The defendants introduced in evidence the statement of R. H. MONTGOMERY, who stated that he is a Professor of Economics in the University of Texas; that he has made a field study for many years of Government regulation of industry with particular reference to railroads and public utilities and that he has acquired a rather detailed knowledge of the conflicts arising between Federal and State governments in regulation of industries which in their essential operations cut across state lines.

He further states facts concerning the size and importance of the petroleum industry, the geographical distribution of production and consumption in the United States, the interstate movement of oil, and the products thereof, produced in Texas, the interrelated nature of the industry, the necessity of national control, the waste that has resulted from overproduction and its effect upon the non-integrated companies the impossibility of the individual states curing the existing evils and the probable beneficial effects of the Petroleum Code, which facts substantially agree with those set forth in the statement of W. B. Hamilton set forth above.

The defendants introduced in evidence a statement by H. C. WIESS, who stated that he is Vice President of the [fol. 132] Humble Oil & Refining Company; that he has been actively engaged in the oil business for approximately 22 years; that he has been a member of the Board of Directors of the Humble Oil & Refining Company for more than sixteen years and a Vice President for more than fourteen years in direct charge of refining and marketing operations; that Humble Oil & Refining Company is an integrated company, engaged itself or through its subsidiary, Humble Pipe Line Company, in producing, transporting, refining and marketing; that said corporation produces oil in New Mexico, Louisiana and in almost all of the producing areas in Texas; that it purchases oil in various producing areas in Texas; that the Humble Pipe Line Company transports oil from all of the principal producing areas of Texas and New Mexico, moving approximately 276,000 barrels per day, of which 197,000 barrels move in interstate or foreign commerce; that Humble Oil & Refining Company has a capacity of approximately 122,000 barrels per day, at least

95 per cent of the products from which are marketed in other states or in foreign countries and less than 5 per cent of which are marketed in Texas; that he is familiar with the various oil fields in Texas and the methods of production, transportation, refining and marketing of the petroleum thereof; that he has made a careful study of the movement of oil and its products to the markets in the United States and abroad; that his corporation has maintained a statistical force for the accumulation and analysis of facts involving the production, transportation, refining and marketing of oil, a large part of which has been done under his supervision and the results of which have been at all times available to him and in constant use by him; that he has made a careful study of not only such data but of statistical data and reports issued by the United States Bureau of Mines, the American Petroleum Institute [fol. 133] and other local, state and national trade associations; and that he is Chairman of the Refining Sub-Committee of the Planning and Coordination Committee for Region 4, including the states of Kansas, Oklahoma, Texas, and New Mexico, and in such capacity is in close touch with refining conditions and practices in such region and the relation between such conditions and the practices of producing and transporting.

He further stated facts concerning the size and importance of the petroleum industry, the position of the integrated companies in the industry, the geographical distribution of production and consumption of petroleum in the United States, the interstate movement of petroleum produced in Texas, the intermingled nature of interstate and intrastate commerce in petroleum; the effect of overproduction upon the natural market, the effect upon production of the fact that petroleum is produced from common reservoirs, the demoralizing effect of the marketing of "hot" oil, and the need for a determination of consumer demand by a national body, which facts substantially agree with those set forth in the statement of W. B. Hamilton set forth above.

The defendants introduced in evidence the statement of RALPH H. KINSLOE, who stated that he is Vice President and General Manager of Magnolia Petroleum Company

and its subsidiary, Magnolia Pipe Line Company, and has general supervision of the production and sale of its crude oil and the products thereof; that he has been actively engaged in the oil business for 20 years; that he has actual knowledge of the production, refining, transportation and [fol. 134] marketing of crude oil in all of the states in which the Magnolia Petroleum Company and its subsidiary operate; that he has observed and studied petroleum business from a national viewpoint; that he knows the effect from a national standpoint of overproduction and underproduction of crude oil upon the national price structure; that the Magnolia Petroleum Company and its predecessor, a joint stock association, have been actively engaged in the production, refining and sale of crude oil and its products at wholesale and retail in interstate and intrastate commerce since 1911; that said Company is a purchaser of crude oil from other producers in Oklahoma, Louisiana, Arkansas and Texas; that said Company owns and operates 5 refineries in the State of Texas; that said Company does not own or operate refineries in other states; that its subsidiary, the Magnolia Pipe Line Company, is a common carrier of crude oil, operating its system of pipe lines in Louisiana, Oklahoma, Arkansas and Texas; that the main trunk line from all states of said Company terminates at Beaumont and Magpetco in Jefferson County, Texas, on the seaboard and that said Pipe Line Company does not purchase or sell oil.

He further stated that oil is produced from two classes of wells, known as flowing wells and pumping wells; that the Magnolia Petroleum Company owns and operates 6,057 wells situated in 5 states, of which number 5,521 are pumping wells and 536 are flowing wells; that of the flowing wells 516 are located in Texas and 467 in the East Texas field; that, of the total wells operated, 83.7 percent are pumpers and that exclusive of the East Texas flowing wells, 98.2 per cent are pumpers and that the percentage of pumping wells operated by said Company in Oklahoma, Kansas, Arkansas and Louisiana is 99.3.

He further stated that on January 1, 1933, Government [fol. 135] statistics show that there were 321,500 oil wells in the United States, of which approximately 11,000 were flowing wells in the East Texas field and 600 were pumping wells in said field; that it is estimated that there are 15,-

000 flowing wells in the United States representing 4.7 per cent of the total number of producing wells; that the average production of the pumping wells is from one to five barrels of oil per day; that unless the said pumping wells are continually operated, they are ruined; that flush fields and flowing wells are comparatively short lived and as the gas and other natural pressure diminishes, the wells cease to flow and the recovery of oil therefrom is by the pumping process; that the nation is dependent upon pumping wells to secure steady and dependable production; that the national requirement of crude oil is from 2,000,000 to 2,300,000 barrels per day; that it is estimated, and he believes correctly, that under normal conditions 75% of the nation's requirement of crude oil is secured from pumping wells; that the potential production from the 11,000 flowing wells in East Texas is in the neighborhood of 5 million barrels per day, far in excess of the national requirement; that if these wells were permitted to produce one-half of their potentials, they would produce 2,500,000 barrels, which is in excess of the nation's requirement; that the Magnolia Petroleum Company, through pumping wells in Oklahoma and Louisiana, secures the greater percentage of the oil that it produces and purchases in those states; that only a small percentage of the oil purchased and produced by it in said states is from flowing wells; that in the States of Kansas and Arkansas, it produces a large number of barrels of oil per day, solely from pumping wells; that practically all of the oil produced and purchased by the Magnolia Petroleum Company in said four states is shipped and sold in interstate commerce; that [fol. 136] 22% of the oil produced and purchased by said Company in Texas is sold and shipped in interstate commerce; that thousands of barrels of oil produced in states other than Texas are transmitted in interstate commerce through its subsidiary pipe line to Beaumont and Magpetco and there shipped to the Eastern Seaboard by boat; that said oil is produced and purchased for the purpose of said interstate shipments; that the majority of the oil so shipped is produced from pumping wells; that a small percentage of the crude oil purchased and produced in states other than Texas is refined in Texas; that 78% of the oil produced and purchased in Texas is refined in Texas; that during the process of refining said oil, it becomes mixed

and intermingled and it is impossible to determine from what crude oils the manufactured products are derived; that 81% of the manufactured products is sold in interstate commerce to purchasers on the Eastern Seaboard of the United States and in other states of the Union, and that said products are manufactured for the purpose of being sold in interstate commerce.

He further stated that the market value of crude oil is determined from a national viewpoint, but its determination is to a great extent controlled by local conditions; that where there is an excess of petroleum over national requirement, its market value decreases as was demonstrated when the oil field in East Texas was permitted to produce without restriction, resulting in the lowering of the price of crude oil to from 25¢ to 10¢ a barrel in Texas, and a great reduction in the price of crude oil in all of the other oil producing states; that when the price of crude oil is reduced to the point where it is unprofitable to operate pumping wells, said pumping wells will be shut in; that the shutting in of said wells results in said wells being destroyed by the "sanding up" of the same and the sands [fol. 137] becoming impregnated with salt water; that a further result is that laborers and employees upon said wells are without employment and the owners of said wells lose their investments, and that it further results in taking out of interstate commerce the oil which has been usually produced from said wells.

He further stated that until the Federal Government undertook to control the petroleum industry from a national viewpoint, the production of oil far exceeded the national demand; that even now, owing to evasion of the law, production is in excess of national demand; that the states in general are incapable of controlling the production of oil; that in East Texas on account of the numerous flowing wells there is great overproduction; that excess oil is being sold far below the market value of the same to refiners who have built temporary refineries in the East Texas field; that it is common knowledge that this "hot" oil is produced in such quantities in East Texas and is sold below the market and true value of the same to such an extent that, unless prohibited, it will depress and destroy the national market for crude oil.

He further stated that one class of refiners undertakes to observe and comply with the Rules and Regulations of

the Government bodies, while another flagrantly violates these rules; that this second class sells the gasoline so manufactured at a much lower cost than the legitimate refiner; that said refiners evade taxes imposed by the State of Texas and sell gasoline to irresponsible persons who operate truck equipment by which they peddle said bootleg gasoline at retail and wholesale; that these peddlers haul such gasoline both in the state where it is manufactured and into adjoining states and often sell this gasoline to retailers who are handling the products of legitimate refiners [fol. 138] and who mix and mingle said products with the legitimate gasoline and sell this mixed gasoline under the trade name and mark of legitimate refiners; that this practice is responsible for a large illicit industry in Texas resulting in the manufacture of millions of gallons of poorly refined gasoline which has affected the marketing of gasoline in interstate commerce; that the result is that the legitimate price structure and market value of gasoline and crude oil has been affected in that the legitimate refinery, wholesaler and retailer is driven to the necessity of meeting the price fixed by the illegitimate seller and marketer, even though this necessitates selling below cost; that, if this continues, it will result in the depression of the entire market structure and will further result in the rapid depletion of the nation's oil reserves and a waste of petroleum and its manufactured products; and that these sources of "hot" oil can be checked by a series of reports, under oath, by producers and refiners and such is a certain useful, practicable and reasonable method of locating the origin of "hot" oil and its products which move in interstate commerce.

He further stated that he is familiar with the various provisions of the National Industrial Recovery Act and the Petroleum Code and the Rules and Regulations adopted by the Administration under said Act; that he believes the enforcement of said Act and the Rules and Regulations will go a long was in eliminating the illegal and harmful practices being carried on and will conserve the resources of the nation and permit the free flow of petroleum in interstate commerce; that unless production of oil is controlled, the free flow of petroleum in interstate commerce will be prevented, unemployment will result and employees in the production and sale of petroleum will be reduced and [fol. 139] their wages diminished; and that this is demon-

strated by the actual results which have occurred during the last 2 or 3 years from the production of "hot" oil.

The defendants introduced in evidence a statement by CARL WEINER, who stated that he is and has been a producer of crude oil in the Chanute field for 20 years; that he is President of the Kansas Stripper Oil Well Association, the membership of which is composed of operators of oil wells in the oldest fields of the eastern counties of Kansas; that in the eastern counties of Kansas there are approximately 11,000 oil wells having a daily production of about 6,000 barrels; that many of these wells are more than 30 years old; that these wells have frequently been restricted because of uncontrolled overproduction of oil in other areas, particularly since the opening of the East Texas area and the Oklahoma City pool; and that since production has been controlled through the Oil Code, these wells have been continuously operated, except for 12 days during the month of October, 1933.

He further stated that in May, 1933, the market price of 36 gravity oil was 25¢ per barrel, and that, as a result, many of the wells in Eastern Kansas were abandoned or shut down; that to his knowledge, the number of wells so abandoned was 476; that there are probably as many more of which he has no positive knowledge; that the production from such wells averaged 600 barrels per day; that this production during the period of their operation was largely transported in interstate commerce; that since the Oil Code has been in effect, the price level has reached $1.00 per barrel; that this increased price has made it possible [fol. 140] for the employees on the wells to be paid good wages; that many men have been employed in reconditioning the wells and the lease equipment; that the general business conditions have greatly improved in the locality where the wells are located and that when the price of oil was reduced to the low levels above mentioned, many men employed on the pumping wells were thrown out of work and those who were retained were paid very low wages.

The defendants introduced in evidence a statement by E. B. REESER, who stated that he has been engaged in vari-

ous branches of the Oil Industry for 32 years; that for 15 years he has been an official of the Barnsdall Petroleum Company, a corporation engaged in the business of producing, refining, transporting and marketing petroleum, and its products, and that he is particularly familiar with the production and marketing of crude oil and the refining and marketing of the refined products thereof.

He further stated that for the last 32 years, from time to time, new oil fields of large production have been discovered and until the last few years the production from such fields has been practically unrestrained, that the invariable result of bringing in fields of large flush production has been that in a short time thereafter the price of crude oil has been materially reduced with an unfavorable reaction upon the market and sale not only of the crude oil, but also of the refined products thereof; that specific examples are the Spindle Top Field in Southeastern Texas in 1902, the Glen Pool Field in Oklahoma in 1906, the Lakeview Gusher Field in California in 1910, the Cushing and Healdton [fol. 141] Field in Oklahoma in 1913-14, the Mexia and Powell Field of Texas in 1922, the Seminole Field in Oklahoma in 1927, and the East Texas Field in Texas in 1930; that in many instances the reduction in price amounted to 80 and 90% of the sale price of crude petroleum; that in many instances the excess production has caused the shutting down of thousands of wells of small and less profitable production which has resulted in the permanent abandonment of these wells and the consequent loss of known reserves of petroleum in the United States; that the Eastern Seaboard market for the oil produced in California was absorbed by the production of the East Texas Field because of the low production cost and the great supply from the East Texas Field; that the result of the loss of this market caused the closing down of many of the smaller wells in the California field, increasing unemployment in said field; and that it is well known that in a great many instances the closing down of wells of small production for any length of time permits water to encroach upon the oil producing formation and thus destroys the producing area in such fields.

He further stated that there are a number of fields in the United States, the unrestrained production of which would cause a reduction in the market price of oil to a few

cents a barrel; that the East Texas field alone could supply the entire requirement of oil for the entire United States and absorb the entire market for oil now produced in the stripper oil area of Pennsylvania, Ohio, Illinois, West Virginia, Kentucky and even of the pumping areas of Oklahoma, Texas and Kansas; that such an absorption of the market would not only result in disruption of the normal flow of interstate commerce, but would result in a great increase in unemployment since the East Texas field can produce the amount of oil necessary to supply the entire [fol. 142] United States with very little increase in its number of employees; and that many refineries scattered throughout the United States which work almost exclusively upon oil produced from stripper well fields would cease to operate and throw out of employment their employees.

The defendants introduced in evidence a statement by W. W. WARNER, who stated that he is the President of the Oklahoma Stripper Well Association, the membership of which is made up of Stripper Well Associations for the several districts embracing the entire oil producing area of Oklahoma; that approximately 90% of all producing wells in Oklahoma produce less than 10 barrels per day and are stripper wells; that it is estimated that there are approximately 50,000 of such wells and that the total aggregate production from them amounts to 140,000 barrels per day; that these wells are largely owned by men of small means who dispose of their oil to integrated companies; that the average cost of producing oil in stripper wells throughout Oklahoma varies from 75¢ to $1.00 per barrel; that the cost of producing oil from flush pools like the Oklahoma City pool or the East Texas field is much less; that the unrestrained production of the Oklahoma City pool and East Texas field has in the past resulted in overproduction with the result that the price of oil in Oklahoma for a considerable period of time reached a low level of 18¢ per barrel; that this price was below the actual cost of production in Oklahoma; that it is estimated that 5,000 stripper wells were compelled to shut down or were completely abandoned with a loss in production of approximately 4,000 barrels per day; that the production thus lost ordinarily had been transported in interstate commerce to

[fol. 143] refineries outside of the State and the refined products transported to consuming centers throughout the country; that many of the stripper wells were closed and were completely lost, as the oil lying beneath them can probably never be recovered; that many employees were thrown out of work through the closing of these wells and the wages of those retained were drastically reduced; and that since production has been placed under control by the National Recovery Act and the Oil Code, the price has increased to a present level of $1.00 per barrel and new employees have been put back on the pay roll at good wages.

He further stated that it is impossible for stripper wells to compete with flush production wells because of the disparity in the cost of production; that if flush production wells are allowed to flow unrestrained, they will virtually monopolize the market so that all of the stripper wells will eventually be shut down or abandoned; and that, in his opinion, stripper wells supply somewhat over 25% of the total domestic production.

The defendants introduced in evidence a statement by J. Wood Glass, who stated that he is President of the Northeastern Oklahoma Stripper Wells Association, which Association includes in its membership oil operators owning and operating stripper wells in Washington, Nowata, Rogers, Osage and North Tulsa Counties, Oklahoma; that there are approximately 20,000 oil producing wells within this area which produce approximately ¾ths of a barrel of oil per day; that the average cost of lifting the oil in these wells is $.84 per barrel; that these stripper wells cannot compete with flush production wells if the latter are permitted to flow unrestrained; that [fol. 144] the unrestrained flow from the East Texas field and the Oklahoma City pool reduced the price of oil in the Oklahoma area to $.25 per barrel in 1933, causing the shutting in or abandonment of approximately 2,000 stripper wells in Northeastern Oklahoma; that the oil from these wells was taken out of the interstate channels of trade into which it customarily flowed; that the shut-down of these wells threw out of employment many workers and caused drastic reduction in wages; and that since the adoption of

the National Recovery Act and the Oil Code the price of oil in Northeastern Oklahoma has increased to $.94 per barrel with the result that stripper wells are able to produce at some profit and many men have been returned to employment and wages have been substantially increased.

The defendants introduced in evidence a statement by J. R. PEMBERTON, who stated that he is a graduate of Leland Stanford University with an A. B. degree; that he majored in geology with particular reference to petroleum matters; that during the year 1909 he was employed as a field geologist by the United States Geological Survey; that in 1910 he instructed at Stanford University; that in 1911-15 he examined the oil and gas resources in the Argentine as a geologist in the employ of the Republic of Argentine; that during 1916-1917 he was employed in the Petroleum Industry in California; that from 1918 to 1923 he was engaged in geological exploration, leasing land, developing wells, producing oil and gas and marketing oil, gas and gasoline in Oklahoma, Texas, Kansas, New Mexico, Louisiana, Arkansas and Kentucky; that during 1924 to 1931, he was engaged in California in the production and marketing [fol. 145] of petroleum; that since 1932 he has been Oil Umpire for California and since September 8, 1933, he has been Oil Umpire for the Federal agency designated by the Petroleum Administrator for the allocation of production of oil in California.

He further stated that within 10 days, the State of California can produce in excess of one million barrels of crude oil daily and maintain such production for at least 10 years: that the potential capacity of the known fields in California is sufficient to produce an amount sufficient to supply the entire demand in the United States for many years to come; that the potential capacity of California to produce petroleum from undiscovered pools is unknown, but of great extent; that the Kettleman Hills Field alone is estimated to contain 2 billion barrels of recoverable petroleum; that the Los Angeles Basin and coastal fields could likewise supply a very large proportion of the consumptive demand of the United States; and that he has received many complaints from producers in California that the December allowable of 450,000 barrels is extremely

low when compared with the potential capacity of the California fields.

