[fol. 122] In addition to the facts he stated above, J. G. Floyd, together with Joe Dupree, stated that during their employment with the Railroad Commission of Texas they became familiar with the more persistent violators of the State Proration Laws; that to their actual knowledge many local refineries in the East Texas Oil Field are tied directly to producing wells, either through by-passes or through illegal connection; that the following enumerated refineries, situated in the East Texas Oil Field, are tied directly to producing properties; and, that in order to check the producing properties, it is necessary also to check the refineries to determine the exact amount of oil being illegally produced above the allowable set by the regulatory body of the State.

Foshee Refinery

Connected to: Iron Rock Oil Co. Block 44. The allowable for this well for the two months was 3872.5 barrels.

A. B. Foshee, Block 36. Allowable was 3710.5 barrels.

Reynolds and Manziel, Block 30. Had a by-pass connection to this refinery and a pipe line connection to some other company. The allowable is not listed in the schedule at Gladewater.

Joe Manziel, Thompson Block 13 has a by pass connection to this refinery and a pipe line connection to some other company. The allowable was 3197.0 barrels.

Burnett & Foshee, Jim Bell lease had a pipe line connection and a by-pass connection to this refinery. The allowable was 2903 barrels.

Locke Refinery

Connected to: Rinehart pipe line system, (See note on this and other pipe lines.)

P. & G. Production Co., Sam Kay lease. This connection was a by-pass. This well was also connected to the 55,000 [fol. 123] barrel tank on Tenery farm. Also connected to Rinehart's system.

McCormick and Bates (Now United East & West) Sam Kay lease. This connection was a by-pass connection and had a different pipe line connection. Allowable was 4405.0 barrels.

Southern Oil & Refining Co. Pipe Line L. M. Harris, Demoss lease, by-pass. Allowable was 3876.5 barrels.

J. C. Harris, Block 17. By-pass connection. The allowable was 3621.5 barrels.

L. M. Harris, Victory lease, by-pass. The allowable was not listed.

55000 barrel tank on the Tenery farm.

C. Lyons Oil Co. (James N. Burns) Whittle lease. Pipe line connection. Allowable was 3739 barrels.

DeWitt and Travis, Bray lease. By-pass. Allowable was 1852 barrels, but not listed after August 7.

Carnation Refinery

Connected to: L. M. Harris, DeMoss lease. Allowable was 3876.5 barrels. The connection was a by-pass connection and pipe line connection.

J. C. Harris, Block 17. Same connections as above lease and the allowable was 3614 barrels.

L. M. Harris, Victory lease. Had a by-pass connection and also pipe line connection. Allowable is not listed.

T. A. Johnson, Block 35. Had a by-pass connection to this refinery. Was only connected three or four days before it was taken out. Caught July 17. The allowable at that time was 61.5 barrels per day.

DeWitt & Travis, Bray lease. Had a pipe line connection leading to this refinery. Also a by-pass connection for a [fol. 124] short time. The allowable was 1852.5 barrels up to August 7th, not listed since then.

Upshur Refinery

Connected to: P. B. Goodwin, Ida Johnson lease. Pipe Line connection. Allowable was 7980 barrels.

Jno. F. O'Connell, Richey lease. Pipe line connection. Allowable was 3853.5 barrels.

Receives quite a lot of truck oil.

Big Sandy Oil & Refining Co.

Lake Refinery

Connected to: Rinehart Pipe Line system. Sabine water system.

Marfinwood Oil Co., Nannie E. Walker lease. By-pass connection. Allowable was 3324 barrels.

Big Ten Oil Co., Block 10. This well was brought in and started to produce about August 10 and the allowable is not listed. Have tanks on the Refinery property.

Chas. Trigger, Wood lease. Pipe line connection and by-pass connection. Allowable 3765 (Up to Aug. 7).

Kimberlin and Reynolds, Perry Est. Block 11. Pipe line connection. Allowable 3215.5 barrels.

Connected to a pipe line owned by the Lake Refinery.

Explanation of the Rinehart Pipe Line System

The Rinehart Pipe Line System is a net-work of lines laid by A. J. Rinehart, and was supplying refineries with oil. Wells were flowed directly into the refineries or to the 55000 barrel tank on the Tenery Farm through this line. That 55000 barrel tank is now owned by the Tex-La Pipe Line Company, and it is connected with the 55000 barrel tank near the "Gladewater Fortress." The Southern Oil & Refining Co. has a pipe line connected to the tank close to the Fortress and the line leads to Kilgore and other [fol. 125] districts. The Southern Oil & Refining Company is also using the old Sabine water system as a gathering system and all the above lines and tanks are now connected together. The Rinehart system is also connected to the Longview Gathering System (Danciger) that leads to the Danciger Refinery at Longview.

Rinehart's pipe line is connected to the Locke Refinery, an- can go to the Carnation Refinery through the Locke Refinery Line. It winds through Gladewater to the Cook refinery, Trinity, Lake, Supreme, Godlin (Old H. & M.) and to Jacks Refinery.

Following is a list of wells which could flow directly to the complainants' refineries. These wells were found flowing as of the dates indicated and were flowing into lines whereby the oil could be switched to more than one refinery, as indicated.

April 23, 1933.—Rinehart Pipe Line System and could go to the Locke, Carnation, Lake, Cook, Trinity, and Gregg Refineries.

May 3, 1933.—J. F. O'Connell—Richey lease—By-pass to Lake or Trinity Refinery.

May 5, 1933.—P. & G. Production Co.—Kay lease—to Rinehart Pipe Line System and can go to Locke, Carnation, Cook, Lake, Trinity, Supreme, Gregg, and Godlin's Refineries.

May 11, 1933.—A. B. Foshee—Block 36 & 44—By-pass to the Foshee Refinery.

May 13, 1933.—Marfinwood Oil Co.—Walker lease—By-pass to the Rinehart Pipe Line System and could go to the Lake, Trinity, Supreme, Jacks, Godlins, Locke and Carnation Refineries.

May 22, 1933.—Burnett & Foshee, Bell lease—by-passing to the Foshee Refinery.

May 25, 1933.—Welch, Locke & Holloway, Whittle lease, by-pass to Locke Refinery.

May & June, 1933.—Dr. E. L. Walker, Walker lease—by-passing to the Lake, Trinity, Supreme, Godlin, or the Jacks Ref.

[fol. 126] May, 1933.—L. M. Harris, DeMoss lease—by-pass to Rinehart System, Locke, Carnation, Texas Oil Products, Lake, Trinity.

May, 1933.—Pelphrey Bros., Halley lease by-passing to the Carnation and Trinity.

June, 1933.—L. M. Harris, Victory lease, by-pass to Carnation, Locke Refineries.

July 17, 1933.—T. A. Johnson, Victory lease—bypass to Carnation Refg.

July 20, 1933.—Bobby Manziel, Block 30—by-pass to the Foshee Rfg.

The following is a list of wells and leases which were found flowing directly into refineries between the dates of May 1st and September 15, 1933. All over-production from these properties went directly to local refineries.

Date	Operator	Lease	Kind of violation	Destination of oil
May 4.	J. F. O'Connell	Richey	By-passing	Lake or Trinity
May 5.	Sam Roosth	Block 63	"	Lake or Trinity
May 7.	Sam Roosth	Block 63	"	Lake or Trinity
May 8.	J. F. O'Connell	Richey	"	Lake or Trinity
May 8.	Sam Roosth	Block 63	"	Lake or Trinity
May 11.	A. B. Foshee	Block 36	"	Foshee Refinery
May 12.	Marfinwood Oil Co.	Walker	"	Lake or Trinity
May 12.	A. B. Foshee	Block 36 & 44	"	Foshee Refinery
May 13.	Marfinwood	Walker	"	Lake or Trinity
May 17.	Burnett & Foshee	Bell	"	Foshee Refinery
May 19.	A. B. Foshee	Block 36 & 44	"	Foshee Refinery
May 19.	Marfinwood	Walker	"	Lake or Trinity
May 20.	Burnett and Foshee	Bell	"	Foshee Refinery
May 20.	Marfinwood	Walker	"	Lake or Trinity
May 22.	"	"	"	" " "
May 23.	Burnett and Foshee	Bell	"	Foshee Refinery
May 23.	A. B. Foshee	Block 44	"	Foshee Refinery
August 14.	A. B. Foshee	Block 36	"	Foshee Refinery

[fol. 127] In addition to the facts he stated above, J. N. Inglish also stated that in the course of the performance

of his official duties, he has secured information as to the available crude storage of the Panama and Southport Refineries, which is as follows:

Panama:

10,000
5,000
3,000
1,500
1,000
1,000—Last contained fuel oil, but could be for crude.
1,000—Last contained gas oil, but could be for crude.
1,000—Last contained Kerosene, but could be for crude.

23,500—Total at Refinery premises.

10,000—This tank located at Republic Christian lease.
10,000—This tank located at Republic Christian lease.

43,500—Total.

NOTE.—The two ten thousand barrel tanks are tied into the Tom Potter line leading to the Panama. There has just been installations made on a pump at Reed's Switch to move this oil.

Southport:

1,000
1,000
1,250
1,250
5,000

9,500—Total at Southport Refinery location.

Both of these refineries have lease storage on their production properties.

In addition to the facts he stated above, H. E. Tyson also stated that, based upon actual observation and from months of experience with the Railroad Commission of [fol. 128] Texas and in the Department of the Interior as an investigator in the East Texas Oil Field, it is a fact that the extent and character of pipe lines serving the East Texas field makes it an impossibility to check over-pro-

ducing properties from a check of the pipe lines. He further stated the following in support of the opinion:

(a) Gauging of pipe line storage facilities will not show the actual amount of oil being produced from a field where certain operators and producers are delivering a part or all of their oil to local refineries and loading racks.

