# INDEX

INDEX—Continued

## TABLE OF CASES

TABLE OF CASES—Continued

TABLE OF CASES—Continued

IN THE

# Supreme Court of the United States

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**OCTOBER TERM, 1934**

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**No. 135**

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PANAMA REFINING COMPANY ET AL.,
*Appellants,*

vs.

A. D. RYAN, S. D. BENNETT and
J. HOWARD MARSHALL,
*Appellees.*

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## BRIEF FOR APPELLANTS

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### I.

### THE OPINIONS OF THE COURTS BELOW

The opinion of the district court is reported in the consolidated cases of Amazon Petroleum Corporation et al. vs. Railroad Commission of Texas et al. and Panama Refining Company et al. vs. Ryan et al., 5 Fed.

Sup. 639. (R. 149.) The opinion of the United States Circuit Court of Appeals in these consolidated cases is entitled Archie D. Ryan et al. vs. Amazon Petroleum Corporation et al., 71 Fed. (2) 1. (R. 178-179.) It is the judgment of the United States Circuit Court of Appeals that the appellants seek to have reversed, and the judgment of the district court affirmed.

## II.

## JURISDICTION

1. Appellants assert: (a) That subsection 9(c) of the National Industrial Recovery Act, approved June 16th, 1933, c. 90, 48 Stat. 195, is unconstitutional and void in that Congress has thereby attempted to delegate to the President the power of legislation; (b) that Regulations IV, V and VII promulgated by Harold L. Ickes, Secretary of the Interior, who was appointed by the President to enforce the provisions of subsection 9(c) of said Act, which regulations were being enforced against appellants by appellees, and criminal prosecutions started by appellees against appellants because of the failure of appellants to comply with such regulations, are void, for the reason that they are not authorized by subsection 9(c) or any other provision of said Act; (c) appellants may not be subjected to criminal procedure or imprisonment and forfeitures or fines and penalties provided for in subsection 9(c) of said Act and said

regulations, for they are producers and refiners of petroleum wholly within the jurisdiction of the State of Texas, and are, therefore, not included within the terms of subsection 9 (c) of said Act, and the things required of them by said regulations are not required by subsection 9 (c) of said Act. Therefore, appellants were entitled to have the criminal prosecutions against them for the violation of said regulations, as well as the further enforcement of said regulations against them, restrained while they were testing the validity of said regulations. (R. 1.)

2. The jurisdiction of the Supreme Court is invoked under Section 240 of the Judicial Code, as amended by the Acts of February 13th, 1925, and upon the further ground that the decision of the United States Circuit Court of Appeals, in holding that subsection 9 (c) of said Act is not an unconstitutional delegation of legislative power to the President and is in all other respects valid, is in conflict with the principles announced by this court in Re Rahrer, 140 U. S. 545; Field vs. Clark, 143 U. S. 649; Buttfield vs. Stranahan, 192 U. S. 470; Butte City Water Company vs. Baker, 196 U. S. 119; United States vs. Grimaud, 220 U. S. 506; Interstate Commerce Commission vs. Goodrich Transit Company, 224 U. S. 194; Knickerbocker Ice Company vs. Stewart, 253 U. S. 156; Hampton & Company vs. United States, 276 U. S. 394; Union Bridge Company vs. United States, 204 U. S. 365; St. Louis & Iron Mountain Railway Company vs. Tay-

lor, 210 U. S. 283; Mutual Film Corporation vs. Industrial Commission of Ohio, 236 U. S. 230.

The decision of the United States Circuit Court of Appeals, wherein it held that the attacked regulations are valid and the appellants may be subjected to criminal procedure for the violation thereof, is in conflict with the principles announced by this court in United States vs. Eaton, 144 U. S. 677; United States vs. United Verde Copper Company, 196 U. S. 207; Williamson vs. United States, 207 U. S. 425; United States vs. George, 228 U. S. 15.

The decision of the United States Circuit Court of Appeals, wherein it held that the appellants were not entitled to an injunction against prosecution and the further enforcement of the attacked regulations against them pending the trial as to the validity of said regulations, is also in conflict with the principles announced by this court in Philadelphia Company vs. Stimson, 223 U. S. 606; and Stafford vs. Wallace, 258 U. S. 496.

## III.

## STATEMENT OF THE CASE

As shown by the opinions of the district court and the Circuit Court of Appeals, this case, while tried separately from that of the Amazon Petroleum Corporation et al. vs. Lon A. Smith et al., which is also pending in this court, being numbered No. 260, yet in disposing

of both cases, both the district court and the Circuit Court of Appeals entered but one opinion which is applicable to both cases, as the federal questions in the Amazon case are identical with those raised in this case, with the exception that in the Amazon case an attack is also made upon section 4 of Article III of the Code of Fair Competition for the Petroleum Industry, as approved by the President on August 19th, 1933, under the provisions of the National Industrial Recovery Act. While the issue as to the validity of that provision of the Petroleum Code is not raised by the pleadings in this case, nevertheless the writer is counsel for some of the appellants in that case and as a portion of our argument in this case as to the invalidity of Title I of the National Industrial Recovery Act is applicable to that additional question raised in the Amazon case, we respectfully request the court to consider this brief as our brief in the Amazon case, due to the shortness of the time before these cases are submitted, which we understand from the clerk of the court to be December 10th; and especially in view of the fact that we have not on this date, November 14th, 1934, received a copy of the record in the Amazon case, and received copy of the record in this case only within the last few days.

The appellants, the Panama Refining Company, who is a refiner of crude petroleum, joined by A. F. Anding, who is a producer of petroleum, brought this suit to restrain the appellees, the agents of the Department of

the Interior and representatives of the Department of Justice, from prosecuting appellants for their refusal to furnish verified daily reports as to production, sale, and disposition of oil by the producer, and the purchase, transportation, storage, refining, and disposition of the products of oil by the refiner, as required by the attacked regulations. Regulation IV applies to the producer, and Regulation V applies to the refiner. They also attacked Regulation VII, which requires the keeping of books by each of them as to their production, storage, transportation, purchase, sale, and refining of petroleum, and for the inspection thereof by the agents of the Department of the Interior. Appellants had failed to comply with these regulations, and criminal prosecutions had been commenced against them for such failure. Appellee Ryan, in charge of the agents of the Department of the Interior, in enforcing said regulations, under the assertion of power as incident to his authority to enforce the attacked regulations, also went upon the property of appellants, over their objections, gauged their tanks, examined their property, and dug up their pipe lines, which resulted in the destruction of the same. Therefore, this suit was instituted for the purpose of enjoining the further enforcement of said regulations against the appellants and the further trespass upon their property under the claim that such regulations authorized inspection of producing oil wells, pipe lines, refineries, and tanks, as well as the inspection of appellants' books,

and to restrain the further prosecution of the appellants for their failure to comply with said regulations pending the suit testing their validity.

Appellants, as grounds for injunctive relief, alleged the invalidity of subsection 9(c) of the National Industrial Recovery Act, and the attacked regulations, which purport to have been promulgated in pursuance of the authority contained in said Act. (R. 1.)

The district court, in his findings of fact and conclusions of law (R. 134), found as a fact that appellant Anding was engaged in the production of oil within the boundaries of the State of Texas, selling the oil so produced within said state; that the appellant Panama Refining Company was engaged in the refining of crude oil within the boundaries of the State of Texas, and all its purchases of crude oil, the transportation, storage, and refining thereof, were confined within the boundaries of the State of Texas, and that only a portion of its refined products were shipped into interstate commerce.

The court concluded that the business of the appellants was intrastate in character and that they, therefore, did not come within the operation of subsection 9(c) of said Act, and while concluding that it was unnecessary to determine the question as to the validity of subsection 9(c) of said Act, he held that, conceding the same to be valid, the attacked regulations sought to subject the appellants to the operation of said Act

and were consequently void and of no force and effect, and the appellants were entitled to an injunction against the further enforcement of said regulations against them, and the further interference by the agents of the Department of the Interior, acting under the purported authority of said regulations, with the appellants in carrying on their business of producing, storing, and refining oil, and the transportation thereof in intrastate commerce. A decree in accordance with these findings and conclusions was entered by the district court (R. 33), which decree was reversed by the United States Circuit Court of Appeals and the cause remanded to the district court with directions to dismiss the bill. (R. 191.) It is, therefore, to reverse the decree of the United States Circuit Court of Appeals that this proceeding is prosecuted.

