

Leland D. Ives—By Govt.—Direct

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Q. Now, have mimeographed copies of Exhibit 7 for Identification been sent out to the poultry trade? A. Yes.

Q. About how many would you say have been sent out? A. I think they sent out about eight or nine hundred every—well, daily.

Q. Eight or nine hundred? A. And monthly and yearly. There is a different set of reports made very day and every month and every year—tabulations.

Q. And these mimeographed tables are open to the public? A. Absolutely, that is what they are made for.

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Mr. Rice: I offer Exhibit 7 for Identification in evidence.

Mr. Heller: I have a question to ask.

By Mr. Heller:

Q. What does this Market News Service, 53 Park Place, represent, is that a Government agency? A. Yes, it is our office.

Q. When you say “our,” what do you mean? A. I mean the Bureau of Agricultural Economics.

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Q. And they have a subdivision known as the Market News Service? A. Yes, sir.

Q. 53 Park Place, Room 902? A. It isn't 53 Park Place any more. It is 614 Washington Street.

Q. I mean, at that time when it was gotten up. A. Yes.

Q. And Government agents are employed to promulgate these papers, is that correct? A. Yes, absolutely.

Mr. Heller: Now, if your Honor pleases, I won't object to it on that ground, but

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I don't see its materiality and on that ground I do object.

The Court: Well, I will take it and if they do not connect it up I will strike it out.

(Government's Exhibit 7 for Identification received in evidence.)

Mr. Rice: Now I ask that these papers be marked for identification.

581 (Four papers marked Government's Exhibits 8, 9, 10 and 11 for Identification.)

By Mr. Rice:

Q. Dr. Ives, I hand you Government's Exhibit 8 for Identification, and I ask you whether or not that is the same table for 1930 as Exhibit 7 is for 1929? A. Yes, sir.

Q. All of these same things are true as of Exhibit 8 for Identification? A. The same system exactly was used, sir.

582 Q. Now Exhibit 9 for Identification which I now show you, is that the same thing for 1931? A. Yes, sir, it is.

Q. And all of the same facts apply? A. Yes, sir, they do.

Q. Now I show you Government's Exhibit 10 for Identification; is that the same thing for 1932? A. That's right.

Q. And all of the same facts are true? A. The same thing.

Q. I show you Government's Exhibit 11 for Identification; is that the same for 1933? A. Yes, sir, that is right.

Q. And the same facts are true? A. The same facts are true.

Mr. Rice: I now offer Government's Exhibit 8 for Identification in evidence.

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Mr. Heller: I make the same objection to all of these, your Honor.

Mr. Rice: I offer Government's Exhibits 8, 9, 10 and 11 for Identification in evidence.

Mr. Heller: I object on the ground that no materiality has been shown as yet.

The Court: You do not object to the form of proof, do you?

Mr. Heller: No, your Honor.

The Court: Well, you only claim it is not material. I will take it and if they are not connected up I will strike them out.

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(Government's Exhibits 8, 9, 10 and 11 for Identification received in evidence.)

Mr. Rice: I ask that this table be marked for Identification.

(Marked Government's Exhibit 12 for Identification.)

Q. Dr. Ives, will you tell us what Government's Exhibit 12 for Identification is? A. This report here is a tabulation of receipts of freight poultry, express poultry, and truck poultry received during the month of September, 1934, and a summary of the contents, that is the classification of the poultry in these cars and trucks.

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Q. Is this likewise a Government document? A. Yes, sir.

Q. Prepared in the same way? A. Prepared in the same way as the freight yearly poultry.

Q. And the same facts are true as to this table relating to the first months of 1934 as to the previous tables? A. Yes, sir.

Mr. Rice: I offer this in evidence.

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The Court: This is for the month of September, isn't it?

The Witness: September, 1934.

Q. And this goes through September, 1934?

A. Yes, sir.

The Court: From when?

The Witness: For the month of September, September 1st to 30th.

587 Q. When does it start? A. I thought it was a monthly report.

Q. Look at the tables at the bottom. A. Oh, there is also a summary of all preceding months.

The Court: When is it from, from when to when?

The Witness: Since January 1st. It is an accumulation of poultry.

The Court: From January 1, 1934 to and through September 30th, 1934, is that it?

588 The Witness: September 30th, 1934, that is it.

The Court: There is no objection to the form of proof, I suppose?

Mr. Heller: Subject to connection.

(Government's Exhibit 12 for Identification received in evidence.)

The Court: You know, if you want to, you could go right along and if they offer them, and they are not allowed, you may mark them for identification and save time. You won't have to mark them both ways.

Mr. Rice: Very well.

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The Court: If you want to interrogate and then offer and then, if it is not received, you may mark it for identification. It saves two markings.

Q. Dr. Ives, have you eight tables each one of which is headed, "Receipts of Live Poultry by States at New York," and for a particular year, and by express, as to certain tables and by truck as to other tables. These eight tables are arranged in order, commencing with 1926 and going up through 1933. Now, will you please tell us whether or not those tables were prepared in the same way as the previous tables?
A. They are all prepared exactly the same way as the previous tables.

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Mr. Rice: I offer these eight tables in evidence.

Mr. Heller: The same objection as before, your Honor.

The Court: Well, now, you don't object to the manner or form of proof, but you say they are not connected?

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Mr. Heller: That is right.

The Court: Now do you want to make them one exhibit or do you want to make them separate?

Mr. Heller: It doesn't make any difference to me. I understand, your Honor, that if in the future the years on these documents appear to be too remote then I can move to have them stricken out.

The Court: Now as I understand it you do not object to the form of proof, in other words you do not require that they should offer certified copies?

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Mr. Heller: No, I do not, your Honor, but if later on I desire to make a motion to strike out because they are too remote I can do so.

The Court: Oh, yes.

Mr. Rice: If your Honor pleases, there are two more supplemental tables which should be included with the eight. I should like to identify those and offer them as part of the exhibit with the eight tables.

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The Court: Very well.

Q. What are the two tables which you were just handed, Dr. Ives?

Mr. Heller: They speak for themselves, I do not think he has to go into an explanation.

The Court: Just to get something on the record, that is all.

Mr. Heller: I see.

The Witness: They are tabulations of the receipts from different states by truck of live poultry for 1931 and 1932.

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Q. That is, the first table relates to 1931 and the second table to 1932? A. To 1932, exactly.

The Court: You offer them in connection with the other eight, making all ten as one exhibit?

Mr. Rice: Yes, your Honor.

The Court: And there is no objection to the form or manner of proof; you object to them in themselves and reserve the right to move to strike them out if for any reason they are not connected?

Mr. Heller: Yes, your Honor.

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(Marked Government's Exhibit 13 in evidence.)

The Court: I will have to ask you gentlemen to have somebody representing each of you to watch that none of your witnesses come in. There is no way of my doing it, so if you will just do that, each of you have somebody to watch to see if any of your witnesses come in, tell them to leave.

Q. I hand you Government's Exhibit 11, Dr. Ives. Will you tell us how many carloads of live poultry came into New York in the calendar year 1933?

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Mr. Heller: I object to that. The document speaks for itself.

The Court: You may read it, if you want to.

Mr. Rice: Very well.

The Court: It is in evidence. You may read it.

Mr. Rice: Government's Exhibit 11 shows that the total number of carloads of live poultry coming into New York in 1933 was 8,150 freight carloads and that that poultry arrived from a great number of States—I believe from about 35 States—but none of which is the State of New York.

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Q. Dr. Ives, does any freight poultry come from within the State of New York? A. No, sir, none whatsoever.

Q. Not even one carload? A. No.

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Q. Then it is true that 100 per cent. of the freight poultry consumed in New York City comes from States other than New York? A. Correct.

Q. About how many pounds of poultry are there in each freight car? A. 17 to 18,000.

Mr. Rice: Government's Exhibit 13 indicates that the express poultry coming into New York amounted to a total, in 1933, of 1,814,948 baskets.

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Q. Is this in baskets, Dr. Ives (handing paper to the witness)? A. I will have to see. This is pounds.

Q. Pounds? A. Pounds.

Mr. Rice: Gentlemen of the jury, this exhibit further indicates that the total amount of truck poultry coming into New York in 1933 was 41,696,293 pounds.

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Q. Dr. Ives, in what form does the express poultry come into New York, is that in coops or some other containers? A. Well, they call them baskets. They are little wooden crates that hold about 50 pounds of poultry.

Q. 50 pounds net? A. 50 pounds net.

Q. Now what about truck poultry? A. Well, as a rule that comes in in the same kind of baskets or containers.

Q. Dr. Ives, does your office compute the total number of pounds of diseased and unfit poultry which is destroyed by your inspectors? A. Yes, sir.

Q. And is that reported daily in the same manner that you have stated the receipts are reported? A. These figures are taken daily from the certificates that come to the office.

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Q. Have you prepared from your office statistics a table showing the number of pounds of poultry destroyed by your inspectors as diseased or unfit poultry for the period from 1928 through 1933? A. Yes, sir.

Q. I hand you this paper and ask you whether that represents a correct transcript of your official Government records? A. Yes, sir, this is a copy that I got up myself, so I know this is correct.

Q. You got this out yourself? A. Yes, sir.

602

Q. For the purposes of this trial? A. Yes, sir.

Q. How many pounds of poultry was condemned and destroyed by your inspectors in the year 1933? A. 289,228 pounds.

Q. More than a quarter of a million pounds? A. Yes, sir.

Mr. Rice: I offer this paper in evidence.

The Court: All right, it is received.

(Marked Government's Exhibit 14 in evidence.)

Q. Dr. Ives, do you know what date the Live Poultry Code went into effect, approximately? A. The latter part of April.

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Q. The latter part of April, 1934? A. The latter part of April, 1934.

Q. Did the number of pounds of diseased poultry destroyed by your inspectors increase after the Live Poultry Code went into effect?

Mr. Heller: That is objected to, the document speaks for itself; it is in evidence.

The Court: First I think we ought to have the date fixed when it went into

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effect; he said some time in April, can you agree on the date?

Mr. Rice: We will establish by proof, your Honor, that it went into effect April 23, 1934.

Mr. Heller: You mean that is when the President said it shall become effective. When it actually functioned, when the Code Authority began to function, that I don't know.

605 Mr. Rice: We will submit definite proof upon this topic.

Q. After April 23, 1934, did your inspectors condemn more live poultry than they had previous to that time?

Mr. Heller: I object to that. The document speaks for itself. It is in evidence.

The Court: You may read it, if you wish to.

Mr. Rice: Very well.

606 The Court: It is in evidence. He does not have to testify any more. You may just read it.

Mr. Rice: Prior to April, 1934, namely, in February, 1934, over 13,000 pounds of poultry were destroyed by Dr. Ives' inspectors; March, over 17,000 pounds; in April, 13,000 pounds; in May, 14,000 pounds; in June, 22,000 pounds; in July, 21,000 pounds; in August, 29,000 pounds; and in September, 37,000 pounds.

Q. Dr. Ives, are you familiar with the conditions and circumstances under which your inspectors condemn live poultry? A. Yes, sir.

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Q. And have you been familiar with those conditions and circumstances throughout the period from 1926 up to the present time? A. Yes, sir, I have.

Q. And do you know what is the cause of the destruction and condemnation of larger amounts of poultry since April 23, 1934? A. The cause?

Q. Yes. A. The demand for better poultry on account of the provisions of the Code, I believe.

Q. You are referring to the Live Poultry Code? A. Yes. The Code requires that the slaughterer kill straight killings, in other words, as received from the commission merchant, and therefore they demanded a less quantity or a smaller quantity of poultry, that they could not handle or that they could not use, and naturally they required us to be more particular in eliminating more poultry. I believe that is the reason for the greater amount of poultry being destroyed than formerly.

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Q. When your inspectors inspect a freight carload of poultry, about how many chickens do they actually handle? A. They must handle not less than 100 individually, up to 200 birds in each car, before they can give a certificate of condition.

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Q. And do they make any inspection of the other chickens that they do not actually handle? A. They actually feel many more in brushing them aside in the cars, so they can see most all of the poultry that is in the different layers.

Q. And what do they do when they see a diseased or sick chicken? A. They immediately withdraw it from the deck in the car and throw it out in the aisle until they get through, and

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then they are all destroyed that he has picked out.

Q. What is the manner of destruction? A. The manner?

Q. Yes. A. By breaking the necks, and put them in a metal container and denature them.

Q. They are all denatured? A. They are all denatured.

611 Q. About what percentage of freight poultry coming into New York is actually condemned and destroyed and denatured, as you have described, just the approximate percentage? A. Well, I do not know; it must be less than one per cent.

Q. Would it be as much as one-third of one per cent.? A. I believe it is about one-third of one per cent., I recall that now.

Q. Referring to poultry that comes in by truck, how do your inspectors ascertain that a truckload of poultry has come into New York? A. The applicant, or at least the party that brings the truckload in, rings us up and asks for an inspection.

612 Q. And if he does not ring you up? A. We do not know he comes in. Of course, possibly a few days after we will hear about it, but that is all we know about it.

Q. You have no system of investigating the amount of truck poultry coming in? A. No, sir; we are not investigators in any sense.

Q. And if the market man does not call you up and request an inspection of the truck poultry, then you do not inspect their poultry, is that right? A. That is right. I might say our regulations—at least, the one thing we can do is to inspect poultry when we are asked. We

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cannot inspect anybody's poultry if they do not ask us to.

Q. What do your regulations provide? A. That we can inspect poultry on request, providing the applicant pays the reasonable cost of inspection.

Q. Has your office kept a record of all truck poultry which you have inspected? A. Yes, sir.

Q. And of all express poultry which you have inspected? A. Yes, sir.

Q. And of all freight poultry? A. Yes, sir.

614

Q. I hand you five reports and ask you what those documents are. A. The certificates are five copies of different individual inspections of truckload poultry coming into New York for Schechter Brothers in one case and the Rugby Live Poultry Company in the other. That is four Schechter Brothers and one Rugby Live Poultry.

Q. Now, the four applying to the Schechter Brothers are at what address? A. 991 Rockaway Avenue.

Q. And the other? A. 858 East 52nd Street, Brooklyn.

615

Q. Do you know, Dr. Ives, whether those are all of the inspections which your office made on behalf of any of the Schechters, on behalf of any person by the name of Schechter, during the calendar year 1933 and during 1934 up to July of this year? A. These are the only inspections made on application of Schechter Brothers or Rugby. We might have inspected some for them under some other applicant; I cannot say as to that.

