Board of Trade Vs. Olsen

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SooperKanoon Citation : sooperkanoon.com/93892

Court : US Supreme Court

Decided On : Apr-16-1923

Appeal No. : 262 U.S. 1

Appellant : Board of Trade

Respondent : Olsen

Judgement :

Board of Trade v. Olsen - 262 U.S. 1 (1923)
U.S. Supreme Court Board of Trade v. Olsen, 262 U.S. 1 (1923)

Board of Trade of City of Chicago v. Olsen

No. 701

Argued February 26, 1923

Decided April 16, 1923

262 U.S. 1

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES

FOR THE NORTHERN DISTRICT OF ILLINOIS

SYLLABUS

1. The decision of this Court in *Hill v. Wallace,* 259 U. S. 44 , holding that local dealings on boards of trade in grain for future delivery, could not constitutionally be brought under federal control by means of the taxing power, as was attempted by the Future Trading Act, is not an authority against the Grain Futures Act of September 21, 1922, c. 369, 42 Stat. 998, which is an exercise of the power to regulate interstate commerce. P. 262 U. S. 31 .

2. The flow of grain shipped into the Chicago market from other states, stored temporarily or held on cars, sold on the Chicago Board of Trade, and reshipped in large part to other states and foreign countries, is interstate commerce subject to regulation by Congress. P. 262 U. S. 33 .

3. The fact that such grain is shipped under through bills of lading from western to eastern states giving shippers the right to remove the grain at Chicago for temporary purposes of storing, inspecting, weighing, grading, or mixing, and of changing ownership, consignee or destination, and then of continuing the shipment under the same contract at the same rate, while it does not prevent the local taxing of the grain while in Chicago, does not take it out of interstate commerce so as to deprive Congress of the power of regulation over it. P. 262 U. S. 33 . *Stafford v. Wallace,* 258 U. S. 495 .

4. Neither does the fact that grain so shipped is temporarily stored in Chicago in warehouses and mixed with other grain, so that the owner receives other grain when presenting his receipt for continuing the shipment. P. 262 U. S. 33 . *Eureka Pipe Line Co. v. Hallanan,* 257 U. S. 265 .

5. Sales on the exchange of the Chicago Board of Trade are indispensable to the continuity of this flow of grain in interstate commerce. P. 262 U. S. 36 .

6. Congress having reasonably found that sales of grain for future delivery (most of which transactions do not result in actual delivery, but are settled by off-setting with like contracts), are susceptible to speculation, manipulation, and control, affecting cash prices and consignments of grain in such wise as to cause a direct burden on and interference with interstate commerce therein, rendering regulation imperative for the protection of such commerce and the national public interest therein -- had power to provide in the Grain Futures Act, *supra,* for placing grain boards of trade under federal supervision and regulation as "contract markets," as a condition to dealing by their members in contracts for future delivery. P. 262 U. S. 36 .

7. The provision of the act requiring each board so designated to adopt a rule permitting the admission, as members, of authorized representatives of cooperative associations of producers engaged in the cash grain business, who comply, and agree to comply, with the rules of the board applicable to other members, and forbidding any rule to prevent the return of the commissions earned by such a representative, less expenses, for division among the members of his association on a *pro rata* patronage basis -- does not take the property of the members of the Chicago Board of Trade without due process of law. P. 262 U. S. 40 .

8. The Chicago Board of Trade is engaged in a business affected by a public national interest, and subject to national regulation as such. P. 262 U. S. 40 .

9. And Congress therefore may reasonably limit the rules governing its conduct to prevent abuses and secure freedom from undue discrimination in its operations, even if, incidentally, the value of memberships is decreased. P. 262 U. S. 41 .

10. The constitutionality of provisions of the above act forbidding use of the mails or interstate means of communication, to offer or accept sales for future delivery, except through members of boards of trade, is not here involved, since the plaintiffs are not affected by them, and, under 10, invalidity of part of the act is not to affect the validity of the remainder. P. 262 U. S. 42 .

11. Section 9 of the act, declaring it to be a misdemeanor for a member of a board of trade, designated as a "contract market," to fail to evidence any contract mentioned in 4 by a written record as therein required, is constitutional. P. 262 U. S. 42 .

12. The Constitutionality of the part of 9 providing punishment for delivering through the mails, or interstate means of communication, false or misleading crop or market reports, is not involved in this case. P. 262 U. S. 42 .

13. Neither is the constitutionality of paragraph (b) of 6, giving the commission power to exclude from "contract markets" persons violating the act or attempting to manipulate the price of grain in violation of 5, or of any rule or regulation made in pursuance of its requirements. P. 262 U. S. 43 .

Affirmed.

This is an appeal from a decree of the District Court for Northern Illinois dismissing a bill in equity. The appeal is under 238 of the Judicial Code (as amended Act January 28, 1915, c. 22, 2, 38 Stat. 803, 804), the case being one in which the constitutionality of the Grain Futures Act (enacted by Congress September 21, 1922, c. 369, 42 Stat. 988) is drawn in question.

The bill was brought by the Board of Trade of the City of Chicago, and a number of its members representing each class of traders on the exchange of the Board, to enjoin the United States District Attorney at Chicago, the Secretary of Agriculture, and the United States postmaster at Chicago from taking steps to enforce the provisions of the act against them on the ground that it violates their rights under the federal Constitution.