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## POINTS RELIED UPON FOR REVERSAL

### POINT A

**The United States Circuit Court of Appeals erred in holding that subsection 9(c) of Title I of the National Industrial Recovery Act is a valid act of Congress, because it is invalid for the following reasons, which, for convenience we will discuss as propositions:**

**FIRST PROPOSITION: Title I of the National Industrial Recovery Act is invalid and must be rejected in its entirety because it is an attempt upon the part of Congress to regulate intrastate, as well as interstate and foreign, commerce; and the provisions relating to interstate and foreign commerce are so interrelated with and dependent upon those provisions regulating intrastate commerce that they cannot be separated therefrom; but, if capable of separation, such provisions, standing alone, would not be consistent with or carry out the purpose of Congress in enacting the Act as manifested in the preamble of the Act declaring the policy of Congress and the results sought to be obtained by such enactment.**

**SECOND PROPOSITION: Subsection 9(c) of Title I of said Act is invalid for the reason that it is a delegation by Congress to the President of power to prohibit, at his discretion, transportation in interstate and foreign commerce of oil or the product thereof that may be produced or withdrawn from storage in excess of the law of any state, which commodities are ordinary commodities of commerce and harmless in themselves. This prohibition, Congress itself is without power to effect, for it is not competent for Congress, under the commerce clause of the Constitution, to enact an interstate and foreign commerce regulations, leaving the effect thereof dependent upon the action of the several states or the agencies thereof.**

THIRD PROPOSITION: Subsection 9(c) of Title I of said Act is invalid for the reason that Congress has delegated to the President the power to prohibit, at his discretion, the transportation into interstate and foreign commerce of the commodities referred to in the Act, and provides for the punishment of any one who violates any order of the President promulgated under said subsection. However, Congress does not lay down any rule, standard, or criterion to guide or limit the President in the orders that he may promulgate under said subsection of the Act; but leaves him or his nominees free to promulgate and enforce any order that he or his nominees may think necessary and needful to prohibit the transportation into interstate and foreign commerce of the commodities referred to in the Act and without any requirement as to their uniformity or applicability throughout the Union. The President, or his nominees, under the provisions of the Act, may subject any one who violates any order of the President or his nominees to criminal procedure for the violation of such order. Therefore, the effect of this Act is to delegate to the President not only the power to regulate interstate and foreign commerce at his discretion, but it also delegates to him and his nominees the power to create and define offenses against the United States.

FOURTH PROPOSITION: Subsection 9(c) purports to be simply a prohibitory statute to become effective as the will of Congress upon the order or proclamation

**of the President putting the same into effect, and purports to prescribe a punishment for the violation thereof. Yet such Act is too indefinite and uncertain as a penal statute, as it does not classify or define, with any degree of certainty, those who are subject to the operation of the Act and may be punished for the violation thereof. That is, it does not define who is the transporter of the prohibited commodities in interstate and foreign commerce, the one who produces the oil in excess of the state law and sells it and delivers it to a refiner within the state of its production, knowing that it will be refined into products and such products transported into interstate and foreign commerce; or the refiner that sells such products and delivers them to the buyer at the railroad of the interstate carrier within the state of the production of the oil; or the buyer who causes the products to be transported from such state of their production into interstate commerce; or the carrier that transports the products from the state of their production into another state.**

## ARGUMENT UNDER FIRST PROPOSITION,

## POINT A

Title I of the National Industrial Recovery Act is too lengthy to set out herein, therefore it is shown in full in Appendix A. Section 1, or the preamble of the Act, shows clearly that Congress had in mind and intended

by Title I of the Act to provide a program for the rehabilitation of industry in the several states of the Union, and that it had in mind and contemplated that this could be done by increasing wages of those who labor in industry, thereby increasing the purchasing power of the country; and that in order for industry to pay such increased wages, the elimination of competition in industry must be effected. Therefore, with these laudable purposes in mind, it entered upon the consideration and enactment of this remarkable legislation.

An examination of the various sections and subsections of Title I of this Act immediately discloses that there are only two provisions, namely, subsections 3(e) and 9(c), that make any direct reference to the regulation of that which is purely interstate and foreign commerce; all of the remaining provisions deal with the promulgation of codes, agreements, and licenses for the regulation and government of every conceivable kind and character of business, and no attempt is made by Congress to differentiate between that which is intrastate and interstate, neither is there any attempt to limit the federal regulations to purely interstate transactions that might be had by those industries that would come under the operation of the codes, licenses, and agreements provided for and authorized by the Act. Congress has not only failed to expressly limit the operation of the Act to interstate and foreign transactions, but the Act shows an avowed purpose on the part of Congress to regulate,

supervise, and control matters clearly beyond its jurisdiction. As an illustration, it is provided in subsection 7(a) that every code, agreement, or license approved or issued under the provisions of the Act shall contain a stipulation "that employers shall comply with the maximum hours of labor, minimum rates of pay, and other conditions of employment approved or prescribed by the President." It is not contended and could not be successfully asserted that this provision was intended to be inserted in the codes covering only those businesses that were purely interstate in their character, for, as a matter of fact, and of which the court will take judicial knowledge, this provision has been inserted in the codes regulating the production of oil, the mining of coal, and the manufacture of articles, the regulation of which are all beyond the power of Congress; and the President has, as a matter of fact, prescribed the hours of labor, the minimum wage, and the conditions of employment for such industries. Therefore, since Congress has not in any wise limited the operation of Title I of the Act to those industries or transactions that come within its jurisdiction, or limit the President in his regulation and supervision of industry to those within the jurisdiction of federal control; and since the regulations authorized by the Act, which could apply to interstate transactions, are not separable from those that apply to intrastate transactions, as they are all dependent upon each other, the conclusion necessarily follows that all of the pro-

visions of Title I of the Act, with the possible exception of subsections 3(e) and 9(c), must be rejected. Employers Liability Cases, 207 U. S. 490; Pollack vs. Farmers Loan & Trust Company, 158 U. S. 636.

We assume that counsel for the appellees will contend that in as much as the Act provides in subsection 3(f) that the punishment for the violation of a code, agreement, or license, is limited to those transactions in violation of such code, agreement, or license, that are in "or affecting interstate or foreign commerce," that Congress intended to limit the operation of the Act to only those transactions within its jurisdiction. But it will be readily seen that this subsection does not assure any such limitation in the sense contemplated by the Constitution, for practically all transactions have an indirect effect upon interstate commerce. In the instant case, counsel for appellees contend by their answer to the appellants' bill of complaint (R. 23), that the production of oil in the East Texas oil field affects the commerce of oil in other states. That is the Government's construction placed upon the provisions of the Act and was undoubtedly the construction placed upon it by Congress when it enacted the Act. Nevertheless, it has been repeatedly held that such an effect upon commerce is indirect and does not bring such matter within the regulatory power of Congress. United Leather Workers vs. Herkert, 265 U. S. 457; Field vs. Barber Asphalt Company, 194 U. S. 618. In the case last cited, at page 623, the court said:

> "In this day of multiplied means of intercourse between the states, there is scarcely any contract which cannot, in a limited or remote degree, be said to affect interstate commerce. But it is only direct interference with the freedom of such commerce that brings a case within the exclusive domain of federal legislation."

Now, then, if all of the provisions of Title I of the Act must be rejected, with the exception of subsections 3(e) and 9(c), would Congress, in view of its declared purpose of enacting the Act and the result contemplated to be obtained therefrom as is shown by the preamble, have enacted these two subsections with all of the other provisions eliminated? Clearly it would not.

Subsection 3(e), in effect, authorizes the President to exclude the import of an article or articles, upon complaint made to him by an industrial or labor organization that such imports are adversely affecting the carrying out of the codes or agreements promulgated under the Act, and are defeating the declared policy of Congress as expressed in the preamble of the Act. Therefore, the provisions of this subsection, which relate to foreign commerce, which is within the regulatory power of Congress, are so dependent upon and interrelated with those provisions of the Act which are clearly beyond the regulatory power of Congress, that they are inseparable, and, consequently, this provision must also be rejected.