Q. Why are you sure that these are the only inspections that you have made on the applica-

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tion of any of the Schechter Brothers or Rugby Live Poultry Market? A. Because I took these from the records, from our records in the office.

Q. And those records show all inspections that you have made on behalf of Schechters? A. Every inspection we ever made we have a record of it.

617 Q. And every inspection made on behalf of A. L. A. Schechter Poultry Corporation, or Schechter Live Poultry Market, Inc., is that right? A. If Schechter is connected with it, we would have that certainly under the name of Schechter, but the A. L. A., I do not know whether I have had anything under that name or not.

The Court: A. L. A. Schechter.

The Witness: A. L. A. Schechter, we haven't had any such thing any more than this.

618 Q. Then these five reports represent all of the inspections that you have made from January 1, 1933, up to and including the month of July, 1934, on behalf of anyone in the live poultry trade by the name of Schechter? A. Yes, sir.

Q. Or by the name of A. L. A. Schechter Poultry Corporation, Schechter Live Poultry Market, Inc., or the Rugby Live Poultry Market, is that correct? A. Yes, sir.

Mr. Rice: I offer these in evidence.

Mr. Heller: Objected to as not material, not within the issues, not the subject of any of the counts of this indictment.

The Court: Overruled.

Mr. Heller: Exception.

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The Court: It is received.
(Marked Government's Exhibit 15 in evidence.)

Q. These reports were kept in the regular course of the duties of your office? A. I did not get the question.

Q. I say, were these reports made in the regular course of the duties of your office? A. These particular ones are copies of the regular reports.

Q. These are copies? A. These are copies.

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Q. And you have the originals in your office?
A. Yes.

Q. And you could produce the originals? A. Yes.

Mr. Heller: I object to the copies as not being the best evidence.

The Court: That is true. If he insists on that, you either have to get the originals or certified copies.

Mr. Rice: Yes; of course, I recognize that, your Honor. I had hoped not to disorganize the very complete files of the Joint Inspection Service, and we are quite willing to produce the originals and give counsel an opportunity to compare them.

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Mr. Heller: I have no objection to this with the exception of the Rugby Live Poultry, which is not a party to this proceeding.

The Court: I will take it and if it is not connected up, I will strike it out. It is easier to take them all together.

Mr. Rice: I understand you waive the objection?

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The Court: The objection is withdrawn.

Mr. Heller: That is right.

The Court: Except the objection you made to the Rugby.

Mr. Rice: Now, gentlemen of the jury, Exhibit 15 indicates that on April 20, 1933, an inspection was made of 57 baskets of live poultry on behalf of Schechter Brothers of 991 Rockaway Avenue, Brooklyn; at 5:14 A. M. and that the inspection was made at the slaughterhouse.

623 The exhibit further shows that on July 8th, 1933, an inspection was made on behalf of the Rugby Live Poultry Market at No. 858 East 52nd Street, Brooklyn, of 84 baskets of live poultry; that this inspection was made at Elizabeth, New Jersey. It further shows that on May 28th, 1934, two lots of poultry, being 15 baskets and 50 baskets, a total of 65 was made on behalf of Schechter Brothers also at No. 991 Rockaway Avenue, Brooklyn, on May 28th, 1934.

624 The inspection of 105 baskets of live poultry was made on behalf of the Schechter Brothers at 991 Rockaway Avenue on May 30, 1934, and an inspection of 86 baskets was made on behalf of Schechter Brothers of 858 East 52nd Street, Brooklyn, on May 30, 1934.

Q. Dr. Ives, I hand you a paper which is entitled "Rules and Regulations of the Secretary of Agriculture Governing the Inspection and Certification of Live Poultry," and attached to it a mimeographed set of instructions. Will you tell us what these documents are?

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Mr. Heller: I object to him talking about this at all, they are not in evidence, and we are not being charged with violation of any rules and regulations of any Federal department.

The Court: The peculiar wording of the Code which calls for inspection does not seem to point out how it shall be required. If the Secretary of Agriculture has required inspection, why then probably I will have to take notice of that.

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Mr. Heller: But we are bound by the indictment, and the indictment does not say that.

The Court: What does the indictment say?

Mr. Heller: We have failed to comply with the rules and regulations of the Municipal Department.

Mr. Rice: If your Honor please, we will prove not only the regulations of the Bureau of Agricultural Economics, but also the regulations of the Department of Health made under the City Ordinance.

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The Court: Wait until I see. I do not see that that alleges exactly——

Mr. Heller: Page 24. Your Honor will find it at the top, beginning with the fourth line.

Mr. Rice: If your Honor please, may I explain the relevancy of this?

The Court: Any rule, regulation or ordinance of the City of New York.

Mr. Rice: That is correct.

The Court: If they can show that there is a combined commission that is pro-

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vided by the City and by the Department of Agriculture, they can show it.

Mr. Rice: That is exactly what we propose to show.

The Court: They may show that. Objection overruled.

Mr. Heller: Exception.

629 Q. Now will you tell us what the documents are which I have just handed you, Dr. Ives? A. The first one is the Rules and Regulations of the Secretary of Agriculture.

Q. Will you speak up a little, Doctor? A. Yes, which is the Act of Congress, empowering the Secretary of Agriculture to make the regulations for the inspection of live poultry and these are the regulations that he has promulgated. The second one, are instructions of the Chief of the Bureau of Agricultural Economics, regulating the manner in which we must inspect poultry.

630 Q. Are your instructions made in accordance with the rules and regulations and instructions which you have just described? A. In accordance with those rules and regulations, yes.

Mr. Rice: I offer these Rules and Regulations and Instructions in evidence.

Mr. Heller: I object on the ground that it is not pleaded in the indictment.

The Court: Well, I will take them, but you will have to show, Mr. Rice, some rule or regulation of the City Department for these combined regulations, otherwise you do not bring yourself within the terms of the indictment.

Mr. Rice: Very well, your Honor. Do I understand that counsel does not object

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on the ground that this is not a certified copy of a public document?

Mr. Heller: I do not so object.

The Court: Let it be marked.

(Marked Government's Exhibit 16 in evidence.)

The Court: If it is a regulation of the City you will have to prove it in the proper way.

Mr. Heller: Of course I object to his even proving any regulation.

632

The Court: You can make that objection when he brings it in, we will take care of that when he gets to it.

Q. Dr. Ives, I hand you a pamphlet entitled, "Sanitary Code and Regulations Governing the Keeping and Sale of Live Rabbits and Poultry," will you tell us what that document is?

Mr. Heller: I object to that on the ground that it is not in evidence as yet.

Mr. Rice: I am laying a foundation for offering it.

633

The Court: Of course that does not prove it.

Mr. Heller: I object to his reading from anything that is not in evidence.

The Court: No.

Q. Will you tell us what that document is, Dr. Ives?

Mr. Heller: Exception.

A. This is a printed copy of the Section of the Sanitary Code of the Health Department of the

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City of New York relating to the keeping and inspection of live poultry in New York City.

Q. And in the operation of your Inspection Service do you have occasion to be governed by the provisions of the Sanitary Code or to relate your inspection in any way to the provisions of that Sanitary Code? A. The work is the creation—

Mr. Heller: I object to it.

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The Court: He didn't ask you that; answer the question.

Q. Just answer the question. A. What was that question again?

Q. Do you have occasion to use the Sanitary Code in connection with your inspection service in any way at all? A. Well, except they lay down rules that we have to do. I do not know just how to answer that question.

Q. They lay down rules? A. And they tell us in these rules what we must do.

Q. And you do that? A. Yes, sir.

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Q. In the course of your inspection? A. Yes, sir.

Mr. Rice: I offer the Sanitary Code in evidence.

Mr. Heller: That is objected to on the ground that it is not pleaded.

The Court: What?

Mr. Heller: On the ground that it is not pleaded. There is no foundation laid down at this time for offering it in evidence.

The Court: But you do not object to the form?

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Mr. Heller: In what way?

The Court: I mean, of course, they would be required to prove it either by a certified copy or through the mouths of witnesses. If you object to the manner of proof here, I have to sustain the objection.

Mr. Heller: I do not want to put the Government to any trouble to get a certified copy. I won't object on that ground. I will, however, object that it has not been pleaded in the indictment.

638

The Court: That is the ground of your objection?

Mr. Heller: That is right.

The Court: I will overrule your objection, if you do not object to the form.

Mr. Heller: No.

The Court: You may have an exception. (Marked Government's Exhibit 17 in evidence.)

Q. Dr. Ives, have you another pamphlet entitled "Section of Sanitary Code and Regulations Governing the Conduct of Poultry Slaughter Houses." Will you tell us what that document is? A. That is a section of the Sanitary Code relating to the regulations of the conduct of slaughter houses.

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Q. And how does that document differ from the one you just identified?

Mr. Heller: I object to the witness describing a document which is in evidence.

Mr. Rice: Very well; I will withdraw the question.

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Q. In the course of your inspection service, are you governed to any extent by the regulations provided in the pamphlet you now hold in your hand?

Mr. Heller: I object to that question as not binding on the defendants.

The Court: Overruled.

Mr. Heller: Exception.

The Witness: No, sir.

641 Q. Do you have any occasion to invoke the provisions of the pamphlet which you now have in your hand? A. No, sir.

Q. Do you have any relation to it whatever? A. No.

Q. Do you know whether the regulations of the Sanitary Code make any regulation with respect to the inspection of poultry under the joint inspection service?

642 Mr. Heller: I object to the form of the question. He said he had nothing to do with it, and now counsel is questioning him about it.

The Court: Well, it speaks for itself.

Mr. Heller: But it is not in evidence, your Honor.

Mr. Rice: I offer the pamphlet in evidence.

Mr. Heller: I object to it. I haven't any idea what it is all about.

Mr. Rice: Dr. Ives has explained that this pamphlet contains excerpts of the Sanitary Code of New York and Regulations Governing the Conduct of Government Slaughter Houses. It may well be

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true that these regulations do not govern the inspection services of Dr. Ives, nevertheless they are material in this case.

The Court: I haven't examined them yet, so I don't know. Let me see the document.

Mr. Rice: May I point out the relevancy?

The Court: Wait a minute. Yes, what is there about it, why do you think it is relevant?

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Mr. Rice: The Live Poultry Code requires inspection in accordance with the requirements of the local area. Now we offer these two pamphlets in evidence to show that the requirements of the local area are that inspections be made by the Joint Inspection Service which is Dr. Ives' office. This is a part of the connecting links that counsel for the defendants has asked for.

Mr. Heller: I haven't asked for it and the witness has stated that he is not bound by it, he has nothing to do with these rules. We are not bound by it in any way, I have never seen it.

645

The Court: Where is the part that relates to inspection?

Mr. Heller: That is already in evidence; that is a different pamphlet.

The Court: Wait a minute—

Mr. Rice: If your Honor please, may I withdraw that exhibit for the time being and reoffer it later?

The Court: Yes; I can't find anything about inspection in it.

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Mr. Rice: Yes, I think you are right; that is fully covered in the previous pamphlet. This will become pertinent in connection with the testimony of another witness.

The Court: Yes, that may be. Then that is withdrawn.

Q. Dr. Ives, approximately what percentage of the freight and express poultry consists of ducks?

647

Mr. Heller: That is objected to as not material in this issue.

The Court: If they have put them together, why, we must know something about them.

Mr. Heller: Are those covered in those exhibits you offered?

Mr. Rice: No.

648

This evidence, if your Honor please, is for the purpose of computing the percentage of live poultry, of live chickens coming from outside of the State into the State of New York. By finding out the percentage of ducks included in the trucked and expressed poultry we may compute—

The Court: These schedules you had included chickens and ducks?

Mr. Rice: Yes, your Honor.

Mr. Heller: Then it is all in evidence now. I object to him testifying any further.

The Court: I do not know whether it is separated on the papers or not.

Mr. Rice: They are not segregated.

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Mr. Heller: They are given by years and months.

The Court: He says they are not segregated as between chickens and ducks.

Mr. Heller: I wish he would qualify it first.

The Court: He is the man who has charge of the records, and they are made under the report.

Q. Do you know approximately what percentage of the trucked and expressed poultry sold in the New York market consists of ducks? A. Is this all the poultry that arrives in New York, you mean, all the poultry by freight or express? 650

Q. Well, let us ask the question this way: What trucked and expressed poultry coming from within the State of New York to the New York market, what percentage of that poultry consists of ducks—do you understand my question? A. Well, no.

(Question repeated by the reporter.)

A. I understand it now, but I don't know that I can answer it. 651

Q. Can you give us an approximate percentage? A. Well, I don't know—

Q. Have you computed this? A. I have computed that sometime.

Q. Do you have any memorandum which will refresh your recollection on that subject? A. I think I have here.

Q. Will you refer to it?

Mr. Rice: In order to save the time of the Court, I should like to direct the witness' attention—

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The Witness: Three and a half per cent.

Q. Did you understand my question? A. Three and a half per cent.

Q. No, I am asking you what percentage of the local poultry trucked to the New York market from within the State consists of ducks? A. One and a half per cent.

Q. How much? A. One and a half per cent.

653

Q. You mean one and a half per cent. of all poultry? A. Yes.

Q. One and a half of all poultry including freight poultry, truck poultry and express poultry coming from all over the United States consists of ducks, is that right? A. I think that is about correct; I am sure I do not—I can't quite get that.

654

Mr. Rice: I wish to state, if your Honor please, that we have computed from the exhibits that are now in evidence that 96.4 per cent. of all of the poultry offered on the New York market comes from states other than New York. Now we propose to show that of that remaining 3.6 per cent., that a large percentage of that consists of Long Island ducks.

Mr. Heller: State your figures, and I will concede them. It doesn't make any difference to me.

Mr. Rice: I have just stated them.

Mr. Heller: All right; that is satisfactory. We will accept them as given by counsel.

Mr. Rice: All right, and I will state further that 60 per cent. of the 3.6 per

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cent. of local poultry consists of Long Island ducks.

Mr. Heller: That is satisfactory to me. I find no fault with it.

Mr. Rice: That is conceded then.

Q. Dr. Ives, I believe you testified that you are a veterinarian? A. Yes, sir.

Q. You understand poultry diseases? A. Well, I understand some of them. I would not say I understand everything.

Q. You don't know everything there is to know about poultry diseases? A. I don't claim to, no, sir.

656

Q. You have studied poultry diseases? A. Yes, sir.

Q. Do you know whether or not poultry diseases are contagious to other poultry?

Mr. Heller: That is objected to, your Honor.

