under the name A. W. Perryman Investment Co. in a general stock brokerage business, with office and prin-

cipal place of business in Houston, Tex., and a trustee of Houston Oil & Refining Co., a so-called common law corporation created by a certain deed and declaration of trust, and respondents F. P. Penfield, C. S. Thomas, W. L. Diehl, and William M. Huff, individually and as trustees and officers of said company, with 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.

Respondent Perryman, as charged, doing business as above set forth, and with the participation and assistance of the aforesaid other respondent individuals, disseminated circulars and other advertising matter and literature, soliciting the sale of the stock of the aforesaid company, and containing many false and misleading statements concerning the value thereof, the location and value of its oil leases, the nature, condition and prospects of its operations and business, and the experience and reliability of its officers.

Among such false and misleading statements the following may be mentioned:

That it had passed the stage of raising funds and was financially ready to commence and carry out drilling and other operation upon a moment's notice; that it owned leases and holdings of great value in eleven great proven oil fields and in many instances adjacent to producing oil wells, some of which were producing great quantities of petroleum; that it was headed by practical experienced men, and oil men of proven records, experts in their lines; that it would be managed in a prudent and careful manner; and that success had already crowned its drilling operations.

The facts, among others, were that the company at no time since its organization had sufficient funds for drilling operations and that respondent Perryman, doing business as above set forth, was engaged in selling stock for such purpose; that none of the company's leases ever was adjacent to or in proven oil fields or of substantial value, that the company had only two wells, each of which was wholly unsuccessful and produced no oil, and that it never had any interest in any producing oil well; that it was not subject, as alleged, to Texas laws regulating and controlling such corporations, and the conduct of their business; that its operations and business were controlled and managed solely by the respondents herein none of whom was experienced in the practical work of locating and drilling for petroleum or in the production and marketing thereof, and that an investment in its stock was not one from which financial gain or return was probable, and that the purchasers thereof never received any dividends thereon or any other profit or return therefrom.

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The complaint alleged, after the making of the allegations above indicated—

“That the aforesaid false and misleading statements made by respondent, Perryman, in the manner hereinbefore set out, and known by said respondent to be false and misleading, were and are calculated to create and did, and do create the belief on the part of the persons solicited by him as hereinbefore set out, that the Houston Oil and Refining Co. is a corporation organized under the laws of the State of Texas; that the operations and business of said company are regulated and controlled by the appropriate provisions of said laws, that the leases owned by said company are in proven oil producing territory and so located with reference to producing wells as to practically assure the discovery and production of petroleum in substantial and well paying quantities and to render probable the production of great quantities thereof, that said company had and has adequate funds to carry out drilling operations and would and will without delay proceed with such operations under an expert and experienced management which assured and assures the efficient and economical pursuit of such operations; that relying upon aforesaid statements and said belief thereby created, large numbers of the persons solicited as above set out have purchased stock of said company and continue to purchase same.”

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 (Federal Trade Commission Act) approved September 26, 1914, the Federal Trade Commission issued and served its complaint upon all of the respondents except W. L. Diehl and William M. Huff, who could not be located.

Thereafter, A. W. Perryman, F. P. Penfield, and C. S. Thomas filed answers and entered appearances by their attorney. Formal hearing was had in the course of which respondents, W. L. Diehl and William M. Huff, appeared in person and participated therein. Testimony and evidence were introduced in support of the complaint and on behalf of the respondents. This matter having now come on for final decision and the Commission having considered the record and being 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, A. W. Perryman, is and for several years prior to this proceeding has been a resident of Houston, Tex., there engaged in the brokerage business under the name of Perryman Investment Co. His business has included the purchase, sale, exploitation and development of oil lands and oil leases, and the organization, direction, and management of corporations, associations, and trusts and the sale of their stock. On January 16, 1919, in association with respondents, F. P. Penfield and C. S. Thomas, he organized under a declaration of trust the Houston Oil & Refining Co. with a capitalization of 1,000,000 shares of the par value of \$1 each. A. W. Perryman became and during all of the time hereinafter mentioned was president, C. S. Thomas, first vice president, W. L. Diehl, second vice president, William M. Huff, third vice president, F. P. Penfield, secretary and treasurer. Respondents, F. P. Penfield, C. S. Thomas, W. L. Diehl, and William M. Huff, had merely nominal connection with the Houston Oil & Refining Co. and at no time exercised or had any control over its affairs, any direct, active or responsible connection with its management, or with the preparation, publication or circulation of the literature or advertising matter by or through which the sale of its stock was effected as hereinafter set forth.