Subsection 9(c) authorizes the President to prohibit the transportation in interstate and foreign commerce of any petroleum or the products thereof produced or withdrawn from storage in violation of any state law or valid rule or regulation of any agency of the state, and prescribes the punishment for the violation of any order made by the President under this subsection. It is clear that Congress, in delegating this power to the President, contemplated that the exercise of such power might be required by the President in carrying out the general scheme of rehabilitation of industry, as contemplated by Title I of the Act. It is equally clear that Congress would not have enacted this provision with all the other provisions of Title I of the Act eliminated, for if it had been the intention of Congress that it should be unlawful to transport the commodities referred to into interstate and foreign commerce, it would have said so in plain and unambiguous language, and prescribed the penalty for the violation of the Act. This it has not done. It has expressed its will in no manner whatsoever. When this provision left the hands of Congress it was a mere nullity and would have continued a mere nullity to this date but for the exercise of the discretionary power which was conferred by Congress upon the President. Therefore, the conclusion is inescapable that Congress intended subsection 9(c) to be a part of the general program looking to recovery, and it, too, must fall with the other provisions of Title I of the Act.

In Pollack vs. Farmers Loan & Trust Company, 158 U. S. at page 636, it is said:

> "It is elementary that the same statute may be in part constitutional and in part unconstitutional, and if the parts are wholly independent of each other, that which is constitutional may stand while that which is unconstitutional will be rejected. And in the case before us there is no question as to the validity of this act, except sections twenty-seven to thirty-seven, inclusive, which relate to the subject which has been under discussion; and as to them we think the rule laid down by Chief Justice Shaw in Warren v. Charlestown, 2 Gray 84, is applicable, that if the different parts 'are so mutually connected with and dependent on each other, as conditions, considerations or compensations for each other, as to warrant a belief that the legislature intended them as a whole, and that, if all could not be carried into effect, the legislature would not pass the residue independently, and some parts are unconstitutional, all the provisions which are thus dependent, conditional or connected, must fall with them.' Or, as the point is put by Mr. Justice Matthews in Poindexter v. Greenhow, 114 U. S. 270, 304: 'It is undoubtedly true that there may be cases where one part of a statute may be enforced as constitutional, and another be declared inoperative and void, because unconstitutional; but these are cases where the parts

are so distinctly separable that each can stand alone, and where the court is able to see, and to declare, that the intention of the legislature was that the part pronounced valid should be enforceable, even though the other part should fail. To hold otherwise would be to substitute, for the law intended by the legislature, one they may never have been willing by itself to enact.' And again, as stated by the same eminent judge in Spraigue v. Thompson, 118 U. S. 90, 95, where it was urged that certain illegal exceptions in a section of a statute might be disregarded, but that the rest could stand: 'The insuperable difficulty with the application of that principle of construction to the present instance is, that by rejecting the exceptions intended by the legislature of Georgia the statute is made to enact what confessedly the legislature never meant. It confers upon the statute a positive operation beyond the Legislative intent, and beyond what any one can say it would have enacted in view of the illegality of the exceptions'."

## ARGUMENT UNDER SECOND PROPOSITION,

### POINT A

**SECOND PROPOSITION: Subsection 9(c) of Title I of said Act is invalid for the reason that it is a delegation by Congress to the President of power to prohibit,**

**at his discretion, transportation in interstate and foreign commerce of oil or the product thereof that may be produced or withdrawn from storage in excess of the law of any state, which commodities are ordinary commodities of commerce and harmless in themselves. This prohibition, Congress itself is without power to effect, for it is not competent for Congress, under the commerce clause of the Constitution, to enact an interstate and foreign commerce regulations, leaving the effect thereof dependent upon the action of the several states or the agencies thereof.**

Subsection 9(c) authorizes the President to prohibit the transportation into interstate and foreign commerce of petroleum or the products thereof produced or withdrawn from storage in excess of that permitted by any state law or valid rule or regulation of any state agency. The effect of this Act and the President's proclamation issued in pursuance thereof prohibiting the movement into interstate and foreign commerce of the commodities referred to, is, of course, to prohibit the movement in such commerce of petroleum that has been produced by a producer in excess of that permitted by the law or regulation of a state, or oil that has already been produced and placed in storage and withdrawn from such storage at a greater rate or in greater quantities than that permitted by a law or order of a state agency. For an illustration, the present order of the Railroad Commission of Texas prohibits a producer of oil in the East

Texas oil field from producing in any twenty-four hours more than one-sixth of one per cent of what his well is capable of producing in twenty-four hours. Under this rule, the average oil producer in the East Texas oil field is permitted to produce about twenty-five barrels a day from each of his wells. Ordinarily it requires about ten minutes for the producer to produce the daily permissible amount. Thus, if any producer on any day should let his well flow a few minutes longer than necessary to produce the permissible production and thereby produce thirty barrels on that day, the extra five barrels would be oil that was produced in excess of the order of the Railroad Commission of the state, and, accordingly, under the provisions of subsection 9(c), the producer could not transport this extra oil or the products thereof into interstate or foreign commerce. We assume that the court will take judicial knowledge of the fact that the extra five barrels of oil that was produced is of exactly the same quality and character as the twenty-five barrels that the producer was permitted to produce, and that the refined products therefrom will be identical with those products manufactured from the permissible production. We also assume that the court will take judicial knowledge that oil or the products thereof are not deleterious commodities or harmful in themselves, but are innocuous articles of commerce. If we are correct in these assumptions, then upon what theory has Congress the power to exclude these extra five barrels of crude

oil or the products thereof from the channels of interstate and foreign commerce?

It is true, this court has sustained acts of Congress closing the channels of interstate commerce to impure foods and drugs, which were harmful in themselves, impairing the health and morals of those that used them, as well as the transportation of women for immoral purposes, and stolen automobiles. The Lottery Case (Champion vs. Ames), 188 U. S. 321; Hipolite Egg Company vs. United States, 220 U. S. 45; Caminetti vs. United States, 242 U. S. 470; Brooks vs. United States, 267 U. S. 432.

These acts were sustained upon the theory that the people of the adjoining states should be protected and that Congress had authority to close the channels of interstate commerce so as to confine these nefarious and harmful practices to the states of their origin. And, again, this court sustained an act of Congress prohibiting the shipment of intoxicating liquor from one state into another when intended for use contrary to the latter's laws. Clark Distilling Company vs. Western Md. Railway Company, 242 U. S. 311. The theory of the act of Congress in this case was to protect the people of a state, who had barred the use of intoxicating liquor in such state, from being imposed upon by the people of other states where the use of intoxicating liquor was permitted. But we have been unable to find any case where this court has ever intimated that Congress has

the power, under the commerce clause of the Constitution, to prohibit the movement of a commodity, which is harmless in itself, out of a state because such commodity was produced in violation of a law of that state, in order to assist such state in the enforcement of its own laws. The holding of this court in Knickerbocker Ice Company vs. Stewart, 253 U. S. 156, appears to be that Congress cannot extend the power granted it by the commerce clause of the Constitution to the extent of prohibiting the transportation into interstate and foreign commerce of innocuous articles. The commerce clause of the Constitution contemplates the regulation of interstate and foreign commerce by the Federal Government so that the rules governing the same shall be uniform and apply throughout the Union, in order that no state may erect a barrier that would be a burden upon or impede such commerce. Panama Refining Company vs. Ryan, 5 Fed. Sup. 639; Hammer vs. Dagenhart, 247 U. S. 251.

Therefore, the effect and only effect of subsection 9 (c) is to prevent the commerce in oil and the products thereof produced in Texas, from moving into interstate and foreign commerce, except in such quantities as the Railroad Commission of Texas may, from time to time, determine should be moved in that commerce. It follows, then, that the commerce in oil and the product thereof that are produced and manufactured in the State of Texas is, by this Act, made to depend upon the will of the Rail-

road Commission of Texas, which defeats the very purpose of delegating to the Federal Government the power to regulate interstate and foreign commerce. Vance vs. Vandercook, 170 U. S. 442; Knickerbocker Ice Company vs. Stewart, 253 U. S. 156.