The Court: On what ground?

Mr. Heller: On the ground that it is immaterial to the issues herein.

The Court: Oh, no. Objection overruled.

657

Mr. Heller: Exception.

A. Yes, sir, it is.

Q. Poultry diseases are contagious? A. Are transmissible to poultry; contagious.

The Court: All of them, or some of them?

The Witness: Well, all infectious diseases.

Q. Is a chicken a delicate animal or is it a tough animal? A. It is a delicate animal.

658

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Q. Do you know, Dr. Ives, whether among veterinarians chickens are considered perishable commodities? A. I should imagine it was perishable.

Q. Do you know whether chickens are perishable? A. I would call them perishable.

Q. In what respect? A. Well, they die, so certainly they are perishable.

Q. I don't mean that, Dr. Ives,— A. You mean shrinking in weight, and so forth?

659

Q. Well, are they subject to great shrinkage and subject to diseases more than other animals? A. Well, the way they are handled they are probably subject to a large death rate in transportation because they are not handled so carefully as other livestock. There is a great number put into one coop, for instance.

Q. Do you know whether a substantial number of chickens die in transportation? A. They do.

Mr. Rice: Your witness.

Cross examination by Mr. Heller:

660

Q. Dr. Ives, you are not an M.D., are you? A. No, sir.

Q. Now, you computed a table—

The Court (to the witness): Have you any degree?

The Witness: Yes, sir.

The Court: What is that?

The Witness: Doctor of Veterinary Surgery.

Q. You say you have computed personally Government's Exhibit 14. Just look at it, please. A. I got the figures up; I did not type it, if that is what you mean.

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661

Q. You supplied the figures? A. Yes, sir.

Q. And Government's Exhibit 14 gives the number of sick and other diseased chickens for the year 1934, month by month, is that correct? A. Yes.

Q. Have you computed them for the year 1933, month by month? A. I haven't, no, sir.

Q. You have not computed, have you, for the year 1933 the number of chickens killed month by month because of certain diseases or for some other reasons? A. We have it in our office, but I haven't it here.

662

Q. Can you bring that table with you? A. I can bring it, yes, sir.

Q. Do you know offhand how it compares between month and month, say January of 1934 and January of 1933? A. I have it I think right in my pocket that I copied off our report.

Q. How many months have you copied? A. I do not know, I would have to look. I copied from April through to December.

Q. And have you copied them from January to April? A. I haven't them with me, no.

Q. You have that at your office? A. Yes.

663

Q. Is it a fact that during certain months of the year some chickens are apt to become more quickly sick than at any other time? A. Yes, sir.

Q. What months are those? A. The months of greatest sickness would be from August to February, in the winter.

Q. When? A. From August until February.

Q. So that January and February of each year would have a greater number of sick chickens than during the months of July and August, for instance? A. Yes.

Q. That is so, isn't it? A. Yes.

664

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Q. Now, by a sick chicken—a sick chicken is sometimes designated as a cull, is it not? A. Sometimes, but not by us.

Q. What do you call a sick chicken? A. Call a sick chicken one that has symptoms of disease as laid down in the regulations of the Chief of the Bureau of Agricultural Economics.

Q. I am asking you what do you consider a sick chicken, when you see one? A. Well, if you show it to me, I will tell you.

665

Q. If a chicken was overfed would you say it was a sick chicken? A. No, not because it was overfed.

Q. If a wing was broken would you say it was a sick chicken? A. No.

Q. You would not say that? A. No.

Q. And you say during the year of 1926 and three years thereafter the Government maintained some kind of school for the learning of what is considered diseases— A. Yes.

Q. (Continuing.) —in the chicken industry? A. Yes.

666

Q. And from that time on the Government has not maintained such a school, is that correct? A. That is right.

Q. And how many of your employees have been employed since 1929? A. You mean how many—

Q. Inspectors, yes, how many of the inspectors that are under your jurisdiction at this time have come into the service since 1929? A. None.

Q. All prior to 1926? A. We have had two veterinarians come in since.

Q. Since that time? A. Yes.

Q. Suppose I show you a picture and I ask you to look at it. I ask you whether this is a

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667

fair representation as to how chickens come in on trains? A. Yes, that is a live poultry type of car.

Q. That is a fair representation of the situation as it is when the chickens come in? A. Yes.

Mr. Heller: Any objection?

Mr. Rice: No.

Mr. Heller: I offer it in evidence.

The Court: Just the picture?

Mr. Heller: Yes, sir.

The Court: If you want to keep the pamphlet, without tearing that page out, cover up all but the picture. 668

Mr. Rice: What page is that?

Mr. Heller: Page 6.

(Marked Defendants' Exhibit A in evidence.)

Mr. Heller: May I show this exhibit to the jury, your Honor?

The Court: Yes.

Q. Dr. Ives, am I right in saying that one of these cars of poultry is divided into 128 layers? A. Yes, sir. 669

Q. Now, what is the average for each deck? A. About 35 or 40 chickens.

Q. Do you know about how many number of chickens there are in an entire carload? A. About 4,000 average.

Q. And each inspector is assigned to examine various numbers of carloads a day? A. Yes, sir.

Q. And he sticks his hand in each and every tier and examines the neck in order to ascertain the weight, is that correct? A. Correct.

670

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Q. Now you said that if he averages about 100 chickens—— A. No, he averages more than that, he cannot do less than that.

Q. Well, about how many do you say he actually puts his hands on? A. Probably 200 at least.

Q. Out of 4,000? A. Out of 4,000, yes, sir.

Q. And then he passes the car as fit for human consumption? A. No.

Q. But what then does he do, give an inspection after that? A. It is approved for unloading.

671

Q. And that is your inspection, isn't it? A. That is a preliminary inspection.

Q. You mean after it is unloaded it is inspected again? A. Not after, but during the process of unloading.

Q. Who does the next inspecting? A. Well, the inspector is supposed to come back there from time to time during the unloading.

Q. What kind of a certificate does he give when he examines 200 chickens out of the 4,000 that are in the car, what kind of a certificate does he give?

672

Mr. Rice: I object to that, he did not say that the inspector examines only 200 chickens out of 4,000, he said he actually feels of 200 chickens.

The Court: You had better frame it that way, because he said he looked at them as he was going along.

Q. Well, now, these chickens are compact, are they not? A. Fairly so.

Q. He brushes aside a few at a time and takes one and feels the neck? A. He does not need to brush them aside because he can see practically half of them without brushing them away.

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673

Q. You mean the half in front of him, is that correct? The other half that are in back of him he cannot see? A. Yes.

Q. So he puts his hand in and examines about, say about 200 chickens on an average, is your statement, in a carload of 4,000? A. He examines individually, yes, sir.

Q. Individual chickens? A. Yes.

Q. And the rest he looks at? A. Yes.

Q. By looking at the back of the tier can he say whether a chicken has a disease in there or not? A. If he sees it at all he can, but if he does not see it he can't.

674

Q. It has to strike his eyes, otherwise he can't detect it? A. Right.

Q. In other words, only 200 out of the 4,000 he can actually say whether they have a disease or not? A. No, that is not true.

Q. Not even out of 200, is that correct? A. I say—you asked a question if he could only say that 200 was healthy, that he saw?

Q. I mean with certainty. A. Well, absolutely, he could say more than that, because he can see—all he can see he can practically say are healthy.

675

Q. Tell us what kind of diseases do chickens suffer from? A. What kind of diseases?

Q. Yes. A. Why, infectious bronchitis is one of the principal diseases in winter time—they have cholera—

Q. In plain English is that a cold? A. That is bronchitis, yes.

Q. And what else? A. What other diseases?

Q. Yes, what other diseases do inspectors look for? A. They look for cholera tuberculosis.

676

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Q. Well, can you determine whether a chicken has tuberculosis or not by a mere inspection from the surface? A. No.

Q. You have to open up the chicken don't you? A. Yes.

Q. And cholera the same way? He might see— A. All he can do is go by symptoms.

Q. What symptoms are evidence, any man looking at a chicken, can ascertain for himself whether or not that particular chicken has cholera? A. He could not tell absolutely.

677

Q. In other words, you can only say with certainty whether a chicken has a disease or not when it is opened up, is that correct? A. Yes.

Q. As a matter of fact, Doctor, the inspection is merely for the purpose of finding out whether the chicken has the proper weight, is that it? That is the main feature of it? A. The crop weight, you mean?

Q. Yes. Isn't it a fact that at one time they used to feed the chickens with charcoal and that is the reason why this inspection is made now, isn't that correct? A. I don't know about charcoal. That would do them good.

678

Q. They used to give them something in order to give them weight? A. Charcoal is very light.

Q. They give them something else that you know of in order to increase the weight? A. Yes.

Q. Well, they give them something else, you know that, in order to increase weight? A. Yes, sir.

Q. And for that purpose we have this inspection service? A. That is not all the reason.

Q. Now, you said on direct examination that a certain fee is to be paid for such inspection? A. Yes, sir.

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Q. Does that go to the Government or to you?

A. That goes to pay the expenses of the inspection.

Q. And you deposit that to your account? A. To our account, the Joint Inspection Service account.

Q. And out of that fund you pay out to these various inspectors, is that correct? A. Yes, sir.

Q. Now, assume that you find some chickens with a cold, or bronchitis, as you call it, isn't it a fact that you put three X marks on the coops and pass them for sale, but you require that the sale take place within twenty-four hours? A. Occasionally we do.

680

Q. In other words, you permit the sale of those chickens with colds, provided that they are sold within twenty-four hours? A. That doesn't say they have colds, it means that they originated in a car that has been inspected with that disease; in other words, that there has been a lot killed from that car with that disease.

Q. Well, after the chickens are loaded on the truck, isn't it a fact that some of the people that purchase the chickens ask you to destroy some of the chickens that they think are unfit, besides the inspectors? A. Do you mean at railroad terminals?

681

Q. Yes. A. Yes, I believe they do.

Q. In other words, the people that purchase them, in addition to the inspectors, look at the chickens for the purpose of determining whether they are diseased or culls? A. Yes.

Q. And they ask you to destroy some of them? A. That is correct.

Q. Do you know whether there was a marked increase in chickens that came into the City of

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New York, or the markets that you have testified to, in the month of September, over last year or over the month of January of this year? A. I don't get that question.

Q. All right, I will withdraw the previous one. The number of chickens rejected or destroyed by you would vary with the number of chickens that come in, isn't that correct? Out of a greater number you would destroy more chickens? A. Ordinarily, yes.

683

Q. There has to be some average in order to have some relation, and one has some relation to the other, isn't that correct? A. Yes.

Q. Now, will you tell us where you got the figures such as are represented by Government's Exhibits 12, 9, 7, and the other exhibits—will you tell us where you got these figures from? A. These figures are the number of cars of live poultry received in New York, and it is tabulated direct from our certificates.

Q. Is there any organization that supplies you with these figures? A. Supplies us?

684

Q. Yes. A. No; you mean this particular one here?

Q. No, all of these exhibits. May I have all of the Government exhibits? Look at Government's Exhibit 13 and tell the jury just where you got these different items that represent that exhibit. A. This particular report is a 1926 report of the express, amount of express poultry coming in. This express poultry at that time was tabulated by the Market News Service, and did not have any relation to the amount of poultry that we inspected.

Q. In other words, that was a private agency that compiled that particular record, is that correct, at this time in 1926? A. Yes.

Q. You do not know where they received their information, do you? A. Yes, I do.

Q. From whom did they receive the information? A. From the railroad companies.

Q. Can you state with reasonable certainty that they had each and every record before them when they compiled that record from all of the railroad companies? A. The chances are there was some they never got.

Q. In other words, some may be missing? A. Yes.

Q. Some may never have been sent to them? A. Absolutely.

Q. You are not in a position to tell us just which ones they received and how many they didn't, is that correct? A. That is right.

Q. How about the year 1927? A. I couldn't say with certainty just when that service stopped; in fact, they get that information yet of express poultry from every railroad.

Q. You mean the private agency? A. Well, it is a Bureau of Agricultural Economics.

Q. Have you heard of the firm of Lerner Barry, or something of that kind? A. Yes, sir.

Q. Who compile a lot of this literature for the Government? A. It has nothing whatever to do with this.

Q. Where did these figures come from? A. These come from our Market News office.

Q. Yes; and who gave the information that is combined in these papers, marked Exhibit 13? A. As I told you, these 1926 and 1927 come direct from the railroad companies.

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Q. Now, 1928. A. Well, 1928, from there on, it all comes from—comes from our office; got the figures from our office.

Q. For the years 1927 and 1928, assuming that the private agency did not receive all the reports from the—

The Court: He said 1926 and 1927.

Mr. Heller: 1926 and 1927, that is all I am relying on.

The Court: You said 1927 and 1928.

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Q. (Continuing.) Oh, '26 and '27. Now, if those papers, documents, did not come in or were not reported to this agency, they would not be included herein, is that correct? A. I believe so.

Q. Now, in 1928 you say your office compiled these records, is that correct? A. Yes, sir.

Q. Where did you get your information from? A. From our inspection records.

Q. Now, assuming that certain poultry was not inspected, you would not have a record of it, would you? A. No.

690

Q. Isn't it a fact that some poultry is inspected in Long Island? A. Inspected in Long Island?

Q. Yes. A. It is inspected out on Long Island, you mean?

Q. I beg your pardon? A. It is inspected out on Long Island? You are referring to ducks?

Q. Some other source than the sources that you gave. A. No matter whether other sources or not, we have the records of it just the same.

Q. Who would send them to you if you did not make the inspection? A. If the inspection was made, we made it.

Q. Couldn't poultry have been inspected by some other person who had knowledge as to the fitness of a chicken or not?

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Mr. Rice: I object to that. That is asking the witness to interpret the rules and regulations of the Board of Health under the Sanitary Code.

The Court: What was the question?

Mr. Heller: If the poultry were inspected by some other sources, by sources other than by Dr. Ives, such inspection would not be included in the tabulation of these figures.

Mr. Rice: That is not the question that I objected to. I have no objection to that one.

692

The Court: Very well.

A. If it was inspected by another agency than us, we would not have a record of it.

Q. That would not show in the exhibits that you offered? A. No, sir.

Q. Now, did your office compute all of the figures for the year 1929 for both express and trucked poultry? A. Yes, sir.

Q. That is, it included all that which has been inspected by you or your assistants? A. Yes, sir.

693

Q. And does that hold true for the years 1931, 1932, 1933 and 1934? A. All after 1928.

Q. And you have a record in your office—that is all the poultry that your office inspected for those years? A. Yes.

Q. And it was from that that these figures were compiled? A. Yes, sir.

Q. Now, do you make a record as to how much poultry comes in from Alabama? A. Yes, sir.

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Q. Do you also make a record that certain poultry comes in from each and every State, every time that it comes in? A. At the time that it is inspected it is recorded on every certificate where it comes from.