The defendants introduced in evidence a statement of AVARY H. ALCORN, who stated that he is an employee of the Department of the Interior, Division of Investigations; that he has gathered data on the production of petroleum in the East Texas field during the month of October, 1933; that the data was obtained from the various pipe lines, gathering systems, refineries, reclamation and gasoline plants located and operating in the East Texas Oil Field; that all information not obtained from the above mentioned [fol. 146] companies operating in the East Texas Field was obtained from the Railroad Commission of Texas and from monthly and daily reports of the above described companies, received in the Department of the Interior office at Tyler; that the amount of overproduction shown by this data is 591,576 barrels, which amount was arrived at after checking every available and possible report that had to do with the producing, refining and transporting of crude oil in and from the East Texas field. He further stated that after twelve years' experience in the oil business he was positive that the above mentioned overproduction of 591,577 barrels of crude oil could not have been, or would not be consumed within the bounds of the State of Texas and that it would have to enter the stream of interstate commerce and be marketed over a large trade area.

The defendants introduced in evidence a statement of WALTER S. BEHRENS, who stated that acting in the scope of his official duties as an Oil Enforcement Agent of the Department of the Interior, Division of Investigations, he has assembled data showing the movement of tank cars of gasoline from the East Texas Oil Field to various points in the United States and also gasoline consigned interstate to the Gulf Coast where such shipments were loaded on tankers entering coastwise and foreign commerce; that from his knowledge of the industry he knows that oil produced in violation of State law is sold at distress prices and has time and time again demoralized the national market for petroleum and its products; that this demoralization

has deprived legitimate oil producers, land owners and markets both within the State of Texas and elsewhere of their fair share of the national market, because of the [fol. 147] competitive advantages the violators enjoy and has deprived legitimate operators of fair prices for their crude oil; that he bases the foregoing statements on the fact that in March, 1933, there was received at Texas City Terminal, Texas City, 4301 cars; in April, 2796 cars; in May, 2796 cars; in June, 678 cars, and from July 1st to July 20th, 1754 cars, each car containing approximately 220 barrels of oil; and that the refined products of this petroleum entered interstate and foreign commerce, affecting the gasoline market not only of Texas, but of the nation.

He further stated that the East Texas Oil & Refining Company shipped from the East Texas Field from June 8th to September 28th, 1933, 342,773.87 barrels of gasoline to Harbur Terminal Company at Texas City for interstate coastwise shipment, of which 197,144.76 barrels had been so shipped on September 28th; and that this refinery and others in the East Texas Oil Field have billed an enormous amount of gasoline to East St. Louis and other points in Illinois, to the States of Arkansas, Tennessee and Kentucky and to other wide areas, thus affecting the national price structure.

The defendants introduced in evidence a statement by Jos. L. QUINN, who stated that in the course of his employment as Oil Enforcement Agent by the Department of the Interior, he checked the records in the office of the Railroad Commission of Texas at Kilgore, Texas, and found that the total shipments during the month of November amounted to 6,906 tank car loads; that of this amount 3,303 cars moved for export or coastwise, 2233 cars moved interstate and 1370 cars moved intrastate; that the percentage of [fol. 148] cars moving intrastate on the total car movements was 19.8% and that this proves that 80.2% of the tank car shipments of products refined in the East Texas Field by East Texas refiners moves interstate.

The defendants introduced in evidence a statement of MARVIN E. CROOM, who stated that he is the East Texas

Manager for the Texas Petroleum Council, an impartial, non-political and non-factional association of companies and individuals engaged in the oil business, which has for its principal purpose the assembling, co-ordinating and disseminating of information appertaining to the conduct of such oil business, with particular reference to the enforcement of the Regulations, Rules and Statutes of Proration, whether State, Federal or individual; that under his direction the records of the various oil regulatory departments of the State have been carefully checked in order to ascertain the true facts with reference to the movements of crude oil and its products in intrastate markets as compared with interstate and foreign markets; that for the month of October, 1933, the total consumption of crude oil and the products thereof within Texas was represented by 78,207,575 gallons of motor fuel, as shown by sworn statements of refiners and distributors filed with the Comptroller of Public Accounts; that from these said sworn statements it appears that the total crude oil runs to stills in October, 1933, amounted to 17,862,236 barrels, while the motor fuel manufactured from this oil amounted to 339,232,853 gallons, an average yield of 45.2% per barrel; that the tank cars and other shipments of motor fuel out of the State of Texas for the month of October, 1933. amounted to 295,372,270 gallons, which is 79.065% of the total used in intrastate and inter-[fol. 149] state markets; that the crude oil shipped out of the State of Texas in the month of October amounted to 6,656,445 barrels, as shown by sworn statements rendered to the Comptroller of Public Accounts; that the intrastate consumption of crude oil and the products thereof amounted to only 4,121,648 barrels in October, 1933, as compared to interstate shipments of 22,215,456 barrels for the same month, or 15.65% intrastate and 84.35% interstate; that the gasoline stocks held by those refineries and distributors reporting to the Comptroller amounted to 294,064,593 gallons at the end of October, 1933, which is practically equal to the total intrastate and interstate market demand for one month of the Winter period; that the crude oil stocks held in Texas at the end of October, 1933, total some 126,872,000 barrels, which is equivalent to the entire State's production for 4.6 months under the current State allowable of 888,000 barrels per day; and that such stocks of crude oil and motor fuel may at any time move

into interstate and export market- to constitute a decided menace to such markets, unless the movement of the same and the origin of said movement be supervised and controlled.

He further stated that at the present time the exact movements of crude oil and its products within the State of Texas are not adequately controlled by State agencies; that the Railroad Commission has supervision over the production of crude oil and pipe line movements, while the Comptroller of Public Accounts has supervision over all phases of intrastate business for tax purposes only and that there is no "tie-in" between the two departments; that there are some sixteen gathering systems which do not report to the Railroad Commission and that these sixteen gathering systems did not report to the Comptroller for the month of October, 1933, so that there are not any State records showing accurate amounts of crude oil transported [fol. 150] by these lines; that the State authorities do not have the legal right to restrain the movements of certain kinds of oil produced or assembled in excess of the current allowable, such as pick-up pits, salvage plants and all classes of storage; that there are eleven refineries located within or adjacent to the East Texas Field which have not been reporting to any regulatory body having jurisdiction and control over oil sources; that according to the estimated runs on stills by agents of the Railroad Commission, these eleven refineries ran for the week ending November 18, 1933, 29.4% of all the runs on stills by refineries located in the East Texas Field, while for the month of September, the same eleven plants ran only 13.5%, showing the increasing market influence of such uncontrolled operations; that for the month of September, 1933, reports to the Comptroller covering taxes were available for only 5 of these 11 plants, but that from their own sworn statements, these five refineries delivered into interstate and export markets more than 54% of their total reported sales for September; that the present laws of the State of Texas are such that a refiner or distributor doing purely an interstate business does not have to have a permit from State authorities and does not have to render reports except special audits, which cannot be conducted extensively and frequently enough to provide adequate checks; that illegal gasoline on which taxes have not been paid, or which is manufactured from "hot" oil, has in the past con-

stituted a menace to and burden on interstate markets; that any uncontrolled oil operations within Texas still constitute a menace to the interstate markets of crude petroleum and its products, because of the tremendous potential production held within the State; that the effect of motor fuel refineries in Texas upon interstate markets may be illustrated by the following list of interstate destinations of gasoline shipments from Oil Refineries, Inc., [fol. 151] located at Overton, Texas, for the month of August, 1933, South Carolina, Ohio, Michigan, Wisconsin, Mississippi, Arkansas, Illinois, Indiana, Nebraska, Iowa, Georgia and Kentucky.

He further stated that current authorized crude petroleum production from the East Texas Field has been cut from an average of 59 barrels as of September 7, 1933 to less than 35 barrels as of December 10, 1933; that unless crude movements are adequately controlled within the State, "hot" oil may become so important a factor in the markets that production will suffer to the extent that general current operations cannot be conducted at a profit; that because of the very nature of petroleum and its products, "hot" oil and its products become intermingled with the allowable production and the identity of the same is not and cannot be distinguished when it crosses the State line; and that the foregoing facts and statements are based upon careful and detailed studies of existing conditions and are substantiated by certificates confirming the important facts contained herein.

The defendants then introduced in evidence a statement by R. B. McLaughlin, who stated that he is Secretary and Assistant Treasurer of the Texas Pipe Line Company and an officer of the Texas Pipe Line Company of Oklahoma; that he has been in the employ of said companies for twenty-seven years; that his duties have been practically exclusively confined to pipe line operation during that time; and that it has been necessary to make an extensive study of pipe line operations not only of the companies by which he has been employed, but also by other major com- [fol. 152] panies operating in what is termed the Mid-Continent and Gulf Coast areas.

He further stated that pipe lines constitute a unique specialized transportation system developed by the petro-

leum industry in many respects similar to railroad systems with trunk line stations, terminals, storage yards, switch systems, dispatchers, and telephone and telegraph systems; that interstate pipe lines operate as common carriers and are subject to the Interstate Commerce Act; and that in various states trunk lines are common carriers and subject to the jurisdiction of State Commissions. He further stated that the Texas pipe Line Company operates today in New Mexico, Texas, Louisiana and Arkansas, with a network of 5,121 miles and performs both interstate and intrastate service; that the Texas pipe Line Company of Oklahoma, while its system is confined within the State of Oklahoma, accepts oil for transportation under joint tariff with the Texas Pipe Line Company for delivery to Houston and Port Arthur, Texas, and also accepts crude for delivery to the Texas-Empire Pipe Line Company, which is an exclusive interstate transportation system.

He further stated that on the basis of a report published by the Interstate Commerce Commission, No. 3397, issue of July, 1933, there were on December 31, 1932, 92,783 miles of pipe line in operation, representing an investment of $763,941,699.00, which transported 1,095,912,816 barrels of oil; that on the basis of reports rendered by Walter M. W. Splawn to the Interstate Commerce Commission (House Report No. 2192—Jan. 19, 1932), approximately 53% of the oil transported in 1931 moved in interstate commerce; that the above report of the Interstate Commerce Commission does not include reports from pipe line carriers operating in California and investigation will develop that [fol. 153] considerable quantity of oil transported by the California pipe line carriers was for interstate commerce in that the oil was delivered to boats at the Pacific Coast for delivery to the Atlantic coast; that, according to the Splawn report, of the 73 major pipe line companies, 21 are engaged exclusively in interstate commerce; that to his knowledge the operations of those engaged in both interstate and intrastate transportations in the Mid-Continent and Gulf areas is so intermingled that it is impossible to separate the operations because in many operations the same pipe lines and pumping equipment are used for transporting oil moving in interstate and intrastate commerce; and that frequently oil originating in a given pool and moving to a given destination through the same pipe line system will be moving in both interstate and intra-

state commerce, since part will be delivered locally at the destination and part will be delivered into boats moving in interstate and foreign commerce.

The defendants introduced in evidence a statement by E. H. EDDLEMAN, who stated that from 1922 to 1926 he was Vice President of the Texhoma Oil & Refining Company; that from 1926 to 1928 he was Vice President of the Continental Oil Company, both of which companies were engaged in the production, refining, transportation and marketing of crude oil and its products; that from 1928 until December, 1931, he was Receiver or Manager of American Refining Company, a corporation engaged in the same branches of the industry; that from January, 1932, until October, 1933, he was Executive Vice President of the Texas Oil and Gas Conservation Association, an association engaged in securing data and statistics concerning all [fol. 154] branches of the oil industry; and that he is familiar with the production, refining and marketing of petroleum and its products throughout the greater part of the United States.

He further stated that approximately 50% of all crude oil produced in the United States is produced by integrated companies whose activities encompass the whole industry; that the typical and usual course of business in the oil industry from the place of production to final distribution is as follows: If the oil is produced by an integrated company, it is transported by the company's pipe lines to its own refineries, sometimes located in another state, then placed in temporary storage until refined in the company's own refinery and moved to the distributing stations of the company, where it is sold either to wholesalers or to the final consumers; that from the moment the oil reaches the surface of the well until it reaches the company's bulk plants or places of ultimate consumption, it is in a continuous current of interstate commerce; that on the average about 80% of all oil produced finds its ultimate market in other states than that in which it is produced; that in the case of production by an integrated company, the title to the oil does not change from the time it leaves the ground until sold to the jobber, distributor, retailer, or consumer; that oil in trunk pipe lines is commingled with other oil so

that there is as a rule no identity of shipment; in the case of production of oil by individuals or non-integrated companies, the oil is usually produced under a contract of sale to some integrated company prior to the time of production; the non-integrated company usually has no storage or pipe line facilities; the oil after purchase by the integrated company is treated in the same way as oil produced by them; in some cases the oil is neither produced by or sold [fol. 155] to an integrated company but sold to a refinery located near the source of production; such refinery, however, sells only a part of its refined products within the state where produced and refined, and the balance finds its way into interstate commerce; that thus the typical and customary course of the oil business is for the great bulk of all oil and the products thereof to move in a continuous stream of interstate commerce, whether produced by integrated or non-integrated companies or individuals.

He further stated that about 95% of the country's crude oil is produced west of the Mississippi River, the states of Texas, California, and Oklahoma producing over 84% of the country's demand; that the oil is moved to the large consuming areas by pipe lines, and also tank steamers from the Gulf points, that there are several pipe lines which extend in an arc across the country from Texas northeasterly through Oklahoma, Kansas, Missouri, Illinois and Indiana, and then due east through Indiana, Ohio, Pennsylvania and New Jersey; that there are also lines from fields in Wyoming which connect with the main trunk line system in Missouri; that Texas and Oklahoma have a network of lines, large and small, fitting into the main trunk lines to the north and others leading down to tidewater on the Gulf Coast; that lines similarly connect Louisiana and Arkansas with the main trunk line system; and that California has its own system linking its fields with the refineries at tidewater.

He further stated that he is familiar with the East Texas Oil Field and with the marketing, transportation, and refining of the oil produced from said field, and the distribution of the refined products thereof; that there are thirteen pipe lines engaged in transporting crude petroleum from the field to various parts of the United States, and that [fol. 156] there are three pipe lines from the East Texas field to Shreveport where part of the oil is refined and shipped to a large number of states, while the rest is re-

piped and reshipped to other points within and without Louisiana; that the other ten pipe lines serving East Texas are the Gulf Refining Company line to Port Arthur, The Humble Oil Company line to Mexia, Houston and Bayton, the Stanolind Oil Company's line to Mexia, the Texas Company's line to Port Arthur, the Texas Company's line to Sand Springs, Oklahoma, the Sun Oil Company's line to Beaumont, the Prairie Pipe Line Company's line to Mexia, the Texas-Empire Company's line to Atreco, Texas, the Atlantic Refining Company's line to Port Arthur, and the Tidal Oil Company's line to the Gulf Coast; and that from the above terminal points the oil or products thereof passes on to other states.

He further stated that another portion of the oil from East Texas is transported by rail some to New Orleans and some northward through Oklahoma and Arkansas.

He further stated that about 90% of all the oil produced in the East Texas field is transported and disposed of as above stated; that of the 10% refined in local refineries, about sixty per cent is shipped by rail to states other than Texas; and that in all, over 85% of the crude oil produced in the East Texas field goes into interstate or foreign commerce, either in the shape of crude oil or the products thereof.

He further stated that there are approximately 560 refineries located throughout the United States, most of which are concentrated in the States of New Jersey, Pennsylvania, Delaware, Ohio, Indiana, and Illinois, and in Texas, Louisiana, and Oklahoma, and also in the Los Angeles Basin and at San Francisco Bay; that the states of [fol. 157] New York, New Jersey, Pennsylvania and Ohio, in the year 1932, refined approximately 20% of the total gasoline refined in the country; Illinois and Indiana approximately 15%; Texas approximately 22%; Oklahoma approximately 7%, and the State of California approximately 16%.

The defendants introduced in evidence a statement of AVARY H. ALCORN, an employee of the Department of the Interior, Division of Investigations, who stated that there were, on November 20, 1933, 4,913,960 barrels of crude oil in steel storage located in Gregg, Rusk, Smith, Upshur and

Cherokee Counties, Texas, according to the records of the Department of the Interior, Division of Investigations; that there were approximately 930,317 barrels of oil which, according to the records, was illegally produced; and that the major portion of the 930,317 barrels classed as illegally produced oil was produced between the dates of April 26, 1933 and September 5, 1933.

The defendants introduced in evidence a statement of J. H. LEECH, who stated that he is a Special Agent of the Division of Investigations of the Department of the Interior; that since July 14th he has been engaged in enforcing the regulations issued by the Secretary of the Interior on July 15th and July 25th, 1933, under Section 9 (c) of the National Industrial Recovery Act; that under said regulations, certain reports are required of producers, refiners, brokers, shippers and transporters of crude petroleum; that early in July representatives of the Department of the Interior examined the forms required by the Texas Rail- [fol. 158] road Commission of producers and others and, in order to relieve any producer or other member of the industry of any hardship in making reports, arranged with the Railroad Commission to alter slightly some of their forms so that those forms, when filed by the producers or other members of the industry, would also meet the requirements of the Department of the Interior; that the report from the producer showing the amount of oil produced and the disposition thereof has been made monthly to the Railroad Commission of Texas on a form known as EB; that the form is furnished by the Railroad Commission and the Governmental Agency without cost to the producer; that it is filed with the Railroad Commission and a copy is furnished the Division of Investigations through the Railroad Commission; that this form has long been in use by the Railroad Commission and the furnishing of the information to the Federal Government through the method stated above could not place any undue burden upon any producer; that the information requested on form EB can be easily furnished by any producer or operator, as such should be in his possession for the successful operation of his business and for the further reason that such data would be necessary in preparing gross tax payments to the state and income tax returns to the Federal Government.

He further stated that the information requested of members of the industry is essential for the reason that the reports show oil produced, transported and the distributions thereof; that this information cannot be obtained from sources other than the producers, operators, and other members of the industry who are requested to report; and that the reports are reasonable, since they request only that information which operators, refiners and others required [fol. 159] to make reports have at their finger tips in order to carry on their own individual business.

He further stated that the only alternative to requiring reports would be for the State and Federal Government to maintain a force in the East Texas oil field of some 25,000 to 28,000 men; that this is due to the large number of producing wells in the field (11,490), to the size of the field, to the vast network of pipe lines and gathering systems originating in the field, and to the close proximity of many refineries to producing wells; that there is no other method within his knowledge to check the source of interstate shipments of "hot" oil, and its products; and that by requiring reports, it can be determined who are engaged in transporting oil, which is produced in violation of valid State regulations, and its products, in interstate commerce.

The defendants introduced in evidence a statement by ARCHIE D. RYAN, who stated that his official position is Special Agent in Charge, Division of Investigations, Department of the Interior, and that since July 14, 1933 he has been assigned to East Texas in the enforcement of the Regulations issued by the Secretary of the Interior of July 15th and July 25th, 1933. He further stated facts which agree substantially with the statement of J. H. Leech, as summarized above.