If the quantity of oil and the products thereof that can move in interstate and foreign commerce from the State of Texas is dependent upon the will of the Railroad Commission of Texas, it follows that the several states have the power and authority to set up other agencies limiting the amount of wheat, corn, sheep, hogs, cattle, and dairy products that may be produced in any state in any given period. Thus, with the aid of Congress, such as in this case, the states are empowered to completely control every article of commerce. It is a matter of history that it was for the purpose of preventing such control by the states that the commerce clause was made a part of the Constitution.

In Kidd vs. Pearson, 128 U. S. 1, it is said:

> "It was said by Chief Justice Marshall that it is a matter of public history that the object of vesting in Congress the power to regulate commerce with foreign nations and among the several states was to insure uniformity of regulations against conflicting and discriminating state legislation."

In view of the purport of subsection 9(c) and a consideration of the extent to which Congress is authorized

to go under the commerce clause of the Constitution, it must be concluded that there is no authority vested in Congress to exclude from the channels of interstate commerce innocuous commodities simply because they may have been produced in excess of that permitted by a state law or regulation.

## ARGUMENT UNDER THIRD PROPOSITION,

### POINT A

**THIRD PROPOSITION: Subsection 9(c) of Title I of said Act is invalid for the reason that Congress has delegated to the President the power to prohibit, at his discretion, the transportation into interstate and foreign commerce of the commodities referred to in the Act, and provides for the punishment of any one who violates any order of the President promulgated under said subsection. However, Congress does not lay down any rule, standard, or criterion to guide or limit the President in the orders that he may promulgate under said subsection of the Act; but leaves him or his nominees free to promulgate and enforce any order that he or his nominees may think necessary and needful to prohibit the transportation into interstate and foreign commerce of the commodities referred to in the Act and without any requirement as to their uniformity or applicability throughout the Union. The President, or his nominees, under the provisions of the Act, may**

**subject any one who violates any order of the President or his nominees to criminal procedure for the violation of such order. Therefore, the effect of this Act is to delegate to the President not only the power to regulate interstate and foreign commerce at his discretion, but it also delegates to him and his nominees the power to create and define offenses against the United States.**

That Congress cannot delegate to the President or any one else its power to make a law, has been stated many times by this court as a principle that must be adhered to if our system of government is to endure. In Re Rahrer, 140 U. S. 545; Field vs. Clark, 143 U. S. 649; Buttfield vs. Stranahan, 192 U. S. 470; Interstate Commerce Commission vs. Goodrich Transit Company, 224 U. S. 194; Butte City Water Company vs. Baker, 196 U. S. 119; Knickerbocker Ice Co. vs. Stewart, 253 U. S. 156. Therefore, the action of Congress in delegating to the President the power to prohibit, in his discretion, the transportation into interstate and foreign commerce of certain innocuous commercial commodities and authorizing the punishment of any one who should violate any order that the President might make, would seem to be in conflict with the principle that this court has so often stated must be maintained as necessary to the perpetuation of our constitutional form of government.

We assume that it will again be stated by counsel, as they have often stated before, that this court has never held an act of Congress invalid because of the delegation

of legislative power to the President. We answer that statement by asserting that never before in the legislative history of this government has Congress attempted to surrender the legislative functions of the government to the President. In every case decided by this court in which the act of Congress was sustained against an attack upon its unconstitutionality because of alleged delegation of legislative power, the court found that the acts manifested the policy or will of Congress with reference to the subject regulated and pointed out that Congress has legislated on the subject so far as was reasonably practical, and, from the necessities of the case, was compelled to leave to the discretion of the executive department only the matter of filling in the details or the finding of facts, upon the ascertainment of which the will of Congress was to become effective; and to the discretion of the executive department as to the administration of the act of Congress to bring about the result pointed out by the act. In Re Rahrer, 140 U. S. 545; Field vs. Clark, 143 U. S. 649; Buttfield vs. Stranahan, 192 U. S. 470; Interstate Commerce Commission vs. Goodrich Transit Company, 224 U. S. 194; Butte City Water Company vs. Baker, 196 U. S. 119; Knickerbocker Ice Company vs. Stewart, 253 U. S. 156. In the act under consideration, wherein has Congress expressed its will to any extent? In prohibiting the transportation of certain Commodities into interstate and foreign commerce, what is there that Congress could not legislate upon fully and express its will in every detail so that the law would be

full and complete when it left its hands, and become effective and enforceable as the will of Congress when approved by the President? The taking effect of legislation of this character could not possibly be contingent upon the happening of an event or the ascertainment that certain facts exist. Therefore, in legislation of this character there is nothing to leave to the President except the approval of the act and its enforcement. The conclusion, therefore, must be that since Congress did not exercise its discretion or express its will as to whether the commodities mentioned should or should not be excluded from the channels of interstate and foreign commerce, that it intended to delegate to the President its power to exclude such commodities from such commerce, such power to be exercised by the President at his discretion. The President himself construed the Act to have this effect, for he did not elect to exercise the power delegated to him by Congress until July 11th, 1933, nearly a month after the Act had been approved. If this Act is not a delegation by Congress to the President of its power, to be exercised at his discretion, what was the effect of the Act during the period from June 16th, 1933, when it was approved, and July 11th, 1933, when the President elected to exercise the power delegated to him, by issuing a proclamation prohibiting the transportation in interstate and foreign commerce of oil or the products thereof that was produced or withdrawn from storage in violation of any state law or rule or regulation of an agency of the state? Was the Act, during that period,

full, complete, and enforceable as the act of Congress? Could any one have been sent to jail under its provisions for having transported in interstate and foreign commerce the commodities referred to in the Act? Certainly these questions must be answered in the negative. Then what was the effect of the Act? It could not possibly be anything other than a mere authorization by Congress to the President permitting him to use its power at his discretion to prohibit the transportation in interstate and foreign commerce of the commodities referred to in the Act, and to subject to criminal prosecution any one who violated whatever order he might make in using the power delegated to him. If we are correct in our conclusion as to the necessary effect of this Act, then it is unquestionably repugnant to Article I, Section 1 of the Constitution. The power to regulate interstate commerce and the power to regulate maritime commerce were delegated by the states to the federal government for the same reason, that is, the object of the grant was to commit direct control to the federal government so as to relieve such commerce from unnecessary burdens and disadvantages incident to discordant state legislation; and to establish, so far as practical, harmonious and uniform rules applicable throughout every part of the Union. In Knickerbocker Ice Company vs. Stewart, 253 U. S. 156, the court rejected an act of Congress which authorized the application of workmen's compensation acts of the several states as the basis for recovery for injuries sus-

tained by one engaged in maritime commerce. In holding the act void, this court said:

> "Having regard to all of these things, we conclude that Congress undertook to permit application of workmen's compensation laws of the several states to injuries within the admiralty and maritime jurisdiction; and to save such statutes from the objections pointed out by Southern Pacific Company vs. Jensen, 244 U. S. 205. It sought to authorize and sanction action by the states in prescribing and enforcing, as to all parties concerned, rights, obligations, liabilities, and remedies designed to provide compensation for injuries suffered by employees engaged in maritime work. And, so construed, we think the enactment is beyond the power of Congress. Its power to legislate concerning rights and liabilities within the maritime jurisdiction and remedies for their enforcement, arises from the Constitution as above indicated. The definite object of the grant was to permit direct control to the federal Government; to relieve maritime commerce from unnecessary burdens and disadvantages incident to discordant legislation; and to establish, so far as practical, harmonious and uniform rules applicable throughout every part of the Union. Considering the fundamental purpose in view and the definite end for which such rules were accepted, we must conclude that in their characteristic features and es-

sential international and interstate relations the latter may not be repealed, amended, or changed, except by legislation, which embodies both the will and deliberate judgment of Congress. The subject was intrusted to it to be dealt with according to its discretion—not for delegation to others. To say that because Congress could have enacted a compensation act applicable to maritime injuries, it could authorize the states to do so, as they might desire, is false reasoning. Moreover, such an authorization would inevitably destroy the harmony and uniformity which the Constitution not only contemplated but actually established—it would defeat the very purpose of the grant. See Sudden & Christianson vs. Industrial Accident Commission, 188 Pac. Rep. 803. Congress cannot transfer its legislative power to the states—by nature this is non-delegable. In Re Rahrer, 140 U. S. 545, 560; Field vs. Clark, 143 U. S. 649, 692; Buttfield vs. Stranahan, 192 U. S. 470, 496; Butte City Water Company vs. Baker, 196 U. S. 119, 126; Interstate Commerce Commission vs. Goodrich Transit Company, 224 U. S. 194, 214."