(b) A producer may produce and run from a lease its daily allowable production to a pipe line where the oil or its equivalent could be checked, provided however, the said pipe line company keeps an adequate set of books or records, but, at the same time such producer may be using a by-pass connected to lines of a local refinery or loading rack and at the same time be delivering oil to such refinery or loading rack.

(c) The mere gauging of the storage facilities of pipe lines, refineries, treating plants and loading racks will not disclose the actual amount of oil produced from a given lease where such pipe lines, refineries, treating plants and loading racks are receiving oil from various leases and sources at the same time.

(d) Gauging of pipe line storage facilities will not show the actual amount of oil produced from day to day by producers.

(e) A producer may deliver the allowable oil production from a lease to a pipe line, and at the same time be delivering to a large storage tank located at some other point, the oil to be placed on the market at a latter date.

(f) Due to the large number of pipe lines and so-called [fol. 129] gathering systems in the East Texas Oil Field, it is impossible to tell what the producer is producing because the many gathering systems can deliver the oil into various trunk lines, loading racks, and to refineries. The oil can go through so many channels that it loses its identity and positively cannot be traced back to its origin.

The Defendants introduced in evidence a statement by Walter S. Behrens, who stated that he has been employed by the Department of the Interior of the United States as an Oil Investigation Agent since September, 1933; that during the military occupation in the East Texas Oil Field, when the field was under Martial Law under proclamation

of the Governor of Texas, he was a Lieutenant in the 124th Cavalry; that at that time he became familiar with the conditions in the field and had occasion to make investigations with reference to over-production of oil and the running of oil to tank farms and to local refineries; that his observations then and now are that the small refineries or skimming plants situated in the East Texas Oil Field are the outlets for the major portion of the oil produced in violation of the Proration Laws or what is commonly known as "hot oil;" that during September and October, 1933, he had been engaged in making investigation which showed that refineries disposed of excess oil both before and after July 11, 1933; that these refineries existed and now exist merely for the purpose of disposing of crude oil; that the following listed data was secured by him from the records of the Railroad offices, situated in the East Texas Oil Field and indicate that refineries shipped enormous amounts of crude oil both before and after July 11th and that the products from these refineries listed entered into the stream of interstate commerce.

[fol. 130]

Foshee Refinery

July, 1933

Gasoline	32 Cars
Fuel Oil	4
Distillate	2
Gas Oil	1
	39 Cars.

August, 1933

Gasoline	3

In addition, the following is the amount of crude oil shipped out over this rack during July. No crude was shipped in August. This rack is the property of the Foshee Refinery and no other refinery is located on this rack.

Date 1933	Consignor	Consignee	Destination	# Cars
July 6	Wade Johnson	B. T. McNeil	Westwego, La.	11
" 9	Frank Havell	Calumet Pet. Co.	Calumet, La.	11

[fol. 131]

Date	Consignor	Consignee	Destination	#Cars
" 11	G. W. Simpson	B. T. McNeil	Westwego, La.	11
" 12	R. S. Alexander	M. B. Blake	"	12
" 14	Trinity Refg. Co.	Phoenix Refg.	Eagle Ford, Tex.	20
" 13	Alex R. Shoozer	M. B. Blake	Westwego, La.	9
" 13	A. R. Wood	do		11
" 12	R. S. Alexander	Sterling O & R Co.	Moose Jaw, Sask.	11
" 13	"	M. B. Blake	Westwego, La.	12
				108

B. T. McNeil is an oil broker with headquarters in Houston, Texas. Witness Behrens made a diligent effort to locate and learn the identity of Mr. Wade Johnson, Frank Havell, G. W. Simpson, R. S. Alexander, Alex. R. Shoozer, and A. R. Woods, listed above, and these are evidently fictitious.

Oil received by truck: None.

Foshee Refining Company

(Gasoline)

Date	Consigned to	Destination	Initl.	Car Nos.	Capy.	Shipper	Rack
7-1	Oakley Gas & Oil Co.	Nashville, Tenn.	STCX	9683	8100	Foshee	Fos. #2
7-1	" " " "	"	STCX	9648	8097	"	" #2
7-2	Wilson Oil Products Co.	Mankato, Minn.	PTX	2768	8260	"	" #2
7-3	Hoosier Pet. Co.	Indianapolis, Ind.	GATX	29547	8106	"	

[fol. 132]

Date	Consigned to	Destination	Initl.	Car Nos.	Capy.	Shipper	Rack
7-3	T. J. Ryan	St. Louis, Mo.	PTX	4037	8058	"	
7-3	"	"	PTX	4712	8078	"	
7-4	Peoples Nu-Gas Co.	Cambridge City, Ind.	QTX	8316	8064	"	"
7-4	Hoosier Pet. Co.	Indianapolis, Ind.	SHPX	8713	8094	"	"
7-5	Wilson Oil Products Co.	Deer River, Minn.	STCX	9421	8073	"	
7-5	"	St. James, Minn.	GATX	25520	8048	"	
7-7	"	Sibley, Ia.	SHPX	8604	8153	"	"
7-7	Geo. C. Peterson	Dupo, Ill.	GATX	29462	8108	Foshee	Fos. #2
7-7	Wilson Oil Products Co.	Lake Crystal, Minn.	GATX	29356	8105	"	"
7-10	Northland Oil Co.	Stewardville, "	GATX	13565	8085	"	"
7-11	O'Day Oil Co.	Ft. Wayne, Ind.	CYCX	9231	8170	"	" #2
7-11	"	"	GATX	29636	8102	"	" #2
7-11	"	Ossian, Ind.	SHPX	8706	8111	"	" #2
7-11	Wilson Oil Products Co.	Staples, Minn.	GATX	23361	8117	"	" #1
7-11	"	Conde, S. D.	GATX	29463	8108	"	" #1
7-12	"	Elmore, Minn.	SHPX	8615	8124	"	"

(From Texas Oil Products
(Company, Gladewater.

[fol. 133] Foshee Refining Company—continued

[fol. 133]

7-14	O'Day Oil Co.	Auburn, Ind.	PTX	1546	8250	"	"
7-14	Texas Oil Products Co.	K. C., Mo.	CTAX	6971	8135	"	"
7-14	" " "	" " "	SHPX	5000	10212	"	"
7-16	" " "	" " "	GATX	29569	8102	"	"
7-16	Diverted to Wilson Oil Products Co.	Willmar, Minn. By T. O. P. Co., Gladewater					
7-17	Texas Oil Products Co.	K. C., Mo.	SHPX	8506	8059	"	"
	Diverted to Wilson Oil Products Company, Worthington, Minn. by T. O. P. Co.						
7-17	Texas Oil Products Co.	K. C., Mo.	GATX	15541	8105	"	"
	Diverted to American Pet. Co., Allendale, Minn. by T. O. P. Co.						
7-17	Texas Oil Products Co.	K. C., Mo.	GATX	3143	8213	"	"
	Diverted to Wilson Oil Products Company, Melrose, Minn. by T. O. P. Co.						
7-18	Texas Oil Products Co.	K. C., Mo.	SHPX	9158	8149	Foshee	Foshee
	Changed to Wilson Oil Products Co. 7-25-33, Worthington, Minn. and the shipper was Texas Oil Products Company, Gladewater.						
7-18	Texas Oil Products Co.	K. C., Mo.	GATX	6027	8079	Foshee	
	Changed 7-27-33 to San Burn Oil Co., Care Osburn Refining Co., Osburn, Ind. from Texas Oil Products Co., Gladewater.						
7-19	Modern Refy. Corp.	K. C., Mo.	GATX	2792	8165	Foshee	
	Changed 7-25-33 to Altitude Pet. Co., Fargo, N. D., this bill of lading in lieu of bill of lading covering same car as of July 17th.						

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Date	Consigned to	Destination	Initl.	Car Nos.	Capy	Shipper	Rack
7-19	Texas Oil Products Co.	Little Rock, Ark.	CTAX	6898	8099	Foshee	
	Changed 7-21-33 to Altitude Pet. Co., Chicago, Ill. Shipper Texas Oil Products Company, Gladewater.						
7-19	Texas Oil Products Co.	Little Rock, Ark.	GATX	14026	8106	"	
	Changed 7-27-33 to G. H. Hammond, Union Stock Yards, Chicago, Shipper Texas Oil Products Co., Gladewater.						
8-18	Gulf Production Co. Care E. Iles.	Overton, Texas	QTX	8722	8119	Foshee	
8-19	Gaither Oil Co.	Ft. Worth, Tex.	GATX	22295	8120	"	Fos. #2
8-26	Century Oil Co.	"	CYCX	8720	8202	"	"
		(Fuel Oil)					
7-1	MK&T Co.	Denison, Texas.	SHPX	8422	8042	Foshee	Fos. #2
7-1	"	"	SHPX	8424	8046	"	" #2
7-1	"	"	SHPX	10244	10142	"	" #2
7-8	Midland Coal Co.	Honey Grove, Tex.	SHPX	10687	10137	"	"

[fol. 135]

(Distillate)

7-1	Northland Oil Co.	Dupo, Ill.	GATX	13068	8075	"	" #2
7-5	Home Oil Co.	Red Wing, Minn.	CTAX	6917	8095	"	

(Gas Oil)

7-18	Texas Oil Products Co.	Little Rock, Ark.	ISTX	412	8109	"	"

Changed to Petroleum Products, Inc., Higginsville, Mo., Texas Oil Products Company, Gladewater on July 21st. Issued in exchange original B/1. dated Gladewater, July 18th.