The defendants introduced in evidence a statement by C. R. STARNES, who stated that he is President of Texas Oil Products Company and is familiar with conditions in the oil business in the State of Texas during the past three years and especially with respect to the purchase of crude [fol. 160] oil for refinery operations and the sale of refined products; that a large part of the oil produced in Texas is

transported out of the State and 85% of the products of petroleum refined in the State is shipped out of the State; that overproduction results in oil selling far below the reasonable cost of production, resulting in price cutting, affecting markets throughout the nation; that there is a great deal of oil produced in Texas in excess of the allowable fixed by the Railroad Commission; that such oil is secretly produced and is almost invariably sold at prices below the prevailing market price to refineries generally located near the field; that the refineries which purchase "hot" oil sometimes ship part of it outside of the State; that the refined products of the portion refined within the State often reach customers outside the State at prices lower than the prevailing prices. He further stated that competition of this character is unfair and affects prices over wide areas; that legitimate refineries have to cut their prices to meet the prices given by "hot" oil refineries, with the result that the entire national market is demoralized and great losses occur to royalty owners and law abiding refiners and producers and that the sale of "hot" oil and its refined products, even if confined to the State of Texas, materially affects and burdens interstate commerce in oil and its products.

He further stated that it is impossible by looking at a barrel of oil or at its refined products to tell whether it was illegally produced; that it is extremely difficult to check all producers over a twenty-four hour period, especially in East Texas, where refineries own production and are directly linked to producing wells; that the vast systems of pipe lines, together with other methods of transportation are so numerous and intricate that it is extremely difficult to trace the source of oil or to determine whether the move-
[fol. 161] ment is intrastate or interstate; that a simple, reasonable and effective way to check production and trace the movement of petroleum is to ascertain the amounts received or purchased by refineries, the name of the seller, or person delivering and the subsequent disposition of the oil or its products; that forms have been provided for this purpose which cause no undue inconvenience or burden; that many refineries gladly give the information desired and that he believes in order to detect "hot" oil or its products, it is necessary to require reports from refineries and to use other means, such as inspection, to check the accu-

racy of such reports and that no undue burden is imposed thereby upon refineries.

The defendants introduced in evidence a statement by Col. Louis S. Davidson, who stated that he was in the East Texas Oil Field from August 17, 1931 to December 20, 1933, as Provost Marshal until March, 1932, and thereafter as Commander of the Military District under martial law for the purpose of assisting the Railroad Commission in enforcing proration; and that since that time he has been in close contact with the operations in the East Texas Field and is familiar with the same. He further stated that during his experience in the Field, all of the refineries, with the exception of two or three, had their own pipe lines or gathering systems; that these refineries did not use seals on the lock stops or the tank batteries located on the leases, from which they received oil, as is required by legitimate pipe line companies; that these lock stops can be opened at will, allowing oil to flow from the lease to the refineries at the same time that the well is producing oil into tanks; that the Chief Refinery and the Southern Oil & Refining Company have wells flowing directly to storage tanks at the refineries; that it is impossible to determine the amount of [fol. 162] oil produced from the lease to which these refineries are connected, without keeping a man on duty at each of such wells continuously, or without gauging the storage tanks located at the refinery; that he is familiar with the pipe line system in Gladewater and Kilgore, Texas; that oil can be delivered from any point in the East Texas Oil Field, to almost any refinery in the Field and can be delivered from one refinery to another; that during May, June and July, 1933, hundreds of cars of crude oil were loaded and shipped out of the East Texas Field by refineries; that the A & P Oil Company, which is Anding & Potter, the owners of the Panama Refining Company, ship hundreds of cars to the Coast, where they were put into foreign and interstate commerce; that there are numerous cases where the surplus overproduced oil has gone to the refinery and the royalty owner has received one price for his legal oil and a small price for the excess oil; that in many cases royalty owners did not receive payment at all for the overproduced oil; that it is useless to check pipe lines, leases and movements of oil by tank cars, unless re-

fineries are also checked; and that unless all outlets are checked, there is no way of arriving at the total production in the East Texas Field.

The defendants introduced in evidence a statement by D. W. HOVEY, who stated that he is Vice President of the Republic Oil Refining Company; that he is familiar with the oil business in the State of Texas during the past three years and especially with respect to the storage of crude oil for refining operations and the sale of refined products. He further stated facts which agree substantially with the statement of C. R. Starnes, as summarized above.

[fol. 163] The defendants introduced in evidence a statement by J. D. WRATHER, who stated that he is President of the Overton Refining Company and that he is familiar with conditions in the oil business in Texas during the past three years, and especially with reference to the purchase of crude oil for refinery operations and the sale of refined products. He further stated facts which agree substantially with the statement of C. R. Starnes, as summarized above.

The defendants introduced in evidence a statement by G. A. SADLER, who stated that he is General Manager of the Tyler Refining Company and that he is familiar with the oil business in the State of Texas during the past three years, and especially with reference to the purchase of crude oil for refining and the sale of refined products. He further stated facts which agree substantially with the statement of C. R. Starnes, as summarized above.

The defendants introduced in evidence a statement by J. G. PUTERBAUGH, who stated that he is President of Blue Star, Winston, Kenwood and Red Star Oil Companies; that he is familiar with the oil business in the East Texas Field; that much of the oil produced in Texas is transported out of the State; that overproduction has, time and time again, destroyed the price structure and has caused oil to sell in

the East Texas Field at the small figure of 10¢ per barrel; that in reporting the production of oil from his property, he submits monthly reports to the Railroad Commission of Texas on the E-B form furnished him without cost; that a copy of this report is furnished the Department of the In- [fol. 164] terior under Regulations IV, issued by the Secretary of the Interior; that the preparation of this report does not work a hardship upon him, or upon any other producer; that it is easily prepared and the information required is essential to the operator for his own knowledge and the successful operation of his property; and that the reports required by Regulations IV and other regulations are reasonable.

The defendants introduced in evidence a statement by H. F. RICHARDSON, who stated that he is Assistant Secretary and Treasurer of Texas Oil Products Company; that he is familiar with the oil business in Texas and especially with respect to the purchase of crude oil for refining and the sale of refined products. He further stated facts which agree substantially with the statement of C. R. Starnes, as summarized above.

The defendants introduced in evidence a statement by J. R. PEARSON, who stated that he has been an independent oil producer for the past twenty years, with properties in the State of Texas and properties in the East Texas Field for the past two and one-half years; that he has been active in a personal way in assisting the Railroad Commission and the military forces in an endeavor to see that the proration laws were obeyed; that the reason for this activity is that he and his partners own oil properties in the East Texas Field which, with stabilization and orderly production, are worth over $1,000,000.00, but that with stabilization such as has existed for the past two years, he would lose these properties, leaving him in debt over $300,000.00. He further stated that he has abided by the proration laws, [fol. 165] although others have become rich by breaking them; that he believes the proration program to be proper and right; that during the period of his operation in the Field, he has had close contact with all classes of operation, including production, refining, pipe lines and trucking; that

practically all the refiners in the Field have their own pipe lines or gathering systems and many also own their own wells; that these refineries do not use seals or lock stops on the tank batteries located on the leases, with the result that the lock stops can be opened at any time, allowing oil to flow to the refinery at the same time the well is producing into the same tanks; that he is familiar with the same small pipe line systems connecting these refineries in the East Texas Field; that these lines are so interconnected that oil can be delivered from practically any point in the Field to these refineries and can be delivered from one refinery to another; that royalty owners whose leases are connected to these refineries have no way of knowing how much oil is produced; that he personally owns an interest in the two leases operated by the East Texas Refinery; that in the months of January, February, March and April, 1933, they sent him checks with statements attached for the proper allowable and in the same envelope each month was another check without the statement for eight to ten times the amount of the allowable check; that he returned these checks and requested a statement of the oil run, which it took several months to obtain; that on checking these figures on the oil run, it was discovered that the greater part of this oil, which was reported for January, February, March and April, 1933, was really run in June, July, August, September and December of 1932, when the posted price for oil was higher; that the refineries paid others 40¢ a barrel at the same time they paid him 25¢ a barrel for oil from the same lease; that daily reports from the refinery [fol. 166] would have prevented this overproduction; that because of the intricate system of pipe line connections between wells and refineries and between refineries, it is absolutely impossible to know the amount of oil the refineries handle or whence it comes, unless reports are required; reports from refineries are necessary to supplement reports from pipe lines and producers; that many refineries in the East Texas Field are making these reports and that he believes the reason others refuse to make the reports is because it will disclose the amount of "hot" oil which they are handling.

The defendants introduced in evidence a statement by J. FRANK GRAHAM, who stated that he is President of the

Texarkana Oil Company and is familiar with the oil business in the East Texas Field. He further stated facts which agree substantially with the statement of J. H. Puterbaugh, as summarized above, to the effect that the reports required by Regulations IV are reasonable.

The defendants introduced in evidence a statement made by M. T. FLANAGAN, who stated that he is sole owner of Flanagan Production Company and is familiar with the oil business in the East Texas Field. He further stated facts which agree substantially with the statement by J. G. Puterbaugh, as summarized above, to the effect that the reports required by Regulations IV are reasonable.

The defendants introduced in evidence a statement by H. B. WALKER, who stated that he is Superintendent of the [fol. 167] Galvez Oil Corporation and that he is familiar with the oil business in the East Texas Field. He further stated facts which agree substantially with the statement by J. G. Puterbaugh, as summarized above, to the effect that the reports required by Regulations IV are reasonable.

The defendants introduced in evidence a statement by W. R. NICHOLSON, who stated that he is interested in oil producing property in the East Texas Field; that the reports required under the Regulations issued by the Secretary of the Interior are reasonable and have not worked a hardship on anyone and that the reports call only for information that each operator necessarily has to know in the successful operation of his own business.

The defendants introduced in evidence a statement by R. J. RAUCK, who stated that he is Secretary-Treasurer of Wise and Jackson and that he is familiar with the oil business in the East Texas Field. He further stated facts which agree substantially with the statement of J. G. Puterbaugh, as summarized above, to the effect that the reports

required by Regulations IV are reasonable, and have not worked a hardship on anyone and that the reports call only for information that each operator necessarily has to know in the successful operation of his own business.

The defendants introduced in evidence a statement by W. J. COLLINS, who stated facts which agree substantially with the statement by W. R. Nicholson, as summarized above, to the effect that the reports required by the regulations are reasonable.

[fol. 168] The defendants introduced in evidence a statement by R. W. FAIR, who stated facts which agree substantially with the statement by W. R. Nicholson, as summarized above, to the effect that the reports required by the regulations are reasonable.

The defendants introduced in evidence a statement by W. A. WISE, who stated that he is President of Jackson, Wise & Sneeden, and that he is familiar with conditions in the oil business in the East Texas Field. He further stated facts which agree substantially with the statement of J. G. Puterbaugh, as summarized above, to the effect that the reports required by Regulations IV are reasonable.

The defendants introduced in evidence a statement by FRANK C. CONDIN, who stated facts which agree substantially with the statement of W. R. Nicholson, as summarized above, to the effect that the reports required by the regulations are reasonable.

The defendants introduced in evidence a statement by A. D. RYAN, who stated that he is Special Agent in Charge of the Division of Investigations, Department of the Interior at Tyler, and that he has become familiar with the methods employed in producing oil in said field and in

transporting, marketing and refining said oil. He further stated that the greater portion of oil produced in East Texas leaves the field in common carrier pipe lines which form an artery in interstate and foreign commerce; that [fol. 169] a barrel of oil from the East Texas field may move by this system to the Atlantic Seaboard, or it may move to the Gulf ports of Texas to be shipped from Texas ports to foreign countries; that most of the oil which is not taken from the field by pipe lines moves into refineries located in the field; that the products from the refineries go into tank cars or into motor truck tanks to be taken into other states; that oil which goes into the pipe lines to be transported to refineries at points distant from the East Texas field is commingled with the other oil; that likewise oil produced in the East Texas field which goes to refineries located there is commingled in the storage tanks as common stock gathered for said refineries by pipe lines known as gathering lines; that in some cases wells, pipe lines and refineries in the East Texas field are controlled by common ownership; that producers in the East Texas field, in his opinion, know that their oil is commingled as common stock either at the refineries, or in the pipe line, and that a great portion of such common stock moves in interstate commerce.

He further stated that a producer agrees to and takes part in such movement in that he places stock tanks on his lease into which he flows oil from his wells, and that he agrees that a pipe line company engaged in business as common carrier connect the pipe line with the tank and that the pipe line company may take the oil out of the tank for the purpose of mixing said oil as common stock with oil taken from the field and that said pipe line company may transport said oil to a producer either within or without the State and that during said shipment the oil is moving with and is a part of the oil which is actually being transported in interstate commerce. He further stated that the producer of oil assists in this movement because he takes part in its delivery in the same manner as if he had delivered the oil into a railroad tank car on a through run, passing [fol. 170] through several states. He further stated that because of this commingling of oil in the transporting system, it is necessary that the employees of the Division of Investigations be permitted to have access to all oil in

order to be able to determine and verify the disposition of any oil and that oil accumulated in pipe lines for transportation constitutes a continuous movement in interstate commerce, since a large portion of the same forms the supply to the large refineries in Illinois, New Jersey, Pennsylvania, Ohio, Oklahoma and Louisiana.

The defendants introduced in evidence statements by J. W. CLARK, J. M. SHAW, J. P. CANSLER, R. J. COCKE, VOYT WILLIAMS, GUY CRISMAN, G. O. SANDERS and J. M. MILSTEAD, all of whom stated that the Cockburn-Boase leases have been producing more oil than is permitted by orders of the Texas Railroad Commission.

In addition to these statements, there was introduced a letter upon the letter-head of "Cockburn and Boase", dated April 19, 1933, and addressed to J. P. Cansler, which stated in part:

"It is the desire of this Company to run excess oil from this lease and, since you are interested, this firm would like for you to mail to them at P. O. Box 205, Arp, Texas, a letter stating the amount of your interest and also that you are willing for the firm of Martin and Cockburn to run excess oil, obtaining the best market price available to them and receive in full the money for this oil, then paying to you your pro rata part of said money collected for oil sold. * * * To enable us to operate this lease without an actual loss of money, we are required to sell more than is com- [fol. 171] monly called the allowable. To keep in business and to protect our investment, we have definitely decided to take this action. You must either join with us, or produce your own storage for your oil and every barrel of oil that belongs to you will be placed in said storage."

The letter was signed "Martin and Cockburn."

The defendants introduced in evidence statements by J. F. MAGEE, W. O. HARDIN, ERNEST A. SESSUMS, C. P. PORTER, F. H. JONES, KENT B. KNOX, HOWARD E. TYSON, and JAMES H. HALE, all of whom stated that the properties owned by R. J. McMurrey and M. H. McMurrey have been

producing more oil than is permitted by the orders of the Texas Railroad Commission.

The defendants introduced in evidence statements by C. E. TABOR, W. E. FLOREY and SAM WARREN, J. J. McROBERTS, W. H. FRANKLIN and O. B. TAYLOR, all of whom stated that the properties of the Anding & Potter Oil Company have been producing more oil than is permitted by the orders of the Texas Railroad Commission.

The defendants introduced in evidence statemnets by JOS. L. QUINN, J. N. INGLISH, WILSON KEYES, J. H. McCLURE and GEORGE H. BLACK, all of whom stated that the properties of Charles M. Cope have been producing more oil than is permitted by the orders of the Railroad Commission of Texas.

[fol. 172] The defendants introduced in evidence statements by J. H. WRIGHT, D. D. ALEXANDER, BARNEY CARTER, L. C. PETERS, J. L. LENAMON, WALTER S. BEHRENS, J. H. WRIGHT and C. H. WESTBROOK, all of whom stated that the properties of the Amazon Petroleum Corporation have been producing more oil than is permitted by the orders of the Texas Railroad Commission.

Mr. Behrens also stated that the crude oil illegally produced by the Amazon Corporation was commingled with other oil and placed in the Republic Oil and Refining Company's terminal, from which point the same was placed in foreign and interstate commerce, in violation of Section 9 (c) of the National Industrial Recovery Act.

The defendants introduced in evidence statements by W. G. HANRAHAN, BERT McCRAY, J. M. GOODMAN and FRANK C. CONDON, all of whom stated that the properties of W. B. Turnbow, Trustee, have been producing more oil than is permitted by the orders of the Texas Railroad Commission.

The defendants introduced in evidence statements by JOE DEU PREE, WILLIAM E. GUINN and J. G. FLOYD, who stated that on November 21, 1933, they discovered an illegal connection on the W. C. Turnbow Persons lease, Well No. 2, by which oil was being flowed to the Union Refining Company, no tenders having been obtained to run this oil, as is required by the State laws; that this procedure is a means employed to deliver excess oil to refineries known as a "by-pass", so that the amount of oil on the lease cannot be determined by gauging storage tanks located thereon; and that part of the oil so by-passed is [fol. 173] shipped in interstate commerce after it is refined by the Union Refining Company.

The defendants introduced in evidence a statement by SAM KIMBERLIN, who stated that he is District Tax Supervisor, Motor Fuel Division of the Comptroller's Department of the State of Texas; that for the month of August, 1933, Oil Refineries, Inc., located near Overton, Texas, reported interstate and export shipments of motor fuel in the total amount of 1,389,768 gallons and that the reported destination points for such shipments included South Carolina, Ohio, Michigan, Wisconsin, Mississippi, Arkansas, Illinois, Tennessee, Minnesota, Kentucky, Louisiana, Indiana, Nebraska, Iowa, Missouri and Georgia, and that of the 731,227 gallons of motor fuel shipped by five other East Texas refineries, namely, Owl Refining Company, Inc., Foshee Refining Company, Lake Refining Company, Panama Refining Company and Locke Refinery, Inc., 395,075 gallons, or 54 per cent of the total was shipped in interstate or foreign commerce.

The above and foregoing is all the evidence necessary for a review of the rulings assigned as error on this appeal introduced at the trial of said cause and all proceedings had in the trial thereof.

Wherefore, Archie D. Ryan, S. D. Bennett and Phil E. Baer, defendants and appellants, pray that the above statement of evidence be settled, approved and allowed by the above entitled court as a true, full and correct and complete statement of all of the evidence necessary for a review of the rulings assigned as error on this appeal taken

and given on the trial of said cause, for use on the appeal [fol. 174] taken to the United States Circuit Court of Appeals for the Fifth Circuit.

Dated this 30 day of March, A. D. 1934.

Charles Fahy, Douglas Arant, Chas. I. Francis, Spl. Asst. to the Atty. Genl., Attorneys for Defendants and Appellants.

STIPULATION AS TO STATEMENT OF EVIDENCE

It is hereby stipulated that the above and foregoing statement of evidence is a true and correct statement of all of the evidence necessary for a review of the rulings assigned as error on this appeal and the same may be approved by the Judge without notice.

Charles Fahy, Douglas Arant, Chas. I. Francis, Attorneys for Defendants and Appellants. W. T. Saye, Saye, Smead & Saye, F. W. Fischer, Edward Lee, Attorneys for Plaintiffs and Appellees.

IN UNITED STATES DISTRICT COURT

ORDER SETTLING STATEMENT OF EVIDENCE

The foregoing statement of evidence is in all respects hereby approved and settled as a true and correct statement of all the evidence necessary for a review of the rulings assigned as error on this appeal and adduced on the trial of the above entitled action.

