($11,819.74) assessed by the Commissioner of Internal Revenue as an additional estate tax on the estate of Jonas B. Kissam, deceased, under the Act of September 8, 1916, as amended in 1917. The action was brought in the United States District Court for the Southern District of New York.

The complaint was a voluminous paper and contained at least four causes of action. As to the first, consisting of 22 paragraphs, McElligott filed a demurrer. Plaintiff made a motion for judgment on the pleadings. The motion was granted, and a final judgment was awarded against "defendant on the merits, for the relief prayed for in the first cause of action set forth" in the complaint.

The judgment was reversed by the Circuit Court of Appeals. 275 Fed. 546.

The following four paragraphs are a summary of the allegations of the complaint stated narratively:

In 1912 the decedent, Jones B. Kissam, was the owner of certain bonds and mortgages and corporate bonds. In that year he conveyed the property to the plaintiff in error, John C. Knox, who, shortly thereafter, reconveyed the same to Kissam and his wife, Cornelia B. Kissam, as joint tenants. All of the parties resided in the state of New York.

In 1917 Kissam died, leaving Mrs. Kissam surviving him. She was made one of the executors of the will, as well as sole beneficiary thereunder.

On December 7, 1917, she, as executrix, and Knox, as executor, made a return of the federal estate tax on the entire estate of Jonas B. Kissam. They included in the return the value of one-half of the jointly owned proper- *548 ty *which was owned and enjoyed by decedent, but did not include the value of the one-half of the jointly owned property, which had been owned and enjoyed by Mrs. Kissam since the creating of the joint estates in July and August of 1912.

A tax of $5,354.14 based upon the return was paid by the plaintiffs in error. On May 9, 1919, the Commissioner of Internal Revenue added to the estate the one-half interest of the value of the estate and assessed as a tax in addition to that which was paid, the sum of $13,668.60. The additional tax was paid under protest and to recover it is the purpose of the action.

The Circuit Court of Appeals, stating the contention of the executors, said that "they claimed that the assessment was void as to the half of the joint property which vested in Cornelia [Mrs. Kissam] before the passage of the Act of September 8, 1916, as amended, and also that the act itself was unconstitutional, as a direct tax upon property without apportionment among the several states, as required by article 1, section 9, subdivision 4, of the Constitution."

But this contention was the alternative of the contention which plaintiffs in error also made, that the Act of September 8, 1916, as amended, was not intended to have retrospective operation. And this was the decision of the District Court, the court saying: "It is true section 201 provides that the tax is imposed upon the transfer of the net estate of 'every decedent dying after the passage of this act'; but the assumption must be that this relates to estates thereafter created and not to then existing property." And the court added: "At the time the statute was passed Cornelia Kissam's interest belonged to her."

The court further observed: "From the structure of the act to say that the measure of the tax is the extent of the interest of both joint tenants is, in effect, to say that a tax will be laid on the interest of Cornelia in respect of which Jonas had in his lifetime no longer ei- *549 ther title or *control." The court rejected that conclusion and denied to the acts of Congress retroactive operation. To this the Circuit Court of Appeals was opposed and reversed the judgment based upon it.

It will be observed, therefore, that this case involves the same question as that decided in Shwab v. Doyle, 258 U. S. 529, 42 Sup. Ct. 391, 66 L. Ed. —, and on the authority of that case the judgment of the Circuit Court of Appeals is reversed and the case remanded for further proceedings in accordance with this opinion.

So ordered.

(258 U. S. 495)

STAFFORD et al. v. WALLACE, Secretary of Agriculture, et al.

BURTON et al. v. CLYNE, U. S. Atty.

(Argued March 20 and 21, 1922. Decided May 1, 1922.)

Nos. 687, 691.

1. Courts ⟹385(1)—Direct appeal to Supreme Court is allowed from interlocutory injunction order under Packers and Stockyards Act.

Under Packers and Stockyards Act 1921, § 316, making applicable to suits for injunction against the orders of the Secretary of Agriculture the same procedure, original and appellate, provided in Act Oct. 22, 1913, for suits for injunction against the orders of the Interstate Commerce Commission, which latter act gives a direct appeal to the Supreme Court from the granting or refusing of an interlocutory injunction, a direct appeal to the Supreme Court may be taken from the refusal of an interlocutory injunction against orders under the Packers and Stockyards Act.

2. Injunction ⟹105(2)—Prosecutions for severe penalties, before opportunity is given to test validity of act, can be enjoined.

If the Packers and Stockyards Act of 1921 is unconstitutional, prosecutions for the severe penalties imposed by that act for violations of the orders of the Secretary of Agriculture thereunder, before opportunity can be given to test its validity, may be enjoined by equity.

3. Constitutional law ⟹70(3)—Nature of evils and steps necessary to eliminate them are questions for Congress.

It was a question for Congress, and not for the courts, to decide the nature of the evils present and threatening in the stockyards industry, and to take such steps by legislation within its power as it deemed proper to remedy them, but the courts in interpreting the Packers and Stockyards Act, in order to determine

its validity, can consider the conditions under which Congress acted.

4. Warehousemen ⚷1—Stockyards are public utilities subject to regulation.

The various stockyards of the country are public utilities to promote the flow of commerce from the ranges and farms to the consumers, and conduct a business affected by a public use subject to regulation by legislative action.

5. Commerce ⚷38—Stockyards are interstate commerce agencies in receiving and delivering stock for interstate shipments by rail.

In the receipt of live stock by rail and in their delivery by rail for shipment to other states, the stockyards are interstate commerce agencies.

6. Commerce ⚷38—Sale of live stock shipped in interstate commerce normally for shipment into other states is "interstate commerce."