As Congress cannot delegate to the President its power to regulate interstate commerce, much less can it delegate to him the power to create and define crimes or offenses against the United States. This it has attempted to do by this Act by providing that any one violating any order made by the President under this Act shall

be punished by a fine not to exceed One Thousand Dollars, or imprisonment not to exceed six months, or both.

> "An offense which may be the subject of criminal procedure must be an act committed or omitted in violation of a public law either forbidding or commanding it." United States vs. Eaton, 144 U. S. 677.

In Donnelly vs. United States, 276 U. S. 512, it is said:

> "There are no common law crimes against the government (United States vs. Eaton, 144 U. S. 677); each case involves the construction of the statute to determine whether the acts or omissions of the accused are denounced as punishable. And regard is always to be had to the familiar rule that one may not be punished for a crime against the United States unless the facts shown plainly and unmistakably constitute an offense within the meaning of the act of Congress. United States vs. Lacher, 134 U. S. 624; Todd vs. United States, 158 U. S. 278; Fasulo vs. United States, 272, U. S. 620."

In the case of Interstate Commerce Commission vs. Brimson, 155 U. S. 4, Justice Brewer, in his dissenting opinion, in which the Chief Justice and Justice Jackson concurred, said:

> "Suppose a law was enacted making criminal the refusal to answer questions put by a commission * * * Would it not be necessary that the statute de-

fine the questions or at least the scope of the questions to be asked? Would not an act be void for indefiniteness and lack of certainty which simply made criminal the refusal to answer relevant questions, in any proper investigation carried on before a commission? * * * Could it be left to the commission to select the matter of investigation, determine the scope of the inquiry, and thus, as it were, create the crime?"

In United States vs. Maid, 116 Fed. 650, it is said:

"A department regulation may have the force of law in a civil suit to determine property rights, * * * and yet be ineffectual as the basis of a criminal prosecution. United States vs. Eaton, 144 U. S. 677. The Supreme Court of the United States in the case last cited marks the distinction thus: 'Regulations prescribed by the President and by heads of departments under authority granted by Congress, may be regulations prescribed by law, so as lawfully to support acts done under them and in accordance with them; and may thus have, in a proper sense, the force of law; but it does not follow that a thing required by them is a thing so required by law as to make the neglect to do the thing a criminal offense in a citizen, where a statute does not distinctly make the neglect in question a criminal offense.' The obvious ground of said distinction is that to

> make an act a criminal offense is essentially an exercise of legislative power which cannot be delegated; while the prescribing by the President or head of a department, thereunto duly authorized, of a rule without penal sanctions, to carry into effect what Congress has enacted, although such rule may be as efficacious and binding as thought it were a public law, is not a legislative but ministerial function."

In United States vs. Grimaud, 220 U. S. 506, the court laid down the rule as to the necessary statutory authority for a regulation in order to subject one to criminal procedure for the violation of such regulation, and as to this the court said that the executive officer could not make any and all regulations that he might deem necessary or needful for the purpose of carrying out the act, but that the regulations must be within the circle prescribed by Congress, or, in other words, they must be in conformity with the rule or criterion laid down by Congress to guide him in the making of such regulations. Why? Because a regulation of the executive department that would subject one to criminal procedure for its violation, which is not within the limits prescribed by Congress and in accordance with the rule or standard prescribed by Congress, would itself be legislation creating an offense. In United States vs. Cohen Grocery Company, 255 U. S. 88, Chief Justice White quoted with

approval a statement of the lower court which is as follows:

> "Congress alone has the power to define crimes against the United States. This power cannot be delegated."

Since in the act under consideration, Congress has prescribed no limitation within which the President may make rules and regulations, and has laid down no rule or standard that he is to follow, but leaves him free to promulgate any rule or regulation that he or his nominees may think necessary in the exercise of the power delegated to him, we must conclude that Congress intended that the President should be free to act in its place and stead in the making of any and all rules and regulations that he might deem necessary and without any limitations placed thereon by Congress, Congress supplying only the power to inflict the punishment for the violation of such rules that he may make. This is undoubtedly a delegation of legislative power to the executive department in its most acute form, and, consequently, the Act is void.

## ARGUMENT UNDER FOURTH PROPOSITION,

## POINT A

**FOURTH PROPOSITION: Subsection 9(c) purports to be simply a prohibitory statute to become effective**

**as the will of Congress upon the order or proclamation of the President putting the same into effect, and purports to prescribe a punishment for the violation thereof. Yet such Act is too indefinite and uncertain as a penal statute, as it does not classify or define, with any degree of certainty, those who are subject to the operation of the Act and may be punished for the violation thereof. That is, it does not define who is the transporter of the prohibited commodities in interstate and foreign commerce, the one who produces the oil in excess of the state law and sells it and delivers it to a refiner within the state of its production, knowing that it will be refined into products and such products transported into interstate and foreign commerce; or the refiner that sells such products and delivers them to the buyer at the railroad of the interstate carrier within the state of the production of the oil; or the buyer who causes the products to be transported from such state of their production into interstate commerce; or the carrier that transports the products from the state of their production into another state.**

In United States vs 11,150 Pounds of Butter, 195 Fed. (C. C. A.) 663, Judge Sanborn said:

> "An offense which may be the subject of criminal procedure must be an act committed or omitted in violation of the public law either forbidding or commanding it. 4 Blk. Com. 5. A penal statute which creates and denounces a new offense, and the act

under consideration is such a statute, may not be lawfully extended by either executive or judicial construction to classes beyond its terms. Men must not be punished unless they fall clearly within the class of persons specified as punishable by such a law. The definition of offenses, the classification of offenders, and the prescription of the punishment they shall suffer, are legislative, and neither executive nor judicial, functions. And forfeitures, fines, and penalties may not be prescribed, imposed, or inflicted, for the violation of a regulation of an executive department without previous legislative prescription."

In Todd vs. United States, 158 U. S. 282, it is said:

"It is axiomatic that statutes creating and defining crimes cannot be extended by intendment, and no act, however wrongful, can be punished under such a statute unless clearly within its terms. 'There can be no constructive offenses and before a man can be punished, his cause must be plainly and unmistakably within the statute.' United States vs. Lacher, 134 U. S. 624; Endlich on Interpretation of Statutes, Sec. 329, 2nd Edition; Pomeroy's Sedgewick on Statutory and Constitutional Construction, 288."

In view of these decisions, it would seem that there can be no question but that the Act under consideration

is invalid, for Congress has not created or defined an offense or classified the offenders. The matter of the creation of the offense and the classification of the offenders is left to the President; all that Congress has done is denounce as a crime and prescribe the punishment for the doing or failure to do that which the President may require to be done or prohibit from being done.

## POINT B

**The United States Circuit Court of Appeals erred in holding that Regulations IV, V, and VII, promulgated by Harold L. Ickes, Secretary of the Interior, for the purpose of enforcing subsection 9(c) of the National Industrial Recovery Act, are valid and enforceable against the appellants and that they may be subjected to criminal procedure for failure to comply therewith.**

The appellants attack the validity of Regulation IV, V, VII of the regulations promulgated by Harold L. Ickes, under the purported authority of subsection 9(c) of the National Industrial Recovery Act, which attacked regulations are set out in full in Appendix B.

Regulation IV, in effect, provides that every oil producer must file a verified daily report with the Bureau of Investigation of the Department of the Interior, showing the location of his oil wells, the amount of oil produced therefrom, and the disposition thereof, giving the name of the purchaser and the pipe line company taking

the oil from his wells. Said report must further contain an affidavit by the producer that he has not produced any oil from his wells in violation of a state law or any valid rule or regulation of any agency of the state.

Regulation V, in effect, provides that every refiner must file daily verified reports with said Bureau of Investigation showing the amount of oil that it purchases each day, from whom purchased, and the disposition it has made thereof, which report shall contain an affidavit that the oil so purchased by said refiner was not produced in violation of any state law or valid rule or regulation of any agency of the state.

