

IN THE MATTER OF
WEST COAST THEATRES, INC., AND WEST COAST
THEATRES, INC., OF NORTHERN CALIFORNIA 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 1320. Complaint, May 29, 1925—Decision, May 8, 1929

Where (1) a corporation engaged in the business of owning, leasing and operating a large number of motion picture theatres, chiefly first run, in certain towns and cities in the southern portion of the state concerned, and strongly interested and in a position of power (together with the corporation immediately following, controlled by it), through exclusive franchise rights and otherwise, in the distribution of pictures as well as exhibition thereof in the state, and dominating, if not monopolizing, the business in the southern portion thereof; the corporation referred to, similarly engaged in other portions of the state in question; (3) a third corporation, likewise thus engaged, and, together with that immediately before referred to directly and indirectly interested in and controlling and operating a very large number of theatres in said state, and dominating the business involved in that part thereof not directly served and controlled by the corporation first referred to; and (4) certain individuals, partners, similarly engaged, whose business was controlled by the two first named corporations and who were associated with said corporations and those conducting the same and interested therein; with a community of interest through common stockholders and otherwise, and progressed to their position of dominance (a) by purchase and construction of theatres (and interests therein), and (b) by contracts providing for (1) joint operation thereof, (2) apportionment of territory and other mutual protection of one another's interests, (3) affiliation with or elimination of competitors and competitive interests (including arrangements directed to control and noncompetitive operation of first run theatres, particularly in the two principal cities of the state, and of one of the only two long run theatres in one of said cities), and (4) in other respects frankly providing for elimination, restriction or preclusion of competition, all in pursuance of a common course of action, and in cooperation and confederating together;

- (a) Influenced, coerced and compelled motion picture producers and/or distributors to sell pictures to them at lower prices than those at which their competitors could buy the same, and to refrain from selling pictures to competitors desired by them for their own theatres, through threatened refusal to buy any pictures, through their arrangements for the showing of first run pictures in said last named city incident to showing thereof by them in their other theatres in the state, and threatening not to show pictures in any of their theatres unless they could have the same for first run exhibition in said city, and through attempting to influence certain competitors to cooperate with them by refusing to bid on pictures offered by the exchanges;

- (b) Used the influence and power possessed by them, by virtue of their extensive ownership and control of theatres in the state, and their common interests with producers and/or distributors doing business therein, to give producers and distributors a satisfactory business in said state or to make it extremely difficult to find a satisfactory market for their films, to prevent competitors from securing films, desired by said corporations, for said competitors' theatres, and to force producers and/or distributors, by threats of boycott, to refuse to lease films to competitors, theretofore long since customers of said producers and distributors, and to give such films to them for use in their own theatres in the cities and towns concerned; and
- (c) Purchased more films than they could use, to prevent competitors in certain cities and towns from securing supplies for said competitors' theatres; With the result that competition in the leasing, sale and exhibition in said state of motion picture films leased from persons or companies located in other states and shipped therein for exhibition, was lessened by the afore-said acts and contracts, and by the withholding, induced by threats or otherwise, by distributors, of motion picture films from theatres of competitors, thereby compelled to sell their theatres to the corporations herein or affiliated interests, or to close the same and retire from the motion picture field or to cease exhibiting motion picture films therein:
- Held*, That such practices, under the circumstances set forth, were to the prejudice of the public and competitors and constituted unfair methods of competition.

Mr. G. Ed. Rowland for the Commission.

Gavin McNab, Schmulowitz, Wyman, Aikins & Brune of San Francisco, Calif. (*Mr. Robert T. Swaine, Mr. Bruce Bromley, and Mr. William Mallard*, of New York City, of counsel), for respondent *Herbert L. Rothchild Entertainment, Inc.*

Mr. Jacob Samuels, of San Francisco, Calif., *O'Melveny, Tuller & Myers*, of Los Angeles, Calif., by *Mr. Walter K. Tuller* and *Mr. James C. Sheppard* (*Mr. A. Dal. Thomson*, of San Francisco, Calif., of counsel), for all other respondents.

SYNOPSIS OF COMPLAINT

Reciting its action in the public interest, pursuant to the provisions of the Federal Trade Commission Act, the Commission charged respondent West Coast Theatres, Inc., engaged in the owning or leasing and operating of motion picture theatres in California, and the various other respondents joined herein, likewise thus engaged, with uniting in a common course of action and cooperating and confederating together to cut off competitors' sources of supply of motion picture films, leased from producers or distributors thereof in States other than California and Nevada,¹ and to restrain and prevent com-

¹ See footnote on page 438.

Complaint

12 F. T. C.

petition therein, in violation of the provisions of section 5 of such act, prohibiting the use of unfair methods of competition in interstate commerce.

Respondents include four California corporations and a partnership, engaged in owning or leasing and operating motion picture theatres, as follows: West Coast Theatres, Inc., with principal office and place of business in Los Angeles; West Coast Theatres, Inc., of Northern California, with principal office in San Francisco, engaged, like the preceding corporation, as above set forth, in operating motion picture theatres in various towns and cities of California, but particularly in the northern portion thereof; The T. & D. Jr. Enterprises, Inc., similarly engaged in the central portion of said State, and in Nevada; Herbert L. Rothchild Entertainment, Inc., similarly engaged in San Francisco, where it operates five theatres; and the partnership of Turner, Dahnken & Langley, composed of H. M. Turner, Fred Dahnken, C. L. Langley, and F. W. Livingston, engaged as above set forth in operating theatres in various California towns and cities.²

Respondents, as alleged, "individually and collectively operate or control the operation of motion picture theatres in practically all of the largest and most important cities in the State of California, and those which are most lucrative for the motion picture industry", and, in the aggregate, operate and control first-run theatres in the larger and more important California towns and cities exceeding in number

* Allegations of the complaint with reference to the activities of respondent exhibitors in leasing and contracting for motion picture films are as follows:

In the prosecution of their respective businesses said respondents are engaged in leasing, from producers or distributors of motion picture films located in other States of the United States than the States of California and Nevada and principally in the State of New York, motion picture films to be exhibited in the respective theatres severally owned or leased, and operated by said respondents. All of said respondents are in competition with other individuals, partnerships, and corporations, who are also engaged in the operation of motion picture theatres in the various towns and cities in California where the respondents or one or more of them also have theatres, and in negotiating for and leasing motion picture films for exhibition in their said theatres from the said motion picture producers and/or distributors in New York and other States of the United States to be shipped into the State of California. Respondents and their said competitors are hereinafter sometimes referred to as exhibitors. The contracts or agreements whereby said motion picture films are leased are in some instances made directly between the exhibitors on the one hand and the respective producers or distributors located in said other States of the United States, and in the other instances they are made between said exhibitors and local agents of said producers or distributors in California but subject to approval and acceptance by said producers or distributors at their home offices. In all cases said contracts contemplate and result in the shipment of said films from said other States into the State of California and the delivery of said films to exhibitors' respective theatres through branch offices of said producers or distributors located in San Francisco or Los Angeles in the State of California.

the number of such theatres operated and controlled by all of their exhibitor competitors in the aggregate.³

Respondents, as charged, engaged and situated as above set forth, and but for the things charged herein naturally in free and unrestrained competition with one another and others⁴ for a period of more than five years last past "have united in a common course of action, and have cooperated and confederated together and with each other, for the purpose of (1) hindering, restraining and preventing said producers or distributors of motion picture films in other States from leasing their said films to said competitors of respondents or any of them, and from shipping said films into the State of California and delivering them to said competitors, and (2) restraining and preventing competition among the respondents and between respondents and other exhibitors in the State of California in negotiating for and leasing motion picture films to be shipped from other States and delivered to said exhibitors respectively in the State of California as aforesaid."

In "pursuance and to carry out said mutual purposes respondents and each of them", as charged, have done and still do the following acts and things:

(a) Enter into and observe agreements and understandings among themselves or between two or more of them whereby they combine under joint management and ownership any theatres which two or more of them may then own or operate in the same towns and

³ Allegations of the complaint more particularly relating to "first-run" and "repeat-run" houses in this connection are as follows:

Motion picture theatres are divided into two classes, which are commonly known as "first-run" and "repeat-run" houses. The first-run theatres are those in which occur the initial presentations of pictures in their respective territories or localities. All others are repeat-run houses. The successful marketing and distribution of a motion picture in a given territory by the producer and/or distributor thereof, is dependent largely upon its showing in the first-run theatres in that territory, (a) because much higher prices are generally commanded and much greater crowds are attracted by the initial exhibition of a new production than by subsequent exhibitions; and (b) because exhibitors who operate first-run theatres in near-by territories and those who operate repeat-run theatres in the same territory, are to a large extent governed in their choice of motion picture films for their respective theatres, by the results of the showings of such films in such first-run theatres. "The influence and power which respondents are thus able to and do exert upon the business of leasing and transporting motion picture films into the State of California from other States are so great that respondents can by extending their patronage to any said producer or distributor, generally enable him to enjoy a successful and lucrative distribution of his product in the State of California, or can on the other hand by withholding such patronage from such producer or distributor prevent him from obtaining a successful and lucrative distribution for his said films or any of them in the State of California."

⁴ The allegation as to this states that "In the absence of the matters and things herein-after set out respondents would naturally and normally be in free and unrestrained competition with other exhibitors and with each other in negotiating for and leasing motion picture films from said producers and/or distributors thereof and exhibiting same to the public in many towns, cities and localities throughout the State of California."

Complaint

12 F. T. C.

cities; agree to mutually refrain from entering into the business of exhibiting motion pictures in any towns or cities wherein another respondent is already engaged in that business; and/or agree to mutually refrain from acquiring additional theatres in new territory or mutually competitive territory without first giving the other party or parties to the agreement an opportunity to participate on a basis of joint ownership and management.

(b) In either towns and cities where two or more respondents are operating theatres, they enter into and observe agreements and understandings with one another that they will not compete with each other in negotiating for or offering to lease any motion picture film; agree among themselves as to which films each shall exhibit; and mutually refrain from negotiating for or leasing any others.

(c) Exchange information as to the motion picture films which each desires to exhibit in order to more fully carry out their understanding set out in subparagraph (b) hereof.

(d) Coerce and compel aforesaid producers and distributors by threats of boycott and by actual boycott to (1) refrain from leasing any of their motion picture films to certain exhibitors who are competing with respondents or one or more of them; (2) refrain from leasing to certain competitors particular films which are from time to time specified by respondents or some of them; (3) refrain from leasing to competitors for repeat or subsequent showings, films that are previously shown or are to be previously shown in respondents' theatres, until after the expiration of such a long period of time after the dates upon which they are exhibited by the respective respondents that said films lose the greater part of their distribution and exhibition value, and/or (4) refrain from leasing any motion picture films to competitors of said respondents unless said competitors will increase their admission price for their theatres to, and maintain it at, specified sums fixed by one or more of the respondents.

(e) Refuse to lease films, sometimes altogether and sometimes only for exhibition in particular towns and cities where respondents' theatres have no competition, from those of said producers and distributors, who fail or refuse to comply with respondents' demands as set forth in subparagraph (d) hereof.

(f) Use other cooperative and individual means to carry out and make effective their aforesaid purposes and undertakings.

The effect and result of the alleged acts and things done by respondents, as alleged, "have been and now are to unduly hinder and restrain interstate commerce between the said producers and distributors on the one hand and the said exhibitors on the other hand, in the distribution, leasing, transportation into the State of Cali-

fornia and delivery of motion picture films; to close to both said producers and distributors and said exhibitors certain of the outlets or channels through which they would otherwise be enabled to obtain trade and pursue their respective businesses; and to deprive them of the advantages which they would enjoy under the natural and normal conditions of competition which would exist among respondents and between respondents and the other exhibitors in the absence of the matters and things herein set out"; and respondents' said alleged acts and practices "are all to the prejudice of the public and of respondents' competitors, and constitute unfair methods of competition in commerce within the intent and meaning of section 5."

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 approved September 26, 1914 (38 Stat. 717), the Federal Trade Commission issued and served a complaint upon the respondents above named, charging them with the use of unfair methods of competition in commerce in violation of the provisions of said act.

The respondents having entered their several appearances, and having filed their several answers herein, hearings were had and evidence was thereupon introduced on behalf of the Commission and respondents before an examiner of the Federal Trade Commission theretofore duly appointed.

Thereupon this proceeding came on for final hearing on the briefs of counsel, and oral argument by counsel for Herbert L. Rothchild Entertainment, Inc., counsel for the other respondents having waived oral argument, and the Commission having duly considered the record and being fully advised in the premises, makes this its findings as to the facts and conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. West Coast Theatres, Inc., is a corporation organized and existing under and by virtue of the laws of the State of California and maintaining its principal office and place of business in the city of Los Angeles in said State. Such corporation was organized in the year 1920 by Sol L. Lesser, A. L. Gore, Adolph Ramish, Thomas A. Morrissey, Goodwin Knight, and Frank S. Hutton. Since the year 1920, it has been engaged in the business of owning, leasing, and operating theatres for exhibition of motion pictures in cities and towns in the State of California. Its authorized capital

Findings

12 F. T. C.

stock under the original articles of incorporation was \$2,000,000 divided into 200,000 shares of \$10 each. Its officers in 1924 were Mike Gore, president; Sol Lesser, vice president; A. L. Gore, secretary, and Adolph Ramish, treasurer. A. L. Gore was afterward vice president. The incorporators, together with Goodwin Knight, Thomas A. Morrissey, and Frank S. Hutton, composed the first board of directors. At the first meeting of the board of directors, Goodwin Knight resigned and Dave Bershon was elected a director.

West Coast Theatres, Inc., of Northern California is a corporation organized and existing under and by virtue of the laws of the State of California. It maintains its principal office and place of business in the city of San Francisco in said State. Such corporation was organized more than ten years ago under the name of Turner & Dahnken. On or about August 9, 1923, the Superior Court of the State of California in and for the city and county of San Francisco, permitted such corporation to change its name to "West Coast Theatres, Inc., of Northern California". Such corporation both before and after the change of its corporate name was engaged in and still is engaged in the business of owning, leasing, and operating motion picture theatres in cities and towns in the State of California, and particularly in the northern half of said State. Since March, 1923, respondent West Coast Theatres, Inc., has owned more than 90 per cent of the stock of said Turner & Dahnken, or respondent West Coast Theatres, Inc., of Northern California, and has controlled the business operations of said respondent corporation. Respondent, West Coast Theatres, Inc., of Northern California, owns 50 per cent or more of the capital stock of several corporations owning theatres in California. In February, 1923, respondent, West Coast Theatres, Inc., bought 3,019 shares of the preferred stock and 68,850 shares of the common stock of Turner & Dahnken corporation (afterward West Coast Theatres, Inc., of Northern California) for about \$1,700,000. Since that time respondent, West Coast Theatres, Inc., has acquired additional shares of common and preferred stock, and at the date of the issuance of the complaint, May 29, 1925, it owned 4,096 shares of preferred stock, out of a total of 6,796 shares issued, and 71,350 shares of common stock, out of a total of 72,850 issued. Officers and directors of Turner & Dahnken immediately after the acquisition of this corporation by respondent West Coast Theatres, Inc., were A. L. Gore, president; Harry Arthur, jr., vice president; A. M. Bowles, secretary, all these gentlemen being directors also. The other four directors were Adolph Ramish, Sol

Lesser, Oscar Samuels, and Jacob Samuels. E. Salomon, a stenographer in the office of Messrs. Samuels, served as director temporarily. As of the date of filing the complaint in this proceeding, A. L. Gore was president and director, Jacob Samuels, vice president and director, A. M. Bowles, secretary and director, Sol Lesser, Adolph Ramish, Oscar Samuels, and Maurice Rosendorn being the other directors.