Since the normal course of business at the stockyards is for cattle received by shipment from other states to be sold at the yards either to packers or to buyers, who will ship either the products or the stock itself principally to other states, the sale of the stock as it comes into the yards is a transaction necessary to the uninterrupted flow of interstate commerce, and therefore a part of such commerce, so that the Packers and Stockyards Act of 1921, authorizing the regulation of such sales, and by title 1, § 2, par. (b), providing that a transaction in respect to any article shall be considered to be in interstate commerce if such an article is part of that current of commerce usual in the live stock and meat-packing industries, was within the power of Congress to regulate interstate commerce.

[Ed. Note.—For other definitions, see Words and Phrases, First and Second Series, Interstate Commerce.]

7. Commerce ⚷3 — Congress may prevent by regulation acts which it can punish after commission.

The acts of stockyards and live stock commission men, which Congress would have power to punish as a conspiracy to burden interstate commerce, it has power to prevent by regulation; the reasonable fear by Congress that such acts will probably and more or less constantly be used in conspiracies against interstate commerce serving the same purpose as the intent to obstruct interstate commerce in the conspiracy.

8. Commerce ⚷3—Customary practices threatening to obstruct interstate commerce are subject to regulation by Congress.

Whatever amounts to a more or less constant practice and threatens to obstruct or unduly burden the freedom of interstate commerce is within the regulatory power of Congress under the commerce clause.

9. Constitutional law ⚷70(3)—Decision of Congress that practices burden interstate commerce followed, unless relation is clearly nonexisting.

The Supreme Court will not substitute its judgment for that of Congress in determining whether practices threaten to burden or obstruct interstate commerce, unless the relation of the subject to interstate commerce and its effect on it are clearly nonexistent.

Mr. Justice McReynolds dissenting.

Appeals from the United States District Court for the Northern District of Illinois.

Separate suits by T. F. Stafford and other against Henry C. Wallace, Secretary of Agriculture, and another, and by J. E. Burton and others against Charles F. Clyne, United States Attorney for the Northern District of Illinois, to restrain the enforcement of orders by the Secretary of Agriculture under the Packers and Stockyards Act of 1921. From orders in each case refusing interlocutory injunctions, complainants appeal. Affirmed.

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*These cases involve the constitutionality of the Packers and Stockyards Act of 1921, approved August 15, 1921, so far as that act provides for the supervision by federal authority of the business of the commission men and of the live stock dealers in the great stockyards of the country. They are appeals from the orders of the District Court for the Northern District of Illinois refusing to grant interlocutory injunctions as prayed. The bills sought to restrain enforcement of orders of the Secretary of Agriculture in carrying out the act, directed against the appellants in No. 687, as the commission men in the Union Stockyards of Chicago, and against the appellants in No. 691, as dealers in the same yards. The ground upon which the prayers for relief are based is that the Secretary's orders are void, because made under an act invalid as to each class of appellants. The bill in No. 687 makes defendants the Secretary of Agriculture and the United States attorney for the Northern District of Illinois, averring that the latter is charged with the duty of enforcing the severe penalties imposed by the act for failure to comply with orders of the Secretary thereunder. The bill in No. 691 makes the United States attorney the only defendant, with the same averment.

The two bills in substance allege that the Union Stockyards & Transit Company was incorporated by the state of Illinois in 1865, and given authority to acquire, construct, and maintain inclosures, structures, and railway lines for the reception, safe-keeping feeding, watering, and for weighing, delivery, and transfer, of cattle and live stock of every description, and to carry on a public

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live stock *market, with all the necessary appurtenances and facilities; that it is the largest stockyards in the world, and in 1920 handled 15,000,000 head of live stock of all descriptions, including cattle, calves, hogs, and sheep, shipped mainly from outside the

state of Illinois: that the live stock are loaded at the point of origin and shipped under a shipping contract which is a straight bill of lading, consigning them to the commission merchants at the yard; that on arrival the live stock are at once driven from the cars by the commission merchant, who is the consignee, to the pens assigned by the stockyards company to such merchant for his use; that they are then in the exclusive possession of the commission merchant, and are watered and fed by the stockyards company at his request; that with the delivery to the commission merchant the transportation is completely ended; that all the live stock consigned to commission merchants are sold by them for a commission or brokerage, and not on their own account; that they are sold at the stockyards, and nowhere else; that the commissions are fixed at an established rate per head; that the commission men remit to the owners and shippers the proceeds of sale, less their commission and the freight and yard charges paid by them; that the live stock are sold (1) to purchasers, who buy the same for slaughter at packing houses, located at the stockyards or adjacent thereto; (2) to purchasers, who buy to ship to packing houses outside the state of Illinois for slaughter; (3) to purchasers, who buy to feed and fatten the same; and (4) to dealers or traders; that about one-third of all the live stock received are sold to the dealers; that not until after the delivery of the live stock to the commission merchants and the transportation has completely ceased, does the business of the dealers begin; that they do not buy or sell on commission, but buy and sell for cash exclusively for their own profit; that the greater part of live stock received by commission men at
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*the yards are in carload or trainload lots, and a substantial part are not graded or conditioned to meet the specific requirements of the buyers; that the dealers, after purchase, put the live stock in pens assigned to them by the stockyards owner and do the sorting and classification; that the dealers buy in open market in competition with each other; that they pay the expense of the custody, care, and feeding and watering the stock while they hold them; that they sell promptly, and have nothing to do with the shipment of the live stock they sell from the yards to points outside.

In the bill in No. 691, the appellants aver that they are members of the Chicago Live Stock Exchange and of the National Live Stock Exchange, the members of which are dealers in all the stockyards of the country, numbering 2,000, and that they bring their bill for all of them who may choose to join and take the benefit of the litigation.