Dated this 2nd day of April, A. D. 1934.

Randolph Bryant, United States District Judge.

[fol. 175] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT

DECREE—Filed Feb. 21, 1934

Came on to be heard said above styled and numbered cause, together with the above numbered causes consolidated therewith; and thereupon came the complainants in

equity cause No. 652, Amazon Petroleum Corporation, a corporation, Barney Cockburn, E. J. Boarse, Charles M. Cope, and W. C. Turnbow Petroleum Corporation, a corporation, with their attorneys, Saye, Smead & Saye; and came also the complainants in equity cause No. 667, Trans-State Corporation, A. H. Tarver, Pelican Natural Gas Company, Dimham Oil Corporation, Oriental Oil Company, K. E. Merren, Canico Oil Company, Adco Oil Company, Laco Production Company, Lexena Oil Corporation, and E. J. Moran, with their attorneys, Saye, Smead & Saye; and came also the complainants in equity cause No. 505 Ortiz Oil Company, Inc., and Deere Creek Oil Company, with their attorney, F. W. Fischer; and came also complainants in equity No. 657, A. F. Anding, Southport Pe-[fol. 176] troleum Company, a corporation, Ironrock Oil Corporation, a corporation, Independent Producers, a corporation, and W. Holloway, with their attorney, F. W. Fischer; and came also complainants in equity cause No. 595, Imperator Oil Corporation, Overton Refining Company, Kilgore Refining Company, K. W. P. Witt, O. L. Hastings, A. N. Landers, W. M. McVey, T. E. Owen, J. Curtis Sanford, Roy Howell, Yandell Rogers, E. J. Bartels, W. H. Wilson, T. J. Whitesides, George F. Thaggard, Arrow Refining & Producing Company, Double L Oil Company, P. D. Bolen, Carl Dunham, J. M. Lapin, G. A. Franklin, and R. S. Harper, with their attorney, F. W. Fischer; and came also complainants in equity cause No. 621, M. E. Trapp and McMurrey Corporation, with their attorneys, F. W. Fischer and W. Edward Lee; and came also complainants in equity cause No. 665, Coffman Production Company, a corporation, and Cemo Production Company, a corporation, with their attorney, F. W. Fischer; and came also the defendants, Archie D. Ryan, Special Agent of the Division of Investigations, Department of the Interior, S. D. Bennett, United States Attorney for the Eastern District of Texas, and Phil E. Baer, United States Marshall for the Eastern District of Texas, with their attorneys, and announced ready for trial; and the United States District Judge Randolph Bryant, upon an examination of the pleadings, ascertained that complainants sought to enjoin certain State officers from enforcing certain proration orders of the Railroad Commission of Texas, and in the same Bills of Complaint sought to enjoin the above-named Federal officers from enforcing certain

regulations and provisions of the Code of Fair Competition for the Petroleum Industry issued and promulgated under the authority of the National Industrial Recovery Act, and it appearing to said District Judge that the cause [fol. 177] of action stated against the State officers presented a case requiring the convening of three judges, the aforesaid District Judge called two judges to his assistance and set the hearing upon application for interlocutory injunction on both causes of action at the same time.

Upon assembling, the statutory three-judge court suggested its want of jurisdiction of the cause of action against the Federal defendants above named as not within Section 380 of the United States Code, and that the cause of action was one for the consideration of the District Judge. Thereupon, all parties desiring the Bills of Complaint to be heard and determined as to both causes of action, it was in open court agreed by all parties, the Judges consenting, and made a matter of record, that each cause should be regarded as submitted to, and to be decided by the tribunal having jurisdiction of it. Upon the conclusion of the evidence it was suggested that the suits be submitted both on the application for interlocutory injunction and on the merits, and the complainants, although pressing their applications for an interlocutory injunction, agreed that the cases might also be submitted upon the merits.

And the Court, being of the opinion that the Bills of Complaint stated two separate and distinct causes of action, one against the State officers, requiring the consideration of three judges, and the one against the above-named Federal defendants, over which the District Judge only had jurisdiction, the two cases were severed and it was ordered that this cause be submitted to the District Judge upon the evidence adduced as against the Federal defendants, and on behalf of the Federal defendants, at the trial before the three Judges, it being stipulated that the issues raised by the pleadings were those presented in the original and supplemental Bills of Complaint filed by the Amazon Petroleum Corporation et al. and the answer [fol. 178] therein filed by the above-named Federal defendants in equity cause No. 652.

And the Court having considered the pleadings, evidence, argument and briefs of counsel, finds that complainants are entitled to injunctive relief against the Federal defendants above named.

It is therefore ordered, adjudged and decreed that the said named defendants, Archie D. Ryan, Special Agent of the Division of Investigations of the Department of the Interior, S. D. Bennett, United States Attorney for the Eastern District of Texas, and Phil. E. Baer, United States Marshall for the Eastern District of Texas, and each of them, their agents, deputies, representatives, and employees, be and they are hereby perpetually enjoined and restrained from enforcing or attempting to enforce against the complainants above named, their agents and employees, Section 4, Article 3, of the Code of Fair Competition for the Petroleum Industry issued and promulgated under and by virtue of the authority contained in the National Industrial Recovery Act; and said named defendants, their agents, deputies, representatives and employees be and they are hereby perpetually enjoined and restrained from requiring of said named complainants, their agents, servants and employees, the reports required under Regulation IV of the Rules and Regulations issued and promulgated by Harold L. Ickes, Secretary of the Interior under the authority contained in Section 10 (a) of the National Industrial Recovery Act; and said defendants and each of them above named, their agents, deputies, representatives, and employees, are further permanently enjoined and restrained from instituting any actions of a civil or criminal nature against said complainants, or either of them, for [fol. 179] alleged violations of the aforesaid Code provisions and regulations above mentioned, and are further perpetually enjoined and restrained from going upon the property of said complainants above named under and by virtue of any authority conferred or attempted to be conferred upon said defendants by the aforesaid Code provisions and regulations above mentioned.

It is further ordered, adjudged and decreed that the complainants have and recover of and from the defendants and each of them, all of their costs herein expended in this proceeding subsequent to the 17th day of February, 1934, the date upon which the decree in the statutory three-judge court above mentioned was entered, for which said costs accruing since said time execution may issue as upon a judgment at law.

It is further ordered, adjudged and decreed that the Bill of Complaint as against the defendant, J. Howard Marshall,

be and the same is hereby dismissed, and that he go hence without day with his costs in this behalf expended, for which he may have execution as in a judgment at law.

It is further ordered, adjudged and decreed that the Marshal serve upon said named defendants, Archie D. Ryan, S. D. Bennett and Phil E. Baer, a copy of this Order.

To the aforesaid Order and Decree the said defendants, and each of them, in open court duly excepted.

Dated this the 21st day of February, A. D. 1934.

(Signed) Randolph Bryant, United States District Judge.

Approved as to form.

Saye, Smead & Saye.

[File endorsement omitted.]

[fol. 180] IN UNITED STATES DISTRICT COURT

MOTION FOR FILING FINDINGS OF FACT AND CONCLUSIONS OF LAW—Filed March 17, 1934

Now come the defendants in the above entitled and numbered cases and move this Honorable Court to file its Findings of Fact specially and state its Conclusions of Law thereon in conformity with Equity Rule 70½.

Dated this 14 day of March, A. D. 1934.

(Signed) Chas. I. Francis, Attorney for Defendants.

[File endorsement omitted.]

IN UNITED STATES DISTRICT COURT

FINDINGS OF FACT AND CONCLUSIONS OF LAW—Filed March 17, 1934

This cause, above styled and numbered, together with the numbered causes consolidated therewith, came on to be heard before this Court on December 14, 1933; came the various parties complainant with their attorneys and the various parties defendant with their attorneys; and there-[fol. 181] upon said cause was heard on the application for temporary injunction and by agreement of all the parties

and with consent of the Court it was stipulated, at the conclusion of the testimony, that this cause also should be determined upon its merits; and the Court having considered the pleadings, evidence, arguments and briefs of counsel upon the issues presented, under the stipulation that such issues were those made by the Bill of Complaint and the supplement thereto filed by the Amazon Petroleum Corporation and the answer and supplement thereto filed by defendants, makes the following findings of fact:

I

That the complainants and each of them are engaged in the production of petroleum in the East Texas Field; that none of the complainants is engaged in shipping petroleum or the products thereof either intrastate or interstate, but all the oil produced by the complainants is sold on the premises where it is produced and title to such oil passes from the complainants upon its being delivered to the buyers on the premises; and that the acts of the complainants do not affect interstate commerce, except incidentally or remotely.

II

The evidence does not show that the complainants have or intend to operate their properties so as to result in waste or destruction of the natural resources of the nation so as to imperil the needs or requirements of the Army or Navy and the national defense of the nation.

III

That the defendant, Archie D. Ryan, is acting under the direction of the Secretary of the Interior to whom the Pres- [fol. 182] ident of the United States has delegated his powers and duties under the National Industrial Recovery Act for the purpose of enforcing Section 9 (c) thereof, and who, also, pursuant to the Presidential authority, acts as Administrator of the Code of Fair Competition for the Petroleum Industry; that the defendant S. D. Bennett is a duly appointed, qualified and acting United States Attorney for the Eastern District of Texas; and the defendant Phil E. Baer is the duly appointed United States Marshal for said district.

IV

That the defendant, Archie D. Ryan, while purporting to act under the direction and as Agent of the Secretary of the Interior pursuant to authority of the National Industrial Recovery Act as a matter of fact is acting beyond his lawful authority and is sued herein as an individual and not as an Agent of the Secretary of the Interior or of the United States Government, and while the defendant, Archie D. Ryan purports to be engaged in regulating interstate commerce under the order of the President made pursuant to Section 9 (c) of the National Industrial Recovery Act, and to be enforcing Section 4 of Article III of the Code of Fair Competition for the Petroleum Industry, as a matter of fact he is attempting to regulate the amount of oil that complainants may produce from their wells and to restrict the production to the allowable fixed by the Railroad Commission of Texas and the allowable fixed by the Code of Fair Competition for the Petroleum Industry.

V

That in demanding the reports complained of by the complainants and demanded under Regulation IV issued by the Secretary of the Interior pursuant to Section 10 (a) of [fol. 183] the Act in demanding the right to go upon, inspect properties, and gauge the tanks of the complainants, the defendant, Archie D. Ryan, is merely seeking to obtain information and evidence which will enable him to accomplish his real purpose of regulating and restricting production from complainants' wells and is demanding these reports and the right to inspect said properties as incident to that objective; and that all of the defendants are threatening to prosecute or to cause complainants to be prosecuted and unless enjoined will prosecute the defendants for failure to make such reports and permit the inspection of their books and records.

VI

That defendants have continually entered upon the premises of the complainants without permission of complainants and have attempted to examine the complainants' books and records relating to production, and have attempted to gauge the tanks of the complainants without the con-

sent of complainants and are threatening and will unless enjoined attempt to continue such acts and to enforce Section 4 of Article III of the Code of Fair Competition for the Petroleum Industry, adopted under Section 3 (a) of the National Industrial Recovery Act, against these complainants by criminal prosecutions under Section 3 (f) of said Act, and by proceedings in Equity under Section 3 (c) thereof; that certain respondents incident to such visitations have dug up and destroyed certain property about complainants' premises.

VII

That the acts of the defendant, Archie D. Ryan, in interfering with the complainants in the operation of their properties and in attempting to restrict the production therefrom and in attempting to compel the complainants to [fol. 184] furnish said reports and to subject their books and records to inspection and in attempting to go upon, inspect and gauge the tanks of the complainants, incident to regulating and restricting the production from their wells as above set forth, results in irreparable loss and injury to complainants from which they have no adequate remedy at law.

Wherefore, the premises considered the Court finds the following conclusions of law:

I

That the Secretary of the Interior is not an indispensable party to the cause of action asserted against the defendant, Archie D. Ryan.

II

That Regulations IV issued by the Secretary of the Interior and the sections of the Code of Fair Competition for the Petroleum Industry, as above set forth, are not authorized by the National Industrial Recovery Act and that the defendants in attempting to enforce said regulations and provisions of the Code of Fair Competition, as aforesaid, are acting without authority of law and their acts in so doing deprived the complainants of their property without due process of law.

To the foregoing findings of fact and conclusions of law, the said defendants and each of them, in open Court, duly excepted.

Dated March 16, 1934.

(Signed) Randolph Bryant, United States District Judge.

[fol. 185] [File endorsement omitted.]

IN UNITED STATES DISTRICT COURT

PETITION FOR SEVERANCE—Filed March 26, 1934

Now comes Archie D. Ryan, S. D. Bennett and Phil E. Baer, defendants in the above entitled cause, and show to the Court that they filed their joint Assignment of Errors and Petition for Allowance of appeal from the decree entered in the above entitled cause on the 21st day of February, 1934; that each of their co-defendants, the Railroad Commission of Texas, Lon A. Smith, C. V. Terrell and E. O. Thompson, James V. Allred, H. H. Wellborn, Milton Melhusen, Nat Gentry and J. Howard Marshall, have waived service of notice of appeal and request to join therein; and that each of said co-defendants has further requested that a severance be ordered.

Wherefore, Archie D. Ryan, S. D. Bennett and Phil E. Baer, defendants herein, pray that the Court make an order of severance from their co-defendants, the Railroad Commission of Texas, Lon A. Smith, C. V. Terrell and E. O. Thompson, James V. Allred, H. H. Wellborn, Milton Melhusen, Nat Gentry and J. Howard Marshall, for the purpose of an appeal to the United States Circuit Court of [fol. 186] Appeals for the Fifth Circuit from the decree entered herein on February 21, 1934, and for such other and further relief as may be proper in the premises.

Dated March 26, 1934.

(Signed) Charles Fahy, (Signed) Douglas Arant, (Signed) Chas. I. Francis, Attorneys for the Above Named Defendants.

[File endorsement omitted.]

IN UNITED STATES DISTRICT COURT

ORDER ALLOWING SEVERANCE—Filed March 26, 1934

It appearing that the Railroad Commission of Texas, Lon A. Smith, C. V. Terrell and E. O. Thompson, James V. Allred, H. H. Wellborn, Milton Melhusen, Nat Gentry and J. Howard Marshall, co-defendants in the above cause, have been duly notified and requested by Archie D. Ryan, S. D. Bennett and Phil E. Baer to join in said petition for appeal, but have failed or refused to join therein, the said Archie D. Ryan, S. D. Bennett and Phil E. Baer are hereby granted the right of appeal alone without joining said Rail-
[fol. 187] road Commission of Texas, Lon A. Smith, C. V. Terrell and E. O. Thompson, James V. Allred, H. H. Wellborn, Milton Milhusen, Nat Gentry and J. Howard Marshall as appellants.

Dated March 26th, 1934.

(Signed) Randolph Bryant, United States District Judge.

[File endorsement omitted.]

IN UNITED STATES DISTRICT COURT

NOTICE OF INTENTION TO APPEAL—Filed March 17, 1934

Archie D. Ryan, S. D. Bennett and Phil E. Baer, defendants in the above entitled cause, hereby serve notice upon the complainants herein through their attorney of record of their intention to appeal to the United States Circuit Court of Appeals, Fifth Circuit, from the decree entered herein on the 21st day of February, A. D. 1934.

Charles I. Francis, Attorney for Defendants.

[fol. 188] Due and personal service of copy of the above notice of appeal is admitted this the 14th day of March, A. D. 1934.

Saye, Smead & Saye, Attorney- for Complainants.

Due and personal service of copy of the above notice of appeal is admitted this the 15th day of March, A. D. 1934.

F. W. Fischer, Attorney for Complainants.

Due and personal service of copy of the above notice of appeal is admitted this the 15th day of March, A. D. 1934.

Edward Lee, Attorney for Intervenor M. E. Trap.

[File endorsement omitted.]

[fol. 189] IN UNITED STATES DISTRICT COURT

PETITION FOR APPEAL AND STAY OF INJUNCTION—Filed March 26, 1934

To the Honorable Randolph Bryant, Judge of said Court:

Archie D. Ryan, S. D. Bennett, and Phil E. Baer, your petitioners respectfully show:

1. Petitioners are the defendants in the above entitled cause.

2. On the 21st day of February, 1934, a final decree was entered in said cause against petitioners in the Tyler Division of the Eastern District of Texas.

3. An order has been entered severing petitioners herein from their codefendants for the purpose of an appeal.

4. Your petitioners consider themselves aggrieved by the decree aforesaid and believe there are manifest errors which are set forth in detail in the Assignment of Errors filed herewith and that an appeal may be taken by them from this Honorable Court to the Circuit Court of Appeals for the Fifth Circuit.

5. Unless this Honorable Court grants your petitioners a stay of said injunction pending disposition of the appeal herein to the Circuit Court of Appeals there will be grave and irreparable injury and damage done to your petitioners and to the many producers and refineries of petroleum and the products thereof throughout the State of Texas and elsewhere within the United States, and to the Secretary of the Interior in his efforts to administer the National Industrial Recovery Act and the Code of Fair Competition for the Petroleum Industry.

6. Your petitioners, and each of them, are employees of departments of the United States Government and have [fol. 190] been directed to prosecute appeal herein by said departments and, therefore, said appeal should be allowed without bond, obligation, or other security being required of them, as provided in Section 870, Title 28, United States Code.

Wherefore, your petitioners pray that an order be made allowing them to appeal from said decree to the Circuit Court of Appeals for the Fifth Circuit sitting at New Orleans, Louisiana; and that an order staying the injunction decreed be entered and the decree in all things be superseded pending said appeal; that no bond, obligation, or other security be required of them in connection with said appeal or stay, that citation issue as provided by law, and that a transcript of the record, proceedings and papers upon which the decree was rendered, duly authenticated, be sent to the said Circuit Court of Appeals.

(Signed) Charles Fahy, Douglas Arant, Chas. I. Francis, Attorneys for Appellants.

[File endorsement omitted.]

[fol. 191] IN UNITED STATES DISTRICT COURT

ASSIGNMENT OF ERRORS—Filed March 26, 1934

Comes now said Archie D. Ryan, S. D. Bennett and Phil E. Baer, defendants in the above entitled cause, and file the following joint Assignment of Errors, upon which they will rely in prosecution of the appeal herewith petitioned for in said cause from the decree of this Court, entered on the 21st day of February, 1934.

1

The Court erred in refusing to dismiss the bills of complaint against the defendant Archie D. Ryan, in that the Court was without jurisdiction to entertain said cause as to him because of the absence in said causes of an indispensable party defendant, to-wit, Harold L. Ickes, Secretary of the Department of the Interior.

2

The Court erred in refusing to dismiss the bills of complaint against all of the defendants.

3

The Court erred in holding that Section 4 of Article III of the Code of Fair Competition for the Petroleum Industry is not authorized by the National Industrial Recovery Act and is illegal.

4

The Court erred in failing to hold that Section 4 of Article III of the Code of Fair Competition for the Petroleum Industry is valid and constitutional.

[fol. 192] 5

The Court erred in holding that Regulation IV is not authorized by Section 10 (a) of the National Industrial Recovery Act and is not reasonable and necessary for the enforcement of Section 9 (c) of said Act, and is illegal.