Respondent, T. & D. Jr. Enterprises, Inc., is a corporation organized and existing under and by virtue of the laws of the State of California, with principal office and place of business in the city of San Francisco, in that State. It was organized in March, 1921, by Mrs. H. M. Turner, L. R. Crook, G. C. Parsons, J. G. Hunter, A. H. Moore, C. W. Godard, and J. C. McCann, residents of San Francisco, Sausalito, Berkeley, and Sacramento, Calif., "to conduct and carry on a general motion picture and film exchange business in any and all of its branches." Powers as to ownership and control of property were secured to enable it to conduct such business. The incorporators were interested in the motion picture business at the time. Incorporators were the first directors. Authorized capital stock was \$1,000,000, divided into 100,000 shares of \$10 each. First officers were (Mrs.) H. M. Turner, president; G. C. Parsons, vice president; A. L. Crook, secretary and treasurer; A. H. Moore, assistant secretary. April 12, 1921, J. G. Hunter was elected second vice president. G. C. Parsons, being a distributor, in an organization primarily of exhibitors, resigned. Respondent T. & D. Jr. Enterprises, Inc., owns or leases and operates theatres in Sacramento, Susanville, Petaluma, Paso Robles, Lodi, and Selma, Calif., and in Reno, Nev., and has in addition interests in theatres or companies operating theatres in Sacramento, Oakland, and San Leandro, Calif. Its stockholders and officers have holdings in theatres elsewhere.

Respondent, Herbert L. Rothchild Entertainment, Inc., is a corporation organized and existing under and by virtue of the laws of the State of California. It was organized in March, 1920, under the name of Famous Players-Lasky Corporation of California, with 120,000 shares of stock authorized, divided into 80,000 shares of common and 40,000 shares of preferred. The preferred stock was never issued. At the time of its formation Herbert L. Rothchild owned 75 per cent of the common stock and Famous-Players Lasky Corporation 25 per cent. At the time of its organization the officers were Herbert L. Rothchild, president, and Sanford F. Walter, secretary. In September, 1922, the name of the corporation was changed

Findings

12 F. T. C.

to Herbert L. Rothchild Entertainment, Inc. Sometime later the officers were Herbert L. Rothchild, president; I. M. Golden, vice president; E. B. Barron, secretary; and Walter E. Wilcox, treasurer. The directors were Rothchild, Golden, Wilcox, W. W. Stettheimer, and Gavin McNab. The officers and directors remained the same until July, 1925. In July, 1925, Mr. Rothchild sold all his stock in the company to Famous-Players Lasky Corporation, to be paid for over a term of years, and since that time he has had no control over the stock, although some of it still stands in his name on the books. After the sale by Rothchild of his stock the name of the corporation was changed to San Francisco Entertainment, Inc.

H. M. Turner, Fred Dahnken, C. L. Langley, and F. W. Livingston are copartners doing business as Turner, Dahnken & Langley. Such partnership was organized prior to July 1, 1921. Such partnership and the individuals of which it was composed maintained their offices and principal place of business in the city of Los Angeles, Calif. These individuals operating as Turner, Dahnken & Langley, were engaged in the business of owning and leasing or operating motion picture theatres in towns and cities in California. On or about July 1, 1921, said respondents H. M. Turner, Fred Dahnken, C. L. Langley, and F. W. Livingston entered into a contract with respondent, West Coast Theatres, Inc., whereby said individuals on the one hand and respondent West Coast Theatres, Inc., on the other, agreed to cease competing with each other in Southern California and acquired certain interests in certain theatres and theatre-holding corporations, some of which had been, up to that time, in competition with one another.

PAR. 2. The term "exhibitors" as hereinafter used applies to respondents and to their competitors engaged in the operation of theatres and in the leasing and the exhibition of motion picture films.

"Exhibitor" is a term used generally to designate operators of theatres which show motion pictures to the public. "Producers" are persons or concerns who produce motion picture films. "Distributors" are persons or concerns who distribute motion pictures.

Motion picture theatres are divided into two classes: (1) First-run houses, (2) subsequent run houses. The successful distribution of motion picture films in a given territory depends largely upon their showing in the first run theatres in that territory. First-run theatres in territory contiguous to the central city in which the film has its "first-run," and subsequent run theatres in the same territory, are guided in their choice of motion picture films by the result of

the exhibition of such films in the first-run theatre in such central city.

PAR. 3. Respondent West Coast Theatres, Inc., operate, control and/or "book" for first-run theatres in large numbers in the more important California cities and towns. At the date of its organization, respondent West Coast Theatres, Inc., controlled the following theatres:

Theatre	West Coast percentage of interest	Remarks
<i>Los Angeles</i>		
Kinema (Criterion).....	100	
Rosebud.....	100	
New Central.....	100	
Strand.....	100	
Alhambra.....	50	50 per cent at time of organization, 100 per cent later.
Hollywood.....	50	House owned by Hollywood Theatres, Inc. of whose stock 50 per cent owned by West Coast Theatres Inc., and 50 per cent by Frank Grant, J. L. Swope, J. M. Young, and others.
Apollo.....	50	Same as Hollywood Theatre. (See new Apollo.)
Windsor.....	50	Same as Hollywood.
<i>Venice</i>		
Auditorium.....	50	House owned 100 per cent by the Venice Investment Co., 50 per cent of whose stock is owned by West Coast Theatres, Inc., and the other 50 per cent was then owned by George Cleveland, Kinney, and others. Mr. Cleveland was closely associated with the men who controlled respondent.
Neptune.....	50	Do.
California.....	50	Do.
<i>Anaheim</i>		
California.....	75	Under name of Anaheim Theatres, Inc., theatre was constructed, G. T. Ingram owning the other 25 per cent interest.
<i>Pomona</i>		
American.....	100	
Belvidere.....	100	
<i>Bakersfield</i>		
California.....	100	
Pastime.....	100	
Hippodrome.....	100	
Opera House.....	100	
<i>Taft</i>		
Sunshine.....	22½	Directly 22½ per cent—indirectly a majority interest.
<i>Redondo</i>		
Capitol.....	50	Same as California Theatre, Venice.
<i>Ocean Park</i>		
La Petite.....	50	Do.

Since the date of its organization and prior to May, 1925, when the complaint was issued in this proceeding, respondent, West Coast

Findings

12 F. T. C

Theatres, Inc., had acquired the following theatres or the interest therein hereinafter indicated:

Theatre	West Coast percent- age of interest	Remarks	
<i>Los Angeles</i>			
Circle.....	100	Leased by Huntington Park Theatres, Inc., of which West Coast Theatres, Inc., owns 50 per cent of capital stock, the other 50 per cent owned by West Coast-Langley Theatre Circuit, controlled by respondent.	
Roosevelt.....	50		
Tally's.....	100	Leased from A. C. Blumenthal Co., other 25 per cent owned by I. H. Norton. Replaces the old Apollo which is owned by Hollywood Theatres, Inc., in which corporation West Coast Theatres, Inc., has 50 per cent interest. Leased by Hollywood Theatres, Inc., in which company West Coast Theatres, Inc., owns 50 per cent of stock. Do. Do. Do. Do. Do. Do. Do. Do.	
Sunbeam.....	100		
Highland.....	100		
Mission (Monterey Park).....	100		
Boulevard.....	100		
Brooklyn.....	100		
Uptown.....	100		
Shamrock (Bandbox).....	75		
New Apollo.....	50		
Wilshire.....	50		
Granada.....	50	Leased from I. King by West Coast-Sunbeam Theatre Co. of which West Coast Theatres, Inc., owns 66⅔ per cent of capital stock and C. W. Grubb owns 33⅓ per cent. Do.	
Paramount.....	50		
Carmel.....	50	Leased by Combined Theatres, Inc., from 7th and Broadway Building Co., West Coast Theatres, Inc., owns 50 per cent of stock and Loew's, Inc., owns other 50 per cent. Do.	
Beverly.....	50		
Sunbeam.....	66⅔	Owned by Boulevard Theatre Co., Inc., of which West Coast Theatres, Inc., owns 50 per cent and Sidney Grauman owns 50 per cent. Owned by South Side Theatres, Inc., 50 per cent of whose stock is owned by West Coast Theatres, Inc., and 50 per cent by R. B. Grunauer.	
Kinema.....	66⅔		
Loew's State.....	50	Owned by John Sugar, West Coast Theatres, Inc., has 50 per cent interest in profits and operates theater. Do.	
California.....	50		
Miller.....	50	Leased by Anaheim Theatres, Inc., the other 25 per cent of whose stock is owned by G. T. Ingram. Do.	
Grayman's Egyptian.....	50		
Manchester.....	50	Built by respondent upon land leased for 99 years from M. Potter. Do.	
York.....	50		
<i>Anaheim</i>			
Fairyland.....	75	Leased from F. Livingston, who holds 38⅓ per cent of stock; C. L. Langley, who had similar share, sold to respondent, West Coast Theatres, Inc., which now owns 61⅓ per cent of stock. Do.	
Strand.....	75		
<i>Pomona</i>			
California.....	100	Leased from Venice Investment Co., of whose stock West Coast Theatres, Inc., owns 50 per cent. Do.	
<i>Taft</i>			
Hippodrome (old).....	22⅓	Leased by Venice Investment Co., of whose stock West Coast Theatres, Inc., owns 50 per cent. Do.	
<i>Redondo</i>			
Art.....	50	Leased by Venice Investment Co., of whose stock West Coast Theatres, Inc., owns 50 per cent. Do.	
Pavillion.....	50		
<i>Ocean Park</i>			
New Dome.....	50	Lease for 15 years	
<i>San Pedro</i>			
Cabrillo.....	100	Lease for 15 years	
<i>San Bernardino</i>			
West Coast.....	100		

Findings

Theatre	West Coast percent- age of interest	Remarks
<i>Long Beach</i>		
West Coast.....	100	Sold.
Liberty.....	100	
Palace.....	50	
<i>Wilmington</i>		
Granada.....	100	
<i>Riverside</i>		
Mission.....	50	West Coast-Langley Circuit owns other 50 per cent. Do. Do. Other 50 per cent owned by Turner, Dahnken & Langley.
Regent.....	50	
Loring.....	50	
Orpheum.....	50	
<i>El Centro</i>		
Palace.....	50	Leased from Mrs. Blackwell to Valley Theatre Co., West Coast Theatres, Inc., own 50 per cent and Arthur Brick, 50 per cent. Do. Owned by Valley Theatre Co. Leased by Valley Theatre Co.
Valley.....	50	
Airdome.....	50	
Tulane.....	50	
<i>Hermosa Beach</i>		
Metropolitan.....	50	Through Venice Investment Co. See Art Theatre, Redondo.
<i>Santa Monica</i>		
Criterion.....	50	Do.
<i>Huntington Park</i>		
Huntington.....	50	Through Huntington Park Theatre Co. See Roosevelt Theatre, Los Angeles. Do.
California.....	50	
<i>Glendale</i>		
Palace Grand (now Lincoln).....	20	Leased by Glendale Theatre Co.; other 80 per cent of stock owned by West Coast-Langley Circuit. Owned by Gateway Theatre Co., in which Fred Miller, Roy Miller, and B. E. Loper, sr., own other 69.7 per cent of the stock.
Gateway.....	30.3	
<i>San Diego</i>		
Balboa.....	100	Building owned by Balboa Building Co., but leased to Silvergate Theatre, Inc., of which respondent West Coast Theatres, Inc., owns 100 per cent of the stock. Do.
Cabrillo.....		
<i>Santa Barbara</i>		
California.....	49	Lensed by California Theatres Co., in which West Coast Theatres, Inc., acquired an interest of 49 per cent, but purchase was rescinded and interest now nil. Do. Do. Same as California. (These theatres are leased by the California Theatre Co.; booked for West Coast.)
Potter.....		
Mission.....		
Granada.....		

Besides the direct holdings detailed above, respondent, West Coast Theatres, Inc., has indirect interests in the following theatres:

Findings

12 F. T. C.

Theatre	West Coast percent-age of interest	Remarks
<i>Los Angeles</i>		
Alvarado.....	50	Leased by the West Coast-Langley Theatre Circuit—same as Mission Theatre, Riverside, Calif.
De Luxe.....	50	Do.
Theatorium (now Hollyway).....	50	Do.
Rivoli.....	50	Owned by Holly-Western Theatres, Inc., 50 per cent of whose stock is owned by Hollywood Theatres, Inc., in which respondent West Coast Theatres, Inc., has a half interest; the other half is owned by Graff Brothers.
Carlton.....	50	Do.
Crescent.....	50	Do.
Iris.....		Leased by Earl Sinks and Hollywood Theatres, Inc., with interests of 50 per cent each, West Coast Theatres, Inc., having 50 per cent interest in Hollywood Theatres, Inc.
<i>Pasadena</i>		
Pasadena.....		Leased by West Coast-Langley Circuit Same as Alvarado Theatre, Los Angeles.
Florence.....		Do.
Raymond.....		Do.
Strand.....		Do.
<i>Inglewood</i>		
Inglewood.....		Leased by the Inglewood Theatre Co., which is owned 33¼ per cent by D. B. Van Derlip, 33¼ per cent by West Coast Theatres, Inc., and 33¼ per cent by Venice Investment Co. West Coast Theatres, Inc., owns 50 per cent of the stock of Venice Investment Co.
Granada.....		Do.

Respondent, West Coast Theatres, Inc., had an interest in certain other theatres construction of which had begun, or negotiations for the acquisition of an interest in which had begun, prior to the issuance of the complaint in this case, May 29, 1925, and which theatres subsequently have been opened and/or acquired. These theatres are as follows:

Theatre	West Coast percent-age of interest	Remarks
<i>Los Angeles</i>		
San Carlos.....	100	Leased by Hollywood Theatres, Inc., of whose stock 50 per cent is owned by West Coast Theatres, Inc.
La Mirada.....	50	
Belmont.....	50	Leased by Huntington Park Theatres, Inc., of whose stock West Coast Theatres, Inc., owns 50 per cent, West Coast Theatres, Inc., of Northern California and C. L. Langley own 50 per cent.
Balboa.....	50	Owned by Southside Theatres, Inc., of whose stock West Coast Theatres, Inc., owns 50 per cent.
Mesa.....	66⅔	Owned by Mesa Investment Co., 66⅔ per cent West Coast Theatres, Inc., and 33¼ per cent by Adolph Ramish.
Ritz.....	100	
<i>South Pasadena</i>		
Rialto.....	50	50 per cent Turner, Dahnken & Langley and 50 per cent by West Coast Theatres, Inc.
<i>Santa Ana</i>		
West Coast Walker.....	51	Owned by West Coast Walker Theaters, Inc.—51 per cent West Coast Theatres, Inc., and 49 per cent O. W. Walker.

436

Findings

Respondent, West Coast Theatres, Inc., through a corporation known as West Coast Junior Circuit, has an interest in the following theatres:

Theatre	West coast percent- age of interest	Remarks
<i>Los Angeles</i>		
Royal.....	50	Owned 100 per cent by West Coast Junior Circuit, Inc., of whose capital stock West Coast Theatres, Inc., owns 50 per cent.
Jewel.....	50	Do.
Crystal.....	50	Do.
<i>Redlands</i>		
Majestic.....	50	Do.
Liberty.....	50	Do.
Wyatt.....	50	Do.
<i>Ontario</i>		
Granada.....	50	Do.
<i>Burbank</i>		
Victory.....	50	Do.