The chairman of the Committee of Agriculture, in reporting to the House of Representatives the bill, which became the act here in question (May 18, 1921, 67th Congress, 1st Session, Report No. 77, to accompany H. R. 6320), referred to the testimony printed in the House Committee Hearings of the 66th Congress, 2d Session, Committee on Agriculture, vols. 220-2 and 220-3, as furnishing the contemporaneous history and information of the evils to be remedied upon which the bill was framed.

It appeared from the data before the committee that for more than two decades it had been charged that the five great packing establishments of Swift, Armour, Cudahy, Wilson, and Morris, called the "Big Five," were engaged in a conspiracy in violation of the Anti-Trust Law (Comp St. §§ 8820-8823, 8827-8830), to control the business of the purchase of the live stock, their preparation for use in meat products, and the distribution and sale thereof in this country and abroad. In 1903 a bill in equity was filed by the United States to enjoin further conduct
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of this alleged conspiracy, as a *violation of the Anti-Trust Law, and an injunction issued. United States v. Swift (C. C.) 122 Fed. 529. The case was taken on appeal to this court, which sustained the injunction. Swift v. United States, 196 U. S. 375, 25 Sup. Ct. 276, 49 L. Ed. 518. In 1912, these same defendants, or their successors in business, were indicted and tried for such violation of the Anti-Trust Law, and acquitted. See House Committee Hearings before Committee on Agriculture, 1820, vol. 220-2, subject, Meat Packer Legislation, 718. It further appeared that on February 7, 1917, the President directed the Federal Trade Commission to investigate and report the facts relating to this industry and kindred subjects. The Commission reported that the "Big Five" packing firms, had complete control of the trade from the producer to the consumer, had eliminated competition, and that one of the essential means by which this was made possible was their ownership of a controlling part of the stock in the stockyards companies of the country. The Commission stated its conclusions as follows:

"The big packers' control of these markets is much greater than these statistics indicate. In the first place, they are the largest and in some cases practically the only buyers at these various markets, and as such hold a whip hand over the commission men who act as the intermediaries in the sale of live stock.

"The packers' power is increased by the fact that they control all the facilities through which live stock is sold to themselves. Control of stockyards comprehends control of live stock exchange buildings, where commission men have their offices; control of assignment of pens to commission men; control of banks and cattle loan companies; control of terminal and switching facilities; control of yardage services and charges; control of weighing facilities; control of the disposition of dead animals and other profitable yard monopolies; and in most cases control of all packing house and other

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business sites. Packer-owned *stockyards give these interests access to records containing confidential shipping information, which is used to the disadvantage of shippers who have attempted to forward their live stock to a second market."

Summary of Report of the Federal Trade Commission on Meat-Packing Industry, July 3, 1918.

Following the report of the Federal Trade Commission, and before the passage of this act, a bill in equity for injunction was filed in 1920, in the Supreme Court of the District of Columbia, in which, on February 27th of that year, was entered a decree against the same Big Five packers, consented to by them, with the saving clause that it should not be considered as an admission that they had been guilty of violations of law. The decree enjoined the packers from doing many acts in pursuance of a combination to monopolize the purchase and control the price of live stock, and the sale and distribution of meat products and of many byproducts in preparation of meats and in unrelated lines, not here relevant, and from continuing to own or control, directly or indirectly, any interest in any public stockyard market company in the United States, or in any stockyard market journal, or in any stockyard terminal railroad or in any public cold storage warehouse. House Committee Hearings, Committee on Agriculture, 1920, vol. 220-2, p. 720, "Meat Packer Legislation."

It appears from these committee hearings that the dealers do not buy fat cattle generally, or largely compete with packers in such purchases. They buy either the thin cattle, known as "stockers and feeders," which they dispose of to farmers and stock feeders, to be taken to the country for farm use and fattening, or they buy mixed lots, and cull out of them the fat cattle. These they dispose of to packers, either directly or through commission men. The proportion of all the hogs passing through the yards in 1919 handled by these traders, speculators, or scalpers, as they are indifferently called,
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was 30 per cent. Of all *the butcher cattle they handled 20 per cent., of the beef cattle 10 per cent., and of "the stockers and feeders" 80 per cent. At Kansas City, this last figure was higher, reaching 95 per cent. Committee Hearings, p. 2140.

It was conceded that, of all the live stock coming into the Chicago stockyards and going out, only a small percentage, less than 10 per cent., is shipped from or to Illinois.

The complaints of the shippers of live stock against the charges and practices, working to their prejudice in the conduct of the stockyards, the commission men, and the dealers, were: First, suppression of competition in purchases through agreement, by which one packer would buy a carload or trainload of cattle and turn over half of it to the only other packer buying in the local market. Second, "wiring on." A shipper would send a carload or trainload of stock to one stockyard. Finding the market unsatisfactory, he would ship them further east. The packers' agents were promptly advised at the second stockyards and, controlling the price there, they made it the same as at the first stockyards, though the shipper had paid the freight, and had to stand the "shrink" of the cattle from the journey. Third, the charges in the stockyards for hay and other facilities were excessive. Fourth, the duplication of commissions through the collusion of the commission men and the dealers, by which commission men would sell at a lower price to dealers than to outside buyers, and drive the latter to buying from dealers through commission men, forcing two commissions. Fifth, the monopoly conferred by the stockyards owner on a company in which packers were largely interested, of buying at a fixed price of $5 a head all dead cattle for rendering purposes, when they were worth more. Sixth, the frequency with which commission men reported to shippers that live stock had been crippled and had to be sold in that condition at a lower price, arousing suspicion as
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to the fact *and if it was a fact, as to the cause of the crippling. Pages 22, 23, 24; also 466 et seq., 1086; 2125, 2244, et seq. Committee of House Hearings, Committee of Agriculture, vol. 220-2, 66th Congress, 2d Session.

Mr. E. G. Godman, of Chicago, Ill., for appellants Stafford and others.

