INDEX

	Page
Opinions below	1
Jurisdiction	2
Questions presented	2
Statute and Code provisions involved	4
Statement	14
Specification of errors to be urged in No. 864	21
Summary of argument	22
Argument	30
I. The code provisions which petitioners violated are within the commerce power of Congress	30
A. The New York City live poultry market and its relation to interstate commerce	30
B. Violation of the code provisions here in issue substantially affects interstate commerce	39
Poultry unfit for human consumption	40
Sale of uninspected poultry	43
Straight killing	44
Reports	45
Minimum wages and maximum hours	47
Sale to an unlicensed poultry dealer	49
C. The court below erred in viewing practices relating to wages and hours as differing in their effect upon interstate commerce from the other practices regulated by the Code	49
D. Under the decisions of this court, the code provisions which petitioners violated are within the commerce power of Congress	57
1. The application to this case of *Local 167* v. *United States*, 291 U. S. 293	57
2. Other decisions of this court show that the federal commerce power may be applied, as it has been applied in the code provisions which are here in issue, to prevent local acts which threaten to disturb or dislocate the normal flow of interstate commerce or the price in interstate markets	63
3. Petitioners are importers of poultry from other States and Congress may regulate their handling and sale of such poultry	75

LoneDissent.org

Argument—Continued. Page
I. The code provisions—Continued.
4. The minimum wage and maximum hour provisions of the code are not controlled by the decision in *Hammer* v. *Dagenhart*, 247 U. S. 251 ---- 80
E. Practices responsible in part for a wide-spread and sharp decline in prices and wages contribute to the obstruction of interstate commerce and may be regulated by the Federal Government ---- 86
F. The wage and hour provisions are appropriate measures to protect interstate commerce from the burdens caused by labor disputes ---- 98
II. The Recovery Act and the provisions of the Live Poultry Code fully satisfy the requirements of the due process clause of the Fifth Amendment ---- 102
A. The provisions of the Live Poultry Code are reasonable regulations bearing a real and substantial relation to objectives within the scope of the commerce power ---- 107
B. The provisions of the Recovery Act and their application in the Live Poultry Code to petitioners are consistent with the procedural requirements of due process of law ---- 116
III. The authorization by Congress to the President to approve codes of fair competition is a constitutional delegation of power ---- 118
A. The Recovery Act contains a sufficient standard ---- 119
B. The President made and stated the findings required by the statute in approving the Live Poultry Code ---- 138
IV. The remaining specifications of error urged by petitioners are without merit ---- 140
A. Section 3 (f) of the Recovery Act is not invalid because of indefiniteness ---- 141
B. The indictment is not defective ---- 147
1. The charges are not too vague or general to be pleaded as res adjudicata ---- 147
2. The indictment sufficiently sets forth the interstate commerce involved and the effect of the violations upon such commerce ---- 149

LoneDissent.org

Argument—Continued.
IV. The remaining specifications—Continued. Page
B. The indictment is not defective—Continued.
3. Count 38 charges a violation of the code 150
4. The trial court properly took judicial notice of the New York ordinances and regulations 150
C. The District Court did not err in denying a bill of particulars 155
D. There was sufficient evidence to go to the jury on each count 156
E. The trial court did not err in the exclusion of evidence 159
F. The trial court did not err in reading the indictment to the jury 162
G. The trial court did not err in its instructions to the jury 163
H. The verdict on the conspiracy count was clearly unanimous 171
I. The trial court did not impose excessive fines or inflict cruel or unusual punishment 172
Conclusion 174
Appendix (separately printed).

CITATIONS

Cases:
Abandonment of Branch Line by C. & S. Ry., 72 I. C. C. 315 72
Adams v. *Milwaukee*, 228 U. S. 572 108
Adkins v. *Children's Hospital*, 261 U. S. 525 26, 112, 113, 114
Allis v. *United States*, 155 U. S. 117 170
American Can Co. v. *Ladoga Canning Co.*, 44 F. (2d) 763 (C. C. A. 7th), cert. den. 282 U. S. 899 56
American Column & Lumber Co. v. *United States*, 257 U. S. 377 69
American Steel Foundries v. *Tri-City Central Trades Council*, 257 U. S. 184 101
Appalachian Coals, Inc., v. *United States*, 288 U. S. 344 4, 91
Asbell v. *Kansas*, 209 U. S. 251 108
Atchison, T. & S. F. Railway Co. v. *United States*, 284 U. S. 248 87
Avent v. *United States*, 266 U. S. 127 128, 129, 132
Badders v. *United States*, 240 U. S. 391 173
Baldwin v. *Seelig, Inc.*, 55 S. C. 497 76, 94
Baltimore & Ohio R. R. v. *Interstate Commerce Commission*, 221 U. S. 612 109, 111
Bartlett Frazier Co. v. *Hyde*, 65 F. (2d) 350, cert. den. 290 U. S. 654 110

LoneDissent.org

Cases—Continued

Page

Baugh v. *United States*, 27 F. (2d) 257, cert. den. 278 U. S. 639 ---- 170
Beaver v. *Taylor*, et al., 93 U. S. 46 ---- 164
Bedford Cut Stone Co. v. *Stone Cutters Assn.*, 274 U. S. 37 ---- 101
Bi-Metallic Investment Co. v. *State Board of Equalization*, 239 U. S. 441 ---- 117
Binderup v. *Pathe Exchange, Inc.*, 263 U. S. 291 ---- 79
Block v. *Hirsh*, 256 U. S. 135 ---- 113
Board of Trade v. *Olsen*, 262 U. S. 1 ---- 21, 24, 65, 66, 67, 70, 84, 109, 166, 167
Bodkin v. *Edwards*, 255 U. S. 221 ---- 156
Bosley v. *McLaughlin*, 236 U. S. 385 ---- 111
Brooks v. *United States*, 267 U. S. 432 ---- 81
Bunting v. *Oregon*, 243 U. S. 426 ---- 111
Butte City Water Co. v. *Baker*, 196 U. S. 119 ---- 123
Buttfield v. *Stranahan*, 192 U. S. 470 ---- 128, 131, 137
Caha v. *United States*, 152 U. S. 211 ---- 154
Chamber of Commerce v. *Federal Trade Commission*, 13 F. (2d) 673 (C. C. A. 8th) ---- 65
Champlin Refining Co. v. *Corporation Commission*, 286 U. S. 210 ---- 147
Chesapeake & Ohio Railway v. *United States*, 283 U. S. 35 ---- 128
Cline v. *Frink Dairy Co.*, 274 U. S. 445 ---- 142, 146
Cohen v. *A. Goodman*, 189 App. Div. 209 ---- 153
Cohen v. *Department of Health of City of New York*, 113 N. Y. 88 (Sup. Ct.) ---- 153
Colorado v. *United States*, 271 U. S. 153 ---- 71, 128
Connally v. *General Construction Co.*, 269 U. S. 385 ---- 142, 147
Coronado Coal Co. v. *United Mine Workers*, 268 U. S. 295 ---- 61, 64, 73, 101
Dominion Hotel v. *Arizona*, 249 U. S. 265 ---- 111
Doty v. *Love*, 55 S. Ct. 558 ---- 123
Duplex Printing Press Co. v. *Deering*, 254 U. S. 443 ---- 100
Edelman v. *Boeing Air Transport Co.*, 289 U. S. 249 ---- 129
Erhardt v. *Boaro*, 113 U. S. 527 ---- 123
Erie Railroad Co. v. *Williams*, 233 U. S. 685 ---- 110
Euclid v. *Ambler Realty Co.*, 272 U. S. 365 ---- 57
Evans v. *United States*, 153 U. S. 584 ---- 156
Federal Radio Commission v. *Nelson Bros. Bond & Mortgage Co.*, 289 U. S. 266 ---- 128
Federal Trade Commission v. *Algoma Lumber Co.*, 291 U. S. 67 ---- 65
Federal Trade Commission v. *Eastman Kodak Company*, 7 F. (2d) 994, affirmed on another issue, 274 U. S. 619 ---- 65
Federal Trade Commission v. *Gratz*, 253 U. S. 421 ---- 122
Federal Trade Commission v. *Keppel & Bro., Inc.*, 291 U. S. 304 ---- 26, 57, 71, 73, 96, 121, 122
Federal Trade Commission v. *Raladam Co.*, 283 U. S. 643 ---- 65, 121

LoneDissent.org

Cases—Continued | Page

Federal Trade Commission v. *Royal Milling Co.*, 288 U. S. 212 ---- 65
Federal Trade Commission v. *Western Meat Co.*, 272 U. S. 554 ---- 64
Field v. *Clark*, 143 U. S. 649 ---- 130
First National Bank v. *Union Trust Co.*, 244 U. S. 416 ---- 129
Florida v. *United States*, 292 U. S. 1 ---- 72
Frischer & Co. v. *Elting*, 60 F. (2d) 711, cert. den. 287 U. S. 649 ---- 27, 122
Galena v. *Amy*, 5 Wall. 705 ---- 129
Gallot v. *United States*, 87 Fed. 446 ---- 162
Georgia Pub. Serv. Comm. v. *Atlantic Coast Line R. R. Co.*, 186 I. C. C. 157 ---- 72
Gibbons v. *Ogden*, 9 Wheat. 1 ---- 94
Greater New York Live Poultry Chamber of Commerce v. *United States*, 47 F. (2d) 156, cert. den. 283 U. S. 837 ---- 58, 76
Greenberg v. *Schlanger*, 229 N. Y. 120 ---- 153
Guerini Stone Company v. *Carlin Construction Company*, 248 U. S. 334 ---- 164
Gulf, C. & S. F. R. Co. v. *Texas*, 246 U. S. 58 ---- 173
Hammer v. *Dagenhart*, 247 U. S. 251 ---- 80, 81, 84
Hampton & Co. v. *United States*, 276 U. S. 394 ---- 132, 134, 137
Hawley v. *Walker*, 232 U. S. 718 ---- 111
Heisler v. *Thomas Colliery Co.*, 260 U. S. 245 ---- 74
Heymann v. *Southern Railway Co.*, 203 U. S. 270 ---- 76
Hill v. *Wallace*, 259 U. S. 44 ---- 84
Holden v. *Hardy*, 169 U. S. 366 ---- 111
Home Building & Loan Assn. v. *Blaisdell*, 290 U. S. 398 ---- 4
Houston, E. & W. T. R. R. Co. v. *United States*, 234 U. S. 342 ---- 73, 80
In re Debs, 158 U. S. 564 ---- 100
Intermountain Rate Cases, 234 U. S. 476 ---- 129
International Harvester Co. v. *Kentucky*, 234 U. S. 216 ---- 143, 146
Interstate Commerce Commission v. *Goodrich Transit Co.* 224, U. S. 194 ---- 109, 129
Jacobs v. *Southern Railroad*, 241 U. S. 229 ---- 164
Joplin Mercantile Company v. *United States*, 236 U. S. 531 ---- 148
Kaye v. *May*, 296 Fed. 450 ---- 154
Keokee Cons. Coke Co. v. *Taylor*, 234 U. S. 224 ---- 110
Kidd v. *Pearson*, 128 U. S. 1 ---- 74
Knoxville Co. v. *Harbison*, 183 U. S. 13 ---- 110
Lamar v. *Micou*, 114 U. S. 218 ---- 154
Leisey v. *Hardin*, 135 U. S. 100 ---- 76
Local 167 v. *United States*, 291 U. S. 293 ---- 24, 31, 57, 62, 63, 71
Lochner v. *New York*, 198 U. S. 45 ---- 113
Mahler v. *Eby*, 264 U. S. 32 ---- 128, 132

LoneDissent.org

Cases—Continued. Page

Marcus Brown Holding Co. v. *Feldman*, 256 U. S. 170 113
Martin's Administrator v. *B. & O. Railroad*, 151 U. S. 673 .. 154
Mason v. *Fearson*, 9 How. 248 129
McLean v. *Arkansas*, 211 U. S. 539 110
Metropolitan Casualty Ins. Co. v. *Brownell*, 55 S. Ct. 538 .. 106
Michaelson v. *United States*, 266 U. S. 42 129
Miller v. *Wilson*, 236 U. S. 373 111
Minnesota Rate Cases, 230 U. S. 352 ..... 80, 94
Mintz v. *Baldwin*, 289 U. S. 346 108
Motes v. *United States*, 178 U. S. 458 145
Mountain Timber Co. v. *Washington*, 243 U. S. 219 111
Muller v. *Oregon*, 208 U. S. 412 111
Mutual Film Corp. v. *Ohio Industrial Commission*, 236 U. S. 230 132
Mutual Loan Co. v. *Martell*, 222 U. S. 225 110
Nash v. *United States*, 229 U. S. 373 142
Nashville, C. & St. L. Ry. v. *Walters*, 55 S. Ct. 486 97
Nebbia v. *New York*, 291 U. S. 502 ..... 29, 75, 102, 103, 112
New York Central R. R. Co. v. *White*, 243 U. S. 188 111
New York Central Securities Corp. v. *United States*, 287 U. S. 12 ..... 28, 126, 129
North America Storage Co. v. *Chicago*, 211 U. S. 306 ..... 25, 108
Northern Securities Co. v. *United States*, 193 U. S. 197 64
Norwegian Nitrogen Products Co. v. *United States*, 288 U. S. 294 117
O'Gorman & Young, Inc. v. *Hartford Fire Ins. Co.*, 282 U. S. 251 ..... 106, 111
Olmstead v. *United States*, 19 F. (2d) 842 156
Pacific Tel. & Tel. Co. v. *Seattle*, 291 U. S. 300 129
Panama Refining Company v. *Ryan*, 293 U. S. 388 ..... 27, 29, 116, 118, 120, 125, 133, 136, 139, 140
Patterson v. *Bark Eudora*, 190 U. S. 169 110
Pennsylvania R. R. Co. v. *Minds*, 250 U. S. 368 164
Pennsylvania R. R. Co. v. *United States Railroad Labor Board*, 261 U. S. 72 101
People v. *131 Boerum Street Co.*, 223 N. Y. 268 153
People v. *Waldron*, 183 App. Div. 807 153
Peoples Natural Gas Co. v. *Public Service Commission*, 270 U. S. 550 79
Radice v. *New York*, 264 U. S. 292 111
Rail & River Coal Co. v. *Yaple*, 236 U. S. 338 110
Railroad Commission v. *Chicago, B. & Q. R. R. Co.*, 257 U. S. 563 73
Railroad Co. v. *Bank of Ashland*, 12 Wall. 226 153
Richmond Hosiery Mills v. *Camp*, 7 Fed. Supp. 139 85
Riley v. *Massachusetts*, 232 U. S. 671 111
Ritchie v. *Franklin County*, 22 Wall. 67 129
Rosenberger v. *Pacific Express Co.*, 241 U. S. 48 76
St. Louis & Iron Mountain Ry. Co. v. *Taylor*, *210 U. S. 281* 122

LoneDissent.org

Cases—Continued — Page

St. Louis, I., M. & St. Paul Ry. v. *Paul*, 173 U. S. 404 — 110
Seaboard Air Line Ry. v. *Watson*, 287 U. S. 86 — 141
Smith v. *Cahoon*, 283 U. S. 553 — 143, 146, 147
Sonneborn v. *Cureton*, 262 U. S. 506 — 76
Southport Petroleum Co. v. *Ickes*, 61 Wash. L. Rep. 577 — 85
Sproles v. *Binford*, 286 U. S. 374 — 129
Stafford v. *Wallace*, 258 U. S. 495 — 21, 24, 68, 75, 78, 97, 101, 165
Standard Oil Co. v. *United States*, 221 U. S. 1 — 142
State v. *Brown*, 62 S. W. (2nd) 426 (Mo.) — 162
Stephenson v. *Binford*, 287 U. S. 251 — 84
Strathearn S. S. Co. v. *Dillon*, 252 U. S. 348 — 110
Sturges & Burn Co. v. *Beauchamp*, 231 U. S. 320 — 111
Supervisors v. *United States*, 4 Wall. 435 — 129
Swift & Co. v. *United States*, 196 U. S. 375 — 68, 74, 78
Tagg Bros & Moorhead v. *United States*, 280 U. S. 420 — 68, 78, 96, 111, 128
Texas & N. O. Ry. Co. v. *Brotherhood of Railway Clerks*, 281 U. S. 548 — 73, 96, 101
Thornton v. *United States*, 271 U. S. 414 — 24, 25, 70, 108, 148, 154
Trademark cases, 100 U. S. 82 — 146
Union Bridge Co. v. *United States*, 204 U. S. 364 — 128, 131, 135, 137
United Leather Workers v. *Herkert & Meisel Co.*, 265 U. S. 457 — 74
United Mine Workers v. *Coronado Coal Co.*, 259 U. S. 344 — 61, 74, 75, 165
United States v. *Chemical Foundation*, 272 U. S. 1 — 128, 129, 132
United States v. *Clyde Steamship Co.*, 36 F. (2d) 691, cert. den. 281 U. S. 744 — 173
United States v. *Cohen Grocery*, 255 U. S. 81 — 146
United States v. *Delaware & Hudson Co.*, 213 U. S. 366 — 64
United States v. *Ferger*, 250 U. S. 199 — 24, 69, 73, 96, 166, 167
United States v. *Grimaud*, 220 U. S. 506 — 129, 132, 135, 137
United States v. *Katz*, 271 U. S. 254 — 110
United States v. *Patten*, 226 U. S. 525 — 24, 67
United States v. *Trenton Potteries Co.*, 273 U. S. 392 — 69
Utah Power & Light Co. v. *Pfost*, 286 U. S. 165 — 74
Waters Pierce Oil Co. v. *Texas*, 212 U. S. 86 — 143, 173
Wayman v. *Southard*, 10 Wheat. 1 — 128, 130
Wilson v. *New*, 243 U. S. 332 — 73, 97, 110, 111, 113
Wolff Packing Co. v. *Industrial Court*, 262 U. S. 522; 267 U. S. 552 — 113, 114