As of May, 1925, the New Central, Apollo, and Windsor of the original holdings in Los Angeles were closed. The Auditorium in Venice was destroyed by fire and the Neptune was closed. The American and Belvidere in Pomona were closed, as was the Opera House in Bakersfield. LaPetite in Ocean Park was dismantled. Of the later acquisitions in Los Angeles, the Tally's and Sunbeam were closed, as was also Miller's. Fairyland and Grand in Anaheim, and Pavillion in Redondo, were also closed, as were Palace in Long Beach, Mission in Riverside, and Palace, Valley, and Tulane in El Centro. Crescent in Los Angeles, in which respondent, West Coast Theatres, Inc., had an indirect interest, was also closed in May, 1925.

Respondents refused to give information as to theatre holdings later than May, 1925, except where negotiations leading to the acquisition of a theatre had been begun before that date, but there were indications that the processes of expansion are continuing as they continued between 1920 and 1925.

PAR. 4. While technically accurate, having in mind that the above lists set forth the direct ownership of respondent, West Coast Theatres, Inc., in the theatre-owning and operating corporations, said lists do not in fact give full information as to such virtual ownership. As of May, 1925, respondent, West Coast Theatres, Inc., owned directly 5,506.2 shares of the capital stock of the Taft Theatre Co. C. L. Langley and respondent, West Coast Theatres, Inc., of Northern California, a subsidiary of West Coast Theatres, Inc., owned 9,490.8 shares of such stock out of a total issue of 15,000 shares. With C. L.

Findings

12 F. T. C.

Langley, its associate, tied to its policies by contract, it controlled all the stock. In the same way, respondent, West Coast Theatres, Inc., and its subsidiary, West Coast Theatres, Inc., of Northern California, together with C. L. Langley, owned 9,998 shares of stock in Glendale Theatre Co., out of a total issue of 10,000 shares. In the same way, West Coast Theatres, Inc., its subsidiary, and its associate, owned 4,997 shares of stock of the Huntington Park Theatre Co., out of a total issue of 5,000 shares.

The West Coast-Langley Theatre Circuit is the same as the partnership of Turner, Dahnken & Langley, named as a respondent in this case. Turner & Dahnken (now West Coast Theatres, Inc., of Northern California) owned a two-thirds interest in Turner, Dahnken & Langley, which interest was acquired by respondent, West Coast Theatres, Inc., when it bought over 90 per cent of the capital stock of Turner & Dahnken. Since that time, F. W. Livingston and C. L. Langley have sold their interests in the partnership to respondents, so at present respondents West Coast Theatres, Inc., West Coast Theatres, Inc., of Northern California and Adolph Ramish own the West Coast-Langley Theatre Circuit.

PAR. 5. Respondent, West Coast Theatres, Inc., does the booking for all the theatres in which it has any interest. Booking for a theatre involves the purchase of motion picture films for exhibition in the theatre, the arranging of runs, play dates, etc. A commission of 10 per cent is charged for this service in practically every case, both for the theatres in which it has an interest, and those in which it has no interest.

In addition to booking for theatres in which it has an interest, respondent West Coast Theatres, Inc., also booked for thirty theatres in which it had no interest of any kind. It had terminated the purchase of films for eight of such theatres prior to the issuance of the complaint in this proceeding, and shortly thereafter, ceased booking for six other of such theatres. At the present time it is booking for sixteen theatres in which it is not an owner in whole or in part. By booking for theatres in which it has no interest of any kind, West Coast Theatres, Inc., is able to control to a great extent the policy of such theatres, and add to its influence and dominance in the film-purchasing market in Southern California.

Respondent, West Coast Theatres, Inc., when it acquires an interest of any kind in a theatre or theatre-owning company, usually requires that it shall keep the books and accounts of said theatre or theatre-owning company.

PAR. 6. A "first-run" theatre is one which exhibits a film for the first time in a particular city, town, or zone. Subsequent exhibitions

436

Findings

of a film in the same city, town, or zone are called "second-run", "third-run", etc. Patrons of moving picture theatres usually prefer to attend first-run theatres, and such theatres charge higher admission prices than subsequent-run theatres. A large majority of the theatres owned, controlled and operated by respondent, West Coast Theatres, Inc., are first-run theatres in the cities, towns, and zones in which said theatres are located.

PAR. 7. Respondent, West Coast Theatres, Inc., of Northern California also owns and operates, or has an interest in, many theatres in the State of California.

At the time that respondent, West Coast Theatres, Inc., acquired the stock of Turner & Dahnken, the name at that time of the corporation afterward respondent West Coast Theatres, Inc., of Northern California, Turner & Dahnken had the following theatres:

Theatre	Turner & Dahnken percentage of interest	Remarks
<i>San Francisco</i>		
T. & D. (Tivoli).....	100	
<i>Oakland</i>		
T. & D.....	100	
<i>Stockton</i>		
T. & D. (California).....	100	
<i>Sacramento</i>		
T. & D. (Capitol).....	50	50 per cent Turner & Dahnken, and 50 per cent M. and J. A. Nally. Later a corporation called Sacramento Theatres, Inc., formed, 50 per cent of whose stock was owned by West Coast Theatres, Inc., of Northern California and 50 per cent by M. and J. A. Nally, and theatre transferred to that corporation.
<i>Berkeley</i>		
T. & D. (California).....	100	
<i>Richmond</i>		
T. & D. (California).....	100	
Richmond.....	100	
<i>Salinas</i>		
T. & D. (California).....	66⅔	Turner & Dahnken undivided two-thirds interest; other one-third owned by G. A. Turner.
Unnamed theatre.....	66⅔	
<i>Watsonville</i>		
T. & D.....	100	
<i>San Jose</i>		
T. & D. (California).....	100	
<i>Alameda</i>		
Unnamed theatre.....	100	Theatre under lease.

Findings

12 F. T. C.

Prior to the date of the complaint in this proceeding, May 29, 1925, the T. & D. Theatre in Watsonville had burned down, and the lease on the Tivoli in San Francisco had expired. All the other theatres were operating as of that date.

From the date of the acquisition of more than 90 per cent of the capital stock of Turner & Dahnken by West Coast Theatres, Inc., February 3, 1923, down to May 29, 1925, the date of the complaint in this proceeding, respondent, West Coast Theatres, Inc., had acquired the following theatres, and interest in theatres:

Theatre	West Coast of Northern California, percentage of interest	Remarks
<i>San Francisco</i>		
Loew's Warfield.....	25	See paragraph 12, section 2 (pp. 453, 459).
<i>Stockton</i>		
State.....	100	
<i>Fresno</i>		
Hippodrome.....	100	
Kinema.....	100	
Liberty.....	100	
Strand.....	100	
White.....	100	
<i>Sacramento</i>		
Senator.....	50	Owned by Sacramento Theatres, Inc., of which West Coast Theatre, Inc., of Northern California owns 50 per cent of stock, M. and J. Naify, 50 per cent.
<i>Berkeley</i>		
U. C.....	100	
Berkeley.....	100	
<i>Watsonville</i>		
California.....	100	
<i>Oakland</i>		
Grand Lake.....	50	Real property and theatre building leased by Bay District Theatres, Inc., of whose stock West Coast Theatres, Inc., of Northern California owns 50 per cent, A. C. Karshi, 50 per cent.
Senator.....	75	
Roosevelt.....	75	

The lease on the Hippodrome Theatre in Fresno was terminated prior to May 29, 1925, and the Roosevelt Theatre in Oakland is no longer owned by respondent.

PAR. 8. Respondent, T. & D. Jr. Enterprises, Inc., on May 29, 1925, owned and operated numerous theatres in California, as follows:

436

Findings

Theatre	T. & D. Jr. per-centage of interest	Remarks
<i>Paso Robles</i>		
T. & D. Jr.	100	Leasehold.
<i>Lodi</i>		
T. & D. Jr.	100	Do.
Tokay	100	Do.
<i>Selma</i>		
T. & D. Jr.	100	Do.
<i>Reno</i>		
Rialto (Granada)	100	Do.
Majestic	100	Do.
Grand	100	Do.
<i>Sacramento</i>		
Godard's	100	Do.
Hippodrome	100	Do.
Liberty	100	Do.
<i>Susanville</i>		
Liberty	100	Owned in fee.
Orpheus (closed)	100	Leasehold.
<i>Petaluma</i>		
California	100	Owned in fee.
Hill Opera House		

Respondent, T. & D. Jr., Enterprises, Inc., as of May 29, 1925, also owned stock in a number of other companies owning and operating theatres. It owned a 60 per cent interest in the Oakland & San Francisco Co., which owned 100 per cent leasehold, State Theatre, Oakland.

It had a 51 per cent interest in the Oak Park Theatre Co., which owned in fee 100 per cent Oak Park Theatre, Sacramento.

It had a 12½ per cent interest in the Oregon & California Amusement Co., which had interests in the following theatres:

Theatre	Per cent leasehold	Remarks
<i>Oakland</i>		
Palace	100	100 per cent leasehold interest is in Monarch Theatre Co., of which Oregon & California Amusement Co. owns 50 per cent.
Casino	100	
Fremont	100	
Flintdale	100	
Granada	50	
Rialto	50	100 per cent leasehold interest is in San Pablo Theatre Co., of which Oregon & California Amusement Co. owns 50 per cent.
Liberty	50	100 per cent leasehold interest is in Diamond Theatre Co., of which Oregon & California Amusement Co. owns 50 per cent.
<i>San Leandro</i>		
Best	50	100 per cent leasehold interest is in East Bay Theatre Co., of which Oregon & California Amusement Co. owns 50 per cent.
<i>Hayward</i>		
Hayward	50	Do.

Findings

12 F. T. C.

It owned a 12½ per cent interest in Monterey Theatres Co., which owned and operated the following theatres in Monterey, Calif.:

Monterey_____	100 per cent leasehold.
Strand_____	100 per cent leasehold.
Star (closed)_____	100 per cent leasehold.
Grove_____	100 per cent owned in fee.

It owned a 12½ per cent interest in West Oakland Theatres Co., which owned and operated in Oakland:

Lincoln_____	100 per cent leasehold.
--------------	-------------------------

It owned a 10 per cent interest in Consolidated Theatres, Inc., which owned and operated in San Francisco:

Royal_____	100 per cent leasehold.
Polk_____	100 per cent leasehold.

In general, the theatre companies named above in which respondent T. & D. Jr. Enterprises, Inc., had a stock interest were controlled by stockholders, or former stockholders, in this respondent who also hold stock in these theatre companies. Many of these stockholders had extensive theatre interests outside of this respondent's holdings. In the Oregon & California Amusement Co., T. & D. Jr. Enterprises, Inc., owns 1,250 shares of stock out of 10,000 shares, the remainder being owned by R. A. McNeil, E. H. Emmick, M. Naify, Charles Moser, M. Thomas, and M. Rosenberg. In the Oakland & San Francisco Co., T. & D. Jr. Enterprises, Inc., owns 60 per cent of the stock, R. A. McNeil 30 per cent, and M. Naify 10 per cent. In the West Oakland Theatre Co., T. & D. Jr. Enterprises, Inc., owns 25 shares of stock out of 200 shares, the remainder being owned by R. A. McNeil, E. H. Emmick, M. Naify, Charles Moser, M. Thomas, and M. Rosenberg. In Monterey Theatres Co., T. & D. Jr. Enterprises owns 37½ shares of stock out of 300 shares, the other stockholders being E. H. Emmick, R. A. McNeil, M. Naify, Charles Moser, and J. E. Moser. The names of the other stockholders in the Oak Park Theatre Co. and Consolidated Theatres, Inc., do not appear in the record. E. H. Emmick, M. Naify, J. A. Naify, R. A. McNeil, and William Nasser were all large stockholders in T. & D. Jr. Enterprises, Inc., on May 29, 1925.

Respondent, T. & D. Jr. Enterprises, Inc., also books for several theatres in which it has no interest. These theatres are the Merced, in Merced, Calif., Tulare, in Tulare, Calif., and Strand, in Alameda, Calif. It also keeps the books for the two last named, for which it is remunerated. The Tulare Theatre is owned by four individuals, of whom two, M. Naify and William Nasser, are officials

of respondent; the Merced Theatre is owned by E. H. Emmick, R. A. McNeil, and M. Naify, large stockholders and officers of respondent; the Strand Theatre is owned by several individuals, including M. Naify and William Nasser, large stockholders in respondent.

T. & D. Jr. Enterprises, Inc., required that before any director or stockholder of the company should become interested in any theatre deal it must first be submitted to the corporation so that the corporation could decide if it wanted to participate in the deal. If the corporation did not, then any director or stockholder could personally acquire an interest.

PAR. 9. Respondent, Herbert L. Rothchild Entertainment, Inc., on May 29, 1925, the date of the issuance of the complaint herein, owned and operated the California, Granada, Imperial, and Portola theatres, all in San Francisco. At the time of its organization all except the Granada were owned and operated, the latter theatre having been built by the corporation shortly after its organization. All these theatres were first-run houses until December, 1923, when the policy of the Portola Theatre was changed, and it became a "grind" house, showing old pictures at a 15-cent admission price.

PAR. 10. Respondent Turner, Dahnken & Langley in July, 1921, declared itself the owner and operator of theatres in Taft, Pasadena, and Glendale, Calif., which are referred to as "closed and restricted towns owned by Turner, Dahnken & Langley." The partnership had at that time Jensen's Theatorium, Alvarado Theatre, and DeLuxe Theatre in Los Angeles, which are given a protection from respondent, West Coast Theatres, Inc., of 1½ miles closed zone. It had also a closed site for a theatre on the Bush property on the line of Santa Monica and Venice. In addition, respondent Turner, Dahnken & Langley, acquired theatres since July, 1921, in South Pasadena and Riverside, Calif. The theatres owned and controlled by Turner, Dahnken & Langley are all set forth in the theatre holdings of respondent, West Coast Theatres, Inc., in paragraph 3 herein, under the names of West Coast-Langley Circuit, Turner, Dahnken & Langley, or F. W. Livingston and C. L. Langley, and will not be repeated here.

PAR. 11. Respondents herein for three or more years prior to the issuing of the complaint in this proceeding, May 29, 1925, had been actual or potential competitors as exhibitors in the motion picture business among themselves and with exhibitors other than respondents, all of which exhibitors used motion picture films which were contracted for with owners outside the State of California, and

Findings

12 F. T. C.

shipped from States other than California into California for exhibition.

PAR. 12. Respondents herein made agreements among themselves, and with other exhibitors, intended to lessen, and which actually did lessen, competition among respondents, as well as, in some instances, between distributors.