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*Mr. Levy Mayer, of Chicago, Ill., for appellants Burton and others.

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*Mr. Solicitor General Beck, of Washington, D. C., for appellees.

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*Mr. Chief Justice TAFT, after making the foregoing statement of the case, delivered the opinion of the Court.

[1] Section 316 of the Packers and Stockyards Act of 1921 makes applicable to suits for injunction against the orders of the Secretary of Agriculture, the same procedure, original and appellate, provided in the Act of October 22, 1913 (38 Stat. 208, 219, 220), for suits for injunction against the orders of the Interstate Commerce Commission. The latter act gives a right to a direct appeal to this court from the granting or refusing an interlocutory injunction. Hence the appeals herein are properly prosecuted.

[2] In each bill the averments are sufficient, if the act be invalid, to show equitable grounds for injunction in the severe penalties incurred for failure to comply with the act before opportunity can be given to test its validity. Ex parte Young, 209 U. S. 123, 28 Sup. Ct. 441, 52 L. Ed. 714, 13 L. R. A. (N. S.) 932, 14 Ann. Cas. 764.

[3] We have framed the statement of the

case, not for the purpose of deciding the issues of fact mooted between the packers and their accusers before the Federal Trade Commission or the Committees of Agriculture in Congress, but only to enable us to consider and discuss the act whose validity is here in question in the light of the environ- *513 *ment in which Congress passed it. It was for Congress to decide from its general information and from such special evidence as was brought before it, the nature of the evils actually present or threatening, and to take such steps by legislation within its power as it deemed proper to remedy them. It is helpful for us in interpreting the effect and scope of the act in order to determine its validity to know the conditions under which Congress acted. Chicago Board of Trade v. United States, 246 U. S. 231, 238, 38 Sup. Ct. 242, 62 L. Ed. 683; Danciger v. Cooley, 248 U. S. 319, 322, 39 Sup. Ct. 119, 63 L. Ed. 266.

The Packers and Stockyards Act of 1921 seeks to regulate the business of the packers done in interstate commerce and forbids them to engage in unfair, discriminatory, or deceptive practices in such commerce, or to subject any person to unreasonable prejudice therein, or to do any of a number of acts to control prices or establish a monopoly in the business. It constitutes the Secretary of Agriculture a tribunal to hear complaints and make findings thereon, and to order the packers to cease any forbidden practice. An appeal is given to the Circuit Court of Appeals from these findings and orders. They are to be enforced by the District Court by penalty if not appealed from and if disobeyed. Title 3 concerns the stockyards and provides for the supervision and control of the facilities furnished therein in connection with the receipt, purchase, sale on commission basis, or otherwise, of live stock, and its care, shipment, weighing, or handling in interstate commerce. A stockyards is defined to be a place conducted for profit as a public market, with pens in which live stock are received and kept for sale or shipment in interstate commerce. Yards with a superficial area less than 20,000 square feet are not within the act. Stockyard owners, commission men, and dealers are recognized and defined, and the two latter are required to register. The act requires that all rates and charges for services and facilities in the stockyards and all practices *514 in *connection with the live stock passing through the yards shall be just, reasonable, nondiscriminatory, and nondeceptive, and that a schedule of such charges shall be kept open for public inspection, and only be changed after 10 days' notice to the Secretary of Agriculture, who is made a tribunal to inquire as to the justice, reasonableness, and nondiscriminatory or nondeceptive character of every charge and practice, and to order that it cease, if found to offend, with the same provisions for appeal and enforcement in court as in the case of offending packers. The Secretary is given power to make rules and regulations to carry out the provisions, to fix rates, or a minimum or maximum thereof, and to prescribe how every packer, stockyard owner, commission man, and dealer shall keep accounts.

The bills aver that the Secretary has given the notice which requires appellants to register, and has announced proposed rules and regulations, prescribing the form of rate schedules, the required reports, including daily accounts of receipts, sales, and shipments, forbidding misleading reports to depress or enhance prices, prescribing proper feed and care of live stock, and forbidding a commission man to sell live stock to another in whose business he is interested, without disclosing such interest to his principal.

The object to be secured by the act is the free and unburdened flow of live stock from the ranges and farms of the West and the Southwest through the great stockyards and slaughtering centers on the borders of that region, and thence in the form of meat products to the consuming cities of the country in the Middle West and East, or, still, as live stock, to the feeding places and fattening farms in the Middle West or East for further preparation for the market.

The chief evil feared is the monopoly of the packers, enabling them unduly and ar- *515 bitrarily to lower prices to *the shipper, who sells, and unduly and arbitrarily to increase the price to the consumer, who buys. Congress thought that the power to maintain this monopoly was aided by control of the stockyards. Another evil, which it sought to provide against by the act, was exorbitant charges, duplication of commissions, deceptive practices in respect of prices, in the passage of the live stock through the stockyards, all made possible by collusion between the stockyards management and the commission men, on the one hand, and the packers and dealers, on the other. Expenses incurred in the passage through the stockyards necessarily reduce the price received by the shipper, and increase the price to be paid by the consumer. If they be exorbitant or unreasonable, they are an undue burden on the commerce which the stockyards are intended to facilitate. Any unjust or deceptive practice or combination that unduly and directly enhances them is an unjust obstruction to that commerce. The shipper, whose live stock are being cared for and sold in the stockyards market, is ordinarily not present at the sale, but is far away in the West. He is wholly dependent on the commission men. The packers and their agents and the dealers, who are the buyers, are at the elbow of the commission men, and their relations are constant and close. The control that the packers have had in

the stockyards by reason of ownership and constant use, the relation of landlord and tenant between the stockyards owner, on the one hand, and the commission men and the dealers, on the other, the power of assignment of pens and other facilities by that owner to commission men and dealers, all create a situation full of opportunity and temptation, to the prejudice of the absent shipper and owner in the neglect of the live stock, in the mala fides of the sale, in the exorbitant prices obtained, and in the unreasonableness of the charges for services rendered.