Statutes:

Child Labor Act, Sept. 1, 1916, c. 432, 39 Stat. 675 — 80, 81, 84
Clayton Act, Oct. 15, 1914, 38 Stat. 730, 15 U. S. C. Secs. 12–27, as amended — 56, 64

LoneDissent.org

Statutes—Continued. Page

Federal Trade Commission Act, Sept. 26, 1914, c. 311, 38 Stat. 717, 15 U. S. C. Secs. 41 *et seq* ---------- 27, 65, 121

Grain Futures Act, Aug. 24, 1921, 42 Stat. 185, 7 U. S. C. Secs. 1–17 ---------- 65

Hepburn Amendment, 49 U. S. C. Secs. 1, 6, 11, 15, 16, 16 (a), 18, 20, 41, June 29, 1906, 34 Stat. 584 ---------- 64

Interstate Commerce Act, 49 U. S. C. Secs. 1–15, Feb. 4, 1887, 24 Stat. 379, as amended ---------- 127

National Motor Vehicle Theft Act, 18 U. S. C. Sec. 408, Oct. 29, 1919, c. 88, 41 Stat. 324 ---------- 80

New York City Charter, Sec. 1172, Laws, 1897, re-enacted in 1901, amended Laws, 1904, c. 628 ---------- 151

New York City Charter, Sec. 1556, Laws, 1897, c. 378, re-enacted Laws, 1901, c. 466, Amended Laws, 1917. c. 382 ---------- 152

Sherman Act, July 2, 1890, 26 Stat. 209, 15 U. S. C. Secs. 1–7 ---------- 57, 58, 61, 62, 64, 69, 74, 75, 143, 144

Tariff Act of 1922, Sept. 21, 1922, c. 356, 42 Stat. 858, 19 U. S. C. Sec. 156 ---------- 27, 51, 121, 122, 124

Tariff Act of 1930, June 17, 1930, c. 497, 46 Stat. 703; 19 U. S. C. 1336 (h) (4) ---------- 51

Miscellaneous:

American Federation of Labor, Proceedings of 53d Ann. Convention ---------- 89

Benjamin, *Marketing Poultry Products* (1923) ---------- 40

Business Conditions Weekly, March 10, 1934 ---------- 89

Cleveland Trust Co. Business Bulletins, January 15, 1934 ---------- 89

Commons and Andrews, *Principles of Labor Legislation* (1920) ---------- 100

Congressional Record, vol. 77 ---------- 91, 93, 163, 169

Corwin, *The Doctrine of Judicial Review* ---------- 52

Daugherty, *Labor Problems in American Industry* (1933) ---------- 98, 99, 100

Department of Agriculture, Agricultural Adjustment Administration, Transcripts of Hearings on Proposed Code for Live Poultry Industry ---------- 9

Department of Agriculture Technical Bulletin 107 (May 1929), *Wholesale Marketing of Live Poultry in New York City* ---------- 30, 35, 53

Department of Commerce, Bureau of Foreign and Domestic Commerce, Statistical Abstract of the United States, 1933 ---------- 90

Paul H. Douglas, *An Analysis of Strike Statistics*, Journal of American Statistical Association (September 1923) ---------- 99

Executive Orders:

No. 6173, June 16, 1933 ---------- 12

No. 6182, June 26, 1933 ---------- 12

No. 6205–A, July 15, 1933 ---------- 12

No. 6207, July 21, 1933 ---------- 12

LoneDissent.org

Miscellaneous—Continued. Page
No. 6345, October 20, 1933 ... 12
No. 6551, January 8, 1934 ... 12
No. 6675–A, April 13, 1934 ... 11, 138
Federal Relief Administration, Monthly Report, November 1934 ... 115
Federal Trade Commission, *Trade Practice Conferences* (1933) ... 121
Hammond and Jenks, *Great American Issues* (1921) ... 100
Hearings before the House Committee on Labor, 73d Cong., 1st Sess., on S. 158 and H. R. 4557 (thirty-hour week bill) ... 51
Hearings before the House Ways and Means Committee, 73d Cong., 1st Sess., on H. R. 5664 ... 120, 168
H. Rep. No. 159, 73d Cong., 1st Sess ... 83
Information Bulletin No. 639 of Car Service Division of American Railway Association ... 90
W. I. King, *The National Income and Its Purchasing Power* (National Bureau of Economic Research, 1930) ... 99
Madison's Debates, H. R. Doc. No. 398, 69 Cong., 1st Sess ... 95, 96
National Association of Manufacturers, Convention Proceedings, 1926 ... 100
National Recovery Administration Record for the Code of Fair Competition for the Live Poultry Industry of the Metropolitan Area in and about the City of New York, Vol. II ... 10
Olds, *The High Cost of Strikes* (1921) ... 100
Pier and Sprague, *Live Poultry Shipments and Receipts at New York City*, the U. S. Egg & Poultry Magazine, August 1934 ... 30
Sachs, Alexander, *National Recovery Administration Policies and the Problem of Economic Planning*, printed in *America's Recovery Program* (Oxford University Press, 1934) ... 88
Sen. Doc. No. 124, 73d Cong., 2d Sess., *Report on National Income*, 1929 to 1932 ... 89, 91
Sen. Rep. No. 114, 73d Cong., 1st Sess ... 83, 168
Some Legal Aspects of the National Industrial Recovery Act, 47 Harvard Law Review 85 ... 84
Stern, Robert L., *That Commerce Which Concerns More States than One*, 47 Harvard Law Review 1335 ... 96
Survey of Current Business, Ann. Suppl.:
1932 ... 89
April 1933 ... 89
U. S. Commissioner of Labor, *Twenty-first Annual Report: Strikes and Lockouts* (1906) ... 99

LoneDissent.org

Miscellaneous—Continued.

U. S. Department of Labor, Bureau of Labor Statistics, *Monthly Labor Review:* Page

September 1920 100

June 1932 99

June 1933 99

July 1934 .... 52, 98, 99

U. S. Department of Labor, Women's Bureau: Bulletin No. 66-1 51

Wahrenbrock, *Federal Anti-Trust Law and the National Industrial Recovery Act*, 31 Mich. Law Review 1009 84

LoneDissent.org

In the Supreme Court of the United States

OCTOBER TERM, 1934

No. 854

A. L. A. SCHECHTER POULTRY CORPORATION, Schechter Live Poultry Market, Joseph Schechter, Martin Schechter, Alex Schechter, and Aaron Schechter, petitioners

v.

UNITED STATES OF AMERICA

No. 864

UNITED STATES OF AMERICA, PETITIONER

v.

A. L. A. SCHECHTER POULTRY CORPORATION, Martin Schechter, Alex Schechter, and Aaron Schechter

ON WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR THE UNITED STATES

OPINIONS BELOW

The opinion of the District Court (R. 131) on the demurrer to the indictment is reported in 8

LoneDissent.org

F. Supp. 136. The opinion of the Circuit Court of Appeals (R. 1648) and the concurring opinion by Circuit Judge Learned Hand (R. 1660), in which Circuit Judge Chase joined, have not yet been reported.

JURISDICTION

The judgment of the Circuit Court of Appeals was entered April 4, 1935. (R. 1664.) Petition for writ of certiorari in No. 854 was filed on April 8, 1935, and in No. 864 on April 11, 1935. Both petitions were granted April 15, 1935.

Jurisdiction of this Court rests on Section 240 (a) of the Judicial Code as amended by the Act of February 13, 1925.

QUESTIONS PRESENTED

1. Whether the following provisions contained in the Code of Fair Competition for the Live Poultry Industry of the Metropolitan Area in and about the City of New York, approved by the President under the National Industrial Recovery Act, are, as applied to operators of wholesale slaughter-houses, within the power of Congress under the Commerce Clause of the Constitution: (1) prohibition of sale of poultry unfit for human consumption; (2) prohibition of sale of uninspected poultry; (3) requirement of "straight killing," i. e., that poultry be sold only on the basis of the run of the coop or on the basis of official grade; (4) requirement of a weekly report showing the range of daily prices and the volume of sales during the

LoneDissent.org

week; (5) requirement of a minimum wage of fifty cents per hour and a maximum of forty-eight hours of labor per week for any slaughterhouse employee; (6) prohibition of sales to unlicensed dealers.

2. Whether the Act, or the provisions enumerated above, constitute a deprivation of liberty or property without due process of law in contravention of the Fifth Amendment to the Constitution.

3. Whether the National Industrial Recovery Act, in authorizing the President to approve codes of fair competition, is an unconstitutional delegation of power by Congress.

4. Whether, if the question is properly raised, Section 3(f) of the Recovery Act is invalid because of indefiniteness; and whether the trial court committed reversible error: (1) In overruling a demurrer alleging that the indictment was too general, vague, indefinite and uncertain; (2) in denying a bill of particulars; (3) in holding that there was sufficient evidence to warrant conviction, including particularly conviction on a count charging a conspiracy to violate the National Industrial Recovery Act and the Code; (4) in excluding certain evidence; (5) in reading the indictment to the jury; (6) in charging the jury as to the meaning of effect upon interstate commerce; (7) in accepting the verdict on the conspiracy count as a unanimous verdict; (8) in the imposition of fines upon the defendants.

LoneDissent.org

STATUTE AND CODE PROVISIONS INVOLVED

The pertinent provisions of the Act of June 16, 1933, c. 90, 48 Stat. 195 (U. S. Code Sup. VII, Title 15, Secs. 701 *et seq.*), known as the National Industrial Recovery Act, are set forth in the Appendix, pp. 1–12.

Background and Legislative History.—This Court has had frequent occasion to notice the crisis which confronted the nation in the spring of 1933 (*Appalachian Coals, Inc.* v. *United States,* 288 U. S. 344; *Home Building & Loan Ass'n.* v. *Blaisdell,* 290 U. S. 398) and which moved the Congress to adopt the National Industrial Recovery Act. References to the nature and extent of the economic crisis are to be found at pages 87–91 of the brief. Similarly, pertinent portions of the legislative history are referred to in the Argument.

Pertinent provisions of the Recovery Act.—The Recovery Act, approved June 16, 1933 (c. 90, 48 Stat. 195), is entitled "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." Title I is entitled "Industrial Recovery" and Title II (not material here) is entitled "Public Works and Construction Projects." Section 1 of the Act states:

> A national emergency productive of widespread unemployment and disorganization of industry, which burdens interstate and foreign commerce, affects the public welfare,

LoneDissent.org

> and undermines the standards of living of the American people, is hereby declared to exist.

This section then states the policy of Congress in enacting this Act to be as follows:

> It is hereby declared to be the policy of Congress to remove obstructions to the free flow of interstate and foreign commerce which tend to diminish the amount thereof; and to provide for the general welfare by promoting the organization of industry for the purpose of cooperative action among trade groups, to induce and maintain united action of labor and management under adequate governmental sanctions and supervision, to eliminate unfair competitive practices, to promote the fullest possible utilization of the present productive capacity of industries, to avoid undue restriction of production (except as may be temporarily required), to increase the consumption of industrial and agricultural products by increasing purchasing power, to reduce and relieve unemployment, to improve standards of labor, and otherwise to rehabilitate industry and to conserve natural resources.

Sections 2 (a), (b), and (c), entitled "Administrative Agencies", authorize the President to establish such agencies and to appoint such officers and employees as he may find necessary to effectuate the policy of Title I, to delegate any of his functions and powers under that title to such officers, agents, and employees as he may designate or

LoneDissent.org

appoint, and to establish an industrial planning and research agency to aid in carrying out his functions under that title; and provides that Title I shall cease to be in effect, and any agencies established thereunder shall cease to exist, at the expiration of two years after the date of the enactment of the Act, or sooner if the President shall by proclamation, or the Congress shall by joint resolution, declare that the emergency recognized by Section 1 has ended.

Section 3 is entitled "Codes of Fair Competition." Section 3 (a), pursuant to which the Live Poultry Code was approved by the President, reads as follows:

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

LoneDissent.org

> such code or codes affect the services and welfare of persons engaged in other steps of the economic process, nothing in this section shall deprive such persons of the right to be heard prior to approval by the President of such code or codes. The President may, as a condition of his approval of any such code, impose such conditions (including requirements for the making of reports and the keeping of accounts) for the protection of consumers, competitors, employees, and others, and in furtherance of the public interest, and may provide such exceptions to and exemptions from the provisions of such code, as the President in his discretion deems necessary to effectuate the policy herein declared.

Section 3 (b) declares that the provisions of a code approved by the President shall be the standards of fair competition for the trade or industry in question, and provides that any violation of such standards "in any transaction in or affecting interstate commerce" shall be deemed an unfair method of competition in commerce, within the meaning of the Federal Trade Commission Act.

Section 3 (c) vests the several District Courts of the United States with jurisdiction in equity to restrain violations of any code approved under Title I.

Section 3 (f) provides as follows:

> When a code of fair competition has been approved or prescribed by the President under this title, any violation of any provision

LoneDissent.org

> thereof in any transaction in or affecting interstate or foreign commerce shall be a misdemeanor and upon conviction thereof an offender shall be fined not more than $500 for each offense, and each day such violation continues shall be deemed a separate offense.

Section 7 (a) provides that:

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

The adoption of the Live Poultry Code.—An application for a code for the live poultry industry in and about New York City was made by a number of trade associations representing "about 90% of

LoneDissent.org

the live poultry industry by members and by volume of business" (R. 6–7, 10, 1586). On January 6, 1934, the Secretary of Agriculture[1] issued a notice of a hearing to be held on January 17, 1934 for the purpose of considering the proposed code. The notice of hearing stated that all interested parties would have an opportunity to be heard (Ex. 19, R. 1580; Appendix, pp. 60–61). Copies of the notice were mailed to members of the industry, including petitioners. (Ex. 20, R. 1580). Hearings were held on January 17 and 18, before representatives of both the Department of Agriculture and the Administrator for Industrial Recovery, the latter participating, however, only with respect to the proposed labor provisions. (See Department of Agriculture, Agricultural Adjustment Administration, Transcripts of Hearings on Proposed Code for Live Poultry Industry.) The witnesses at the hearings included representatives of the associations submitting the code, and of retail associations, labor unions and farmers' associations, as well as individual members of the industry.[2] During the hearings[3] the provisions of

---

[1] The Secretary of Agriculture had general jurisdiction of certain codes including that for the live poultry industry, the Administrator for Industrial Recovery being vested as to such codes with jurisdiction only over labor provisions. See note 7, *infra*, p. 12.

[2] A list of the witnesses with their affiliations, taken from the transcripts of the hearings, is printed in the Appendix, pp. 72–75.

[3] Copies of the transcripts of hearings were obtainable from the reporter upon payment of his charges. They are

LoneDissent.org

the proposed code were taken up one by one for criticism and suggestion.

Upon the completion of the hearings the code was examined in the Department of Agriculture and the National Recovery Administration, and reports [4] were submitted to the Secretary of Agriculture and the Administrator for Industrial Recovery. On the basis of the hearings and the reports, the code was redrafted, but substantial changes were made only in the labor and administrative provisions. The trade associations which had submitted the original code filed assents to the new labor and administrative provisions. (See National Recovery Administration Record for the Code of Fair Competition for the Live Poultry Industry of the Metropolitan Area in and about the City of New York, Vol. II.)

On April 10, 1934, the Secretary of Agriculture and on April 9, 1934, the Administrator for Industrial Recovery transmitted the code to the President, accompanied by their reports [5]

open to public inspection at the Department of Agriculture and the National Recovery Administration.

[4] The reports to the Secretary are recorded in the files of the Department of Agriculture; those to the Administrator are contained in Vol. II of the National Recovery Administration Record for the Code of Fair Competition for the Live Poultry Industry of the Metropolitan Area in and about the City of New York.

[5] The report of the Administrator for Industrial Recovery dealt only with wages, hours of labor and other labor provisions of the Code (R. 9–15, Appendix, pp. 28–33).

LoneDissent.org

recommending its approval and finding that it complied with all requirements of the Act (R. 5–15, Appendix, pp. 25–33). A stenographic report of all evidence introduced at the hearings was also transmitted to the President (R. 6, Appendix, p. 25). The report of the Secretary of Agriculture found specifically, *inter alia,* that the associations submitting the code were truly representative of the industry and that they imposed no inequitable restrictions on admission to membership, that the code was not designed to eliminate or oppress small enterprises or to promote monopolies, that it would tend to effectuate the policy declared in Section 1 of the Act, that the provisions of the code establishing standards of fair competition were regulations of transactions in or affecting the current of interstate and foreign commerce and were reasonable, and that due notice and opportunity for hearing had been afforded interested parties (R. 6–9, Appendix, pp. 26–28).