Carnation Refinery, Gladewater, Texas

July

Gasoline	22 Cars
Gas Oil	4 "
Kerosene	2 "
Distillate	4 "
Tractor Fuel	1 "
	33 "

[fol. 136]

August

Gasoline	10 Cars
Gas Oil	4 "
Kerosene	5 "
Distillate	1 "
Fuel Oil	3 "
	23 "

(Gas Oil)

Date	Consigned to	Destination	Initl.	Car. Nos.	Capy.	Shipper	Rack
7-12	Modern Refy. Corpn.	Dupo, Ill.	SHPX	8959	7981	Carnation	Ty.
7-17	Modern Refy. Corpn.	Jackson, Miss.	GATX	29502	8104	"	
7-21	M. B. Chatfield	Celina, Texas	CTAX	8152	8170	"	"
8-18	National Oil & Grease Co.	Marshall, Ark.	CATX	8082	8064	Primrose	
8-22	Saunders Pet. Co.	Howarden, Ia.	SHPX	8425	8055	Carnation	"
8-25	National Oil & Grease Co.	Oxford, Miss.	SHPX	11633	10217	"	"
8-31	Primrose Pet. Co.	N. Little Rock	SHPX	10110	10063	"	

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Date	Consigned to	Destination	Initl.	Car Nos.	Capy.	Shipper	Rack
		(Kerosene)					
7–17	Altitude Pet. Co.	K. C. Mo.	GATX	29322	8106	Carnation	
7–20	Modern Refy. Corp.	" "	GATX	13514	8087	"	Ty.
8–12	" " "	E. St. Louis, Ill.	STCX	8708	8100	"	"
8–15	" " "	" "	IMRX	1185	8083	"	"
8–18	" " "	Lebanon, Tenn.	CYCX	111	8083	"	"
8–21	" " "	E. St. Louis, Ill.	GATX	2781	8167	"	"
8–31	Pet. Import & Export Corp.	St. Rosa, La.	GATX	15052	8106	"	"
		(Distillate)					
7–12	Western Pet. Co.	Omaha, Neb.	HTCX	1042	8082	"	
7–17	Barron Oil Co.	Shenandoah, Ia.	SHPX	8684	8059	"	
7–23	Modern Refy. Corp.	Dupo, Ill.	IMRX	1180	8086	"	
7–29	Cooper Keller Oil Co.	Rice Lake, Wis.	QTX	8316	8064	"	
8–20	Primrose Pet. Co.	N. Little Rock	GATX	5469	8087	"	"
		(Gasoline)					
7– 1	Modern Refy. Corp.	Ossian, Ind.	PTX	2000	8250	"	"
7– 1	American Pet. Co.	Carroll, Ia.	SHPX	8468	8229	"	"
7– 1	"	Oskaloosa, Ia.	GATX	15541	8106	"	"
7– 5	Modern Refy. Corp.	Dupo, Ill.	PTX	4061	8002	"	"
7– 5	" " "	" "	CTAX	8094	8067	"	"

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7– 7	City of Dallas	Dallas, Texas.	SIMX	1223	10070	"	"
7– 8	Texas Oil Products Co.	Wilmar, Minn.	GATX	29309	8108	"	"
7–11	T. J. Ryan	St. Louis, Mo.	SIMX	1613	10227	"	"
7–11	" "	" "	GATX	6439	8120	"	"
7–11	Penn-Bright Oil Co.	Chicago, Ill.	SIMX	1032	10070	"	"
7–12	Cooper Keller Oil Co.	Wilson, Minn.	PTX	6134	8095	"	
7–14	Gaither Oil Co.	Ft. Worth, Tex.	PTX	4670	8081	"	"
7–17	Oakley Gas & Oil Station	Atlanta, Ga.	HTCX	1110	8069	"	
7–17	American Pet. Co.	Evansville, Ind.	HTCX	1147	8086	"	"
7–19	Cooper Keller Oil Co.	Rice Lake, Wis.	APTX	108	8084	"	"
7–21	Red Ace Pet. Co.	Nashville, Tenn.	GATX	25558	8059	"	"
7–21	Modern Refy. Corp.	Dupo, Ill.	HTCX	1017	8080	"	"
7–21	" " "	" "	HTCX	1006	8087	"	"
7–21	***" " "	" "	SHPX	8727	8028	"	"
7–25	C. R. Kline, % Charlie Macklen,	Gravois Switch, Gravois, Mo.	GATX	15551	8018	"	
7–29	Cooper Keller Oil Co.	Wilson, Minn.	GATX	26589	8096	"	"
8–11	" " " "	" "	PTX	4712	8078	"	
8–12	Modern Refy. Corp.	E. St. Louis, Ill.	PTX	3459	8252	"	"

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Date	Consigned to	Destination	Initl.	Car Nos.	Capy.	Shipper	Rack
8–21	Cooper Keller Oil Co.	Wilson, Minn.	GATX	6411	8127	"	
8–21	" " " "	Minneapolis, Minn.	SIMX	9932	8152	"	"
8–21	" " " "	" "	CYCX	8517	8083	"	"
8–24	" " " "	" "	PTX	1546	8250	"	"
8–24	" " " "	" "	PTX	4061	8051	"	"
8–28	" " " "	" "	SHPX	11373	10074	"	"
8–29	T. J. Vogel Oil Co.	Omaha, Neb.	GATX	13190	8085	"	"
8–31	Cooper Keller Oil Co.	Minneapolis, Minn.	CTAX	8124	8165	"	"
***			GATX	29520	8104	"	"
7–21	Red Ace Pet. Co.	Paris, Tenn.	HTCX	1005	8110	"	"
		(Tractor Fuel)					
7–29	Penn-O-Tex Oil Co.	Sidney, Neb.	HTCX	1032	8070	Carnation Ty.	
		(Fuel Oil)					
8–21	Collin County Mill & Elev. Co.	McKinney, Tex.	SHPX	8876	8014	"	"
8–26	do	" "	SHPX	8992	7982	"	"
8–26	Farmers & Merchants Compress & Whse. Co.	Sulphur Spgs. Tex.	SHPX	9095	8155	"	"

[fol. 140]

Lake Refining Co., Gladewater, Texas

July, 1933

Gas Oil	17
Kerosene	2
	19 Cars

August, 1933

Gas Oil	1
Top Crude	1
	2 Cars.

Date	Consigned to	Destination	Initl.	Car Nos.	Capy.	Shipper	Rack
7– 1	L. A. Black	DeWitt, Ark.	SHPX	8136	8072	Gas Oil Lake	
7– 2	L. A. Black	DeWitt, Ark.		7627	7611	" " "	
7– 3	L. A. Black	DeWitt, Ark.	CTAX	8105	8167	" " "	
7– 3	L. A. Black	Gillette, Ark.	GATX	29858	8119	" " "	Team
7– 6	L. A. Black	DeWitt, Ark.	PTX	2561	8258	" " "	"
7– 7	Blue Seal Oil Co.	Carlisle, Ark.	SHPX	9183	8138	" " "	"

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Date	Consigned to	Destination	Initl.	Car Nos.	Capy.	Shipper	Rack
7– 8	L. A. Black	DeWitt, Ark.	WRDX	64	8049	" "	" "
7–10	L. A. Black	Yoder, Ark.	CTAX	7000	8111	" "	"
7–11	L. A. Black	DeWitt, Ark.	HECX	1012	10162	" "	"
7–11	L. A. Black	DeWitt, Ark.	STCX	1330	10097	" "	" "
7–12	L. A. Black	DeWitt, Ark.	ISTX	232	8008	" "	"
7–14	L. A. Black	DeWitt, Ark.	SHPX	2402	10040	" "	"
7–16	L. A. Black	Gillette, Ark.	CTAX	8090	8064	" "	" "
7–17	L. A. Black	DeWitt, Ark.		2085	8067	" "	" "
7–18	L. A. Black	DeWitt, Ark.	STCX	8320	8050	" "	" "
7–19	L. A. Black	DeWitt, Ark.	GATX	1892	8181	" "	" "
7–21	L. A. Black	DeWitt, Ark.	SHPX	8464	8234	" "	" "
8– 8	Star Refg. Co.	Ft. Worth, Tex.	SHPX	9137	8140	" "	" "
8– 9	Radio Pet. Co.	Teague, Tex.	KTX	8043	8043	" "	" "
8–25	City of Crete	Crete, Neb.		215	8052	" "	" "
7–14	Blue Seal Oil Co.	DeWitt, Ark.	CYCX	9171	8173	Kerosene	" "
7–21	Withers and Wellford, Inc.	Memphis, Tenn.	GATX	29351	8102	"	" "
8– 9	Star Refg. Co.	Ft. Worth, Tex.	SHPX	1027	10024	Reduced Crude for further refining.	"
8–26	Apex Oil Co.	Granite City, Ill.	GATX	2830	8097	Gasoline Lake Ty.	

[fol. 142]

Upshur Refining Co., Gladewater, Texas

July, 1933

Gasoline	2
Distillate	2
Gas Oil	1
	5 Cars.

August, 1933

Fuel Oil	2
Gas Oil	4
Cracking Stock	1
Petroleum Oil	1
	8 Cars.