(1) Under date of July 1, 1921, F. W. Livingston, Hattie M. Turner, Fred Dahnken, and C. L. Langley, partners doing business under the name and style of Turner, Dahnken & Langley, as parties of the first part, entered into a contract with respondent West Coast Theatres, Inc., and Mike Gore, A. L. Gore, Sol Lesser, and Adolph Ramish, as parties of the second part, in which contract it is recited:

Whereas, said parties of the first part, are the owners, controllers or operators of certain theatres in Southern California, hereinafter enumerated; and,

Whereas, in certain localities in Southern California the theatres of said parties hereto, respectively are in open and aggressive competition which threatens to be ruinous and unprofitable to said parties respectively and such parties are fearful that such competition may extend to other localities in Southern California where a theatre or theatres of said parties only is now owned, controlled, or operated, and the parties hereto for the purpose of their mutual benefit, and to avoid and prevent such ruinous and unprofitable competition, and for the further purpose of providing against the contingencies of the future as the business of the parties hereto may come in conflict have agreed as follows, to wit:

Following the above preamble, the parties to this contract agree to organize and incorporate the Hippodrome Theatre of Taft, Inc., and Palace Grand Theatre of Glendale, Inc., for the purpose of acquiring, operating, and dealing in theatres and kindred property. These corporations are to be made holding companies for the theatres and other kindred properties owned by the parties to the contract and located in the place indicated by the names of the corporations. Parties of the second part were to hold 22½ per cent of the stock of the Hippodrome corporation and 20 per cent of the stock of the Glendale corporation, and the corporations were to be given certain First National film franchises owned by parties of the second part. It is provided in such contract that each of the parties thereto shall have an equal number of stockholders on the boards of directors of the two companies, although West Coast Theatres, Inc., has a minority of the capital stock, and each shall have 50 per cent of the voting power both in the Hippodrome and the Glendale corporations. Said corporations were formed in accordance with the terms of the contract, on April 6, 1922, under the names "Taft Theatre Co.," and "Glendale Theatre Co.," and are now in existence.

It is recited in the agreement that parties of the second part (West Coast Theatres, Inc.) own theatres in Bakersfield, Pomona, Long Beach, Venice, Redondo, Anaheim, San Pedro, San Diego, and Taft, Calif., which are designated as "Closed and restricted towns owned by West Coast Theatres, Inc.," and that said parties of the second part also own eight theatres in Los Angeles, one in Gardner Junction, and three in Hollywood, Calif., which have "Protection of 1½ miles radius closed zone given." It is also recited that such parties of the second part own three theatres in Los Angeles—the Kinema, Alhambra, and Shamrock, designated as "Open and unrestricted communities." It is also recited that parties of the first part have three theatres in Los Angeles—Jensen's Theatorium, Alvarado, and DeLuxe theatres, which are designated as "Theatres owned by Turner, Dahnken & Langley wherein a protection of 1½ miles closed zone is given." It is further recited in the contract that Main Street, Los Angeles, is "open and unrestricted" in the block between Fourth and Fifth Streets. Also that on the Bush property, located on the line of Santa Monica and Venice, Turner, Dahnken & Langley propose to establish a theatre which shall be open and unrestricted.

Closed towns as understood in the motion picture industry are towns where one interest owns the theatres, and there is but one customer for films.

The contract further provides that the theatres already owned, controlled, operated or in the course of construction, belonging to either party to the contract, shall continue to serve the respective communities or zones set out in the foregoing paragraph of the contract, and the parties to the contract agree not to invade any such zone or community and to refrain from competition with each other therein. If new zones are created by either party during the life of the contract in any manner, the party creating such new zone or community must first give notice to the other party of the location of such new zone, proposed plans, etc., and said other party shall have the exclusive right and option for thirty days to acquire a 50 per cent interest in such enterprise at actual cost.

It is provided that whenever the parties of the first part create a new zone or zones subject to service by a First National franchise, parties of the second part agree to assign or cause to be assigned to the parties of the first part such franchise, if in their power so to do.

Another clause requires the parties to the contract to refrain from acquiring an interest in any new theatre within a 1½-mile radius of any theatre then owned or being constructed by either party, with certain exceptions.

Findings

12 F. T. C.

Under the contract the options given to each of the parties to the contract to share in each new theatre enterprise of any of the other parties are limited to two years. If the parties undertaking such new enterprise fail to notify the other parties and offer them 50 per cent interest in the enterprise, then the other parties may give notice of a desire to participate and such notice gives the other parties an option under certain circumstances, during the life of the contract. This arrangement for the participation by all parties to the contract in the new enterprises of each party applies to any interest which either party may get in any new project.

It is also provided that the contract is effective in and binds the parties from the northern line of Kern and San Luis Obispo Counties, and takes in what is known as Southern California.

The words "invade" or "compete", or "invasion" or "competition" are defined by the parties to the agreement as including any interests, rights, and titles, indirect as well as direct, as copartners, stockholders, owners of units, under declaration of trust, or otherwise, "however acquired, or however direct or inconsequential."

The term of the contract is twenty-five years. The parties to said contract have adhered to and abided by the policies and provisions contained therein, and so far as necessary, said contract is still in effect. The acquisition of control over the Turner, Dahnken & Langley interests by respondent, West Coast Theatres, Inc., in February or March, 1923, made this contract unnecessary as a means of extending its control over theatres in Southern California, and in the suppression of competition between Turner, Dahnken & Langley and respondent West Coast Theatres, Inc., in such territory. Turner & Dahnken, the corporation afterward known as West Coast Theatres, Inc., of Northern California, when acquired by respondent West Coast Theatres, Inc., in February or March, 1923, owned a two-thirds interest in Turner, Dahnken & Langley, and this interest passed to respondent West Coast Theatres, Inc., with the other Turner & Dahnken holdings.

(2) An agreement between respondent, West Coast Theatres, Inc., and Loew's, Inc., was dated May 26, 1923. By this agreement the parties bound themselves to form a New Jersey corporation to be known as "Combined Theatres Corporation," the stock of which was to be shared by the parties to this agreement, and to place in the control of such corporation said Loew's theatres in Los Angeles and San Francisco, Calif. Combined Theatres Corporation was to be controlled by a board upon which both parties were represented. Under the agreement, the theatres were to be operated for joint account. The contract recites that Loew's, Inc., owns all the capital

stock of Metro Pictures Corporation, a New York corporation (now known as Metro-Goldwyn-Mayer), and that respondent West Coast Theatres, Inc., "is the owner of the exclusive franchise or right to the distribution in the State of California, of motion picture productions released by or through the Associated First National Pictures Corporation." By the agreement Combined Theatres Corporation was to have the pick of not less than twenty-two pictures per year released by Metro Pictures Corporation and Associated First National Pictures Corporation, respectively, for first-run exhibition in the two theatres covered by said contract, said pictures to be on the "play or pay" basis. The theatres covered by said contract are Loew's State Theatre, in Los Angeles, and Loew's Warfield Theatre, in San Francisco, both being leading downtown, first-run theatres in their respective cities, and their policies being the showing of a picture for seven days. Each concern, Loew's and respondent, West Coast Theatres, Inc., had share and share alike in the profits. Loew's, Inc., had general inspection rights and West Coast Theatres, Inc., was the actual operator. The California and Miller's theatres in Los Angeles were also acquired by Combined Theatres Corporation and operated under similar terms. The contract is still in force as to Loew's State Theatre in Los Angeles and Loew's Warfield Theatre in San Francisco.

Subsequent to the acquisition of the controlling interest in Turner & Dahnken, respondent, West Coast Theatres, Inc., entered into an agreement with said Turner & Dahnken, dated June 26, 1923, whereby it was agreed that Turner & Dahnken would carry out the provisions of the contract between West Coast Theatres, Inc., and Loew's, Inc., dated May 26, 1923, relating to the furnishing of not less than 22 Associated First National pictures for exhibition in Loew's Warfield Theatre, and that Turner & Dahnken would have exclusive management of said theatre, under the supervision of West Coast Theatres, Inc. It was also set forth that Turner & Dahnken owned the exclusive franchise from Associated First National Pictures, Inc., to the first-run exhibition of all pictures produced and/or distributed by Associated First National Pictures, Inc., for the city and county of San Francisco. For its services in the management of the theatre and for the privilege of the first-run pictures produced and/or distributed by Associated First National Pictures, Inc., respondent, West Coast Theatres, Inc., agrees to pay Turner & Dahnken one-half of the net profits made from the operation of Loew's Warfield Theatre, and Turner & Dahnken agree to bear one-half of any losses therefrom. The agreement is to continue in force during the life of the lease of Loew's Warfield Theatre to Combined Theatres Corporation unless

Findings

12 F. T. C.

Turner & Dahnken shall sooner lose the said franchise to the first run of pictures produced and/or distributed by Associated First National Pictures, Inc., or unless West Coast Theatres, Inc., is superseded in the management of Loew's Warfield Theatre, as provided for in the agreement of May 26, 1923, between West Coast Theatres, Inc., and Loew's, Inc., which is made a part of this agreement.

From May 26, 1923, the date of the agreement between West Coast Theatres, Inc., and Loew's, Inc., to May 29, 1925, the date of the complaint, only eight films other than those produced by Metro Pictures Corporation and Associated First National Pictures, Inc., were exhibited in Loew's Warfield Theatre, and two of these pictures were distributed by All Star Feature Distributors, Inc., in which respondent, West Coast Theatres, Inc., owned a stock interest.

By this contract, competition between Loew's, Inc., and respondents, West Coast Theatres, Inc., and West Coast Theatres, Inc., of Northern California as exhibitors was terminated in the cities of Los Angeles and San Francisco, as was also competition between Metro Pictures Corporation and Associated First National Pictures, Inc., in the leasing of films for first-run exhibition in said cities.

(3) Under date of November 21, 1924, respondent, West Coast Theatres, Inc., entered into a four-party agreement with Fredroy Amusement Co., Combined Theatres Corporation, and Loew's, Inc., by which for the year in which the contract was in force, Fredroy's Miller's Theatre was made a second-run theatre, running second to the Criterion, California, and Loew's State in Los Angeles. The contract states that Loew's, Inc., owns or controls all the stock of Metro-Goldwyn Distributing Corporation, and respondent, West Coast Theatres, Inc., is the owner of the exclusive franchise in the State of California of all pictures released by or through First National Pictures, Inc. Loew's, Inc., and West Coast Theatres, Inc., agree to make available as many pictures distributed by these two exchanges as are necessary, which pictures have previously been exhibited at the Criterion, California, or Loew's State theatres. The contract also states that Combined Theatres Corporation is also about to take over the management of the California Theatre, in Los Angeles. While the management of the theatre during the term of the agreement is given to Combined Theatres Corporation, respondent, West Coast Theatres, Inc., actually managed and operated the theatre, as under the contract between Loew's, Inc., and West Coast Theatres, Inc., by which Combined Theatres Corporation was formed to take over Loew's State Theatre, the management of theatres owned by Combined Theatres Corporation is given to respondent, West Coast Theatres, Inc. The term of this contract was from November 22,

1924, to October 31, 1925. This contract eliminated Miller's Theatre from competition with theatres owned or controlled by respondent, West Coast Theatres, Inc., as a first-run house.

(4) Hollywood Theaters, Inc., controlled by respondent, West Coast Theatres, Inc., under date of October 14, 1922, entered into a contract with Carl Graff and Joseph Graff, a partnership. At that time the corporation owned the Rivoli Theatre, and the partnership the Crescent Theatre, on Western Avenue, in the city of Los Angeles, Calif. In this contract the following recitation of facts and motive occurs:

Whereas it is the desire of all the parties hereto that the competition in the operation of said theatres be terminated, and that they hereafter be run in conjunction with each other.

The agreement provides that the theatres should thereafter be conducted jointly for the benefit of the parties to the agreement, and that the partnership should get one-third and the corporation two-thirds of the profits. The parties also agreed that the partnership acquire and equip a new theatre at Fifty-fourth Street and Western Avenue, Los Angeles, and that when that theatre had equipment equal to the Rivoli, then a new corporation should be formed in which the partnership and the corporation should have equal holdings. Finally, the Crescent Theatre was to be sold and the Rivoli and the new theatre operated. Virtual control was given the Hollywood Theatres, Inc., and bookings were to be made for the theatres in conjunction with respondent, West Coast Theatres, Inc., which was to receive 10 per cent of the contract price of all films shown for this service. The partnership was to transfer its Associated First National franchise to the new corporation for mutual benefit of the parties, and the corporation was to pay to Graff Bros. 50 per cent of the cost of the franchise. The new corporation contemplated in this contract was formed and is now operating under the name of Holly-Western Theatres, Inc., the stock being held as provided for in the agreement. Holly-Western Theatres, Inc., owns the Rivoli, Crescent, and Carlton Theatres in Los Angeles. Respondent, West Coast Theatres, Inc., owns 50 per cent of the capital stock of Hollywood Theatres, Inc.

By this contract all competition between Graff Bros. and respondents, Hollywood Theatres, Inc., and the West Coast Theatres, Inc., in the business of owning and operating motion picture theatres has been eliminated.

(5) Under date of January 26, 1926, an agreement was entered into between M. Rosenberg, Harry Sugarman, and A. L. Bernstein, parties of the first part, and West Coast Theatres, Inc., party of the second

Findings

12 F. T. C.

part, for the formation of a theatre-owning corporation to be called "West Coast Junior Circuit". The contract provides that Rosenberg, Sugarman, and Bernstein have purchased certain theatres "by mutual agreement with West Coast Theatres, Inc.", and that the interests of the respective parties are 50 per cent to respondent, West Coast Theatres, Inc., $16\frac{2}{3}$ per cent to M. Rosenberg, $16\frac{2}{3}$ per cent to Harry Sugarman, and $16\frac{2}{3}$ per cent to A. L. Bernstein. It is stated that it is the desire and purpose of all the parties that other theatre properties be acquired, and that the theatre properties already acquired and hereinafter to be acquired shall be operated independent of the individual interests of any of the parties, and that for the purpose of convenience a new corporation had been theretofore organized under the name of Junior Theatres, Inc., and that as all the parties desire that the corporation known as Junior Theatres, Inc., and West Coast Theatres, Inc., should operate in harmony and for the best interests of each other, it was thereupon agreed that the name of the corporation should immediately be changed to West Coast Junior Circuit, Inc.; that upon the execution of the agreement all affairs of the parties should be transferred to said corporation, and that stock should be issued in accordance with the respective interests of the various parties. It was further provided for the organization of another corporation known as "The Holding Corporation", to which corporation Rosenberg, Sugarman, and Bernstein transfer any or all of their stock interests in the West Coast Junior Circuit, with a right to them to dispose of not to exceed 50 per cent of the capital stock of the Holding Corporation. It is then provided for the method of disposing of stock interests held by the parties if they so desired. The contract provides that the management of the West Coast Junior Circuit should be in Rosenberg, Sugarman, and Bernstein, subject to the supervision of the directors of West Coast Junior Circuit, so long as those parties should collectively own or control 50 per cent of the stock of the Holding Corporation or West Coast Junior Circuit. It is further provided that should such stock ownership cease, West Coast Theatres, Inc., should at its option take over and retain the management as long as desired. No theatres or real estate should be purchased by the Junior Circuit except through a vote of a majority of the directors of the corporation, and no theatres then being operated by the parties to the agreement should be taken over, leased or operated except by like consent. The share in the profits, losses, and expenses of the new circuit should be in the proportion of the stock holdings, and the directorate of the corporation should be composed of four directors selected by West Coast Theatres, Inc., and four

selected by Rosenberg, Sugarman, and Bernstein. The method of paying for the stock is set forth, and it is provided that West Coast should pay for its interest and stock the same as the collective cost to Rosenberg, Sugarman, and Bernstein. It is provided that the bookkeeping of the Junior Circuit shall be carried on by the bookkeeping department of West Coast Theatres, Inc., at actual cost, and that West Coast shall have control of the buying of all pictures for the various theatres owned by the Junior Circuit, and that the Junior Circuit will bear a proportionate share of the actual cost of maintaining the buying department.