On April 13, 1934, the President, by Executive Order, approved the code,[6] having first made the findings required by the statute. (R. 3–5, Ap-

[6] The code was immediately printed by the Government Printing Office. Copies could be obtained upon request from the National Recovery Administration and the Department of Agriculture. A copy could also be obtained from the Superintendent of Public Documents, upon payment of a nominal fee.

On May 15, 1934, a meeting of the live-poultry industry was held in New York City at which the code was explained and the announcement made that its administration and enforcement would begin immediately (R. 492–493). Three

LoneDissent.org

pendix, pp. 23–24.) These findings are set forth and discussed later, *infra*, pp. 138–140.

The Live Poultry Code: The provisions of the Code of Fair Competition for the Live Poultry Industry of the Metropolitan Area In and About the City of New York (hereinafter referred to as the Code), as well as the President's executive order approving the Code and the reports to the President on the Code by the Secretary of Agriculture and by the Administrator for Industrial Recovery,[7] are set forth in full in the first count of the indictment (R. 3–43), were introduced in evidence (R. 540; Ex. 26, R. 1586) and are reprinted in the Appendix at pages 23–59. The following are the Code provisions directly involved:

ARTICLE III—HOURS

> SECTION 1. No employee shall be permitted to work in excess of forty (40) hours in any

of the petitioners were present at the meeting (R. 637–638). One of them had acted as secretary of a marketmen's meeting previously held to elect representatives to the Industry Advisory Board of the Code. (R. 539.)

[7] By virtue of prior Executive orders delegating authority to the Secretary of Agriculture and to the Administrator for Industrial Recovery, the former official was vested with general jurisdiction over certain codes, including that for the poultry industry, and the latter had jurisdiction over the labor provisions of these codes. (Executive Orders Nos. 6173, 6182, 6205–A, 6207, 6345, 6551, dated, respectively, June 16, 1933, June 26, 1933, July 15, 1933, July 21, 1933, October 20, 1933, January 8, 1934. See Appendix, pp. 13–22.) The hearings on codes where there is such two-fold jurisdiction are held before representatives of these two officials.

LoneDissent.org

one week, except as herein otherwise provided. * * *

* * * * *

(b) Slaughterhouse employees provided that they shall not work more than forty-eight (48) hours in any one week.

ARTICLE IV.—WAGES

SECTION 1. No employee shall be paid in any pay period less than at the rate of fifty (50) cents per hour * * *.

ARTICLE VII.—TRADE PRACTICE PROVISIONS

The following practices shall be deemed to be and shall constitute unfair methods of competition on the part of members of the industry and are hereby prohibited.

* * * * *

SEC. 2. *Inedible products.*—Knowingly to purchase or sell for human consumption culls or other produce that is unfit for that purpose.

* * * * *

SEC. 14. *Straight killing.*—The use, in the wholesale slaughtering of poultry, of any method of slaughtering other than "straight killing" or killing on the basis of official grade. Purchasers may, however, make selection of a half coop, coop, or coops, but shall not have the right to make any selection of particular birds.[8]

---

[8] Article II of the Code contains the following definitions:
"SEC. 15. The term 'straight killing' means the practice of requiring persons purchasing poultry for resale to accept

LoneDissent.org

SEC. 15. *Illegal sales.*—The sale or resale of produce to any person not legally entitled to conduct a business of handling the produce of the industry (where a license or permit is required).

* * * * *

SEC. 22. *Inspection of poultry.*—The sale of live poultry which has not been inspected and approved in accordance with the rules, regulations, and/or ordinances of the particular area.

ARTICLE VIII.—GENERAL

* * * * *

SEC. 3. *Listing sales prices.*—Every member of the industry shall submit a weekly report to the code supervisor. Such report shall show the range of daily prices and volume of sales for each kind, grade, or quality of produce sold by the member of the industry during the reported week.

STATEMENT

Petitioners in No. 854 were convicted in the United States District Court for the Eastern District of New York on 19 counts of an indictment

---

the run of any half coop, coop, or coops, as purchased by slaughterhouse operators, except for culls.

"SEC. 16. The term 'culls' means poultry which is unfit for human consumption as defined in the instructions of the Chief of the Bureau of Agricultural Economics governing the inspection of live poultry at New York."

LoneDissent.org

containing 60 counts.[9] One count charged a conspiracy to commit offenses against the United States by violating the National Industrial Recovery Act (hereinafter referred to as the Recovery Act) and the Code, and the other 18 counts charged violation of various substantive provisions of the Code. Upon appeal to the Circuit Court of Appeals, that court reversed the judgment of the District Court on Count 46, charging a violation of the minimum wage provisions of the Code, and on Count 55, charging a violation of its provisions regulating maximum hours of labor, and otherwise affirmed the judgment of the District Court.

This Court granted certiorari in No. 854 to review the judgment of the Circuit Court of Appeals in so far as it affirmed the conviction on 17 counts and granted certiorari in No. 864 to review that court's reversal of judgment on Counts 46 and 55. Two of the six petitioners in No. 854, namely, Schechter Live Poultry Market and Joseph Schechter, were not named as defendants in Counts 46 and 55 and are therefore not respondents in No. 864. For convenience we shall refer to the appellants in the court below as petitioners and to the United States as the respondent.

The Code was approved by the President, pursuant to authority vested in him by Section 3 (a)

[9] Of the remaining 41 counts, 19 were dismissed on demurrer (R. 130–131), 8 were dismissed on petitioners' motion at the close of the evidence (R. 1480), and the jury rendered a verdict of acquittal on 14 counts (R. 1547–1549).

LoneDissent.org

of the Recovery Act, on April 13, 1934. It applies to all persons engaged in the business of selling, purchasing for resale, transporting or slaughtering live poultry, from the time such poultry comes into the New York metropolitan area to the time it is first sold in slaughtered form.[10] (R. 15–16.) The Code contains a preliminary statement of purpose and definition of terms (Articles I and II); fixes maximum hours of labor and minimum wages of employees (Articles III and IV); prohibits child labor and provides the guarantees for freedom in collective bargaining required by Section 7 (a) of the Recovery Act (Article V); sets forth the machinery for administering its provisions [11] (Article VI); prohibits specified trade practices (Article VII); and contains certain general

[10] The metropolitan area, as defined in the Code, consists of New York City, four contiguous counties in New York State, two counties in New Jersey, and one in Connecticut. (R. 19.)

[11] The Code's provisions are administered by a code supervisor appointed by the Secretary of Agriculture and the Administrator for Industrial Recovery, with the approval of an industry advisory committee of 15 members representing equitably the different branches of the industry. (R. 11, 25–29.) The Secretary and the Administrator may remove the code supervisor at any time and they may disapprove any of his acts. (R. 25, 26.) The industry was unanimous in demanding that administration be concentrated in a single individual. (R. 11.)

Each member of the industry is required to pay his pro rata share of the expenses of administration, which expenses are subject to the approval of the industry advisory committee. (R. 33–34.)

LoneDissent.org

provisions relating to the requirement of reports, modification of the Code, and prohibition of monopolies or monopolistic practices (Article VIII).

Petitioners A. L. A. Schechter Poultry Corporation and Schechter Live Poultry Market, Inc., are corporations operating wholesale poultry slaughterhouse markets at 858 East 52d Street, Brooklyn, and 991 Rockaway Avenue, Brooklyn, respectively. (R. 1389, 1439, 1620.) Petitioner Joseph Schechter operated the Schechter Live Poultry Market, Inc. (R. 1439), and also participated in, and in fact dominated, the management of the A. L. A. Schechter Poultry Corporation. (R. 526–527, 530–531, 1434–1435.) The latter corporation, which was operated by Joseph Schechter's three younger brothers, petitioners Martin, Alex and Aaron Schechter (R. 1351, 1389), is the largest wholesale slaughterhouse in Brooklyn. (R. 626.)

Petitioners ordinarily purchase their live poultry from commission men at the West Washington Market in New York City or at the railroad terminals serving the city (R. 1413), but occasionally they purchase from commission men in Philadelphia (R. 985–987). After the poultry is trucked to their slaughterhouse markets it is sold, usually within 24 hours, to retail poultry dealers and butchers. (R. 254, 271, 1355–1357.) Poultry so purchased is immediately slaughtered, prior to delivery, by shochtim (singular, shochet) employed by petitioners. (R. 744, 1277, 1292.)

LoneDissent.org

Petitioners were convicted of violating the following trade practice provisions of Article VII: Section 2, prohibiting the sale, knowingly, of poultry unfit for human consumption (Count 2, R. 62–65); Section 22, prohibiting sale of live poultry which has not been inspected in accordance with the regulations and ordinances of New York City (Counts 4 and 5, R. 66–69); Section 14, prohibiting use of any method of slaughtering other than "straight killing"[12] (Counts 24 to 33, inclusive, R. 71–82); Section 15, prohibiting the sale of poultry to a person not licensed, as required by New York City rules, regulations, and ordinances, to conduct the poultry business (Count 60, R. 117–118).

The other Code provisions which petitioners were convicted of violating are Section 3 of Article VIII, which requires weekly reports showing the range of daily prices and volume of sales (Counts 38 and 39, R. 90–94); Section 1 of Article IV, which prohibits paying any employee less than 50 cents per hour (Count 46, R. 101–102); and Section 1 of Article III, which prohibits permitting a slaughterhouse employee to work more than 48 hours in a week (Count 55, R. 111–112). In addition, petitioners were found guilty of conspiring to violate the Recovery Act and the Code. (Count 1, R. 2–62.)

The Circuit Court of Appeals held that the power given the President to approve codes of fair com-

[12] The "straight killing" requirement of the Code is really a requirement of straight selling. (*Supra*, pp. 13–14.)

LoneDissent.org

petition, subject to the restrictions and limitations imposed by the Act and within the policies which it establishes, is a constitutional delegation of legislative power. (R. 1652–1659.) The court's opinion also sets forth the facts deemed relevant to the question whether the Code provisions at issue are within the commerce power of Congress. The following are among the more important facts stated:

The dominant position of the New York market makes it "the medium by which prices for poultry throughout the country are measured." (R. 1649.) The farmer's price reflects the current New York price, and demoralization of the price structure there brings about a like situation in other markets and reduces the price received by the interstate shipper and by the farmer. (R. 1649–1650.) Diseased poultry is shipped almost exclusively to New York. (R. 1650.) It is sold through misrepresentation as to its condition and, as a result, consumers become distrustful of freshly slaughtered poultry, and its sale at low prices in competition with good poultry reduces the latter's price. (*Ibid.*) Selling uninspected poultry induces fraudulent practices, such as overfeeding, in the course of interstate shipment. (*Ibid.*) Selective killing, rather than straight killing, results in price-cutting, with consequent lower prices for interstate shippers and farmers. (*Ibid.*) The price to the consumer is determined not only by the cost of the poultry to slaughterhouses, but also by the wages

LoneDissent.org

paid to their employees. (*Ibid.*) The opinion of Judge Manton also states (R. 1651):

> The appellee argues that the payment of lower wages permits the employer to sell at a lower price than if he paid higher wages. Competition is thus affected. Lower wages resulted in price cutting which in turn affects interstate commerce. It was also established that sales by wholesale marketmen to unlicensed operators, not subject to Health Department supervision, were a further cause of the industry's unfair practices.

The court concluded that the various Code provisions before it, other than those prescribing a minimum wage and maximum hours of work, were within the commerce power of Congress. (R. 1651–1652.) It stated that the majority were of the opinion that the latter type of regulation could not be sustained under this power because slaughterhouse employees were not directly engaged in interstate commerce and because the terms of their employment did not affect interstate commerce within the meaning of the commerce clause. (R. 1660.)

All other errors assigned by petitioners, appellants below, were found to be without merit. (R. 1659–1660.)

The concurring opinion concedes that "hours and wages will in fact influence the import of the fowls into the state" (R. 1662), but the limits of

LoneDissent.org

Congressional power over this field of activity were said to depend upon the "size" of the effect on interstate commerce (R. 1661). The view was expressed that the *ratio decidendi* of *Stafford* v. *Wallace,* 258 U. S. 495, and *Board of Trade* v. *Olsen,* 262 U. S. 1, is not "susceptible of statement in general principles." (R. 1662.) Treating the question, accordingly, as one of degree, control by Congress of the labor performed in converting live fowl into dressed poultry, following importation of the live birds, was regarded as analogous to an exercise by it of control over "the rent of the buildings where the fowls are stored, the cost of the feed they eat while here, and of the knives and apparatus by which they are killed and dressed." (R. 1663.) Such labor was held to be "part of the general domestic activities of the state" immune from Congressional regulation. (*Ibid.*)

SPECIFICATION OF ERRORS TO BE URGED IN NO. 864

The Circuit Court of Appeals erred:

1. In holding that the Code provisions for a minimum wage of fifty cents per hour and for a maximum work week of forty-eight hours for slaughterhouse employees exceed the power of Congress under the commerce clause of the Constitution.

2. In reversing that part of the judgment of the District Court relating to counts 46 and 55 of the indictment.

LoneDissent.org

SUMMARY OF ARGUMENT

I

The New York market dominates the live poultry industry. The New York price determines the prices in other markets as well as the prices at which poultry is sold by shippers and by farmers.

Each of the practices which the Code regulates, and which are here in question, affects substantially the price, the quality and the volume of live poultry shipped into the New York market. The sale of unfit poultry in competition with wholesome grades brings down the price structure for all grades, the effect being disproportionate to the relative amount of unfit poultry sold. A principal reason for the magnified effect of the sale of unfit poultry is the resulting distrust on the part of consumers, who are generally unable to distinguish good from unfit poultry before it is dressed. It is estimated that if unfit poultry could be excluded from the market by effectively prohibiting its sale in New York, there would be an increase of about 20 percent in the consumption and shipment of live poultry.

Failure to inspect, and sales to unlicensed dealers, produce the same consequences as does sale of unfit poultry, since these practices facilitate such sale. Selective killing, i. e. selling, likewise demoralizes the price structure by depressing the price for good poultry rejected from coops by the earliest purchasers at the slaughterhouse. The practice of

LoneDissent.org

selective killing or selling has also tended to prevent the development of grading before shipment on the basis of quality, and so has prevented an accurate price basis for poultry as sold by farmers or other shippers.

The payment of unduly low wages, and the exaction of a long working week, contribute in the same way to the adverse effects on the price structure, and the quality and volume of live poultry shipped into New York. Because of the unusually sharp competition in this industry, and the close margin on which slaughterhouse operators work, any saving in wage costs is translated into a reduction in price. The effect is to lower the price, to induce the sale of unfit and inferior grades of poultry by competitors, and so to cause a diversion of trade and shipments from live to dressed poultry, and to induce a progressive break-down of the live poultry market.

The court below apparently proceeded on an *a priori* and erroneous distinction between the labor and other practices prohibited, with respect to their effect on interstate commerce. Although the question was treated as one of degree, the majority of the court did not suggest that there was no evidence to support the finding of the jury that violation of the labor provisions produced the same consequences as violation of the other provisions in question.

Under the decisions of this Court, the Code provisions which the petitioners violated are within

130948—35——3

LoneDissent.org

the commerce power of the Congress. *Local 167* v. *United States,* 291 U. S. 293, indicates that under the facts of this industry the practices of the wholesale slaughterhouses are so closely related to the preceding interstate movement that, from the standpoint of Federal regulation, whether under the Sherman Act or otherwise, it makes no difference what parts of their business are "in" interstate commerce, and what parts, if any, are on the fringe of such commerce but necessary to its proper functioning. Irrespective of the extent to which the slaughterhouse operators are engaged "in" interstate commerce, their practices are subject to Federal regulation. The effect of those practices on the national price and on the interstate movement of poultry is no less than the effect of the local activities in a dominant market regulated under the Grain Futures Act, or the Packers and Stockyards Act, or the Sherman Act. *Board of Trade* v. *Olsen,* 262 U. S. 1; *Stafford* v. *Wallace,* 258 U. S. 495; *United States* v. *Patten,* 226 U. S. 525. Moreover, the effect of the practices on the quality of the goods shipped and on the trustworthiness of goods in interstate commerce affords an additional basis for Federal regulation. *Thornton* v. *United States,* 271 U. S. 414; *United States* v. *Ferger,* 250 U. S. 199.

The provisions of the Code are supported also on an independent ground: they are in one aspect part of a comprehensive effort by Congress to

LoneDissent.org

edy the breakdown of interstate commerce which culminated in 1933. In this view practices which contribute to a sharp decline in wages, prices and employment contribute to a frustration of commerce among the States and are subject to Federal regulation in the interest of protecting and promoting that commerce. An additional basis on which the wage and hour provisions rest is that they are reasonable means for the prevention of labor disputes arising out of those subjects, and so are adapted to protecting interstate commerce from the burdens caused by labor disturbances.