Regulation VII provides that every producer and refiner shall keep accurate books as to his transactions with reference to the production, transportation, refining, and disposition of oil and the products thereof, and that such books shall at all times be open for inspection by the agents of the Bureau of Investigation of the Department of the Interior.

In addition to requiring compliance with these regulations, appellee Ryan and his agents asserted the authority to and did go upon the property of the appellants, gauge their tanks, and inspect their property, and dig up their pipe lines and destroy the same. This right of visitation and inspection was claimed as incidental to their right to enforce the attacked regulations.

Appellants, in their bill of complaint (R. 1), attacked

the validity of these regulations, asserting that even though subsection 9(c) were valid, there was no authority contained therein authorizing said regulations, and especially appellants could not be subjected to criminal procedure for failure to comply with the regulations because the things required by them were not required by the Act of Congress. As shown in the record, the appellees had already, before the filing of the amended bill of complaint, commenced criminal prosecutions against appellants because of their failure to comply with the regulations in question.

Of course, it cannot be contended that there is any express authority on the part of Congress for the regulations under consideration. But it will be contended that the power to promulgate and enforce these regulations is implied from the power to enforce subsection 9(c).

In United States vs. 11,150 Pounds of Butter, 195 Fed. (C. C. A.) 663, it is said:

> "Implied authority in an executive officer of a department to repeal, extend, or modify an act of Congress may not be lawfully inferred from authority to enforce it, and a regulation of the Secretary of the Treasury, or any other executive officer, made under legislative authority to make rules to enforce an act of Congress, which has the effect to subject classes of property to forfeiture and classes of persons to fines and penalties under the

act, that are not included therein by the terms of the law, is unauthorized and void. United States vs. 200 Barrels of Whiskey, 95 U. S. 571; United States vs. Eaton, 144 U. S. 677; Williamson vs. United States, 207 U. S. 425; United States vs. Grimaud, 220 U. S. 506; St. Louis Merchants Bridge Railway Company vs. United States, 188 Fed. 191; United States vs. Keitel, 157 Fed. 396; United States vs. 3 Barrels of Whiskey, 77 Fed. 963; United States vs. Manion, 44 Fed. 800; United States vs. Hoover, 133 Fed. 950; United States vs. 1 Package of Distilled Spirits, 88 Fed. 856."

From the face of the regulations, it is clear that by them an attempt was made to subject to the operation of the Act classes of persons and property that were not included within the terms of the Act, for they deal with matters that are purely local. The production of oil and the refining of the same is not commerce, and the purchase, transportation, and storage of oil is not interstate commerce until the same is tendered to a carrier for interstate transportation. Champlin Refining Co. vs. Corporation Commission, 286 U. S. 210; Hammer vs. Dagenhart, 247 U. S. 251. Therefore, the regulations under consideration have no relation to the Act of Congress, unless it may be said that by compliance with the regulations the agents of the Department of the Interior charged with the enforcement of the Act could better enforce it. But we have not yet reached that stage

of government where citizens can be compelled by regulations to assist the officers of the government in detecting crime.

It will be seen that these regulations apply to and affect only the East Texas and Oklahoma City oil fields. If they have any support, the foundation therefor must be found in the commerce clause of the Constitution. Yet that clause has many times been interpreted by this court as conferring upon Congress the power to make rules and regulations as to the movement of interstate and foreign commerce so that the rules governing such transportation shall be equal and uniform and apply uniformly throughout the Union. Kidd vs. Pearson, 128 U. S. 1; Knickerbocker Ice Company vs. Stewart, supra; Panama Refining Company vs. Ryan, supra. In Kidd vs. Pearson, supra, it is said:

> "It was said by Chief Justice Marshall that it is a matter of public history that the object of vesting in Congress the power to regulate commerce with foreign nations and among the several states, was to insure uniformity of regulations against conflicting and discriminating state legislation."

In Panama Refining Company vs. Ryan, supra, the court, in discussing the regulations that are here under consideration, said:

> "The Supreme Court, again, in the case of County of Mobile vs. Kimball, 102 U. S. 692, laid down the

> rule as to the constitutional limitations of Congress under the commerce clause, in which it held that the power of Congress to regulate interstate commerce is unlimited, but that in regulating commerce between the states and foreign countries, the regulations must be uniform and of one system or plan. The reason is obvious, being so that no discrimination would occur by reason of such legislation. In the case at bar, the regulations sought to be enforced against the complainants apply only to the East Texas and Oklahoma City oil fields, showing conclusively that they are not intended or meant to be regulations of commerce in a constitutional sense, but merely an attempt upon the part of the Federal Government to limit the production of oil from these two fields and to control the manufacture thereof, essentially matters of state regulation."

It is apparent that the purpose of the attacked regulations in requiring reports and examining books and records, and making inspections of the physical properties, is to obtain evidence against those who might transport the forbidden articles in interstate and foreign commerce, and they are therefore repugnant to the Fourth and Fifth Amendments to the Constitution. Boyd vs. United States, 116 U. S. 616; Counselman vs. Hitchcock, 142 U. S. 547. The learned trial judge, in discussing this phase of this case, said:

"It has been repeatedly held that in order to subject one to inquisitions, visitations, and interrogations by extrajudicial bodies, for the purpose of obtaining information against them, statutory authority for such claim of right must be shown to plainly and definitely confer upon such bodies such authority. Overton Refining Company vs. C. V. Terrell et al, 4 Fed. Sup. 443; Boyd vs. United States, 116 U. S. 616; Counselman vs. Hitchcock, 142 U. S. 547; Interstate Commerce Commission vs. Brimson, 154 U. S. 448; Harriman vs. Interstate Commerce Commission, 211 U. S. 408."

## CONCLUSION

In view of what this court has often said in the decisions above pointed out, it is clear that Title I in its entirely, as well as subsection 9(c) thereof, and the attacked regulations, are not within the powers delegated to the Federal Government by the Constitution.

Is there, then, an inherent power of sovereignty in the Federal Government over and above and outside of the powers delegates to it in the Constitution that may be asserted by Congress to regulate the production of articles that are of general use throughout the nation? That no such power resides in the Federal Government was definitely decided by this court in Kansas vs. Colorado, 206 U. S. 89.

Does an emergency, such as Congress in the preamble of this Act declared to exist, create such power in the Federal Government that Congress and the President may set aside the limitations of the Constitution by which they were intended to be restrained, and thereby dictate to the citizens of a state how much petroleum they can produce during any period, and the minimum wage that they shall pay their employees while producing it, and subject such citizens to criminal prosecutions for the violation of any order made by the President in pursuance of such purpose? It has been repeatedly held by this court that an emergency does not create power and that even during a state of war, Congress nor the President can pass the limitations placed upon them by the Constitution, nor deprive a citizen of those rights guaranteed to him by it. Ex parte Milligan, 4 Wall. 2, 100; United States vs. Lee, 106 U. S. 196; United States vs. Cohen Grocery Company, 255 U. S. 86; Home Building & Loan Association vs. Blaisdell, 290 U. S. 255.

"To what purpose are powers limited," asked the great Chief Justice Marshall, "and to what purpose is that limitation committed to writing in the Constitution, if these limits may at any time be passed by those intended to be restrained?" Marbury vs. Madison, 1 Cranch. 137.

> "The Constitution was not intended to provide merely for the exigencies of a few years, but was to

endure for a long lapse of ages, the events of which were locked up in the inscrutable purposes of Providence." Martin vs. Hunter, 1 Wheat. 305.

Respectfully submitted,

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# APPENDIX A

## NATIONAL INDUSTRIAL RECOVERY ACT

(Public No. 67—73rd Congress)

## AN ACT

To encourage national industrial recovery, to foster fair competition, and to provide for the construction of certain useful public works, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

## TITLE I—INDUSTRIAL RECOVERY

### Declaration of Policy

### Section 1

A national emergency productive of widespread unemployment and disorganization of industry, which burdens interstate and foreign commerce, affects the public welfare, and undermines the standards of living of the American people, is hereby declared to exist. It is hereby declared to be the policy of Congress to remove obstructions to the free flow of interstate and foreign commerce which tend to diminish the amount thereof; and to provide for the general welfare by promoting the organization of industry for the purpose of cooperative action among trade groups, to induce and maintain united

action of labor and management under adequate governmental sanctions and supervision, to eliminate unfair competitive practices, to promote the fullest possible utilization of the present productive capacity of industries, to avoid undue restriction of production (except as may be temporarily required), to increase the consumption of industrial and agricultural products by increasing purchasing power, to reduce and relieve unemployment, to improve standards of labor, and otherwise to rehabilitate industry and to conserve natural resources.