PAR. 2. Respondent, A. W. Perryman, immediately after the organization of the Houston Oil & Refining Co., controlled and directed its affairs and, under the name of and acting through Perryman Investment Co., advertised, offered for sale and sold its stock to persons in the various States of the United States by means of circulars, circular letters and other advertising matter which he caused to be distributed in the various States of the United States among purchasers and prospective purchasers of stocks and securities, in competition with other individuals, partnerships and corporations engaged in the sale of stocks and securities in interstate commerce. In such circulars and circular letters and other advertising matter, respondent, A. W. Perryman, under the name and style aforesaid, represented that the Houston Oil & Refining Co. was organized with sufficient funds to start development, and was not dependent on the sale of stock for its operations; that the company owned leases and holdings of great value in eleven great and proven fields and, in many instances, adjacent to producing oil wells, some of which were then producing great quantities of petroleum; whereas in truth and in fact the Houston Oil & Refining Co. was organized with approximately \$9,000 in money in its treasury to which was added the sum of \$8,000 or \$9,000 loaned to the company by the

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respondent, A. W. Perryman, and at the time the Houston Oil & Refining Co. began to drill its well, the company had on hand only between \$15,000 and \$20,000 to expend for the purpose and in drilling it to a depth of approximately 2,100 feet, expended between \$40,000 and \$50,000 in money, most of which was derived from the sale of stock. The company was unable to complete the well because of the lack of funds and thereupon entered into a contract with the Texas Oil Co. to complete it on a so-called fifty-fifty basis for distribution of any profits derived or to be derived therefrom. It was drilled by the Texas Co. to a depth of 2,800 feet, but was abandoned, or in the parlance of the industry it was "junked", by reason of the twisting off of a drill stem in the hole. Thereafter the Texas Co. drilled a second well about 500 feet from the No. 1 well to a depth of 2,600 feet into the salt and abandoned both wells and the lease. The Texas Co. expended in completion of well No. 1 and well No. 2, as aforesaid, approximately \$100,000. None of the leases of the Houston Oil & Refining Co. proved to be of real or permanent value and none of them were located in proven or producing portions of the various oil fields mentioned in the advertising matter, but were located from three-fourths of a mile to four miles from producing wells or active operations, except that a lease held by the respondent company in the county of Markham was located on land adjoining that on which a gas well was located.

It was further represented in such advertising matter by respondent in his efforts to sell the stock of the Houston Oil & Refining Co. that it was a joint association organized under the stringent laws of the State of Texas, whereas in fact the said company is a so-called common law trust, created by a deed and declaration of trust with full and absolute authority over its property lodged in the trustees who in this instance were respondents, A. W. Perryman, F. P. Penfield, and C. S. Thomas, as stated in the first paragraph hereof.

PAR. 3. The above and foregoing false and misleading representations had the capacity and tendency to mislead and deceive and did mislead and deceive numerous persons, in various States of the United States, into the purchase of the stock of the Houston Oil & Refining Co. in the belief that it had sufficient funds with which to prosecute the development of leases which it owned in proven and productive oil fields, and that the stock purchased was the stock of a joint association organized under the stringent laws of the State of Texas.