II

The Recovery Act and the provisions of the Code fully satisfy the requirements of the due process clause of the Fifth Amendment. No effort was made by the petitioners to satisfy the burden of demonstrating that the Recovery Act is arbitrary, capricious, or unreasonable in its provisions. The provisions of the Code are shown to bear a substantial relation to the regulation of interstate commerce. Moreover, the restrictions imposed by the Code embody the judgment of a substantial portion of the industry as to what is both necessary and reasonable. The prohibitions against dealing knowingly in poultry unfit for human consumption, against the sale of uninspected poultry, and against the sale of poultry to unlicensed dealers, are manifestly not violative of due process under the decisions of this Court. E. g., *North American*

LoneDissent.org

Storage Company v. *Chicago,* 211 U. S. 306; *Thornton* v. *United States,* 271 U. S. 414. The requirement of "straight killing" obviously imposes no burden on the slaughterhouse operator, but instead simplifies his business because it enables him to sell coops or half coops as they have been purchased by him. This provision tends to eliminate the evils resulting from the practice of selective killing and to bring about careful grading according to size and quality before shipment. The requirement of weekly reports showing the range of daily prices and volume of sales is a reasonable method of obtaining information essential to the proper administration and enforcement of the Code. Similar requirements have frequently been sustained by this Court.

No effort has been made to attack the particular minimum wage and maximum hours schedules established by the Code as arbitrary, capricious, unreasonable or unfair. The objection would seem to be based upon a general argument that the establishment of a minimum wage or maximum hours of labor is *per se* violative of due process.

The argument rests chiefly upon the case of *Adkins* v. *Children's Hospital,* 261 U. S. 525. That case, however, is clearly distinguishable. (1) The Court there found that no reasonable relationship existed between the fixing of minimum wages and the protection of the health and morals of women—a deficiency which has obviously no bearing here.

LoneDissent.org

(2) The present provisions cannot be said to consider only the necessities of the employee, as was held in the *Adkins* case, for here the Act and the Code take into account the interests of employer as well as employee. (3) Finally, in that case the Court was not dealing with an emergency, as was expressly recognized in the opinion.

The procedure followed in the adoption of the Live Poultry Code fully satisfies the requirements of the Act and of due process of law.

III

In *Panama Refining Co.* v. *Ryan,* 293 U. S. 388, this Court did not pass upon the validity of Section 3(a) of the Recovery Act, but indicated that it presented a different problem of delegation from that raised by Section 9(c).

Section 3(a) of the Recovery Act authorizes the President to approve codes of "fair competition" after making certain prescribed findings. The words "fair competition" set the primary standard for presidential action. Fair competition—or the antithetical expression "unfair methods of competition"—has been used in the Federal Trade Commission Act and in the Tariff Act of 1922 as a basis for administrative and judicial action. *Federal Trade Commission* v. *Keppel & Bro.,* 291 U. S. 304; *Frischer & Co.* v. *Elting,* 60 F. (2d) 711, certiorari denied 287 U. S. 649. Under the Recovery Act the President is to be guided in approving rules of fair

LoneDissent.org

competition by the codes submitted by representative groups in the industries affected. There is authority for such a resort to business experience and judgment. Fair competition is given further meaning and substance by the requirement in Section 3(a) that the codes will tend to effectuate the policy set forth in Section 1 of the Act.

In many cases this Court has upheld standards no more specific than "fair competition", when given content and meaning by other sections or by the general purpose of the statute in which they were used, e. g., *New York Central Securities Corp. v. United States,* 287 U. S. 12 (public interest).

The precise degree of detail with which policies and standards must be defined varies with the subject regulated. This Court will not permit the doctrine of delegation so to restrict the power of Congress as to interfere with its ability to legislate. The leading decisions reflect the importance attributed to the necessity for the delegation. The delegation in the Recovery Act would have been necessary in normal times because of the need for a flexible procedure which could have differentiated between industries; it was especially necessary in view of the emergency confronting Congress at that time, requiring immediate action in many fields. In the words of the Court, "Without capacity to give authorizations of that sort we should have the anomaly of a legislative power which in many circumstances calling for its

LoneDissent.org

exertion would be but a futility" (*Panama Refining Co.* v. *Ryan, supra,* at page 421).

In other sections of the Recovery Act Congress has clearly manifested its intention that the codes contain maximum hour and minimum wage provisions. Sections 7(a), 7(c), 4(b). Since the policy of Congress as to the inclusion of such provisions is clearly expressed, the remaining question is what the maximum hours and minimum wages should be for each class of employment in each industry. The President is to determine these amounts in accordance with the limitations established by the Act. The determination of these amounts would seem clearly to be a matter of administrative detail.

Section 3(a) of the Recovery Act requires the President to make certain findings of fact as a condition of his approval of codes. In approving the live poultry code, the President made the findings required.

IV

The phrase "in or affecting interstate commerce" does not render Section 3(f) invalid for indefiniteness, since these words have been given meaning by judicial decision and, if any uncertainty as to their meaning exists, it arises from the nature of the constitutional limitations upon federal power. Such language, commonly used, as for example in the Sherman Act, has never been deemed to render a statute invalid for indefiniteness.

LoneDissent.org

The several remaining specifications of error (see questions presented, *supra,* p. 3) are briefly argued, *infra,* pp. 147–173, and do not warrant repetition here.

ARGUMENT

I

THE CODE PROVISIONS WHICH PETITIONERS VIOLATED ARE WITHIN THE COMMERCE POWER OF CONGRESS

A. THE NEW YORK CITY LIVE POULTRY MARKET AND ITS RELATION TO INTERSTATE COMMERCE

An outstanding fact in the live-poultry business is the dominant position of the New York market. It is not only the largest market in the United States; it consumes more live poultry than all the other large cities combined.[1] (R. 1151, 1249.) Whereas Chicago, the next largest market, receives about 30 cars a week, and Philadelphia, Boston and Newark each from 10 to 12 cars, New York

---

[1] In 1933 over 73% of all original carload shipments of live poultry were unloaded in New York City. (Pier and Sprague, *Live Poultry Shipments and Receipts at New York City*, The U. S. Egg & Poultry Magazine, August 1934, p. 35.)

The great importance of New York City in the movement of live poultry is undoubtedly due to the large orthodox Jewish population in that city. The poultry eaten by orthodox Jews must be kosher-killed; that is, a deputy of the Jewish rabbi, called a shochet, must slaughter the bird. (Department of Agriculture Technical Bulletin 107 (May, 1929), *Wholesale Marketing of Live Poultry in New York City*, p. 18.) It is estimated that the Jewish population consumes about 80% of the live poultry in New York City and Italians an additional 10%. (*Ibid*, p. 17–18.)

LoneDissent.org

receives from 175 to 200 cars each week. (R. 1079.) Three-fourths of the live poultry marketed there comes in by freight and the remainder by truck and express. (R. 257.) All the freight receipts and over 96% of all receipts are from other States (R. 218–219, 257), 35 States, chiefly in the Middle West and South, contributing to the movement (Exhibits 7–13,[2] R. 1557–1575).

In *Local 167* v. *United States,* 291 U. S. 293, 295, this Court briefly described the manner of handling live poultry from its origin in distant States to delivery in freshly slaughtered form to retailers in New York City. The facts are fully disclosed by the present record.

Poultry is assembled in carload quantities by shippers at shipping stations. (R. 1072, 1144.) The shippers may be large concerns, like the packers, and may operate a fleet of trucks for making collections and purchases from farmers, or they may buy the poultry from hucksters who go out with horse and wagon and collect from farmers. (R. 259–260, 1072, 1144.) The poultry is loaded in specially-constructed box cars containing 128 steel cages or decks. (R. 258, 1072.) Poultry going to

[2] These exhibits show the actual shipments by States for the years 1929 to 1933, inclusive, and for the first nine months of 1934. The truck and express shipments are stated in pounds and the freight shipments in carloads. A carload is from 17,000 to 18,000 pounds. (R. 200.)

LoneDissent.org

New York is sent to commission men or receivers and arrives at the Manhattan terminal of the New York Central Railroad or at one of the four New Jersey terminals serving New York City. (R. 186–187, 262.) 75% of the freight poultry comes in at the New York Central terminal. (R. 261–262.) The commission men either handle the business on a commission basis, in which case they represent the shippers as agents and remit the proceeds of sale, less commission and freight and handling charges; or they buy the poultry for their own account. (R. 256–257.) From 60% to 75% is sold on commission. (R. 380.)

Before the poultry is unloaded at the New York or New Jersey railroad terminals, it is inspected by agents of the Department of Agriculture. And any birds found to be diseased or unfit for human consumption are destroyed. (R. 187–190, 203–204, 263–264.) Most of the truck poultry is inspected at the West Washington Market or at the Wallabout Market in Brooklyn, but there are several other points in New York City where truck poultry is regularly inspected by these agents. (R. 189.) The agent makes the inspection by physically examining about 200 birds in a car and looking over the others. (R. 203, 224–225.) The inspection, like many others, is by sample, but any car showing signs of sickness is thoroughly inspected. (R. 266, 428–429.) After a car has passed inspection, it is unloaded and the birds are placed in wooden coops, 6 feet by 3 feet. (R. 1073.)

LoneDissent.org

The commission men sell to slaughterhouse operators, who are also called marketmen. (R. 254.) About 7 o'clock in the morning the slaughterhouse operators begin congregating at the New York Central freight terminal, examine the poultry and dicker with the commission men as to price. (R. 262–263, 1074–1075.) From 80% to 100% of the poultry arriving at this terminal is sold there and loaded directly on trucks of the slaughterhouse men, and the balance is taken to the commission men's stands in West Washington Market, where part is transferred directly from the commission men's trucks to those of the slaughterhouse operators. (R. 269–270.) Of the arrivals at the New Jersey terminals, about 80% is loaded there on the trucks of the slaughterhouse operators, about 5% is sold to buyers located in New Jersey, and the remaining 15% is brought to West Washington Market, where about half is transferred directly from the commission men's trucks to the trucks of the slaughterhouse operators. (R. 268–269.) The commission men make it a practice to sell the poultry taken to West Washington Market on the day of unloading from the freight cars, even at sacrifice prices. (R. 270.)

When the coops arrive at the slaughterhouse, they are stacked along the wall, and the poultry is sold the next morning to the retail stores,

LoneDissent.org

butchers and poultry dealers,[3] who sell directly to consumers. (R. 255, 1355–1357.) More than half the poultry is slaughtered within 24 hours of its arrival at the terminals. (R. 271.) When a sale is made by a slaughterhouse, and before delivery, the birds are killed by shochtim, thrown into barrels, bags, or boxes, and taken to the retailer's place of business. (R. 474.)

In the metropolitan area there are about 22 commission men, about 350 slaughterhouse operators, and approximately 5,000 retail butchers and chicken dealers. (R. 249, 253–256.) Some of the slaughterhouses sell only at wholesale, that is, to retailers, others sell both wholesale and retail, and still others at retail, that is, direct to the consumer.[4] (R. 253–254.)

The underlying factors in determining the price at which commission men sell their poultry are supply and demand, but prices in actual day-to-day transactions are either arrived at by individual agreement between buyer and seller or, as is generally the case, are settled upon the basis of the current day's "quotation." (R. 1236.) This quotation is determined by a private price-reporting agency. (R. 1074–1075, 1235.) Its representative

[3] A butcher is one who sells both meats and poultry; a chicken dealer is one who sells poultry exclusively. (R. 254.)

[4] In the Code the term "wholesale slaughterhouse" means one which sells for purposes of resale an average of over 3,000 pounds a week, and all other slaughterhouses are deemed "retail slaughterhouses." (R. 18.)

LoneDissent.org

appears at the New York Central terminal about nine in the morning, interviews the various commission men and ascertains the prices at which they have sold that morning, gets similar reports from buyers, and then fixes the price for the day for four or five different grades of fowl. (R. 1074–1075, 1149–1150, 1235–1236.) Some of the sales made before the quotation is announced are at a definite price and others are made on the basis of what the quotation will be.[5] (R. 1236.)

Prices in other markets are determined by the New York price, with a differential for freight and handling costs in New York. (R. 289–290, 356–357, 1094.) For example, there is a differential of 2½¢ between the New York and the Chicago market price.[6] (R. 288–289.) In some eastern markets, such as Boston and Newark, the price is based directly on the New York quotation. (R. 1237.) The New York price also determines the price at which the shipper sells, the price he pays the huckster or dealer, and the price the dealer pays the farmer. (R. 290–291, 1249–1250.) A drop in the New York price rapidly brings down the price in other markets and in the country. (R. 290–291.) As one of petitioners' witnesses said, "The paying price in the country depends

---

[5] *Wholesale Marketing of Live Poultry in New York City*, note 1, *supra*, p. 30, at pp. 29–32, describes the market price mechanism as it existed in 1929.

[6] The "market price" is the price paid by marketmen (or slaughterhouse operators) to commission men. (R. 1236.)

LoneDissent.org

on the New York market." (R. 1249.) A Government witness, expressing the same view, said (R. 291):

> The market is made in New York City at about half past nine in the morning, and by noontime they would be knocking the price down to the farmer out in the country, on the same day.

The charts[7] on the three following pages illustrate how closely prices in other markets and shipping areas correspond to the New York price. The first shows the monthly high price for live poultry in New York City and in Chicago for the years 1926 to 1934, inclusive. The second shows the weighted average price of live poultry on the 15th of each month during the years 1926 to 1934, inclusive, in New York City and on farms in Missouri, which is the State shipping the largest amount of live poultry to New York (Exs. 7–13, R. 1557–1561). The third shows the daily price in New York City and in Louisville, Kentucky, for the months of January, February, and March, 1934.

The fact that New York City daily live poultry prices are published in representative newspapers in 23 Western and Southern States (two of these newspapers carrying only a statement of the condition of the New York market) is some indication

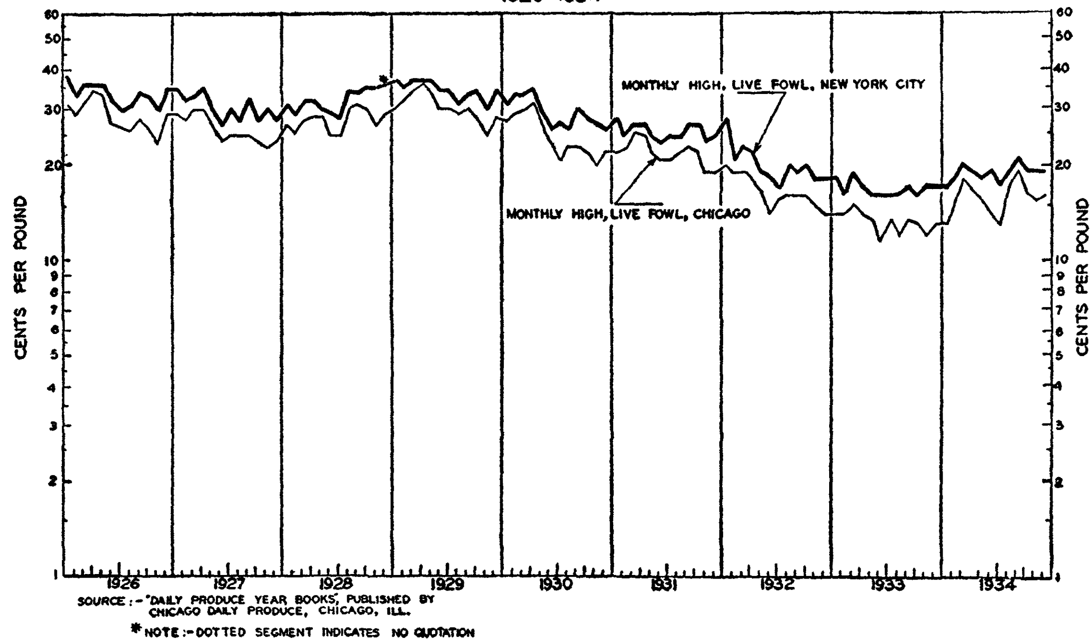
[7] The prices on which these charts are based and the sources from which the prices were obtained are set forth in the Appendix, pp. 68–71.