6

The Court erred in failing to hold that Regulation IV is valid and constitutional.

7

The Court erred in holding that the defendants are not authorized by Section 9 (c) of the National Industrial Recovery Act and by the Code of Fair Competition for the Petroleum Industry to go upon the property of the complainants for the purpose of inspecting books and records, and further doing such acts as are reasonable necessary in inspecting such properties, gauging tanks and examining pipes and pipe connections as not reasonable nor necessary for the enforcement of Section 9 (c) of the National Industrial Recovery Act and the Code of Fair Competition for the Petroleum Industry.

8

The Court erred in failing to hold that in authorizing the acts described in paragraph 7 above the Code of Fair

Competition for the petroleum Industry and the National Industrial Recovery Act are valid and constitutional.

9

The Court erred in holding that the defendants are unauthorized to bring criminal prosecutions or actions in equity against complainants for violation of Section 4 of Article III of the Code of Fair Competition for the Petroleum Industry.

[fol. 193]

10

The Court erred in holding that the defendants are not authorized to prosecute or cause to be prosecuted the complainants for failure to submit reports required by Regulations IV.

11

The Court erred in holding that the transactions of the complainants are not in or directly affecting interstate commerce.

12

The Court erred in failing to hold that as a matter of fact 85 per cent of the oil produced in the East Texas field and of the products thereof moves in interstate commerce.

13

The Court erred in failing to hold that the preservation of the nation's petroleum resources is essential to the national defense and to the support of an army and the maintenance of a navy.

14

The Court erred in failing to hold that the production of petroleum in excess of the amount allowed by a valid state order demoralizes the interstate market for petroleum and its products on a nation-wide scale and has a direct effect on established channels of interstate commerce in petroleum and its products.

15

The Court erred in failing to hold that the production of oil in excess of the amount allocated by a valid State order causes a waste of natural resources resulting in a

depletion of the nation's supply of oil which is necessary [fol. 194] to the movement of interstate commerce, to the national defense and to the support of an army and the maintenance of a navy.

16

The Court erred in holding that the defendants are requiring reports or making inspections for any other purposes than the purposes authorized by Section 9 (c) of the National Industrial Recovery Act and Section 3 of Article IV of the Code of Fair Competition for the Petroleum Industry.

17

The Court erred in holding that the defendant, Ryan, is acting beyond the authority delegated to him by the Secretary of the Interior.

18

The Court erred in finding that the defendants have dug up and destroyed certain property about the complainants' premises.

19

The Court erred in failing to hold that a nationwile emergency exists in industry generally, and specifically in the Petroleum Industry.

20

The Court erred in failing to hold that the production of petroleum in excess of the amount allowed by a valid State order constitutes an unfair trade practice within the meaning of the National Industrial Recovery Act and the Code of Fair Competition for the Petroleum Industry.

[fol. 195]

21

The Court erred in finding that the actions of the defendants are causing, and, unless restrained, and will continue to cause irreparable loss and injury to the complainants.

22

The Court erred in finding that the defendants are depriving complainants of property without due process of law.

23

The Court erred in entering the decree granting a permanent injunction against the defendants.

24

The Court erred in entering a decree granting a permanent injunction against the defendants which restrained them from enforcing Article 4 of Section III of the Code of Fair Competition, requiring reports of producers under Regulation IV; and going upon the properties of the complainants in that said decree and injunction are not limited to the doing of such acts in connection with intrastate commerce.

Wherefore, defendants pray that said decrees may be reversed, and for such other and further relief as to the Court may seem just and proper.

Dated the 26th day of March, 1934.

(Signed) Charles Fahy, (Signed) Douglas Arant, (Signed) Chas. I. Francis, Attorney for Defendants.

[File endorsement omitted.]

[fol. 196] IN UNITED STATES DISTRICT COURT

ORDER ALLOWING APPEAL—Filed March 26, 1934

Upon petition of the defendants Archie D. Ryan, S. D. Bennett, and Phil E. Baer and it appearing to the Court that the appeal herein is being prosecuted pursuant to the direction of the Solicitor General of the United States and the Department of Justice, it is hereby ordered as follows:

1. That an appeal without bond is hereby allowed in the above-entitled cause to said defendants Archie D. Ryan, S. D. Bennett, and Phil E. Baer to the United States Circuit Court of Appeals for the Fifth Circuit from the final decree heretofore entered in said cause on the 21st day of February, A. D. 1934, granting a perpetual and permanent injunction.

2. That the perpetual and permanent injunction issued under the authority of said decree not be stayed.

3. That a citation be issued directed to the complainants herein to be and appear in the United States Circuit Court of Appeals for the Fifth Circuit sitting at New Orleans, Louisiana, within thirty days from the day of taking said appeal as required by law.

4. That the Clerk of this Court transcribe, certify and [fols. 197-199] transmit to the said United States Circuit Court of Appeals for the Fifth Circuit, a true and complete transcript of the record and all other proceedings in this cause as required by law.

Done and ordered at Beaumont, Texas, this 26th day of March, A. D. 1934.

(Signed) Randolph Bryant, Judge of the United States District Court in and for the Eastern District of Texas.

[File endorsement omitted.]

Citation in usual form showing service on F. W. Fischer et al., filed March 26, 1934, omitted in printing.

[fol. 200] IN UNITED STATES DISTRICT COURT

CERTIFICATE—Filed March 26, 1934

Elijah Crippen, being first duly sworn, deposes and says:

I hereby certify that I am an officer working under the Attorney General of the United States in the Department of Justice, with the title of "Special Assistant to the Attorney General."

I hereby further certify that the Solicitor General of the United States and the Department of Justice have authorized and directed the following defendants, namely, Archie D. Ryan, S. D. Bennett, and Phil E. Baer, to take an appeal in said cause from the decree of this Court granting a permanent injunction, and to apply for an order staying and superseding said permanent injunction.

Elijah Crippen.

Subscribed and sworn to before me this 24th day of March, A. D., 1934. Mrs. H. I. Griffies, Notary Public in and for Smith County, Texas. My commission expires June 1, 1935. (Seal.)

[fol. 201] [File endorsement omitted.]

IN UNITED STATES DISTRICT COURT

NOTICE OF ELECTION FOR PRINTING RECORD—Filed April 2, 1934

Archie D. Ryan, S. D. Bennett, and Phil E. Baer, appellants in the above cause, hereby give notice of their election to take and file in the Circuit Court of Appeals for the Fifth Circuit to be printed under the supervision of its Clerk a transcript of the record herein.

This the 2 day of April, A. D., 1934.

Chas. I. Francis, Attorney for Appellants.

[File endorsement omitted.]

[fol. 202] IN UNITED STATES DISTRICT COURT

STIPULATION AS TO CONTENTS OF TRANSCRIPT OF RECORD—Filed April 2, 1934

It is hereby stipulated and agreed by and between the attorneys for the respective parties that the transcript of record to be filed in the United States Circuit Court of Appeals for the Fifth Circuit pursuant to the appeal heretofore allowed herein, shall include the following:

1. Caption.
2. Bill in Equity.
3. Answer of the Defendants, Archie D. Ryan, S. D. Bennett and Phil E. Baer.
4. Amendment and Supplement to Original Bill.
5. Answer to Amendment and Supplement to Original Bill.
6. Amendment and Supplement Bill.
7. Stipulation of all parties, dated March 15, 1934.
8. Statement of the Evidence and Waiver of Notice.
9. The Decree.

10. Motion for Filing Findings of Fact and Conclusions of Law.
11. Findings of Fact and Conclusions of Law.
12. Petition for Severance.
13. Order Allowing Severance.
14. Notice of Intention to Appeal.
15. Petition for Appeal and Stay of Injunction.
16. Assignment of Errors.
17. Order Allowing Appeal Without Bond.

[fol. 203] 18. Citation on Appeal and Acceptance of Service thereof.

19. Certificate of Direction to Appeal.
20. Notice of Election for Printing Record.
21. Stipulation as to Contents of Transcript of Record.
22. Clerk's Certificate.

Charles Fahy, Douglas Arant, Chas. I. Francis, Special Asst. to Atty. Genl., Attorneys for Defendants and Appellants. W. T. Saye, Saye, Smead & Saye, F. W. Fischer, Edward Lee, Attorneys for Plaintiffs and Appellees.

[File endorsement omitted.]

[fol. 204] IN UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF TEXAS, TYLER DIVISION

No. 652. Equity

AMAZON PETROLEUM CORPORATION, et al., Complainants,

v.

RAILROAD COMMISSION OF TEXAS et al., Respondents

No. 635. Equity

PANAMA REFINING COMPANY et al., Complainants,

v.

A. D. RYAN et al., Respondents, And Cases Consolidated Therewith

OPINION OF THE COURT—Filed Feb. 12, 1934

BRYANT, District Judge:

In these related cases complainants attack the validity of an Act of Congress known as the National Industrial Re-

covery Act, and certain regulations of the Secretary of the Interior, the provisions of the Code for the petroleum industry established under the Act, upon constitutional grounds.

In the Anding and Panama Refining Company cases a rule to show cause was issued returnable October 2, calling upon the respondents, Ryan, et al., to show cause why a preliminary injunction should not be granted as prayed. On the hearing upon this rule, and the respondent's answer [fol. 205] thereto, the rule was discharged and the application for preliminary injunction denied. The cause was thereupon set for final hearing upon November 6th. Shortly thereafter, a similar attack was made upon the statute and the regulations by the complainants in the other cases listed above, in which the individual members of the Railroad Commission of Texas, their agents, the Attorney General of Texas, and various district and county attorneys of the State were made respondents, and in which the complainants invoking the Fourteenth Amendment, sought injunctive relief, interlocutory and final, to restrain enforcement against them of certain orders of the Railroad Commission limiting their production of oil.

It appearing that the latter cause of action presented a case for three judges, a statutory court was ordered assembled to pass upon the constitutional question raised.

The statutory court in limine suggested its want of jurisdiction over the cause of action against the Federal respondents as not within Section 380, and decided that such cause of action was for the consideration of the District Judge alone.

All parties desiring the application to be heard and determined as to both causes of action, it was in open court stated and agreed to by all parties, and the judges consenting, made matter of record, that each cause should be regarded as submitted to and to be decided by the tribunal having jurisdiction of it. It was further stipulated of record in the latter suits filed, that the suits be submitted on the evidence taken at such hearing, both on the application for interlocutory injunction and on the merits.

The pertinent portions of the Act of Congress involved are as follows:

[fol. 206] "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 sonctions 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 [fol. 207] 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.

(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.

(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

Sec. 3. (a) Upon the application to the President by one or more trade or industrial associations or groups, the [fol. 208] 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 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.

(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 trans-[fol. 209] action 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.

(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.

(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.

(f) When a code of fair competition has been approved or prescribed by the President under this title, any violation of any provision thereof in any transaction in or affecting interstate or foreign commerce shall be a misdemeanor and upon conviction thereof an offender shall be [fol. 210] fined no more than $500 for each offense, and each day such violation continues shall be deemed a separate offense.

Oil Regulation

Sec. 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.

(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 monopoly.

(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.

[fol. 211] Rules and Regulations

Sec. 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.

(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.''

The President, pursuant to the claim of power granted to him by said Section 9 (c), issued an Executive Order prohibiting the transportation in interstate and foreign commerce of all 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 the State.

The President duly delegated to the Secretary of the Interior his power and functions by Executive Order and authorized the Secretary of the Interior to make all necessary or desirable rules or regulations.

Thereafter, the Secretary of the Interior issued rules and regulations purporting to effectuate said Executive Order and Section 9 (c) of the Act. It is paragraph 4 and 5 of these rules and regulations which are attacked in [fol. 212] the present suits and they provide substantially as follows: Regulation 4 requires each producer of petroleum to file a statement under oath not later than the 15th day of each month with the Division of Investigations of the Department of Interior, giving (1) the residence and post office address of the producer; (2) the location of his producing properties and wells, the allowable production therefor as fixed by the State agency; (3) the daily production in barrels; (4) details of deliveries of petroleum and the amount in storage at the beginning and end of the month; and (5) a declaration that no part of the petroleum or products thereof produced and shipped has been produced or withdrawn in violation of State law or valid regulation.

Regulation 5 requires every refiner to file a statement not later than the 15th of each month, with said Division of Investigations, containing the following information: (1) the residence and post office address of the refiner; (2) the place and date of receipt, with names and business addresses of the producers or parties from whom the petroleum was received, the amount received, and the amount held in storage on the last day of the calendar month preceding the period covered by the report; (3) details as to the disposition of said petroleum and the amount 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 or disposed of, was produced or withdrawn from storage in excess of the amount permitted to be produced or withdrawn from storage by State law or valid regulation.

The Code of Fair Competition, as provided for in Section 3 (a) of the Act, as it relates to the petroleum industry, provides among other things as follows:

(a) That complainants and other producers engaged in [fol. 213] the producing of oil shall pay their employees not less than a specified wage;

(b) Shall not work their employees in excess of a specified number of hours per day;

(c) That all employees engaged in similar work shall work the same number of hours, and be paid at least a specified wage, the hours of service and rates of pay being subject to change by the President;

(d) That complainants, and all persons subject to the code, shall insert in all contracts made by them for work to be done in the industry, whereby the contractor shall agree that all of his employees, and all employees of any subcontractor shall be paid the rates prescribed by said code, and that the schedule of hours of all such employees conform to these prescribed by said code;

(e) That complainants, and other members of said industry, shall not, as a condition of employment, require any employee or anyone seeking employment to join any union or refrain from joining any union or labor organization;

(f) That complainants, and other oil producers be prohibited from storing oil or withdrawing oil from storage without the consent and approval of a Planning and coordinating Committee appointed by the President;

(g) That not in excess of 100,000 barrels of oil shall be withdrawn from storage in the United States on any day;

(h) That required production of oil to balance consumer demand for petroleum products shall be estimated by a [fol. 214] Federal agency designated by the President; that allocation of such requirements shall be made among the states, and no state shall be permitted to produce in excess of such allocation, all allocations to be approved by the President.

The general claim of complainants as against respondents is substantially as follows: that the complainants (producers) are not engaged in shipping any oil either intrastate or interstate, but are engaged solely in the business of producing and marketing oil. The oil is sold by them on their respective leases and title to such oil passes from complainants upon its being delivered to buyers on the premises where it is being produced. They further claim that the respondents are purporting to act under authority conferred by the National Recovery Act, the Executive Order above referred to, and that the President, assuming to act in his official capacity but without any authority whatever, approved and promulgated what is known as the Code of Fair Competition for the Petroleum Industry, and that by the Executive Order referred to, he attempted to delegate to the Secretary of the Interior full power and authority to enforce and carry into effect the provisions of the National Recovery Act relating to the Petroleum Industry. That the respondents are attempting to enforce the aforesaid code and orders as against these complainants and as an incident to such enforcement are demanding of and compelling complainants to furnish them with reports required by the regulations referred to above, and that as an incident to the enforcement of such demand, they make repeated inspections of complainants' properties and gauge their tanks to ascertin the amount of oil being produced by them. That certain respondents, [fol. 215] incident to such visitations have dug up and destroyed certain property about complainants' premises, and will in the future continue to assert such rights of visitation and inspection and invasion of complainants' property rights unless restrained from so doing; that the Federal officers have stated that if the complainants do not comply with said orders and regulations and provisions of the code, they will cause them to be arrested and prosecuted under Section 9 (c) of the National Recovery Act, and that unless restrained said Federal officers will institute and prosecute actions, both civil and criminal against the complainants, which will result in irreparable injury and damage to complainants, for which they have no adequate remedy at law.

The only difference in the case made as to the refiners is that they are engaged exclusively in the production and manufacture of products from crude petroleum; that they

are not engaged in interstate commerce and that none of their products when sold by them go into the channels of interstate commerce.

The evidence is without contradiction that the complainants in this case are not actually engaged in interstate commerce.

The claim is made that the provisions of the National Recovery Act, code and regulations, are null and void because:

(a) It is an attempt by Congress to delegate its legislative powers to the President.

(b) It is an attempt by Congress to vest in the President the powers of a supreme dictator, contrary to the National Constitution, and contrary to our Republican form of government.

(c) It authorizes the President to exercise police powers not granted to the National Government by the several [fol. 216] states of the Union, and is in violation of the 10th Amendment to the National Constitution.

(d) It deprives complainants of their natural and inherent rights contrary to the 9th Amendment to the National Constitution.

(e) It deprives complainants of their property without due process of law, in violation of the 5th Amendment to the National Constitution.

(f) It violates both the 4th and 5th Amendments to the National Constitution, in that it attempts to give the Federal Government the right to compel the complainants and others to produce their papers and effects, compels them to give evidence against themselves, and deprives them of liberty and property without due process of law.

(g) It is contrary to the 7th Amendment to the National Constitution in that it imposes excessive fines and cruel and unusual punishment.

To this claim or right by complainants, respondents answer by saying in general that under a declared emergency the powers of Congress are expanded beyond their extent under ordinary circumstances, and in ordinary times, and that under the commerce clause, the Federal Government

has the power to control the production of petroleum, and that while ordinarily the production of oil or refining thereof is not interstate commerce, that this may so affect interstate commerce so as to come within the regulatory power of Congress. That the Act does not constitute an unlawful delegation of legislative power and is valid.

The majority opinion this day filed has adjudged that [fol. 217] the orders of the Railroad Commission of Texas are valid.

For the purposes of this opinion, it may be conceded that Congress may 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. The further exceedingly doubtful concession may be made that the Act does not delegate legislative power and authority to the President so that the essential point for decision is as to the validity of the regulations issued by the Secretary of the Interior and the provisions of the code and their binding effect, if any, upon the complainants, under the facts disclosed in this matter.

The above concessions and assumptions are indulged because I have reached the conclusion that the regulations and the code provisions involved have no constitutional basis as applied to the facts of this case.

This is another of those cases which have so frequently engaged the attention of the national courts involving as it essentially does a contest between state and Federal authority and more particularly the extent to which the Federal Government may go in its exercise of authority in regulation of matters ordinarily committed to the regulation of the States.

Owing to the apparent importance of the matter, a statement of my reasons for the conclusion reached is deemed proper.

It has been decided specifically and unequivocally by the Supreme Court that mining is not interstate commerce and the power of Congress does not extend to its regulation as such. United Mine Workers of America v. Coronado Coal Company, 259 U. S. 407. Champlin Refining Co. v. Corp. Comm., 286 U. S. 210.

[fol. 218] As said by the Supreme Court in Oliver Iron Mining Co. v. Lord, 262 U. S. 171, 178: "Mining is not

interstate commerce but like manufacturing is a local business subject to local regulation and taxation. Its character in this regard is intrinsic, is not affected by the intended use or disposal of the product, is not controlled by contractual engagements and persists even though the business be conducted in close connection with interstate commerce."

The decisions of the Supreme Court further show that the making or manufacturing of goods are not commerce nor does the fact that these things are to be afterward shipped or used in interstate commerce make their production a part thereof. Hammer v. Dagenhart, 247 U. S. 251, 272.