The purpose of the act is expressed in its title to be for the prevention of obstructions and burdens upon interstate commerce in grain by regulating transactions on grain future exchanges and for other purposes. Its second section, par.(a), is one of definitions. Its definition of interstate commerce, in the sense of

the act, is as follows:

"The words 'interstate commerce' shall be construed to mean commerce between any state, territory,

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or possession, or the District of Columbia, and any place outside thereof, or between points within the same state, territory, or possession, or the District of Columbia, but through any place outside thereof, or within any territory or possession, or the District of Columbia."

Paragraph (b) contains the following addition to the foregoing definition:

"(b) For the purposes of this Act (but not in any wise limiting the foregoing definition of interstate commerce) a transaction in respect to any article shall be considered to be in interstate commerce if such article is part of that current of commerce usual in the grain trade whereby grain and grain products and byproducts thereof are sent from one state with the expectation that they will end their transit, after purchase, in another, including, in addition to cases within the above general description, all cases where purchase or sale is either for shipment to another state, or for manufacture within the state and the shipment outside the state of the products resulting from such manufacture. Articles normally in such current of commerce shall not be considered out of such commerce through resort being had to any means or device intended to remove transactions in respect thereto from the provisions of this Act. For the purpose of this paragraph, the word 'state' includes territory, the District of Columbia, possession of the United States, and foreign nation."

Section 3 is in the nature of a recital and finding as follows:

"Sec. 3. Transactions in grain involving the sale thereof for future delivery as commonly conducted on Boards of Trade and known as 'futures' are affected with a national public interest; that such transactions are carried on in large volume by the public generally and by persons engaged in the business of buying and selling

grain and the products and byproducts thereof in interstate

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commerce; that the prices involved in such transactions are generally quoted and disseminated throughout the United States and in foreign countries as a basis for determining the prices to the producer and the consumer of grain and the products and byproducts thereof and to facilitate the movements thereof in interstate commerce; that such transactions are utilized by shippers, dealers, millers, and others engaged in handling grain and the products and byproducts thereof in interstate commerce as a means of hedging themselves against possible loss through fluctuations in price; that the transactions and prices of grain on such boards of trade are susceptible to speculation, manipulation, and control, and sudden or unreasonable fluctuations in the prices thereof frequently occur as a result of such speculation, manipulation, or control, which are detrimental to the producer or the consumer and the persons handling grain and products and byproducts thereof in interstate commerce, and that such fluctuations in prices are an obstruction to and a burden upon interstate commerce in grain and the products and byproducts thereof and render regulation imperative for the protection of such commerce and the national public interest therein."

The act in 4 forbids all persons to use mails or interstate telephone, telegraphic, wireless, or other communication, in offering or accepting sales of grain for future delivery or to disseminate prices or quotations thereof, excepting the man who holds the grain he is offering for sale, and the owner or renter of land on which the grain offered for sale is to be grown, and excepting also members of Boards of Trade located at a terminal market on which cash sales occur in sufficient volume and under such conditions as to reflect the general value of grain and its different grades, and which have been designated by the Secretary of Agriculture as "contract markets."

The act puts these boards of trade under supervision of the Secretary of Agriculture and imposes conditions

precedent and subsequent on his power to designate or continue them as "contract markets."

The conditions are:

(a) The keeping of a record with prescribed details of every transaction of cash and future sales of grain of the Board or its member in permanent form for three years, open to inspection of representatives of the Departments of Agriculture and of Justice.

(b) The prevention of the dissemination by the Board or any member of misleading prices.

(c) The prevention of manipulation of prices or the cornering of grain by the dealers or operators on the Board.

(d) The adoption of a rule permitting the admission as members of authorized representatives of lawfully formed cooperative associations of producers having adequate responsibility engaged in the cash grain business, complying with and agreeing to comply with, the rules of the Board applicable to other members, provided that no rule shall prevent the return to its members on a *pro rata* patronage basis the money collected by such association in the business, less expenses.

The Secretary of Agriculture, the Secretary of Commerce, and the Attorney General are made a commission to hear and determine after due notice, whether any board of trade has failed or is failing by rule to do the things required above, and, if found in default, to suspend its functions as a contract market for a period not to exceed six months, or to revoke its designation as such, with an appeal on the record to the circuit court of appeals within the circuit where the board is situate. Such commission, too, is to hear appeals from the Secretary's action in refusing to designate any Board of Trade as a contract market.

There is a further provision for excluding from all contract markets and trading privileges any person violating

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the provisions of the act or the regulations in pursuance thereof.

Section 9 declares anyone trading in futures in violation of 4, or sending intentionally or carelessly false or misleading quotations or information as to the prices of grain guilty of a misdemeanor.

The bill of the plaintiffs describes the organization of the Chicago, Board of Trade as a corporation under a special act of the Legislature of Illinois, passed in 1859 (Priv.Laws 1859, p. 13), with a membership of 1,600 and a board of 18 directors, of whom one is president. It avers that the Board does no business in selling or buying grain, but only furnishes an exchange and offices where such business can be done by its members; that it does not deliver any market quotation through interstate means, but it does cause to be collected the first price and each change of price on its exchange in cash and future sales during the regular hours in the exchange hall, and delivers them to certain telegraph companies, who pay the Board for this information.