Administrative Agencies
Section 2(a)

To effectuate the policy of this title, the President is hereby authorized to establish such agencies, to accept and utilize such voluntary and uncompensated services, to appoint, without regard to the provisions of the civil service laws, such officers and employees, and to utilize such Federal officers and employees, and, with the consent of the State, such State and local officers and employees, as he may find necessary, to prescribe their authorities, duties, responsibilities, and tenure, and, without regard to the Classification Act of 1923, as amended, to fix the compensation of any officers and employees so appointed.

Section 2(b)

The President may delegate any of his functions and

powers under this title to such officers, agents, and employees as he may designate or appoint, and may establish an industrial planning and research agency to aid in carrying out his functions under this title.

Section 2(c)

This title shall cease to be in effect and any agencies established hereunder shall cease to exist at the expiration of two years after the date of enactment of this Act, or sooner if the President shall by proclamation or the Congress shall by joint resolution declare that the emergency recognized by section 1 has ended.

## CODES OF FAIR COMPETITION

Section 3(a)

Upon the application to the President by one or more trade or industrial associations or groups, the President may approve a code or codes of fair competition for the trade or industry or subdivision thereof, represented by the applicant or applicants, if the President finds (1) that such associations or groups impose no inequitable restrictions on admission to membership therein and are truly representative of such trades or industries or subdivisions thereof, and (2) that such code or codes are not designed to promote monopolies or to eliminate or oppress small enterprises and will not operate to discriminate against them, and will tend to effectuate the

policy of this title: Provided, That such code or codes shall not permit monopolies or monopolistic practices: Provided further, That where such code or codes affect the services and welfare of persons engaged in other steps of the economic process, nothing in this section shall deprive such persons of the right to be heard prior to the approval by the President of such code or codes. The President may, as a condition of his approval of any such code, impose such conditions (including requirements for the making of reports and the keeping of accounts) for the protection of consumers, competitors, employees, and others, and in furtherance of the public interest, and may provide such exceptions to and exemptions from the provisions of such code, as the President in his discretion deems necessary to effectuate the policy herein declared.

Section 3(b)

After the President shall have approved any such code, the provisions of such code shall be the standards of fair competition for such trade or industry or subdivision thereof. Any violation of such standards in any transaction in or affecting interstate or foreign commerce shall be deemed an unfair method of competition in commerce within the meaning of the Federal Trade Commission Act, as amended; but nothing in this title shall be construed to impair the powers of the Federal Trade Commission under such Act, as amended.

Section 3(c)

The several district courts of the United States are hereby invested with jurisdiction to prevent and restrain violations of any code of fair competition approved under this title; and it shall be the duty of the several district attorneys of the United States, in their respective districts, under the direction of the Attorney General, to institute proceedings in equity to prevent and restrain such violations.

Section 3(d)

Upon his own motion, or if complaint is made to the President that abuses inimical to the public interest and contrary to the policy herein declared are prevalent in any trade or industry or subdivision thereof, and if no code of fair competition therefor has theretofore been approved by the President, the President, after such public notice and hearing as he shall specify, may prescribe and approve a code of fair competition for such trade or industry or subdivision thereof, which shall have the same effect as a code of fair competition approved by the President under subsection (a) of this section.

Section 3(e)

On his own motion, or if any labor organization, or any trade or industrial organization, association, or group, which has complied with the provisions of this title, shall make complaint to the President that any

article or articles are being imported into the United States in substantial quantities or increasing ratio to domestic production of any competitive article or articles and on such terms or under such conditions as to render ineffective or seriously to endanger the maintenance of any code or agreement under this title, the President may cause an immediate investigation to be made by the United States Tariff Commission, which shall give precedence to investigations under this subsection, and if, after such investigation and such public notice and hearing as he shall specify, the President shall find the existence of such facts, he shall, in order to effectuate the policy of this title, direct that the article or articles concerned shall be permitted entry into the United States only upon such terms and conditions and subject to the payment of such fees and to such limitations in the total quantity which may be imported (in the course of any specified period or periods) as he shall find it necessary to prescribe in order that the entry thereof shall not render or tend to render ineffective any code or agreement made under this title.

In order to enforce any limitations imposed on the total quantity of imports, in any specified period or periods, of any article or articles under this subsection, the President may forbid the importation of such article or articles unless the importer shall have first obtained from the Secretary of the Treasury a license pursuant to such regulations as the President may prescribe. Upon in-

formation of any action by the President under this subsection the Secretary of the Treasury shall, through the proper officers, permit entry of the article or articles specified only upon such terms and conditions and subject to such fees, to such limitations in the quantity which may be imported, and to such requirements of license, as the President shall have directed.

The decision of the President as to facts shall be conclusive. Any condition or limitation of entry under this subsection shall continue in effect until the President shall find and inform the Secretary of the Treasury that the conditions which led to the imposition of such condition or limitation upon entry no longer exists.

Section 3(f)

When a code of fair competition has been approved or prescribed by the President under this title, any violation of any provisions thereof in any transaction in or affecting interstate or foreign commerce shall be a misdemeanor and upon conviction thereof an offender shall be fined not more than $500 for each offense, and each day such violation continues shall be deemed a separate offense.

## AGREEMENTS AND LICENSES

### Section 4(a)

The President is authorized to enter into agreements with, and to approve voluntary agreements between and among, persons engaged in a trade or industry, labor organizations, and trade or industrial organizations, associations, or groups, relating to any trade or industry, if in his judgment such agreements will aid in effectuating the policy of this title with respect to transactions in or affecting interstate or foreign commerce, and will be consistent with the requirements of clause (2) of subsection (a) of section 3 for a code of fair competition.

### Sections 4(b)

Whenever the President shall find that destructive wage or price cutting or other activities contrary to the policy of this title are being practiced in any trade or industry or any subdivision thereof, and, after such public notice and hearing as he shall specify, shall find it essential to license business enterprises in order to make effective a code of fair competition or an agreement under this title or otherwise effectuate the policy of this title, and shall publicly so announce, no person shall, after a date fixed in such announcement, engage in or carry on any business, in or affecting interstate or foreign commerce, specified in such announcement, unless he shall have first obtained a license issued pursuant to such regulations as the President shall prescribe.

The President may suspend or revoke any such license, after due notice and opportunity for hearing, for violations of the terms or conditions thereof. Any order of the President suspending or revoking any such license shall be final if in accordance with law. Any person who, without such a license or in violation of any condition thereof, carries on any such business for which a license is so required, shall, upon conviction thereof, be fined not more than $500, or imprisoned not more than six months, or both, and each day such violation continues shall be deemed a separate offense.

Notwithstanding the provisions of section 2(c), this subsection shall cease to be in effect at the expiration of one year after the date of enactment of this Act or sooner if the President shall by proclamation or the Congress shall by joint resolution declare that the emergency recognized by section 1 has ended.

Section 5

While this title is in effect (or in the case of a license, while section 4(a) is in effect) and for sixty days thereafter, any code, agreement, or license approved, prescribed, or issued and in effect under this title, and any action complying with the provisions thereof taken during such period, shall be exempt from the provisions of the antitrust laws of the United States.

Nothing in this Act, and no regulation thereunder, shall prevent an individual from pursuing the vocation

of manual labor and selling or trading the products thereof; nor shall anything in this Act, or regulation thereunder, prevent anyone from marketing or trading the produce of his farm.

## LIMITATIONS UPON APPLICATION OF TITLE

### Section 6(a)

No trade or industrial association or group shall be eligible to receive the benefit of the provisions of this title until it files with the President a statement containing such information relating to the activities of the association or group as the President shall by regulation prescribe.

### Section 6(b)

The President is authorized to prescribe rules and regulations designed to insure that any organization availing itself of the benefits of this title shall be truly representative of the trade or industry or subdivision thereof represented by such organization. Any organization violating any such rule or regulation shall cease to be entitled to the benefits of this title.