Q. You mean the poultry is? A. Yes.

Q. When you make your inspections do you keep those certificates? A. Every certificate is kept, yes; we have every certificate that we ever wrote.

695

Q. You get your information from the records of the railroad company? A. Yes.

Q. Well, how do you get your information? A. What information?

Q. How much poultry comes in from Alabama on a certain day in a certain year? A. Well, if a load of poultry comes in and the man says it comes from Alabama, we take his word for it.

Q. But you have no independent way of ascertaining whether it comes from Alabama or Connecticut or where? A. No.

Q. You take the word of the man that tells you where it came from? A. Yes.

696

Q. And that is how you compute your records? A. Yes.

Q. Now you said on direct examination that since the N. R. A. came into existence the market men asked you to pay more attention to your inspection, and for that reason you found more diseased chickens, is that correct? A. I do not say we found more diseased chickens, we took more out.

Q. And unfit chickens, is that correct? They used pressure on you to make a closer examination, and up to that time, that is, the last few months of this year, you made indiscriminate

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examinations, is that it? A. Well, we made a closer examination.

Q. More particular, is that the idea? A. More particular, yes.

Q. Now, you have been more particular, is that it, and that is at the request of the market men?

A. Well, it is at the request of the buyer.

Q. Of the purchaser? A. He wouldn't take them; throws them back.

Q. And up to that time he was willing to take whatever came in? A. I do not know whether he was willing or not; he did.

698

Q. And you gave him the inspection as long as he was willing to take it? A. We wouldn't see them, individuals that he picked out; if he did not bring them to our attention specifically we would not see them again.

Q. In other words, the purchaser had to call it to your attention for you to see it, is that correct? A. Well, he would in individual cases, yes.

Q. In other words, perhaps 50 per cent. of the rejected poultry was poultry called to your attention by the purchaser, is that right, as being unfit? A. Well, they called our attention to a good lot of poultry that we did not condemn.

699

Q. But they found it to be unfit and they called it to your attention? A. They said it was unfit; maybe we say it isn't.

Q. Well, the average market man knows, does he not, a man in the business a long time, and purchases chickens, what a fit or unfit chicken is? A. I don't think so.

Q. Is it possible for a chicken to contract a disease between the time that it passes your inspection and the time it reaches the place of busi-

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ness? A. There is time for symptoms to be more developed, possibly.

Q. In other words, sometimes you cannot tell the symptoms from a superficial examination, is that correct? A. They are not always well marked, no, sir.

Q. And that may develop in the course of twenty-four hours, isn't that correct? A. True.

Q. And it happens very frequently, is that it? A. Yes, sir.

701

Q. As a matter of fact, you said the chickens are handled with very little care; in other words, coops are placed one on top of the other? A. Yes.

Q. And the coop may fracture a head, for instance, of a chicken, may it not? A. Very often.

Q. May fracture a wing? A. Yes, sir.

Q. It may catch a cold in transportation, may it not? A. If it is going far enough, yes.

Q. Anything might happen between the time a chicken is inspected and the time it is sold, is that correct? A. I would not say anything might happen to it. Several things might happen to it.

702

Q. Well, several things might happen to it. Now, do you maintain a night force for inspection purposes? A. No, sir.

Q. You limit your inspections between what hours? A. They are not really limited. Daylight hours we are supposed to—

Q. 9 to 5? A. Daylight.

Q. Have you any definite hours? A. (No answer.)

Q. I beg your pardon. A. No, sir.

Q. But it has got to be during daylight? A. Yes, sir.

Q. You don't inspect at night? A. We do.

Q. When? A. Well, if they have an accident or anything, they say they break down, we give them inspection often after hours.

Q. Where can you be reached after five o'clock? A. In our office.

Q. You mean you keep your office open all night? A. No.

Q. Only during daylight? A. No, that is open longer, but we don't have inspectors there.

Q. You do not make any inspections on Sunday, is that correct? A. We have done such things.

Q. Occasionally? A. Yes.

Q. Unless someone has your private 'phone and you can locate the inspector, they could not get an inspection on Sunday? A. Unless they made an appointment Saturday, they could not get it Sunday, no.

Q. Without appointment they could not get it, is that correct? A. Correct.

Q. Just how many inspectors did you say that you have, and whereabouts are they located? A. We have fourteen live poultry inspectors.

Q. I will limit myself to live poultry. You have fourteen? A. Yes.

Q. How are they distributed? A. There is one at Eastport, Long Island, there is probably six at New York Central, 60th Street, there is three in West Washington Market sometimes, sometimes four; one on the Lackawanna, Jersey; one at Communipaw, Jersey. I do not know how many that is.

Q. How many chickens does an inspector examine, on the average, each day? A. I suppose his average would be about four cars a day,

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probably maybe eight or ten hundred or a thousand chickens.

Q. I mean how many chickens does he inspect a day, I do not mean that he actually takes hold of in his hands; what is the total number of chickens that he examines per day per average?

A. Well, he averages about four cars, I expect, a day.

Q. And that would be how many chickens, about? A. Fifteen or sixteen thousand chickens.

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Q. In other words, each inspector goes through approximately sixteen thousand chickens, that is not personally handling each and every one of them, is that correct? A. He disposes of that many.

Q. And if more chickens come in than you have inspectors for, it cannot be inspected that day, and then what happens? A. I do not know as that happens at all.

Q. Is it possible to keep a man waiting for three hours? A. Possible to keep him waiting for inspection?

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Q. Yes. A. Yes, there have been such cases, yes.

Q. Is it possible to keep a man waiting for five hours for an inspection? A. It is possible but I do not think it has happened like that.

Q. Do you know exactly whether it did happen or didn't?

Mr. Rice: He has already answered that question, your Honor.

The Court: I thought he answered it, but I will let him answer it now to be sure.

Q. Do you know of your own knowledge whether it happened or not? A. In any case?

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Q. Yes. A. I do not think it ever happened, a man wait five hours.

Q. Do you inspect personally? A. Yes, sir.

Q. Occasionally? A. Yes.

Q. Do you know what happens in a different market when you are not in that market, when you are in another market? A. Not by absolute knowledge, I wouldn't say I did.

Q. Is it possible that a situation like that might have happened in a place when you weren't there, is that right? A. Yes, sir.

710

Q. That depends on the number of chickens that come in on particular days during particular hours, is that correct? A. As to whether they get prompt service or not?

Q. That is right. A. Yes.

Q. Do you know that it is a fact that the inspection regulations with reference to the Board of Health have been abolished? A. Do I know it?

Q. Yes. A. Yes, sir.

Q. In other words the Board of Health does not require any more inspection than——

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Mr. Rice: If your Honor please, I move to strike that out because upon further examination it will be disclosed that this revocation has taken place in the month of September, 1934, after the indictment was filed, and that the revocation took place simultaneously with the taking over of this entire function by the Code Authority.

The Court: Well, you can bring it out from him.

Mr. Heller: Yes, he can bring it out.

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Leland D. Ives—By Govt.—Cross

The Court: You can bring it out from this witness when it was abolished.

Mr. Rice: Very well.

Q. You are not employed by the City of New York, are you? A. No, sir.

Q. They have no jurisdiction over you, the Board of Health of the City of New York? A. No, sir.

713

Q. Have you that table with you showing the particular months for the year 1933 as to the number of chickens destroyed? A. I have copied that off myself for my own information before I left the office; this is my own copy though.

Q. Can I see it? A. Certainly (handing paper to counsel).

Q. Now, is it correct that in the month of October there were 34,626 chickens destroyed, in the year 1933? A. If that is what I have there opposite.

Q. Yes, and is it correct that 56,211—

Mr. Rice: Is that pounds or chickens?

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Mr. Heller: It is pounds, the same as the other.

The Witness: Pounds.

Q. Yes. Is it correct that in the month of November 56,211 pounds were destroyed? A. Yes.

Q. Is it also correct that in the month of December, 31,189 pounds of chickens were destroyed? A. Yes, sir.

Q. Is it correct that in the month of April, 14,086 chickens were destroyed?

The Court: Pounds or chickens?

Mr. Heller: These are all pounds.

Leland D. Ives—By Govt.—Redirect

715

The Witness: If that is the amount I have down there.

Q. Can you compile for us a complete list for the years 1933, 1932 and 1931? A. Absolutely.

Q. Will you do that? A. If it is requested.

Mr. Heller: That is all.

The Court: He has asked you to do it, will you do it?

The Witness: Yes, sure. We have no secrets at all.

716

The Court: All right.

Redirect examination by Mr. Rice:

Q. May I see this paper that counsel has been using? A. (Witness hands paper to counsel.)

Q. Dr. Ives, in the month of June, 1934, how many pounds of poultry were destroyed? A. June, 1934?

Q. Yes, just in round figures. A. 23,000, practically.

Q. And in June, 1933? A. 9,000.

Q. In other words, about two and a half times as much was destroyed in June, 1934, as in June, 1933? A. Correct.

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Q. In July, 1934, how many pounds were destroyed? A. 21,165.

Q. And in July, 1933? A. 8,479.

Mr. Rice: Now we will not go through the rest of the figures. They will be offered in evidence tomorrow.

The Court: I beg your pardon?

Mr. Rice: I say, they will be offered in evidence by defendants' counsel tomor-

718 *Leland D. Ives—By Govt.—Redirect*

row, I understand. He has requested them.

The Court: Whenever he gets them. I don't know whether he is going to offer them, but we will see about it when we get to it.

719 Q. Dr. Ives, you stated on cross examination that you could not always tell definitely whether or not a chicken had a particular disease until you had opened up the chicken. A. Some diseases, yes.

Q. That applies to only some diseases, is that right? A. Yes.

Q. What is true as to most diseases? A. Well, the predominant diseases that we get in the Winter time here are diagnosed easily by simply looking at a bird, and that is the infectious bronchitis, which is the principal one we have to deal with.

Q. Do you have a set of standards as to the symptoms of diseases? A. We do have them in our regulations.

720 Q. Will you tell us what some of them are? A. Well, if a bird has both eyes swollen and closed, exudates coming out of their eyes, or if they are gaping, or singing, as they call it, or sneezing, coughing, those are direct symptoms of bronchitis or some disease of the thorax or lungs. The position in breathing shows that, they stand with their mouths open, gasping for air. Now, those are all symptoms of lung diseases, bronchial diseases.

Q. If a chicken has any one of those symptoms, does the Government under its regulations consider that chicken unfit for human

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tion? A. Not only if it has only one, two, maybe; if it is just coughing, without any swollen eyes or exudates, or anything, they don't consider that.

Q. Let us take a look at the standards. Will you point to some of the standards as shown by Government's Exhibit 8?

Mr. Heller: May I first know whether he knows it without refreshing his recollection before he reads them? He is an expert.

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The Court: Yes, if you know them.

Mr. Heller: Before you read them, please.

The Witness: What is that?

Mr. Heller: Recite them without reading them. Recite what the regulations are.

The Witness: There are many.

Mr. Rice: May I call counsel's attention to the fact that there are perhaps a dozen of them?

The Court: He wants to know what this witness knows.

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That is in evidence, is it?

Mr. Rice: Yes, sir.

The Court: That will speak for itself. Let him tell us himself, if he knows.

Mr. Rice: Very well.

The Witness: Sure; I might not think of them.

The Court: Tell us what you know. Maybe you will be helped out a little bit. Tell us what you know.

724

Leland D. Ives—By Govt.—Redirect

Q. The first one you mentioned was a chicken with two swollen eyes. A. Two swollen eyes, yes.

Q. And what else? And the eyes closed, is that what you said? A. Eyes closed, or if they have exudates coming out.

Q. Suppose it just has those symptoms, two eyes closed and swollen? A. Yes?

Q. Is that classed— A. That is classed—

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Q. (Continuing.) —by your regulations as unfit for human consumption? A. That is classed as unfit for human consumption and destroyed.

Q. Do you as a veterinarian consider a chicken unfit for human consumption, a chicken such as that? A. Yes.

Q. And is it generally considered unfit for human consumption? A. Yes.

Q. Tell us some other combination of symptoms which according to your regulations would make the chicken unfit for human consumption?

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A. Well, if a chicken sits or stands humped up and, on taking hold of it, it is very light, the chances are it would have tuberculosis. That would be considered unfit for food. If it has ruffled feathers, unclean feathers, or if it has a prolaxed rectum, with a greenish exudate, that would be a symptom maybe of cholera, and consider that unfit for food; or if they have dropped abdomen, with tumors or dropsical conditions, as evidenced by the dropped abdomen, they are considered unfit for food. If they have large crops and hard and don't eat, although the feathers may be ruffled that is considered unfit for food. These symptoms that we consider unfit for food are made simply because as a general thing poultry with these symptoms or these succession of symptoms have some condition on

post-mortem shows they are unfit for food, and that is the reason that we can only go by symptoms as being probably unfit for food.

Q. Do you know of any other practicable way in which you could condemn chickens as unfit for human consumption? A. Post mortem examination is the only one that I know of.

Q. Would that be possible in the live poultry trade? A. No, sir.

Q. Why not? A. You couldn't inspect it dead if it was alive.

Q. Who are the class of people who purchase live poultry? A. Well, naturally it is a kosher trade.

Q. Kosher trade, that means they are purchased by orthodox Jews? A. Absolutely.

Q. And the orthodox Jews insist on purchasing live poultry? A. Absolutely correct.

Q. And they won't permit a post mortem before they pick out the chicken? A. Then they would not eat it anyhow.

Q. On cross examination you were asked whether or not the principal purpose of inspection was to ascertain the size of crop of the chicken, what are the purposes of your inspection? A. The purposes of inspection are to eliminate over-crop poultry, and pick out diseased or unhealthy poultry for the trade.

Q. And the latter purpose, is that as important as the first? A. To my mind it is much more important.

Q. And do the inspectors of the Joint Inspection Service pay as much attention to the latter phase of it as the first? A. Equally as much, I think.

730

Leland D. Ives—By Govt.—Recross

Q. If a chicken has a broken wing, as Mr. Heller suggested, do you consider that unfit for human consumption? A. Not because it has a broken wing, if that is all it has.