The Supreme Court said in the famous Child Labor case: "The control by Congress over interstate commerce cannot authorize the exercise of authority not entrusted to it by the Constitution. Pipe-line cases, 243 U. S. 548, 560. The maintenance of the authority of a State over matters purely local is as essential to the preservation of our existence as is the conservation of the supremacy of the Federal power in all matters entrusted to the nation by the Federal Constitution. In interpreting the Constitution it must never be forgotten that the nation is made up of States to which are entrusted the powers of local government. And to them and to the people the powers not expressly delegated to the national government are reserved. Lane County v. Oregon, 7 Wall. 71, 76. The power of the States to regulate their purely internal affairs by such laws as seem wise is inherent and has never been surrendered to the general government * * * This court has no more important function than that which devolves upon it the obligation to preserve inviolate the constitutional limita- [fol. 219] tions upon the exercise of authority, federal and State, to the end that each may continue to discharge harmoniously with the other the duties entrusted to it by the Constitution."

As said in Ohio Oil Company v. Indiana, 177 U. S. 190, 211, 212: "In view of the fact that regulations of natural deposits of oil and gas and the right of the owner to take them as an incident of title in fee to the surface of the earth, as said by the Supreme Court of Indiana, is ultimately but the regulation of real property and they must hence be treated as relating to the preservation and protection of rights of an essentially local character."

In the case of Kidd v. Pearson, 128 U. S. 1, the Supreme Court in discussing the extent of the authority of the Federal Government under the commerce clause, among other things said: "The line which separates the province of Federal authority or the regulation of commerce from the powers reserved to the States has engaged the attention of this court in a great number and variety of cases. The decisions in these cases, though they do not in a single instance assume to trace that line throughout its entire extent or to state any rule further than to locate the line in each particular case as it arises, have almost uniformly adhered to the fundamental principle which Chief Justice Marshall in the case of Gibbons v. Ogden, 9 Wheat 1, laid down as the nature and extent of the grant of power to Congress on this subject and also the limitations, expressed and implied, which it imposes upon State legislation with regard to taxation, to the control of domestic commerce and to all persons and things within its limits of purely internal concern * * * no distinction is more familiar to the common mind nor more clearly expressed in political literature than that between manufacture and commerce. [fol. 220] Manufacture is transformation, the fashioning of raw materials into a change of form for use; the functions are different; the buying and selling and the transportation incident thereto constitutes commerce and the regulation of commerce in a constitutional sense embraces the regulation at least of such transportation. Commerce with foreign countries and among the states strictly considered consists in intercourse and traffic, including in its terms navigation and the transportation and transit of persons and property as well as the purchase, sale and exchange of commodities. If it be held that the term includes the regulation of all such manufactures as were intended to be the subject of commercial transactions in the future, it is impossible to deny that it would also include all productive industries that contemplate the same thing. The result would be that Congress would be invested to the exclusion of the States with a power to regulate not only manufacturers, but also agriculture, horticulture, stock-raising, domestic fishing, mining * * * in short, every branch of human industry. * * * 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.'"

The Supreme Court again in the case of County of Mobile v. 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 State 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.

[fol. 221] In the case at bar the regulations sought to be enforced against the complainants apply only to the East Texas and the 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 may be argued that the purpose of these statutes as set forth in the declarations of emergency, and of policy by Congress are much broader than the commerce power of Congress and that these purposes of national rehabilitation are sought to be accomplished through a variety of effort of mutual and voluntary agreement which carry no penalties and also by a variety of mere money spending activities of the Federal government particularly in the aid of agriculture.

It is nevertheless true however, that in those provisions in which the government exhibits the heavy hand of authority to control or to compel a surrender of individual right and individual initiative in the fields of agriculture and of industries with pains and penalties, the statutes themselves in their very terms base the power to enforce upon the commerce clause. In this respect the intention of Congress has been made clear.

This conclusion finds support in the legislative history of this Act. Senator Wagner of New York, who was largely instrumental in the formulation and drafting of this legislation, said: "I have been discussing codes which are vol-

untary both as to their competitive practices and as to their labor provisions, and it is primarily upon such spontaneous action that the bill relies. It is not my intention to substitute government for business, or to remove from the [fol. 222] shoulders of business men the responsibility for economic recovery. The duties of industrialists are enhanced by the opportunities which the bill offers for constructive cooperation." Again, in the same address, he said: "The question of the proper exercise of Federal authority depends upon whether the bill confines itself to national matters or whether it attempts to extend to matters which are of purely local concern. The answer is clear. The language of the bill expressly provides that any compulsory measures such as the licensing feature of the bill, and any penalties for violation of the codes *shall be confined to business in or affecting interstate commerce. Thus no attempt is made to extend Federal action to an area of activity not covered by the commerce clause of the Constitution.*"

Legislative intent is made plain when the statute, after making provision for the codes and providing that said codes shall be the standards of fair competition says: "Any violation of such standards *in any transaction in or affecting interstate or foreign commerce* shall be deemed an unfair method" etc. Section 3 (b).

It is a matter of common knowledge that the provisions of the codes do not stop with interstate commerce or with those trades or industries that are interstate in character. There is no pretense of such limitation. To bring such transactions within the constitutional regulatory power of Congress enforceable under penalty of the law, it is necessary to consider that Congress may under the power to regulate interstate and foreign commerce reach back into the states and control without limit the source of production and manufacturing processes, dictate the hours of labor, wages to be paid, the conditions of employment and the relation of employer and employee.

That such was not the intent of Congress except as it [fol. 223] related to interstate transactions in fact is thus made clear.

It being made clear from the evidence in this case that complainants have not subscribed to such code and are not engaged in interstate commerce, they are not subject to the

pains and penalties provided by the Act for violation of such code, because they are clearly not engaged "in any transaction in or affecting interstate or foreign commerce."

To sustain a pretension to powers so vast and so unprecedented and so unheard of should certainly find its basis in the clearest expression of intent upon the part of Congress. Under the plain terms of the Act the expression of intent is to the contrary.

The power to regulate commerce between the states is without question one of the full, complete and plenary powers of Congress. As was said by the Supreme Court in the cases of Houston Texas Railroad v. United States, 234 U. S. 342, "It is unnecessary to repeat what has frequently been said by this court with respect to the complete and paramount character of the power confided to Congress to regulate commerce among the several states. It is of the essence of this power that where it exists it dominates. Interstate trade was not left to be destroyed or impeded by the rivalries of local government. The purpose was to make impossible the recurrence of the evils which had overwhelmed the confederation and to provide the necessary basis of national unity by insuring uniformity of regulation against the conflicting and discriminating state legislation. By virtue of the comprehensive terms of the grant, the authority of Congress is at all times adequate to meet the varying exigencies that arise and to protect the national interest by securing the freedom of interstate commercial intercourse from local control. Gibbons v. Ogden, 9 Wheat [fol. 224] 1, 196, 224; Brown v. Maryland, 12 Wheat 419, 446; County of Mobile v. Kimball, 102 U. S. 691, 696, 697; Smith v. Alabama, 124 U. S. 45, 473; Second Employers Liability Cases, 223 U. S. 1, 47, 53, 54; Minnesota Rate Cases, 230 U. S. 352, 398, 399.

It would neither be instructive nor profitable to undertake to review the numerous cases in which the Supreme Court has upheld the exercise of this power. It may simply be admitted that they go the full length in sustaining legislation by Congress in regulating local conditions or activities which have the effect of directly interfering with interstate commerce so as to be an obstruction or burden thereon.

In Board of Trade v. Olsen, 262 U. S. 1, where the Grain Futures Act was involved, it was held that "whatever amounts to more or less constant practice and threatens to obstruct or unduly to burden the freedom of interstate com-

merce 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 relation of the subject to interstate commerce and its effect upon it are clearly non-existent."

Here Congress has not declared any local activity or condition as constituting a burden upon interstate commerce. As is said in United States v. Ferger, 260 U. S. 199: "It follows that sales for future delivery on the Board of Trade are not in and of themselves interstate commerce. They cannot come within the regulatory power of Congress as such *unless they are regarded by Congress from the evidence before it as directly interfering with interstate commerce so as to be an obstruction or burden thereon.*"

[fol. 225] As was further said in the Olsen case: "In the Act we are considering Congress has expressly declared that transactions and prices of grain in dealing in futures are susceptible to speculation, manipulation and control which are detrimental to the producer and consumer and persons handling grain in interstate commerce and render imperative for the protection of such commerce and the national public interest therein."

Here there is no such expression of judgment finding or will by Congress. There is not here shown any entry by Congress either directly or through its agency into the exclusive province of the State in dealing with intrastate activities except where those engaged in purely intrastate activities consent to the provisions of the code by subscribing thereto, which is not the case here.

There is not perceived in the terms of this Act any intention, express or implied, by Congress to invade the sphere of purely local action in aid of or to remove burdens or restrictions upon interstate commerce. In such connection it is interesting to note the observations of the present Chief Justice in an argument before the Federal Oil Conservation Board in 1926, when he was speaking in the capacity as counsel for his client, The American Petroleum Institute, and wherein he quotes the language of the Supreme Court as found in the Coronado case and the Oliver Mining Company v. Lord, supra to show that oil production is not commerce and then proceeds as follows:

"It may therefore be safely taken for granted that under the powers to regulate commerce Congress has no constitutional authority to control the mere production of petroleum on lands (other than Indian lands) within the territory of a State. All plans for requiring unit operation or otherwise, which involved the assertion of such a power on [fol. 226] the part of Congress do not require discussion. They proceed from an utterly erroneous conception of Federal power. It does not further the policy of conservation to take up the public attention with futile proposals which disregard the essential principles of our system of government."

Further, he stated: "I am aware that it has been suggested that such Federal power to control production within the states might be asserted by Congress because it could be deemed to relate to the provision for the common defense and the promotion of the general welfare." (An argument made in this case in the brief of the Solicitor of the Department of Interior.) The Chief Justice continuing said: "Reference is sometimes made in support of this view to the words of the preamble of the Federal Constitution. But as Story says 'The preamble never can be resorted to to enlarge the powers confided to the general government or any of its departments. It cannot confer any power per se; it can never amount, by implication, to an enlargement of any power expressly given.' ". 1 Story on the Constitution, Sec. 462. And this statement was approved by the Supreme Court of the United States in Jacobsen v. Mass., 197 U. S. 11, 22.

"The suggestion to which I have referred is an echo of an attempt to construe Article I, Section 8, subdivision 1 of the Constitution of the United States, not as a power 'to lay and collect taxes, duties, imposts, and excises, to pay the debts and provide for the common defense and general welfare of the United States,' but as conferring upon Congress two distinct powers, to wit: (1) the power of taxation and (2) the power to provide for the common defense and the general welfare. In this view, it has been urged that Congress has the authority to exercise any power that [fol. 227] it might think necessary or expedient for the common defense or the general welfare of the United States. Of course, under such a construction the government of the United States would at once cease to be one of enumerated powers and the powers of the states would be wholly illu-

sory and would be at any time subject to be controlled in any matter by the dominant Federal will exercised by Congress on the ground that the general welfare might thereby be advanced. That, however, is not the accepted view of the Constitution. (1 Story on the Constitution, secs. 907, 908; 1 Willoughby on the Constitution, sec. 22.) The government of the United States is one of enumerated powers and is not at liberty to control the internal affairs of the states respectively such as production within the States, through assertion by Congress of a desire either to provide for the common defense or to promote the general welfare.''

The government claims that under a declared emergency powers of Congress are expanded beyond their extent under ordinary circumstances and in ordinary times, and relies upon the cases of Highland v. Russell, 279 U. S. 253; Block v. Hirsh, 256 U. S. 135; Brown v. Feldman, 256 U. S. 170; Wilson v. New, 243 U. S. 332; Chastleton v. Sinclair, 264 U. S. 543.

In each of the above cases the action complained of was predicated upon an actual existing power of government and the emergency was only the occasion for bringing the power into exercise.

However, as has been very aptly said by the Supreme Court in the recent case of Home Building and Loan Association v. John H. Blaisdell & Wife, 290 U. S. 255, ''emergency does not create power. Emergency does not increase granted power or remove or diminish the restrictions imposed upon power granted or reserved. The Constitution [fol. 228] was adopted in a period of grave emergency. Its grants of power to the Federal government and its limitations of the powers of the States were determined in the light of emergency and they are not altered by emergency. What power was thus granted and what limitations were thus imposed are questions which have always been and always will be the subject of close examination under our constitutional system.''

''While emergency does not create power emergency may furnish the occasion for the exercise of power. 'Although an emergency may not call into life a power which has never lived, nevertheless emergency may afford a reason for the exertion of a living power already enjoyed.' '' Wilson v. New, 243 U. S. 348.

By 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 the State. Any violation of any order of the President issued under the provisions of this subsection shall be punishable," etc.

By Section 10 (a) "The President is authorized to prescribe such rules and regulations as may be necessary to carry out the purpose of this title."

Indulging as is indicated above, the violent presumption that Section 9 (c) is valid in the face of the complaint made against it to the effect that it is an abdication by Congress of its function of legislating and an unconditional delegation of authority to the President of its power to legislate, the inquiry arises as to the validity of the regu- [fol. 229] lations made pursuant to this provision. It might be said in passing that there cannot be perceived from this expression of Congress any expression of will or intent of its own, and that it prescribes no penalty for a violation of the Act, but that the penalty prescribed is for violation of any orders that the President might make under the Act and that it further provides that the President may terminate the same at any time he sees fit.

Entertaining as I do the gravest misgivings, if not the absolute certainty of conviction that this provision of the Act is invalid by reason of its delegation to the Executive of legislative authority, yet conceding it for the purposes of the decision to be valid, it is obvious that the President and his agents in their rules and regulations could exercise no greater authority nor to any greater extent than that which was exercised by Congress itself. This is limited to the transportation in interstate and foreign commerce of petroleum and the products thereof, etc.

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 v. C. V. Terrel, et al., 459 in Equity in this court. Counselman v. Hitchcock, 142 U. S. 547. Interstate Commerce Commission v. Brimson, 154 U. S. 448. Harriman v. Interstate Commerce Commission, 211 U. S. 408.

As there is nothing contained in the statute authorizing the action complained of on the part of the respondents, it is clear that such regulations requiring such reports and the going upon the property of the complainants by the [fol. 230] respondents, gauging their tanks and digging up their pipelines are without authority of law.

But the respondents say that the regulations in question are: (1) reasonably necessary to carry out the purposes of the Act and (2) that they do not infringe upon constitutional rules, but there cannot be read into the Act any intention of Congress to invade the rights of the State to regulate matters of purely local concern and regulation such as the production of oil and the refined products thereof where they have no relation to and do not go into interstate commerce, and it is not competent for the Secretary of the Interior, however good his motives, to enlarge by regulation upon the provisions of the Act itself.

Since the Act in terms only authorizes the prohibition of the transportation in interstate and foreign commerce of petroleum and the products thereof; it certainly cannot be extended to cover by regulation those who are obviously not engaged in the transportation of such products in interstate or foreign commerce or engaged at all in interstate or foreign commerce.

The other provisions of Section 9 (c) relating to transportation in interstate commerce recognize the validity of State regulations and the action of the State regulatory body in fixing the amount of withdrawals and the amount to be produced. This in itself is a denial of any intention upon the part of Congress to grant to national officers the right to act in regard to the production of crude oil or the manufacture of its products.

Such action by officers of the National government is obviously an indirection and evasion contrary to the terms of the Act itself in an attempt to regulate and control the [fol. 231] production of oil and the manufacture of products therefrom, a matter committed solely to the discretion of the State.

As was said in Stafford v. Wallace, 258 U. S. 496, where the Act gave the Secretary of Agriculture a large measure of control over the stockyards of the country and which control extended to practically all the methods of doing business therein, even to the price to be charged for the services rendered in the stockyard. The Supreme Court

said: "What there 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 Congres 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 relation of the subject to interstate commerce and its effect upon it are clearly non-existent." Here there has been not only no determination by Congress of a practice there threatens to obstruct or unduly to burden the freedom of interstate commerce except as it relates, if at all, to the transportation in interstate and foreign commerce of petroleum and its products. It has not considered and decided the fact of any other danger to or burden upon interstate commerce and the regulations of the Secretary of the Interior certainly cannot override and enlarge the determinations of Congress by mere regulation to the prejudice of the rights of the State over matters of purely local concern.

The case here is about the same as Stafford v. Wallace, if, under the facts of that case the Secretary of Agriculture had by regulation required that every domestic producer of livestock, engaged solely in intrastate commerce, give him information as to the kind and character, [fol. 232] description and age, color and sex of the livestock so raised, something which obviously had no relation to the matter of local practice or condition which Congress was attempting to affect by regulation: then the situation there and here would be fairly comparable. Such a requirement would have had no reasonable relation to the expressed will of Congress and so here. The regulations of the Secretary of the Interior have no reasonable or any relation to the will of Congress expressed in this Act. To admit of the authority of the Secretary of the Interior to make such regulations as those involved here is to go in the face of the terms of the Act itself. Such an invasion of the rights of the States is not permissible in our dual form of Government.

The facts of this case clearly and obviously disclose that the regulations seek by indirection to evade constitutional limitations by superseding State authority to which the power is clearly committed to regulate the local production of crude oil and to supervise the manufacture of products therefrom.

As said in Boyd v. United States, 116 U. S. 616: "Illegitimate and unconstitutional practices get their first footing in that way, namely, by silent approaches and slight deviations from legal modes of procedure.

This can only be obviated by adhering to the rule that Constitutional provisions for the security of person and property should be liberally construed. A close and literal construction deprives them of half their efficacy and leads to gradual depreciation of the right as if it consisted more in sound than in substance. It is the duty of courts to be watchful for the Constitutional rights of the citizen and against any stealthy encroachments thereon. Their motto should be obsta principiis."

[fol. 233] As if apropos of the situation here presented, John F. Dillon, addressing himself to the constitutional provisions written for the protection of life, liberty and property, years ago said: "If there is any problem which can be said to be yet unsettled it is whether the bench of this country, State and Federal, is able to bear the great burden of supporting under all circumstances the fundamental law against popular or supposed popular demands for enactments in conflict with it. It is the loftiest function and the most sacred duty of the judiciary * * * unique in the history of the world * * * to support, maintain and give full effect to the Constitution against every act of the legislature or the Executive in violation of it. This is the great jewel of our liberties. We must not, 'like the base Judean, throw a pearl away richer than all his tribe.' This is the final breakwater against the haste and passions of the people. Against the tumultuous ocean of Democracy. It must at all costs be maintained." Dillon's Laws and Jurisprudence of England and America, page 214.

The above conclusions obviate the necessity of discussion of the other constitutional questions raised.

A decree may be presented in accordance herewith.

[File endorsement omitted.]

[fol. 234] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 235] That thereafter the following proceedings were had in said cause in the United States Circuit Court of Appeals for the Fifth Circuit, viz:

[fol. 236] IN THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT

No. 7350

ARCHIE D. RYAN, S. D. BENNETT, PHIL E. BAER, Appellants,

vs.