The stockyards are not a place of rest or final destination. Thousands of head of live *516 stock 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 to 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 live stock 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.

[4-6] The act, therefore, treats the various stockyards of the country as great national public utilities to promote the flow of commerce from the ranges and farms of the West to the consumers in the East. It assumes that they conduct a business affected by a public use of a national character and subject to national regulation. That it is a business within the power of regulation by legislative action needs no discussion. That has been settled since the case of Munn v. Illinois, 94 U. S. 113, 24 L. Ed. 77. Nor is there any doubt that in the receipt of live stock by rail and in their delivery by rail the stockyards are an interstate commerce *517 *agency. United States v. Union Stock Yards Co., 226 U. S. 286, 33 Sup. Ct. 83, 57 L. Ed. 226. The only questior here is whether the business done in the stockyards, between the receipt of the live stock in the yards and the shipment of them therefrom, is a part of interstate commerce, or is so associated with it as to bring it within the power of national regulation. A similar question has been before this court and had great consideration in Swift v. United States, 196 U. S. 375, 25 Sup. Ct. 276, 49 L. Ed. 518. The judgment in that case gives a clear and comprehensive exposition, which leaves to us in this case little but the obvious application of the principles there declared.

The Swift Case presented to this court the sufficiency of a bill in equity brought against substantially the same packing firms as those against whom this legislation is chiefly directed, charging them as a combination of a dominant proportion of the dealers in fresh meat throughout the United States not to bid against each other in the live stock markets of the different states, to bid up prices for a few days, in order to induce the cattle men to send their stock to the stockyards, to fix prices at which they would sell, and to that end to restrict shipments of meat when necessary, to establish a uniform credit to dealers, and to keep a black list, to make uniform and improper charges for cartage, and finally to get less than lawful rates from the railroads, to the exclusion of competitors, and all this in a conspiracy and single connected scheme to monopolize the supply and distribution of fresh meats throughout the United States. In holding the bill good, this court said (196 U. S. 396, 25 Sup. Ct. 279, 49 L. Ed. 518):

"The scheme as a whole seems to us to be within reach of the law. The constituent elements, as we have stated them, are enough to give to the scheme a body and, for all that we can say, to accomplish it. * * * It is suggested that the several acts charged are lawful and that intent can make no difference. But they *518 are bound to*gether as the parts of a single plan. The plan may make the parts unlawful. Aikens v. Wisconsin, 195 U. S. 194, 206. The statute gives this proceeding against combinations in restraint of commerce among the states and against attempts to monopolize the same. Intent is almost essential to such a combination and is essential to such an attempt."

Again (196 U. S. 396, 397, 25 Sup. Ct. 279, 49 L. Ed. 518):

"Although the combination alleged embraces restraint and monopoly of trade within a single state, its effect upon commerce among the states is not accidental, secondary, remote, or merely probable. * * * Here the subject-matter is sales, and the very point of the combination is to restrain and monopolize commerce among the states in respect of such sales."

Again (196 U. S. 398, 399, 25 Sup. Ct. 280, 49 L. Ed. 518), in answer to the objection that what was charged did not constitute a

case involving commerce among the states, the court said:

"Commerce among the states is not a technical legal conception, but a practical one, drawn from the course of business. When cattle are sent for sale from a place in one state, with the expectation that they will end their transit, after purchase, in another, and when in effect they do so, with only the interruption necessary to find a purchaser at the stockyards, and when this is a typical, constantly recurring course, the current thus existing is a current of commerce among the states, and the purchase of the cattle is a part and incident of such commerce. What we say is true at least of such a purchase by residents in another state from that of the seller and of the cattle. * * *"

The application of the commerce clause of the Constitution in the Swift Case was the result of the natural development of interstate commerce under modern conditions. It was the inevitable recognition of the great *519 *central fact that such streams of commerce from one part of the country to another, which are ever flowing, are in their very essence the commerce among the states and with foreign nations, which historically it was one of the chief purposes of the Constitution to bring under national protection and control. This court declined to defeat this purpose in respect of such a stream and take it out of complete national regulation by a nice and technical inquiry into the noninterstate character of some of its necessary incidents and facilities, when considered alone and without reference to their association with the movement of which they were an essential but subordinate part.

The principles of the Swift Case have become a fixed rule of this court in the construction and application of the commerce clause. Its latest expression on the subject is found in Lemke v. Farmers' Grain Co., 258 U. S. 50, 42 Sup. Ct. 244, 66 L. Ed. —, decided at this term, February 27, 1922. In that case it was held, on the authority of the Swift Case, that the delivery and sale of wheat by farmers to local grain elevators in North Dakota, to be shipped to Minneapolis, when practically all the wheat purchased by such elevators was so shipped, and the price was fixed by that in the Minneapolis market, less profit and freight, constituted a course of business, and determined the interstate character of the transaction. Accordingly a state statute, which sought to regulate the price and profit of such sales, and was found to interfere with the free flow of interstate commerce, was declared invalid as a violation of the commerce clause. Similar confirmation of the principle of the Swift Case is to be found in Dahnke v. Bondurant, 257 U. S. 282, 42 Sup. Ct. 106, 66 L. Ed. 239, in Eureka Pipe Line v. Hallanan, 257 U. S. 265, 42 Sup. Ct. 101, 66 L. Ed. 227, and in United Fuel Co. v. Hallanan, 257 U. S. 277, 42 Sup. Ct. 105, 66 L. Ed. 234, all decided December 12, 1921; in Western Union Co. v. Foster, 247 U. S. 105, 113, 38 Sup. Ct. 438, 62 L. Ed. 1006, 1 A. L. R. 1278; *520 United States v. *Reading, 226 U. S. 324, 367, 368, 33 Sup. Ct. 90, 57 L. Ed. 243; Ohio R. R. Co. v. Worthington, 225 U. S. 101, 108, 32 Sup. Ct. 653, 56 L. Ed. 1004, and Loewe v. Lawlor, 208 U. S. 274, 301, 28 Sup. Ct. 301, 52 L. Ed. 488, 13 Ann. Cas. 815.