(Distillate)

Date	Consigned to	Destination	Initl.	Car Nos.	Capy.	Shipper	Rack
7–12	Ark.-La. Pet. Co. Notify Ark-La. Pet. Co., Stuttgart, Ark.	Gillette, Ark.	ISTX	504	8106	Upshur	Team

[fol. 143]

Date	Consigned to	Destination	Initl.	Car Nos.	Capy.	Shipper	Rack
7–17	Ark-La. Pet. Co.	Carlisle, Ark.	CTAX	7004	8111	"	"
		(Gas Oil)					
7–17	Farmers Co-Operative Gin Co.	Celina, Tex.	CTAX	8084	8087	"	"
7–25	North Texas Gin Co.	Prosper, Tex.	SHPX	8549	8014	"	"
7–26	Standard Tilton Milling Co.	Dallas, Texas.	WRDX	61	8050	"	"
8– 4	Chief Refg. Co.	Stuttgart, Ark.	SHPX	7627	7611	"	"
	From Chief Refg. Co.						
8–19*	Primrose Pet. Co.	Memphis, Tenn.	SHPX	8722	8033		"
8–19*	"	"	SHPX	8817	7996		"
	*From Upshur Refining Company - Shipper - Primrose Petroleum Co. Per Upshur Refining Company, H. T. Melton.						
8–28	Modern Refg. Corp.	Little Rock, Ark.	SHPX	8322	8125	Upshur	Team
8–31	" " "	Hattiesburg, Miss.	SHPX	2392	10036	"	"
		(Fuel Oil)					
8– 5*	Dennison Compress Co.	Dennison, Texas.	SHPX	11759	10212		

*From Frank B. Chatfield, Shipper Frank B. Chatfield, Per Upshur Refining Company.

[fol. 144]

Date	Consigned to	Destination	Initl.	Car Nos.	Capy.	Shipper	Rack
8– 7*	ShermanCompressCo.	Sherman, Tex.	SHPX	8872	8007		“
	*From Upshur Refg. Co., Shipper Frank B. Chatfield, Upshur Refg. Co., By H. Melton						
8– 8*	Collin County Mill & Elev. Co.	McKinney, Tex.	GATX	25842	8003		
	*From Upshur Refg. Co., Shipper Frank B. Chatfield, Upshur Refg. Co., H. T. Melton.						
	(Cracking Oil)						
8–23	PetroleumProductsCo.	Omaha, Neb.	GATX	26593	8095		Team
	Primrose Petroleum Company, Per Upshur Refining Company.						
8–23	PetroleumProductsCo.	Omaha, Neb.	SHPX	8080	8096		“
	Primrose Petroleum Company, Dallas, Texas, Per Upshur Refg. Co.						
8–27	PetroleumProductsCo.	Fayette, Mo.	SHPX	7605	7623		
	From Upshur Refg. Co., Shipper Primrose Pet. Co., Per Upshur Refg. Co.						

[fol. 145] Walter S. Behrens further stated that there are fifty-one refineries in the East Texas Field and that the following eleven refineries have failed to make the reports required by the Department of the Interior:

Panama, Canyon, Foshee, Carnation, Lake, Locke, Southport, Owl, Lotus, Hanover, and Acme.

The Defendants introduced in evidence a statement by Kent B. Knox, who stated that he is employed by the United States Department of the Interior, Division of Investigations, as an Oil Enforcement Agent in the East Texas Oil Field; that in the performance of his duties he compiled from official records of the War Department, U. S. Engineer Office, the Collectors of Customs, Department of Commerce, and the Railroad Commission of Texas, the following data:

Tanker Movements

All Movements Through Texas Ports

Figures taken from records of the War Department, United States Engineer Office, Galveston. Reduced from tons (2000 lbs) to barrels of 42 gallons on the basis of 6.44 barrels per ton for crude oil, 7.21 barrels per ton for gasoline, 7.00 barrels per ton for kerosene, and 6.28 barrels per ton for gas and fuel oil.

July, 1933

Crude Oil	15,424,674	barrels
Gasoline	6,678,363	"
Kerosene	704,844	"
Oil, Gas & Fuel	3,466,114	"

[fol. 146] August, 1933

Crude Oil	16,275,309	barrels
Gasoline	5,864,830	"
Kerosene	1,068,270	"
Oil, Gas & Fuel	3,787,091	"

September, 1933 (Incomplete)

Figures from Reports by Collectors of Customs, Department of Commerce; Foreign & Coastwise Movement.

Crude Oil—East Texas	4,689,534	barrels
Conroe	1,303,165	"
Other Fields	6,235,617	"
	12,228,316	"
Gasoline	1,122,598	"
Kerosene	238,564	"
Oil, Gas & Fuel	523,069	"

October, 1933 (Gasoline only & Incomplete)

Gasoline	173,839	barrels

Tanker Movement From Louisiana Ports

Reports by Collectors of Customs, Department of Commerce, show large amounts of East Texas crude shipped from Louisiana Ports.

Baton Rouge, La.:

July, 1933

Gasoline	247,298	barrels
Kerosene	47,949	"

August, 1933

Gasoline	470,937	"
Kerosene	20,898	"

September, 1933

Gasoline	244,894	"
Kerosene	6,673	"

New Orleans, La.:

July, 1933

Gasoline	274,065	"

August, 1933

Gasoline	199,930	"

[fol. 147] Shipment of By-Products by Railroad from East Texas July 18 to 31, Incl., 1933

(Figured at 193 barrels per car, 42 gallons per barrel)

Gasoline	910	Cars	175,630	barrels
Kerosene	90	"	17,370	"
Gas Oil	277	"	52,496	"
Distillate	68	"	13,124	"
Naphtha	17	"	3,281	"
Fuel Oil	141	"	27,213	"

August, 1933

Gasoline	2,188	Cars	422,284	"
Kerosene	292	"	56,356	"
Gas Oil	611	"	117,923	"
Distillate	393	"	75,849	"
Fuel Oil	1,157	"	223,301	"
Naphtha	38	"	7,334	"

September, 1933

Gasoline	2,121	Cars	409,353	"
Kerosene	283	"	54,619	"
Gas Oil	578	"	111,554	"
Distillate	376	"	72,568	"
Fuel Oil	1,878	"	362,454	"
Naphtha	41	"	7,913	"

September, 1933

(Topped Crude Included)

Export	2,995	Cars	578,935	"
Interstate	2,773	"	535,189	"
Intrastate	960	"	185,280	"

94% Interstate & Export

October, 1933

(1st to 26th Incl.)

(Topped Crude Included)

Export	3,177	Cars	613,161	barrels
Interstate	2,151	"	415,143	"
Intrastate	789	"	152,277	"

93¼% Interstate & Export.

[fol. 148] The Defendants introduced in evidence a statement by E. F. Everheart and T. J. Breeding, who stated that they were representatives of the Railroad Commission of Texas; that about September 4, 1933, V. E. Cottingham, their Deputy Supervisor, instructed them to make an investigation of the A. & P. Oil Company (A. F. Anding) Brightwell No. I Well, located in the R. W. Smith Survey, Rusk County, Texas; that they were also instructed to meet Mr. A. H. Alcorn of the Department of the Interior, and after meeting Mr. Alcorn and Mr. Martin, another representative of the Department of the Interior of the United States, they proceeded to the Brightwell No. I Well, on the above mentioned lease, and, upon examination of said well, found the following:

A four inch pipe extending from the above well eastward for a distance of about 165 feet, at which point this four inch line was welded to another four inch line running in a north-south direction. The north end of this pipe extended north for about 15 feet, thence east for a few feet, same being open-ended, and the south end extended southward for about 1000 yards. Examination disclosed a gate valve about 4 feet west of the welded junction of the two four inch lines and also another gate valve about 4 feet north of this welded junction.

They requested the man in charge of the above lease to disconnect the four inch line from the well which connects with the north-south line, this he did. The east-west line was disconnected between the welded junction and the gate four feet to the west. After it was disconnected and the open end bull-lugged, they sealed this gate valve with the Railroad Commission seals. To the best of their knowledge, this four inch line connects into the oil string of casing in the well some 6 or 8 feet below the casing-head outlets.

[fol. 149] T. J. Breeding, C. F. Fullingim, and W. C. Howison stated that on September 5, 1933, Deputy Supervisor V. E. Cottingham asked them to make a supplemental report on the A. & P. Oil Company's Brightwell No. I Well, located in the R. W. Smith Survey, Rusk County, Texas; that Mr. Cottingham explained that the previous examination made September 4th, above set out, did not show definitely that the east-west four inch line tied into the oil string or casing, and that he wanted them to dig

down alongside of the casing and determine if this connection was made; that they arrived at the well about 3:00 PM and proceeded to dig down by the casing where the by-pass was supposed to be welded into the casing; that after they had dug down about four feet below the surface, a Mr. Hickey, who is in charge of the above well, told them that it would be impossible to dig much further down, because there were 165 sacks of cement around the connection which they were looking for; that he then told them, in order to save them the trouble of digging up the connection, that he would tell them about it; that he said that the four inch pipe was welded through the surface casing and oil string approximately 6 or 8 feet below the casing-head outlets and that 23 feet east of the well another gate valve would be found on the four inch line and that they dug up this gate and found it closed.

The Defendants introduced in evidence a statement by E. N. Stanley, Chief Investigator for the Railroad Commission of Texas, and V. E. Cottingham, Deputy Supervisor for the Railroad Commission of Texas, who stated that on the 6th day of September, 1933, Mr. Tom Potter came [fol. 150] to the Railroad Commission's office, located in Kilgore, Texas; that Potter said in their presence that he had come for the purpose of discussing with them the by-pass connection which had been found on the A. & P. Oil Company (A. F. Anding) Brightwell No. I Well, located in the R. W. Smith Survey, Rusk County, Texas; that during the discussion, he represented himself as being a part owner of the above well and wanted to know if they were going to file a violation complaint with the Attorney General's Department for having a by-pass connection; that they told him the matter would be referred to the Attorney General's Department for opinion; that Mr. Potter readily admitted a four inch pipe had been welded into the oil string casing and said that the connection had been made for by-passing oil from the well, but that it had not been used and that they did not intend to use it until the embargo was lifted; and that Potter also stated that a concrete slab was between this connection and the surface of the ground.