Prior to the entering into of the contract of January 26, 1926, the formation of West Coast Junior Circuit, Inc., had been presented to the board of directors of respondent West Coast Theatres, Inc., by a letter from M. Rosenberg, dated March 30, 1925. The minutes of the meeting of the board of directors of West Coast Theatres, Inc., dated April 7, 1925, show that Messrs. Rosenberg and Sugarman were present and presented the matter to the board. They stated that the new circuit intended to operate in smaller towns and districts such as Fullerton, Burbank, Compton, Maywood, etc., where West Coast Theatres, Inc., was not interested, and that they desired to cooperate with West Coast Theatres, Inc., in every way, and would not go into any opposition points against respondent or its affiliations. They would give respondent the right and privilege to approve or reject any location. Director Ramish was in favor of the proposition with the proviso that if West Coast Theatres, Inc., should decide against any location its decision would be final, that respondent owns 50 per cent of every proposition, and that if respondent did not want 50 per cent of any proposition it should be rejected so far as the new circuit was concerned. Reference was made to a location in Los Angeles the new circuit was considering at the time, and Rosenberg stated that as long as respondent, West Coast Theatres, Inc., was interested in the location the Junior Circuit would drop it. On April 28, 1925, A. L. Gore was appointed by the board of directors as a point of contract between West Coast Theatres, Inc., and the Junior Circuit.

The purpose and effect of this agreement is to eliminate competition between the parties to it in the ownership and operation of motion picture theatres. West Coast Junior Circuit, Inc., is under the control of West Coast Theatres, Inc., which respondent books for the theatres of the Junior Circuit, and keeps its accounts.

(6) On January 1, 1925, respondents, West Coast Theatres, Inc., West Coast Theatres, Inc., of Northern California, and C. L. Langley, entered into an agreement showing the ownership of each party in the Mission, Regent, and Loring Theatres in Riverside, Calif., as

Findings

12 F. T. C.

follows: West Coast Theatres, Inc., one-half; West Coast Theatres, Inc., of Northern California, two-sixths; and C. L. Langley, one-sixth. It is further provided that respondent, West Coast Theatres, Inc., shall have exclusive management, operation, and supervision of said theatres, and shall do the booking for, and keep the accounts of said theatres. In September, 1925, C. L. Langley sold his interest in these theatres.

(7) Henry C. Jensen, of Los Angeles, a theatre owner and exhibitor, under date of May 25, 1921, made three separate agreements with Hattie M. Turner, Fred Dahnken, and C. L. Langley, by which he agreed to refrain from carrying on the business of maintaining and operating any theatres within the corporate limits of the city of Pasadena, the city of Glendale, or within $1\frac{1}{2}$ miles of the Theatorium Theatre, in Los Angeles, as long as respondent, Turner, Dahnken & Langley, or any or either of them, or any person or persons deriving title to the good will from any or either of them should carry on a like business in the same location. He had sold at a previous time Jensen's Pasadena Theatre, and Jensen's Raymond Theatre in Pasadena, Calif.; Palace Grand Theatre in Glendale, Calif., and Jensen's Theatorium in Los Angeles, Calif., to the parties. It is recited that at the time of sale, May 5, he had agreed to refrain from the theatre business in the territory in which the theatres had been located. The agreements of May 25, 1921, it is recited, were for the purpose of reducing the former agreements to writing. In this way, Mr. Jensen, a large theatre owner, was eliminated from the theatre field in some of the best theatre territory in California. July 1, 1921, respondent, West Coast Theatres, Inc., entered into contracts with the parties with whom Mr. Jensen had contracted, eliminating competition between them and respondent, West Coast Theatres, Inc. Afterward respondent, West Coast Theatres, Inc., secured a controlling interest in the Turner, Dahnken & Langley holdings.

(8) On June 11, 1923, an agreement was entered into between Ackerman & Harris, Inc., and respondent T. & D. Jr. Enterprises, Inc., by which the former agreed to sell to the latter "All of the issued and authorized capital stock of" Oakland & San Francisco Theatre Co., Stockton State Theatre Co., and Fresno Hippodrome Co., "together with all the leases and personal property to the said corporations and each of them belonging, and the good will thereof, and all other assets, benefits, emoluments, and advantages to which said corporations and each of them is entitled under their respective leases" for a total of \$282,500, payable over a period of four years, with last payment due August 1, 1927. By supplemental agreements

between T. & D. Jr. Enterprises, Inc., and Turner & Dahnken (now West Coast Theatres, Inc., of Northern California), the latter company agreed to buy from T. & D. Jr. all the capital stock of the Stockton State Theatre Co. and the Fresno Hippodrome Co., and furnished \$10,000 of the \$20,000 required to be paid the day the agreement was entered into. The valuation placed on the stock of the two companies was \$150,000, \$110,000 being for the Stockton State Theatre Co. and \$40,000 for the stock of Fresno Hippodrome Co. The conditions of the sale by T. & D. Jr. to Turner & Dahnken, and provision for payment of installments over a period from June 30, 1923, to September 1, 1927, are provided in an agreement between T. & D. Jr. Enterprises, Inc., and Turner & Dahnken, dated June 30, 1923.

The contract between Ackerman & Harris, Inc., and respondent T. & D. Jr. Enterprises, Inc., also conveyed to the latter a lease upon the Sacramento State Theatre, in Sacramento, and an exclusive franchise for its Oakland State Theatre of all vaudeville booked by Ackerman & Harris, Inc. The theatre referred to in the agreement as "Sacramento State Theatre" is in fact the Hippodrome Theatre, in Sacramento.

By an agreement between Ackerman & Harris, Inc., respondent T. & D. Jr. Enterprises, Inc., and respondent West Coast Theatres, Inc., of Northern California, dated May 20, 1925, or about the time of the issue of the complaint in this proceeding, arrangements were made by which respondent West Coast Theatres, Inc., of Northern California might pay directly for the stock of the Stockton State Theatre Co. and of the Fresno Hippodrome Co., and have it released from escrow, while that respondent was relieved of any possible liability for the stock of the Oakland and San Francisco Theatre Co.

By these agreements, respondent T. & D. Jr. Enterprises, Inc., and respondent West Coast Theatres, Inc., of Northern California were joined in a common motion picture enterprise from June 11, 1923, to May 20, 1925, or later. On the face of the contracts the association might be continued to 1927. Respondent West Coast Theatres, Inc., of Northern California acquired the State Theatre, in Stockton, and the Hippodrome Theatre, in Fresno; respondent T. & D. Jr. Enterprises, Inc., acquired the State Theatre, in Oakland, outright, and a lease on the Hippodrome Theatre, in Sacramento, as well as an exclusive franchise for the city of Oakland for Ackerman & Harris vaudeville; and Ackerman & Harris, Inc., was eliminated from competition in the exhibition field with these two respondents in the cities of Oakland, Fresno, Stockton, and Sacramento, and

Findings

12 F. T. C.

these two respondents placed to that additional extent in control of the field.

(9) By an agreement dated May 15, 1918, between Turner & Dahnken and J. Naify, it was provided that the parties to the contract should each own a 50 per cent interest in the T. & D. Theatre, in Sacramento, and that Naify should be manager. On November 10, 1922, another agreement was entered into between Turner & Dahnken and M. Naify and J. A. Naify, providing for a partnership between the parties, Turner & Dahnken having a 50 per cent interest, and M. and J. A. Naify 50 per cent. M. Naify was made manager of the theatre. The policy of the theatre was controlled by Turner & Dahnken. The contract contained a provision that should West Coast Theatres, Inc., of Northern California go into the theatre business in Sacramento in any other theatre or theatres during the life of the agreement, the Naifys should have an equal interest in the business as West Coast Theatres, Inc., of Northern California, upon payment of an equal amount of money as that paid by said West Coast Theatres, Inc., of Northern California.

The name of the T. & D. Theatre has been changed to the Capitol. The contract is still in effect, and respondent West Coast Theatres, Inc., of Northern California, holds a 50 per cent interest in this theatre. The provision in the clause above quoted has been carried out. In 1924 a theatre called the Senator was erected in Sacramento by a corporation, and leased to respondent West Coast Theatres, Inc., of Northern California, who transferred it to a corporation organized in November, 1924, known as Sacramento Theatres, Inc. Respondent West Coast Theatres, Inc., of Northern California owns 50 per cent of the capital stock of Sacramento Theatres, Inc., and M. and J. A. Naify own 50 per cent. Later the Capitol Theatre was transferred to said corporation. The partnership arrangement covered the ownership and joint operation of the Senator and Capitol theatres in Sacramento.

M. Naify is president and general manager, as well as a large stockholder, of respondent T. & D. Jr. Enterprises, Inc., and J. A. Naify is a large stockholder in that respondent. Respondent T. & D. Jr. Enterprises, Inc., also owns theatres in Sacramento.

(10) On October 3, 1923, an agreement was entered into between Emil Kehrlein, Katherine Kehrlein, his wife, Oliver Kehrlein and Frances C. Kehrlein, his wife, Emil Kehrlein, jr.; and Mary Osborn Kehrlein, his wife, and S. W. Molkenbuhr, who owned all the stock of the Kehrlein Investment Co., and Frank W. Purkett, whereby Purkett was given an option to purchase all the stock of the Motab Investment Co. and the Liberty Theatres Co. of California. The

Motab Investment Co. owned the Kinema Theatre, in Fresno, Calif., and Liberty Theatres Co. the Liberty and Strand theatres in that city. The purchase price of the stock, consisting of 10,000 shares of Motab Investment Co., and 750 shares of Liberty Theatres Co., was \$334,000, and there were some other obligations. On October 6, 1923, Purkett assigned his option to Herbert L. Rothchild, president of respondent, Herbert L. Rothchild Entertainment, Inc., with the exception of a 25 per cent interest which he retained for himself. On November 20, 1923, the Kehrlein Investment Co. entered into an agreement with Purkett, setting forth the terms of the sale of the stock in the two theatre corporations. On November 27, 1923, Purkett assigned his interest in the agreement of November 20, 1923, to Herbert L. Rothchild. On December 18, 1923, Rothchild transferred and assigned to respondent, West Coast Theatres, Inc. of Northern California all his interest in the Purkett agreement which had been derived by him under the assignment of November 27, 1923. Purkett retained a 25 per cent interest in the stock.

On February 7, 1924, a written agreement was executed between West Coast Theatres, Inc., of Northern California and Purkett by which it was agreed that a new corporation, to be known as the Fresno or the Valley Amusement Co., should be formed, which was to take over the stock of the Motab Investment Co. and the Liberty Theatres Co., and operate the Kinema, Liberty, and Strand theatres, in Fresno. In one place in this agreement the amount of stock in the Motab Investment Co. is referred to as 1,000 shares, which is evidently an error. Various provisions covering the rights of the parties were included in the contract, but as the new corporation was never formed, it is not necessary to review them.

Included in the agreement of November 20, 1923, between Kehrlein Investment Co. and Purkett is a provision that, as part of the consideration of the contract, neither Kehrlein Investment Co., nor any of its stockholders would, directly or indirectly, engage in any similar business in the county of Fresno, in the future.

Herbert L. Rothchild had intended to extend his theatre holdings when he obtained the assignment from Purkett, but was unable to do so because of failing health, and assigned his interest to respondent, West Coast Theatres, Inc., of Northern California, on December 18, 1923.

Negotiations resulting in this assignment by Mr. Rothchild were with Mr. Schenck, a director of respondent West Coast Theatres, Inc., and took place on December 6, 1923, the same date that Mr. Schenck and Mr. Rothchild had also agreed to abrogate the Imperial Theatre contract, between Herbert L. Rothchild Entertainment, Inc.,

Findings

12 F. T. C.

and respondent, West Coast Theatres, Inc., and West Coast Theatres, Inc., of Northern California (Turner & Dahnken). The actual assignment was dated, however, December 18, 1923, and the formal abrogation of the Imperial Theatre contract did not take place until the following April. The record does not show any connection between the assignment and the abrogation other than contemporaneous negotiation by the same individuals.

At the present time respondent West Coast Theatres, Inc., of Northern California owns the Kinema, Strand, and Liberty theatres, in Fresno, 100 per cent, having acquired Purkett's contingent interest. By these several agreements respondent acquired these theatres, and all the stockholders in the Kehrlein Investment Co., were eliminated as competitors of it, directly or indirectly, for all time in the county of Fresno, State of California.

(11) Respondent, West Coast Theatres, Inc., of Northern California (Turner & Dahnken) under date of June 12, 1923, made an agreement in writing with respondent Herbert L. Rothchild Entertainment, Inc., by which these respondents jointly operated the Imperial Theatre in San Francisco as a long-run theatre.

The agreement recites that the Herbert L. Rothchild concern owns and operates motion picture houses in San Francisco known as the Granada, California, and the Imperial theatres, and that Turner & Dahnken owns and operates the theatre in San Francisco known as Loew's Warfield; that all said theatres are located in what is known as the downtown district, and are known to the motion picture business generally as first-run houses; that certain types of pictures are known generally as one-week pictures, and certain other and exceptional types of pictures are what are known generally as long-run pictures, that is to say, pictures that are of such a type as are calculated to be exhibited profitably in a first-run house in a downtown district for two weeks or more; that certain types of theatres are best adapted for the exhibition of long-run pictures; that the Imperial Theatre is well and peculiarly adapted for the exhibition of long-run pictures; that the number of long-run pictures available is limited; that both parties desire to make possible the continuous showing of long-run pictures in San Francisco; that Herbert L. Rothchild Entertainment, Inc., still owed Webber Bros. \$171,438.56 as an unpaid part of the \$400,000 purchase price for the Imperial Theatre, payable in annual installments of \$57,142.86, the first payable January 1, 1924; that Herbert L. Rothchild Entertainment, Inc., owned and operated the Imperial Theatre under a lease.

Based upon these premises the contract went on to provide for joint operation and conduct of a motion picture business in the Imperial Theatre for the joint account of the parties, profits and losses to be divided two-thirds to the Rothchild concern, and one-third to Turner & Dahnken. Provision was made for determination of the profits and losses by agreeing upon what should be regarded as expenses, including an overhead of \$250 a week. Settlements of profits and losses were to be made quarterly each year, the first on September 28, 1923. Payments upon the purchase price were to be carried as an expense amounting to \$1,098.80 a week.

It was further agreed that all long-run pictures should be exhibited only in the Imperial Theatre, and that no long-run pictures shall be exhibited by either party in the Granada, California, or Loew's Warfield theatres, and that no pictures shall be shown in said theatres for a longer period than one week.

It was also agreed that neither party should acquire in any manner, directly or indirectly, an interest in any other theatre in the first-run, down-town district of San Francisco except by mutual consent, and all future expansion in such district should be for the joint and equal account of both parties. All profits and losses shall be borne equally by the parties.

The clause was not to apply to the Portola, of the Rothchild concern, or to the Tivoli, of Turner & Dahnken, which were not then operated as first-run houses.

Turner & Dahnken was to have the active management of any houses opened jointly, but the Rothchild concern was to be advised with as to policy.

All contracts for the showing of film in the Imperial Theatre, except with Paramount, Metro, Goldwyn, and First National, were to be signed by representatives of both parties.

Expansion of the theatre business in the residence or neighborhood districts of San Francisco was to be thereafter for joint account at the option of either party on a fifty-fifty basis.

The life of the contract was to coincide with the term of the lease held by the Rothchild concern on the Imperial, or of any extension of the lease.

Physical fittings of the theatre at the end of the joint control term were to be owned two-thirds by the Rothchild concern and one-third by Turner & Dahnken.

By another instrument executed the same day, respondent West Coast Theatres, Inc., became a party to the contract, since it "owns or controls practically all of the capital stock of the said Turner & Dahnken, and the said agreement is for practical purposes for the

Findings

12 F. T. C.

benefit of the said West Coast Theatres, Inc., as well as for the benefit of the said Turner & Dahnken."