The bill further avers that it is sustained only by the initiation fees and dues of its members, the former being $25,000 for each member, and the latter being in the form of annual assessments; that it has, from these sources, accumulated funds with which to provide a large building and offices for the exchange, from some of which it receives rental and so has property worth $2,000,000 or more; that its existence depends on keeping its memberships valuable; that it does this by requiring character and financial responsibility as qualifications for its membership and by a requirement that a member shall charge for every sale a fixed minimum commission to a nonmember principal, and a less minimum to a member who shall be his principal; that corporations are not permitted to be members, but that, when two of the stockholders and officers are members, the corporation

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is permitted as a member to make contracts on the exchange. The bill further avers that, if the Board were required to admit representatives of cooperative associations of producers, with the privilege of dividing with their members the proceeds of commissions, less expenses, it would greatly impair the value of its memberships to other members.

The bill further avers that the members of its exchange engage only in three kinds of trading:

(1) Many act as commission merchants, and receive from producers and country grain dealers grain in cars and boats consigned to them, which as agents they sell for immediate delivery and account to their principals for the proceeds of such sales, less their commissions and other expenses, and many members, as principals or agents, purchase and sell grain in Chicago which is in cars or elevators for immediate delivery, and all of these transactions are known as "cash sales."

(2) Many members send out in the afternoons, whenever market conditions are favorable, telegrams or letters to country grain dealers offering to buy grain, or to millers and other nonresidents of Chicago, probable buyers, offering to sell grain at released prices and to be shipped within a certain time, on condition that these offers be accepted before regular market hours the next morning. These are known as "cash sales for deferred shipment," or as "sales to arrive."

(3) Many of the members engage either as principals or agents in making on the exchange contracts with other members for the purchase and sale of grain for future delivery by which the seller agrees to deliver in Chicago the grain covered by the contract upon any day of the named month that he shall select. More than 75 percent of the volume of all trading in the exchange is for future delivery, and, under the rules, it must be done in the exchange hall and between regular fixed hours; that both buyers

and sellers in all such contracts are personally present when the contracts are made.

The bill further avers that all contracts for future delivery are under the rules of the Board fulfilled only by delivery of warehouse receipts for the grain issued by twelve warehouses in Chicago, selected by the Board and having a capacity of 13,000,000 bushels and licensed by the State of Illinois to do a public warehouse business; that the grain is mixed with other grain, so that the receipt holder never gets the grain deposited when the receipt was issued; that, while a rule of the exchange makes grain in railroad cars deliverable in future cars the last three days of the month, the transaction is not fully completed till the grain in those cars is deposited in a regular warehouse and receipt issued; that, in the trading for future delivery, more than three-quarters of the many millions of bushels contracted to be delivered are settled for without delivery by offsetting purchases; that a large part of the future trading is done by grain merchants, millers, and others only for the purpose of insuring themselves against price fluctuations in respect of like grain owned by them and held for sale, shipment, or manufacture, and is settled by offsetting.

The bill further avers that another large part of future trading is done by speculators, so called, who make a study of market conditions affecting prices, and try to profit by their judgment as to future prices; that few of such speculators have capital enough to make large single purchases in any way affecting the market; that six-sevenths of all the trading in futures in the country take place in Chicago; that no corners have been run on the exchange for 15 years, due to the enforcement of rules against them by the Board and "perhaps to the Sherman Anti-Trust Act;" that manipulation has never been successfully resorted to to depress prices; that the selling of futures has no such effect; that the law of supply

and demand regulates prices and prevents violent fluctuations, and that, before hedging was made possible by this future trading, the cost of the middleman between producer and consumer was much greater.

The defendants filed an answer admitting much of the bill, but specifically denying the averments included in the last foregoing paragraph.

The plaintiffs submitted a large number of affidavits in support of a motion for a temporary injunction. These contained opinions of many professors of political economy in the colleges of the country to the effect that trading in futures in the long run did not depress prices, but stabilized them.

The court denied the motion for a temporary injunction, and, of its own motion, dismissed the bill for want of equity.

The conclusions of Congress expressed in the recital of 3 as to the detriment to interstate commerce from constantly recurring manipulation of sales for future delivery were reached after many years of investigation and examination of witnesses, including the advocates of regulation and those opposed, and men intimately advised in respect to the grain markets of the country.

The Senate Committee on Agriculture and Forestry reported to the Senate as follows:

"Every member of a grain exchange who testified before this committee acknowledged that there is at times excessive speculation and undesirable speculation in the futures market. Furthermore, it was brought out that a few big traders at times influence prices -- manipulate the market -- by the great volume of their operations. Also it was shown that a continually fluctuating, and not a stable, market is the desire of speculators. Such a market is against the interests of the producer; he must have stable prices in order to market his crop to best advantage. A market without wide and frequent price fluctuations

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would greatly benefit the producer. The reason for this is that rapidly fluctuating prices cannot be fully reflected in the prices paid at country stations, so an additional margin must be allowed for buying in the country."

Sen. Report No. 212, 67th Congress, 1st Sess.

Witnesses testified before the committee that a calculation based on commissions showed the total bushels of grain sold for future delivery on the Chicago Board of Trade in a year reach nearly 20,000,000,000 and that the amount of grain actually delivered under such contracts is not 1 percent of this. Objectors to future trading insisted at first that future trading put in the hands of desperate speculators an easy opportunity to corner the market and to promote great and rapid fluctuations in value, and was wholly vicious, and should be forbidden. Further investigation and consideration have satisfied many that the law of supply and demand operated on futures as on cash sales, and that futures are very useful in certain respects, notably in offering a means by which, through "hedging," owners of grain can, to some extent, protect themselves against the danger of losses by fluctuation.