E. N. Stanley further stated that since January 24, 1933, he has been in charge of proration in the East Texas Oil

Field for the Railroad Commission of Texas; that the East Texas Oil Field now has approximately 11,000 producing wells; that in the field there are hundreds of miles of pipe lines, gathering systems, and other connections used for the transportation of oil from wells to tanks, to gathering systems, to loading racks and refinery connections; that in the performance of his official duties, as Chief Investigator for the Railroad Commission in the East Texas Oil Field, among many violations, the following violations had been brought to his attention:

Southport Pet. Co.: This refinery has received oil from the Travis and Kroll, Crowder leases and King leases, Van [fol. 151] Winkle Survey, which has been illegally produced continuously and still doing so. The above company was caught using by-pass on both above mentioned leases.

The Southport Petroleum Company does not make out reports of any kind, operate a pipe line without permit, refuse to give any kind of information whatsoever and have an eight foot wire fence around the refinery proper which prevents inspection or investigation by Railroad Commission employees of their use of illegally produced crude oil.

On September 20th, 1933, their I & G N Ry. lease well was caught flowing to Southport Pet. Co., refinery without making reports nor obtaining approved tenders.

Panama Refining Co.: This refinery has run illegally produced oil from the Jay Simmons well, Ben Bean lease, Van Winkle Survey. They were caught using a by-pass on March 22nd and reported to Attorney Gen'l. The Panama Refining Company has continuously run hot oil, and have refused the Railroad Commission any kind of information and inspection of their properties.

The Defendants introduced in evidence a statement by Colonel Louis S. Davidson, who stated that during the military occupation of the East Texas Oil Field, he was commanding officer of the 124th Cavalry, which unit of the National Guard was designated by the Governor to administer military law in this field while it was under martial [fol. 152] law by proclamation of the Governor of the State of Texas; that during this occupation and since he has kept in close touch with the conditions in the East Texas Oil

Field and knows that there existed there a chaotic condition; that the Rules and Regulations of the Railroad Commission were openly scoffed at; that many operators, producers and refiners and others continuously violated the Rules and Regulations as to production and movement of oil; that millions of barrels of illegally produced oil entered the channel of interstate commerce and that conditions as existed in this field had a demoralizing effect upon the national markets; that without Federal control of production at its source or distribution from the field, both in the crude petroleum and its products, that these conditions will again return to the East Texas Oil Field, thus destroying the national markets and, in fact, the oil industry itself.

He further stated that while he was commanding officer in the East Texas Oil Field, his staff of officers and enlisted men uncovered by-passes in enormous numbers, they discovered every conceivable by-pass that could be thought of by an oil racketeer, unbelievable systems of connection and network of lines were uncovered, the existence of which, without having actually observed them, is almost unbelievable; that millions of barrels of illegally produced oil have left the East Texas field and hundreds of royalty owners, land owners, and fee owners have been defrauded of their property by such over-production which, in fact, is nothing but stealing that part from the common pool to which his neighbor is entitled; that in his opinion, the greatest step toward eliminating these chaotic conditions from the East Texas Oil Field was taken by President Roosevelt on July 11, 1933, when he signed his Executive Order prohibiting [fol. 153] illegal or "hot oil" from entering into the stream of interstate commerce. Conditions are greatly improved in the East Texas Oil Field since that date; that it is witness's belief that without Federal control in this field conditions would be unbearable; and that the national oil markets would be destroyed and thousands of people would be destitute.

He further stated that during the period from August 17, 1931, to December 20, 1932, a portion of which time the field was under martial law, all of the refineries in the East Texas Oil Field, with the exception of two or three, had their own pipe line or gathering system; that these refineries did not use seals on the lock stops on the tank batteries located on the leases from which they were receiving

oil as is required and which is done 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 and that some of the refineries had wells flowing directly to storage tanks located at the refineries; that it is impossible to determine the amount of oil produced from leases to which these refineries are connected without keeping a man on duty at such wells the entire 24 hours in each day, or without gauging the storage tank located at the refinery; that he is familiar with the pipe line system in Gladewater and Kilgore, Texas, and that oil can be delivered at any point in the East Texas Oil Field to almost any refinery in the field and can be delivered from one refinery to another. He further stated that in most cases, there are loading racks at the refinery; that refineries having no loading racks have lines from the refinery to loading racks; that during the months of April, May, June and July, 1933, hundreds of cars of crude oil were loaded and shipped out of the East Texas [fol. 154] Field by refineries; that A. & P. Oil Company, which is Anding & Potter, the owner of the Panama Refining Company, loaded hundreds of cars of crude oil which were shipped to the coast, where same was put into foreign and interstate commerce; that there were numerous cases on record where the surplus over-produced oil had gone to the refineries, and the royalty owner had received one price for his legal oil and a much smaller price for the excess oil; that in many instances, in the past he has records to show that the royalty owner did not receive payment for a large majority of the over-produced oil that went to the refinery; that it is absolutely useless to check pipe line, leases and movement of oil by tank cars from loading racks other than the refineries and allow the refineries to run unrestrained in the handling of crude oil, when, in fact, the majority of these refineries are not only in the refining business but are brokers for crude oil; and that unless all other outlets are checked, there is no way of arriving at the total production in the East Texas Oil Field.

The Defendants introduced in evidence statements by K. B. Knox, H. L. Bray, Howard E. Tyson and J. G. Floyd, each of whom stated that he is an Oil Enforcement Agent

of the Department of the Interior; that in the performance of his official duties in the State of Texas it has been necessary to make investigations as to the production of illegal oil and the use of illegal underground pipe net work, known as by-passes; and that he has listed a considerable number of such illegal practices which he has discovered in the East Texas Field.

[fol. 155] The Defendants introduced in evidence a statement of NEAL POWERS, who stated that he is Assistant Attorney General for the State of Texas; that it is his duty to prosecute cases and suits for the State of Texas arising out of violations of the rules and regulations of the Railroad Commission of Texas; and that he has compiled a list of the cases pending before his office against connections of refineries situated in the East Texas Oil Field for violations occurring from May 4, 1933, to August 1, 1933, which list shows that there are a large number of alleged violations by connections of refineries who are complainants in this case.

The Defendants introduced in evidence a statement by A. D. RYAN, who stated that his official position is that of Special Agent in Charge of the Tyler Office of the Division of Investigations, Department of the Interior; that on July 14, 1933, he was directed by the Director of Investigations to proceed to East Texas for the purpose of enforcing the Regulations issued by the Secretary of the Interior under Section 9 (c) of the Act of June 16, 1933, Public 67 (73 Congress); that when he arrived in East Texas he found that a large number of operators, refiners, gathering systems and pipe lines were utterly disregarding the Rules and Regulations of the Railroad Commission of Texas, that in the month of June some five million barrels of excess oil were produced and run either to storage or from the East Texas Oil Field; that in July this overproduction amounted to approximately two million barrels of oil; that in August excess production amounted to in the neighborhood of six hundred thousand barrels; that taking into consideration the enormous number of wells, which [fol. 156] is in round numbers 11,000, to properly police each well would require an enormous force of men; and

that he believes that the proper and successful way in which to enforce the Regulations issued in Section (9) (c), is by requiring reports as designated in the Regulations issued by the Secretary on July 15 and 25, 1933.

He further stated that it is his belief that the small refineries and skimming plants, situated in the East Texas Oil Field, are the outlet either for crude petroleum or the products thereof for a large part of the oil now being produced in excess of the allowable as set by the Railroad Commission of Texas; that he has made many inspection trips throughout the field and, from his observations and by checking reports secured from some refineries, knows that products far in excess of crude receipts as shown are disposed of by these "hot" refineries; that the agents of his office have been hindered and prevented from properly enforcing the regulations issued under Section 9 (c) by these "hot" refineries; that many obstacles have been placed in the way of these agents; and that while they have not openly been threatened with violence, they have been, by various means, prevented from securing reports and gauges of refinery tanks, which information and data is necessary if President Roosevelt's Executive Order of July 11, 1933, prohibiting illegally produced oil from entering the stream of interstate commerce is to be successfully enforced.

The Defendants offered in evidence a statement by AVERY H. ALCORN and a chart prepared by him showing the relation between the Total Daily Average Oil Movements, [fol. 157] the Total Daily Average Allowable Production, and the Total Daily Average Over-Deliveries of Oil in barrels in the East Texas Field from February 27, 1933, to September 26, 1933. He stated that he believed the statements shown in the chart are true.

The Defendants introduced in evidence a statement by J. H. LEECH, who stated that he is a Special Agent of the Division of Investigation, Department of Interior; that in connection with his official duties, it has been necessary for him to make a careful study of the Regulations issued by the Secretary of the Interior on July 15, 1933, and the

Amendments thereto; that he is also familiar with the various forms of the Railroad Commission requiring reports; that the Railroad Commission forms requiring reports from producers, shippers, gathering systems and pipe lines have been adjusted to comply substantially with the requirements of the Federal Regulations; that it has been arranged that they may continue to be filed with the Railroad Commission, which furnishes the Department of Interior with a copy of each report; that the reports are furnished to producers, shippers, gathering systems and pipe lines without cost, that it appears that no hardship has been placed upon anyone required to furnish these reports, since the Regulations are reasonable and do not demand information which is not easily acquired; and that all of the reports are necessary for the proper enforcement of the National Industrial Recovery Act. He further stated that it is also necessary to require reports from processors of petroleum, in order to prevent the interstate shipment of illegally produced oil; that for this reason Regulation V was inserted in the Regulations and requires each pur- [fol. 158] chaser, shipper or refiner of petroleum, including all persons engaged in the processing of petroleum in any manner, to make reports showing the place and date of the receipt, the names and addresses of the producers and of the persons from whom the petroleum was received, the disposition of said petroleum, including the place and dates of delivery, the amounts delivered, the names and business addresses of the consignees, the transporting agencies and the amount of petroleum held in storage at the end of the calendar month; that this regulation is not unreasonable for the reason that it is believed that for the successful operation of any business, the directing heads thereof should, at all times, have this data available, since it is necessary to them in order to determine the financial condition of their businesses and also in order to make necessary tax reports to the State and Federal Governments; and that he has determined that a large part of the shipments from refiners in the East Texas Field enter interstate commerce.