LoneDissent.org

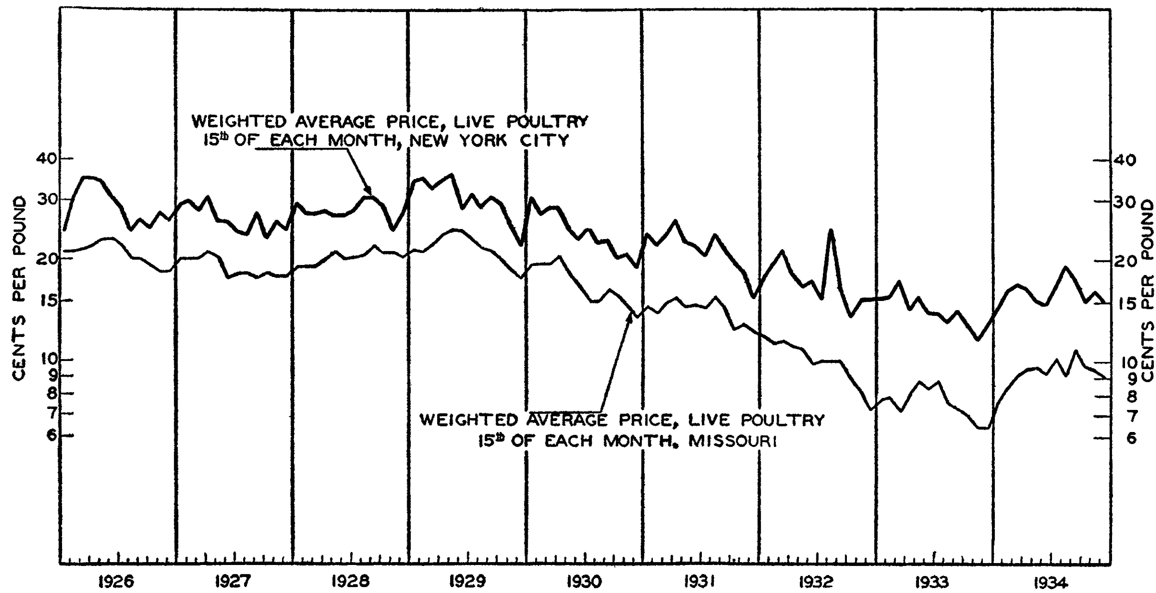
MONTHLY PRICES FOR LIVE FOWL

NEW YORK CITY AND CHICAGO

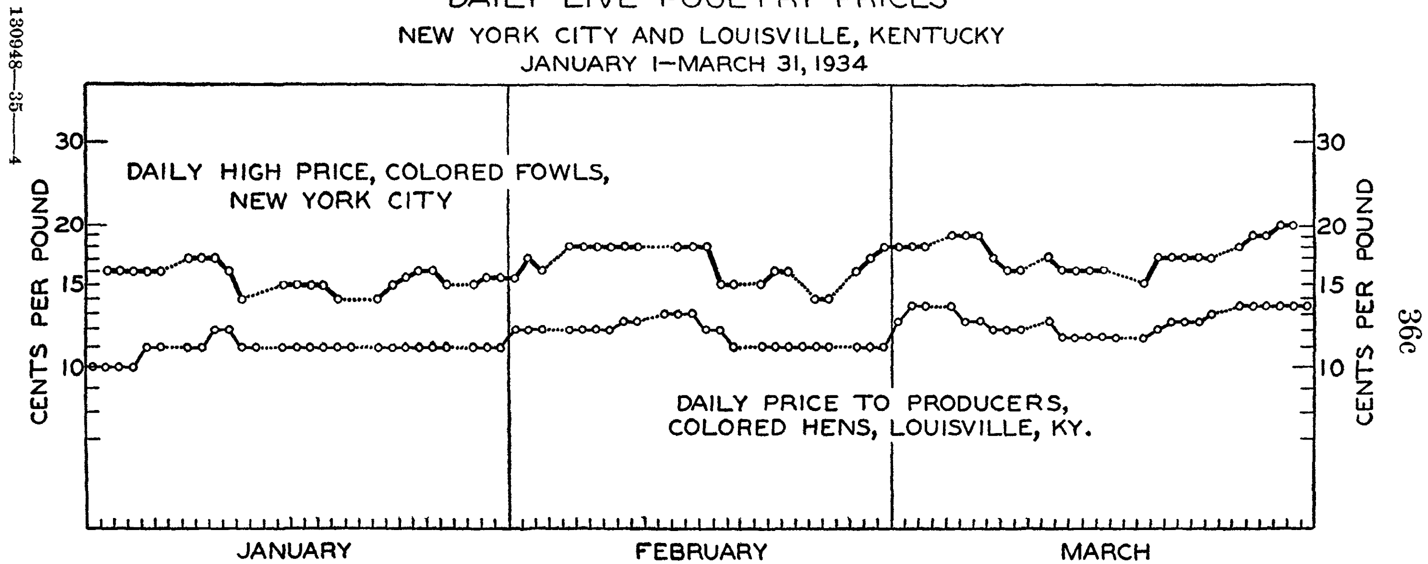
1926—1934



LoneDissent.org



LoneDissent.org



130948—35——4

LoneDissent.org

of the interest in and the importance of these prices over a wide area of the country.[8]

Poultry and eggs, together with milk and milk products, are the farmers' two year-round or "cash" crops. (R. 260.) In a poultry-raising section the farmer's poultry is like money in the

[8] The States and newspapers referred to are as follows:

State	Newspaper
Alabama	Montgomery Advertiser.
Arkansas	Arkansas Democrat (Little Rock).
Florida	Florida Times-Union (Jacksonville).
Georgia	Augusta Chronicle.
Idaho	Boise Capital News.
Illinois	Illinois State Register (Springfield).
Indiana	Richmond Palladium.
Iowa	Sioux City Journal.
Kansas	Wichita Beacon.
Kentucky	Louisville Times.
Louisiana	Times-Picayune (New Orleans).
Michigan	Grand Rapids Herald.
Minnesota	Austin Daily Herald.
Missouri	Springfield Leader and Press.
Montana	Great Falls Tribune*.
Nebraska	Nebraska State Journal (Lincoln).
North Carolina	Asheville Times.
Ohio	Sandusky Register*.
Oklahoma	Tulsa Tribune.
Tennessee	Chattanooga Daily Times.
Texas	San Antonio Express.
Virginia	Roanoke Times.
Wisconsin	Fond du Lac Commonwealth Reporter.

(The papers followed by a star give only the condition of the New York market. The above list represents a very brief examination of representative newspapers and is therefore by no means exhaustive.)

LoneDissent.org

bank; he draws on it to pay for everyday needs, such as food and clothing, and his purchases are to a large extent directly dependent upon the volume and value of his poultry sales. (R. 260–261, 435.)

The Code was adopted to promote cooperative action, to regulate and promote interstate commerce and remove obstructions to its free flow by preventing unfair trade practices—selling poultry unfit for human consumption and uninspected poultry, secret rebating, selective killing, and pressure for reduced wages and increased hours. Many of these had existed for some time and had become more general during the last two years. (R. 446.) Selective killing, in particular, was a practice which had been increasing year by year. (*Ibid.*) The industry was the victim of "cut-throat" competition. (R. 1115–1116.) One of petitioners' witnesses testified that members of the industry "are looked upon as the worst type of business men in the world." (R. 1184.)

While the volume of live poultry receipts in New York City has been steadily downward since 1927, with a slight rise from 1929 to 1930, receipts in that city of dressed poultry have been uniformly upward since 1927, except for a drop from 1931 to 1932, and more dressed poultry was received in 1933 than at any previous time. (Ex. 24, R. 1583; R. 440–441.) It is, of course, impossible to state definitely to what extent uneconomic or improper practices in the live poultry industry contributed to this counter movement in volume of live and

LoneDissent.org

dressed poultry shipments and consumption, but the evidence shows (R. 287–288, 366, 440–441) that sale of unfit poultry had caused trade to swing from live to dressed poultry.[9]

In 1927 the live poultry sold in New York had a value of \$57,000,000; in 1933 its value was only \$27,000,000, a decline of 53%. (R. 438–439.) The price per pound of fowls in New York fell from a 1929 average of 31.2¢ to a 1933 average of 14.4¢, and in the case of chickens from 30.3¢ to 13.8¢, a drop in each case of about 54%. (Ex. 23, R. 1581.) About 20% of the slaughterhouse operators have gone through bankruptcy or reorganization during the last four or five years. (R. 372.)

B. VIOLATION OF THE CODE PROVISIONS HERE IN ISSUE SUBSTANTIALLY AFFECTS INTERSTATE COMMERCE

The movement of live poultry from the farm in the West and South to sale over the counter to the householder in New York City and the functions performed by those handling the poultry in the course of this movement have been described. It has been shown that the New York market, by reason of its size, dominates other markets and fixes the price on which innumerable transactions all over the country are based.[10] As a witness for peti-

[9] Kosher-killed poultry is sold with the feathers on and it is very hard for a person who does not know poultry to distinguish an ordinary bird from a poor one after it has been killed. (R. 276.)

[10] The fact that the agency which reports New York egg and poultry prices derives its income from selling its reports

LoneDissent.org

tioners said, the huckster who goes out to buy live poultry from farmers knows his operating and shipping costs and his profit margin and gauges the price offered farmers by the New York market price. (R. 1250.) The prices thus affected are in large part the prices in interstate sales.

With this factual background, it is necessary to examine the testimony of witnesses familiar with the industry [11] that the practices of petitioners materially affect the flow and character of interstate commerce and the interstate price structure.

POULTRY UNFIT FOR HUMAN CONSUMPTION [12]

Poultry diseases are contagious and a whole carload of live poultry may become infected from one or two birds. (R. 270, 724.) Poultry diseases are

---

to telegraph companies, exchanges, dealers, and press associations, and publishing them in daily and weekly publications, is some indication of the extent of their dissemination. (Benjamin, *Marketing Poultry Products* (1923), pp. 255, 256.) The agency referred to is the same one at present reporting live poultry prices in New York. (R. 1075.)

[11] Four Government witnesses testified as to the practices in the industry: Dr. Ives, senior marketing specialist of the Bureau of Agricultural Economics of the Department of Agriculture and Supervisor of the Live Poultry Inspection Service in New York (R. 182–183); Mr. Tottis, a commission man (R. 248); Mr. Termohlen, principal agricultural economist in charge of the Poultry Unit of the General Crop Section of the Agricultural Adjustment Administration (R. 387); and Mr. Peterson, Code Supervisor of the Code and previously an economist in the Agricultural Adjustment Administration (R. 485).

[12] Count 2, R. 62–65. Poultry unfit for consumption will be referred to as unfit poultry.

LoneDissent.org

communicable to humans, one witness knowing of 37 instances in which tuberculosis had been contracted from tubercular chickens. (R. 724.) Prior to the Code about 2% of the live poultry sold in New York was unfit for human consumption. (R. 283.) It is estimated that, if this 2% unfit poultry could be excluded from the market, the consumption of live poultry would increase about 20%. (R. 288.)

Unfit poultry is sold substantially below the market price. (R. 284, 414.) Petitioners, for example, sold such poultry at 6 to 10¢ per pound when the regular market price was 14¢. (R. 859–861, 926.) When a retailer purchases a batch of unfit poultry and pastes in his window notices advertising poultry substantially below the current price, his competitors immediately demand poultry which can compete with this price, and this creates a demand for unfit and inferior poultry and attracts "rejects" from western packing stations. (R. 284, 414-415, 422–425.) This wholesalers' demand for unfit poultry is also satisfied by shipments of unfit poultry from other cities. (R. 284–287.) Before the Code, New York was looked upon as the dumping ground for inferior and sick poultry. (R. 275, 284–287.) As expressed by witness Tottis, "Anything with a head on it" was shipped to New York. (R. 274–275.)

Unfit poultry sold in competition with high-priced poultry brings down the price structure for all grades of poultry, its effect being disproportionate to its relative quantity. (R. 291–292, 414–415, 421–422.) There is a tendency to narrow the range

LoneDissent.org

between the price of good poultry and inferior poultry, which "means that the good poultry price comes down." (R. 276, 284, 291.) The consequent demoralization of the New York market price of all live poultry correspondingly reduces the returns to interstate shippers, and reduces the nationwide price of poultry. (R. 290, 291, 300, 422, 434.)

When shippers and farmers are able to dispose of unfit poultry in New York, it is sent there and the better grades of poultry are sent to dressing plants (R. 426); if the demand could be shut off by effectively prohibiting sale of unfit poultry in New York, these shipments would stop (R. 287, 368). The sale of unfit poultry has increased interstate shipments of unfit and inferior poultry (R. 284–287, 300, 422, 425, 481), and has decreased interstate shipments of healthy poultry (R. 300, 426).

Most of the live poultry brought into New York is kosher-killed and is sold with the feathers on. (R. 276.) It is very difficult for the consumer to distinguish unfit poultry after it has been slaughtered. (R. 288.) Many consumers, it was stated, have been "stuck" with unfit and inferior poultry and have shifted their patronage to dressed poultry, where they can see what they are buying. (R. 287–288, 366, 440–441; Ex. 24, R. 1583.) In the past four or five years there has been a decline of about 25,000,000 pounds in the amount of live poultry that is sold in New York, and a corresponding increase in the amount of dressed poultry sold there. (R. 287; Ex. 24, R. 1583.)

LoneDissent.org

Since the adoption of the Code, there has been an appreciable improvement in the quality of the poultry shipped to New York. (R. 286, 293.) Witness Tottis testified that the packers, who had been unloading their inferior poultry on the New York market prior to the Code, had apparently "reformed." (R. 286.)

SALE OF UNINSPECTED POULTRY [13]

The Code prohibits the sale of live poultry which has not been inspected in accordance with the rules and regulations of the local area. (R. 39.) The regulations under the Sanitary Code of New York City, which is part of the city ordinances, prohibit bringing live poultry into New York City or offering it for sale there until inspected by the Inspection Service of the United States Department of Agriculture. (Ex. 18, R. 1579–1580.)

Since 1926 the Live Poultry Inspection Service of the Department of Agriculture has been inspecting live poultry brought into New York City. (R. 182–183.) Inspection is made only on request, application for inspection being made by the commission man or slaughterhouse operator who brings in the poultry. (R. 187, 204–205.)

Failure to inspect facilitates and induces the shipment to New York of unfit poultry and of inferior poultry, and encourages fraudulent practices in transit designed to increase weight, such as feeding chickens sand or gravel or constipating them.

[13] Counts 4 and 5, R. 66–69.

LoneDissent.org

(R. 273–274, 292, 303, 430.) To the extent that failure to inspect permits sale of unfit poultry, it contributes to the burdens upon interstate commerce which this practice imposes. Those who study the market rely upon the figures as to volume of receipts furnished by the inspection reports. (R. 431–432.) If inspection is avoided, an inaccurate picture of the supply situation is obtained and this tends to distort market values. (*Ibid.*)

Since the Code, inspection has been more rigid, because buyers from commission men have insisted upon stricter inspection and the condemnation by inspectors of unfit poultry. (R. 202–203, 232–233, 264–265, 277.) In June 1933, the inspectors condemned, in round numbers, 9,000 pounds of live poultry and in June 1934, 23,000 pounds. (R. 239.) The figures for July 1933 and July 1934 are, respectively, 8,479 and 21,165 pounds. (*Ibid.*) The more rigid inspection has cut down considerably the volume of unfit poultry shipped to the New York market from other cities. (R. 293.)

STRAIGHT KILLING [14]

The Code prohibits sales by "wholesale" slaughterhouses on any basis other than the run of the coop (except unfit poultry) or on the basis of official grade. (*Supra,* p. 13.)

Prior to the Code the retailers who arrived first at a slaughterhouse selected from each coop the best poultry or the birds of most desirable weight, paying only the prevailing price. (R. 294, 295, 434.)

[14] Counts 24–33, R. 71–82.

LoneDissent.org

The picked-over and rejected poultry had to be sold later at sacrifice prices and this poultry, when resold by the retailer at a cheap price, forced the market down and tended to break the general price structure. (R. 295, 434.) When prices go down, there is a tendency to ship poorer poultry to the market until the situation corrects itself. (R. 435.) Another evil effect of selective killing is the injury to the rejected chickens likely to occur when they are individually handled and then thrown back in the coop. (R. 434.)

Enforcement of straight killing would bring about grading according to weight or quality, or both, before shipment. (R. 295–296, 375–377, 433.) A direct outlet in New York for graded poultry would mean a truer relation between the price the shipper receives for his product and its value, and would encourage the farmers to raise a better quality of poultry and a larger volume. (R. 433–434.) Grading of birds by size would materially facilitate marketing in New York. (R. 375–376.)

The Code provision requiring "straight killing" has improved the quality of the poultry shipped to New York, and has had the effect of eliminating a large volume of unfit poultry from interstate channels. (R. 203.)

REPORTS [15]

The Code requires every member of the industry to submit to the Code Supervisor a weekly report

[15] Counts 38 and 39, R. 90–94.

LoneDissent.org

showing "the range of daily prices and the volume of sales for each kind, grade, or quality" of poultry sold during the week. (*Supra,* p. 14.) This provision is essential to proper administration and enforcement of the Code.

In the case of commission men, the Code Supervisor, by comparing the volume of reported sales against the reports of the Inspection Service, can detect whether the Code provision against sale of uninspected poultry has been violated. In the case of slaughterhouses, the sales reports enable the Supervisor to determine which slaughterhouses fall within the Code definition of "wholesale" slaughterhouses (average weekly sales of 3,000 pounds or more) so as to be subject to the requirement of straight killing. The reports also furnish data necessary for the enforcement of Section 9 of Article V of the Code (R. 24), which provides that slaughterhouses shall employ a certain minimum number of employees depending upon the volume of their sales.

The Code requires a report of the "range" of daily prices for each kind of poultry sold, in other words, maximum and minimum prices. In view of the low price at which unfit poultry is sold (*supra,* p. 41), this disclosure would greatly facilitate detection of sales of unfit poultry.[16] For like reasons, the reports would aid in uncovering violations of the straight killing provision of the Code.