### Section 6(c)

Upon the request of the President, the Federal Trade Commission shall make such investigations as may be necessary to enable the President to carry out the pro-

visions of this title, and for such purposes the Commission shall have all the powers vested in it with respect of investigations under the Federal Trade Commission Act, as amended.

Section 7(a)

Every code of fair competition, agreement, and license approved, prescribed, or issued under this title shall contain the following conditions: (1) that employees shall have the right to organize and bargain collectively through representatives of their own choosing, and shall be free from the interference, restraint, or coercion of employers of labor, or their agents, in the designation of such representatives or in self-organization or in other concerted activities for the purpose of collective bargaining or other mutual aid or protection; (2) that no employee and no one seeking employment shall be required as a condition of employment to join any company union or to refrain from joining, organizing, or assisting a labor organization of his own choosing; and (3) that employers shall comply with the maximum hours of labor, minimum rates of pay, and other conditions of employment, approved or prescribed by the President.

Section 7(b)

The President shall, so far as practicable, afford every opportunity to employers and employees in any trade or industry or subdivision thereof with respect to which

the conditions referred to in clauses (1) and (2) of subsection (a) prevail, to establish by mutual agreement, the standards as to the maximum hours of labor, minimum rates of pay, and such other conditions of employment as may be necessary in such trade or industry or subdivision thereof to effectuate the policy of this title; and the standards established in such agreements, when approved by the President, shall have the same effect as a code of fair competition, approved by the President under subsection (a) of section 3.

Section 7(c)

Where no such mutual agreement has been approved by the President he may investigate the labor practices, policies, wages, hours of labor, and conditions of employment in such trade or industry or subdivision thereof; and upon the basis of such investigations, and after such hearings as the President finds advisable, he is authorized to prescribe a limited code of fair competition fixing such maximum hours of labor, minimum rates of pay, and other conditions of employment in the trade or industry or subdivision thereof investigated as he finds to be necessary to effectuate the policy of this title, which shall have the same effect as a code of fair competition approved by the President under subsection (a) of section 3.

The President may differentiate according to experience and skill of the employees affected and accord-

ing to the locality of employment; but no attempt shall be made to introduce any classification according to the nature of the work involved which might tend to set a maximum as well as a minimum wage.

Section 7(d)

As used in this title, the term "person" includes any individual, partnership, association, trust, or corporation; and the terms "interstate and foreign commerce" and "interstate or foreign commerce" include, except where otherwise indicated, trade or commerce among the several States and with foreign nations, or between the District of Columbia or any Territory of the United States and any State, Territory, or foreign nation, or between any insular possessions or other places under the jurisdiction of the United States, or between any such possession or place and any State or Territory of the United States or the District of Columbia or any foreign nation or within the District of Columbia or any Territory or any insular possession or other place under the jusrisdiction of the United States.

## APPLICATION OF AGRICULTURAL ADJUSTMENT ACT

Section 8(a)

This title shall not be construed to repeal or modify any of the provisions of title I of the Act entitled "An

Act to relieve the existing national economic emergency by increasing agricultural purchasing power, to raise revenue for extraordinary expenses incurred by reason of such emergency, to provide emergency relief with respect to agricultural indebtedness, to provide for the orderly liquidation of joint-stock land banks, and for other purposes," approved May 12, 1933; and such title I of said Act approved May 12, 1933, may for all purposes be hereafter referred to as the "Agricultural Adjustment Act."

Section 8(b)

The President may, in his discretion, in order to avoid conflicts in the administration of the Agricultural Adjustment Act and this title, delegate any of his functions and powers under this title with respect to trades, industries, or subdivisions thereof which are engaged in the handling of any agricultural commodity or product thereof, or of any competing commodity or product thereof, to the Secretary of Agriculture.

## OIL REGULATION

Section 9(a)

The President is further authorized to initiate before the Interstate Commerce Commission proceedings necessary to prescribe regulations to control the operations

of oil pipe lines and to fix reasonable, compensatory rates for the transportation of petroleum and its products by pipe lines, and the Interstate Commerce Commission shall grant preference to the hearings and determination of such cases.

Section 9(b)

The President is authorized to institute proceedings to divorce from any holding company any pipe-line company controlled by such holding company which pipe-line company by unfair practices or by exorbitant rates in the transportation of petroleum or its products tends to create a monoply.

Section 9(c)

The President is authorized to prohibit the transportation in interstate and foreign commerce of petroleum and the products thereof produced or withdrawn from storage in excess of the amount permitted to be produced or withdrawn from storage by any State law or valid regulation or order prescribed thereunder, by any board, commission, officer, or other duly authorized agency of a State. Any violation of any order of the President issued under the provisions of this subsection shall be punishable by fine of not to exceed $1,000, or imprisonment for not to exceed six months, or both.

## RULES AND REGULATIONS

### Section 10(a)

The President is authorized to prescribe such rules and regulations as may be necessary to carry out the purposes of this title, and fees for licenses and for filing codes of fair competition and agreements, and any violation of any such rule or regulation shall be punishable by fine of not to exceed $500, or imprisonment for not to exceed six months, or both.

### Section 10(b)

The President may from time to time cancel or modify any order, approval, license, rule, or regulation issued under this title; and each agreement, code of fair competition, or license approved, prescribed, or issued under this title shall contain an express provision to that effect.

## APPENDIX B

The Three regulations by the Secretary of the Interior involved in the present litigation read as follows:

### IV.

Every producer of petroleum shall file a statement under oath, sworn to before any duly authorized State or Federal officer, not later than the fifteenth day of each and every calendar month, beginning with August 15, 1933, with the Division of Investigations of the Department of the Interior, unless otherwise ordered to report at more frequent intervals by the Division, which statement shall contain the following information for the given field involved covering the preceding calendar month:

(1) The residence and post-office address of the producer.

(2) The location of his producing properties and wells, the allowable production for each property and well as prescribed by the proper State agency for both property and wells.

(3) The daily production in barrels produced from each property and well.

(4) A report of all deliveries of petroleum showing the names and places of business of all persons to whom such petroleum was delivered whether pur-

chasers, consignees, or transporting agencies, and the quantity involved in each delivery, transportation or other disposition thereof, together with a report of all petroleum in storage, wherever located, at the beginning and at the end of said calendar month, the place of storage and the amount in storage at each place.

(5) A declaration that no part of the petroleum or the products thereof produced and shipped has been produced or withdrawn from storage in excess of the amount permitted to be produced or withdrawn from storage by any State law, or valid regulation or order prescribed thereunder by any Board, Commission, Officer, or other duly authorized agency of the State in which the petroleum was produced. (As amended by Order of July 25, 1933.)

V.

Every purchaser of petroleum, shipper (other than a producer) of petroleum, and refiner of petroleum (including all persons engaged in the processing of petroleum in any manner), shall file a statement under oath sworn to before any duly authorized State or Federal officer, not later than the fifteenth day of each and every calendar month beginning with August 15, 1933, with the Division of Investigations of the Department of the Interior, unless otherwise ordered to report at more frequent intervals by the

Division, which statement shall contain the following information for the preceding calendar month:

(1) The residence and post-office address of the purchaser, shipper, refiner, or processor.

(2) The place and date of the receipt, the names and business addresses of the producers and/or other parties from whom the petroleum was received, the amount received of such petroleum and the amount of petroleum held in storage or otherwise on the last day of the calendar month next preceding the period covered by the report.

(3) The disposition of said petroleum, including the place and date of delivery, the amount delivered, the names and business addresses of the consignees to whom delivered, the transporting agencies, and the amount of petroleum held in storage or otherwise at the end of said calendar month.

(4) A declaration that to the best of the information and belief of the affiant, none of the petroleum received and/or disposed of was produced or withdrawn from storage by any State law or valid regulation or order prescribed thereunder by any Board, Commission, Officer, or duly authorized agency of the State in which the petroleum was produced. (As amended by Order of July 25, 1933.)

## VII.

All persons, natural or artificial, embraced within the terms of Section 9(c) of the National Industrial Recovery Act (Public No. 67, 73rd Congress) and the Executive orders and regulations issued thereunder, shall keep and maintain available for inspection by the Division of Investigations of the Department of the Interior adequate books and records of all transactions involving the production and transportation of petroleum and the products thereof.