The Defendants offered in evidence the following exhibits:

Executive Order of the President dated July 11, 1933, prohibiting 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.

Executive Order promulgated by President Roosevelt [fol. 159] dated July 14, 1933, authorizing the Secretary of the Interior to exercise all the powers vested in the President for the purpose of enforcing Section 9 (c) of the Act of Congress of June 16, 1933, (Public No. 67, 73d Congress), and said Order, including full authority to designate and appoint such agents and to set up such boards and agencies as he may see fit, and to promulgate such rules and regulations as he may deem necessary.

Defendants then offered in evidence their Exhibit No. I, being a Stipulation by the Attorneys for complainants and defendants which is in words and figures as follows:

DEFENDANT'S EXHIBIT NO. I

STIPULATION

Come now the plaintiffs and the defendants by their respective counsel and hereby stipulate and agree that on the final hearing in the above entitled cause the evidence or testimony produced or introduced may be so produced or introduced in the form of affidavits, and they respectively, on behalf of the plaintiffs and defendants, waive the right of cross-examination or the production or introduction of oral testimony, and submit the cause to the court for decision upon the affidavits which each of them respectively offer on said final hearing.

Dated at Tyler, Texas, in said District, this 6th day of November, 1933.

F. W. Fischer, Attorney for Plaintiffs. Charles Fahy, Attorney for Defendants.

[fol. 160] 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, A. D. Ryan, J. Howard Marshall and S. D. Bennett, 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 taken to the United States Circuit Court of Appeals for the Fifth Circuit.

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

J. Howard Marshall, Charles Fahy, Chas. I. Francis, 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.

J. Howard Marshall, Charles Fahy, Chas. I. Francis, Attorneys for Defendants and Appellants. F. W. Fischer, Attorney for Plaintiffs and Appellees.

[fol. 161] 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.

[File endorsement omitted.]

In United States District Court

Decree—Filed Feb. 21, 1934

Came on to be heard the above styled and numbered cause, together with the above numbered causes consolidated therewith; and thereupon came the Panama Refining Company, a corporation, and A. F. Anding, complainants in Cause No. 635, with their attorney, F. W. Fischer; and came also Locke Refining Company, a corporation, Carnation Refining Company, a corporation, Foshee Refining Company, a corporation, Upshur Refining Company, a corporation, Supreme Refining Company, a corporation, Lake Refining Company, a corporation, Southport Petroleum Company, a corporation, Canyon Refining Company, a corporation, Lotus Refinery, a partnership composed of Jack Bell and W. H. Williams, and J. P. McGee, complainants in [fol. 162] Cause No. 636, with their attorney, F. W. Fischer; and came also Hanover Refining Company, a copartnership composed of J. S. Presnall, Jr., Brown McCallum, and Jack Buckley, Arrow Refining and Producing Company, a corporation, H. I. Johnson, doing business under the firm name of H. I. Johnson Refinery, Deere Creek Oil Company, a corporation, and B. F. Trawick and H. E. Wright, partners, doing business under the name of Dutch Rose Refining Company, complainants in Cause No. 640, with their attorney, F. W. Fischer; and came also the defendants A. D. Ryan, J. Howard Marshall, and S. D. Bennett, with their attorneys, and announced ready for trial; and the Court having considered the pleadings, evidence, and argument of counsel in said original cause and the consolidated causes above named, is of the opinion that said complainants are entitled to injunctive relief.

It is therefore ordered, adjudged and decreed as follows, to wit: that the defendants, A. D. Ryan, Special Agent of the Division of Investigation, Department of Interior of the United States, S. D. Bennett, United States Attorney, Eastern District of Texas, and J. H. Marshall, Special Assistant to the Attorney General of the United States be and they are hereby permanently enjoined and restrained from enforcing any rule or regulation promulgated by the Secretary of the Interior or other designated agent under the National Industrial Recovery Act insofar as the same applies to the production of petroleum or the refining and

storage thereof, or the transportation of petroleum or the products thereof in intrastate commerce.

Said defendants, their servants, agents and employees and any one else purporting to act under the authority of the National Industrial Recovery Act or any rule or regula- [fol. 163] tion promulgated thereunder, are hereby perpetually restrained and enjoined from going upon or about the premises of complainants or in any wise interfering with them or molesting them in the conduct of their business by reason of the provisions of The National Industrial Recovery Act or regulations promulgated thereunder.

It is further ordered that the said defendants A. D. Ryan, S. D. Bennett and J. Howard Marshall be served by the marshal with a copy of this permanent injunction.

It is further ordered that the complainants recover of and from said defendants their costs in this behalf expended.

To the aforesaid order and decree said defendants, and each of them, duly except in open court.

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

Randolph Bryant, United States District Judge.

[File endorsement omitted.]

IN UNITED STATES DISTRICT COURT

MOTION FOR FILING FINDINGS OF FACT AND CONCLUSION OF LAW—Filed Feb. 26, 1934

Now comes the defendants in the above entitled and numbered cause and moves that this Honorable Court file its [fol. 164] findings of facts specially, and state separately its conclusions of law thereon.

Dated this the 26th day of February, 1934.

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 November 6, 1933; came the va-

rious parties complainant with their attorneys and the various parties defendant with their attorneys; and thereupon 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, agreements and brief of counsel upon the issues presented, under the stipulation that such issues were those made by the amended Bill of Complaint filed by the Panama Refining Company, et al., on October 23, 1933, and the answer thereto filed by the defendants on November 6, 1933, makes the following findings of fact:

I

That the Panama Refining Company and the other complainant refiners are the owners and operators of crude oil [fol. 165] refining plants located in or adjacent to the East Texas Oil Field, purchasing all of their oil requirements from various and sundry producers in the East Texas Oil Field and that said refiners sell their products to dealers within the State of Texas, as well as to dealers outside of the State of Texas.

II

That A. F. Anding and the other complainant producers own and operate various oil and gas leases in the East Texas Oil Field and that such producers are not engaged in shipping petroleum or the products thereof outside of the State of Texas.

III

That the complainant refiners are not engaged in interstate commerce, except as to that portion of their refined products of crude oil that they manufacture in their respective refining plants in Texas and sell and have transported to other states; nor does the refining of crude petroleum, and the intrastate sale or transportation of refined petroleum products, affect interstate commerce, except incidentally and remotely.

IV

That the complainant producers are not engaged in interstate commerce nor does the production of petroleum in

excess of quotas allocated by a state regulatory body affect interstate commerce, except incidentally and remotely.

V

That defendant A. D. Ryan is acting under direction from and as the agent of the Secretary of the Interior to whom the President of the United States has duly delegated his [fol. 166] powers and duties under the National Industrial Recovery Act for the purpose of enforcing Section 9 (c) thereof and who, under Presidential authorization, is Administrator of the Code of Fair Competition for the Petroleum Industry.

VI

That defendant J. Howard Marshall is a Special Assistant to the Attorney General of the United States for the purpose of assisting and aiding in the enforcement of Section 9 (c) and the regulations adopted under the National Industrial Recovery Act.

VII

That defendant S. D. Bennett is the duly appointed United States Attorney for the Eastern District of Texas.

VIII

That defendant A. D. Ryan is demanding reports from complainant producers under Regulations IV and from complainant refiners under Regulations V and is demanding the right to inspect complainants' books and records under Regulations VII issued by the Secretary of the Interior, all of which Regulations were issued under authority of the National Industrial Recovery Act, for the purported reason of enforcing Section 9 (c) of said Act, and all defendants are threatening to prosecute or to cause complainants to be prosecuted for failure to make such reports and permit such inspection of books and records.

IX

Regulations IV, V and VII adopted under the National Industrial Recovery Act have no fair or reasonable rela- [fol. 167] tion to the purposes of Section 9 (c) of said Act.

X

That defendants have continually entered upon the premises of complainants without permission of complainants and have attempted to examine complainants' books and records relating to production, and have attempted to gauge their tanks and inspect their property, all of which acts the defendants assert are authorized by said Section 9 (c) of the National Industrial Recovery Act, and the Regulations issued under said Act, that certain respondents incident to such visitations have dug up and destroyed certain property about complainants premises.

XI

That defendants have threatened and are attempting to enforce against complainants criminal prosecution by reason of complainants' failure and refusal to make and file the reports prescribed by Regulations IV and V, and submit their books and records to inspection as provided by Regulation VII.

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 A. D. Ryan.

II

Regulations IV, V, and VII, and all other rules and regulations issued by the Secretary of the Interior under [fol. 168] the National Industrial Recovery Act, are invalid, illegal, unconstitutional and not authorized by Title I of the National Industrial Recovery Act, insofar as the same apply to the production of petroleum or the refining and storage thereof, or the transportation of petroleum or the products thereof in intrastate commerce.

III

That defendant A. D. Ryan has been acting and intends to continue to act beyond the scope of his authority under Title I of the National Industrial Recovery Act, in entering upon the properties of the complainants.

IV

That defendants are without authority to prosecute or to threaten to prosecute the complainants under the National Industrial Recovery Act, even though complainants may fail and omit to file the reports required by Regulations IV and V, or to keep and maintain for inspection books and records as required by Regulation VII.

V

That the National Industrial Recovery Act or the rules and regulations promulgated thereunder do not authorize the defendants, their servants, agents and employees, or any one else purporting to act under the same to go upon or about the premises of the complainants herein or in anywise interfere with or molest them in the conduct of their business.