---

[16] Exhibit 38 (R. 1607) shows the high and low daily prices at which petitioner A. L. A. Schechter Poultry Corporation sold fowl and broilers during the period May 16,

LoneDissent.org

Expenses of Code administration are financed by assessments on members of the industry based upon volume of sales. (R. 33–34, 1040–1041.) Reports are necessary for the administration of this Code requirement.

MINIMUM WAGES AND MAXIMUM HOURS [17]

The Code fixes 50¢ per hour as the minimum wage which must be paid to all employees and establishes, with exceptions immaterial here, 48 hours per week as the maximum hours of labor for any slaughterhouse employee. (*Supra,* p. 13.)

Slaughterhouse men sell at a small margin above operating costs. (R. 298.) Labor costs represent 50% to 60% of their operating costs. (R. 296, 329.) Slaughterhouses cut their prices when they reduce their costs of operation. (R. 298, 1156–1157.)

Witness Tottis, a commission man and wholesale marketman, testified that *it is the practice* of the poultry dealers in New York to reduce their prices to correspond with the amount paid out in wages, and that when operation costs have been reduced,

---

1934 to June 9, 1934. The low prices on fowl varied on consecutive sales days in this remarkable way (in cents per pound): 15, 8, 8, 15, 8, 15, 8, 8, 19, 19, 17, 17, 17, 8, 8, 14, 16, 14, 4, 16, 10, 14, 14. It is fair to say that these prices, if reported, would have " stuck out like a sore thumb."

The word " average " under the word " price " in Exhibit 29, R. 1592, was written in by the reporting corporation. Compare Exhibit 30, R. 1597. The two exhibits as printed in the record do not show that the form of report prepared by the Code Supervisor is ruled off and two lines are allowed for each classification of poultry.

[17] Counts 46 and 55, R. 101–102, 111–112.

LoneDissent.org

it is their practice to reduce their selling prices. (R. 298.) Whenever they make a saving on wages, it is reflected in a corresponding reduction in prices. (R. 298, 1156–1157.) Because of the cutthroat character of the competition in this industry (R. 1115–1116) the effect is almost automatic. When one marketman cuts prices as the result of a saving in wages, his competitors demand a cheaper grade of poultry in order to compete with him. (R. 297, 299, 358.) Because of the consumer's difficulty in distinguishing different grades of live poultry, the marketman "sells strictly on a price basis" whenever the stress of cutthroat competition requires him to meet the abnormally low price of the wage cutter. (R. 358, 434–435, 295.)

The resulting increased demand for middle grades and cheap grades of poultry lessens the demand for the finer grades and depresses the price of the better poultry. (R. 299.) Shippers then send more of their cheap, inferior poultry to the New York Market. (R. 299–300.) When a slaughterhouse operator cuts his wages and prices, others, to compete with him, likewise cut prices and this brings about a general demoralization of the price structure which reaches all the way back to the interstate shipper. (R. 299–300, 358, 422.)

When slaughterhouse employees work more than 48 hours in a week, a saving in extra help and reduction in operating costs result. (R. 299.) The practice of requiring employees to work more than 48 hours a week produces the same effects as cutting wages below the Code level. (R. 298–299.)

LoneDissent.org

SALE TO AN UNLICENSED POULTRY DEALER [18]

The Code prohibits the sale of live poultry to a person who is required by law to have a license or permit to conduct the business of handling live poultry and who does not have such a license or permit. (*Supra,* p. 14.) The Sanitary Code of New York City prohibits keeping, selling or killing live poultry without a permit issued by the Board of Health. (Ex. 17, R. 1579.)

This Code provision, like that requiring the filing of reports, is incidental to the main purposes of the Code. Sale of poultry to unlicensed slaughterhouses or retailers makes proper supervision of the industry difficult. It encourages the entry into the industry of irresponsible persons who are likely to sell unfit poultry and uninspected poultry and to engage in destructive price cutting and other unfair methods of competition prohibited by the Code.

C. THE COURT BELOW ERRED IN VIEWING PRACTICES RELATING TO WAGES AND HOURS AS DIFFERING IN THEIR EFFECT UPON INTERSTATE COMMERCE FROM THE OTHER PRACTICES REGULATED BY THE CODE

The concurring opinion of Judge Hand does not make clear the precise ground for reversal of the conviction on counts 46 and 55. In view of the verdict and judgment on these counts the reversal represents either (1) a generalization that, as a matter of law, wage and hour practices in this in-

[18] Count 60, R. 117–119.

LoneDissent.org

dustry cannot affect interstate commerce as do other aspects of the business which are regulated or (2) a holding that in the case at bar there was no evidence to support the finding of the jury that these employment practices do in fact affect interstate commerce in the industry as do the other practices for which a conviction was entered and affirmed. It is submitted that the former ground is untenable and that the latter ignores the evidence upon which the jury's verdict was based.

Judge Hand takes the view that the limits of Federal power to regulate, outside the field of interstate commerce itself, depend upon the extent of the effect of the practice regulated upon interstate commerce and that the question is one of degree. But it is submitted that his view that wage and hour regulation falls on one side of the line and the other practices regulated by the Code fall on the other represents either an *a priori* conclusion or one which the evidence and the verdict of the jury refute. His concurring opinion appears to ignore the test of degree which it sets up, because it proceeds to identify wages and hours with other matters, such as rent and the cost of knives used in slaughtering, having obviously far less importance and effect. The casualness with which reference is made to the fact that labor is "little more than half the cost" is surprising in view of its importance on the question of degree.

Competition in low wage payments and in other onerous terms of employment, such as long working hours, has been widely recognized as

LoneDissent.org

tially affecting the movement of goods and the course of trade. Such recognition has come from the Federal Government, from the States, and from foreign countries. Congress, in authorizing the President, through the flexible tariff, to equalize conditions of comparative cost in order that our industries might be protected against the inflow of goods from abroad, provided that wages paid to labor should be one of the factors taken into account.[19] Efforts to enact State legislation establishing high labor standards have been impeded or blocked by the belief that unless similar action is taken generally, commerce will be diverted from the States adopting such standards and toward those without them.[20] This fear of diversion of trade has led to demands for Federal legislation on the subject of wages and hours.[21] Only recently representatives of seven northeastern States signed an interstate compact to establish uniform standards for conditions of employment, and particularly a uniform minimum wage for women and minors.[22] Foreign countries

[19] Act of September 21, 1922, c. 356, 42 Stat. 942; U. S. C., title 19, sec. 156. Act of June 17, 1930, c. 497, 46 Stat. 703; U. S. C. Sup. VII, title 19, sec. 1336 (h) (4).

[20] See a study of the history of labor legislation for women in Massachusetts, U. S. Department of Labor; Women's Bureau: Bulletin No. 66–1, pp. 26–29, 31, 36.

[21] *Id.*, pp. 27–28, 33. See also Hearings before the House Committee on Labor on S. 158 and H. R. 4557 (thirty-hour week bill), 73d Cong., 1st Sess., pp. 8–9, 26, 739, 885.

[22] Delegates from Conn., Me., Mass., N. H., N. Y., Pa., and R. I. on May 29, 1934, signed such an interstate compact,

130948—35——5

LoneDissent.org

have attempted to meet in a similar way the problem of trade movements resulting from competing labor standards. Before the War a number of the European countries entered into an agreement to stabilize labor conditions in order to protect national trade from the effects of competition in lax labor standards. See Corwin, *The Doctrine of Judicial Review,* p. 161.

Those who sponsored the Recovery Act likewise fully recognized the importance of wage-cutting and degradation of labor standards as competitive practices affecting interstate commerce. We set forth in the Appendix, pp. 62–67, extracts from the President's message to Congress, the debates in Congress and the hearings on the bill which show that minimum wages and maximum hours of work were regulated by the Act because of the view that practices in respect of them were one of the most important factors in interstate competition, requiring control if fair competition in such commerce was to be attained.

If we turn from general considerations to the facts of this case, we find that violations of the wage and hour provisions of the Code set in motion the same kinds of currents or waves of disturbance as those set in motion by violations of the trade practice provisions. The situation may be briefly stated as follows:

---

which requires submission to the respective state legislatures for ratification. Bureau of Labor Statistics; Monthly Labor Review, July 1934, pp. 61–65.

LoneDissent.org

The industry is closely knit geographically. Its members congregate daily to purchase poultry at the railroad terminals or at West Washington Market. On a given day substantially all the wholesale slaughterhouse operators purchase at the same price, the day's quotation, for the same grade or quality of poultry.[23] The services performed by the slaughterhouses—hauling the poultry to their places of business, storing it over night or occasionally longer, slaughtering the poultry as an incident to sale—are simple and permit little opportunity for competition in efficiency and skill. Accordingly, they, and the retail butchers and poultry dealers who are their customers, compete primarily on a price basis and the industry is extremely sensitive to price competition.

A slaughterhouse operator, paying lower wages than his competitors or reducing his labor costs by exacting long hours of work, translates his saving in labor costs into lower prices. (*Supra,* pp. 47–48.) Unfit poultry is likewise sold below the market price. (*Supra,* p. 41.) Selective killing is a

---

[23] In *Wholesale Marketing of Live Poultry in New York City*, note 1, p. 30, *supra*, at page 31, the following statement is made concerning the method of determining price on the New York market:

" Under this arrangement it does not matter so much to the dealers in the New York City trade whether prices are out of line with what fundamental economic factors seem to warrant. The chief concern of the dealers is to make sure that all shall operate on the same basis and that none shall have an advantage so far as the basic price is concerned."

LoneDissent.org

form of price concession, since the birds first selected are sold at the market price and the left-over birds are later sold at a lower price.[24] (*Supra,* pp. 44–45.) Offerings of poultry below the market price, for any of these reasons, force others to meet this competition by demanding poultry which they can sell at a like price, and this demand stimulates shipment to New York of cheap, inferior, and unfit poultry. (*Supra,* pp. 41–45, 48.) At the same time there is a decreased demand for the better and higher-priced grades of poultry and a less amount is shipped to the New York market. (*Supra,* pp. 42, 48.) There is, in consequence, a general lowering of the price level, and the returns to interstate shippers and farmers throughout the country are reduced. In the long run, such practices injure the industry and those engaged in it because consumers of its products become dissatisfied and distrustful and turn to dressed poultry. (*Supra,* p. 42.)

The volume of protest directed against petitioners' violations of the Code indicates how sensitive the industry is to the competitive practices of even one or two concerns. The Code was strictly adhered to by the entire industry during the first week it was put into operation.[25] (R. 495, 567.)

[24] This summary statement of the effect of these Code provisions upon interstate commerce is not intended to be exclusive. See the effect of enforcing straight killing in bringing about the interstate shipment of graded poultry. (*Supra*, p. 45.)

[25] Although the Code became legally effective April 23, 1934, it was not regarded as put into operation until May 16

LoneDissent.org

Beginning with the second week of operation, the Code Supervisor received innumerable complaints of petitioners' violations, every competitor in the Brooklyn district filing a complaint. (R. 568, 572–573.) The Schechters were the first to violate the Code (R. 533–534), and within one week their business jumped from 32,000 pounds to 48,000 pounds per week (R. 579). A great many people said that they would not be able to live up to the Code unless petitioners and others of like calibre did so. (R. 567.)

Respondent submits that the record lends no factual support to Judge Hand's assumption that it logically follows from a decision upholding the wage and hour provisions of the Code that Congress may control the rents of the slaughterhouses and the price paid for the knives used in slaughtering poultry. Labor costs are from 50% to 60% of operating costs. When the other 40% or 50% is divided among rent, light and heat, supplies and materials, taxes and other miscellaneous expenses, it is obvious that none of these items is of more than minor importance and that, in relation to their effect upon competition and interstate commerce, they fall into an entirely different category than regulation of minimum wages and maximum hours of labor. Moreover, Judge Hand's hypothesis is inapplicable, for here the practices are those of the slaughterhouse operators themselves

---

1934, after the Code Supervisor had organized his staff and after a meeting in New York, attended by some 800 persons, to explain and discuss its provisions. (R. 492–494.)

LoneDissent.org

in relation to others, including employees, engaged in the same business. The slaughterhouse operators exercise a much larger measure of control over wages and hours than over their rental payments or the prices they pay for knives.

It should also be noted that it is not inconceivable that Congress may "control" in a similar manner the cost of supplies purchased, where the practices determining that cost have a substantial effect upon interstate commerce. Precisely this result has been reached under the Clayton Act. In *American Can Co.* v. *Ladoga Canning Co.,* 44 F. (2d) 763 (C. C. A. 7th), certiorari denied 282 U. S. 899, a packing company was permitted to recover triple damages under Sections 2 and 4 of the Act because the defendant manufacturer sold cans to a packing company, a competitor of the plaintiff, at discriminatory prices. The court upheld this application of the statute although over 99% of the sales to the favored concern were intrastate (see p. 770), upon the ground that the price discrimination in the intrastate sales of cans affected interstate commerce in the goods manufactured therefrom. If Congress can control the price which a manufacturer pays for his supplies where this is an element in competition affecting interstate commerce, it can under like circumstances bring within the measure of its control certain terms of his contracts for the employment of labor.

The question presented by this case is no different in kind from that which is presented on every occasion when the application of Federal power is

LoneDissent.org

challenged. The extent and the limits of such power must be marked out by a process which in this field, as in others, is one of "judicial inclusion and exclusion." Cf. *Federal Trade Commission* v. *Keppel and Brother,* 291 U. S. 304, 312, and *Euclid* v. *Ambler Realty Co.,* 272 U. S. 365, 397. The decision cannot be affected by suggestions that if the present power is sustained, it will extend to subjects which have only a fanciful relation to interstate commerce. No such suggestion drawn from hypothetical cases has heretofore prevented the process of judicial inclusion and exclusion from resting upon the facts established by the record.

D. UNDER THE DECISIONS OF THIS COURT, THE CODE PROVISIONS WHICH PETITIONERS VIOLATED ARE WITHIN THE COMMERCE POWER OF CONGRESS

1. THE APPLICATION TO THIS CASE OF *LOCAL 167* V. *UNITED STATES,* 291 U. S. 293

The Code provisions regulating practices of wholesale slaughterhouse operators, including those dealing with minimum wages and maximum hours of work, bear very much the same relation to interstate commerce as the practices in restraint of trade which were before this Court in *Local 167* v. *United States,* 291 U. S. 293, *supra.* That suit was a proceeding in equity under the Sherman Act brought against various wholesale slaughterhouse operators (called marketmen in the Court's opinion), an association of marketmen, and two labor unions and certain of their members who were alleged to be allied with the marketmen. The principal purposes of the combination were to allocate retailers among the wholesale marketmen and to increase

LoneDissent.org

and maintain the prices charged by marketmen. Neither shippers nor commission men (receivers) were parties to the conspiracy. The means used in effectuating the conspiracy, as described by this Court (p. 295), were the assessment and collection of a large sum of money to pay for enforcement activities; hiring men to obstruct the business of dealers who resisted; spying on wholesalers and retailers; using violence and other forms of intimidation to prevent the free purchase of poultry; and, in the case of the labor unions, "for like purposes, and to extort money for themselves and their associates", refusing to handle poultry for recalcitrant marketmen and refusing to slaughter it.

Prior to the commencement of the equity action, most of the equity defendants had been convicted in a criminal proceeding under the Sherman Act charging the same conspiracy. The Circuit Court of Appeals affirmed.[26] In answer to the contention that there was no restraint of commerce between shippers and receivers, that interstate commerce ended with delivery of the poultry to the receivers and that the commerce restrained was therefore local, the court said (pp. 158–159):

> In the case at bar, the receivers did not warehouse the poultry or commingle it with local goods before disposing of it. They were merely a conduit through which flowed the daily stream of commerce from shippers to marketmen. It was clearly contemplated

[26] *Greater New York Live Poultry Chamber of Commerce* v. *United States*, 47 F. (2d) 156, certiorari denied, 283 U. S. 837.

LoneDissent.org

> by the shippers that the poultry should pass through the receivers to the marketmen, for the shippers paid the charges for unloading, cooping, and cartage to West Washington Market, and the price paid the shippers depended on market price made by resale to the marketmen. * * * We believe the situation is analogous to that involved in the livestock cases already discussed, and we hold that the poultry remained in interstate commerce until sale by receivers to marketmen.

In the equity appeal the Government urged the same view, but this Court sustained upon a broader ground the decree of the District Court enjoining the conspiracy. It said (p. 297):

> It may be assumed that some time after delivery of carload lots by interstate carriers to the receivers the movement of the poultry ceases to be interstate commerce. *Public Utilities Comm'n* v. *Landon,* 249 U. S. 236, 245. *Missouri* v. *Kansas Gas Co.,* 265 U. S. 298, 309. *East Ohio Gas Co.* v. *Tax Comm'n,* 283 U. S. 465, 470–471. But we need not decide when interstate commerce ends and that which is intrastate begins. The control of the handling, the sales and the prices at the place of origin before the interstate journey begins or in the State of destination where the interstate movement ends may operate directly to restrain and monopolize interstate commerce. *United States* v. *Brims,* 272 U. S. 549. *Coronado Coal Co.* v. *United Mine Workers,* 268 U. S. 295, 310.