It is manifest that Congress framed the Packers and Stockyards Act in keeping with the principles announced and applied in the opinion in the Swift Case. The recital in section 2, par. b, of title 1 of the act, quoted in the margin, leaves no doubt of this.[1] The act deals with the same current of business, and the same practical conception of interstate commerce.

[7-9] Of course, what we are considering here is not a bill in equity or an indictment charging conspiracy to obstruct interstate commerce, but a law. The language of the law shows that what Congress had in mind primarily was to prevent such conspiracies by supervision of the agencies which would be likely to be employed in it. If Congress could provide for punishment or restraint of such conspiracies after their formation through the Anti-Trust Law as in the Swift Case, certainly it may provide regulation to prevent their formation. The reasonable fear by Congress that such acts, usually lawful and affecting only intrastate commerce *521 when considered alone, will probably *and more or less constantly be used in conspiracies against interstate commerce or constitute a direct and undue burden on it, expressed in this remedial legislation, serves the same purpose as the intent charged in the Swift indictment to bring acts of a similar character into the current of interstate commerce for federal restraint. 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 meet it. This court will certainly not substitute its judgment for that of Congress in such a matter unless the

[1] The first title (section 2, paragraph b) provides that: "For the purpose of this act a transaction in respect to any article shall be considered to be in commerce if such article is part of that current of commerce usual in the live stock and meat packing industries whereby live stock and its products 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 general description, all cases whose purchase or sale is either for shipment to another state, or for slaughter of the live stock within the state and the shipment outside of the state of the products resulting from such slaughter. Articles normally in such current of commerce shall not be considered out of such current through resort being had to any means or device intended to remove transactions in respect thereto from the provisions of the act."

relation of the subject to interstate commerce and its effect upon it are clearly nonexistent.

In United States v. Ferger et al., 250 U. S. 199, 39 Sup. Ct. 445, 63 L. Ed. 936, the validity of an act of Congress punishing forgery and utterance of bills of lading for fictitious shipments in interstate commerce was in question. It was contended that there was and could be no commerce in a fraudulent and fictitious bill of lading, and therefore that the power of Congress could not embrace such pretended bill. In upholding the act, this court, speaking through Chief Justice White, answered the objection by saying:

"But this mistakenly assumes that the power of Congress is to be necessarily tested by the intrinsic existence of commerce in the particular subject dealt with, instead of by the relation of that subject to commerce and its effect upon it. We say mistakenly assumes, because we think it clear that if the proposition were sustained, it would destroy the power of Congress to regulate, as obviously that power, if it is to exist, must include the authority to deal with obstructions to interstate commerce (In re Debs, 158 U. S. 564), and with a host of other acts which, because of their relation to and *522 influence upon interstate *commerce, come within the power of Congress to regulate, although they are not interstate commerce in and of themselves."

The Transportation Act of 1920 (41 Stat. 456) presents a close analogy to this case. It authorizes supervision by the Interstate Commerce Commission of intrastate commerce, where it is so carried on as to work undue, unreasonable advantage or preference in favor of persons or localities in intrastate commerce, as against those in interstate commerce, or any undue, unjust, or unreasonable discrimination against interstate commerce itself. Railroad Commission v. Chicago, Burlington & Quincy Railroad Co., 257 U. S. 563, 42 Sup. Ct. 232, 66 L. Ed. 371, decided February 27, 1922. That case followed the Minnesota Rate Cases, 230 U. S. 352, 432, 433, 33 Sup. Ct. 729, 57 L. Ed. 1511, 48 L. R. A. (N. S.) 1151, Ann. Cas. 1916A, 18; Houston & Texas Ry. v. U. S., 234 U. S. 342, 351, 34 Sup. Ct. 833, 58 L. Ed. 1341; Illinois Central R. R. Co. v. Public Utilities Commission, 245 U. S. 493, 38 Sup. Ct. 170, 62 L. Ed. 425; B. & O. Ry. Co. v. Interstate Commerce Commission, 221 U. S. 612, 618, 31 Sup. Ct. 621, 55 L. Ed. 878; Southern Ry. Co. v. United States, 222 U. S. 20, 26, 27, 32 Sup. Ct. 2, 56 L. Ed. 72; Second Employers' Liability Case, 223 U. S. 1, 48, 51, 32 Sup. Ct. 169, 56 L. Ed. 327, 38 L. R. A. (N. S.) 44. The principle of these cases is thus clearly stated by the court in Minnesota Rate Cases, 230 U. S. 399, 33 Sup. Ct. 739, 57 L. Ed. 1511, 48 L. R. A. (N. S.) 1151, Ann. Cas. 1916A, 18:

"The authority of Congress extends to every part of interstate commerce, and to every instrumentality and agency by which it is carried on; and the full control by Congress of the subjects committed to its regulation is not to be denied or thwarted by the commingling of interstate and intrastate operations. This is not to say that the nation may deal with the internal concerns of the state as such, but that the execution by Congress of its constitutional power to regulate interstate commerce is not limited by the fact that intrastate transactions may have become so interwoven therewith that the effective government of the former incidentally controls the latter. This conclusion necessarily results from the supremacy of the national power within its appointed sphere."