Q. You do not condemn a chicken because it has a broken wing, do you? A. No, not if that is all it has, but it wouldn't be kosher just the same.

Q. That doesn't concern you? A. Absolutely not.

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Q. As an inspector? A. No, sir.

Q. You do not consider it unfit for human consumption simply because it is non-kosher? A. No, sir.

Mr. Rice: That is all.

Recross examination by Mr. Heller:

Q. Let me ask you one question, Doctor, you say that when a chicken has a disease it is apt to spread to another chicken, is that it? A. Yes, sir.

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Q. In your inspection you have found diseased chickens and have destroyed them, is that right, is that correct? A. We have found them?

Q. Yes. A. We find them in every car, yes.

Q. Right. How long does it take for this disease to take effect on other chickens that come along with the diseased chickens? A. What particular disease do you refer to?

Q. Well, diseases that you said are apt to spread, what are they? A. Well, in an indication of bronchitis the incubation stage is about seven days.

Q. In other words, the disease that is more apt to spread is a bronchitis condition? A. That is the quickest.

Q. What other diseases are apt to be spread to other chickens? A. Cholera, diphtheria, tuberculosis.

Q. Now, tuberculosis you have stated before it is impossible to ascertain with certainty until the chicken is opened? A. Yes.

Q. And the same with cholera, and the only thing you can ascertain with certainty is when a chicken has a cold? A. No.

Q. You are not able to ascertain that? A. You can't diagnose absolutely the real trouble, but you can be satisfied it is one of several causes that makes the bird have certain symptoms.

Q. All right. Let us assume that you have found in one tier about ten chickens with colds; do you destroy those ten chickens? A. Not if they do not have sufficient symptoms.

Q. If they have a slight cold? A. If they simply have running eyes or something like that, we do not destroy them.

Q. If they have running eyes, you pass them as poultry fit for human consumption? A. Absolutely.

Q. And that cold may develop into a more severe cold, is that correct? A. It probably will if it isn't taken care of.

Q. And if they have that cold it may have spread to other poultry, is that correct? A. Incipient, yes.

Q. At the time of your discovery? A. Yes.

Q. You do not condemn the entire tier, do you? A. No, sir.

Q. You pass it along as fit for human consumption? A. Yes.

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Q. In spite of the fact that it might have carried the disease to other chickens? A. Yes.

Q. And your inspection is really limited to an average of 200 out of 4,000, is that correct? A. Practically.

Q. And on that basis you pass the entire lot as fit for human consumption, is that correct?

A. Well, our certificate does not say that these birds that we pass are fit for human consumption.

737

Q. In other words, your inspection is not for the purpose of ascertaining whether the chickens are fit for human consumption, is it? A. We have a sample inspection only.

Q. In other words, that is all the inspection consists of, a sample inspection, isn't that correct? A. Practically, yes.

Q. And that is uniform in the entire industry, isn't that right? A. Yes.

Q. There are no exceptions made, that is all there is to this inspection, isn't that right, a sample inspection? A. Well, that is all that is required.

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Mr. Heller: That is all.

The Court: You are going to bring the papers tomorrow that you were requested to—

Mr. Rice: Just one question?

The Court: Surely.

Redirect examination by Mr. Rice:

Q. Dr. Ives, by a sample inspection you mean that the inspector handles only about 200 of the chickens out of a carload of 4,000 chickens, is that right? A. That is right.

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739

Q. And you also mean that he looks over the rest of the chickens while he is feeling of the 200, is that right? A. He looks them over, yes, he practically sees most of the birds that are in the car.

Mr. Rice: That is all.

Mr. Heller: Except those that are in the back, is that correct?

The Witness: He may see some of those too, if he is looking for them.

The Court: All right, gentlemen (addressing the jury), do not allow anybody to talk to you about the case, do not discuss it between yourselves, do not form any opinion until it is finally submitted to you, and be here at ten o'clock tomorrow morning.

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(Adjourned to Thursday, October 18, 1934, at ten A. M.)

Brooklyn, N. Y., October 18, 1934.

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(Met pursuant to adjournment at 10 A. M.; present as before.)

Mr. Rice: Our second witness this morning is Mr. Theodore J. Tottis.

The Court: Had you finished with the witness you had on the stand yesterday?

Mr. Rice: Yes.

The Court: There was some question that was asked as to which you made some statement and they objected, and I said that is so, you could ask the witness if

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you wanted. You did not ask the witness those questions.

Mr. Rice: I understood Mr. Heller excused Dr. Ives after court adjourned last night, and simply asked him to produce some additional papers.

Mr. Heller: That is right. I have no further questions for him.

743 The Court: What Mr. Rice asked was with the reference to when the ordinance was abolished, and the doctor didn't answer that. There was a statement made, and I do not know whether that is accepted as the fact or not.

Mr. Rice: This will be proved by the testimony of another witness.

The Court: That is all right; I am not trying the case for you, but if I see anything for either of you, I will suggest it.

744 THEODORE J. TOTTIS, called as a witness on behalf of the Government, having been duly sworn, testified as follows:

Direct examination by Mr. Rice:

Q. Mr. Tottis, what is your occupation? A. Buyer for the Dexter Food Company.

Q. What is the Dexter Food Company? A. The Dexter Food Company is a poultry commission house, live poultry commission house.

Q. Located at what address? A. 1000 East 149th Street in the Bronx, or in the Port Morris Yards of the New York Central Railroad.

Mr. Heller: Speak a little louder, please.

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The Witness: Located in the Port Morris Yards of the New York Central Railroad.

Q. How many commission men are there in the live poultry industry in Metropolitan New York?

A. You do not include Newark in Metropolitan New York?

Q. No. A. About twenty-two.

Q. And the Dexter Food Company is one of those twenty-two commission houses? A. Yes, sir.

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Q. And you are a buyer and solicitor for the Dexter Food Company? A. Yes, sir.

Q. Who are the people that are associated with you in the Dexter Food Company? A. Well, it is a corporation, and our largest stockholders are Mr. J. Posteraro—

Mr. Heller: May I know the purpose of this, as to who the stockholders are? I do not think that is pertinent at all.

The Court: I do not know what the materiality is.

Mr. Rice: If your Honor please, I wish to have this witness thoroughly identify himself; I wish to lay a foundation for qualifying him as an expert.

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The Court: Well, the fact that he is a stockholder, of course that is of moment. I do not know whether it is of any moment who the other stockholders are.

Mr. Rice: I simply wish to bring out the character of men with whom he is associated.

The Court: All right. If there is anything to it you may bring it out.

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Q. Just briefly, who are the men associated with you in the Dexter Food Company? A. Mr. J. Posteraro, Mr. Sinte, Mr. DeSandra, Mr. Copeland, Mr. Salthe; they are the principal stockholders.

Q. That is Dr. Royal S. Copeland? A. Yes, sir.

Q. The Dexter Food Company, you have said, is a poultry commission house? A. Yes, sir.

Q. Do you operate also a wholesale slaughter house? A. Yes, sir.

749 Q. Under what name? A. Under the name of Salthe Poultry Company, and the Salthe Poultry Company is owned entirely by Dexter Food Company, and we merely have a separate company on account of the New York State Commission Merchants law that requires us to have that.

Q. What is the business of the Dexter Food Company as a commission house? A. Bringing in live poultry and selling it to slaughter houses, either wholesale or retail.

750 Q. What is the business of the Salthe Company? A. Slaughtering—selling to retail stores live poultry.

Q. How long have you been in the poultry business? A. Seven years.

Q. Will you trace your experiences in the poultry business from the time that you commenced? A. Well, I started working in the company just handling poultry in the slaughter house to get acquainted with poultry, to know good from bad, and the various qualities; and after going through all the operations in the slaughter house I started working on the commission end of the business, weighing cars, and then going out into the country end to see how

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the poultry was handled in the country, and buying poultry outright and also soliciting it on a commission basis.

Q. That was the work that you commenced doing seven years ago? A. Yes.

Q. Then what did you do? A. I went through the poultry business from the slaughter house operation all the way to the country end of it.

Q. Just review the character of your experience in the various phases of the business. A. In the slaughter house handling poultry, grading it, helping in the killing of it, getting orders, talking to the customers, soliciting their business, keeping them satisfied, weighing out cars, grading cars, setting a price on the poultry in the cars, going out into the country and buying poultry according to its value, and grading poultry out in the country.

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Q. Have you made any studies of the market conditions in the poultry industry? A. Yes, sir.

Q. What studies have you made? A. Relationship between live and dressed poultry market, relationship with the New York poultry markets to out-of-town markets, relationship of top market poultry and the possible selling price compared to the poorer grades of poultry, the effect of selling of poorer grades of poultry on the market price of top grades of poultry.

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Q. What type of material have you studied in connection with that? A. All the Government reports, reports of outlying markets, reports and statistics of the Ernie Barry Company.

Q. Reports covering what subjects, prices—
A. Prices and volume.

Q. Prices and volume? A. Right.

Q. And the relationship of prices and volume to various competitive practices? A. Yes.

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Q. Have you studied the competitive practices in the live poultry industry in New York? A. Yes, sir.

Q. What phases of those competitive practices have you studied? A. Well, about all the phases that there are, that are covered—all the phases of it are covered in our Code, and all those phases have been gone into or studied.

Q. Have you studied the various evil competitive practices—

755 Mr. Heller: I object to the form of the question.

Q. (Continuing.) —in the marketing—

Mr. Heller (continuing): There has been no testimony here about any evil practices, and counsel is asking him did he study evil practices.

The Court: I do not know that the word “evil” has been used. There is some testimony of some practices.

756 Mr. Rice: I will withdraw the question. I will ask the question in a different form.

Q. Mr. Tottis, are you familiar with the competitive practices in the live poultry industry in New York? A. Yes, sir.

Q. What are those practices? A. Selling misbranded poultry, selling poultry unfit for human consumption, secret rebates, selling poultry other than straight killing. They are about the—

Q. How about the inspection regulations? A. Well, that is just a law that we have to comply with rather than a practice of the industry, because, before we received the regulations

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ing it, why, we just did about what the next man did, regardless of what had happened.

Q. Do you mean that one of the practices in the industry in the past has been to sell un-inspected poultry?

Mr. Heller: May we have a date, your Honor? "Past" is too long.

Mr. Rice: The date will be very definitely fixed.

Mr. Heller: Let us have it now so we will know what we are talking about.

758

A. Before we had the Inspection Service, one of the common practices of the industry was the poultry—or the practice in the industry was that the poultry could be loaded or unloaded, regardless of condition, and the result of it was that poultry came into New York, and in order for the shipper to get weight out of his poultry, they had one of two things to do, either to feed it a substance that was heavy as possible, or to plug the poultry; in other words, to stuff the poultry so it would retain as much of the feed as possible.

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Q. Just one moment before we get into that. I would like to have you discuss the nature of this industry. You have told us that there are about twenty commission men. A. Yes.

Q. Now, commission men sell to whom? A. To wholesale and retail slaughter house operators.

Q. About how many wholesale and retail slaughter house operators are there in New York? A. Strictly wholesale, that don't sell any retail, I don't believe that would run over 50. Then there would be about another hundred and

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Theodore J. Tottis—By Govt.—Direct

fifty that also—that also sell both wholesale and retail, and about another hundred and fifty that would be classed as strictly retail, that is, wholesale selling to either a butcher store or chicken dealer, and a retailer selling direct to the consumer.

Q. In other words, there are about 350 wholesale and retail slaughter house operators in New York? A. Approximately.

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Q. And the commissionmen sell, the 20 commissionmen sell to those 350 wholesale and retail slaughter house operators, is that right? A. To this extent, that there are a few that do not buy from the New York commissionmen, that go out of town to do their buying.

Q. For the most part? A. The largest part.

Q. Is it true that the 20 commissionmen sell to the 350 wholesale and retail slaughter house operators? A. Yes, sir.

Q. Is it the practice in the industry to refer to the slaughter house operators also as market men? A. Yes.

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Q. And there are commission men and market men. The market men are wholesale or retail slaughter house operators— A. Yes.

Q. Who do the market men sell to? A. The retail consumer man sells to the consumer, the housewife that comes in and buys her individual bird. The wholesale market man has two outlets, butchers and chicken dealers. A butcher in our classification is a man that sells both meats and poultry. A chicken dealer is a man that sells poultry exclusively.

Q. Then you have described three categories in New York, first the commission men, about

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20 in number, who sell to the market men, who are about 350 in number? A. That is right.

Q. And the market men in turn sell to two classes of people, namely, the butcher and the retail poultry dealer? A. That is the wholesale market man sells to butchers and retail poultry dealers.

Q. And the retailer? A. And the retailer sells to the consumer.

Q. Are there also chicken stands to whom the market men sell? A. Well, a chicken stand is—we class as a chicken dealer—chicken dealers have places, two types of places of business. The majority of them are located in public markets. It will be a room of possibly the size of this that will be divided into a meat counter, another man will have a dairy counter, another one will have a grocery counter, and another one will have a vegetable counter, and they also have a chicken counter, that they refer to as a chicken stand. Then he also may take half of a butcher store and have his stand over on one side and devote himself strictly to the handling of poultry, leaving the butcher to handle meats. He devotes himself entirely to chickens or poultry, and therefore we refer to him as a chicken dealer to distinguish him from a butcher because a chicken dealer sells poultry strictly on the volume basis and poultry only, where the other type sells both meat and poultry.

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Q. Now, Mr. Tottis, you told us the number of commission men, which is about 20. You have told us the number of market men, which is about 350. Now will you tell us approximately how many butchers and retail poultry dealers and poultry stands there are engaging in the distribution of live poultry? A. I don't believe

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anybody could give you an accurate figure on that, but roughly it would run around 5,000 in New York City.

Q. And they in turn sell to the consumers?

A. Yes, sir.

767

Q. Now who consumes live poultry? A. Well, it goes particularly to three classes; by far the largest proportion is the kosher-killed and sold to the Jewish trade. Then the retailers have the most of the balance of the business, which is sold mostly to foreigners, people who have been used to fresh-killed poultry, such as the Italians, and then there is a small percentage of country people from the middle west and the south that cannot get used to dressed poultry and they still buy fresh-killed poultry in New York, but that would run very small percentage.

Q. Now what would you estimate, Mr. Tottis, to be the accurate value of live poultry sold in New York City in normal times, we will say in 1928? A. Well, it ran close—actual value—I should say \$60,000,000.