The above agreement was verbally canceled December 6, 1923, by Mr. Joseph M. Schenck, on behalf of the respondent West Coast Theatres, Inc., and West Coast Theatres, Inc., of Northern California, and by Mr. Rothchild, on behalf of respondent, Herbert L. Rothchild Entertainment, Inc. It was formally canceled by action of the board of directors of West Coast Theatres, Inc., on March 4, 1924, and by the board of directors of West Coast Theatres, Inc., of Northern California, on April 2, 1924. During the life of the agreement no expansion in the first-run down-town district was made by either party, nor in the neighborhood or residence districts in San Francisco. No accounting was rendered by either party to the other.

PAR. 13. By purchase and construction of theatres, by contracts with competitors eliminating competition, by making partnerships with competitors, respondents West Coast Theatres, Inc., and West Coast Theatres, Inc., of Northern California, have steadily progressed from the time of the organization of the former to the time of the hearing in this proceeding toward domination of the motion picture theatre field in California. In Southern California such domination is such as to tend strongly to monopoly in that portion of the State. In Northern California, the domination is shared with respondent T. & D. Jr. Enterprises, Inc., which has pursued a similar policy. Initially respondent T. & D. Jr. Enterprises, Inc., had some of the same backers as Turner & Dahnken, now West Coast Theatres, Inc., of Northern California. Both these respondents cooperated in acquiring additional theatres, and had common interests through some of the officers and stockholders of respondent T. & D. Jr. Enterprises, Inc.

PAR. 14. In addition to their power as exhibitors, respondents West Coast Theatres, Inc., and West Coast Theatres, Inc., of Northern California, for five or six years last past, have been important motion picture film distributors in California, Nevada, Arizona, and in the Hawaiian Islands. They have had control in that territory of the distribution rights of Associated First National Pictures, Inc. By contract they have had refusal of the Goldwyn or the Metro-Goldwyn pictures for certain of their theatres. They have also had a large stock interest in Educational Film Exchange of Southern California and Educational Film Exchange of Northern California, distributing short reel pictures released by or through Educational Film Exchange.

(1) For several years Associated First National Pictures, Inc., a Delaware corporation, has produced, and/or purchased and dis-

tributed high-class motion picture films. Respondent West Coast Theatres, Inc., and West Coast Theatres, Inc., of Northern California have had the added prestige and power given by control over their distribution in California, Arizona, Nevada, and the Hawaiian Islands, and their interest in the distribution in New York State. Distribution in Southern California and Arizona was made through Associated First National Pictures of Southern California, Inc., a Delaware corporation, which performed the function of an exchange. Respondent, West Coast Theatres, Inc., owned 51 per cent of its stock, stockholders of this respondent held the other 49 per cent. Respondent, West Coast Theatres, Inc., also held a block of the stock of the National company, Associated First National Pictures, Inc. Distribution in Northern California, Nevada, and Hawaiian Islands was made through Associated First National Pictures of Northern California, Inc., a Delaware corporation, which also performed the function of an exchange. Respondent, West Coast Theatres, Inc., of Northern California, succeeded to the interests of Turner & Dahnken in this exchange. Turner & Dahnken originally owned all of the capital stock of Associated First National Exchange of Northern California, Inc., and at the date of the complaint owned 51 per cent, the remaining 49 per cent being owned by Associated First National Pictures, Inc. Turner & Dahnken also owned 60 per cent of the issued and outstanding capital stock of First National Exchange of New York, a distributing corporation, which in turn owns 60 per cent of the capital stock of Associated First National Pictures, Inc., of New York, a corporation, which in turn owns 14½ per cent of the capital stock of Associated First National Pictures, Inc., the producing-distributing corporation, doing a nation-wide business. Said Associated First National Pictures, Inc., of New York, owns a franchise entitling it to distribute First National pictures throughout the State of New York. Turner & Dahnken also owned stock in Associated National Pictures, Inc.

Control over distribution of Educational Film Exchange pictures in California has also been exercised by these respondents. Associated First National Pictures, Inc., of New York, above referred to, owned an interest in Educational Film Exchange of New York, and Turner & Dahnken owned 60 per cent of the capital stock of that company, as heretofore set forth. In addition, Turner & Dahnken owned 1,579 shares of the issued and outstanding capital stock of New York Exchange for Educational Films, Inc., a corporation with 10,000 shares of authorized capital stock.

Findings

12 F. T. C.

All of the stock holdings of Turner & Dahnken were acquired by respondent, West Coast Theatres, Inc., when it bought the controlling interest in Turner & Dahnken, now respondent West Coast Theatres, Inc., of Northern California.

(2) Ownership of the exclusive franchise for the distribution of First National pictures in the States of California, Arizona, Nevada, and Hawaiian Islands entitled respondents, West Coast Theatres, Inc., and West Coast Theatres, Inc., of Northern California, to grant subfranchises in those States.

Associated First National Pictures, Inc., of Northern California, controlled by respondent West Coast Theatres, Inc., of Northern California, has issued 96 subfranchises to theatres in Northern California and Nevada since its organization. At the time of taking testimony in this proceeding, July, 1927, all of these subfranchises had been canceled except 14, of which at least 10 of the theatres still holding subfranchises were owned by respondent, West Coast Theatres, Inc., of Northern California.

(3) An agreement in writing was made between Associated First National Pictures, Inc., a Delaware corporation, known in the agreement otherwise as Pictures Company, and Associated First National Pictures of Northern California, Inc., a Delaware corporation, known in the agreement otherwise as Exchange, dated July 1, 1920, by which Pictures Company granted to Exchange until January 1, 1945—

the sole and exclusive right, license, and privilege to distribute within the territorial boundaries of the States of (sic) all counties in the State of California except San Luis Obispo, Santa Barbara, Kern, Ventura, Los Angeles, San Bernardino, Riverside, Orange, San Diego, and Imperial, the State of Nevada and Territory of Hawaii positive prints of all motion pictures, the distribution of which within said boundaries is or shall be controlled by Pictures Company, except such pictures as, under the terms of the contracts by which Pictures Company secures them, Pictures Company is not permitted to or can not distribute therein through Exchange.

Details of the arrangement were set out in the agreement, including obligation upon the part of Exchange to bear $3\frac{3}{4}$ per cent of the expense of securing pictures for distribution. Other exchanges were to supply the rest of the funds if called upon to do so. Pictures Company was authorized to bind Exchange by contracts for the procuring of pictures. Exchange undertook to maintain a local office, and to distribute picture films for Pictures Company and for other producer-distributors. Exchange undertakes to develop distribution in the whole territory assigned to it. Contracts with exhibitors, called subfranchise contracts, must be made in the name

of and have the approval of the Pictures Company. Ownership of all picture films furnished by it to Exchange remains in Pictures Company. Films must not be copied. Exchange acts as agent for Pictures Company. Exchange must strictly account for all moneys received for picture film rentals. Pictures Company decides upon remuneration to Exchange other than expenses of Exchange. Exchange under the agreements succeeds to the rights of First National Exhibitors Circuit, Inc., its predecessor.

The contract may be terminated by Pictures Company on default of Exchange, in which case Pictures Company regains control of all rights and property granted to Exchange under the agreement. As security that it will perform its part of the contract, Exchange hypothecates 1,885 $\frac{1}{2}$ shares of stock which it owns in Pictures Company. Pictures Company has an option to buy the interests of Exchange before these interests can be sold to any other purchaser.

(4) January 1, 1924, the contract of July 1, 1920, was amended by a supplementary agreement. Exchange is released from further assessments by Pictures Company. Exchange is given 884 shares of second preferred A stock in Pictures Company, of the par value of \$88,400, and 355 shares of second preferred B stock, of a par value of \$35,000. Exchange cancels its franchise rights and assigns its equipment to Pictures Company. Exchange relinquishes its right for fifty years to distribute pictures, or to use the name Associated First National Pictures Company of Northern California, Inc., unless with the written consent of Pictures Company. Exchange reclaims its stock in Pictures Company hypothecated as security in the franchise agreement.

(5) Under date of March 9, 1921, Associated First National Pictures, Inc., a Delaware corporation (called Pictures Company) entered into a contract with Associated First National Pictures of Southern California, a Delaware corporation (called Exchange) then controlled by respondent West Coast Theatres, Inc. By that contract a franchise was given Exchange for the exclusive distribution until 1945 in Southern California and Arizona of all films produced by Pictures Company. Exchange was to pay 2 $\frac{1}{2}$ % per cent of the exhibition value of the pictures. It was given power to issue subfranchises in its exclusive territory with the approval of Pictures Company. Exchange was made the agent of Pictures Company and was obligated to account to it periodically. Exchange deposited a voting trusts certificate for 1,489 $\frac{2}{3}$ shares of its capital stock as security for the carrying out of the contract. This agreement was signed by Michael Gore and David Bershon for the Exchange.

Findings

12 F. T. C.

(6) An amended agreement was made between the parties January 1, 1924. It was shown that Exchange had stock interests in the Pictures Company. It received 402 shares of preferred A stock and 280 shares of preferred B stock in the Pictures Company of an estimated aggregate value of \$68,000. This was issued to respondent West Coast Theatres, Inc., Exchange was released from assessments by the Pictures Company. It relinquished its franchise agreement and gave up its former privilege of distributing films other than those of Pictures Company. Exchange got back its voting trust certificates for its own stock. This agreement was signed by J. M. Young and A. L. Gore for the Exchange, two officers of respondent West Coast Theatres, Inc.

Respondents West Coast Theatres, Inc., and West Coast Theatres, Inc., of Northern California did not lose their exclusive franchises for the distribution of First National pictures in California. On November 21, 1924, more than eleven months after the contract with Associated First National Pictures, Inc., whereby West Coast Theatres, Inc., relinquished its exclusive franchise for the distribution of First National pictures in Southern California, in a contract between respondent, West Coast Theatres, Inc., Fredroy Amusement Co., Combined Theatres Corporation, and Loew's, Inc. (referred to in par. 12, sec. 3), it is stated:

Whereas, West Coast is the owner of the exclusive franchise in the State of California of motion pictures released by or through First National Pictures, Inc.

(7) Under date of November 27, 1919, the Pictures Company made a voting trust agreement with its stockholders by which Fred Dahnken, who afterward sold his motion picture interests to respondent West Coast Theatres, Inc., was one of five trustees who were to control the policies of the Pictures Company. This agreement discloses interest by respondents herein in the capital stock of the Pictures Company, through Thos. L. Tally, Turner & Dahnken, and indirectly through First National Exchange, Inc.

PAR. 15. First-run, as used in the Rothchild-Turner and Dahnken agreement hereinabove quoted, and as used generally in the motion picture business, means primarily the continuous showing of the picture in a motion picture theatre other than a road show house, in the city which is the center of distribution of motion picture films for that territory. When that continuous showing terminates, all other showings in that city and in that territory become subsequent runs. First-run is a definite thing. First-run is also used to designate the first continuous showing of a film in a motion picture

theatre, other than a road show house, in any city, or in any zone. In that case it is the first-run for the city or the zone, although not the first-run for that film distribution territory. Theatres in which pictures are regularly shown first-run are known as first-run theatres.

PAR. 16. As a regular policy the California and the Granada, owned and operated by the Rothchild concern, and Loew's Warfield, operated by Turner & Dahnken, were weekly change, first-run houses. This was also true of the Portola theatre up to 1923, when it became a subsequent-run house. On the other hand, the Imperial Theatre, owned and operated by the Rothchild concern, extended the first run of a film as long as it was profitable to show it continuously. It was known as a long-run house. There was but one other long-run theatre in San Francisco at the time, the St. Francis. In 1925 the first-run houses in San Francisco numbered nine, the Granada, Warfield, Golden Gate, California, Cameo, Strand, now the St. Francis, Imperial, Hippodrome, and Pantages. Of these theatres the California, Granada, and Loew's Warfield were the leading first-run houses, and the St. Francis and Imperial were long-run houses. Three of the other theatres were vaudeville houses, with motion pictures as a minor part of the bill; and the Cameo Theatre usually showed pictures which could not get a first-run showing in the California, Granada, or Loew's Warfield theatres, and Western action pictures.

PAR. 17. Theatres with a fixed weekly change exhibition policy such as obtained in the California, Granada, and Loew's Warfield theatres in 1923, find it undesirable, if not impracticable to change policy. A consistent, fixed policy as to time of run in any theatre is considered by managers as the most desirable plan of operation.

Theatres with a weekly change policy used 52 pictures a year, and the Imperial used from 22 to 25 a year. About 700 feature picture films were released a year for the years 1923 to 1925, which were available for showing in first-run houses in San Francisco. The supply in numbers was amply sufficient for all motion picture theatres operating as first-run houses in San Francisco at the time. Occasionally a theatre showing other lines of entertainment made a first-run of a film. Road-show houses, of which there were three in San Francisco, made occasional showing of pictures not offered to the motion picture theatres at the time they were booked for the road shows. Booking of road-show pictures was done in New York. Road-show houses in San Francisco exhibited films at prices running to \$2, as against charges by first-run houses of 50 cents to 65 cents for general admission. Usually such houses presented traveling

Findings

12 F. T. C.

companies in legitimate drama. After pictures had been some time on exhibition in the road-show theatres, they then had their first-runs in the San Francisco motion picture first-run houses.

PAR. 18. Respondents West Coast Theatres, Inc., and West Coast Theatres, Inc., of Northern California, as indicated by the evidence in this proceeding, entered into the agreements of June 12, 1923, with Herbert L. Rothchild Entertainment, Inc., covering the Imperial Theatre in good faith for the purposes indicated in the agreements, and endeavored to carry out the plans of cooperation therein contemplated and initiated.

A. M. Bowles, general manager of respondent, West Coast Theatres, Inc., of Northern California, wrote Harry Arthur, jr., manager of respondent West Coast Theatres, Inc., Mr. Bowles's superior officer, complaining of lack of cooperation on the part of Jack Partington, who was in charge of the operation of the respondent, Herbert L. Rothchild Entertainment, Inc., theatres. Mr. Bowles refers to a matter which Mr. Arthur and Mr. Bowles "overlooked", and recalls an "unofficial" undertaking that Mr. Arthur and Mr. Bowles arrived at with Herbert L. Rothchild, in the presence of Mr. Partington, "regarding the elimination of vaudeville acts". Mr. Bowles writes: "It was very clear to me that these acts were to be discontinued". "We", writes Mr. Bowles, "immediately stopped putting on these acts and stuck to all the details of our understanding". But Mr. Partington, Mr. Bowles wrote, redoubled his effort in getting vaudeville acts, said he understood that a certain act booked by Famous Players only was to be eliminated, and he defied Bowles to do his worst. In turn Mr. Partington, with Mr. Rothchild's backing, complained of too much publicity by Loew's Warfield Theatre. There was also a difference as to Mr. Partington taking Mr. Bowles's orchestra leader at Oakland away from him. Mr. Bowles expressed his desire to live up to all provisions of the agreement.

Mr. Bowles considered it necessary to have an "ironclad" understanding with Rothchild himself that the Rothchild interests would carry out the agreement, or declare the policy of the three big houses wide open. He states that one of the principal benefits to be derived out of the Imperial partnership was the cooperation and strength West Coast Theatres, Inc., of Northern California would derive by closely affiliating its entire organization with the Rothchild company.