VI

That defendants by the above described acts are causing and unless restrained will continue to cause irreparable injury to the complainants.

[fol. 169] To the foregoing findings of fact and conclusions of law, the said defendants and each of them in open Court duly excepted.

Done this the 16th day of March, A. D. 1934.

Randolph Bryant, United States District Judge.

[File endorsement omitted.]

IN UNITED STATES DISTRICT COURT

NOTICE OF INTENTION TO APPEAL—Filed March 17, 1934

A. 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.

Chas. I. Francis, Attorney for Defendants.

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.

[fol. 170] [File endorsement omitted.]

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:

A. D. Ryan, S. D. Bennett, and J. Howard Marshall, 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. 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.

4. 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 refiners of petroleum and the products thereof throughout the State of Texas and [fol. 171] 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.

5. Your petitioners, and each of them, are employes of departments of the United States Government and have 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 super-

seded 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.

J. Howard Marshall, Charles Fahy, Chas. I. Francis, Attorneys for Appellants.

[File endorsement omitted.]

[fol. 172] IN UNITED STATES DISTRICT COURT

ASSIGNMENT OF ERRORS—Filed March 26, 1934

Come now A. D. Ryan, S. D. Bennett and J. Howard Marshall, defendants in the above-entitled cause, and file the following joint Assignment of Errors upon which they will rely upon the prosecution of an appeal herewith petitioned for in said cause from the decree of this Court granting a perpetual and permanent injunction entered on the 21st day of February, 1934.

1

The Court erred in refusing to dismiss the Bills of Complaint against the defendant, A. D. Ryan, in that the Court was without jurisdiction to entertain said cause as to him, because of the absence in said cause 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 Regulation IV is unauthorized by the National Industrial Recovery Act as not reasonable and necessary to enforce Section 9 (c) of said Act, and is illegal.

4

The Court erred in holding that Regulation IV is invalid and unconstitutional.

[fol. 173]

5

The Court erred in holding that Regulation V is unauthorized by the National Industrial Recovery Act as not reasonable and necessary to enforce Section 9 (c) of said Act, and is illegal.

6

The Court erred in holding that Regulation V is invalid and unconstitutional.

7

The Court erred in holding Regulation VII is unauthorized by the National Industrial Recovery Act as not reasonable and necessary to enforce Section 9 (c) of said Act, and is illegal.

8

The Court erred in holding that Regulation VII is invalid and unconstitutional.

9

The Court erred in holding the defendants are unauthorized by the National Industrial Recovery Act to go upon the property of the complainants for the purpose of inspecting books and records and further doing such acts as are reasonably necessary in inspecting such property, 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.

10

The Court erred in failing to hold that, in authorizing the acts set forth in Paragraph 9 above, Section 9 (c) of the [fol. 174] National Industrial Recovery Act is valid and constitutional.

11

The Court erred in holding that the defendants are without authority to prosecute, or to cause to be prosecuted, the complainants under the National Industrial Recovery Act for the failure to file the reports required by Regulations IV and V or to keep and maintain for inspection books and records as required by Regulation VII.

12

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

13

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

14

The Court erred in entering the decree granting a permanent injunction in that said decree is so vague, indefinite and uncertain that defendants are prevented from doing many acts which the Court has not held to be unlawful.

15

The Court erred in entering the decree granting a permanent injunction in that it is impossible for defendants and their agents to determine therefrom what is intrastate commerce within the meaning of the decree.

[fol. 175] 16

The Court erred in permanently enjoining and restraining defendants from enforcing any Rule and Regulation promulgated by the Secretary of the Department of the Interior or other designated agents under the National Industrial Recovery Act insofar as same applies to the production of petroleum in that said production affects interstate commerce, the support of an army and the maintenance of a navy.

17

The Court erred in permanently enjoining and restraining defendants from enforcing any Rule or Regulation promulgated by the Secretary of the Department of the Interior or other designated agents under the National Industrial Recovery Act insofar as same applies to the refining of petroleum, in that said refining affects interstate commerce, the support of an army and the maintenance of a navy.

18

The Court erred in permanently enjoining and restraining defendants from enforcing any Rule or Regulation promulgated by the Secretary of the Department of the Interior or other designated agents under the National Industrial Recovery Act insofar as same applies to the storage of petroleum or the products thereof in that said storage affects interstate commerce, the support of an army and the maintenance of a navy.

19

The Court erred in permanently enjoining and restraining defendants from enforcing any Rule or Regulation promulgated by the Secretary of the Department of the Inte-
[fol. 176] rior or other designated agents under the National Industrial Recovery Act insofar as same applies to the transportation of petroleum or the products thereof in intrastate commerce in that said transportation affects interstate commerce, the support of an army and the maintenance of a navy.

20

The Court erred in permanently enjoining and restraining the defendants in the enforcement of "any" Rule or Regulation promulgated by the Secretary of the Department of the Interior or other designated agents under the National Industrial Recovery Act in that all of the matters covered by the Rules and Regulations promulgated under the authority of said Act are not raised by the issues joined by the pleading herein.

21

The Court erred in entering the decree herein perpetually restraining and enjoining the defendants, their servants, agents and employees, and anyone else purporting to act under the authority of the National Industrial Recovery Act or any Rule or Regulation promulgated thereunder from going upon or about the premises of the complainants or in any wise interfering with them in the conduct of complainants' business, by reason of the provisions of the National Industrial Recovery Act or Regulations promulgated thereunder, in that the said decree and injunc-

tive relief are not limited to the doing of all of said things in connection with intrastate commerce.

22

The Court erred in entering the decree and permanently enjoining the defendants herein from going upon or about [fol. 177] complainants' premises in that the term "going upon or about" and "premises" are too vague, indefinite and uncertain.

23

The Court erred in entering the decree and permanently enjoining the defendants herein from going upon or about complainants' premises in that the premises of said complainants are not fully shown in complainants' Amended Bill of Complaint or any other pleading filed herein as to extent, description and location of the same.

24

The Court erred in holding that transactions of the complainant refiners, except as to that portion of the refined products of crude oil that they sell and have transported to other states, are not transactions in or directly affecting interstate commerce.

25

The Court erred in holding that the transactions of the complainant producers in connection with the production of crude oil are not transactions in or directly affecting interstate commerce.

26

The Court erred in holding that the production, purchase and sale of petroleum and the products thereof, wholly within the State of Texas, are not transactions directly affecting interstate commerce in such commodities.

27

The Court erred in failing to hold, as a matter of fact, that eighty-five per cent of the crude oil produced in the East Texas Field and of the products thereof are com- [fol. 178] mingled with, or move in, or enter the stream of interstate commerce.

28

The Court erred in failing to hold that the production of crude oil in excess of the amount allocated by a valid state order, and the refining, storing and transportation thereof, demoralizes the interstate market for petroleum and its products on a nation-wide scale, and disrupts the natural channels of interstate commerce in petroleum and the products thereof.

29

The Court erred in failing to hold that the production of crude oil in excess of the amount allocated by a valid State order results in a depletion of the supply of oil necessary to the movement of interstate commerce and to the support of an army and the maintenance of a navy.

30

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.

31

The Court erred in failing to hold that a national emergency exists in industry generally and specially in the Petroleum Industry.

32

The Court erred in finding the defendants have destroyed certain property of the complainants.

Wherefore, defendants pray that said decree be reversed, [fol. 179] said injunction be dissolved and for such other and further relief as to the Court may seem just and proper.

Dated this the 26th day of March, A. D., 1934.

J. Howard Marshall, Charles Fahy, Chas. I. Francis, Attorneys for Defendants.

[File endorsement omitted.]

IN UNITED STATES DISTRICT COURT

ORDER ALLOWING APPEAL—Filed March 26, 1934

Upon petition of the defendants A. D. Ryan, S. D. Bennett and J. Howard Marshall 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 A. D. Ryan, S. D. Bennett and J. Howard Marshall to the United States Circuit Court of Appeals for the Fifth Circuit for 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.

[fols. 180 & 181] 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 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.

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, filed March 26, 1934, omitted in printing.

[fol. 182] IN UNITED STATES DISTRICT COURT

CERTIFICATE OF DIRECTION TO APPEAL—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, A. D. Ryan, S. D. Bennett, and J. Howard Marshall, 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.

[fol. 183] 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.)

[File endorsement omitted.]

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. Amended Bill of Complaint and Exhibits attached thereto.
3. Answer of defendants to Amended Bill of Complaint.
4. Stipulation of all parties on pleading.

[fol. 184] 5. Statement of the evidence and Waiver of Notice.

6. The Decree.

7. Motion for Filing Findings of Fact and Conclusions of Law.

8. Findings of Fact and Conclusions of Law.

9. Notice of Intention to Appeal.

10. Petition for Appeal and Stay of Injunction.

11. Assignment of Errors.

12. Order Allowing Appeal without Bond.

13. Citation on Appeal and Acceptance of Service thereof.

14. Certificate of Direction to Appeal.

15. Notice of Election for Printing Record.

16. Stipulation as to Contents of Transcript of Record.

17. Clerk's Certificate.

J. Howard Marshall, Charles Fahy, Chas. I. Francis, Attorneys for Defendants and Appellants. F. W. Fischer, Attorney for Plaintiffs and Appellees.

[File endorsement omitted.]