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Q. Now who do the commission men buy their poultry from, the live poultry? A. The commission men handle poultry on two different bases. He handles—that is his business is divided into two types, a straight commission basis and bought poultry, that is poultry bought on his own account. Commission poultry, he solicits shipments from the shippers throughout the middle west by carload and from nearby States by truck, and then he also handles poultry on his own account that he may buy on either a delivered basis New York or a track basis out in the west.

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Q. That is when the commission man buys on his own account he becomes the owner of the live poultry? A. That's right.

Q. And when he buys on a commission basis what is his relationship? A. Strictly commission broker, an agent. He sells the shipper's poultry, deducts his commission, and sends the balance out to the shipper.

Q. Where are these shippers located? A. Oh, I could give the names of about 35 States where they are located.

Q. Do you know whether any freight poultry comes from within the State of New York? A. No, none at all.

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Q. 100 per cent. of the freight poultry comes from States other than New York? A. That's right.

Q. Now how else does poultry come in besides freight? A. Express and truck.

Q. And about what percentage comes in by express and truck? A. Roughly about 25 per cent. of the total value.

Q. Do you know what percentage of all live poultry marketed in New York comes from outside the State of New York? A. All except, oh, about three or four per cent. of it—that is about 96 or 97 per cent.

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Q. 96 or 97 per cent. of all the poultry comes from outside the State of New York? A. That is right.

Q. And as to the remaining 3 or 4 per cent., do you know approximately what percentage of that is duck, from Long Island? A. Oh, 2 or 3 per cent.

Q. Then about 99 per cent. of all the live chickens come from outside the State of New York, is that right? A. That is right.

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Q. Now will you describe the method of shipment of the live poultry from the 35 States where it comes by freight? A. Well, there is a private car line known as the Palace Poultry Car Company that owns all the live poultry cars that are specially constructed. Their principle is like an ordinary box car with the exception that the outsides have a screening, a heavy mesh screening. In the center of the car, where the two wide box car doors would be, there it is separated from the balance of the car and called the car man's stateroom where he has a collapsible bed for sleeping purposes, and a stove for cooking purposes, and a clothes closet and a dish closet. Now on the bottom of the floor of the car or underneath the bottom is what they call the Possum belly where he stores feed that is used in transit and then there is over his head, a large water tank which he uses for carrying the water to mix with the feed during the trip.

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774 Through the center of the car is an aisle about wide enough for a man to walk through and from the sides of the aisle to the outside of the car it is separated into layers or decks. That aisle separates the car into four quarters and then there are three partitions in each quarter, up and down, which is separated into four sections and each one of those sections have 8 layers giving you 32 decks in each quarter and 128 decks in a car.

Q. Now are these decks stationary? A. Yes.

Q. They cannot be removed? A. Well, in one type of car the floor of every other deck can be removed, with the object that when they run turkeys at Thanksgiving time the decks are only

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11½ or 12 inches high, not large enough for a large bird to stand—the cars are constructed to be used for turkeys and geese and in the L. P. T. car the first bird and the 58 layers can be removed so they can be used for turkeys—in other words they become double decks instead of separate decks.

Q. Aside from that the 128 decks are stationary? A. Yes.

Q. Now about how many pounds of poultry can be packed in each deck? A. That is variable with the seasons of the year and the type of poultry being shipped.

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Q. Well, what is the range? A. It was the range, with the fowl, in the summer time, about 20 or 28 heads and in the winter time 30 or 32 and from the south, possibly as high as—in cold weather and small birds—35 heads per deck.

Q. Now, what would the 35 heads weigh? A. About 140 or 150 pounds.

Q. And what would be the range in pounds? A. Well, the total car in the summer months would be about 14,000 pounds, and in the winter time 20,000 pounds, with 21,000 being very exceptional.

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Q. Now where the shippers who ship this poultry from the 35 States to the commission men in New York City, where do they obtain the poultry? A. Well, they obtain it from several different sources. For instance, we have a particular shipper that we do business with out in Ohio, he runs a fleet of 20 trucks and they cover half the State of Ohio and half the State of Indiana.

Q. And what is he called? A. He is called a concentrator or shipper. He in turn buys his

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poultry from what is referred to as dealers. He occasionally will go to a farmer if the farmer has a large bunch of poultry, but poultry is one of the cash crops that the farmer raises—poultry, butter, fat and eggs.

Q. Now what do you mean by a cash crop?

779 A. Well, it is something—well, potatoes for instance are one a year crop and the same with any of his grains, practically any crop that he raises he can only harvest once a year and he gets his money once a year, but poultry he raises all the time, and it is the only thing that he can get cash for and for instance if he needs a pair of shoes, tomorrow he knows that the shoes will cost three bucks, and he knows that he can go to the dealer with the chickens, and if the chickens are selling for around 12½ or 13 cents, he will take about 30 pounds of poultry and take it in and get some cash with which to buy his shoes.

780 Q. Would you say then that the farmer ordinarily uses the money that he receives from the sale of poultry to buy the commodities that he needs? A. The poultry and butter and butter fat is the same to the farmer out there as money may be here, you may go into a bank and draw a check for any money that you need to buy something, and out there that is the same to the farmer, that is, he uses his poultry and his eggs, that is, those are the things that he uses to buy his commodities with. For instance, if he wants to buy some groceries he will go out in the back and catch up maybe fifty pounds of poultry, take that to the grocery store at the crossroads, and the grocer will weigh it up and say, "I am getting twelve cents a pound for

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poultry, that is fifty pounds, and will be six dollars. I will give you six dollars credit on the books, and you then can purchase six dollars worth of groceries with it.''

Q. Would you say then that the farmer purchases depends to a certain extent upon the volume of his sales of poultry and the value that he receives for those sales? A. Yes, to a large extent.

Q. Very directly? A. Very directly.

Q. Well, now, the poultry is sold to a dealer or concentrator, who in turn sells to the shipper, is that right? A. That is right.

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Q. And the shippers sell to the commission men? A. That is right.

Q. Now, the commission men, you have said, are about 20 in number, and you are one of them? A. Yes, sir.

Q. Where do the commission men have their places of business? A. The majority of them are located in West Washington Market in New York City; in fact, there are about 22, and all except 3 of them are located there.

Q. You are one of the 3 that is not located there? A. One of the 3, that is right.

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Q. After the poultry arrives at its destination what happens? A. Well, it is offered for sale—

Q. First you had better tell us, Mr. Tottis, at what point does the poultry arrive in the freight cars in New York City or around New York? A. In New York City proper there is a terminal that unloads freight cars at 26th Street in South Brooklyn, in the Lackawanna Railroad Yards. The largest proportion of poultry, I should say 75 per cent. of all the poultry coming into New

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York City, in the Metropolitan district, arrives at the 60th Street yards of the New York Central Railroad.

Q. That is on Manhattan? A. That is on Manhattan. There is another poultry yard of the New York Central at 149th Street and East River, and there is another terminal of the Lackawanna Railroad called Harlem Transfer, at 135th Street and the Harlem River.

785 Q. Does that account for all of the terminals in New York? A. No; there are three other terminals that bring in poultry on the Jersey side of the Hudson River: The Lackawanna Railroad, the Pennsylvania Railroad and the Central Railroad of New Jersey.

Q. How about the B. & O.? A. They use the—rather the Central of New Jersey use the B. & O. Yards. There is very little poultry hauled over the B. & O., only as far as Bound Brook Junction, and it is handled from there on by the Central Railroad of New Jersey.

786 Q. Does any poultry arrive at the Erie Terminal? A. Yes, the Erie handles some, and the Pennsylvania handles 2, 3, 4 cars a week.

Q. The principal terminals are the New York Central Terminal on Manhattan and the 4 railroad terminals that you have mentioned in New Jersey, are they not? A. That is right.

Q. What happens when a freight car of poultry arrives at these terminals? A. When a freight car arrives the commission company to whom it is consigned offers it for sale to the buyers. The buyers all start congregating in the yards around 7 o'clock in the morning, inspect the poultry, that is, look at it, see if it satisfies them, and then they try to dicker with the salesmen to

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find out what the selling price is, and if they can buy it at a price that they think is a reasonable price, why, they place an order for that poultry; in other words, they buy it. From then on it is up to the commission man to deliver the poultry to them.

Q. Before the poultry is unloaded is there any inspection made? A. Yes; that is the commission man's job. After he sells the poultry he has to request the Joint Inspection Service for an inspection of that poultry, which is done by making out a regular application upon a card, putting on the car number, and giving that to the Inspection Service. Then they send an inspector in to inspect the car both for crop content, type of feed fed, and health.

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Q. That inspection is made by the Joint Inspection Service operated by the Bureau of Agricultural Economics, is it not? A. That is right.

Q. Are you familiar with that inspection service? A. Yes, sir.

Q. Is that inspection service made at the terminals? A. Yes, sir.

Q. Will you describe the nature of that inspection service? A. Well, at eight o'clock every morning the Inspection Service calls up and wants to know if we have any poultry to be inspected, and at what time to send the inspectors there, and our usual procedure is to get our cars started around ten o'clock, and we arrange with them to have the inspectors sent there at ten o'clock to make the inspection. The inspector goes into the car, and if the car is a normal car, it will take about 20 minutes, if it hasn't been overfed, or if the car is healthy, he passes the car for inspection.

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At our particular terminal, after the poultry is unloaded, we use our own house men to grade that poultry, that is, to grade out what we consider undesirable or unfit poultry, and every chicken coming out of the car is handled. Anything that we consider unfit is put in a separate container or battery until the car is finished. If it goes to outside buyers, they grade or cull through the coops, and anything that they consider unfit is rejected by them. Then that rejected poultry is held until the car is completely unloaded. The inspector looks at the poultry, and anything that he considers unfit for human consumption in his opinion he destroys, and we have to denature that with a disinfectant.

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Q. Are you required to keep disinfectant on your premises for that purpose? A. He won't inspect the car unless there is a can of disinfectant at the car door in a barrel in which the destroyed poultry is put.

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Q. Do the New York Health Department Rules require that every poultry dealer keep a can of disinfectant on the premises? A. To the best of my knowledge—

Mr. Heller: That is objected to.

Mr. Rice: I withdraw the question.

Q. Are you familiar with the inspection of poultry since the Live Poultry Code went into effect? A. Yes, sir.

Q. Has it differed in any respect since the Code went into effect? A. I think it is more drastic.

Q. Will you describe the difference? A. Well, previously a lot of poultry that we considered

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unfit for human consumption was left largely to our discretion.

Q. To your discretion as commission men? A. That is right.

Q. As the seller? A. That is right. The way it works out at the present time—well, let me express it this way. Previously we have an expression in the trade, if there is a scarce market in New York, everything is good poultry, and if there is a sloppy market, that is, an over-supply, nothing is good poultry. In other words, if there was a temporary scarcity of poultry we would insist to the buyer that he take everything that had a head on it, or we would cancel his order, and if there was a sloppy market, why, he was fairly fastidious in the way he culled his poultry through. But the way it has worked out recently, even on a top market, if we try to make a gentleman take poultry the way we think it should be taken on a tight market, he immediately starts yelling he is going to get the Code Supervisor, the investigator, up there, and he is going to do half a dozen other things, and we just have to take back stuff that ordinarily formerly we could fairly well insist on his taking. Then, in our own poultry, when it comes to have the cars inspected, the inspectors are much more drastic in the poultry that they kill off that they consider has any sort of infectious disease.

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Q. Now, if during an inspection of a carload of poultry it is discovered that there are a few chickens with infectious diseases, what happens? A. The car is marked sick, and the inspector stays at the car door as the—well, I can best explain it this way: We had a car three weeks ago yesterday that was marked sick by the In-

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797 spection Service. The car man in the morning before the inspector arrived, and with our help, we didn't want the inspector to mark the car sick, so we culled through the car and killed off 247 heads that we thought were the worst, and we destroyed them and took them over to the dump, and the inspector came in at ten o'clock. He went through the car and he apparently had seen some we had missed and he destroyed 82 heads. And then as the car was unloaded he separated out 825 pounds that he had marked for immediate slaughter. And that poultry had to be sold immediately, and we couldn't carry it over, had to sell it that very morning, and the balance of the poultry was healthy poultry, and we took it into the house, and we had no trouble with it. The Board of Health inspector got wind of it, because he was around to our place the following morning, went through the entire house, and he did not find a sick chicken in the place.

798 Q. When a few diseased chickens are found in a carload by the inspector, then is a more thorough inspection made? A. Yes, then he gives—well—if the car is healthy, he would give it what would ordinarily amount to a sample inspection, but if there is any sign of sickness in the car, then it is immediately thoroughly inspected.

Q. What do you mean by a thorough inspection? A. He practically handles every bird himself, or looks at every bird coming out of the car.

Q. After the poultry is inspected in the freight cars, what happens to it? A. It is unloaded into the buyer's truck and then the buyer's driver culls through for poultry that he considers unfit for human consumption, poultry that he cannot sell or is not allowed to sell, and he rejects

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that poultry. Then the balance of the poultry is loaded into the buyer's truck and he takes it home to his own market.

Q. As to the poultry arriving at the New Jersey terminals, how is that poultry transported from the terminals to the buyers? A. About 80 per cent. of it is loaded directly onto the buyer's truck.

Q. When you say "buyer's truck," do you mean market man's truck? A. Market man's truck.

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Q. The man who buys from the commission man? A. That is right. For instance, he may go to 60th Street and go to a commission house, and the commission man may say, "I have a nice car over in the Jersey road," and he will tell him where the poultry is out of, and the man will take the truck over to the Jersey road and load the poultry on his truck there.

Q. You say about 80 per cent. of the poultry arriving at the Jersey terminals is called for by the buyer in his own truck? A. That is right.

Q. And is it transmitted directly from the freight car into the buyer's truck? A. Yes.

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Q. Then what happens to it? A. Then he comes back to New York and he may load some more stuff on his truck at the market, or the other New York terminals.

Q. What do you mean by market, West Washington Market? A. West Washington Market.

Q. And then he goes to his market? A. Yes.

Q. Brooklyn, the Bronx, Queens? A. I would like to explain that. The commission man operates the carload poultry at the railroad terminals, but at the West Washington Market they have stands or stalls or stores, whichever way you

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want to call them, where the express and truck poultry is handled, so when he finishes loading there at the Jersey road, he may stop at the stand or commission man's stand, down at West Washington Market, he may put a few more coops on the truck, and then go back to his place of business.

Q. But you say that 80 per cent. is loaded directly from the freight cars onto the buyer's truck and carried in from the New Jersey terminal into New York? A. That is right.