PAR. 19. By threatening to refuse to buy any films from motion picture producers and/or distributors, by tying in all of their theatres throughout the State of California with the first-run in San Francisco, by threatening not to show pictures in any of their theatres in the State of California unless they can have the pictures for first-

run exhibition in San Francisco, and by attempting to influence certain of their competitors to cooperate with them by refusing to bid on pictures offered by the exchanges, respondents West Coast Theatres, Inc., and West Coast Theatres, Inc., of Northern California influence, coerce and compel motion picture producers and/or distributors to sell them pictures at lower prices than their competitors can buy them, and to refrain from selling pictures to their competitors which these respondents desire for their theatres.

PAR. 20. In the motion picture industry negatives of the pictures are first produced and tested out. From them positive prints of the pictures are made. These prints are leased by the producers and/or distributors to the exhibitors and are the pictures actually shown the public. Many of the negatives are made in California, in the neighborhood of Los Angeles. Some are made in the neighborhood of New York City. Some of these negatives are used in California to make positive prints of the pictures which are exhibited in California. The larger number are shipped out of California to other States, such as New York, New Jersey, and Illinois, where the positive prints are made and distributed in interstate commerce to points in the several States of the United States for exhibition. During the period covered by the evidence in this proceeding, far the larger volume of motion pictures exhibited in California were positive prints made in New York, New Jersey, and Illinois, and shipped to California for exhibition. In the greater number of instances where the picture is intended for exhibition in the northern half of California, in Nevada, a portion of Oregon, or in the Hawaiian Islands, the print is shipped to the San Francisco office of the producer or distributor, and from that point served to the theatres in that territory. In some instances, as in the case of the Pathe and Universal news reels and specialties, the prints are shipped directly from New York or New Jersey laboratories to the exhibitor in California, or elsewhere. Usually when the exhibitor has shown the picture for the run for which it has been leased, he returns it to the San Francisco office of the producer or distributor who has leased it to him. Occasionally the exhibitor when he has finished with the print ships it upon order from the producer or distributor to another exhibitor. The greater number of producers or distributors from their district headquarters in San Francisco serve Northern California, Nevada, Hawaii, and a portion of Oregon. Motion picture prints are never sold to exhibitors, but are leased for a single run, to be made in a certain theatre upon dates mutually agreed upon, and at the end of the run all exhibition interest of the lessee in the print ceases. It always remains the property of the producer

Findings

12 F. T. C.

and/or distributor. As a rule, the distributing concerns are subsidiaries or agents of the producers, and the property remains beneficially in the producer. Contracts involving leasing of pictures in San Francisco territory were almost invariably completed by approval in New York City.

Pictures distributed by the Pathe Exchange to respondents from and in San Francisco during the period covered by this proceeding were shipped as positive prints from laboratories located in Eastern States, or States other than California, to the San Francisco branch of the Pathe Exchange, and from that branch delivered to exhibitors, or were shipped directly from the Eastern laboratories to the exhibitors. They were leased and served to the theatres of respondents within California between the Tehachapis and the northern boundary, and in portions of Oregon and Nevada.

From its San Francisco exchange, Film Booking Office, a New York concern, distributed positive prints of motion pictures to respondents and to other exhibitors in Northern California, parts of Oregon and Nevada, and the Hawaiian Islands. These positive prints were shipped to San Francisco from New York, with the exception of the Bennett and the Ince pictures, which were made in California and shipped to San Francisco from other California points. The Bennett and Ince pictures were a small percentage of the pictures distributed from San Francisco by this exchange. Respondents with theatres in the territory indicated were served by this exchange from San Francisco.

From its San Francisco office Famous Players-Lasky corporation managed the distribution of films in the Pacific Coast States and in several other western States. Negatives of its pictures were produced in New York, upon Long Island, and in Southern California. Some of its positive prints sent to San Francisco were shipped from Southern California and some from the New York laboratories of the corporation. Respondents were served with such prints immediately from San Francisco.

Before the Goldwyn Exchange was consolidated with the Metro-Goldwyn-Mayer, until about 1924, it served respondents and other motion picture exhibitors in Northern California and Nevada from its San Francisco Exchange with positive prints of motion pictures. Some were made in and came from Southern California, and some from New York. Respondents' theatres in the territory were served with these positive prints from San Francisco.

Vitagraph Company distributed from San Francisco positive prints of motion pictures to respondents and the other exhibitors in California from Delano and Paso Robles on the south, to the northern

boundary, and in Nevada. Some of the negatives from which these pictures were printed were made in Los Angeles, Calif., and some in the studio of the company in Brooklyn, N. Y., but the positive prints of the pictures were received in San Francisco from the laboratory of the company in Brooklyn. Leasing contracts were sent to New York, N. Y., for approval. This was the situation, at least, from 1921 to 1926, the period as to which there is testimony upon the point in this record.

Metro Film Exchange, later Metro-Goldwyn, still later Metro-Goldwyn-Mayer, prior to October, 1926, distributed from its office in San Francisco positive prints of motion pictures to respondents and to exhibitors in California north of Bakersfield and San Luis Obispo, to the northern boundary of California, in a small portion of southern Oregon, and to several towns in Nevada. Between 1922 and 1924 many of the positive prints of these pictures were shipped to San Francisco from the Rothacker laboratory in Los Angeles. Others came from New York. Contracts for the leasing of the pictures were systematically sent to New York for approval.

Universal Film Exchanges, Inc., between the years 1919 and 1927, distributed from its headquarters in San Francisco positive prints of motion pictures to respondents and to other exhibitors in California from Delano and Atascadero on the south, to the northern boundary of the State, to southern Oregon and to parts of Nevada. Between 1921 and 1925, the great majority of these prints were shipped to San Francisco from the Universal laboratories in Leonia, N. J. Some few came from Universal in Southern California. News reels distributed by this concern were shipped from the Hearst laboratories in the east to San Francisco. Often they were shipped from these laboratories direct to the exhibitor. It is the regular procedure with some of the prints.

Producers Distributing Corporation for three years immediately previous to the hearing in this proceeding in June, 1927, distributed from its headquarters in San Francisco positive prints of motion pictures to respondents and to other exhibitors in California from Bakersfield and Atascadero on the south, to the northern boundary, in southern Oregon, in parts of Nevada and in the Hawaiian Islands. These positive prints came from New York to San Francisco almost exclusively in 1924. Then for a time the printing was switched to Los Angeles, and the prints came from that point. Later there was another switch, and when the testimony was taken in June, 1927, the prints were being delivered one-half from New York and one-half from Los Angeles, to San Francisco. Prior to two years ago all the leasing contracts for pictures of this concern were sent to New York

for approval. Recently some of the contracts are approved in California and some sent to New York for approval.

First National Pictures, Inc., between 1921 and 1925 inclusive, distributed from its headquarters in San Francisco positive prints of motion pictures to respondents and to other exhibitors in Northern California, part of Nevada, and the Hawaiian Islands. The negatives from which these prints were made were produced usually in Los Angeles, although some were produced in the East. The prints were made in Los Angeles and in Chicago, and were shipped to San Francisco from these points.

PAR. 21. Because of extensive ownership and control of theatres in California by respondents, and because of common interests of respondents West Coast Theatres, Inc., and West Coast Theatres, Inc., of Northern California, with some of the producers and/or distributors doing business in California, respondents exert and have exerted great influence and power over the business of leasing motion picture films in that territory. Such power places these respondents in position either to give a producer and/or distributor a satisfactory business in the State of California, or to make it extremely difficult for the producer to find a satisfactory market in that territory for his motion picture films. Such influence and power has been used by respondents West Coast Theatres, Inc., West Coast Theatres, Inc., of Northern California, and T. & D. Jr. Enterprises, Inc., to prevent their competitors from securing films for their theatres which were desired by respondents, and to force producers and/or distributors by threats of boycott of their films, to refuse to lease films to their competitors, who had been customers of said producers and/or distributors for a long time, in certain cities and towns, and give said films to respondents for their theatres in said cities and towns.

(1) J. W. Di Stacio owned the Liberty Theatre, in Sacramento, from 1917 to April, 1925, at which time he sold the theatre to respondent, T. & D. Jr. Enterprises, Inc., and took stock in said respondent for payment, owning 1,250 shares at the time of taking testimony, in July, 1927. He became manager of the State Theatre, also owned by T. & D. Jr., and supervised the Liberty Theatre. In 1923, respondent T. & D. Jr. Enterprises, Inc., owned Godard's Theatre, in Sacramento, and at the time the complaint was issued, May 29, 1925, owned the State, Hippodrome, Liberty, and Godard's theatres, in Sacramento. It also owned a 51 per cent interest in the Oak Park Theatre, in a suburb of Sacramento, and Messrs. M. & J. A. Naify, officers and stockholders in T. & D. Jr., owned a 50 per cent interest in the Capitol and Senate Theatres, in Sacramento.

and respondent West Coast Theatres, Inc., of Northern California owned the other 50 per cent.

Mr. Di Stacio had been using Universal pictures, off and on, for some time. He applied to Carol A. Nathan, manager of Universal Exchange, in San Francisco, for that service for the season 1923-24. He received two pictures, "Kentucky Derby" and "The Flirt," which he showed in his theatre. Mr. Nathan informed him he could not have any more of the pictures because he was afraid that if he sold them to Di Stacio, T. & D. Jr. Enterprises, Inc., would not buy any pictures for their entire circuit. Mr. M. Naify, general manager of T. & D. Jr. told Nathan that if T. & D. Jr. could not get these pictures for their theatre in Sacramento they would not show the pictures in any other houses on their circuit. The two pictures were not shown in any T. & D. Jr. theatres.

Walter K. Kofeldt of Los Angeles, Calif., was branch manager for the Pathe Exchange at San Francisco, Calif., from 1921 to 1925, inclusive. He had been selling the Pathe service to J. W. Di Stacio, of Sacramento, for the Liberty Theatre. Mr. Di Stacio had purchased part of a series of comedy pictures known as "Our Gang" series, in 1924. Mr. Kofeldt refused to sell any more of the series to Mr. Di Stacio, because if he did, he could not sell these Pathe pictures to respondent, T. & D. Jr. Enterprises, Inc., theatres in that territory. He was told by Mike Naify, who booked for this respondent's theatres, that if he could not buy these comedies in all of their towns, he would not buy them in any. He was told this on numerous occasions when he visited Mr. Naify for the purpose of selling service. One occasion remembered was March or April, 1924. This was in Mr. Naify's offices in San Francisco.

(2) Albert H. Moore was an exhibitor in Berkeley for five years or more preceding 1923. In partnership with Mr. Dean he had owned and operated the U. C. Theatre and the Berkeley Theatre, in Berkeley, Calif. The U. C. Theatre had 1,750 seats, and the Berkeley Theatre 850 or 900. The former theatre was operated from 1917, and the latter from 1922 to January, 1924. They were both first-run theatres in competition with California Theatre, owned and operated by respondent, West Coast Theatres, Inc., of Northern California, theretofore known as Turner & Dahnken. There were also two second-run houses in Berkeley, the Lorin Theatre and the Strand Theatre, and a third-run house, the Varsity Theatre. Before he opened the Berkeley Theatre in July, 1922, Mr. Moore began to have difficulty in getting film service. He decided to run the more desirable features he could secure in the U. C., or large theatre, and to take mediocre pictures for the smaller house. He was able to get

Findings

12 F. T. C.

between 200 and 300 pictures of this kind, and with them put a double bill on at the Berkeley Theatre and made it a success. In the larger house, Mr. Moore had been using the Goldwyn, Paramount, or Famous Players-Lasky, Hodkinson, Selznick services.

When Mr. Moore tried to get the Goldwyn service for the season 1923-24 for his theatres, he was told by G. C. Parsons, the San Francisco Exchange manager, that it had been taken away from Mr. Moore by the office in New York, and leased to the West Coast. A letter and telegram were shown Mr. Moore by Mr. Parsons to that effect. Mr. Parsons expressed regret. Moore had been using the Goldwyn service 100 per cent for some years. He was never able to get any films from the Goldwyn Exchange after that. Messrs. Bowles and Arthur, of respondents West Coast Theatres, Inc., and West Coast Theatres, Inc., of Northern California, first approached Parsons to buy the 1923-24 service, and wanted a picture called "Enemies of Women", the first release on that service, but Parsons sold it to Moore. Bowles and Arthur demanded 100 per cent service for their entire territory, and said if he did not give it to them they would go to New York and get it. Arthur and Dave Bershon, officials of West Coast Theatres, Inc., went to New York and insisted that the service be taken away from Moore and given to respondents West Coast Theatres, Inc., and West Coast Theatres, Inc., of Northern California, which was done. Parsons was willing to continue to selling Moore.

When the change was made from Moore to respondent West Coast Theatres, Inc., of Northern California there were four pictures left over from the previous year's service which Moore had not exhibited. The Goldwyn-Cosmopolitan Co., insisted that West Coast Theatres, Inc., pay for these pictures. West Coast Theatres, Inc., of Northern California did pay for the pictures but did not exhibit them in their theatre in Berkeley.

Some time in 1923, Ben Simpson, manager for the Hodkinson Exchange, had promised Mr. Moore the picture "Down to the Sea in Ships". The price for the picture had been agreed upon as \$500. Mr. Moore went away for a time. When he returned after two weeks he was told by Mr. Simpson that the picture had been sold to the West Coast.

Prior to May, 1923, Federated Film Corporation, which exchange distributed Warner Bros. pictures in the San Francisco territory, had sold all Warner Bros. pictures in Berkeley to Moore. Some time subsequent to May, 1923, Moore applied to Mr. Morgan Walsh, manager of the exchange, for two Warner Bros. pictures, called "Brass" and "Main Street". Prices for the pictures were

agreed upon, but play dates were to be set after Moore's return from a trip. Upon his return he was told he could not have the pictures as they had been sold to West Coast. At the time of the sale the T. & D. Theatre in Berkeley was owned by respondent West Coast Theatres, Inc., of Northern California, and Walsh negotiated with Mr. Bowles, manager of that company, with whom he had never had prior dealings, for these pictures. From that time respondent West Coast Theatres, Inc., of Northern California became the Federated Film Corporation account in Berkeley.

At about the same time Moore applied to Mr. Quive, manager of Silznick Exchange, for two pictures entitled "Common Law" and "Rupert of Hentzau". He had been using Selznick pictures in the U. C. Theatre previous to that time. The pictures were promised to him and prices agreed upon, but he did not receive them. Mr. Quive told him they had been sold to West Coast Theatres, Inc., by the head office in New York.

Moore had been using Paramount pictures, released by Famous Players-Lasky, ever since 1917, in his U. C. Theatre. Before opening the Berkeley Theatre, he was assured by the exchange manager he could continue to have the entire service. A short time before the opening he was advised that he would have to split the service with the California Theatre (T. & D.), owned by respondent West Coast Theatres, Inc., of Northern California.

(3) Because of the difficulties they had in getting a supply of films for their theatres, Messrs. Moore and Dean sold them, in January, 1924, to E. H. Emmick, of respondent T. & D. Jr. Enterprises, Inc., upon Mr. Emmick's terms. In the latter part of 1923, Messrs. Emmick, Naify, and McNeil, all connected with T. & D. Jr., offered to buy the theatres. The theatres had not been on the market for sale. The contract of sale with Emmick was executed in January, 1924, and provides for the formation of two corporations, one to own and operate the U. C. Theatre, under the name Berkeley Theatres, Inc., and the other to own and operate the Berkeley Theatre, under the name Progress Theatre Co. Said corporations were formed, and the theatres transferred to them. Respondent T. & D. Jr. Enterprises, Inc., held one half the capital stock in each of them, and Messrs. E. H. Emmick, R. A. McNeil, M. Naify, and William Nasser owned the other half. About two weeks after the sale to Emmick, the theatres were transferred to respondent West Coast Theatres, Inc., of Northern California, by the sale to that corporation of the capital stock of the two companies, for the price paid by Emmick and his associates, plus 10 per cent. All payments under the contract of sale have been made by respondent West Coast Theatres, Inc., of

Findings

12 F. T. C.

Northern California. A. M. Bowles, manager of this respondent, is president and director of both companies.