*523 *In section 311 of the act, quoted in the margin,[2] Congress gives to the Secretary of Agriculture in respect to intrastate transactions that affect prejudicially interstate commerce under his protection, the same powers given to the Interstate Commerce Commission in respect to intrastate commerce which affects prejudicially interstate railroad commerce in paragraph 4, section 13, as amended in section 416 of the Transportation Act of 1920. This was the paragraph and section which were enforced in Railroad Commission v. Chicago, Burlington & Quincy Railroad Co., supra, and the validity of which was upheld by this Court.

Counsel for appellants cite cases to show that transactions like those of the commission men or dealers here are not interstate commerce or within the power of Congress to regulate. The chief of these are Hopkins *524 v. *United States, 171 U. S. 604, 19 Sup. Ct. 40, 43 L. Ed. 290, and Anderson v. United States, 171 U. S. 604, 19 Sup. Ct. 50, 43 L. Ed. 300. These cases were considered in the Swift Case and disposed of by the court as follows (196 U. S. 397, 25 Sup. Ct. 280, 49 L. Ed. 518):

"So, again, the line is distinct between this case and Hopkins v. United States, 171 U. S. 578. All that was decided there was that the local business of commission merchants was

[2] Section 311 is as follows:

"Whenever in any investigation under the provisions of this title or in any investigation instituted by petition of the stockyard owner or market agency concerned which petition is hereby authorized to be filed, the Secretary after full hearing finds that any rate, charge, regulation or practice of any stockyard owner or market agency for or in connection with the buying, or selling on a commission basis or otherwise, receiving, marketing, feeding, holding, delivery, shipment, weighing or handling, not in commerce, of live stock, causes any undue or unreasonable advantage, or preference as between persons or localities in intrastate commerce in live stock on the one hand, and interstate or foreign commerce in live stock, on the other hand, or any undue, unjust, or unreasonable discrimination against interstate or foreign commerce which is hereby forbidden and declared to be unlawful, the Secretary shall prescribe the rate, charge, regulation or practice thereafter to be observed in such manner as in his judgment will remove such advantage, preference, or discrimination. Such rates, charges, regulations or practices shall be observed while in effect by the stockyard owners or market agencies parties to such proceeding affected thereby, the law of any state or the decision of any state authority to the contrary notwithstanding."

not commerce among the states, even if what the brokers were employed to sell was an object of such commerce. The brokers were not like the defendants before us, themselves the buyers and sellers. They only furnish certain facilities for the sales. Therefore, there again the effects of the combination of brokers upon the commerce was only indirect and not within the act. Whether the case would have been different if the combination had resulted in exorbitant charges, was left open. In Anderson v. United States, 171 U. S. 604, the defendants were buyers and sellers at the stockyards, but their agreement was merely not to employ brokers, or to recognize yard traders, who were not members of their association. Any yard trader could become a member of the association on complying with the conditions, and there was said to be no feature of monopoly in the case. It was held that the combination did not directly regulate commerce between the states, and, being formed with a different intent, was not within the act. The present case is more like Montague & Co. v. Lowry, 193 U. S. 38."

It is clear from this that if the bill in the Swift Case had averred that control of the stockyards and the commission men was one of the means used by the packers to make arbitrary prices in their plan of monopolizing the interstate commerce, the acts of the stockyards owners and commission men would have been regarded as directly affecting interstate commerce and within the Anti-Trust Act. Congress has found as an evil to be apprehended and to be prevented by the act here in question, in the *525 *use and control of stockyards and the commission men to promote a packers' monopoly of interstate commerce. The act finds and imports this injurious direct effect of such agencies upon interstate commerce, just as the intent of the conspiracy charged in the indictment in the Swift Case tied together the parts of the scheme there attacked and imported their direct effect upon interstate commerce.

Again, if the result of the combination of commission men in the Hopkins Case had been to impose exorbitant charges on the passage of the live stock through the stockyards from one state to another, the case would have been different, as the court suggests. The effect on interstate commerce in such a case would have been direct. Similarly, in the Anderson Case, if the combination of dealers had been directed to collusion with the commission men to secure sales at unduly low prices to the dealers and to double commissions, or to practice any other fraud or oppression calculated to decrease the price received by the shipper and increase the price to the purchaser in the passage of live stock through the stockyards in interstate commerce, this would have been a direct burden on such commerce and within the Anti-Trust Act.

The other cases relied on by appellants are less relevant to this discussion than the Anderson and Hopkins Cases. Some of them are tax cases. As to them it is well to bear in mind the words of the Court in the Swift Case, 196 U. S. 400, 25 Sup. Ct. 281, 49 L. Ed. 518:

"But we do not mean to imply that the rule which marks the point at which state taxation or regulation becomes permissible necessarily is beyond the scope of interference by Congress * * * where such interference is deemed necessary for the protection of commerce among the states."

Thus take the case of Bacon v. Illinois, 227 U. S. 504, 33 Sup. Ct. 299, 57 L. Ed. 615. Bacon had purchased grain in transit from a western state to the east. He exercised the power under his con*526*tract to stop the grain in Illinois and put it in a grain elevator there. He intended to send it on to some other state for sale. He might have changed his mind. He did, however, after a time, send it out of the state. The grain was taxed while it was in Illinois. The question was whether it was immune from taxation because in transit in interstate commerce. Following the cases of Woodruff v. Parham, 8 Wall. 123, 19 L. Ed. 382; Coe v. Errol, 116 U. S. 517, 6 Sup. Ct. 475, 29 L. Ed. 715; Brown v. Houston, 114 U. S. 622, 5 Sup. Ct. 1091, 29 L. Ed. 257; Pittsburg & Southern Coal Co. v. Bates, 156 U. S. 577, 15 Sup. Ct. 415, 39 L. Ed. 538; Diamond Match Co. v. Ontonagon, 188 U. S. 82, 93, 96, 23 Sup. Ct. 266, 47 L. Ed. 394; Kelley v. Rhoads, 188 U. S. 1, 5, 7, 23 Sup. Ct. 259, 47 L. Ed. 359; General Oil Co. v. Crain, 209 U. S. 211, 28 Sup. Ct. 475, 52 L. Ed. 754; and American Steel & Wire Co. v. Speed, 192 U. S. 500, 24 Sup. Ct. 365, 48 L. Ed. 538, it was held that property in a state which its owner intends to transport to some other state, but which is not in actual transit and in respect to the disposition of which he may change his mind is not in interstate commerce just because of the intention of its owner, and may, therefore, be taxed by the state where it is. The court brought out the distinction between such cases and this in the remark (227 U. S. 516, 33 Sup. Ct. 303, 57 L. Ed. 615):