PAR. 4. The stock of the Houston Oil & Refining Co. advertised, offered for sale and sold by respondent, A. W. Perryman, under the name of Perryman Investment Co., was so advertised, offered for sale

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and sold in competition with individuals, partnerships, corporations and associations engaged in the sale of stocks and securities in commerce among the various States of the United States, and respondent, A. W. Perryman, under the name of Perryman Investment Co., caused certificates of said stock, when sold, to be transported from Houston, Tex., through and into other States of the United States to the purchasers 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 an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission and the answers of respondents, A. W. Perryman, doing business under the name and style of Perryman Investment Co., A. W. Perryman, F. P. Penfield, C. S. Thomas, individually and as trustees and officers of the Houston Oil & Refining Co., the testimony and evidence and brief of counsel for the Commission, respondents and each of them 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, A. W. Perryman, doing business under the name and style of Perryman Investment Co., and individually, 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 respondent, A. W. Perryman, doing business under the name and style of Perryman Investment Co., or otherwise, cease and desist from publishing, distributing, or circulating any magazine, newspaper, pamphlet, prospectus, circular, circular letter, or any other printed or written matter, in connection with the offering for sale, or the sale, in interstate commerce, of the stock of the Houston Oil & Refining Co. or of any other corporation, association, or partnership, containing any false or misleading statement or representation concerning the organization, financial condition, resources, properties, production, income, or prospects of said Houston Oil & Refining Co., or of any other corporation, association or part-

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nership whose stock is sold or offered for sale by respondent in the course of said commerce.

It is further ordered, That the complaint be and the same hereby is dismissed as to respondents, F. P. Penfield, C. S. Thomas, W. L. Diehl and William M. Huff.

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

Syllabus

IN THE MATTER OF

RIGHT WAY ROYALTY SYNDICATE, E. L. CHAPMAN,
H. F. MITCHELL AND A. J. CHAPMAN

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

Docket 930. Complaint, Nov. 20, 1922—Decision, Aug. 19, 1927

Where two individuals, trustees in a company organized by them under a declaration of trust, which provided, among other things that no certificate holder should have any rights in the management or control of its property, that the trustees should have authority to sell all or any part of its assets, at any time, and for any consideration which they might see fit, that any trustee should have the right, in his individual capacity, to sell to it royalties or other interests in oil and gas properties at a profit to such trustee individually, that such profit should be in addition to a commission of 10 per cent allowed the trustee individually for handling the transaction, that the trustees individually should receive a commission of 10 per cent of the proceeds from the sale of its assets, that the profits in excess of the par value received from the sale of securities should go to the trustee individually making the sale, and that the trustees might at any time dissolve, reorganize, incorporate, or merge the company; in offering and selling as stock or units of the company, their own individual stock, acquired by them in return for interests or properties sold by them to the company, under their powers under the aforesaid declaration, at prices fixed by themselves, substantially in excess of those paid by them for such interests or properties (in many cases resold by them, as trustees, after a brief period of ownership by the company, to another organization in which one of them was also trustee, at considerably lower prices than those paid therefor by the company);

- (a) Represented in advertisements in newspapers of general circulation, pamphlets and circulars, that the company had no salaried officers, no advertising expenses, paid no commission to agents to sell its stock or units, and incurred no expense beyond 10 per cent of the earnings, to the trustees for their services, under and by virtue of the articles of agreement and declaration of trust, the fact being that each individual, in pursuance of the privilege of selling their various interests in oil and gas properties to it at prices far in excess of the cost thereof to them, received within a few months after its organization, \$150,000 more than the 10 per cent represented to purchasers and prospective purchasers as their sole compensation;
- (b) Omitted from advertisements and newspapers, pamphlets, circulars and all other advertising matter utilized by them for the sale of such stock, any information concerning those provisions of the aforesaid articles and declaration, which invested the trustees with absolute control of the operations of the syndicate and its finances, and which allowed them to sell their property to the syndicate at prices far exceeding their cost to the trustees, and thereafter to cause the sale or transfer of such interests at such prices and under such conditions as they might deem advisable; and