LoneDissent.org

> *United States* v. *Swift & Co.*, 122 Fed. 529, 532–533. Cf. *Swift & Co.* v. *United States*, 196 U. S. 375, 398. The Sherman Act denounces every conspiracy in restraint of trade including those that are to be carried on by acts constituting intrastate transactions. *Bedford Co.* v. *Stone Cutters Assn.*, 274 U. S. 37, 46. *Loewe* v. *Lawlor*, 208 U. S. 274, 301. The interference by appellants and others with the unloading, the transportation, the sales by marketmen to retailers, the prices charged and the amount of profits exacted operates substantially and directly to restrain and burden the untrammeled shipment and movement of the poultry while unquestionably it is in interstate commerce.

The district court had enjoined interferences with loading, unloading, trucking, slaughtering, and buying in purely intrastate transactions, and it was argued on appeal that the decree was too broad in this respect. This Court, however, refused to modify the decree, saying (pp. 299–300):

> And, maintaining that interstate commerce ended with the sales by receivers to marketmen, appellants insist that the injunction should only prevent acts that restrain commerce up to that point. But intrastate acts will be enjoined whenever necessary or appropriate for the protection of interstate commerce against any restraint denounced by the Act. *Bedford Co.* v. *Stone Cutters Assn., ubi supra. Gompers* v. *Bucks Stone & Range Co.*, 221 U. S. 418, 438.

LoneDissent.org

This Court held, in effect, that it would take judicial notice that disturbance of the free marketing of poultry, as between wholesale slaughterhouses and retailers and as between the wholesalers and receivers, necessarily restrained and disturbed the antecedent flow of poultry in interstate commerce to receivers. There was no evidence, as there is here, that maladjustments and restraints in the business practices of the wholesalers materially affected and disturbed that flow. Moreover, there was no evidence that the conspirators intended to control the supply of poultry shipped to receivers or the price at which they sold to the slaughterhouse men, although in Sherman Act cases involving tortious interference with production, intent to control the supply of the product entering and moving in interstate commerce, or its price in interstate markets, is usually necessary to bring such interference within the scope of the Act. *Coronado Coal Co.* v. *United Mine Workers,* 268 U. S. 295, 310; *United Mine Workers* v. *Coronado Coal Co.,* 259 U. S. 344, 408, 409.

The decision means, therefore, that, under the facts of this particular industry, the practices of the wholesale slaughterhouses are so closely related to the preceding interstate movement, that, from the standpoint of Federal regulatory control whether under the Sherman Act or otherwise, it makes no difference what parts of their business are "in" interstate commerce and

LoneDissent.org

what parts, if not "in" interstate commerce, are nevertheless necessary to its proper functioning. The following factors may have been given consideration: The wholesale slaughterhouses furnish the connecting link between the interstate shipper and interstate consignee (receiver), on the one hand, and the retail stores in which the poultry comes to rest within the State, on the other hand. The coops of live birds move rapidly and continuously through the hands of both receivers and wholesalers, without change in form other than slaughtering incident to sale to retailers. The poultry must debouch smoothly through the wholesalers if the incoming interstate movement is not to become clogged. The wholesalers participate in certain unquestioned interstate activity, such as hauling poultry from the New Jersey terminals and trucking poultry from other States to their places of business.

The holding in *Local 167* that the commerce power, as applied in the Sherman Act, extends to intrastate conduct which obstructs or restrains interstate commerce, establishes no new doctrine. The significance of the case in the present connection is the determination that the combination of wholesale slaughterhouse operators, which restricted competition in dealings assumed to be intrastate, would sufficiently affect and burden the stream of poultry flowing into the New York market to be within Federal control and regulation. And, so far as the Federal power is concerned, there can be no difference between disturbances to

LoneDissent.org

interstate commerce caused by a combination to eliminate competition and disturbances caused by excesses of competition or even by the forces of ordinary competition.

2. OTHER DECISIONS OF THIS COURT SHOW THAT THE FEDERAL COMMERCE POWER MAY BE APPLIED, AS IT HAS BEEN APPLIED IN THE CODE PROVISIONS WHICH ARE HERE IN ISSUE, TO PREVENT LOCAL ACTS WHICH THREATEN TO DISTURB OR DISLOCATE THE NORMAL FLOW OF INTERSTATE COMMERCE OR THE PRICE IN INTERSTATE MARKETS

While respondent emphasizes the fact that in *Local 167* v. *United States* this Court held, even without direct substantiating evidence, that practices which disorganized the orderly marketing of poultry by wholesale slaughterhouses burdened the flow of poultry in interstate commerce to the New York market; and while respondent contends that the practices which the Code prohibits, by causing changes in the character of poultry moving to New York and by influencing its price in interstate transactions, impose burdens on interstate commerce no less direct and substantial than the combination of slaughterhouse men and unions under consideration in *Local 167;* respondent wishes equally to emphasize that in its opinion that case represents merely an application to the facts of this particular industry of principles which are thoroughly established and which this Court has applied under a wide variety of facts and circumstances.

The history of Congressional legislation under the commerce clause and the decisions of this Court have confirmed the power of Congress to intervene

LoneDissent.org

in order to protect commerce among the States from acts or conditions which Congress deems injurious to that commerce. The fact that those acts or conditions, considered by themselves, are located within a single State, does not serve to remove them from the ambit of Federal control. On occasion, that control has been exercised by prohibiting the movement of goods produced under conditions which affect interstate commerce adversely. Such was the exercise of Federal power in the commodities clause of the Hepburn Amendment, which prohibited shipment by a carrier of goods manufactured or produced by that carrier. See *United States* v. *Delaware & Hudson Co.,* 213 U. S. 366.

More frequently the power has been exercised to remove or remedy acts or conditions which burden or obstruct interstate commerce. Physical obstructions caused by strikes growing out of a labor controversy can be prevented under the Sherman Act. *Coronado Coal Co.* v. *United Mine Workers,* 268 U. S. 295. Conditions of ownership detrimental to interstate commerce, consisting in the acquisition by one corporation of the stock of another where the effect of the acquisition "may be to substantially lessen competition between the two", are prohibited under the Clayton Act. *Federal Trade Commission* v. *Western Meat Co.,* 272 U. S. 554. Compare *Northern Securities Co.* v. *United States,* 193 U. S. 197. Unfair competitive practices, such as misrepresentation of the character of the business of the seller (*Federal*

LoneDissent.org

Trade Commission v. *Royal Milling Co.,* 288 U. S. 212) or misleading description of a product (*Federal Trade Commission* v. *Algoma Lumber Co.,* 291 U. S. 67), are prohibited by the Federal Trade Commission Act.[27]

This Court has sustained the power of Congress to regulate the business of and activities on exchanges, because they affect a national market and the price and movement of commodities in interstate commerce. Among these decisions, *Board of Trade* v. *Olsen,* 262 U. S. 1, sustaining the validity of the Grain Futures Act, is noteworthy.

Inasmuch as the case at bar also involves practices occurring in a central market which largely

---

[27] Under Section 5 of the Federal Trade Commission Act prohibiting " unfair methods of competition in [interstate] commerce ", the question whether the method as well as the competition must be in interstate commerce does not seem to have been discussed, but this Court said in *Federal Trade Commission* v. *Raladam Co.*, 283 U. S. 643, 647:

" In a case arising under the Trade Commission Act, the fundamental questions are, whether the methods complained of are ' unfair ', and whether, as in cases under the Sherman Act, they tend to the substantial injury of the public by restricting competition in interstate trade and ' the common liberty to engage therein.' "

Whatever the correct conclusion as a matter of statutory construction, the constitutional power of Congress to prohibit intrastate practices which promote unfair interstate competition is no longer open to question. For instances in which intrastate acts have been condemned under Section 5, see *Federal Trade Commission* v. *Eastman Kodak Company*, 7 F. (2d) 994 (C. C. A. 2nd, affirmed on another issue, 274 U. S. 619); *Chamber of Commerce* v. *Federal Trade Commission*, 13 F. (2d) 673 (C. C. A. 8th).

LoneDissent.org

determine the national price of a commodity moving in interstate commerce, the *Olsen* case is peculiarly apposite. A comparison between that case and this one will demonstrate that the practices regulated in each have substantially the same effect upon interstate commerce. That case involved the Grain Futures Act, which regulated contracts for sales of grain for future delivery, most of which, this Court said (p. 36), "do not result in actual delivery, but are settled by offsetting them with other contracts of the same kind." The sales were between buyers and sellers in the city of Chicago; but it was contended that these sales of futures affected the price at which cash grain was sold throughout the country. Thus the question was not one of regulating the movement of a commodity in interstate commerce, or of directly regulating the price of a commodity moving in interstate commerce, but of regulating purely local activity which Congress had found (see pp. 4–5) affected the price of commodities moving in interstate commerce and caused price fluctuations which burdened and obstructed interstate commerce. This Court held the regulation valid, declaring (p. 40):

> The question of price dominates trade between the States. *Sales of an article which affect the country-wide price of the article directly affect the country-wide commerce in it.* (Italics supplied.)

In the *Olsen* case interstate consignments of grain were affected by the prices of cash grain and,

LoneDissent.org

more indirectly, by the prices of grain future contracts on the exchange in Chicago, which were affected by certain trading practices on the grain exchange. The primary purpose of the statute was to regulate the final link in the causal chain. Interstate commerce in poultry is affected by the price of the poultry moving in interstate commerce which is in turn substantially affected by the price in the New York slaughterhouses, which is in part determined by the competitive practices of the slaughterhouse operators. In each case there is a controlling market which affects the flow of commerce and the price. Petitioners' attempted distinction on the ground that one of the purposes of the Grain Futures Act was the prevention of monopoly is supported by neither the facts of that case nor the opinion of Chief Justice Taft.

United States v. *Patten,* 226 U. S. 525, upon which the Court relied by analogy in the *Olsen* case, further illustrates the power of Congress to bar activities in a central market which affect the price and movement of a commodity elsewhere. The case sustained an indictment under the Sherman Act which charged a conspiracy to purchase on the New York Cotton Exchange contracts for the future delivery of cotton in excess of the amount available for delivery at the due dates. This Court held (see pp. 542–543) that since a corner enabled the conspirators "to obtain control of the available supply and to enhance the price to

LoneDissent.org

all buyers in every market of the country", it was altogether plain that the conspiracy, by its necessary operation, "would directly and materially impede and burden the due course of trade and commerce among the States."

Congress may enact legislation making it unlawful for meat packers to agree not to compete with each other in the purchase of cattle at the stockyards. *Swift & Co.* v. *United States,* 196 U. S. 375. The principles of this decision were held to support the constitutionality of the Packers and Stockyards Act regulating the practices of commission men and dealers in the major stockyards of the country. *Stafford* v. *Wallace,* 258 U. S. 495. See also *Tagg Bros. & Moorhead* v. *United States,* 280 U. S. 420. In the former case the Court said (p. 515):

> Expenses incurred in the passage through the stockyards necessarily reduce the price received by the shipper, and increase the price to be paid by the consumer. If they be exorbitant or unreasonable, they are an undue burden on the commerce which the stockyards are intended to facilitate.

It also said (p. 521):

> Whatever amounts to more or less constant practice, and threatens to obstruct or unduly to burden the freedom of interstate commerce is within the regulatory power of Congress under the commerce clause, and it is primarily for Congress to consider and decide the fact of the danger and meet it.

LoneDissent.org

It may properly be said that in all these cases upholding the power of Congress to regulate, or to prevent abuses incident to the conduct of, national markets, dislocation of the normal flow of commerce and of price in interstate transactions was the essence of the burden on interstate commerce which warranted Federal control. These are the very types of dislocation which the Code provisions in issue are designed to eliminate.

Under the Sherman Act, the effect of price upon interstate trade has been clearly recognized. That Act has been deemed to prohibit the fixing of prices by agreement where the effect is unreasonably to restrain interstate commerce. *American Column & Lumber Co.* v. *United States,* 257 U. S. 377; *United States* v. *Trenton Potteries Co.,* 273 U. S. 392.

Again, Congress may regulate local practices which affect interstate commerce because of their injurious or deceptive nature. The statute sustained in *United States* v. *Ferger,* 250 U. S. 199, made it a crime to forge a bill of lading representing an interstate transaction. The burden on commerce was the unwillingness to purchase valid bills which might be engendered by the circulation of fictitious bills: if bills of lading are not readily marketable, the flow of commerce is likely to be impeded. In like manner, the sale of unfit, inferior, or uninspected poultry destroys consumer confidence in the quality and fitness of the product and adversely affects the consumption of live

LoneDissent.org

try in the New York market and its shipment to that market.[28] Violation of the straight-killing and wage and hour provisions of the Code stimulates the sale and shipment of unfit and inferior poultry and thus contributes to the same result. (*Supra,* pp. 45, 48.)

Federal legislation providing for quarantining and disinfecting cattle in a State, to prevent spread of disease to other States, may be constitutionally applied to cattle ranging across the boundary line of two States because "the authority of Congress over interstate commerce extends to dealing with and preventing burdens to that commerce and the spread of disease from one state to another by such cattle ranging would clearly be such a burden, if it were not to be regarded as commerce itself." *Thornton* v. *United States,* 271 U. S. 414, 425.

Petitioners urge that, while the power of Congress extends to local activities which, as stated in *Board of Trade* v. *Olsen,* 262 U. S. 1, 39, " disturb the normal flow of actual consignments", the disturbance must be direct and substantial, and that the various decisions which have been cited turn on the particular facts and circumstances presented. They urge that, at least as to competition among slaughterhouse operators in the

[28] In the present case there is also shown (*supra*, pp. 41–43) the more immediate effect upon interstate commerce of a change in the character of poultry shipped to New York, because of the outlet for inferior and unfit poultry provided by such sales.

LoneDissent.org

matter of minimum wages and maximum hours of work of employees, the effect of these practices on interstate commerce is too slight and incidental to be within Federal control.[29] While *Local 167* v. *United States,* 291 U. S. 293, *supra,* seems directly in point, respondent's contention as to the other decisions is that the Code provisions which are at issue fall within the principles laid down and the considerations given weight, rather than that they are controlling on their facts.

This Court has approved regulation under the commerce clause where the effect upon interstate commerce is relatively slight as compared with the continuous effect exerted by the practices of slaughterhouse operators in their daily business transactions, for these operators are themselves essential adjuncts to the orderly flow of poultry to the New York market and are engaged in interstate commerce.

In *Colorado* v. *United States,* 271 U. S. 153, the Court sustained an order of the Interstate Commerce Commission authorizing an interstate railroad to abandon operation of an unprofitable branch line lying wholly within a State. The operating deficit on the branch line over a period of approximately seven years was less than 2% of the carrier's net railway operating income for those

---

[29] But the fact that a slaughterhouse operator may meet his competitor's wage cut with one of his own does not render Congress powerless to act. *Federal Trade Commission* v. *Keppel & Bro., Inc.*, 291 U. S. 304, 312–313.

LoneDissent.org

years.[30] Nevertheless, the order of the Commission was sustained on the ground that losses incurred in operating the branch line might prejudice the carrier's ability efficiently to serve interstate commerce. In *Florida* v. *United States,* 292 U. S. 1, the Court sustained an order of the Commission setting aside certain intrastate rates for logs, upon the ground that the rates were unremunerative and therefore discriminated against interstate commerce. Yet the new rates which the Commission established increased the carrier's revenue during a two-year period by less than 2% of its net railway operating income.[31]

---

[30] Net railway operating income from January 1, 1916, to December 31, 1920, totaled $13,723,554 (*Abandonment of Branch Line by C. & S. Ry.*, 72 I. C. C. 315, 319), and for 1921 and 1922 it was $1,903,793 and $1,061,877, respectively (*id*, 86 I. C. C. 393, 395), or a total of $16,689,124 for the seven years. The operating deficit on the branch line from January 1, 1916, to May 21, 1925, was $147,597 (*id.*, 86 I. C. C. 393, 394–395).

Taxes on the branch line during this period were $157,244, but the record did not show how much they would be reduced by abandonment. (*Ibid.*) If the full amount of taxes be included in computing loss from branch-line operation, the loss is less than 2% of total net railway operating income.

[31] The carrier's net railway operating income was $12,-874,207 and $7,241,304 for 1929 and 1930, respectively, a total of $20,115,511. *Georgia Pub. Serv. Comm.* v. *Atlantic Coast Line R. R. Co.*, 186 I. C. C. 157, 166. During the period February 8, 1929, to January 31, 1931, the carrier's revenue from the rates prescribed by the Commission exceeded that which would have been collected under the lower rates which the Commission set aside by $290,283. (*Ibid.*, p. 167).

LoneDissent.org

In the field of commercial regulation as well, Federal power has been upheld where the disturbance to the flow of commerce is comparatively minor, for example, a strike halting production at particular mines (*Coronado Coal Co.* v. *United Mine Workers,* 268 U. S. 295), the giving of premiums in penny-candy packages (*Federal Trade Commission* v. *Keppel & Bro.,* 291 U. S. 304), the forging of a small number of bills of lading (*United States* v. *Ferger,* 250 U. S. 199). These cases stand in contrast to the direct and substantial effect on interstate commerce shown in the case at bar.