[fol. 185] IN UNITED STATES DISTRICT COURT

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

A. D. Ryan, S. D. Bennett and J. Howard Marshall, 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. 186] 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 Recovery 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. 187] 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 en-

forcement 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. 188] "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 organi-

zation of industry for the purpose of cooperative action among trade groups, to induce and maintain united action of labor and management under adequate governmental sanctions and supervision, to eliminate unfair competitive practices, to promote the fullest possible utilization of the present productive capacity of industries, to avoid undue restriction of production (except as may be temporarily required), to increase the consumption of industrial and agricultural products by increasing purchasing power, to reduce and relieve unemployment, to improve standards [fol. 189] 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. 190] President may approve a code or codes of fair

competition for the trade of 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 code-. 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 transac- [fol. 191] tion 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 misde- [fol. 192] meanor and upon conviction thereof an offender shall be fined nor 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. 193] 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 [fol. 194] and 5 of these rules and regulations which are attacked in 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:

[fol. 195] (a) That complainants and other producers engaged in 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 [fol. 196] demand for petroleum products shall be estimated by a 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 ascertain the amount of oil being produced by them. That certain respondents, incident to such visita- [fol. 197] tions 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.

[fol. 198] (c) It authorizes the President to exercise police powers not granted to the National Government by the several 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 of 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.
[fol. 199] The majority opinion this day filed has adjudged that 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 [fol. 200] Coal Company, 259 U. S. 407. Champlin Refining Co. v. Corp. Comm., 286 U. S. 210.

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. Pipeline 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 [fol. 201] important function than that which devolves upon it the obligation to preserve inviolate the constitutional limitations 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 [fol. 202] nor more clearly expressed in political literature than that between manufacture and commerce. 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, stockraising, 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 [fol. 203] reason is obvious, being so that no discrimination would occur by reason of such legislation.

In the case at bar the regulations sought to be enforced against the complainants apply only to the East Texas and 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 voluntary both as to their competitive practices and as to their [fol. 204] 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 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 produc- [fol. 205] tion and manufacturing processes, dictate the hours of labor, wages to be paid, the conditions of employment and the relations of employer and employee.

That such was not the intent of Congress except as it 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 case 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 [fol. 206] 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 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 commerce is within the regulatory power of Congress under the commerce clause, and it is primarily for Congress to consider and decide the fact of the danger and meet it. This court will certainly not substitute its judgment for that of Congress in such a matter unless the 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 [fol. 207] 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.*"

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 [fol. 208] 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 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 [fol. 209] 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 it might think necessary or enpedient 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 illusory 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 Asso- [fol. 210] ciation 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 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 [fol. 211] against it to the effect that it is an abdication by Congress of its function of legislating and an unconstitutional delegation of authority to the President of its power to legislate, the inquiry arises as to the validity of the regulations 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. Terrell, 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.

[fol. 212] 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 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.

[fol. 213] 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 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 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 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 [fol. 214] had by regulation required that every domestic producer of livestock, engaged solely in intrastate commerce, give him information as to the kind and character, 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 [fol. 215] against any stealthy encroachments thereon. Their motto should be obsta principiis."

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.'' Dillons 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. 216] Clerk's certificate to foregoing transcript omitted in printing.

[fol. 217] That thereafter the following proceedings were had in said cause in the United States Circuit Court of Appeals for the Fifth Circuit, viz:

IN THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT

No. 7351

A. D. RYAN, S. D. BENNETT, J. HOWARD MARSHALL, Appellants,

versus

PANAMA REFINING COMPANY et al., Appellees

Motion of Appellants for Supersedeas and Stay

MOTION FOR SUPERSEDEAS AND STAY AND AFFIDAVIT IN SUPPORT—Filed April 4, 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, J. Howard Marshall 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 Dis-[fol. 218] trict of Texas, entered a decree granting a permanent and perpetual injunction in a certain cause entitled Panama Refining Company et al., plaintiffs, versus A. D. Ryan et al., defendants, in Equity Cause No. 635 and Consolidated Causes Nos. 636 and 640, then pending in said Court.

The District Court, by its decree, granted a permanent and perpetual injunction enjoining and restraining A. 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 J. Howard Marshall, Special Assistant to the Attorney General of the United States, from enforcing any Rule or Regulation designated by the Secre-

tary of the Interior under the National Industrial Recovery Act insofar as the same applies to the production of petroleum or the refining and storage thereof, of the transportation of petroleum or the products in intrastate commerce, and enjoining said parties, their servants, agents and employees and anyone else purporting to act under the authority of the National Industrial Recovery Act or any Rule or Regulation promulgated thereunder from going upon or about the premises of the complainants or in anywise interfering with them or molesting them in the conduct of their business by reason of the provisions of the National Industrial Recovery Act or Regulations promulgated thereunder. 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 to the direction from the Solicitor General of the United States and the Department of Justice, have taken appeal [fol. 219] 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 and refiners of petroleum and the products thereof 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.

The appellants further state that in their opinion the order of said District Court granting said permanent in-

junction should and will be reversed, or, at least, that it [fol. 220] 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 Assistant to the Attorney General, Attorneys for the Appellants, 617 Citizens Nat. Bank Bldg., Tyler, Texas.

[fol. 221] 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

STATE OF TEXAS,
County of Smith:

Before me, the undersigned authority, a Notary Public in and for said County and State, on this day personally ap-

peared J. R. Cannon, 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:

[fol. 222] My name is J. R. Cannon. I am Acting Special Agent in Charge of the Division of Investigations of the Department of the Interior at Tyler, Texas, and am particularly familiar with conditions in the East Texas oil field and generally with conditions in the oil industry throughout the United States. I am also familiar with the records and files of the Division of Investigations at Tyler, Texas, in which are reflected East Texas oil field conditions since the Tyler office was opened in August of 1933.

Overproduction in the East Texas field at this time amounts to approximately 75,000 barrels per day. This excess oil and its refined products jeopardize the interstate petroleum market throughout the Midcontinent and Eastern Coast area. This figure represents approximately a one hundred per cent increase in overproduction since the decision of the United States District Judge in the Panama and Amazon cases and in my opinion is directly attributable to the effect of these decisions in preventing effective Federal regulation, as the injunctions in these cases apply to approximately one hundred and forty-four producing and refining properties which constituted a substantial per cent of the total sources of illegally produced oil and refined petroleum products.

In my opinion the State authorities alone and unsupported by the Federal authorities cannot curb this illegal produc-[fol. 223] tion under conditions that now exist.

J. R. Cannon, Acting Special Agent in Charge.

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

[fol. 224] No. 7351

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

versus

PANAMA REFINING COMPANY 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 and refined as required by the provisions of law and regulations complained of, be and the same hereby is stayed.

[fol. 225] No. 7351

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

versus

PANAMA REFINING COMPANY 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., for appellees, was submitted to the Court.

[fol. 226] IN THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT

No. 7351

A. D. RYAN, S. D. BENNETT and J. HOWARD MARSHALL, Appellants,

versus

PANAMA REFINING COMPANY et al., Appellees

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

Before Bryan, Foster and Sibley, Circuit Judges

OPINION OF THE COURT—Filed May 22nd, 1934

SIBLEY, Circuit Judge:

This case was tried in the District Court and in this court along with that of Amazon Petroleum Corporation, et al., vs. Ryan, et al., the appeal in which has just been disposed of. The cases are similar except that this embraces among its complainants certain refiners of oil who ship some of their products in interstate commerce and who attack also Regulation V of the Secretary of the Interior which provides for [fol. 227] reports to be made by refiners. The present decree enjoined the enforcement of that Regulation also. What was said by us in the opinion in the case of Amazon Petroleum Corporation applies here, and for the reasons there set forth we reverse the decree in this case and remand the cause with direction to dismiss the bill.

[fol. 228] 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

Before Bryan, Foster and Sibley, Circuit Judges

OPINION OF THE COURT—Filed May 22nd, 1934

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 District [fol. 229] 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 Petroleum 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 which [fol. 230] 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 violation of the [fol. 231] 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 bypasses 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 commerce in large [fol. 232] 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. 233] 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 fine of not to exceed $1,000.00 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; Cham- [fol. 234] plain 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 interstate 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 ex-

changes. 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 [fol. 235] in the exercise 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 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 may 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 upheld in the cases [fol. 236] 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 Fourteenth 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 not engage in intertsate 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. 237] 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 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 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 Con- [fol. 238] gressional 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 fullness 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 complaint 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 attacked. 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. 239] 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 some one 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 some one 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 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 [fol. 240] statements of an intelligible legislative plan sufficient to be 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

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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 legislatvie 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.

*[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.

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. 241] 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

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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 directly 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. Acheson, 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.

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 government 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 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 show- [fol, 242] ing of irreparable damage or insolvency of the 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. 243] No. 7351

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

versus

PANAMA REFINING COMPANY 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. 244] IN THE UNITED STATES CIRCUIT COURT OF APPEALS, FIFTH CIRCUIT

No. 7351

A. D. RYAN et al., Appellants,

vs.

PANAMA REFINING COMPANY et al., Appellees

Application of Appellees for Stay of Mandate

MOTION AND ORDER STAYING MANDATE—Filed June 7, 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 appel-

lants and ordered a dismissal of appellees' bills of complaint.

[fol. 245] 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 No. 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.

[fol. 246] 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 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, F. W. Fischer, Tyler, Texas, Attorney for Appellees.

[fol. 247] UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH DISTRICT

No. 7351

A. D. RYAN, S. D. BENNETT and J. HOWARD MARSHALL, Appellants,

versus

PANAMA REFINING COMPANY et al., Appellees

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 7th day of June, 1934.

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

[fol. 248] 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 that the pages numbered from 217 to 247 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 7351, wherein A. D. Ryan, S. D. Bennett and J. Howard Marshall are appellants, and Panama Refining Company, 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 216 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 7th day of June, 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. 249] 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. 38,763. U. S. Circuit Court of Appeals, Fifth Circuit. Term No. 135. Panama Refining Company et al., Petitioners, vs. A. D. Ryan, S. D. Bennett and J. Howard Marshall. Petition for a writ of certiorari and exhibit thereto. Filed June 29, 1934. File No. 135, O. T., 1934.