AMAZON PETROLEUM CORPORATION et al., Appellees

Motion of Appellants for Supersedeas and Stay

MOTION OF APPELLANTS FOR SUPERSEDEAS AND STAY AND AFFIDAVIT IN SUPPORT—Filed April 4th, 1934

To the Honorables the Justices of the United States Circuit Court of Appeals for the Fifth Circuit:

Acting pursuant to the direction of the Solicitor General of the United States and the Department of Justice, come now the above named appellants, through their attorneys, Charles Fahy, Douglas Arant and Chas. I. Francis, and show unto your Honors that on the 21st day of February, 1934, the Honorable Randolph Bryant, Judge of the United States District Court for the Eastern District of Texas, entered a decree granting a permanent and perpetual in-[fol. 237] junction in a certain cause entitled Amazon Petroleum Corporation et al., plaintiffs, versus Archie D. Ryan et al., defendants, in Equity Cause No. 652 and Consolidated Causes 667, 505, 595, 621 and 665, then pending in said Court.

The District Court by its decree granted a permanent and perpetual injunction enjoining and restraining Archie D. Ryan, Special Agent of the Division of Investigations, Department of the Interior of the United States, S. D. Bennett, United States Attorney for the Eastern District of Texas, and Phil C. Baer, United States Marshal for the Eastern District of Texas, and each of them, their agents, deputies, representatives and employees, from enforcing or attempting to enforce against the complainants

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Section 4, Article III of the Code of Fair Competition for the Petroleum Industry; from requiring from the complainants the reports required under Regulation IV of the Rules and Regulations issued and promulgated by the Secretary of the Interior under authority contained in Section 10 (a) of the National Industrial Recovery Act; from bringing any action, civil or criminal, against the complainants for alleged violations of the aforesaid Code and Regulations, and from going upon the property of the complainants by virtue of any authority conferred or attempted to be conferred by the aforesaid Code and Regulations. Appellants urge below and again urge here that the District Court erred by the reasons specifically set forth in the Assignment of Errors. Appellants, pursuant [fol. 238] to the direction from the Solicitor General of the United States and the Department of Justice, have taken appeal from said decree and permanent injunction and the same has been duly allowed by said District Judge.

On the 26th day of March, A. D. 1934, your Appellants petitioned the District Court in said cause for a supersedeas and stay of said decree and injunction pending disposition of this appeal; and the District Court denied said supersedeas and stay of the injunction.

Unless this Honorable Court grants a supersedeas in this cause and stays all proceedings under or by virtue of said order, there will be grave and irreparable injury and damage done to said appellants and to the producers of petroleum in the State of Texas and elsewhere throughout the United States, and to the Secretary of the Department of the Interior in his administration of Section 9 (c) of the National Industrial Recovery Act. The effect of the decree and the injunction will be to bring to a complete halt the Government's program in and for the petroleum industry in the State of Texas and elsewhere throughout the United States, and a substantial tendency towards the breakdown of the recovery of the entire petroleum and allied industries throughout the United States. One of the cornerstones of the present national program is in virtual suspension and the conservation of a natural resource essential to the national defense is seriously imperiled.

[fol. 239] The appellants further state that in their opinion the order of said District Court granting said permanent injunction should and will be reversed, or, at least,

that it appears that there is reasonable doubt as to whether the order of said District Court should be sustained.

Wherefore, appellants pray this Honorable Court to enter an order of supersedeas, without bond, staying the permanent injunction granted by the decree entered in this cause on February 21, 1934, and commanding said District Court, its Judge, Clerks and Marshals to refrain from taking or suffering to be taken before them any further proceedings pursuant to or by virtue of, said decree granting said injunction herein, until the hearing and decision by this Court of the said appeal and the return of the mandate thereon; and ordering that good and sufficient service of such order of this Court shall be deemed made by lodging in the office of the Clerk of the United States District Court for the Eastern District of Texas, Tyler Division thereof, a true copy of this motion and the order of the Court entered thereon; and for such further relief as to this Court may seem proper.

Charles Fahy, John F. Davis, Chas. I. Francis, Special Asst. to the Atty. Gen'l, Attorneys for Appellants, 617 Citizens Nat. Bank Bldg., Tyler, Texas.

[fol. 240] IN THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT

No. —

A. D. RYAN et al., Appellants,

vs.

PANAMA REFINING COMPANY et al., Appellees

No. —

ARCHIE D. RYAN et al., Appellants,

vs.

AMAZON PETROLEUM CORPORATION et al., Appellees

AFFIDAVIT IN SUPPORT OF MOTIONS FOR SUPERSEDEAS AND STAY ORDERS

Before me, the undersigned authority, a Notary Public in and for said County and State, on this day personally appeared Chas. I. Francis, known to me to be the identical person whose name is subscribed to this affidavit and who being by me duly sworn on oath deposes and says:

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My name is Chas. I. Francis. I am Counsel of Record in the Panama and Amazon cases. I am an Assistant Solicitor in the Department of the Interior of the United States and a Special Assistant to the Attorney General [fol. 241] of the United States and in such capacity have been charged with the duty of enforcing, in the Eastern District of Texas, the Code of Fair Competition for the Petroleum Industry, Section 9 (c) of the National Industrial Recovery Act and the Regulations issued under Section 10 (a) thereof. I commenced this work on November 27, 1933, and am particularly familiar with conditions existing in the East Texas oil field and generally with conditions in the petroleum industry throughout the nation since that date.

Since the decrees of the United States District Judge Bryant in the Panama and Amazon cases have been entered, there has been a material increase in the production and transportation of illegally produced and refined petroleum—in my judgment amounting to approximately 100 per cent increase in the East Texas oil field alone. In my opinion, this increase is solely due to the effect of these decrees.

The present overproduction in this field is approximately seventy-five thousand barrels per day, as compared with approximately forty thousand barrels per day during the month of January, 1934.

This overproduction threatens the interstate market for petroleum and its products and menaces the Federal government's stabilization and conservation program under the National Industrial Recovery Act.

For the reasons stated in the appellants' motions and brief herein filed. I believe that a supersedeas and stay order should be entered by this Court. If such supersedeas [fol. 242] and stay orders be entered, the Appellants will diligently prosecute such appeals.

Chas. I. Francis, Special Assistant to the Attorney General.

Subscribed and sworn to before me this the 31st day of March, A. D. 1934. Mrs. H. I. Griffies, Notary Public, Smith County, Texas. My commission expires June 1, 1935. (Seal of Notary Public, County of Smith, Texas.)

[fol. 243] IN THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT

No. 7350

ARCHIE D. RYAN, S. D. BENNETT, PHIL E. BAER, Appellants,

v.

AMAZON PETROLEUM CORPORATION et al., Appellees

Response to Motion of Appellants for Supersedeas and Stay

RESPONSE OF APPELLEES TO MOTION FOR SUPERSEDEAS AND STAY—Filed April 4th, 1934

To the Honorable the Justices of the United States Circuit Court of Appeals for the Fifth Circuit:

Your respondents would respectfully show that it is not true that unless this Honorable Court grants a supersedeas in this cause and stays all proceedings there will be grave and irreparable injury and damages to the appellants, and to the producers of petroleum in the State of Texas and elsewhere throughout the United States; that it is not true that grave and irreparable injury and damage will be done to the Secretary of the Department of Interior in his administration of Section 9-C of the National Industrial Recovery Act; that it is not true that the effect of the decree and injunction will be to bring to a complete halt the government's program in and for the petroleum industry in the State of Texas and elsewhere throughout the United States; or that it will result in a substantial tendency towards the breakdown of the recovery of the entire petroleum and allied industries throughout the United States; [fol. 244] that it is not true that the effect of said decision is to virtually suspend the present national program for the conservation of the natural resources essential to the National Defense.

II

Your respondents would further respectfully show to the court that it is not probable that the permanent injunction granted by the District Court will be reversed, or that there is any reasonable doubt that said order will be sus-

tained, because it appears from the court's findings of fact and conclusions of law that the appellants were acting wholly without authorization of law in that they were attempting to regulate and restrict the production of petroleum from the wells of the appellees under the guise of regulating interstate commerce, whereas the appellees were not engaged in interstate commerce, and the business of the appellees as conducted by them does not affect interstate commerce, except incidentally and remotely.

III

Your respondents would further respectfully show to the court that the appellants would suffer no loss or damage whatever by reason of the order of the District Court not being stayed, because the orders of the Railroad Commission of Texas were held valid, and these appellees under and by virtue of the decision of the court upholding said orders are now operating their properties in strict conformity with the orders of the Railroad Commission of Texas. The appellees are not engaged in either buying, selling, shipping or transporting petroleum in interstate commerce, but on the other hand are engaged exclusively in the producing of oil which is sold by them at the stock tanks on the leases near the wells where it is produced, and title passes from the appellees upon delivery to purchasers at the stock tanks. Therefore, the injunction of the District [fol. 245]' Court in no way interferes with the government in the administration of the National Industrial Recovery Act which prohibits the shipment of oil produced in excess of the orders of the Railroad Commission in interstate commerce.

IV

Respondents would further respectfully show to the court that by reason of the fact that they are compelled by the statutes of the State of Texas to comply with the orders of the Railroad Commission of Texas, and are not permitted to produce in excess of the allowable fixed by the Railroad Commission of Texas, a stay of the order of the District Court would accomplish nothing.

V

Respondents would further respectfully show to the court that under the findings of the District Court the appellants,

without authority of law, were, under the guise of regulating interstate commerce, attempting to regulate and restrict the production from appellees' wells, which would and did result in irreparable loss and damage to the appellees, for which they have no adequate remedy at law, and that unless an injunction was granted the appellants would without authority of law, institute and prosecute penalty suits against the appellees, and would cause the appellees to be subjected to criminal prosecution for alleged violations of the so-called Code of Fair Competition, all of which would result in irreparable loss and damage to the appellees. Therefore, if the motion of the appellants for a stay is granted, these appellees, as found by the District Court, will be subjected to prosecutions both civilly and criminally, regardless of whether or not they continue to comply with the orders of the Railroad Commission of Texas.

[fol. 246] Wherefore, appellees respectfully pray that the motion of the appellants be denied; for costs, and general relief.

Saye, Smead & Saye, for Appellees.

[fol. 247] No. 7350

ARCHIE D. RYAN, S. D. BENNETT and PHIL E. BAER

versus

AMAZON PETROLEUM CORPORATION et al.

ORDER STAYING DECREE PENDING APPEAL

Extract from the Minutes of April 4th, 1934

Upon application of appellants, it is ordered that pending the appeal herein the decree of the district court, insofar as it enjoins inspections and the furnishing of reports of oil produced as required by the provisions of law and regulations complained of, be and the same hereby is stayed.

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[fol. 248] No. 7350

ARCHIE D. RYAN, S. D. BENNETT and PHIL E. BAER

versus

AMAZON PETROLEUM CORPORATION et al.

ARGUMENT AND SUBMISSION

Extract from the Minutes of May 2nd, 1934

On this day this cause was called, and, after argument by Douglas Arant, Esq., Special Assistant to the Attorney General, and Chas. I. Francis, Esq., Special Assistant to the Attorney General, for appellants, and F. W. Fischer, Esq., and J. N. Saye, Esq., for appellees, was submitted to the Court.

[fol. 249] IN THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT

No. 7350

ARCHIE D. RYAN, S. D. BENNETT and PHIL E. BAER, Appellants,

versus

AMAZON PETROLEUM CORPORATION et al., Appellees

Appeal from the District Court of the United States for the Eastern District of Texas

OPINION OF THE COURT—Filed May 22nd, 1934

Before Bryan, Foster and Sibley, Circuit Judges

SIBLEY, Circuit Judge:

The Amazon Petroleum Corporation, with other producers of petroleum in the East Texas field, brought a bill to enjoin the Railroad Commission of Texas and other officers of the State from enforcing orders of the Commission which greatly restricted the production of oil; and at the same time to enjoin Ryan, an agent of the Department of

the Interior of the United States, and the United States [fol. 250] District Attorney and the Marshal from enforcing certain portions of the National Industrial Recovery Act and of the Regulations and Code for the Petroleum Industry promulgated thereunder. A court of three judges having severed the two causes of action and taken jurisdiction of that to enjoin the orders of the Railroad Commission, upheld those orders. Amazon Corporation vs. Railroad Commission, 5 Fed. Sup. 633. The cause of action against the federal officers was tried by the District Judge and a final decree rendered by which the defendants were perpetually enjoined from enforcing Section 4 of Article III of the Petroleum Code and Regulation IV, and from going on the property of the complainants by virtue of them, and from instituting civil actions or criminal prosecutions for violation of them. 5 Fed. Sup. 639. This decree is now under review by appeal.

Article III of the Petroleum Code is entitled Production. Section 1 relates to limiting imports of petroleum and its products. Section 2 relates to withdrawals from storage. Section 3 provides for a Federal Agency designated by the President to make estimates of required domestic production and under approval of the President to allocate it equitably among the states. Sec. 4 reads: "The subdivision into pool and/or lease and/or well quotas of the production allocated to each State is to be made within the State. Should quotas allocated in conformity with the provisions of this Section and/or Section 3 of Article III of this Code not be made within the State or if the production of petroleum within any State exceeds the quota allocated to said State, the President may regulate the shipment of petroleum or petroleum products in or affecting interstate commerce out of said State to the extent necessary to effectuate the purposes of the National Industrial Recovery Act and/or he may compile such quotas and recommend them to the State Regulatory Body in such State, in [fol. 251] which event it is hereby agreed that such quotas shall become operating schedules for that State. If any subdivision into quotas of production allocated to any State shall be made within a State any production by any person, as person is defined in Article I, Section 2 of this Code, in excess of any such quota assigned to him shall be deemed an unfair trade practice and in violation of this Code." The attacked Regulation IV was made by the Secretary of

the Interior by virtue of the delegation to him of the Presidential power by an Executive Order of July 14, 1933. In substance the Regulation requires every producer of petroleum to file with the Department of the Interior each month a sworn statement of the allowable production fixed by the State Agency for each of his properties and wells, the daily production from each and the place of storage, and a declaration that none of the petroleum produced or shipped was in excess of the amount permitted by the state. Regulation VII requires that adequate books and records of all transactions in production and transportation of petroleum be kept and maintained available to inspection by the Department of the Interior. No provision is called to our attention which specifically authorizes the inspection of oil properties and storage tanks. The evidence is without substantial conflict, and shows that the complainants are only producers of crude petroleum, neither selling it for delivery in other states or countries nor transporting it thither, but disposing of it on their properties in Texas. The Texas Railroad Commission has adopted the allocation for the state made under Petroleum Code, Article III, Section 3, and its orders have reduced the allowable production of complainants' wells to a small percentage of their capacity. The defendants are demanding the reports required by Regulation IV, are inspecting the books and the properties of the complainants and gauging their storage tanks, and threaten and intend to prosecute them for vio- [fol. 252] lation of the Regulations and Code. Some of the complainants have in fact been producing and disposing of petroleum in excess of that allowable. The East Texas oil field is the largest in the country and capable alone of producing the petroleum marketable in the United States. It has most of the flowing wells from which oil is most cheaply produced. Production in excess of market demand greatly affects the market price, which has often fallen below the cost of production even in Texas, and sometimes as low as ten cents per barrel at the well. Eighty-five per cent of the oil produced in Texas and its products is transported into other states, and greatly affects the oil business in all states. Eighteen other states produce petroleum also, of which California and Oklahoma are capable of producing amounts comparable with those producible in Texas, but in other states the wells are less bountiful and more costly in operation, but yield a very

large aggregate production and represent a huge investment. Petroleum is an exhaustible national resource, very necessary in the arts of peace and war, of importance to all parts of the country and incapable of satisfactory substitution. Its production is a major industry and its distribution is necessarily carried on largely in interstate and foreign commerce since over half of the states produce none. It is peculiar in its transportation and handling, because this is most largely done by means of pipe lines in which the oil of many producers is often indistinguishably mingled on the way to a refinery, to storage tanks, or in transportation to other states and countries. In the oil fields these pipe lines are a complicated and connected system, often underground, with unobservable ramifications. Sometimes by-passes are employed to run oil secretly around the place for its measurement by the mere opening of a valve. By these means and others oil in excess of what is allowable is produced and shipped in interstate [fol. 253] commerce in large quantities, not only defeating the attempted restrictions but demoralizing the general markets and often cheating those who have royalty interests in what is produced. If the transportation of excess oil in interstate commerce is to be successfully controlled, the system of reports and records required and the inspections practiced are both reasonable and necessary.

The main contentions made by appellants or by appellees are: 1. That the Secretary of the Interior is an indispensable party to the attack on his Regulations. 2. That the production of oil cannot be regulated by Congress and the provisions of the Act and of the Regulations and of the Code dealing with it are unconstitutional. 3. That the Regulations and the Code exceed the authority given by the Act. 4. That if Congress could itself have made the attacked provisions it could not delegate to the President and he could not delegate to others the power to make them. 5. That the reports and inspections are searches and compulsions to self-incrimination forbidden by the Constitution.

1. The Secretary of the Interior is not personally doing or threatening the acts of trespass and of prosecution which are sought to be enjoined. Although the actors may be authorized and incited by him so that he would be a proper co-defendant if he were within the court's reach,

the court has power to stop the trespassing by those within its jurisdiction irrespective of their claim that they are acting for others. Osborne vs. Bank of United States, 9 Wheat. 738; State of Colorado vs. Toll, Supt., 268 U. S. 228. This is not a bill to cancel the Secretary's Regulations, but only to test their efficacy to protect defendants in their alleged trespasses against complainants' rights. There is no more need to make the Secretary a party for this purpose than to make the President a party because he promulgated the Code or the Congress because it enacted the statute.

[fol. 254] 2. The National Industrial Recovery Act, Section 303, provides: "If any provision of this Act or the application thereof to any person or circumstances is held invalid, the remainder of the Act and the application of such provision to other persons or circumstances shall not be affected thereby." We are therefore called on to deal only with those provisions of the Act directly involved in this case, and with their application to the circumstances here appearing. A more general discussion of the Act is both unnecessary and inappropriate. Section 9 is devoted to oil regulation. Paragraph (c) reads: "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, committee, 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 a fine of not to exceed $1,000 or imprisonment for not to exceed six months, or both." The prohibition thus authorized was made by the President on July 11, 1933. On its face it is a regulation of transportation in interstate and foreign commerce, and within that familiar power of Congress. But because it is expressly based on and is designed to aid a restriction on production or withdrawal from storage made by valid state law or regulation it is said to be in reality a regulation of production within the state, which is not interstate or foreign commerce. Oil production is either mining or manufacture. Neither the one nor the other is ordinarily within the power of Congress to regulate within a state.