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Q. Now, what happens to the remaining 20 per cent. arriving at the Jersey terminals? A. Oh, about 5 per cent. of it is sold to buyers located in Jersey.

Q. What happens to the remaining 15 per cent.? A. And the balance,—I would best explain it by an example. If I have a truck that arrives in the 60th Street Market, I may load 20 coops there, and I decide I want to load 10 coops over on the Jersey road, but I have 2 cars to load there at the one time, I will call a commission man to have the poultry put on his truck and brought into West Washington Market and I will later take my truck down to West Washington Market to transfer the load. Well, some of that stuff is transferred out of that 15 per cent. About half of it may be transferred that way.

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Q. That is, may be transferred directly from the commission man's truck to the buyer? A. To my truck by the buyer's truck.

Q. At West Washington Market? A. At West Washington Market, and it may run about 8 or 10 per cent. that may not be sold at the railroad that is loaded onto the commission man's truck

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or trucking company, which he buys, and brought to his stand, and put on his stand for slaughter whenever they can dispose of it.

Q. Let us see if we have that clear, 80 per cent. is loaded from the New Jersey terminal freight cars directly to the buyer's truck and taken by the buyer to his market in New York?

A. Yes, sir.

Q. Five per cent. is sold to the New Jersey buyers? A. Buyers.

Q. Fifteen per cent. is taken to the commission man's stand in West Washington Market?

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A. Half of it. Half of it may be transferred.

Q. Just a moment. Let us take it step by step. Fifteen per cent. is taken to West Washington Market, is that right? A. That is right.

Q. And about half of that 15 per cent. is simply transferred from the commission man's truck to the buyer's truck in West Washington Market and then taken by the buyer to a market in New York, is that correct? A. That is right.

Q. And the remaining half of that 15 per cent. is transferred onto the commission man's stand at West Washington Market? A. Until he can dispose of it, yes.

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Q. How about the poultry arriving at the New York Central Terminal, how is that transmitted to the buyers? A. As much as the commission man can sell is loaded directly onto a buyer's truck and what he is unable to sell is put on the commission man's truck, or a trucking company's truck, taken down to a stand at West Washington Market and held there until he can sell it.

Q. What percentage did you say is called for by the buyer in his own truck at the New York Central Terminal? A. Well, that depends upon

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your market conditions, which vary from time to time. There will be days when 100 per cent. of it at the terminal is picked up by the buyer, and there are days when it will run as low as 80 per cent., and the balance may have to be sent down to West Washington Market.

Q. Then it ranges between 80 and 100 per cent.? A. Yes, sir.

Q. The balance is brought down to West Washington Market, and what is done with it there? A. Sold.

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Q. Is part of it immediately transferred to the buyer's truck at West Washington Market? A. That is done, and the buyer may have his stuff ordered down to West Washington Market and have it picked up down there on his truck, and the balance, some of it, is sold the same day, some of it may possibly be carried over until the following day, but the common practice is to try to dispose of it even at a sacrifice price to move it that very same day.

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Q. Is poultry considered to be a perishable commodity? A. I think it is considered highly perishable.

Q. Why? A. Well, just this, it is live stock, requires feeding, it is so susceptible to disease, to contagious disease, which will travel through it so very fast, that the railroads in particular consider it more highly—about the most highly perishable commodity that they handle.

Q. What is the consequence of this perishability? A. It receives very nice, fast movement from start to finish. Railroads put it on their fast trains. They will make stops of very fast trains to pick up live poultry where they pass up ordinary live stock. At the time it arrives

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in New York, oh, I would say 50, 60 per cent. of that poultry is slaughtered in the slaughter houses the very next day. They want to keep it on hand as short a time as possible and handle it as fast as they can.

Q. About how many hours expire from the time of the arrival of the poultry at the terminals, railroad terminals, to the time that it is slaughtered at the wholesale and retail slaughter house markets? A. Poultry arrives in the terminal in New York, the commission man is anxious to sell as much of it as possible, and not carry it over in cars from day to day, and from the time it arrives in New York, there is a freight run that gets into 60th Street that handles the bulk of it at 6 o'clock at night, and another one gets in about 5 or 6 o'clock in the morning, and that stuff is sold and delivered to the buyers' trucks, the bulk of it, by noontime, and it is usually slaughtered by the following morning by the slaughter house operator.

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Q. Would you say that more than 24 hours ordinarily expires from the time that the poultry arrives at the railroad terminal until it is slaughtered? A. The bulk of it.

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Q. More than 50 per cent.? A. More than 50 per cent. goes out within 24 hours.

Q. And is slaughtered? A. Is slaughtered within 24 hours.

Q. Now, does the slaughter house operator sell the poultry to the retail poultry dealer or butcher before or after he slaughters it? A. Well, he sells it—I will express it this way: there are two types of butchers; one insists on going to the market himself and picking out the poultry that he wants and the other will have confidence in

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his slaughter house operator and will merely call up on the telephone and ask him to deliver him a certain size order. Where the butcher goes into the market, he picks out or points out his poultry before it is slaughtered and while it is still alive, but its weight, he is charged the price—rather at the weight after it has been slaughtered. In other words, he pays for it on the slaughter weight, but he picks it out while it is still alive, but if he has picked out something that is still alive and then turns out to be unfit, it is his privilege to naturally reject that.

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Q. But the sale is consummated prior to the slaughtering of the poultry? A. That is right.

Q. Now, what day of the week is most of the business done? A. Thursday.

Q. And about what percentage of the live poultry is sold on Thursday? A. About 60 per cent.

Q. Why is that? A. Well, a large proportion goes to the Jewish trade and the Jewish Sabbath starts at sundown on Friday and the poultry has to be in the house and cleaned and cooked before sundown on Saturday—before Friday, rather—and it is consumed on Friday night, Saturday night, and Sunday.

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Q. Well, why must it be cooked before sundown on Friday? A. On account of the Jewish orthodox laws, the Jewish religion.

Q. The Jewish dietary laws required that? A. I believe so.

Q. Now, do you know when the inspection of live poultry in New York commenced? A. 1926.

Q. And prior to that time there was no inspection of live poultry? A. No. There was what they called a buyer's inspection, but it had no official weight and it did not mean a thing.

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It was merely a group of inspectors paid by the buyers themselves that were supposed to judge whether the poultry was over-cropped or not, but it did not mean anything and eventually petered out.

Q. The Joint Inspection Service came into being in 1926? A. That's right.

Q. And it has operated since that time? A. Since that time, that is right.

Q. Now, will you describe the conditions in the marketing of live poultry prior to the time that the Joint Inspection Service commenced operating in 1926?

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Mr. Heller: I object to that question as entirely too remote to be involved in this case, with no relevancy at all as to what happened before 1926. He may as well start with 1900.

The Court: I don't know that that is so, they want to show the change, I suppose. I will let it go in.

Mr. Heller: Exception.

Mr. Rice: It is our purpose, your Honor, to show what happens when there is no inspection.

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The Court: I have overruled the objection, Mr. Rice.

Q. Will you describe the conditions existing in the poultry industry prior to the inspection service in 1926? A. Their object was to try and unload poultry with such a weight—

Mr. Heller: I object to what the object was, let him describe conditions.

The Court: That's right.

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The Witness: The poultry, instead of being fed as it is now, with a modern type of feed——

Q. Speak up, please. A. To get weight into the car, poultry was fed everything imaginable, and there were two ways of doing that, they would use something that had a heavy weight for volume or they would try to constipate the poultry so that the feed would not pass through it.

Q. And what was that called? A. Plugging.

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Q. And how was that done? A. Well, they feed it a wheat with very little moisture or ground wheat with coarse flour mixed with it. It was a dough consistency, or they would make little pellets of dough and feed it to the poultry, or any other method to gain weight, one would feed to sand gravel and in a few cases they actually used cement, anything that would be heavy and also be very slow in going through the bird's digestive system.

Q. Now, who did this? A. The car man, the shipper, in other words.

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Q. And when, before the morning of unloading? A. Yes, sir.

Q. Now, that is just before he sold it to the commission man? A. That's right, or to the buyer.

Q. Now, what was the type of poultry that was brought into New York at that time under those conditions? A. I don't get what you mean by "type of poultry."

Q. Well, was the poultry brought in at that time as good as the poultry today?

Mr. Heller: I object to the form of the question.

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The Court: He can tell us what the conditions were.

Mr. Heller: He has already stated that, your Honor.

The Court: Yes.

Q. Well, what kind of poultry was sent into New York prior to 1926? A. Anything with a head on it.

Q. Will you describe that a little more fully? A. Anything that the western dressing plant could not dress out, and which would show good quality or that was unfit for human consumption that they had bought unknowingly and had gotten it into the poultry plant, rather than dress it out and take a loss, they put it in the live cars and rode it to New York.

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Q. And which you say that there was a demand for inferior poultry and unfit poultry in New York?

Mr. Heller: I object to the form of the question.

The Court: He knows whether they could sell it or not.

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Mr. Heller: He may state what the quality of the poultry that was sold in New York was.

The Court: He told us what kind they were bringing in, now he can say whether it was sold.

Mr. Rice: I will withdraw the question.

Q. What were the marketing conditions in the live poultry industry at that time? A. Well, that type of poultry coming in created demand for cheap poultry because there was certain poor sections of the city that tried to buy poultry as

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cheap as possible. The average live poultry brought into New York is kosher-killed, and that is sold with the feathers on and it is very hard for a person who does not know poultry to be able to tell an ordinary bird from a poor bird. Most of the people can tell a very good bird from an ordinary bird, but it is harder to tell a poor grade of poultry and there is a certain demand for that cheap poultry in cheap neighborhoods, something that they can sell at very low price and the result of that poor poultry coming in was they had a tendency to depress the value of the good poultry, because good poultry that was selling at a high price had to meet the competition and the tendency is for the range to narrow and that usually means that the good poultry price comes down.

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Q. Now, would you say that these conditions continued the same way after the Joint Inspection Service went into operation? A. They improved.

Q. They improved somewhat, did they? A. Yes, sir.

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Q. But not entirely? A. Not entirely because—

Mr. Heller: I object to the because.

Mr. Rice: If your Honor please, this witness is testifying as an expert.

The Court: He is giving opinion evidence; this isn't fact, this is opinion.

Mr. Rice: Very well; proceed.

The Court: Go ahead.

Mr. Heller: I understand then it is to be connected up with the facts?

The Court: Yes, but he has already given us facts; now he is just giving his

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opinion, as a result of those facts something has happened; this is his opinion pure and simple.

A. Those conditions have been remedied somewhat, but they still exist.

Q. What are the factors that have continued the existence of those practices? A. Well, the Inspection Service, to my way of thinking, should be a little stricter. Poultry coming in uninspected has a tendency to continue that practice. And one of the worst conditions we have is that poultry, instead of being killed straight or sold straight, is allowed to be graded, and that as—the poultry, if it had been killed straight, that poultry would be forced to be kept out in the country and not allowed to come into New York, but by grading the poultry, a certain percentage of that poultry is available, and there is a demand created for it because it is there.

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Q. Has the inspection become more rigid since the Live Poultry Code became effective? A. Yes, it has.

Q. You are familiar with the general provisions of the Live Poultry Code, are you not? A. Yes, sir.

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Q. You are familiar with the provisions of the Code permitting the sale of poultry unfit for human consumption? A. Yes, sir.

Q. How would you describe poultry unfit for human consumption? A. Well, the average person——

Mr. Heller: I object to that; there is no foundation for this testimony, as yet.

The Court: He has shown a very wide

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experience. He can give us his opinion as to what is unfit for human consumption.

Mr. Heller: Are we to be charged with what is unfit in another source, in other places?

833 The Court: I do not know, but he is laying the groundwork, trying to show that there is some interstate proposition involved here. This isn't directed to the particular acts that you have committed, this is proof that is offered now to show that this is Interstate Commerce, and then to show the effect of these various things. Unless they can do that, they cannot charge you with a crime.

Mr. Heller: Do I understand that we are bound by what takes place all over the country?

834 The Court: No, but they have got to show that this is something that affects interstate commerce, otherwise it wouldn't be an offense. Therefore, they must show that first; after they do show that, then they can show whether these individual acts of yours were connected with these practices, but they have to show first whether it involves interstate commerce.

Mr. Heller: I except to this line of testimony.

The Court: All right, it is only an opinion he is giving now as an expert.

Q. You have examined a great many birds?

A. Yes, sir, a great many.

Q. In the past seven years? A. Yes, sir.

Q. And you are familiar with poultry diseases? A. Yes, sir, the common diseases.

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Q. The common diseases——

The Court: What do you call common diseases?

The Witness: Roup, infectious bronchitis, tumors, dropsy, limber-necks, water-bellies——

Q. How about avian tuberculosis? A. Yes, sir.

Q. You are familiar with that? A. Yes, sir; in an advanced stage.

Q. Have you had any training in detecting these more common poultry diseases? I do not mean have you gone to school? A. No, I haven't gone to school, but I have received training in it. At one time we had a man working in our place for five years that was a veterinarian, and during my early period up there, why, we performed quite a few post-mortems on different types of chicken diseases, so that I was able readily to recognize them, that is, in a fairly advanced stage.

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Q. What is a gapper? A. It is one of the advanced stages of infectious bronchitis, when the wind-pipe is getting clogged and the bird has got a great deal of trouble breathing, and he starts opening his mouth and gapping for air.

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Q. What are the other symptoms of a gapper? A. That is the one, that is the sole one that you can pick out without any chance of making a mistake. You can look at a carload of poultry from 25 to 50 feet away and immediately spot a gapper, by just that one action.

Q. Is a gapper considered unfit for human consumption in the poultry trade? A. Yes, sir.

Q. How about poultry with these other diseases that you have mentioned? A. With roup it gets immensely swollen eyes, so it is very

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readily seen even from a distance. But a tubercular bird or a limber-neck is very readily distinguished at a distance. Its neck is doubled over, it is down on the ground, and it cannot straighten itself up. A tumor you cannot see, but you can feel it in poultry. You cannot as a rule see them at a distance. You must feel the bird for the tumor, and what we refer to as water-belly must be actually handled to be recognized or identified.

839 Q. Are all of these classes unfit for human consumption? A. Yes, sir.

Q. What is a water-belly? A. Well, it is a water cyst that forms in the ovaries, and it is usually caused by excessive strain of laying eggs.

Q. Is a poultry with that defect unfit for human consumption? A. Absolutely. If you open that bird up it will just smell to the heavens.