An objection to the validity of regulation of mininmum wages and maximum hours which petitioners may urge is that this has hitherto been left to the States, except as to employees directly engaged in interstate commerce (*Wilson* v. *New,* 243 U. S. 332; *Texas & N. O. Ry. Co.* v. *Brotherhood of Railway Clerks,* 281 U. S. 548). But extension of Federal regulation into fields previously occupied exclusively by the States is a common occurrence. Control by the Federal Government of certain stock acquisitions, strikes, agreements in restraint of trade, and unfair methods of competition constitutes, to that extent, a supersedure of State authority. Congress may also bring within its control intrastate rates which affect interstate commerce (*Houston, E. & W. T. R. R. Co.* v. *United States,* 234 U. S. 342; *Railroad Commission* v. *Chicago, B. & Q. R. R. Co.,* 257 U. S. 563).

LoneDissent.org

Transactions which Congress may regulate may also be within the police or taxing power of the State. "The rule which marks the point at which state taxation or regulation becomes permissible" does not necessarily prevent "interference by Congress in cases where such interference is deemed necessary for the protection of commerce among the States." *Swift & Co.* v. *United States,* 196 U. S. 375, 400, *supra.* Accordingly, cases which hold that a state tax upon or regulation of manufacture or production does not burden interstate commerce because manufacture and production are not interstate commerce, do not fix the permissible limits of the commerce power of Congress. See *Kidd* v. *Pearson,* 128 U. S. 1; *Heisler* v. *Thomas Colliery Co.,* 260 U. S. 245; *Utah Power & Light Co.* v. *Pfost,* 286 U. S. 165.

Cases such as *United Mine Workers* v. *Coronado Coal Co.,* 259 U. S. 344, and *United Leather Workers* v. *Herkert & Meisel Co.,* 265 U. S. 457, holding that the mere stoppage of production by a strike having a local purpose is not within the Sherman Act rest upon a construction of what constitutes a combination in restraint of interstate commerce within the meaning of that Act rather than upon the constitutional limits of the commerce power of Congress. They are further inapplicable because the restraints in question affected only that portion of the supply produced in a small number of mines or factories, whereas here the Code seeks to

LoneDissent.org

late practices affecting the interstate movement of a substantial portion of the national supply.

Intent is material when the question is the scope of a conspiracy, but the constitutional limits of the power of Congress are not contracted or extended by the absence or presence of intent on the part of individual defendants. To put the matter in another way, the determination by Congress as to the necessity for particular regulation "serves the same purpose as the intent" which may be required in cases under the Sherman Act when the overt acts in carrying out a conspiracy are confined to the field of intrastate conduct. *Stafford* v. *Wallace,* 258 U. S. 495, 520–521, *supra.* See *United Mine Workers* v. *Coronado Coal Co.,* 259 U. S. 344, 408.

Manufacture and production seem sometimes to be regarded as if insulated from commerce, as if whatever concerned them necessarily affected interstate commerce only remotely. We submit that there is no such "closed class or category" of activity which, by reason of its inherent character, lies beyond the reach of the commerce power. In *Nebbia* v. *New York,* 291 U. S. 502, this Court recently rejected similarly artificial tests for determining the application of the due process clause of the Constitution.

3. PETITIONERS ARE IMPORTERS OF POULTRY FROM OTHER STATES AND CONGRESS MAY REGULATE THEIR HANDLING AND SALE OF SUCH POULTRY

The commerce clause protects against State prohibition of the sale of goods in the original package

LoneDissent.org

after importation from other States, even though the goods have come to rest in a warehouse or store within the State, the reason being that freedom of sale is part of interstate commerce and interference with such freedom, as long as the merchandise is unsold and in the original package, is an obstruction.[32] *Leisy* v. *Hardin,* 135 U. S. 100, 110, 111. See also *Heymann* v. *Southern Railway Co.,* 203 U. S. 270; *Rosenberger* v. *Pacific Express Co.,* 241 U. S. 48. *Baldwin* v. *Seelig, Inc.,* 55 S. Ct. 497, holds that the commerce clause guarantees to an importer of milk from another State freedom to sell it, not only in the original container, but after it had been bottled within the State; that the State has no power to impose even a conditional prohibition of such sales.

If the decision in *Greater New York Live Poultry Chamber of Commerce* v. *United States,* 47 F. (2d) 156, *supra,* is correct and the wholesalers' purchases at the railroad terminals and at West Washington Market are purchases in interstate commerce, their importation of poultry and first sale are protected against State interference (other than proper sanitary control or like measures).

---

[32] The fact that a State may levy a non-discriminatory property tax against such goods or a non-discriminatory occupation tax against the dealer who handles them (*Sonneborn* v. *Cureton,* 262 U. S. 506), does not limit the force of the decisions that the importation and sale are within the protection of the commerce clause.

LoneDissent.org

The regulatory power of the Federal Government would seem to extend to a field of activity wherein the commerce clause circumscribes state action. Accordingly, if the interstate journey does not end with delivery of poultry to receivers (commission men) at the railroad terminals, the incidents of importation and first sale, and all aspects of the importers' business related thereto, would seem to be within the regulatory power of Congress.

As to poultry bought by and delivered to the slaughterhouse operators at the New Jersey terminals and as to poultry which they buy in other States and truck to their slaughterhouses, just as petitioners brought poultry from Philadelphia (R. 996–999), they are clearly importers of the poultry. As to poultry loaded on their trucks at the New York Central Terminal, the flow of poultry from shippers to them is clearly unbroken and continuous. Unloading, inspection, weighing and sale of the poultry at the terminal are services incidentally performed to promote the regular and steady movement of live poultry from shippers to slaughterhouse operators. Over four-fifths of the freight poultry is thus sold and transferred at the terminals and, of the balance brought to West Washington Market, one-half is transferred directly from the receivers' trucks to those of the slaughterhouse operators. (*Supra,* p. 33.)

LoneDissent.org

From the standpoint of Federal regulation of the activities of the slaughterhouse operators, it is probably immaterial whether the sale of the small remaining portion of freight poultry, which, before sale, is unloaded at the receivers' stands in West Washington Market, is or is not a sale in interstate commerce. But we submit that these stands (and even more so the transfers made at the New York Central terminal) are in every way analogous to stockyards through the medium of which buyers are found for livestock shipped to the stockyards from other States. This Court has held that a combination to restrain freedom in buying and selling cattle on such stockyards and the charges and practices of the dealers and commission men who negotiate purchases and sales are subject to control by Congress. *Swift & Co.* v. *United States,* 196 U. S. 375, 398–399; *Stafford* v. *Wallace,* 258 U. S. 495; *Tagg Bros. & Moorhead* v. *United States,* 280 U. S. 420.

In *Stafford* v. *Wallace,* this Court said (pp. 515–516):

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

LoneDissent.org

> incident to this current from the West to the East, and from one State to another. * * * The sales are not in this aspect merely local transactions. They create a local change of title, it is true, but they do not stop the flow; they merely change the private interests in the subject of the current, not interfering with, but, on the contrary, being indispensable to its continuity.

The intermediate delivery of the poultry to the receivers at the railroad terminals does not break the interstate character of the movement from shippers in other States to slaughterhouse operators. Cases such as *Binderup* v. *Pathe Exchange, Inc.,* 263 U. S. 291, 309, and *Peoples Natural Gas Co.* v. *Public Service Commission,* 270 U. S. 550, show that where, as here, there is continuity in the movement of a perishable commodity from one State to its intended destination in another, interstate transportation is not arrested by an intervening change in custody and title.

The shadowy character of any distinction between the activities of the slaughterhouse operators which are "in" interstate commerce and those which are not is illustrated by the nature of the duties performed by the employee with respect to whom the wage and hour violations occurred. This employee was the bookkeeper of the A. L. A. Schechter Corporation. (R. 101–102, 111–112, 1013, 1016, 1018–1019; Ex. 37, R. 1606.) The bookkeeper, in recording the corporation's purchases of

LoneDissent.org

poultry, was engaged in performing duties essential to the carrying on of its purchases of poultry in interstate commerce. Therefore, apart from the broader aspects of the relation to interstate commerce of the wage and hour regulation of the Code, the particular violations which are before the Court arose out of employment affecting interstate commerce. While other duties of the bookkeeper may have concerned wholly intrastate transactions, this is immaterial since his rate of pay and working hours must be regulated as a unit or not at all. Intrastate transactions can be regulated by the Federal Government where these transactions are so interwoven with interstate commerce that the latter cannot be effectively regulated without control of the former. *Minnesota Rate Cases,* 230 U. S. 352; *Houston E. & W. Texas R. R. Co.* v. *United States,* 234 U. S. 342.

4. THE MINIMUM WAGE AND MAXIMUM HOUR PROVISIONS OF THE CODE ARE NOT CONTROLLED BY THE DECISION IN *HAMMER* V. *DAGENHART,* 247 U. S. 251.

Hammer v. *Dagenhart,* 247 U. S. 251, held unconstitutional an act of Congress which prohibited interstate shipment of the product of any mine or factory in which children had been employed within thirty days of the removal of the product. The Court said (p. 276) that the necessary effect of the legislation was "to regulate the hours of labor of children in factories and mines within the States." Subsequently, this Court sustained a Federal statute prohibiting the interstate

LoneDissent.org

tion of stolen motor vehicles and, in distinguishing *Hammer* v. *Dagenhart,* said that the child labor law was held invalid "because it was really not a regulation of interstate commerce but a congressional attempt to regulate labor in the State of origin, by an embargo on its external trade." *Brooks* v. *United States,* 267 U. S. 432, 438.

In the *Dagenhart* case no attempt was made to show that the employment of child labor had any substantial effect upon interstate commerce in the articles manufactured. It was contended that factories in States in which child labor was prohibited were placed on an unequal competitive basis with factories in other States, but there was no suggestion that the practice aimed at burdened, obstructed or diminished the flow of interstate commerce. The evidence in the present case that the Code practices which are regulated cause such a burden and obstruction is a sufficient ground of distinction between the child-labor case and the one at bar.

A second and more important ground of distinction is the different purpose and objective of Congress in the Recovery Act. The child-labor statute dealt with interstate commerce only when there had been a departure from certain labor standards in production preceding commerce. The legislation was cast in the form of commerce regulation to achieve a non-commerce purpose, to impose upon those engaged in production a prescribed labor policy.

LoneDissent.org

In the Recovery Act, on the other hand, wage and hour regulation is authorized only as a part of, and in subordination to, the fixing of standards of fair competition and, as trades and industries are organized today, codes of fair competition are codes of fair interstate competition. The provisions of the Act, the Committee reports, the debates in Congress, the hearings on the bill and the circumstances existing at the time the statute was enacted, all establish that the first and foremost purpose of Congress in the Recovery Act was rehabilitation of trade and commerce, and that regulation of minimum wages and maximum hours of labor was authorized from the standpoint of eliminating unfair competitive practices in interstate commerce.

In section 1 of the Act Congress declared the existence of a national emergency "which burdens interstate and foreign commerce." In its declaration of policy, the policy first declared was, "to remove obstructions to the free flow of interstate and foreign commerce which tend to diminish the amount thereof."

Title I of the Act authorizes codes of fair competition and Title II provides for the construction of and loans in aid of public works and various construction projects, and authorizes an appropriation of $3,300,000,000 for the purposes of the Act. Congress authorized this vast appropriation in a time of diminished public revenue in order to set the wheels of industry and commerce in motion, to "prime the pump."

LoneDissent.org

The House Ways and Means Committee in its report on the bill stated (H. Rep. No. 159, 73d Cong., 1st Sess., p. 11):

> The public-works program should produce immediate substantial revival of business. The industrial recovery program should * * * add to this stimulation * * *. By raising the standard of labor conditions throughout trade and industry, through voluntary cooperation with the aid of the Government, unfair competition, based upon the employment of underpaid and overworked labor, should be generally eliminated.

The Senate Finance Committee in its report on the bill discussed the Committee changes in the House bill and printed the report of the House Committee. (Sen. Rep. No. 114, 73d Cong., 1st Sess.)

We again refer to statements made by the President in his message to Congress and to statements made on the floor of Congress and in hearings on the bill which are set forth in the Appendix, pp. 62–67. They show that the proponents of this legislation deemed wage cutting and the lengthening of working hours as destructive of interstate commerce and fair interstate competition.

Regulation may be valid when Congress intended to act and did act under its commerce power although regulation of the same kind could not be supported under this power when Congress intended to act and did act under some other power.

130948—35——7

LoneDissent.org

Compare *Board of Trade* v. *Olsen,* 262 U. S. 1, *supra,* with *Hill* v. *Wallace,* 259 U. S. 44. It follows that a type of regulation which was invalid when, as in the child-labor law, Congress legislated for a non-commerce purpose, should be upheld when, as in the Recovery Act, Congress legislated upon the same subject for a commerce purpose. And even if the Court should conclude that Congress in this legislation may have been actuated, in part, by other purposes, this would not affect the validity of the statute. Legislation enacted for a purpose within constitutional power is valid although other ends not within such power were sought to be attained. *Stephenson* v. *Binford,* 287 U. S. 251, 276.

A further ground of distinction between the present case and *Hammer* v. *Dagenhart* is the wholly different situation of industry, trade, and commerce when the Recovery Act was passed. In a time of severe depression, interstate competition and commerce are peculiarly sensitive to and affected by variations in terms of employment. Interstate commerce is the instrumentality by which producers or localities impose their labor standards upon producers and localities elsewhere.[33]

When the child-labor law was passed (1916), the World War was in progress and every effort was

---

[33] See *Some Legal Aspects of the National Industrial Recovery Act*, 47 Harvard Law Review 85, 88–89; Wahrenbrock, *Federal Anti-Trust Law and the National Industrial Recovery Act*, 31 Mich. Law Rev. 1009, 1054–1055.

LoneDissent.org

directed toward increasing production. The primary competition was between employers to secure adequate labor. In 1933 the economic situation was reversed. Competition in the ranks of labor to sell their services afforded opportunity to hard-pressed employers to exploit their workmen, and when the less scrupulous yielded to this temptation, others were forced by competition to pursue the same course. Whether or not interstate commerce was substantially affected by child labor in 1916, it will scarcely be contended that interstate commerce was not vitally affected by wage-cutting in the depression years.

It is submitted that what practices and conditions materially affect interstate commerce, so as to be within Federal control, is a question of fact. Trade practices and labor conditions, which in normal times would have only an indirect and incidental effect upon interstate commerce, may substantially burden interstate commerce during a period of overproduction, cutthroat competition, unemployment, and reduced purchasing power. See *Richmond Hosiery Mills* v. *Camp,* 7 Fed. Supp. 139, 144; *Southport Petroleum Co.* v. *Ickes,* 61 Wash. L. Rep. 577. The issue presented for determination here should not be prejudiced by the fact that nearly twenty years earlier, when economic conditions were altogether different, a bare majority of this Court concluded that a statute with wholly different objectives was not within the Federal commerce power.

LoneDissent.org

E. PRACTICES RESPONSIBLE IN PART FOR A WIDESPREAD AND SHARP DECLINE IN PRICES AND WAGES CONTRIBUTE TO THE OBSTRUCTION OF INTERSTATE COMMERCE AND MAY BE REGULATED BY THE FEDERAL GOVERNMENT.

We have maintained thus far that the provisions of the Live Poultry Code here in question are valid regulations of interstate commerce because the practices regulated are part of or substantially affect interstate commerce in that industry. There is, however, an independent ground on which these provisions can be sustained. The Code was not an isolated effort at Federal regulation. It was part of a broader plan embodied in the National Industrial Recovery Act and applicable to numerous industries in or affecting interstate commerce.

The Recovery Act was passed after production, trade and commerce had been declining for three and one-half years and after the decline had assumed tremendous proportions. The purpose of the Act and of the codes of fair competition authorized by Title I was the promotion of recovery in commerce and industry. The justification under the commerce clause for particular provisions in the codes may be based in part upon their relation to the revival of business and commerce. In this view they are to be regarded as reasonable means of remedying the breakdown in trade and commerce then existing, a breakdown so severe and extensive that it was "the outstanding contemporary

LoneDissent.org

fact, dominating thought and action throughout the country." *Atchison, T. & S. F. Railway Co.* v. *United States,* 284 U. S. 248, 260.

The sharp downward trend of business was marked by a catastrophic fall in commodity prices, a heavy decline in wages, salaries, and employment and a curtailed market for both consumers' and producers' goods. These factors interacted upon and intensified each other, producing a cumulative downward trend. In this period of falling prices and shrinking business, overhead charges—such as interest, taxes, depreciation and depletion of plant—remained fairly constant and so became a relatively heavy burden. The practice of sharply reducing prices in an effort to obtain a larger share of the decreased demand required a reduction in costs. The pressure to reduce costs is generally directed toward the item most easily subject to control, namely, labor costs. Reduction of wages and other forms of reduced labor costs are relatively easy in a time of depression because of the demoralization in the labor market caused by widespread unemployment. As prices and wages are cut by individual employers or groups of employers, others in self-preservation are compelled to do the same. The process tends to repeat itself at constantly lower and lower levels.[34]

---

[34] The processes of the "vicious spiral of deflation" are thus succinctly described by Alexander Sachs, the first Chief of the Division of Economic Research and Planning of the

LoneDissent.org