Kidd vs. Pearson, 128 U. S. 1; Hammer vs. Dagenhart, 247 U. S. 251; United Mineworkers vs. Coronado Coal Co., 259 U. S. 345; Oliver Iron Mining Co. vs. Lord, 262 U. S. 172; [fol. 255] Champlain Refining Co. vs. Corporation Commission, 286 U. S. 210; Utah Power & Light Co. vs. Pfost, 286 U. S. 165. It may be that under peculiar circumstances, such for example as are here shown to exist in the relation of oil production in Texas to commerce in oil with and among the other states, such a burden on or interference with intertsate commerce may exist as to justify Congressional action, as in the case of intrastate rates which injuriously affect interstate commerce, Houston, E. & W. T. R. R. Co. vs. United States, 234 U. S. 342; Wisconsin R. R. Commission vs. C. B. & R. R. R. Co., 257 U. S. 563; Florida vs. United States, 282 U. S. 194; or local stockyard practices, Stafford vs. Wallace, 258 U. S. 495, or selling of grain on the exchanges. Chicago Board of Trade vs. Olsen, 262 U. S. 1. Such a question may arise under the provisions of the Petroleum Code, Article III, Section 4, relating to the fixing of production quotas, but in the provision of the Act now before us there is no such question. The regulation of production is assumed to have been validly made by the state, and the federal regulation is actually only of interstate and foreign commerce, adjusted to aid and not to thwart the state action. Such cooperation between state and central government is not Constitutionally wrong, but right and desirable. The central government was not created to be an opponent and a rival of the state governments, but to be a supplement and a protection to them. Its enumerated powers, although supreme and sometimes exercised to the dissatisfaction of some state, are not misused when by a happy concord of duty these governments can cooperate. The grant to the central government of the power to regulate interstate and foreign commerce is without qualification and in general exclusive of the states, and that government may rightly take up the regulation of a matter at the point where the state government because of this grant must itself cease to regulate. Thus when some of the states in the exercise [fol. 256] of their general police power sought to control the transportation and sale of intoxicating liquors within their borders, Congress with a plain purpose to make the state regulation more effective first made such liquors subject to state laws on arrival, and later forbade them to be

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transported in interstate commerce into such a state. In Re Rahrer, 140 U. S. 545; Clark Distillery Co. vs. Western Maryland R. R. Co., 242 U. S. 311. So the states in the exercise of their police power regulate the stealing of automobiles, but Congress supplementarily forbids and punishes the interstate transportation of stolen cars. Brooks vs. United States, 267 U. S. 432. The Lottery Act supplements in the federal domain a police power indubitably residing in the states. Champion vs. Ames, 188 U. S. 321. Other instances might be cited. The provision of the National Industrial Recovery Act under discussion is not unconstitutional because it operates and was intended to operate so as to make more effectual valid state action with reference to oil production.

Nor is it unconstitutional because its effect is temporarily to restrict the volume of interstate and foreign commerce in oil. No doubt in general there should be free trade among the states, but that is not to say that laissez faire must have full scope. The power to regulate interstate commerce is given to Congress in identical terms with the power to regulate foreign commerce. The regulation of foreign commerce for the good of the whole country by severe restrictions on immigration, and by protective tariffs on goods, and by embargoes, is a part of our history and maye be independent of any inherent objectionableness in the persons or the articles affected. A similar power, with some special restrictions, exists as to interstate commerce and may be exercised not only to exclude harmful articles but to better the health and stability of such commerce as a whole. Regulation by prohibition was [fol. 257] upheld in the cases above cited. What a centralized constitutional government may do in the way of regulation of trade or commerce our dual system can accomplish by the cooperation of its state and central governments.

The contention is also made that the effect of Sect. 9(c) of the statute is to take property without due process of law. Of course regulations of commerce, whether by state or central government, must not offend other provisions of their respective constitutions. But by hypothesis of the statute the regulation by the state must be a valid one. Validity has been adjudicated in this case. The prohibitions on this point of the state constitution and of the Four-

teenth Amendment with reference to the state are so similar to the prohibition of the Fifth Amendment as to the central government that if the state regulation be valid the assisting federal statute cannot well offend at this point.

3. The Act, Sect. 10(a), authorizes the President to prescribe such rules and regulations as may be necessary to carry out the purposes of this title, and provides punishment for their breach. Regulations IV and VII providing for monthly statements and for books and records subject to inspection are clearly shown to be necessary in order to render effectual the prohibition of the statute against shipping excess petroleum in interstate and foreign commerce. Excess oil cannot be distinguished after it is mingled with other oil either in the storage tank, the pipe line or the tank car. If it is produced it can be traced into interstate commerce only by producers' reports and such inspections as are provided for. The fact that the producers themselves do no- engage in interstate commerce does not render it less necessary that they furnish information. Those who buy from them probably could not tell whether what they bought and were about to ship was or [fol. 258] was not excess oil. The inspection of books is only a check on the truthfulness of the reports. The attacked regulations are supported as reasonably necessary to the purposes of the Act.

The Code provision, Art. III, §4, adopted under Sect. 3 of the Act, goes further than the provisions of Sect. 9(c) heretofore considered because it deals directly with production. These complainants have not consented to the Code and are bound by it only if it has the force of law. The Code provides for an ascertainment by a Federal Agency of the required domestic production of crude oil and its products, and for its equitable allocation among the several states by Presidential approval; and if the allocation is not regarded by the state agencies by making a subdivision of it among the pools, leases and wells, within the state so that an excess production results, the President may either regulate shipments out of the state so as to equalize such shipments or may himself make and recommend to the state agencies such quotas, which shall then become operating schedules for that state. Production by any person in excess of the quota assigned to him is declared an unfair trade practice and in violation of the

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Code. Since production of excess oil and not its shipment in interstate or foreign commerce thus constitutes violation of the Code, it is said that the commerce power of Congress is exceeded. In this case the State of Texas has fixed its own quotas, so that federal power to fix them is not involved. We do not inquire whether the production of crude oil intended for shipment in interstate or foreign commerce constitutes such a threat to do that act or such a temptation to it as to be capable of restraint in order to make effectual the prohibition of shipments in such commerce, in the manner in which the possession of intoxicating liquors was held to be regulable by Congress although the sale and transportation only of them was within [fol. 259] Congressional power. For by reference to Sect. 5 of the Act it appears that the sanctions for violating the Code are but three. Paragraph (b) declares a violation to be an unfair method of competition within the meaning of the Federal Trade Commission Act. If that sanction be an unlawful one, and should be sought to be applied against complainants before the Federal Trade Commission, they have their remedy in that proceeding. Paragraph (c) provides for injunction proceedings by the District Attorney to prevent violation, and a complete remedy against wrong is available there. Paragraph (f) provides a sanction by criminal prosecution, but only when the violation is "in any transaction in or affecting interstate or foreign commerce." An indictment or information could not stop at alleging the production of excess oil, but would have to allege with appropriate fulness that it was in a transaction in interstate commerce or affecting it. This sanction is thus tied to and seemingly not intended to exceed the commerce power of Congress. Each such criminal case would depend on its own facts. The provision of the Code thus enforced does not appear to be unconstitutional. Whether any complainant at any time has violated it is more appropriately to be tried in a prosecution of him than in this composite suit in equity. We may say of all three sanctions that an adequate remedy against abuse is afforded in the proceedings indicated by the statute for their respective enforcement, so that a remedy in equity by injunction may not be had.

4. The delegation to the President of power to put the prohibition of Sect. 9(c) into effect is not seriously at-

tacked. Such a thing has been often done under varying forms of language, as appears by the review of statutes in Field vs. Clark, 143 U. S. 649. See also Hampton vs. United States, 276 U. S. 394. But the regulations promulgated by the Secretary of the Interior and the Code approved by the President are strongly attacked as an im- [fol. 260] proper delegation of legislative power. We have shown the regulations in question to be reasonable and within the Act if made by the President. The Act in Sect. 2(b) expressly authorized the President to appoint someone else to exercise any function or power given him, and he appointed the Secretary to exercise this function. It is the case of a legislative agent authorized to appoint a subagent. Congress, well knowing that the President could not personally do all that was put on him, authorized him to select someone to attend to the business instead of itself appointing such a one. We know of nothing to forbid it. The regulations made by the Secretary stand as though Congress had directly authorized him to make them.

The Code is a novelty in legislation. Its making was not a delegation by Congress of a power of legislation to the various trade or industrial groups mentioned in Sect. 3*[1]. The groups could really do nothing but advise the President, just as Congress itself often is advised by hearing those to be affected. While a very strong influence is accorded to each group, it is the President's act in approving a recommended Code or imposing an involuntary one that

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*[1] Congress by the Act of March 2, 1893, enacted that the American Railway Association, a mere trade body, should fix the height of draw-bars for railway cars which was to be established as standard by the Interstate Commerce Commission, but there was thereby no unconstitutional delegation of legislative power. St. Louis & Iron Mountain R. R. Co. vs. Taylor, 210 U. S. 281. By R. S. § 2324 Congress in providing for mining on the public lands enacted that the miners in each district might make regulations not in conflict with law. These regulations come close to being a miners' code of fair competition in staking out claims, but there was no improper delegation of legislative powers to the miners. Erhart vs. Boaro, 113 U. S. 527; Butte City Water Co. v. Baker, 196 U. S. 119.

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gives it force. Congress puts sanctions behind either which are intended to make it enforceable law. Whether the general purposes of the Act stated in Sect. 1, together with the requisites of a Code set out in Sect. 3 or elsewhere are statements of an intelligible legislative plan sufficient to be [fol. 261] filled out and executed by a commission after hearing those to be affected, as for instance when a legislature orders just and reasonable rates to be established on railroads and authorizes a commission to enquire into and fix them, is a question we need not broadly answer.*[2] The particular policy and plan disclosed in Sect. 9 to regulate excess oil by debarring it from interstate commerce is entirely clear. The regulations and Code provisions which are here in issue do not go beyond that purpose and plan.

5. The regulations touching reports and inspection of records are not in violation of the prohibition of the Fourth [fol. 262] Amendment forbidding unreasonable searches or of the Fifth Amendment guaranteeing that no person shall be compelled in any criminal case to be a witness against himself. A producer of oil does not operate under any right or license derived from the federal government and is not subject to such rigorous treatment as if he did. But he is a citizen within the protection of that govern-

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*[2] While Congress cannot abdicate legislative power, it may make large delegations of it, always retaining the right of control and of reassumption. While the Constitution was being written the then Congress on July 13, 1787, made the Ordinance for the Government of the Northwest Territory, in which very broad legislative powers were delegated. Similar delegation occurred when the Louisiana Territory was purchased. Sere vs. Titot, 6 Cranch. at page 337. Legislative power appropriate for a municipality was delegated with reference to the District of Columbia. Stoutenberg vs. Hennick, 129 U. S. 141. Governments with legislative powers have been established by Congress for other territories and insular possessions. See United States vs. Heinszen, 206 U. S. at page 385. Broad powers given the Secretary of Agriculture to make regulations touching forest reserves, whose breach was criminally punishable, were upheld in United States vs. Grimaud, 220 U. S. 506. In all these cases matters within the states were not directly affected. Such matters ought no doubt to be kept more di-

ment and owes it a citizen's duty to assist in the enforcement of its laws. The object of the reports and the inspection of books is to ascertain the existence and the disposition of excess oil in order that its interstate and foreign transportation may be stopped. The government has a right to know about this, just as it has a right to know what the citizen's income is that it may be taxed. Presumably no crime has been committed by producer or taxpayer. No criminal case is pending, and the immediate purpose is information and not prosecution. The fact that the report is required greatly tends to keep producer or taxpayer from committing a crime that would be disclosed thereby. But if he has committed a crime and is entitled to withhold evidence of it, he should at the proper time and on the specific ground that disclosure would tend to criminate him, assert the right to withhold the particular evidence. Because such a thing conceivably might occur is no reason to upset laws and regulations which are generally useful and necessary in the public business.

The inspection of properties and tanks and pipe lines does not seem to be expressly authorized by any regulation. It may be a civil trespass when not consented to, even though it is not a search in the constitutional sense

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rectly in Congressional control; but even so, practical necessity has required of Congress more and more to act through agents in fixing legislative details. The Interstate Commerce Commission is an outstanding example. One of its broadest discretionary powers in reference to the long and short haul clause was upheld as validly delegated in United States vs. Atchison, T. & S. F. R. R. Co., 234 U. S. 476. The Secretary of War is validly empowered to require alteration or removal of bridges which unreasonably obstruct navigable waters. Union Bridge Co. vs. United States, 204 U. S. 364; Monongahela Bridge Co. vs. United States, 216 U. S. 177. The Federal Reserve Board was validly authorized to empower individual National Banks to act as trust companies. First National Bank Bay City vs. Fellows, 244 U. S. 416. The delegation to the President of power to alter tariffs within limits and for purposes disclosed was held not unconstitutional in Hampton vs. United States, 276 U. S. 394. We have discovered no delegation which Congress has plainly made that has been refused recognition by the Supreme Court.

when the premises are open to free entry. See Hester vs. United States, 265 U. S. 57; United States vs. Western & Atlantic Railroad, 297 Fed. 482. But if a trespass, there is no showing of irreparable damage or insolvency of the [fol. 263] trespassers, and no occasion for an injunction on that account.

We are of opinion that the injunction ought not to have been granted, and the decree is reversed and the cause remanded with direction to dismiss the bill.

[fol. 264] No. 7350

ARCHIE D. RYAN, S. D. BENNETT, and PHIL E. BAER,

versus

AMAZON PETROLEUM CORPORATION et al.

JUDGMENT

Extract from the Minutes of May 22nd, 1934

This cause came on to be heard on the transcript of the record from the District Court of the United States for the Eastern District of Texas, and was argued by counsel;

On consideration whereof, It is now here ordered, adjudged and decreed by this Court, that the decree of the said District Court in this cause be, and the same is hereby, reversed; and that this cause be, and it is hereby, remanded to the said District Court with direction to dismiss the bill.

[fol. 271] No. 7350

ARCHIE D. RYAN, S. D. BENNETT, and PHIL E. BAER,

versus

AMAZON PETROLEUM CORPORATION et al.

ORDER DENYING REHEARING

Extract from the Minutes of June 29th, 1934

It is ordered by the Court that the petition for rehearing filed in this cause be, and the same is hereby, denied.

[fol. 272] IN THE UNITED STATES CIRCUIT COURT OF APPEALS, FIFTH CIRCUIT

No. 7350

ARCHIE D. RYAN, S. D. BENNETT, and PHIL E. BAER, Appellants,

versus

AMAZON PETROLEUM CORPORATION et al., Appellees

Application of Appellees for Stay of Mandate

APPLICATION FOR STAY OF MANDATE—Filed July 5th, 1934

Come now the appellees in the above entitled and numbered cause, and would show to the court that they will immediately, and as soon as the clerk of this court can prepare a transcript of the proceedings in this cause, apply to the Supreme Court of the United States for a writ of certiorari to review the judgment rendered herein by this honorable court, wherein it reversed the judgment of the district court and vacated and set aside the injunction granted by the district court in favor of appellees and against appellants and ordered a dismissal of appellees' bills of complaint.

[fol. 273] Appellees would further show that while this cause was pending before this honorable court and before its determination thereof, this court entered an order staying the injunction granted appellees by the district court, in so far as it enjoined inspection and the furnishing of

reports of oil produced and refined, as required by the provisions of the law and regulations complained of. Therefore, the only portion of the decree of the district court that has not already been stayed by this court is that part wherein appellants are enjoined from proceeding with the criminal prosecutions already instituted against appellees, and from instituting additional criminal prosecutions against appellees because of their failure to comply with the regulations that are attacked in this suit.

Appellees would further show to the court that there is now pending before the Supreme Court of the United States in the cause of United States of America, appellant, vs. J. W. Smith, et al., appellees, and numbered 869 on the docket of said court, the question of whether one may be subjected to criminal prosecution for failure to comply with the identical regulations that are attacked in this suit; and the determination by the Supreme Court of the United States of that question in said cause will be determinative of the question as to whether the appellees in this case may be subjected to criminal prosecution for failure to comply with the regulations attacked herein.

Appellees would further show to the court that they believe that if the mandate of this court, vacating the injunction of the district court, is not stayed, the appellants will [fol. 274] immediately proceed with said criminal prosecutions, as well as institute other criminal prosecutions because of the failure of appellees to comply with the attacked regulations before and after the granting of the injunction against them in the trial court, notwithstanding the question of the appellees' criminal liability for failure to comply with said regulations is now pending before the Supreme Court of the United States and set for submission in October, 1934.

Wherefore, because of the premises, appellees pray that this honorable court stay its mandate for such time as will enable the appellees to apply to the Supreme Court of the United States for a writ of certiorari to review the judgment of this court, and if appellees file such application with the clerk of said court within such time, then that said mandate be stayed until this cause is determined by said court.

Respectfully submitted, W. T. Saye, J. M. Saye, W. Edward Lee, Longview, Texas; F. W. Fischer, Tyler, Texas; (Signed) F. W. Fischer, Attorneys for Appellees.

[fol. 275] UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH DISTRICT

No. 7350

ARCHIE D. RYAN, S. D. BENNETT and PHIL E. BAER, Appellants,

versus

AMAZON PETROLEUM CORPORATION et al., Appellees

ORDER STAYING MANDATE—Filed July 18th, 1934

On consideration of the application of the Appellees in the above numbered and entitled cause for a stay of the mandate of this court therein, to enable Appellees to apply for and to obtain a writ of certiorari from the Supreme Court of the United States, it is ordered that the issue of the mandate of this court in said cause be and the same is stayed for a period of thirty days; the stay to continue in force until the final disposition of the case by the Supreme Court, provided that within thirty days from the date of this order there shall be filed with the clerk of this court the certificate of the clerk of the Supreme Court that the certiorari petition and record have been filed, and that due proof of service of notice thereof under Paragraph 3 of Rule 38 of the Supreme Court has been given. It is further ordered that the clerk shall issue the mandate upon the filing of a copy of an order of the Supreme Court denying the writ, or upon the expiration of thirty days from the date of this order, unless the above-mentioned certificate shall be filed with the clerk of this court within that time.

Done at New Orleans, La., this 18th day of July, 1934.

(Signed) Rufus E. Foster, United States Circuit Judge.

[fol. 276] CLERK'S CERTIFICATE

UNITED STATES OF AMERICA:

UNITED STATES CIRCUIT COURT OF APPEALS, FIFTH CIRCUIT

I, Oakley F. Dodd, Clerk of the United States Circuit Court of Appeals for the Fifth Circuit, do hereby certify

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that the pages numbered from 235 to 275 next preceding this certificate contain full, true and complete copies of all the pleadings, record entries and proceedings, including the opinion of the United States Circuit Court of Appeals for the Fifth Circuit, in a certain cause in said Court, numbered 7350, wherein Archie D. Ryan, S. D. Bennett and Phil E. Baer are appellants, and Amazon Petroleum Corporation, et al., are appellees, as full, true and complete as the originals of the same now remain in my office.

I further certify that the pages of the printed record numbered from 1 to 234 are identical with the printed record upon which said cause was heard and decided in the said Circuit Court of Appeals.

In testimony whereof, I hereunto subscribe my name and affix the seal of the said Circuit Court of Appeals, at my office in the City of New Orleans, Louisiana, in the Fifth Circuit, this 18th day of July, A. D. 1934.

Oakley F. Dodd, Clerk of the United States Circuit Court of Appeals, Fifth Circuit. (Seal United States Circuit Court of Appeals, Fifth Circuit.)

[fol. 277] SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed October 8, 1934.

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Fifth Circuit is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Endorsed on cover: File No. 38,888. U. S. Circuit Court of Appeals, Fifth Circuit. Term No. 260. Amazon Petroleum Corporation, Barney Cockburn, E. J. Boase, et al., Petitioners, vs. Archie D. Ryan, S. D. Bennett and Phil E. Baer. Petition for a writ of certiorari and exhibit thereto. Filed August 6, 1934. File No. 260, O. T., 1934.