During 1923, Messrs. A. L. Gore, Bowles, and Arthur, of respondents West Coast Theatres, Inc., and West Coast Theatres, Inc., of Northern California, had sought to buy the theatres from Messrs. Moore and Dean, or to become a partner in them. Mr. Dean refused to have any dealings with the West Coast companies. Several months before the sale of the theatres, and about the time Messrs. Moore and Dean were having difficulty in securing a supply of films for their theatres respondent West Coast Theatres, Inc., directed Bowles, manager of respondent West Coast Theatres, Inc., of Northern California to arrange for the purchase of the Moore and Dean theatres at whatever price was necessary to pay for them, so that these respondents could "close" the town.

Respondent, T. & D. Jr. Enterprises, Inc., at its inception, had in the organization Mrs. Turner, who was also interested in Turner & Dahnken, predecessor to respondent West Coast Theatres, Inc., of Northern California. Albert H. Moore, who was an owner of the U. S. and Berkeley theatres, was also interested in respondent T. & D. Jr. Enterprises, Inc., for a time and was a member of the board. In the early history of T. & D. Jr. it did not compete with Turner & Dahnken, but avoided the towns in which the latter had theatres. As has been indicated already, there were common holdings involving Turner & Dahnken and its successor, and persons interested in T. & D. Jr. Respondents, T. & D. Jr. Enterprises, Inc., had been cooperating with it on other occasions to acquire theatre property wanted by respondent, West Coast Theatres, Inc., interests.

(4) Allen E. King, president of the King Realty & Amusement Co., Oakland, Calif., for about thirteen years prior to May, 1925, was a motion picture exhibitor, doing business in Oakland, Calif. At the time of the taking of his testimony in this proceeding, June, 1927, he still operated the Gem Theatre in Oakland. At that time he owned the Lincoln and the Palace theatres in Oakland. He leased the Palace in 1923, to the Oregon & California Amusement Co., owned by respondent, T. & D. Jr. Enterprises, Inc., and the individuals associated with it. He sold the lease on the Lincoln to the West Oakland Theatre Co. in 1923, also owned by T. & D. Jr., and individuals associated with it. The Palace Theatre was a 1,250-seat house; the Lincoln about 1,000.

King began construction of the Palace Theatre in the early part of 1923. At that time there was a small theatre across the street called the Globe, which was running very old pictures, in a small poorly constructed building. Before the Palace was completed,

in February, 1923, the Globe Theatre, together with four other theatres in the neighborhood, was acquired by the Oregon & California Amusement Co.

Before opening the Palace Theatre Mr. King applied for picture film service to the Famous Players-Lasky, Universal, Goldwyn, Federated, Educational, Pathe, and other exchanges or distributors. He had made written application upon contract forms furnished by the exchanges with the Educational Film Exchange, with the Universal Film Exchange, Jewell Productions, and Fox Film Corporation, and it was his understanding that they were contracts for the service, as were other verbal arrangements with the local managers of other exchanges.

Early in 1923, prior to the contemplated opening of the Palace Theatre by Mr. King, he asked Mr. Kofeldt, district manager for the Pathe Exchange in San Francisco for the Pathe service for the new theatre, and was assured by Mr. Kofeldt that there would be no trouble upon that score when Mr. King was ready to make contracts for the service.

When Mr. King asked booking dates for the Jewell productions of the Universal Film Exchange, for which he had signed applications or tentative contracts, which had been approved and recommended by Mr. Nathan, the exchange manager, he was informed by Mr. Nathan that he could not give dates under the applications, since Messrs. Emmick, McNeil, and Naify, then connected with respondent, T. & D. Enterprises, Inc., threatened to cancel their entire bookings if Mr. King were supplied with film for his new theatre, and it would cost Nathan his job if he gave the bookings to Mr. King. Prior to the season of 1923-24, Nathan had been selling a large proportion of his product to King.

Mr. King applied to Mr. Sheehan, manager of Fox Film Exchange for the 1923-24 service, but was told it had been sold to Oregon & California Amusement Co. Fox had two years' supply of films available for Oakland, because the company was building a new theatre in Oakland. King signed a contract for the 1922-23 service, but did not use it because the 1923-24 service had been sold the Oregon & California Amusement Co., to be shown in the Globe Theatre across the street from the Palace, and the pictures would have been more than a year old and he could not have competed with the current product in the Globe Theatre.

Mr. King had been using the Goldwyn film service in his other theatres 100 per cent, and when he was about to open the Palace Theatre in the summer of 1923, he applied for the service for that theatre, but was denied it. Mr. Parsons, the district manager at

Findings

12 F. T. C.

San Francisco, told him at the time of the refusal that Messrs. Emmick, McNeil, and Naify, the day before had told him that they would cancel their entire service if Mr. King were supplied with any service whatsoever for the Palace. Mr. Parsons said that to give Mr. King the service would cost him his job. The films were shown later in Oakland houses owned by respondent, T. & D. Jr. Enterprises, Inc.

Mr. King signed applications and leasing contracts for the picture films "Brass" and "Main Street", on forms furnished him by the Federal Film Exchange, for the Palace Theatre in July, 1923. He had negotiated for the pictures with Morgan Walsh, the local manager. Mr. Walsh wrote him a letter and asked him to come to Mr. Walsh's office. He told Mr. King that if the pictures which he had applied for were given him, the T. & D. Jr. circuit officers had told him that they would cancel its contract, the office would want to know why, and it would lose Mr. Walsh his job.

Sidney J. Goldman, district manager of Film Booking Office, with headquarters in San Francisco, had sold the service between 1922 to 1925, to respondent T. & D. Enterprises, Inc., having dealt with Messrs. McNeil and Naify in that connection. Mr. Goldman had sold to Mr. King for the Palace Theatre "Remittance Woman" and "Divorce". He was told at the time by Mr. McNeil that if Mr. Goldman sold to the Palace Theatre Mr. McNeil would not buy for the balance of his circuit, since the Palace would cut off three or four of his houses. The pictures were subsequently shown at the Palace Theatre, after it was acquired by Oregon & California Amusement Co.

Prior to the construction of the Palace, the Globe Theatre had been operated by Mr. and Mrs. Thomas in a small poorly constructed wooden building. It was immediately across the street from the Palace. It had been showing very old pictures. In February, 1923, when the construction of the Palace Theatre was in progress, the Globe Theatre and three or four others in the immediate neighborhood, including the Casino and Fruitvale, were acquired by Oregon & California Amusement Co., controlled by respondent T. & D. Enterprises, Inc., and individuals associated with it. The Globe Theatre was dismantled very soon after Mr. King had sold his Palace Theatre to Oregon & California Amusement Co.

After Mr. King had found that he could not secure film service for the Palace Theatre he was approached by a Mr. Saul with an offer of purchase. He signed a contract of sale with Mr. Saul early in August. Mr. Saul signed as agent for the Oregon & California Amusement Co., a corporation allied in interest with respondent

T. & D. Jr. Enterprises, Inc., and the former corporation proved to be the purchaser.

Several months later Mr. King also sold a lease upon the Lincoln Theatre, through Mr. Saul, to the West Oakland Theatre Co., another corporation allied in interest with respondent, T. & D. Jr. Enterprises, Inc., Messrs. Emmick and McNeil, at that time holding 11,978 shares of stock in respondent T. & D. Jr. Enterprises, Inc., appeared in connection with the purchase and sale.

PAR. 22. Respondents West Coast Theatres, Inc., and West Coast Theatres, Inc., of Northern California, for the purpose of preventing their competitors in certain cities and towns in which said respondents and competitors operate theatres, from securing supplies of films for their theatres, buy more films than they can use in their theatres in said cities and towns. Said respondents also have agreements with their competitors in certain competitive points covering the negotiating for, and bidding on, of film services to be used in their theatres and the theatres of their competitors at such points.

PAR. 23. Respondents West Coast Theatres, Inc., West Coast Theatres, Inc., of Northern California and T. & D. Jr. Enterprises, Inc., consult together regarding the negotiating for and leasing of motion picture films to be exhibited in cities and towns where two or more of them operate theatres, and agree as to a division of film services in said cities and towns.

PAR. 24. Competition in the leasing or sale, and their exhibition in California, of motion picture films leased from persons or companies located in States other than the State of California, and shipped to the State of California for exhibition from States other than the State of California, has been lessened by acts of respondents West Coast Theatres, Inc., West Coast Theatres, Inc., of Northern California, the T. & D. Jr. Enterprises, Inc., and H. M. Turner, Fred Dahnken, C. L. Langley, and F. W. Livingston, partners doing business under the trade name and style of Turner, Dahnken & Langley, by contracts among such respondents and/or between such respondents and other persons looking to the concentration of motion picture theatres in the hands of respondents, or to the lessening of competition in the operation of such theatres, including the leasing and exhibition of such motion picture films. Such competition was lessened by the successful activities of respondents West Coast Theatres, Inc., West Coast Theatres, Inc., of Northern California, and T. & D. Jr. Enterprises, Inc., inducing, by threats or otherwise, distributors of such motion picture films to withhold their films from theatres in competition with the theatres of these respondents and thus to compel such competitors to sell their theatres to respondents, or to persons or interests affiliated with respondents, or to close said

Order

12 F. T. C.

theatres and retire from the motion picture theatre field, or to cease exhibiting motion picture films in said theatres.

PAR. 25. That under the circumstances set out in the foregoing findings of fact the affiliations and relationships existing between respondents and their purposes, policies, and practices as described and set out in said findings of fact constitute a combination and common course of action, as alleged in paragraph 4 of the complaint⁵ in this proceeding.

CONCLUSION

The practices of respondents West Coast Theatres, Inc., and the other respondents herein, except Herbert L. Rothchild Entertainment, Inc., under the conditions and circumstances set forth in the foregoing findings of fact, are to the prejudice of the public and respondent's competitors, and are unfair methods of competition in commerce, and constitute a violation of section 5 of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

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 testimony taken and upon briefs filed herein, and the Commission having made its findings as to the facts and conclusion that the respondents have violated the provisions of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes",

It is now ordered, That the respondents West Coast Theatres, Inc., West Coast Theatres, Inc., of Northern California, The T. & D. Jr. Enterprises, Inc., and H. M. Turner, Fred Dahnken, C. L. Langley, and F. W. Livingston, partners doing business under the trade name and style Turner, Dahnken & Langley, and each and all of them and their officers, agents, representatives, and employees, and all other persons acting under, through, by or in behalf of them, or any of them, forever cease and desist, from:

(1) Combining, agreeing, or cooperating among themselves or with others to induce, persuade, coerce, or compel purchasers and/or distributors of motion picture films to refuse to sell or lease, in interstate commerce, to a competitor or competitors of respondents, or any one of them, motion picture films, or a particular film, by threats of refusal to purchase or lease films, or a particular film, for all or

⁵ See p. 439 et seq.

436

Order

part of the theatres owned, operated or controlled by respondents, or any one of them.

(2) Combining, agreeing, or cooperating among themselves or with others, through control by respondents or any one of them of the distribution of the motion picture films of a producer or producers, to refuse to sell or lease in interstate commerce to a competitor or competitors of respondents or any one of them motion picture films or a particular film.

(3) Combining, agreeing, or cooperating among themselves or with others to hinder, obstruct, or prevent producers and/or distributors of motion picture films from selling or leasing films, or a particular film, in interstate commerce, to a competitor or competitors of respondents, or any one of them, by intimidation, coercion, withdrawal, or threatened withdrawal of patronage, or by promises or agreements or assurances to increase the patronage of respondents, or any one of them.

(4) Combining, agreeing, or cooperating among themselves or with others to hinder, obstruct, or prevent motion picture exhibitors from freely purchasing or leasing motion picture films, in interstate commerce, or from freely competing, in the purchase or lease of motion picture films, in interstate commerce, with respondents, or any one of them, by communicating directly or indirectly with any producer and/or distributor of motion picture films or any agent or representative thereof for the purpose of inducing, persuading, coercing, or compelling such producers and/or distributors not to sell or lease motion picture films to such exhibitors.

(5) Combining, agreeing, or cooperating among themselves or with others to hinder, obstruct, or prevent competitors or a competitor in any city, town, or zone from securing a supply of films in interstate commerce for theatres or theatre owned and operated by said competitors or competitor, by leasing a larger number of films for the theatres or theatre of respondents or any one of them than can be shown in said theatres or theatre.

It is further ordered, That the respondents above named, and each of them, within 60 days from the date of the notice hereof, file with the Commission a report in writing setting forth in detail the manner in which this order has been complied with and conformed to.

ORDER OF DISMISSAL

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answers of the respondents, and the testimony taken, and upon briefs filed herein,

It is now ordered, That complaint as to respondent Herbert L. Rothchild Entertainment, Inc., be, and the same is hereby dismissed.

Complaint

12 F. T. C.

IN THE MATTER OF

SAM RHEINGOLD, AN INDIVIDUAL TRADING AS MAID-
RITE DRESS COMPANYCOMPLAINT (SYNOPSIS), FINDINGS, AND ORDER IN REGARD TO THE ALLEGED
VIOLATION OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 1582. Complaint, Mar. 19, 1929—Decision, May 27, 1929*

Where an individual engaged in the sale of women's dresses direct to the consumer, in advertising the same described certain dresses as "This regular \$10 Style Satin Finish Dress for only \$1.69", "Silk Lustre Effect Pongee—Smashing Prices \$7.50 down to \$1.69", "\$10 Style Silk Lustre Charmeuse Dress \$1.95", "This \$5 Style for only \$1.69", "This regular \$7.50 Silk Pongee Lustre Dress for only \$1.69" and "Wool Embroidered Flannel Dress", the facts being that the first three dresses referred to, and last but not one, contained no silk, that the so-called flannel dress contained no wool other than certain wool yarn embroidery, and that the implied reduced prices were the usual and customary prices for the garments in question; with the capacity and tendency to mislead and deceive a substantial part of the purchasing public into believing the garments to be respectively composed of silk and wool, and to be a better quality and usually sold for a higher price than indicated by the price at which offered, and to induce the purchase thereof in such mistaken beliefs:

Held, That such practices, under the circumstances set forth, constituted unfair methods of competition.

Mr. R. H. Winn for the Commission.

SYNOPSIS OF COMPLAINT

Reciting its action in the public interest, pursuant to the provisions of the Federal Trade Commission Act, the Commission charged respondent individual, engaged in the sale and distribution of women's dresses to purchasers in other than the State of origin of such shipments, and with principal office and place of business in Philadelphia, with advertising falsely or misleadingly as to composition and prices, in violation of the provisions of section 5 of such act, prohibiting the use of unfair methods of competition in interstate commerce.

Respondent, as charged, in his advertisements in newspapers and periodicals of general circulation among various States, describes, represents, and refers to certain dresses containing no silk as "Satin Finish Dress", "Silk Lustre Charmeuse Dress", and "Silk Pongee Lustre Dress"; certain dresses containing no wool as "Biggest Bargain Ever Advertised by us in This Beautiful Jersey Dress"; and certain dresses containing no wool except for certain wool yarn embroidery as "Wool Embroidered Flannel Dress"; with the effect of