The government did not, in this hearing and argument, maintain that, by manipulation, the operators can permanently depress the prices of grain, but insisted and cited the actual quotations from time to time, some as late as the summer of 1922, showing violent fluctuations through "deals" of large operators engaged in manipulating the futures market at intervals since 1900, before which corners were ever recurring but since which they have been infrequent. Much evidence was adduced before congressional committees that the sales of futures on the Chicago Board dominated the prices of wheat in this country and the world. The injurious effect of these recurring fluctuations in such futures upon the consignment of grain by owners and producers was asserted by witnesses. Mr.

Herbert Hoover, whose experience as Food Administrator gave his opinion weight, said to the House Committee on Agriculture (Future Trading Hearings-66th Congress, 3d Session, pp. 909, 910):

"The second form of manipulation, and the one that I feel does at times take place, is the making of a drive on the price by either the sale or the purchase of such quantities as will affect the price by the volume of material coming to the market at that particular time. I would regard those transactions as an attempt to dislocate

the normal flow of the law of supply and demand, and any attempt of any individual to dislocate a free market must be against public interest. I feel it is also against the interest of the individual producer, because a drive on the market that depresses the price must find a considerable number of farmers who, through the fall in price and their outside obligations, are compelled to liquidate, and they have been done an injury. Incidentally the commodity has been brought into the market, and an acceleration to depression has been created."

Mr. Julius H. Barnes, the head of the United States Grain Corporation during the war, and of widest experience in the grain markets of the world at the same hearing, after explaining that future dealing stabilizes prices and helps legitimate hedging, and that a drive on prices worked its own cure in the long run, as did the distinguished economists whose affidavits were exhibited in this case, said (pp. 839, 840):

"But it is also true that, even though such a price depression must be temporary in character, it may, during its period of effectiveness, do substantial injustice by forcing the liquidation of grain held on margins, or, by the price tendency thus displayed, frightening owners otherwise confident of the ultimate value of their goods."

The Federal Trade Commission, in its report on wheat prices to the President, December 13, 1920, said (p. 8):

"Prices of wheat futures, the decline of which has been especially the subject of criticism, are susceptible of manipulation. Wide fluctuations in prices and large discounts of the future price below the cost price have prevailed. This has made it unsatisfactory for 'hedging,' and hedging sales may also appear to be manipulation because, if they are large, they may cause sharp depressions. Wheat futures are not functioning well, even according to the standards of their advocates."

Mr. Julius H. Barnes, in his evidence before the Federal Trade Commission, in October, 1922, describes the effect upon interstate commerce of a "deal" in May, 1922, wheat on the Chicago Board of Trade, when the price of futures rose rapidly. Large operators collected cash wheat all over the country and headed it for Chicago for delivery at the attractive prices. This took wheat away from all the other wheat centers of the country, where it normally would have remained for consumption, and accumulated it in almost unsalable quantity in Chicago, greatly disturbing the normal and useful flow of wheat in its ordinary and proper distribution and precipitating a crash in prices. [Footnote 1]

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It was charged before the congressional committees that the limitation of deliveries under contracts for futures to warehouse receipts of twelve regular warehouses aggregating but 13,000,000 bushels capacity, with the privilege of a tender of grain in cars on the last three days of the delivery month and a power in the board of directors to enlarge the privilege in case of an emergency, casts another element of speculative doubt into the prices of futures, and puts too much control in the board of directors. In view of the fact that the total capacity of Chicago for storing grain in public and private warehouses is 45,000,000, it is urged that this rule of the futures market is sinister and dangerous in affecting the prices of a market that are worldwide in their influence by such a narrow limitation of deliveries subject to

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arbitrary and uncertain change at the discretion of the Board, and that it is a factor in frightening shippers and lawful hedgers in making opportunity for speculative manipulation and burdening the flow of grain in normal interstate channels. [Footnote 2]

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MR. CHIEF JUSTICE TAFT, after stating the case as above, delivered the opinion of the Court.

Appellants contend that the decision of this Court in *Hill v. Wallace,* 259 U. S. 44 , is conclusive against the constitutionality of the Grain Futures Act. Indeed, in their bill, they pleaded the judgment in that case as *res adjudicata* in this as to its invalidity. The act whose constitutionality was in question in *Hill v. Wallace* was the Future Trading Act (c. 86, 42 Stat. 187). It was an effort by Congress, through taxing at a prohibitive rate sales of grain for future delivery, to regulate such sales on boards of trade by exempting them from the tax if they would comply with the congressional regulations. It was

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held that sales for future delivery where the parties were present in Chicago, to be settled by offsetting purchases or by delivery, to take place there, were not interstate commerce, and that Congress could not use its taxing power in this indirect way to regulate business not within federal control. We said (p. 259 U. S. 68):

"Looked at in this aspect, and without any limitation of the application of the tax to interstate commerce, or to that which the Congress may deem from evidence before it to be an obstruction to interstate commerce, we do not find it possible to sustain the validity of the regulations as they are set forth in this act. A reading of the act makes it quite clear that Congress sought to use the taxing power to give validity to the act. It did not have the exercise of its power under the commerce clause in mind, and so did not introduce into the act the limitations which certainly would accompany and mark an exercise of the power under the latter clause."

Again, on page 259 U. S. 69 , we said:

"It follows that sales for future delivery on the Board of Trade are not in and of themselves interstate commerce. They cannot come within the regulatory power of Congress as such unless they are regarded by Congress, from the evidence before it, as directly interfering with interstate commerce so as to be an obstruction or a burden thereon."

The Grain Futures Act which is now before us differs from the Future Trading Act in having the very features the absence of which we held in the somewhat carefully framed language of the foregoing prevented our sustaining the Future Trading Act. As we have seen in the statement of the case, the act only purports to regulate interstate commerce and sales of grain for future delivery on boards of trade, because it finds that, by manipulation they have become a constantly recurring burden and obstruction to that commerce. Instead,

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therefore, of being an authority against the validity of the Grain Futures Act, it is an authority in its favor.

The Chicago Board of Trade is the greatest grain market in the world. *Chicago Board of Trade v. United States,* 246 U. S. 231 , 246 U. S. 235 . Its report for 1922 shows that, on that market in that year were made cash sales for some 350,000,000 bushels of grain, most of which was shipped from states west and north of Illinois into Chicago, and was either stored temporarily in Chicago or was retained in cars and after sale was shipped in large part to Eastern states and foreign countries. This great annual flow is made up of the cash grain sold on the exchange, the cash sales to arrive (*Chicago Board of Trade v. United States,* 246 U. S. 231), and the comparatively small percentage of grain contracted to be sold in the futures market not settled by offsetting. *Chicago Board of Trade v. Christie Grain Co.,* 198 U. S. 236 , 198 U. S. 248 . The railroads of the country accommodate themselves to the interstate function of the Chicago market by giving shippers from Western states bills of lading through Chicago to points in Eastern states with the right to remove the grain at Chicago for temporary purposes of storing, inspecting, weighing, grading, or mixing, and changing the ownership, consignee or destination, and then to continue the shipment under the same contract and at a through rate. *Bacon v. Illinois,* 227 U. S. 504 . Such a contract does not prevent the local taxing of the grain while in Chicago, but it does not take it out of interstate commerce in such a way as to deprive Congress of the power to regulate it, as is plainly intimated in the authority cited (p. 227 U. S. 516) and expressly recognized in *Stafford v. Wallace,* 258 U. S. 495 , 258 U. S. 525

-526. The fact that the grain shipped from the West and taken from cars may have been stored in warehouses and mixed with other grain, so that the owner receives other grain when presenting his receipt for continuing

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the shipment, does not take away from the interstate character of the through shipment any more than a mixture of the oil or gas in the pipelines of the oil and gas companies in West Virginia, with the right in the owners to withdraw their shares before crossing state lines, prevented the great bulk of the oil and gas which did thereafter cross state lines from being a stream or current of interstate commerce. *Eureka Pipe Line v. Hallanan,* 257 U. S. 265 , 257 U. S. 272 ; *United Fuel Gas Co. v. Hallanan,* 257 U. S. 277 , 257 U. S. 281 .

It is impossible to distinguish the case at bar, so far as it concerns the cash grain, the sales to arrive, and the grain actually delivered in fulfillment of future contracts, from the current of stock shipments declared to be interstate commerce in *Stafford v. Wallace,* 258 U. S. 495 . That case presented the question whether sales and purchases of cattle made in Chicago at the stockyards by commission men and dealers and traders under the rules of the stockyards corporation could be brought by Congress under the supervision of the Secretary of Agriculture to prevent abuses of the commission men and dealers in exorbitant charges and other ways, and in their relations with packers prone to monopolize trade and depress and increase prices thereby. It was held that this could be done, even though the sales and purchases by commission men and by dealers were in and of themselves intrastate commerce, the parties to sales and purchases and the cattle all being at the time within the City of Chicago.

We said (pp. 258 U. S. 515 -516):

"The stockyards are not a place of rest or final destination. Thousands of head of livestock arrive daily by carload and trainload lots, and must be promptly sold and disposed of and moved out to give place to the constantly flowing traffic that presses behind. The stockyards are but a throat through which the current flows,

and the transactions which occur therein are only incident to this current from the West to the East, and from one state to another. Such transactions cannot be separated from the movement to which they contribute and necessarily take on its character. The commission men are essential in making the sales without which the flow of the current would be obstructed, and this, whether they are made to packers or dealers. The dealers are essential to the sales of the stock farmers and feeders. The sales are not in this aspect merely local transactions. They create a local change of title, it is true, but they do not stop the flow; they merely change the private interests in the subject of the current, not interfering with, but, on the contrary, being indispensable to, its continuity. The origin of the livestock is in the West, its ultimate destination known to, and intended by, all engaged in the business is in the Middle West and East, either as meat products or stock for feeding and fattening. This is the definite and well understood course of business. The stockyards and the sales are necessary factors in the middle of this current of commerce."

This case was but the necessary consequence of the conclusions reached in the case of *Swift & Co. v. United States,* 196 U. S. 375 . That case was a milestone in the interpretation of the commerce clause of the Constitution. It recognized the great changes and development in the business of this vast country and drew again the dividing line between interstate and intrastate commerce where the Constitution intended it to be. It refused to permit local incidents of great interstate movement, which taken alone were intrastate, to characterize the movement as such. The *Swift* case merely fitted the commerce clause to the real and practical essence of modern business growth. It applies to the case before us just as it did in *Stafford v. Wallace.*

The distinction that the exchange of the Chicago Board of Trade building is not within the same inclosure as the

railroad yards and warehouses in which the grain is received and stored on its way from the West to the East as it is being sold on the exchange, while the stockyards exchange and the actual receipt and shipment of cattle are within the same fence, surely can make no difference in the application of the principle. The sales on the Chicago Board of Trade are just as indispensable to the continuity of the flow of wheat from the West to the mills and distributing points of the East and Europe, as are the Chicago sales of cattle to the flow of stock toward the feeding places and slaughter and packing houses of the East.

The question under this act is somewhat different in form and detail from that in the *Stafford* case, but the result must be the same. It is not the sales and deliveries of the actual grain which are the chief subject of the supervision of federal agency by Congress in the Grain Futures Act, although a record of cash sales is required, and a corner in cash sales would be a violation of it, and there are other provisions equally regulatory of them. It is the contracts of sales of grain for future delivery, most of which do not result in actual delivery but are settled by offsetting them with other contracts of the same kind, or by what is called "ringing." *Board of Trade v. Christie Co.,* 198 U. S. 236 , 198 U. S. 246 -247. The question is whether the conduct of such sales is subject to constantly recurring abuses which are a burden and obstruction to interstate commerce in grain? And further, are they such an incident of that commerce and so intermingled with it that the burden and obstruction caused therein by them can be said to be direct?

In *United States v. Ferger,* 250 U. S. 199 , the question was of the validity of a statute of Congress punishing the forging of bills of lading used in interstate commerce, and altering them. The lower court had dismissed an indictment charging the offense denounced in the statute,

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on the ground that Congress could only deal with real bills of lading where there was an actual shipment in interstate commerce, and had no power to punish a fraud and fiction where there was no such commerce, and where the bills of lading whose fabrication was the subject of complaint were mere pieces of papers

fraudulently inscribed, and did not relate to any actual interstate commerce. This Court, speaking through Chief Justice White, rejected the view of the lower court, on the ground that interstate commerce would be directly impaired and weakened by the unrestrained right to fabricate and circulate spurious bills of lading apparently connected with such commerce. The Court, in *Stafford v. Wallace, supra,* adopted and applied this principle, and said, 258 U.S. 258 U. S. 521 :

"Whatever amounts to more or less constant practice, and threatens to obstruct or unduly to burden the freedom of interstate commerce is within the regulatory power of Congress under the commerce clause, and it is primarily for Congress to consider and decide the fact of the danger and to meet it. This Court will certainly not substitute its judgment for that of Congress in such a matter unless the relation of the subject to interstate commerce and its effect upon it are clearly nonexistent."

In the act we are considering, Congress has expressly declared that transactions and prices of grain in dealing in futures are susceptible to speculation, manipulation, and control which are detrimental to the producer and consumer and persons handling grain in interstate commerce and render regulation imperative for the protection of such commerce and the national public interest therein.

It is clear from the citations, in the statement of the case, of evidence before committees of investigation as to manipulations of the futures market and their effect, that we would be unwarranted in rejecting the finding

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of Congress as unreasonable, and that, in our inquiry as to the validity of this legislation, we must accept the view that such manipulation does work to the detriment of producers, consumers, shippers, and legitimate dealers in interstate commerce in grain and that it is a real abuse.

But it is contended that it is too remote in its effect on interstate commerce, and that it is not like the direct additions to the cost to the producer of marketing cattle by exorbitant charges and discrimination of commission men and dealers, as in *Stafford v. Wallace.* It is said there is no relation between prices on the futures

market and in the cash sales. This is hardly consistent with the affidavits the plaintiffs present from the leading economists, already referred to, who say that dealing in futures stabilizes cash prices. It is true that the curves of prices in the futures and in the cash sales are not parallel, and that sometimes one is higher and sometimes the other. This is to be expected, because futures prices are dependent normally on judgment of the parties as to the future, and the cash prices depend on present conditions, but it is very reasonable to suppose that the one influences the other as the time of actual delivery of the futures approaches, when the prospect of heavy actual transactions at a certain fixed price must have a direct effect upon the cash prices in unfettered sales. The effect of such a "deal" as that of May, 1922, as explained by Mr. J. H. Barnes, shows this clearly, and illustrates in a striking way the direct effect of such manipulation in disturbing the actual normal flow of grain in interstate commerce most injuriously. Mr. Barnes also points out the effect of the operation of the rule limiting deliveries to warehouse receipts from warehouses selected by the directors of the Board, whose unregulated power to suspend or modify the rule pending settlement adds to the speculative character of the market and frightens consignors.

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More than this, prices of grain futures are those upon which an owner and intending seller of cash grain is influenced to sell or not to sell as they offer a good opportunity to him to hedge comfortably against future fluctuations. Manipulations of grain futures for speculative profit, though not carried to the extent of a corner or complete monopoly, exert a vicious influence and produce abnormal and disturbing temporary fluctuations of prices that are not responsive to actual supply and demand and discourage not only this justifiable hedging, but disturb the normal flow of actual consignments. A futures market lends itself to such manipulation much more readily than a cash market.

In the case of *United States v. Patten,* 226 U. S. 525 , an indictment charged a conspiracy to run a corner by making purchases of quantities of cotton for future delivery, by means of which the conspirators were to secure control of the

available supply of cotton in the country and enhance the price of cotton at will. It was contended that, even if the necessary result of this was an obstruction of interstate trade, it was so indirect as not to constitute a restraint of it within the federal Anti-Trust Law under which the indictment was drawn. This Court held otherwise and sustained the indictment.

Corners in grain through trading in futures have not been so frequent as they were before 1900, due, as the plaintiffs aver, to the stricter rules of the Board of Trade as to futures and to the Sherman Anti-Trust Act, though they do seem to have since occurred infrequently. The fact that a corner in grain is brought about by trading in futures shows the direct relation between cash prices and actual commerce on the one hand, and dealing in futures on the other, because a corner is not a monopoly of contracts only, it is a monopoly of the actual supply of grain in commerce. It was this direct relation that led to the decision in the *Patten* case. If a corner and the enhancement

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of prices produced by buying futures directly burden interstate commerce in the article whose price is enhanced, it would seem to follow that manipulations of futures which unduly depress prices of grain in interstate commerce and directly influence consignment in that commerce are equally direct. The question of price dominates trade between the states. Sales of an article which affect the countrywide price of the article directly affect the countrywide commerce in it. By reason and authority, therefore, in determining the validity of this act, we are prevented from questioning the conclusion of Congress that manipulation of the market for futures on the Chicago Board of Trade may, and from time to time does, directly burden a & obstruct commerce between the states in grain, and that it recurs and is a constantly possible danger. For this reason, Congress has the power to provide the appropriate means adopted in this act by which this abuse may be restrained and avoided.

The next provision of the act which is attacked as invalid is that which forbids a board, designated as a contract market, from excluding from membership in, and

all privileges on, its exchanges any duly authorized representative of a lawfully formed and conducted association of producers having adequate financial responsibility, engaged in the cash grain business, and complying or agreeing to comply with the terms and conditions lawfully imposed on the other members, and which bars any rule forbidding the return by such association of the commissions of its representative, less expenses, to the *bona fide* members of the cooperative association in proportion to their consignments of grain to the exchange. It is said that this will impair the value of memberships in the Board and will take the property of the members without due process of law.

The Board of Trade conducts a business which is affected with a public interest, and is therefore subject to

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reasonable regulation in the public interest. The Supreme Court of Illinois has so decided in respect to its publication of market quotations. *New York & Chicago Grain Exchange v. Chicago Board of Trade,* 127 Ill. 153. In view of the actual interstate dealings in cash sales of grain on the exchange, and the effect of the conduct of the sales of futures upon interstate commerce, we find no difficulty under *Munn v. Illinois,* 94 U. S. 113 , 94 U. S. 133 , and *Stafford v. Wallace, supra,* in concluding that the Chicago Board of Trade is engaged in a business affected with a public national interest and is subject to national regulation as such. Congress may therefore reasonably limit the rules governing its conduct with a view to preventing abuses and securing freedom from undue discrimination in its operations. The incidental effect which such reasonable rules may have, if any, in lowering the value of memberships does not constitute a taking, but is only a reasonable regulation in the exercise of the police power of the national government. Congress evidently deems it helpful in the preservation of the vital function which such a board of trade exercises in interstate commerce in grain that producers and shippers should be given an opportunity to take part in the transactions in this world market through a chosen representative. Nor do we see why the requirement that the relation between them and this representative, looking to economy of participation on their part by a return of patronage

dividends, should not be permissible because facilitating closer participation by the great body of producers in transactions of the Board which are of vital importance to them. It would seem to make for more careful supervision of those transactions in the national public interest in the free flow of interstate commerce. Under the present rules of the Board, corporations are permitted to enjoy the benefit of membership by reason of the membership of two of their executive officers who are *bona fide* stockholders, and all their stockholders

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are thus given a chance to enjoy the commissions earned and the benefits to the corporation of other membership privileges to the extent of their stock ownership. The provisions of the act objected to are to be sustained on the principles laid down in *House v. Mayes,* 219 U. S. 270 . *Broadnax v. Missouri,* 219 U. S. 285 , and *Grisim v. South St. Paul Live Stock Exchange,* 152 Minn. 271. We think the objection to this feature of the act untenable.

We do not find it necessary to our decree in this case to consider the constitutional objections made in the bill to that part of the fourth section which forbids he use of the mails and interstate facilities of communication to offer or accept sales for future deliveries or to send quotations of prices thereof except through members of a board of trade, because the plaintiffs are not affected thereby. Section 10 of the act reads as follows:

"If any provision of this act or the application thereof to any person or circumstances is held invalid, the validity of the remainder of the act and of the application of such provision to other persons and circumstances shall not be affected thereby."

The unconstitutionality of these provisions, if they be unconstitutional, would therefore not invalidate the rest of the act.

Section 9 declares it to be a misdemeanor for a member of a designated board of trade to fail to evidence any contract mentioned in 4 by a record in writing as therein required. This is only a legitimate means of enforcing the statutory

regulations of the Board of Trade which we have found to be within the power of Congress.

As to the power of Congress to provide in 9 for the punishment of any one who shall knowingly or carelessly deliver through the mail or interstate means of communication false or misleading crop or market reports, it will be time enough for us to consider its existence when some one is charged with the offense and is brought to trial therefor. The plaintiffs present no such case.

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Paragraph (b) of 6 which gives to the Commission the power on complaint after investigation by the Secretary of Agriculture, and after a hearing, to exclude from all contract markets any person violating any of the provisions of the act or attempting to manipulate the market price of any grain in violation of the provisions of 5 of the act or of any of the rules or regulations made in pursuance to its requirements, is attacked as invalid because a jury trial is not afforded. The plaintiffs do not aver that they are committing acts which will subject them to such exclusion, or that charges have been made and proceedings have been begun or are about to be begun against them by the Secretary of Agriculture. Until they are thus in danger of suffering prejudice from the operation of the paragraph, they cannot invoke our decision as to its validity.

For the reasons given the decree of the district court is

Affirmed.

MR. JUSTICE Mc REYNOLDS and MR. JUSTICE SUTHERLAND dissent.

[Footnote 1]

In response to Senate Resolution 133, the Federal Trade Commission prepared to make a report by conducting, in October, 1922, an inquiry into the market manipulation of grain. Mr. Julius H. Barnes was a witness, and, in the course of his examination, said (pp. 74-76):

"Now, in May, 1922, we had the same spectacular gyrations in prices, starting earlier in the month and falling into a complete collapse in price. Why?"

"COMMISSIONER MURDOCK: In the middle of the month this time?"

"MR. BARNES: Yes, starting early in the month, rising to a peak and then falling to an early collapse. Without knowing the facts, because these things are detected by commission merchants, it seems quite clear that there were two or three large lines of wheat bought in Chicago for delivery in May, 1922; that at least one of those, on popular report, was a man who could easily pay for 5,000,000 bushels of wheat; that he intended to take the wheat as a merchant; that he was going to pay cash for it and not squeeze somebody to make a settlement. He expected to get delivery of that, did not buy it in anticipation that it could not be delivered, and therefore he could force a settlement, and he was going to act as a merchant on the belief that wheat was worth more in the world's markets than the prices then ruling in Chicago; but, on top of that, there developed that two or three other men, who were evidently clear speculators, not acting with that conception, had also lines of wheat, and the aggregate of those made a shortage in Chicago exceeding the stock of wheat in Chicago or naturally tributary thereto."

"The result of that was that, as this situation developed, the buyer, miller, or exporter began to get afraid about the Chicago market, that he might have to buy his hedges in higher, and began to buy in those hedges, and the market advanced under that kind of apprehensive buying, the buying of legitimate merchants who were frightened to leave their hedges in that month any longer. That helped make the peak, plus perhaps some buying by interested people who wanted to see the price marked up, and those large cash interests in Chicago began to collect all over the country wheat and head it to Chicago for delivery at these attractive prices, which by this time had reached a relation in respect to all of the markets which attracted wheat from every direction to Chicago."

"The result of that was that, by the end of the month, there was accumulated in Chicago a stock of 10,000,000 or 12,000,000 bushels of wheat, which was beyond the normal absorbing capacity of the consumption trade that rests on Chicago, and

that wheat had been lifted by the incentive of these apprehensively made prices from centers where it should have remained for the consumption which normally overtakes it from those centers -- Omaha, Kansas City, Minneapolis, all these other points. So that the country stocks which should normally supply mills west of Chicago or south of Chicago were lifted out of their natural place and directed to Chicago by these apprehensively made prices, and there was collected in Chicago an almost unsalable quantity of wheat which could only press in one direction, could not go back."

"COMMISSIONER MURDOCK: So that we had a price collapse by that?"

See also letter of J. H. Barnes to Chicago Board of Trade, p. 69, Grain Future Hearings before Committee on Agriculture and Forestry, U.S. Senate, 67th Congress,2d Session, on H.R. 11843, containing the following:

"Present conditions lay an economic burden on distribution cost by drawing wheat to Chicago out of its accustomed channels and from points of supply needed shortly for actual consumption elsewhere. These evil effects are solely from apprehension of a forced settlement at artificial prices on hedges properly used as insurance against price level fluctuations."

[Footnote 2]

Evidence of Julius H. Barnes before Federal Trade Commission in October, 1922 (page 77), on inquiry in response to Senate Res. No. 133:

"MR. BARNES:: In the demonstration for several years that the chief abuses of the trade were deliberate manipulation and congestion, the deliberate forcing of settlement by artificial prices, the trade step by step tried to make it more difficult for any one to obtain that control of the market. They made No. 1, 2, 3 wheat, and on all varieties deliverable. That was not sufficient, as demonstrated in Chicago two years ago to the market committee of 1917. I suggested to them that the trade ought to seriously consider a widening of the contract basis once more, so as to make wheat at Omaha and Kansas City and Minneapolis at points of accumulation on the normal flow. So that there was not any substantial injustice done a buyer;

deliverable at a freight cost difference and a small penalty, so that it would not be abused, and I stand today for that as being the one real constructive thing left for the Chicago market today, if Chicago is to be the liquid grain future trading market of America, as it should be, if there is a natural advantage in concentrating all the trading of the country in one market, so that you can send an order through and get 100,000 or 500,000 bushels in a minute, to answer a cable from abroad or a milling order, because the volume of trade there is liquid all the time, and I believe that is in the public interest."

"If it is to do that, then Chicago ought to widen this wedge against these shippers, and it can be done by taking into contract delivery the wheats in these other markets. The effect last May would have been that that wheat would have been delivered, but the wheat itself would have physically been in Omaha and Kansas City and available for milling in June and July, when it was needed, and it would not have been in Chicago to press direct on East and the world's market and cause a further decline in price."

"MR. WATKINS: Mr. Barnes, what you would include for delivery at Chicago markets you would include for delivery at seaboard markets, would you not?"

"MR. BARNES: No. I would not, because, as I say, on the natural flow, a buyer in Chicago for actual delivery of wheat must in the normal process of trade move that wheat east. His consumption both for export and milling is east of Chicago. Therefore, for him to take delivery west of Chicago at a freight difference and a small penalty is no substantial injustice; but to force him to take wheat at the seaboard at the transportation cost when maybe he is buying in Chicago to supply a mill in Omaha, might be a very substantial injustice."