Q. Is the expression "cull" used in the live poultry trade? A. Yes.

840 Q. What does it generally mean? A. Poultry unfit for human consumption, that is generally referred to as a cull.

Q. Are there also chickens which are inferior or undesirable that are not considered culls? A. Yes, a large percentage.

Q. What is the distinction between the two? A. It is usually referred to in the trade as a second.

Q. A second? A. Or an undesirable, a second is the common term.

Q. Are they fit for human consumption? A. Absolutely.

Q. What is a second? Describe it to us. A. Well, it is a bird that may have a poorer breast, a little leaner breast, maybe suffering

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from malnutrition, it may have a crooked breast, it may have possibly a broken leg or a broken wing.

Q. Prior to the time that the Live Poultry Code became effective are you familiar with the practice of giving weight allowance in lieu of culls? A. Yes, sir.

Q. Just what was that practice?

Mr. Heller: Objected to as not part of this indictment.

The Court: There is no charge of that kind here.

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Mr. Rice: We are endeavoring to show the practice—

The Court: I know, but whether you gave allowances or not doesn't mean anything, does it?

Mr. Rice: We are simply endeavoring to show that the practice prior to the time of the Code was to pass on the culls to the buyers and give a weight allowance in lieu thereof.

The Court: I understand that.

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Mr. Rice: And we are endeavoring to show that the Code provision which prohibits weight allowance in lieu of culls, that the Code provision prohibits the sale of diseased poultry and has eliminated that practice.

The Court: Go ahead if that is it.

Q. What was that practice prior to the time of the Live Poultry Code? A. It varied according to the quality of the car. In the average car they gave a pound to a coop in lieu of culling the poultry. In poorer cars it ran as high as

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3 and 5 pounds weight allowance per coop. In other words, the buyer could not put his hand into the coop and pick out the culls or the sick poultry; he had to take the straight run, and if he loaded 10 coops on his car, then they would deduct 50 pounds of weight, or give him 50 pounds weight allowance for the culls.

Q. And the culls were delivered to the buyer along with good poultry? A. That is right.

Q. And were the culls ultimately sold? A. They were.

845 Q. Was that the practice in the trade? A. Yes.

Q. Even though the poultry was diseased and classified as unfit for human consumption it was sold? A. Yes, sir.

Q. I mean sold to the consumer? A. Sold to the consumer, yes.

Q. How does the practice differ since the Live Poultry Code came into effect? A. One of the provisions of the Code—

846 Mr. Heller: I object to the provisions of the Code. How does it differ, was the question?

The Court: Yes, tell us how the practice differs.

Q. You are familiar with the provision of the Code prohibiting the weight allowance in lieu of culls? A. Today we do not give a weight allowance in lieu of culls. We give a man the privilege to cull his poultry, and anything that we mutually consider unfit, rather, he is not compelled to take.

Q. Does he take it? A. No.

Q. What happens to the culls or unfit poultry now? A. It is destroyed at the car door.

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Q. And disinfected? A. Yes.

Q. Mr. Tottis, what is the effect upon the shipment of live poultry of selling culls or poultry unfit for human consumption in the New York market?

Mr. Heller: May we have the period of time when, at present or when?

Q. Generally, what is the economic effect upon the shipment of poultry of the selling of culls in the New York market?

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Mr. Heller: I object to it, first, on the ground that it is too general, and, secondly, he has not been qualified as to competency.

The Court: He has had a wide experience in this. He can tell what the effect on this trade is.

Mr. Heller: I haven't seen any figures yet, your Honor, of percentages that come in that were culls or anything else. This man gives a general opinion as to the effect of culls coming in.

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The Court: He said before that they gave allowances but did not cull and now they do cull. It is his opinion, of course.

Q. Now, prior to the time that the Code went into effect approximately what percentage of live poultry shipped into New York consisted of poultry unfit for human consumption? A. In my opinion it ran approximately around 2 per cent.

Q. And was practically all of that sold to the consumer? A. Yes, sir.

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Q. Are you familiar with the effect of shipments of live poultry from other States, and the practice of selling culls in the New York market? A. Yes, sir.

Q. You have made a study of that? A. I have.

851 Q. What is the effect? A. I will start this way; take a neighborhood where there are a group of chicken stores. One of those dealers will go to his market and buy a lot of this poultry from everywhere from 3 to 5 to 7 cents a pound when the market price may be 17 cents. He will take it back to his store and paste up a big sign on a window saying poultry 12 or 15 cents a pound. Immediately, all his competitors go down to the market where they kill poultry and they want to buy poultry at a price that they can compete with that price at. That creates a demand for that. We have to be in a position where we can buy cheap poultry so that we can sell it to our trade to compete with that type of price. It has a tendency to make us a little weaker, that is to go out and try to buy cheaper poultry so that we can compete with that cheap price and that attracts a lot of rejects from these western dressing stations. The result is cars have been coming into New York that are practically culls, just on the borderline—solid carloads where they pick up junk from these other cities and bring it in to New York to satisfy that type of trade and that has a tendency to knock the price structure down for the top price poultry.

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Q. Do you know whether it was a practice on the part of shippers prior to the Code to send that inferior and sick poultry to the New York market? A. Absolutely, yes. New York

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was the dumping ground for all the junky poultry all over the country.

Q. Did it differ from other larger cities of the country? A. Yes, decidedly.

Q. Why? A. Because there was a demand created for it and there was no effort made to keep that poultry out of the New York market. For instance, take a town like Chicago. Chicago has what is called a Poultry Board of Trade, and every carload or truck load of poultry that comes in there, when it arrives at the door of the receiver, he must request inspectors or graders from the Poultry Board of Trade, and he has no choice of who these inspectors are, and they come out and they grade the poultry and the poultry is sold according to their grading. Theirs is the official grading for Chicago. And they grade it both for size and for quality, and if poultry is unfit, in their opinion, it is either returned to the shipper to take back to the country or destroyed on the spot. All over your other outlying markets, Cleveland, Toledo, Columbus, Pittsburgh, all of the poor poultry is returned to the shipper and destroyed. They have a very strong ordinance in the town and trade practices that won't take in that type of poultry, and the result is that the poultry—they may accumulate a few thousand or 1500 pounds of this junky poultry in Chicago, St. Louis or any one of those towns, and they load it into a live car and roll it into New York and dispose of it there because there is a demand for it.

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Q. Was that actually done regularly prior to the Code? A. Absolutely.

The Court: I see a good many people coming in. I want to call your attention

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to the fact that if any of them are your witnesses——

Mr. Heller: I have not subpoenaed them as yet.

The Court: I just call attention to it, that is all.

857 Q. Do you know what the practices of the packers were prior to the Code? A. They were also in the same position, taking their dressing station rejects, loading them into live cars and sending them to New York, but that is one type of poultry. The packers have apparently reformed in the last two months to a remarkable degree and they are shipping in real good quality of poultry at the present time.

Q. Has the character of the interstate shipments of poultry improved since the Code went into effect? A. I think it has.

Q. Appreciably? A. I think so.

858 Q. Do you know whether there is a difference between the demand for culls in New York from that in Newark, New Jersey? A. Yes, New York will handle a lot poorer types of poultry that they could not dispose of over in Newark.

Q. Can you illustrate that by any examples? A. Merely this, that Newark handles larger top poultry or—a larger percentage of it is top market poultry compared to the percentage of top market poultry in New York. While the same shippers will ship to the New York market that ship to the Newark market, the Newark market receives a much higher percentage of top market poultry. The buyers out there grade their poultry very closely.

Q. Do you know of any instance, Mr. Tottis, where poor poultry has been rejected in Newark

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and later received in New York? A. Yes, I know of instances.

Q. Do you know who the commission houses are that handle poultry at Philadelphia? A. Yes, there is Eagle Poultry Company, Albert & Warms, Albert Levitt, Farmers Produce, Risser & Rabinowitz.

Q. Are there just those four commission houses in Philadelphia? A. No, there are a few more. There is a firm by the name of Handy. There are about a half dozen there.

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Q. Do you know what the practice of commission houses in Philadelphia is in regard to shipping poultry into New York or rather what the practice has been in the past? A. Well, they receive their poultry and they sell to a certain extent on grade. They grade out the poorer quality of poultry and they have been in the habit of placing the poultry into the New York market.

Q. In your opinion, Mr. Tottis, would there be substantially less unfit poultry shipped into New York market from other States if the sale of unfit poultry were prohibited in New York? A. Absolutely.

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Q. And would there be a substantial increase in the amount of fit poultry sent to the New York market? A. Absolutely, because of a lot of this unfit poultry in my opinion the trade is swinging away from live poultry. Our consumption of live poultry in the last four or five years has dropped off about 25,000,000 pounds, and it was not due solely to economic conditions, because the dressed poultry market increased its sales by about the same equivalent, around 23,000,000 or 25,000,000 pounds, so the tendency

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seems to be away from live poultry to dressed poultry on account of that.

Q. To what extent would the consumption of live poultry increase the sale of poultry unfit for human consumption could be prevented? A. I believe we would get back about 20 per cent. of the business that has been lost as a result of it.

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Q. That is, by preventing the sale of the 2 per cent. culls, it is your opinion that the sale of all live poultry in New York would increase about 20 per cent.? A. I think so.

Q. What is that opinion based on? A. People that I have spoken to, that have bought this fresh-killed poultry and have been stuck with a lot of these undesirable or culled poultry that was sold to them because they did not know much about poultry. They decided that they would rather buy poultry that they could see actually dressed instead of taking something blind.

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Q. Well, now, is it easy for a consumer to determine that a chicken is unfit for human consumption? A. No, it is not the easiest thing in the world at all, not after it is slaughtered.

Q. Do you know what the relationship between the market prices in New York City are to the prices in other marketing centers in the United States? A. There is a fairly close relationship. For instance, the differential between the New York and Chicago market will be approximately 2½ cents.

Q. Which is higher? A. Yes, sir.

Q. Now, what sets the market price for poultry in the various markets throughout the United States? A. The New York market.

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Q. The New York market sets the price for other markets? A. That is right.

Q. Now, how do the differentials between the Chicago market and the New York market—you say that is 2½ cents? A. Yes.

Q. What accounts for that difference? A. The difference in the freight charges from Chicago to New York, plus the cost of handling at the New York end.

Q. And in what direction does poultry move over the country? A. From west to east.

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Q. Any other direction? A. North; that is, from the New England States toward New York, and from the Middle Atlantic States toward New York, and the balance of it moves from the West to the East.

Q. How about in the Winter time? A. In the Winter time it comes from the South up to the North.

Q. And therefore the prices in New York are the highest in the United States? A. Yes, sir; the New York market is always higher than any other market.

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Q. And the prices in other centers represent the differential between the New York price represented by the difference in freight? A. And any variation from that would be very temporary, lasting probably a day or two. There is a difference in handling freight charges between Chicago and New York of 2½ cents, so if New York today has a 17-cent market, Chicago should be 14. If Chicago should go to 14 and poultry is coming from the West, east, it is more profitable to continue the car on to New York to get the extra 2½ cents. If the Chicago market, however, should go to 15 cents, then of course it

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would be more profitable to stop the car at Chicago. If they should have a glut, for instance, of poultry in another city, let us take St. Louis, for example, why, then, if they had a glut there, one of the dealers would immediately make up a car and send it to New York. That is the way that they keep the balance.

869 Q. Now, if the competitive practices demoralize the market price in New York City, does that have any effect on market prices in marketing centers throughout the United States?

Mr. Heller: I object unless the practice is specified.

The Court: If he knows when it is; that is the point. The way he has expressed himself heretofore, he knows the conditions, and he has said about the changes. If there are any reasons for changes other than those, I don't know about it.

Mr. Heller: He simply said there was a difference in freight charges.

870 The Court: He did that, and he also said that there was a difference in demand. He said that if a certain market was overloaded it would change the effect.

Q. Now, if the competitive practices in New York City have an effect, the effect of demoralizing the market prices in New York City, does that have any effect on the market prices in other marketing centers throughout the United States?

A. Naturally, it will bring it down to about the same relationship, which happens to be the differential between these other cities.

Q. Does it have any effect on the prices received by interstate shippers? A. Naturally,

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cause there is also a fixed ratio between the market prices and the farmer, that is, what the farmer receives for his poultry, or the handler, that is, should it be the handler, on the other end, whether it is a commission man or some other dealer in another city or the farmer or the shipper.

Q. Well, does it have the same effect on the farmer as it has on the shipper? A. Yes, sir.

Q. That is, if the price structure in New York City is demoralized, that reduces the price that the interstate shipper receives for his poultry and it reduces correspondingly the price that the farmer receives for the poultry that he sells? A. That is right.

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Q. And is that readily reflected? A. It would take about 24 hours. 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.

Q. Now, what effect, in your opinion, does the sale of culls—and by the expression “culls” I mean poultry unfit for human consumption—what effect does the sale of culls have upon the prices received by the interstate shippers? A. I thought that I explained that before. It merely brings down the value of the good poultry because you have to sell high-priced poultry in competition to cheap poultry, and it has a tendency to narrow the range and bring the price of good poultry down, and that is reflected all the way back to the shipper in the lowering of market prices.

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Q. Does it reduce the aggregate value received for all of the poultry? A. Yes.

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Q. Does it reduce it out of proportion to the amount of culls sold? A. Yes, out of proportion, or the value of it.

Q. What effect does the lack of inspection of poultry have upon the prices of selling culls? A. Facilitates or makes much easier the bringing in of culls, makes it much easier to sell them, and you can handle a considerably larger volume of them.

875 Q. Does it have the effect of inducing larger shipments of culls? A. Naturally, to meet competition of the next man that handles culls.

876 Q. What other effect does the lack of inspection have upon the character of poultry brought in or sold, other than culls? Does it have any effect upon the crops of chickens? A. Well, if you have no inspection—I can best explain it with the condition that exists here in New York at the present time. We have an inspection for crop content in the New York market; Newark has no such inspection. And as a result of that fact a shipper would rather ship his car into Newark, all things being equal, than he would to the New York market, because he can give it an unlimited increase of feed, and the weight resulting will be 500 pounds to a car better in the Newark market on account of the lack of inspection. And the same thing applies to New York; if we could get poultry into our place that wasn't inspected and take it in with the larger crops, why, it would be much easier for us to attract additional shippers, and we could get shippers on a much more advantageous basis than we do at the present time.

Q. I believe you have already testified that since the Live Poultry Code became effective,