"The question, it should be observed, is not with respect to the extent of the power of Congress to regulate interstate commerce, but whether a particular exercise of state power in view of its nature and operation must be deemed to be in conflict with this paramount authority."

Moreover, it will be noted that even in tax cases where the tax is directed against a commodity in an actual flowing and constant stream out of a state from which the owner may withdraw part of it for use or sale in the state before it reaches the state border, we have held that a tax on the flow is a burden on interstate commerce which the state may not impose because such flow in interstate commerce is an established course of business. United Fuel Gas Co.

v. Hallanan, 257 U. S. 277, 42 Sup. Ct. 105, 66 L. Ed. 234, decided December 12, 1921. *527 Eureka *Pipe Line Co. v. Hallanan et al., 257 U. S. 265, 42 Sup. Ct. 101, 66 L. Ed. 227, decided December 12, 1921. In the former, the court summed up as follows:

"In short the great body of the gas starts for points outside the state and goes to them. That the necessities of business require a much smaller amount destined to points within the state to be carried undistinguished in the same pipes does not affect the character of the major transportation. Neither is the case as to the gas sold to the three companies changed by the fact that the plaintiff, as owner of the gas, and the purchasers after they receive it might change their minds before the gas leaves the state and that the precise proportions between local and outside deliveries may not have been fixed, although they seem to have been. The typical and actual course of events marks the carriage of the greater part as commerce among the states and theoretical possibilities may be left out of account. There is no break, no period of deliberation, but a steady flow ending as contemplated from the beginning beyond the state line. Ohio R. R. Commission v. Worthington, 225 U. S. 101, 108; United States v. Reading Co., 226 U. S. 324, 367; Western Union Telegraph Co. v. Foster, 247 U. S. 105, 113."

The case of Blumenstock v. Curtis, 252 U. S. 436, 40 Sup. Ct. 385, 64 L. Ed. 649, is easily distinguished from the one at the bar. There it was merely held that an attempt of a publisher to monopolize the business of publishing advertising matter in magazines, resulting in refusal of such publisher to accept advertisements in his magazines, was too remote in its relation to the interstate commerce of circulating magazines. The court said:

"This case is wholly unlike International Text-Book v. Pigg, 217 U. S. 91, wherein there was a continuous interstate traffic in text-books and apparatus for a course of study pursued by means of correspondence, and the movements in interstate commerce were held to *528 bring the sub*ject matter within the domain of federal control, and to exempt it from the burden imposed by state legislation."

Pennsylvania R. R. Co. v. Knight, 192 U. S. 21, 24 Sup. Ct. 202, 48 L. Ed. 325, relied on by counsel for appellants and said to be exactly applicable to the case at bar, was an effort by the Pennsylvania Railroad Company to secure immunity from city regulation for a cab system which it ran in New York to and from its station to points in New York City, on the ground that it was part of interstate commerce. This court held that, because it was independent of the railroad transportation, and not included in the contract of railroad carriage, it did not come within interstate commerce. The case was distinguished in the Swift Case, 196 U. S. 401, 25 Sup. Ct. 281, 49 L. Ed. 518, from cartage for delivery of the goods when part of the contemplated transit. There is nothing in the case to indicate that if such an agency could be and were used in a conspiracy unduly and constantly to monopolize interstate passenger traffic, it might not be brought within federal restraint.

As already noted, the word "commerce," when used in the act, is defined to be interstate and foreign commerce. Its provisions are carefully drawn to apply only to those practices and obstructions which in the judgment of Congress are likely to affect interstate commerce prejudicially. Thus construed and applied, we think the act clearly within Congressional power and valid.

Other objections are made to the act and its provisions as violative of other limitations of the Constitution, but the only one seriously pressed was that based on the commerce clause, and we do not deem it necessary to discuss the others.

The orders of the District Court refusing the interlocutory injunctions are

Affirmed.

Mr. Justice McREYNOLDS dissents.

Mr. Justice DAY did not sit in these cases and took no part in their decision.

(258 U. S. 574)

STATE OF OKLAHOMA v. STATE OF TEXAS (UNITED STATES, Intervener).

(Argued Dec. 13 and 14, 1921. Decided May 1, 1922.)

No. 20.

1. Courts ⟹264(3)—Original jurisdiction of Supreme Court includes determination of claims to funds in hands of its receivers.

Where the Supreme Court has original jurisdiction of the suit because it is by one state against another, and by the United States against two states, and has appointed a receiver to take charge of the oil and gas produced from the territory in dispute, it can determine claims by private individuals against the funds in the hands of its receivers as ancillary to the main suit.

2. Navigable waters ⟹36(1)—Title to lands under bed passes to state on admission to Union.

Under the constitutional rule of equality among the states, whereby each new state becomes, as was each of the original states, the owner of the soil underlying the navigable waters within its borders, Oklahoma became the owner of the entire bed of the Red river, whose south bank was the boundary between Texas and the United States, if the river was navigable.

⟹For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes