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that there has been a much more rigid inspection of live poultry. A. I think so.

Q. And do you know whether or not that has had any effect upon the volume of culls shipped into the New York market from other States?

A. My particular experience with shippers we have been doing business with——

Mr. Heller: I object to his particular experience; we do not want it limited to his particular experience, it should be general.

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The Court: Give it to us generally, not your own personal experience. Do you know as a general thing whether that is so?

The Witness: Yes; it has been cut down considerably.

Q. Will you explain the practice of straight killing?

Mr. Heller: He has already explained that; we have been all over this before.

The Court: I do not know whether he has or not; he touched on it, but I do not think he explained it particularly.

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The Witness: Poultry is handled in large, long coops that contain 40 to 60 heads to a coop; and by straight killing they mean that when a man comes in and buys half a coop of poultry, instead of grading and picking out 10 or 15 heads out of that coop and some more out of the car, he has to take it straight the way it runs.

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Q. Suppose he wants to buy just five heads of chickens, is he permitted to buy five heads? A. On straight killing?

881 Q. Straight killing, as you understand it, applies only where the buyer is buying a half coop or full coop, is that right? A. Oh, you can also have straight killing. In our particular place we keep poultry in batteries, where is contained the whole six heads, and you can still give them poultry straight. Very few of them order less than a dozen heads at a time and you can still give it to them straight without waiting.

Q. Will you explain the practice of selective killing that existed prior to the time that the Code became effective? A. Well, at that time a buyer went in and handled each bird himself and picked out just what he wanted.

882 Q. What time of the morning did the buyers come in? A. Well, killing starts at seven o'clock on Monday, Tuesday and Wednesday, five on Thursday and at six on Friday, and they used to come in anywhere from ten minutes before killing time to two hours before killing time.

Q. For what purpose? A. Picking out the poultry that they wanted.

Q. Explain the method of selecting the poultry prior to the time the Code became effective? A. Well, they would merely go into a place and pull a slat off the coop and pick out what they wanted, or if they were taking quite an amount, they would pull out of the coop what they did not want, and when it came time to slaughter the poultry, the poultry they picked out would be in a separate container and would be just what they wanted for size and quality.

Q. What happened to the rest of this poultry? A. It was sold at a cheaper price to whichever

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buyer they could get at a satisfactory price. It was a sacrifice price.

Q. The selected poultry picked by the first buyer, did the first buyer pay normal price or did he pay a premium? A. No, the normal price.

Q. For that poultry. He paid the normal price? A. I would consider he even paid a sub-normal price for it.

Q. Why? A. Did not pay as much as it was worth, did not pay for the cost of grading.

Q. And the buyers who came second and bought the picked over poultry bought at a sacrifice price? A. At a considerable sacrifice price.

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Q. What was the result of this practice of selective killing upon market price? A. Well, that knocked the market price down and created a demand for cheaper poultry again to compete with that existing cheap poultry.

Q. Why? A. Because if a man goes out and sells poultry cheap, his next door neighbor wants to buy poultry that he can sell just as cheap on a competitive basis, and he will have a lot of trouble getting considerably higher prices for better merchandise on account of the larger volume of cheaper poultry that was on the market being sold.

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Q. You have spoken of the practice of grading poultry in the Chicago market. Do you know whether the practice of straight killing as required by the Live Poultry Code would have any effect upon the practice of grading the poultry prior to shipment? A. It would force grading, that is, grading out in the country, in the New York market.

Q. What type of grading? A. Both for size and quality.

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Q. That is, if the practice of straight killing were enforced in New York City the poultry shipped into New York would be graded prior to shipment? A. That is correct.

Q. According to size and quality? A. And quality.

Q. Are you familiar with the costs of operating a live poultry slaughter house? A. Yes, sir.

Q. Approximately what percentage of the costs are labor costs? A. Fifty to 60 per cent.

887 Q. Fifty to 60 per cent.? A. Our labor costs.

Q. In your opinion, Mr. Tottis, would the payment of smaller wages than those required by the Code have any effect upon the market price of poultry?

Mr. Heller: That is objected to. There has been no foundation laid for this testimony.

The Court: Why?

Mr. Heller: There are no facts whatever to show what labor charges are.

888 The Court: By inference, the less the cost of operating the less he can sell for at the same profit.

Mr. Heller: I suppose we should have a table or a statement showing what the labor charges were at one period of time and what it is now.

The Court: That is not what he asked him. He asked him what the labor charges were and he said 50 to 60 per cent. And now he asks him, if the costs paid for labor be reduced would it have an effect on the market price. I think anybody could answer that, couldn't they, out of hand?

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Mr. Heller: I could not.

The Court: You could draw inferences, couldn't you? Your labor cost you less, you could operate at less cost.

Mr. Heller: The objection to inferences is that this is a criminal case.

The Court: That is a mathematical inference. If any one element of your cost is reduced your total cost is reduced.

Mr. Heller: I think the jury can draw their own conclusion.

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The Court: I will let him answer.

Mr. Heller: Exception.

The Witness: Will you repeat the question?

(The reporter repeated the last question.)

A. Well, if everybody paid the same wage, it would not have an effect, but if one man could operate cheaper than the next and correspondingly sell his poultry cheaper than the next, then the tendency is the man with the higher wage scale would try to buy cheaper poultry to compete with him.

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Q. And the result is that more cheaper poultry is brought into the New York market? A. It would have that tendency.

Q. Do you know whether it has been the practice in the live poultry trade in New York to reduce the prices of poultry where there has been a reduction in the wages paid to employees?

Mr. Heller: Objected to. There is no testimony that there has been a reduction.

The Court: He can give an opinion as to what the result would be, but I do not

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think there has been any evidence up to date.

Mr. Rice: I will withdraw that question.

Q. Is it the practice of the poultry people in New York to reduce their prices to correspond with the amount paid out in wages and salaries?

A. I don't get that quite clearly.

Mr. Heller: I object to that, if your Honor pleases.

893 The Court: Well, he may state if he knows.

Mr. Heller: Exception.

The Witness: I would say yes.

Q. Do you know whether or not it has been the practice of poultry market men in New York to sell for a small margin above their cost of operation? A. Yes, they sell for a very small margin above the cost of operation.

Q. If the costs of operation are reduced, has it been the practice to reduce their prices? A. To reduce their selling prices, yes.

894 Q. Are you familiar with the Code provisions prohibiting employees in slaughter houses from working more than 48 hours a week? A. Yes, sir.

Q. In your opinion, Mr. Tottis, would the practice of requiring employees to work in excess of 48 hours, have any effect upon the prices of poultry?

Mr. Heller: I object to the question. There has been no foundation laid.

The Court: I will let him answer. It is an opinion. If it is not connected up, it means nothing.

Mr. Heller: Exception.

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A. Well, where a man cannot work his men over 48 hours, naturally, he would have to get extra help, and, increasing his cost of operation, it would work the same way as if he was competing with a man that was working below the Code wages, he would have to cut down his selling price and try to get cheaper poultry to compete.

Mr Heller: If your Honor pleases, may we have a short recess at this time?

The Court: Yes. Gentlemen of the Jury, I admonish you not to discuss this case with anybody, or among yourselves. You may take a recess of five minutes.

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Q. Mr. Tottis, you have spoken of the effect of paying less than Code wages, or requiring employees to work more than Code hours upon the prices of poultry. I believe you have just stated that it has the effect of inducing the slaughter house operators to purchase cheaper poultry; is that correct? A. That is right.

Q. What effect does that have upon the market price of poultry in New York? A. Brings down the price of better poultry because it increases the demand for the middle grades and cheaper grades, and there is a less demand for the finer grades, and it has a tendency to depress the price.

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Q. Does it have any effect on the character of the poultry shipped? A. Naturally, it depresses the price of the better quality poultry, it depresses the price on the better grade of poultry out in the country, and they are shipped in to markets where they can get a more advantageous price for it.

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Q. Does it have any effect upon the character of the shipments to the New York market? A. What do you mean by the character of them?

Q. The type poultry shipped. A. There will be less of good poultry come in here.

Q. And more of poor poultry? A. More of the poorer grades.

Q. And it has the effect of reducing the returns to the interstate shippers? A. That is right.

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Q. And does it have any effect upon the farmer? A. Naturally, he will get less money for his poultry.

Q. Do you know of any poultry inspection service other than the Joint Inspection Service, operated by the Bureau of Agricultural Economics in New York? A. Not in New York.

Q. Do you know whether poultry is inspected by veterinarians in New York who are not in the employ of the Joint Inspection Service? A. Not that I know of.

Q. Are you familiar with the requirements of the New York Board of Health? A. Yes, sir.

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Q. As they existed prior to the month of September, 1934?

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

Mr. Rice: I will withdraw the question, your Honor.

Q. When poultry comes in by truck, do you know what the arrangement for inspection is? A. Yes, sir.

Q. What is it? A. There are several terminals and places of inspection around New York City where you have to take that poultry to get

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it inspected, and you go through the same procedure, notify the Inspection Service, tell them that you have a truckload of poultry, and require to have it inspected. The inspector appears after a while, and you make out an inspection request on a form card, and he inspects the poultry.

Q. And if a market man goes to Philadelphia and purchases a truckload of inferior poultry or sickly poultry and does not request inspection, is it inspected? A. No, sir.

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

The Court: He is telling what he knows. I suppose it is a fact; I do not know.

Mr. Heller: There is no testimony here that a truckload came from Philadelphia or any other place.

The Court: No, there isn't, but if any chickens come in from the outside, from outside the State of New York, by truck, is that inspected, if there is no request made?

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Q. Will you answer his Honor's question? A. No inspection is made, only upon request.

The Court: Whether the chickens are good or bad, they won't be inspected unless there is a request made?

The Witness: Yes, sir.

The Court: That must be made by whom?

The Witness: By the owner of the poultry or the receiver of the poultry on this end.

The Court: All right.

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Q. After such poultry is inspected, what evidences of inspection are given to the market man? A. There is a tag or label with the date of the inspection and the certificate number of it—or, rather, the number of the inspection request is stamped on these labels and the labels are affixed to the container in which the poultry is.

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Q. That is, the labels are glued onto the coop or the basket, whichever it happens to be? A. To the coop or basket, whichever it happens to be, yes, sir.

Q. Now, you were here yesterday when Dr. Ives testified on cross examination that certain poultry with colds might pass inspection provided that they be sold within twenty-four hours, did you hear that testimony? A. Yes, sir.

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The Court: He already testified to that himself, I believe—I think he did—that some poultry was passed for immediate killing, that had to be killed that day, within twenty-four hours, and others could be stored.

Q. Do you know what the purpose of that requirement is? A. To keep the disease from spreading.

Q. Now, how about poultry with colds, where the poultry is not yet unfit for human consumption, can that poultry be slaughtered within twenty-four hours? A. Yes.

Q. And safely sold to the consuming public? A. Yes, sir.

Q. Now, after the container of poultry bearing the inspection label has been emptied, what

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pens to that container? A. It should be cleaned and the label destroyed.

Q. You mean it should be cleaned? A. The regulations of the Board of Health require the container to be cleaned after each time it is used.

Q. What happens to the old inspection label? A. It is destroyed.

Q. You mean it should be destroyed? A. Should be destroyed.

Q. Now, Mr. Tottis, if truck poultry is brought into New York and the buyer does not request inspection of that poultry, what effect does that have upon the type of poultry that is brought in from other States? A. Well, it would have a tendency that the shipper will be able to—will know that he can bring in poultry without inspection, he can feed it whatever he wants and ship any type of quality in that he cares to.

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Q. Does it have an effect of inducing shipments of sickly, diseased poultry? A. Because he can get away with it.

Q. And of inferior poultry? A. Because he can get away with that too.

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Q. And does it have any effect upon the market prices? A. Naturally, you are getting more cheap poultry in, and it will have a tendency to depress the price of better poultry.

Q. Does that have any effect upon the prices that the interstate shipper receives for the poultry which he sells to the New York market? A. Naturally it depresses his price too.

Q. And likewise it has some effect upon the farmer? A. That is right.

Mr. Rice: That is all.

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Cross examination by Mr. Heller:

Q. Do I understand that you made a special study of the industry for the past 7 years, is that my understanding? A. That I have been in it for 7 years, and while I have been in it I have tried to make a study of it.

Q. You mean you have devoted your entire time while being connected with the firm for a period of 7 years to the study of the industry? A. That is what I tried to do.

911 Q. What are your duties with this particular firm that you are connected with? A. Soliciting and buying at the present time.

Q. For the past 7 years will you give us, year by year, just what your duties were, just generally? A. Originally, when I went with the company, in order to learn the poultry business, I worked in the slaughter house and actually handled poultry.

Q. For about how long? A. I still do that occasionally.

912 Q. Was that your major function when you entered into the company's employ originally? A. The idea was to learn——

Q. Just answer my question. A. Will you repeat the question?

(Reporter repeated last question.)

A. At that time it was.

Q. Now tell me for how long a period, from the time you entered the employ of the company, you made that your major function? A. For about three years.

Q. In other words, you were confined to the place of business and studied the industry from

your place of business for a period of three years, is that correct? A. That is right.

Q. And that is from what year to what year? A. 1927 to 1930.

Q. From then on what did you do, what were your functions? A. My—in addition to the work that I was doing in the slaughter house, to look after the unloading of live cars for about a year, then, after that, I had the additional duties of soliciting and buying poultry.

Q. In other words, from the year 1930 to 1934, you performed duties within the place such as the unloading of cars, and also purchasing and selling poultry? A. That is right. 914

Q. Where did you purchase and where did you sell poultry for the last four years? A. Where did I purchase them?

Q. Yes. A. Want it by States?

Q. Yes; how much time did you stay away from the city? A. My time out of the city was approximately four months out of each year.

Q. That is during the past four years? A. That is right.

Q. Left the City of New York for different States in the country to buy poultry, is that correct? A. That is right. 915

Q. That happened regularly for four months out of every year? A. That is right.

Q. And you traveled from what State to what State? A. I traveled every State east of the Mississippi River except Florida. Minnesota, North and South Dakota, Wisconsin, Iowa, Kansas, Arkansas and Oklahoma.

Q. During these four months of every year you purchased sufficient poultry for your firm for the rest of the year, is that the idea? A. No.

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

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Q. You merely purchased them for how long a time? A. The way we work, you travel around, you make a contact with the shipper, that may cover three or four States, and it is for no specific period of time, then from time to time I talk on the telephone two or three times a week and tell him what we want for the following week, and from what sections of the country you want it, and what type of poultry you want.

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Q. In other words, you made a contact with these different agencies every four months a year, and thereafter ordered your poultry from that agency, is that correct, as you needed it? A. That is right.

The Court: Was this four months continuous?

The Witness: No, from time to time, about two-week stretches.

Q. In other words, you left the city for a period of two years, and then you would come back? A. Two weeks.

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Q. I meant two weeks, and then you would come back? A. Yes.

Q. And then you would go away again for two weeks? A. That is right, approximately.

Q. And about what part of the year did these two weeks fit in? A. About every two months, take a trip.

Q. And every two months you take off about two weeks? A. Yes.

Q. And the rest of the time you spend at your plant? A. Not all of it; some at the plant, some at the various railroad terminals around New York, to see how poultry is running.

Q. In other words, you went from railroad to railroad to see you got the proper poultry? A. No, to see how poultry is running in the various sections of the country.

Q. What does your concern do? Do they buy and sell poultry? A. Yes, sir.

Q. Isn't it your duty to effect sales and purchases of poultry? A. Is that my duty?

Q. Was that part of your duties with your firm? A. Not to effect sales. I am not a salesman.

Q. To make purchases for your concern? A. Yes. 920

Q. What was the purpose of going from railroad to railroad, as the time went on? A. To see how poultry ran that came in from different sections of the country from which we were not receiving poultry, to see if it ran any better.

Q. In other words, you were interested in ascertaining whether you made a good buy or not, is that it? A. No.

Q. Or you wanted to change the purchaser? A. No.

Q. What then? A. To get an idea of the general market conditions and a general idea what selling condtions were like. 921

Q. Well, now, suppose you had placed your order for a week's merchandise, week's needs, and then you say the next week you would go to different markets to see what came in from different sources? A. No, I do that from time to time, not necessarily because I want another week's poultry.

Q. I mean what would be the real purpose in that, to change your method of buying? A. Yes, for instance if I were in a section of the country that happened to be shipping larger chickens

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when a smaller sized chicken was more desirable, I could find out down there what section of the country was shipping smaller sized chickens and then get my supply of poultry from that section of the country.

Q. Now, what factors would determine whether a small or large chicken would be desirable for your business? A. The selling conditions, the demands of our customers.

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Q. Suppose a hundred customers want small chickens for this week, does that mean that the same hundred customers will want the same kind of small chickens the next week, the same size? A. Here in New York the size of chickens will vary, they will vary even in one carload, and there is a seasonal variation. As the season progresses the larger proportion of larger chickens, it runs larger. I can best put it this way—

Q. Let us take it from that point—

Mr. Rice: Let us have a complete answer.

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The Court: We have had an answer, but he wanted to enlarge it.

Mr. Heller: Yes, he answered it, we will come to that in a minute.

The Court: All right, go ahead.

Q. In other words it depends upon the season of the year as to when we get a large crop of large chickens or small crop of small chickens or vice versa? A. Plus the section of the country.

Q. You are at liberty as a commission merchant to buy from whatever source you desire, is that correct? A. Yes.

Q. In other words what comes into the State of New York depends largely on the commission merchants? A. That is right.

Q. In other words they have a right to reject chickens or not to buy certain chickens if they so desire? A. That is right.

Q. You are a commission merchant, is that right? A. That is it.

Q. And you know these defendants are a wholesale slaughter house? A. Yes.

Q. Do you happen to know them? A. Personally I do not know them, no.

Q. But you have heard of the fact they are a wholesale slaughter house? A. Yes.

Q. They buy their chickens from the commission merchants, is that right? A. Presumably, yes.

Q. Yes, and they are limited to buy the chickens that are in the State, is that correct, whatever the commission merchant has to offer? A. Not necessarily.

Q. Assuming that a wholesale slaughter house man needs 10,000 pounds on a Monday, he has to take what the commission merchant may have to offer, must he not? He can go to the commission merchant and buy what he has for sale? A. Yes, he could.

Q. In other words if he wanted 10,000 pounds of chicken he would go down to the West Washington Market if he dealt with some commission merchant down there, wouldn't he? A. Yes.

Q. And he would get 10,000 pounds of chickens, whatever chickens he wanted? A. Of whatever he wanted.

Q. By picking from whatever was in the State at that time? A. No, not necessarily.

Q. Then how would he get his 10,000 pounds of chicken? A. If he didn't like the New York market he has the Philadelphia market to go to,

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and he has the Newark market available to him, and he can get some truckman, some one of these overnight truckers to go to other places and get him what he wants if he can't get what he wants here.

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Q. Suppose he needed 10,000 pounds of chicken on Monday at ten o'clock, when he comes down to the West Washington Market, would he have to take whatever is there? A. If he came down Monday and wanted 10,000 pounds—when he came down to the railroad at ten o'clock or what?

Q. Now a man needs merchandise and he has no other sources and no other States to buy from and he comes down with his truck to a regular market, is he limited in taking from whatever chickens are there? A. Naturally.

Q. He has no alternative, has he? A. No.

Q. He does not control as to what comes in and what goes out? A. No.

Q. The commission merchant does that? A. Presumably yes.

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Q. Now there are certain designated markets which are known as States from where the bad chickens come from, is that correct? A. Some States run worse than others.

Q. Well, there are certain particular States are there not? A. Yes.

Q. Do you happen to know of some of them? A. Nebraska and Iowa run a lot of poor stuff into New York.

Q. Well, isn't it a fact that three-fifths of all the culls that come into New York City come from the States of Missouri, Kansas, Illinois and Oklahoma? A. What are those States again?

The Court: Read it.

(Reporter reads the last question.)

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Q. Is that right? A. That has not been my experience.

Q. Now where was your experience any greater than the Government experience in computing these figures? A. I cannot tell you that. Are you talking about culls or sick cars?

Q. Culls. Would you take a statement from the Senior Economic Division of the Agricultural Department, that is the Bureau of Agricultural Economics of the Department of Agriculture as correct? A. Yes.

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Mr. Rice: Now I object to the form of the question. We have no objection to introducing this document in evidence, in fact we want it in.

The Court: I will overrule the objection.

Mr. Rice: Exception.

Q. Does it not remain a fact that it is up to the shipper as to whether or not he wants to buy these culls? A. Yes.

Q. Now a cull is not always a sick chicken, is it—yes or no? A. What do you mean by cull?

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Q. That is exactly my word, is a cull always a sick chicken or not? A. Well, different people have different definitions of the word cull.

Q. In other words your definition might be different than mine? A. Yes.

Q. Well, would you take this definition given by the Government as the correct definition; it is fit for human food, but which may be thin, lacking vigor or deformed or blemished in such a way as to render it salable only at a discount? A. We consider that an undesirable or second.

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Q. Well, is that fit for human consumption?

A. Yes, but the Government's definition does not necessarily mean the trade's definition. For instance, you take a grade A egg, in New York. Well, there are eight different states that give a grade A egg different descriptions or definitions. That may be the Government's definition of a cull, but it is not the trade's term.

Q. It is not yours? A. Or the trade's.

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Q. Do you know that the Government has gotten this information from the trade? A. I cannot tell you, was it the New York trade or some other trade?

Q. Well, will you take now as correct the definition of cull? A. Yes, the cull to my mind would be the same as an undesirable.

Q. But it is still fit for human consumption? A. Yes, with that definition.

Q. Now you characterized certain conditions that existed prior to the 1926, on direct examination. A. Yes.

Q. As to inspections for instance, did you not? A. Yes, sir.

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Q. Now as I understand it you first came into this business in the year 1927? A. That's right.

Q. Where did you get the information with reference to the year 1926, and prior thereto?

A. At that time there was a Mr. Sorley that inaugurated this Inspection Service. I became interested in the poultry business through him. I had a position at that time that gave me plenty of leisure and I spent a lot of time with him.

Q. And who is Mr. Sorley? A. He was the originator and general manager of the New York Live Poultry Commission Merchants Association.

Q. And he imparted certain knowledge with reference to conditions existing in the year 1926, to you? A. That's right.

Q. Now you are basing your opinion today as an expert of what he told you, yes or no? A. No.

Q. What else are you basing your opinion upon as to what happened in 1926? A. Observation.

Q. Now were you in the chicken business before 1926? A. I was not in the business myself, but I spent a lot of time in it. I was in a lot of cars and I saw them unloading and I saw the type of feed used.

Q. What did you do in 1926? A. I worked with an electrical truck manufacturer.

Q. Will you give us the name, please? A. The Ward Motor Vehicle Company.

Q. And what were your duties with that company? A. Electrical engineer.

Q. And what were the functions of that company? A. Installing electrical equipment.

Q. Where? A. In fleet truck users.

Q. In the City of New York? A. Not necessarily, no.

Q. You went out to sell for them? A. No.

Q. Well, what did you do for them? A. I installed electrical equipment and I made surveys of actual conditions of electrical truck users and I recommended equipment.

Q. Did you do the manual work? A. No.

Q. You did the investigation work? A. Call it surveys.

Q. In other words, you were trying—— A. Consultant work.

Q. I beg your pardon? A. It is more consultant work.

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Q. Consulting work? A. Yes.

Q. Consisting of engineering work? A. Yes.

Q. With reference to cars? A. Yes, sir.

Q. And how long were you employed in that employment prior to 1926? A. Four years.

Q. That is, from 1922 until 1926? A. That is right.

Q. And that had something to do with electricity, electrical cars? A. Yes.

Q. Equipment? A. That is right.

Q. Is that correct? A. That is right.

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Q. And prior to that time with whom were you employed? A. Transit Commission, New York State.

Q. And the nature of that work? A. Mechanical engineering.

Q. For how long a time? A. A year.

Q. That had nothing to do with the poultry business? A. That is right.

Q. Have you observed from the time of your employment with this electrical company the functions of the poultry industry from day to day? A. No.

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Q. Prior to 1926? A. Not from day to day.

Q. In your spare time? A. Yes.

Q. Sundays? A. No.

Q. You were working five or six days a week? A. No.

Q. How many days a week did you work? A. Some weeks five, sometimes one.

Q. You were on a part time basis? A. Full time.

Q. What did you do with the rest of the time? A. Whatever I felt like, and whatever interested me at the time.

Q. You mean the electrical company was paying you for observing other features or other economic conditions? A. They were paying me for being at their beck and call whenever they needed me.

Q. But you had your time to yourself? A. That is right.

Q. You did not have to do any work for the company, although they paid you for it? A. That is right.

Q. And during that time you were interested in the live poultry industry? A. That is right.

Q. And you consulted with the gentleman you spoke of? A. Yes.

Q. I suppose you contemplated going into the poultry industry at that time? A. Yes.

Q. For a period of five years before? A. No, not for five years.

Q. For how many? A. Two years.

Q. And in 1925 and 1926? A. Yes.

Q. You made a study of the industry then? A. Yes.

Q. Is that correct? A. Yes.

Q. You were particularly interested in the inspection service at that time? A. Not particularly, no more so than other phases of it.

Q. Well, why were you interested in the inspection service? A. Because I happened to be friendly with a man who at that time was the chief veterinarian in charge of the Inspection Service, I had gone to college with him, and I was quite friendly with him.

Q. I understood you to say there was no inspection service before 1926. A. There was an inspection service then; it was inaugurated in 1926.

Theodore J. Tottis—By Govt.—Cross

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Q. I am talking about prior to 1926; do you now say that there was an inspection service prior to 1926? A. Not that I know of.

Q. But nevertheless you spoke to this gentleman about an inspection service prior to 1926? A. Not about an inspection service, about poultry business in general.

Q. So you know nothing about the inspection service prior to 1926? A. Yes, by hearsay, just what I have been told about conditions that existed then.

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Q. From whom did you hear that? A. From this chief veterinarian that assisted in the inauguration of the original inspection service.

Q. You have no knowledge as to what happened prior to 1926, yourself, except what he explained to you? A. Yes.

Q. Is that correct? A. Of course, since then, since I have been in the poultry business, I have talked to a lot of different people that have been running cars for years and years, and they have explained to me about the conditions that existed prior to the inspection service.

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Q. Do you consider yourself as an economist? A. No.

Q. You claim merely that you have a peculiar knowledge about this industry, is that correct? A. That is right.

Q. Have you tabulated as to how many chickens came in last year, came in and were sold in the City of New York? A. Individual chickens?

Q. Yes, or the poundage? A. No, I have the Government reports, that is all.

Q. In other words, your expertness consists of a study of Government reports, is that correct? A. Partially.

Q. Do you know how many chickens were raised last year? A. Raised?

Q. Yes, on the farms. A. No, that I do not.

Q. Do you know whether it was greater last year than the year before? A. It was about 5 per cent. less.

Q. Less than the year before? A. I believe so.

Q. Do you know whether chickens that were raised and sold last year were greater in the year before? A. Offhand, I do not remember those figures.

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Q. What makes that figure so clear in your mind, what makes you remember that last year there were 5 per cent. less than the year before? A. For the same reason that I remember that this year there are 10 per cent. less poultry, because it just happened to stick in my mind.

Q. Are you sure that assumption is correct? A. Which assumption is that?

Q. That they raised more chickens, or there were less raised last year than the year before?

A. And 10 per cent. this year than last year.

Q. You are sure about that? A. Fairly.

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Q. Are you certain? A. I am not interested enough to worry about it particularly.

Q. We want to worry about it because these defendants are being charged with a crime, and the jury are entitled to know. Will you now try to remember it with certainty, if you can? A. I could not with certainty.

Mr. Rice: If your Honor please, may I inquire as to the relevancy of this line of examination?

The Court: Yes; he is examining him as to his qualifications as an expert.

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Theodore J. Tottis—By Govt.—Cross

Mr. Rice: Very well; if it is for that purpose, I have no objection.

Q. Now, isn't it a fact that in the year 1933 more chickens were raised and sold than in 1932 or 1931? A. I wouldn't be sure of that.

Q. You wouldn't be sure it was not so, would you? A. I have no recollection of it at the present time, to be definite.

953

Q. You gave testimony on direct examination that certain conditions affected the poultry industry, and there has been a decrease from year to year. A. Decrease in the consumption of live poultry in New York, not generally throughout the United States, or what was raised on the farm.

Q. On what do you base that? A. On the Government report figures.

Q. What is that? A. On the Government reports again.

Q. Let me read to you something about a Government report and see whether you agree with this statement or not——

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The Court: Wait a minute, what report is it?

Mr. Heller: United States Department of Agriculture, Bureau of Agricultural Economics, Washington, D. C., estimates of chickens for the years 1931 to 1934.

Mr. Rice: What year?

Mr. Heller: 1931 to 1934.

Mr. Rice: Oh, very well.

Q. Do you agree with this statement: "More chickens were raised on farms last year than in 1932"? Do you agree with that? A. Than were raised on the farms, on the farms in 1932?

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Q. Yes. A. Well, they say it of farms——

Q. Just answer me, whether you agree with that statement or not. A. That statement is not clear to me. Do they mean on farms actually hen-hatched or does it include the hatchery report on commercial chicks?

Q. Will you just answer my question?

The Court: He is asking you a question.

Mr. Heller: I am not on the witness stand, your Honor.

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The Witness: I do not know what you mean by that question. I do not know what they mean by it.

Q. I will take that for an answer. A. Take it for an answer, if that includes——

The Court: All right, one minute. No question.

Q. Do you agree with this statement, "The number of chickens raised on farms in 1933 is estimated at 662,550,000, which is 1 1/10 per cent. more than in 1932, and 5 3/10 per cent. more than in 1931." Do you agree with that? A. Yes, that I will.

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The Court: That is taken from the same——

Mr. Heller: Same paper that I am reading from.

Q. Do you agree with this statement, "The number of chickens sold from farms in 1933 is estimated at 387,784,000, being 3 4/10 per cent. more than in 1932 and 3 per cent. more than

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in 1931 and 5 1/10 per cent. more than the average for five years, 1926 to 1930''? Do you agree with that statement? A. Why, I have no reason to disagree, if it is a Government report. I am not acquainted with the poultry conditions through the West and the Pacific Coast or down South. I merely know about the conditions around in the metropolitan district here.

959

Q. In preparing yourself as an expert don't you think that you should be familiar with this information that the Government is giving clearly to everybody? A. Not necessarily.

Mr. Rice: I object.

The Court: He has answered.

Q. Do you know that farmers have consumed more chickens last year than the year before? A. Yes, that I do know.

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Q. Wouldn't that be an element to take into consideration as to whether or not more chickens can be sold to the different markets? A. No, because the farmer's economic condition will have a bearing on that.

Q. You mean if a farmer has no money he has to eat his own chickens, is that right? A. That is correct, he hasn't the money to go out and buy meat.

Q. And therefore he sells less, is that correct? A. That is right.

Q. And that would affect the market all over the United States, wouldn't it? A. Not necessarily.

Q. Why not? A. Because if he raised more, even though he did eat more, there would still be more available for the market.

Q. Assuming he raised much. A. That is different.

Q. Then it would affect the market, would it not? A. If it would be an appreciable volume.

Q. Yes, now, you have no presentation of statistics to tell us exactly the standing of the situation from year to year, have you? A. No, I have not.

Q. Isn't it also a fact that a farmer sells his chickens mostly when he needs money? A. No, not necessarily.

Q. Isn't it a fact that the farmer before Christmas, when he needs some money for Christmas, goes out and sells more chickens at that particular time? A. Possibly.

Q. And that would tend to vary the sale of chickens from month to month depending on when the farmer sells his chickens? A. Well, the farmer will sell his chickens whenever he needs to, whenever he wants money, or, if he is able to ship them to market before their grade changes so he will get less money.

Q. Did I understand you to say that Newark gets better grade chicken than New York? A. Not necessarily. I said there were more cars of top market chickens—a larger proportion of the total cars that came into Newark bring top market than they do in New York.

Q. What do you mean by top market? A. Well, a market is quoted this way for instance these days; Indiana grade 17 cents; fancy western 16 cents; western 15 cents; average 14 cents. There will be more cars sold in the Newark market or a larger percentage of their total cars will bring the 17 cents market price than will be sold in the New York market.

964 *Theodore J. Tottis—By Govt.—Cross*

Q. Now didn't I understand your testimony on direct examination to be that Newark gets a better class of chickens? A. No, a larger percentage.

Q. A larger percentage of chickens? A. A larger percentage of their total supply is top market than the New York supply.

Q. And they had no inspection there? A. That's right.

Q. And we have inspections? A. That's right.

965 Q. Now isn't it a fact in determining what percentage of culls come into New York City you must take into consideration the quantity of good chickens that come into the City of New York? A. Not necessarily.

Q. Wouldn't it vary with the amount of chickens that come in? A. Let me explain it this way; you can get an ordinary grade or an ordinary car of just fair poultry and they will have no culls in it, if you call it culls or poultry that is unfit. Then, you can get a car of ordinary poultry that will run no culls and you can get a car of your fancy poultry that will run a thousand pounds of culls.

966 Q. Wouldn't you be more apt to find more culls in the city or state where more chickens come in, isn't that right? A. Depending on the grade of poultry that they handle.

Q. Assume that they come from states that usually ship good poultry, except the four states that I mentioned, you would find some culls? A. Yes.

Q. And you would find some unfit chickens? A. Yes.

Q. Now the greater number would be found wherever the greater quantity is received? A.

Not necessarily. You take a city like Chicago where the shipper knows that his poultry is going to be graded and the culls destroyed. Chicago runs a considerable volume of poultry, but the percentage of culls, on account of that inspection, is negligible, compared with a city like Newark.

Q. Now, are chickens inspected at the source of shipment or at the source of receipt? A. The B. A. E. inspected—

Q. For New York purposes. A. At this end of the market.

Q. So that nobody knows what is in the car-load when it leaves the source, to destination? A. The shipper knows.

Q. Does the shipper examine every chicken, whether it is unfit or fit? A. It is his business to.

Q. The shipper on the other end? A. Or his employees, yes.

Q. Examines the chickens? A. Yes.

Q. Now, are they qualified to do that? A. Certainly.

Q. Anybody is qualified to inspect chickens in that business? A. I imagine they have a fair working knowlege of it.

Q. And they could ascertain whether or not the chickens were fit or not at the time they shipped them to New York? A. With the exception of any disease that they may contract in transit.

Q. That they would know about? A. No.

Q. Well, now suppose a chicken had a cold, that would not deter them from shipping chickens? A. Yes, it would.

970

Theodore J. Tottis—By Govt.—Cross

Q. Isn't it a fact that the inspectors in New York pass chickens for examination that have colds? A. Yes, but you see——

Q. Answer yes or no.

The Court: No, let him answer.

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The Witness: He will notice a few chickens in his car that have colds and he knows that New York is a fourth morning delivery and unless he gets those chickens out he is going to have a considerable quantity sick at the time that it arrives in New York, four days later, it is to his financial advantage to keep that stuff out of his car.

Q. Is it possible for a chicken to contract the cold in transit? A. Yes.

Q. It will spread to other chickens? A. Possibly.

Q. And still it would be slaughtered in New York for immediate consumption? A. Not if it had reached an advanced stage.

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Q. You mean when it is dying? A. No, when it has reached the gaping stage.

Q. Are you familiar with the cross marks that they put on chickens "Passed for immediate consumption"? A. Yes, you mean the red crosses on the coops.

Q. Now, is this the label that they put on the boxes after they have been inspected? A. Yes, that is the label (witness examines label).

Mr. Heller: I offer it in evidence.

Mr. Rice: No objection.

The Court: It will be received.

(Marked Defendant's Exhibit B in evidence.)

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Q. Do you know that these inspection slips merely recite the fact that the particular poultry contained in the coop or crate were from a lot which was approved? A. Yes.

Q. It does not necessarily mean that each and every chicken was inspected? A. It should be.

Q. You heard Dr. Ives testify yesterday? A. I did.

Q. Do you remember him saying that the inspector is required to at least feel 100 chickens and his average is 200 out of 4,000? A. Yes.

974

Q. And did you hear him say that he may observe with his eyes some other chickens during the course of his inspection, as to whether or not they had any visible disease? A. That's right.

Q. Do you remember him saying you cannot see what was in the back? A. I disagree with him with some of these statements.

Q. Do you remember him saying that, that is saying that.

Q. You are not an inspector, are you? A. No. all I am asking you? A. Yes, I remember him

Q. You don't do any inspection work, do you? A. No, but before we put a Government inspector into a car I inspect every car myself.

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Q. For your own firm? A. That's right.

Q. You have a peculiar system of doing business. A. I don't know whether you could call it peculiar or not, I call it good.

Mr. Heller: So do I.

Q. But it is limited to your business as far as you know, is that correct? A. Yes, that is correct.

Q. It is not uniform, that you know of? A. No.

Theodore J. Tottis—By Govt.—Cross

Q. Did you hear him say you cannot detect grave diseases such as cancer or cholera until a chicken is opened? A. Yes.

Q. That is correct, isn't it? A. That is right.

Q. So when you told us before that the only way you can ascertain that was by—— A. A post-mortem examination.

Q. By a post-mortem examination, so that the purchaser, as far as he is concerned, could not tell whether a chicken has cholera or not until they open it, is that correct? A. Yes.

Q. They buy the chickens alive, do they not? A. Yes.

Q. That is, so far as the defendants herein are concerned? A. Yes.

Q. They are brought into their place of business, in this case in Brooklyn, is that correct? A. Yes.

Q. Then the purchaser or the chicken dealer buys those chickens, is that correct? A. That is correct.

Q. And they give them to what they call a shocht, and he kills them, is that correct? A. That is right.

Q. They could not detect whether or not a chicken has cholera until after the housewife opens the chicken? A. Cholera you cannot.

Q. And if the chicken had a cold it would make no difference, if it weren't a severe cold? A. No, not if it is in the sneezing stage.

Q. Well, anything might happen between the time he buys the chickens in the West Washington Market until the time that they are transported to Brooklyn and arrive at their place? A. No, not necessarily.

Theodore J. Tottis—By Govt.—Cross

979

Q. A chicken having a slight cold, it could become more severe in 24 hours; will it not? A. It will take over 24 hours for it really to become a gapper.

Q. Is there any difference between a cold in a chicken and in a human being? A. That I can't tell you.

The Court: He hasn't qualified as to human beings.

Mr. Heller: I take it he is a human being himself.

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The Court: I understand, but he hasn't qualified as to knowledge of medicine or colds.

Mr. Heller: I do not think we need expert testimony on that ground; we all have colds.

The Court: I do not want to discuss that.

Q. Do you know that it is possible for a chicken with a slight cold, for it become more severe in 24 hours? A. Certainly.

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Q. It might become so severe as to make the chicken unfit for human consumption? A. I do not think it would reach the gapper stage in 24 hours.

Q. Chickens aren't always sold within 24 hours, are they? A. Oh, no.

Q. There may not be enough customers, is that right? A. You can always get a customer.

Q. You mean to give it away? A. Yes.

Q. Did you ever work in Chicago? A. No, sir.

Q. Did you ever work in any other State? A. In the poultry business?

Theodore J. Tottis—By Govt.—Cross

Q. Any business. A. Yes, I have worked in other States.

Q. Prior to 1926? A. No.

Q. After 1926? A. Yes.

Q. For what concern? A. An electric truck company.

Q. That is between 1926 and when? A. I was out in Detroit for a month, I was down in Philadelphia for several weeks.

Q. What was the name of this concern that you say you were working for? A. The Ward Motor Vehicle Company.

Q. During what years? A. 1926.

Q. And during the year 1927? A. No, I was working in the poultry business in 1927.

Q. What is the name of that concern that you worked with? A. Ward.

Q. I mean the poultry concern. A. Dexter Food Company, and Salthe Poultry Company.

Q. How long has this Dexter Food Company been in business? A. As the Dexter Food Company, about two years.

Q. Only been in business for two years? A. This new incorporation of ours has been in existence two years.

Q. You mean there was a corporation that was prior in existence to this one? A. That is right.

Q. So you worked for a different corporation prior to working for the Dexter Food Company, Inc.? A. Yes.

Q. What was the name of this other concern? A. The Dexter Poultry Company.

Q. Were you an officer of the Dexter Poultry Company? A. Yes, sir.

Q. Also a stockholder? A. Yes.

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Q. Now, isn't it a fact that they made a composition settlement with their creditors and were bankrupt? A. That is right.

Q. Then you formed this new incorporation? A. Correct.

Q. With the same name, Dexter Food Company? A. That is right.

Q. And you have been in that business since then? A. That is right.

Q. You testified as an expert with respect to the expense of the operation of slaughter houses. Will you tell the jury just what you did in your study to give the expert testimony that you gave? What did you do in order to be able to give that testimony? What do you base it on? A. Wait a minute; I did not get that first part of your question.

986

(Reporter repeated last question.)

A. (Continuing.) Well, as I recited before, I went through every single operation in the slaughter house.

Q. How many slaughter houses did you take into consideration in giving the estimates that you gave on direct examination? A. The only estimate that I gave was the cost, that the cost was between 50—that the labor cost was about 50 to 60 per cent.

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Q. How many plants or slaughter houses did you examine in order to arrive at that figure? A. That figure covers about 14 slaughter houses in the Bronx.

Q. Wholesale slaughter houses? A. Yes, some of them wholesale and retail.

Q. I beg your pardon? A. Some of them wholesale and retail.

Q. You grouped them together? A. No, some of the slaughter houses conduct both wholesale and retail business, and some wholesale business.

Q. Yes, but I say, you studied the two as one, did you not? A. That is right.

Q. And what are the names of the owners of the slaughter houses that you considered in making that estimate, and when did you consider that? A. Oh, we recently had a little meeting in the Bronx of the various slaughter house operators, in which each of them presented their cost of operation and what their actual operating expense is, and it was discussed quite openly at the meeting, and all of those men up there gave us their figures that labor cost was between 50 and 60 per cent. of their total expenses.

Q. When did that meeting take place? A. Within—since the—the specific day I couldn't tell you.

Q. What month? A. About two months ago.

Q. You called a meeting together of all the slaughter house people two months ago to determine that question? A. There was a meeting called. I did not call it individually. It was not called to determine just that one question.

Q. There was a meeting two months ago? A. That is right.

Q. And you were present? A. That is right.

Q. And just what was said? A. I couldn't repeat it offhand.

Q. Did one of the market men get up and say, "It cost me 50 to 60 per cent. for labor," is that how you arrived at your figure? A. Approximately. Some of them stated what their total cost was and what their labor cost was.

Q. What was the occasion for making that statement? A. We were considering merging

various companies together up there, and we wanted to know just how each one stood and what their financial condition was, and whether it would be economically sound to merge the various companies.

Q. Did you ascertain from each particular member that was present as to how many employees he has in his employ? A. We had that information at the time.

Q. Did you have that information? A. It was available for me and I saw it.

Q. Was that in written form? A. Some of it was in written form and some of it was verbal.

Q. How many statements did you examine? A. A dozen, 12 or 13.

Q. Just what did you find? Do you remember any of the names? A. Concerning what?

Q. Concerning the number of employees. A. Offhand, I was not interested enough to remember them up until this time. As soon as we found out that mergers were out of the question, why, I kind of forgot about it, but I can give you a fair idea now of how many employees the various slaughter houses have up there.

Q. Those that were present, did you examine just how many employees each member had, what their wage was, how many hours they worked? A. We had that information at the time, yes.

Q. Talking about you? A. It was available to me at the time.

Q. And you read each and every statement? A. That is right, concerning those items.

Q. And you computed the percentage to be correct? A. That is right.

Q. Is that correct? A. That is right.

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Theodore J. Tottis—By Govt.—Cross

Q. And that was for the purpose of a merger?

A. That is right.

Q. A merger with what? A. Merger of slaughter houses.

Q. For what purpose? A. Purpose that all mergers are for, to try to operate more economically.

Q. Control the prices? A. No.

Q. Control the output? A. No.

Q. Control the customers? A. No.

Q. Control the price? A. No.

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Q. For no other purpose? A. That is all; for no illegal purpose.

Q. Well, for what lawful purpose? A. To cut down the operating expense, operate more efficiently.

Q. Is it necessary to pay 50 to 60 cents on a dollar for labor, is it necessary? A. Not in my opinion.

Q. You mean it can be cut down? A. I think so.

Q. Is there such a thing as a union in this poultry business? A. There is.

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Q. You know every employer must sign a contract? A. That is right.

Q. And you are bound by the wages? A. If you sign a contract.

Q. And you must sign a contract? A. No. We locked our unions out two days ago and they are back on a temporary 48-hour truce, and if they do not come to our terms Tuesday, they are going to be out.

Q. You mean you are bucking the union? A. Certainly.

Q. You want to pay less? A. No, we want to pay the original scale that we have been paying, and we don't want to pay more.

Q. Does the Code provide for paying more?
A. No.

Q. Didn't your requirements require the payment of more than what the Code requires? A. Will you say that again?

Q. Under your contract with the union? A. That is right.

Q. Does that call for paying more than what the Code requires? A. Yes, it is higher than the Code wage.

Q. It is a higher wage? A. Than the Code wage.

Q. In other words, all people that have signed a union contract are paying more than what the Code requires? A. Some of them have union employees that are about the minimum wage of the Code. The Code only specifies a minimum wage.

Q. Right. Now, your union contract is in excess of that minimum wage, is it not? A. I would not say it is in excess. I would put it this way: We had a contract where our shohtin were on a weekly wage. The Commissioner of New York City appointed Judge Rosalsky as a mediator, at the request of the Rabbinical Board of New York, to try to control output of shohtin so that they should not kill so much poultry, and put more of them to work. So Judge Rosalsky as mediator, handed down his decision that shohtin should be paid at the rate of half a cent a pound, with a minimum wage of \$45, and not to slaughter in excess of 12,000 pounds a week. Our shohtin have been slaughtering more than that. Well, to accept that decision it would increase our wages. It would not increase the wages per man, but it

1000 *Theodore J. Tottis—By Govt.—Cross*

would increase the cost of slaughtering the total volume of poundage; in other words, instead of three men, we would have to employ five and a half or six.

Q. And you have a serious objection to that?

A. And we have an objection to it.

Q. In other words, you do not want to conform with Judge Rosalsky's ruling, is that correct, if possible? A. That is right. At least—I will put it this way, we have not, up to this time.

1001 Q. As a matter of fact, it would be a drain on your pocketbook in order to conform with that requirement? A. Naturally, when your expense goes up it is more of a drain.

Q. And do you know that a similar ruling was made by Mr. Peterson, that you should pay them a half a cent a pound? A. Mr. Peterson does not control our pocketbook.

Q. But didn't he rule that they are entitled to that one-half a cent a pound? A. No; he merely stepped in as an arbitrator.

1002 Q. And didn't he find for the shohtin? A. No.

Mr. Rice: If your Honor please, I have no objection to proving this witness' character and veracity thoroughly, but I cannot conceive what this shohtin controversy has to do with the issues of this case.

The Court: No.

Mr. Rice: Or as to the veracity or integrity of the witness.

The Court: I think that is so. We are not trying out that particular phase.

Theodore J. Tottis—By Govt.—Cross

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Mr. Heller: Here is my object in questioning—

The Court: I know, but you are talking about some union difference, difference between the union and the employees, which has been either arbitrated or discussed, and we are not concerned with that at all.

Mr. Heller: Coming up to the next point—

The Court: Get to your next point.

Mr. Heller: I am right up to it now.

The Court: But that point is passed. It has nothing to do with this case.

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Mr. Heller: It is connected with the next question.

The Court: I do not get that at all.

Gentlemen of the Jury, do not allow anybody to talk to you about the case, do not discuss it between yourselves, and do not form any opinion until it is finally submitted to you. Return at two o'clock.

(Recess until 2 P. M.)

(Met pursuant to adjournment at 2:00 P. M.; present as before.)

1005

THEODORE J. TOTTIS, resumed the stand.

Cross examination (continued) by Mr. Heller:

Q. Can you give us the names of those market people whose records you have inspected for the purpose of ascertaining the costs of labor? A. I have either inspected them or received them verbally, and yes, I can give you their names.

1006 *Theodore J. Tottis—By Govt.—Cross*

Q. Will you do so, please? A. Ornstein & Bromberg—

Q. What is the address? A. I cannot tell you the addresses.

Q. In the Borough of the Bronx? A. Yes, in the Borough of Bronx. Van Ness Poultry Company, S. & K. Poultry Company, Bathgate Live Poultry, Intervale Live Poultry, Manne Brothers, Sokoloff, Siegal and Zarkin, S. S. & B., Panish, and Salthe.

1007 Q. You say you received that information verbally from them? A. I either saw the figures, some of the figures were prepared by accountants, some prepared by themselves, and some were verbal.

Q. And you did not personally check the accuracy of such figures? A. No, I did not.

Q. You took them for whatever they were worth? A. Yes, because they were in line and ran fairly consistent.

Q. The only figures you received were from people doing business in the Borough of the Bronx? A. That is right.

1008 Q. That is two months ago, approximately? A. That is right.

Q. Have you analyzed the cost of operating a slaughter house in the Borough of Brooklyn? A. No.

Q. Is it possible that there may be a little variation between the Bronx and Brooklyn? A. It is possible.

Q. Is it possible that there may be a variation in salaries as far as the people are concerned, that one person does not give the same salary as another, is that right? A. Certainly.

Theodore J. Tottis—By Govt.—Cross

1009

Q. One employer may pay his bookkeeper \$20 and another employer may pay his bookkeeper \$40, is that right? A. That is correct.

Q. Some of the executives or members of the firm may draw \$35 a week, and others \$70 a week? A. That is correct.

Q. All of these factors must be taken into consideration as to the cost of overhead and operation of the plant? A. That is right.

Q. And there is a distinction between the cost of operating a slaughter house and the cost of operating a commission merchant's business? A. They are two different types of dealers entirely.

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Q. In other words, when you gave your opinion that when someone pays less for salaries than another, did you have in mind a concern known as a slaughter house or as a commission merchant? A. Slaughter house.

Q. There is no question about that, that the price is fixed by the commission merchant, is there? A. What is that?

Q. Of poultry? A. That is a much mooted question, as to how the price of poultry is arrived at.

1011

Q. Isn't it a fact that the commission merchant asks a certain price, and if a slaughter house wants the poultry he must pay that price? A. He may not sell it for a fixed particular price, he may sell it at a cent under, or maybe two cents below the market, and a special price is arrived at when the poultry is bought.

Q. But the penny over or under the market price is the market price which is fixed by the commission merchant? A. It isn't fixed by the commission merchant.

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Q. Do you really know how prices are fixed?

A. Yes.

Q. Let us hear how prices are fixed, who fixes them. A. The price is made between the buyer and the seller.

Q. Are you sure that is the correct way of determining the price? A. That is the way it is done at the present time.

Q. Is that the way it was done a month ago?

A. Yes, sir.

1013 Q. Is that the way it was done a year ago? A. Yes, sir.

Q. Let me read to you from a Government bulletin known as "The wholesale marketing of live poultry in New York City," the following statement, and tell me whether that isn't the way the price is fixed: "The method of arriving at wholesale prices of live poultry on this market is briefly as follows: A representative of a private price reporting agency of high standing visits West Washington Market between 12 o'clock noon and 1 P. M. each day of the week except Saturday and Sunday for the purpose of obtaining from the members of the trade a report of their morning's transactions"——

1014

Mr. Rice: What page are you reading from?

Mr. Heller: Page 29.

Mr. Rice: What date is that pamphlet?

Mr. Heller: May, 1929.

Mr. Rice: 1929?

Mr. Heller: Yes, that is the date of this pamphlet.

Mr. Rice: Thank you.

Q. (Continuing.) —"He is usually met by a group of buyers and sellers who surround him,

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and the more aggressive ones immediately try to impress him with their ideas of what the prices for the different classes of poultry should be. Sometimes the ardor manifested in making their point takes on near mob proportions, but such extreme demonstrations are not frequent, and the dickering although usually loud and boisterous, is ordinarily orderly. Every dealer is likely to have some personal motive for the position he takes in the interpretation of the market or for the price he reports for the transactions which he may claim he has made because of his peculiar commitments, he exerts himself to have the price of a given class of poultry quoted higher or lower as the circumstances may suggest."

1016

Is that a correct statement as to how prices were fixed in May, 1929? A. I absolutely disagree with that.

Q. You disagree with that? A. Absolutely.

Q. That never took place? A. Not that way.

Q. And it does not take place in the same manner? A. No.

Q. You are positive about that? A. Positive.

1017

Q. You say then that the prices are fixed by the buyer and seller? A. That is right.

Q. Do you mean it is fixed by an economic law, such as the law of supply and demand? A. Yes.

Q. In other words, when there is a greater supply the price goes down? A. That is right.

Q. And when there is a scarcity of supply the price goes up? A. Naturally.

Q. And the commission merchant knows how much he has on hand, is that correct? A. Yes.

Q. If he is over-stocked he is glad to get rid of it at any price? A. Not necessarily, because the other commission merchants may be short. It is

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the entire market that should be over-supplied and not an individual commission merchant.

Q. That is what we are talking about, the entire market, generally speaking. If the market is over-flooded or has an excess of supply the price goes down? A. That is right.

Q. He is glad to sell it for whatever he can get? A. I would not say that he would sell for whatever he could.

1019 Q. Rather than destroy the poultry, he is glad to get rid of it? A. No, he can carry it in the car on the track for a day, if the car is healthy, or two days.

Q. And if the supply is just as great the next day and there is a greater demand, the price still would go down? A. If he can estimate what demand is going to be made—what the demand is going to be two days hence——

Q. So—— A. It varies according to conditions.

1020 Q. You may proceed. I will take whatever explanation you have to say for an answer. A. The conditions are variable in the live poultry market from day to day and from hour to hour. I have seen occasions when the market——

Q. Just a minute. I am not interested in your personal transactions.

The Court: He has answered you now. That is the answer.

Mr. Heller: I beg your pardon?

The Court: He has answered you. You do not need to take the special occasion.

Q. How often do chickens come into the city?

A. You mean on car and truck?

Q. That is right. A. General movement?

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Q. Every day. A. At the present time, five days a week.

Q. Once a day? A. How do you mean? They continue to come in each day.

Q. All day long? A. That is right, within reasonable working hours.

Q. But all day long and every day of a five-day week, is that right? A. Yes, during business hours.

Q. And the commission merchant places his orders for those carloads, does he not? A. Yes, he places his orders.

1022

Q. How long before the chickens come into the city does he place his order, how long before? A. Length of time it requires to transport it in.

Q. Does he place an order two days in advance? A. I have seen them placed three hours in advance and I have seen cars arrive from shippers that were consigned to nobody and after the car arrived tried to get a receiver to handle the poultry,—the receiver handled it for them.

Q. Are these individual cases you are talking about? A. It is conditions that occur every day continually.

1023

Q. Do merchants, generally speaking, out of the 21 commission merchants, do 10 of them or say 15 of them place their orders two days in advance for their needs? A. They don't place their orders that way. If poultry is received on a consignment basis, the shipper has a particular receiver he does business with. When he accumulates a car of poultry, he ships it so it will arrive in New York any day except Saturday or Sunday.

Q. How many of the 21 commission merchants buy their merchandise on consignment? A. That

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figure nobody could answer for you, because it is your own personal business.

Q. Don't go into speeches. Just give me your answer. You don't know; no one knows? A. No one knows.

Q. How many buy on their own credit of the 21? A. No one knows that answer, either.

1025

Q. You would have to go from merchant to merchant to ascertain whether or not a particular shipment came in on consignment or to his credit, is that correct? A. Yes, if you wanted to know you would have to ask him.

Q. Have you gone from merchant to merchant and ascertained how many shipments came in on consignment and how many came in on their own credit? A. Not by asking the commission merchant, but I have ascertained that.

Q. Please, just answer the question.

The Court: You asked him if he ascertained it and he is answering you that he had not ascertained it by going to the merchants, but he has ascertained it in some other way.

1026

Q. How did you ascertain it? A. By looking at the waybills of the railroad.

Q. You have access to all the waybills of the railroad companies? A. At times.

Q. You have such access? A. When I have been interested in it.

Q. How long ago? A. Oh, at least once a week.

Q. Every week you go down to the railroad and you look at the consignee's bill, is that correct? A. I do.

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1027

Q. And what are the railroad companies you go to? A. Various railroads that ship live poultry where I have access.

Q. Please mention their names and addresses.

A. I don't care to.

Mr. Heller: I insist that he give an answer, your Honor.

The Court: What is it you want?

Mr. Heller: I want him to give me the names of the railroad companies, and addresses he goes to and examines these papers.

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The Court: Oh, he will have to tell you what railroad companies.

The Witness: New York Central.

Q. That is the only railroad you go to? A. (No answer.)

Q. Have you received permission from the commission merchants to examine those consignee bills? A. No.

Q. Have you received that from any official of the New York Central? A. No.

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Q. Have you somebody in there that is willing to hand you that information? A. No.

Q. You examine it yourself? A. Yes.

Q. What particular place do you examine that? A. Oh, various places. I don't remember them offhand.

Q. Did you examine them last week? A. Yes; I saw them last week.

Q. What place last week did you examine them at? A. I don't know.

Q. You don't know? A. No.

Q. Two weeks ago? A. No.

Q. Three weeks ago? A. No.

1030

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The Court: Don't shake your head.

The Witness: The answer is no.

Q. For what purpose do you go down to examine these bills? A. To find out whether it is paid poultry or commission poultry.

Q. In what way does it affect your business? A. Just curiosity on my part to know what is going on in the industry.

1031

Q. Did you make an arrangement with anybody in particular with the Government to testify here? A. How do you mean, did I make arrangements with them? I have been requested to.

Q. Yes. How did they come to know about you? A. Oh, you will have to ask them.

Q. In other words, they communicated with you, is that correct? A. That is right.

Q. And wanted you to testify here? A. Well, I wasn't told I would testify here. They wanted to know if I would appear before a Grand Jury and explain to them how live poultry is handled through the United States and the Metropolitan District.

1032

Q. And for that purpose you studied certain records, is that correct? A. No, I studied them for my information for normal course of business.

Q. For your course of business? A. To have a general knowledge of the business.

Q. And you are in the Bronx, are you not? A. That is right.

Q. You have no place in West Washington Market? A. No.

Q. How many are in West Washington Market, commission merchants, out of the 21? A. Oh, all but three.

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1033

Q. Three are scattered elsewhere? A. Yes.

Q. One in the Bronx, that is your concern?

A. Two in the Bronx.

Q. Two in the Bronx? A. That is right.

Q. And one elsewhere? A. Yes.

Q. Is it possible for a merchant to sell merchandise at a smaller price and still sell the good quality merchandise that other merchants get more for? A. I did not get that question clear.

Q. Is it possible for a merchant to sell a chicken of standard size and of good quality for a lesser sum than another merchant, is it possible? A. Certainly. Anybody can sell at any price.

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Q. Any man can throw his money out, if he so desires, is that correct? A. That is correct.

Q. And if a man pays less rent and less money for his overhead expenses, it is possible for him to undersell the next competitor, may he not? A. Certainly.

Q. And you could not say definitely that the only element which you must take into consideration in determining whether or not good or bad chickens come into the city is the element of underselling by one competitor as against another? A. That is right.

1035

Q. In other words, there are other elements to be taken into consideration, are there not? A. Besides cost of merchandise, certainly.

Q. A man can lose money if he so desires? A. Certainly.

Q. That would not affect the question of the quantity of culls that may come into the city? A. Yes, that is correct.

Q. Wouldn't you say that the proper regulation with reference to the selection of chickens

1036

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should be at the source rather than at the place of sale? A. Absolutely no.

Q. You say no? A. And if I may explain why——

Q. No, I will let you explain later. Is it possible to grade the chickens at the place of shipment? A. In some cases.

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Q. Why is it impossible to grade them in other places? A. Because the volume of the particular shipping point may be too small. That works out this way: Certain shipping points you can load a full car in a day or half a day, or higher in flush season, as high as four cars in a single day; there are other shipping points where the poultry moves so slowly that the car has to come along, along the railroad, and may have four or five stops at different points in order to make up the carload. The stuff is brought in by small hucksters to the car door, and if there are any poultry rejected, they would have no place to take them at the present time.

1038

Q. Let me ask you this: Give me one State that you buy from. A. Ohio.

Q. You have a representative in Ohio? A. No, sir.

Q. Do you have somebody representing you there? A. No, sir.

Q. You buy directly from someone? A. Directly from the shipper. He does not represent us, he sells to us.

Q. On occasions you have gone down to see him? A. That is right.

Q. Is there anything to prevent you from asking him to grade the chickens according to weight? A. Nothing whatever.

Q. You can make such a demand? A. Certainly.

Q. Well, wouldn't that be the proper place to grade the chickens? A. For a man that could ship a full carload out of one point, it would be, and probably that is where they will be graded in the future. If it was along a railroad or in a part of the country where they cannot ship carloads, that is, carload lots, they would have trouble grading that way; they would have to take them to some concentrating point, or some place where they can put the rejects out at any specified point along the roads. 1040

Q. Now, how many average carloads does a commission merchant buy in a day? A. You mean cars that come into New York in a day?

Q. No, what is the average quantity per pound that the commission merchant purchased day by day? A. There is no average in New York.

Q. Well, does the commission merchant buy one carload of poultry? A. That I cannot tell you; nobody knows how much they buy.

Q. Well, how many carloads do you receive daily? A. We receive an average of a car a day. 1041

Q. And in this particular case it is possible to grade poultry? A. Yes.

Q. Now, isn't it a fact that most commission merchants buy at least one or more carloads per day? A. Half of them do.

Q. And half of them buy more than one or two? A. Half of them, they will run as high as seven and ten and twenty in one day.

Q. And they can insist on grading the poultry, if they so desire? A. Yes.

Q. So that when poultry comes into the State, that is, if you receive a carload of poultry, it is

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your wish and desire to sell that carload, is it not? A. Yes.

Q. Now, when a wholesale slaughter house man comes to buy it, he must buy so many coops? A. As many as he wants to.

Q. He does not segregate each particular coop as to poundage, as to weight, as to quality, does he? A. I don't get your question.

Q. Well, how many chickens are in a coop? A. Forty to 60.

1043 Q. And if a man wants one coop, he gets a particular coop with 40 chickens in it? A. Yes.

Q. And those 40 chickens may be all the weight—that is, some 5 pounds, some 3 pounds, and some 4 pounds? A. That is correct.

Q. And he buys them as is? A. That is right.

Q. And then he brings it to the slaughter house? A. That is right.

Q. And then when someone comes in and wants to buy five chickens from the slaughter house man, he must stick his hand in and take the first five, is that correct? A. Yes.

1044 Q. And that is what we mean by straight killing? A. Yes.

Q. Now, if he should pick five 5-pounders, that may affect your business, may it not? A. I don't see how.

Q. Well, he will be left with the others? A. If he grabs five chickens out of a coop and they are all 5-pounders, that would mean that it was a uniform coop.

Q. Well, suppose he deliberately selects five chickens at 5 pounds apiece because one of his butchers wants that, he might be left with five that have only 3 or 4 pounds on them? A. Yes; that would affect our business, because our

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tomers would demand that grading on weight by us to compete with his business.

Q. You say that he must take the coop as it is?

A. Yes, sir.

Q. And you require him to sell it as it is? A. Yes, sir.

Q. Now, that particular customer of his wants five chickens at 5 pounds apiece, and under this Code he is not permitted to select them, and then he must lose the sale, is that correct? A. No, that is not so, because if the customer could not buy it from anybody else, he won't lose the sale; he will only lose the sale if the customer knows that he can go to his competitor and buy it by size.

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Q. Are you a married man? A. Yes, sir.

Q. Now, do you know from your experience as a married man that a housewife may desire on one occasion a 5-pound chicken and on another occasion a 3½-pound chicken? A. That is right.

Q. When she comes in and asks for a 5-pound chicken, she doesn't want a 3-pound chicken, is that correct? A. That is correct.

Q. And if the butcher purchases a limited quantity from the wholesale slaughter house and he has a special customer that insists on a certain weight chickens, you must satisfy such customer if you want to make a sale, is that correct? A. If you can make the sale profitably, yes, sir. The thing for a butcher to do, if he has a special order, under straight killing, the butcher would go to the chicken dealer if he is in need of a few heads of special size, a chicken dealer that handles a quantity of chickens. That is the practice that we used to have in New York years ago. The small butcher who wants 2- or 3- or 4- or

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5-pound birds, he would go to a chicken dealer who handled a very large volume of business, and he would be able to supply him with the size.

Q. Now, do you justify the selection of chickens, if price justifies it, or don't you justify it at all? A. I don't get that question.

Q. If a butcher comes in and wants five 5-pounders would you justify selling him, if the wholesale man can get a better price than if he did not have to make a selection? A. My answer is this: that we could not attempt to do it on account of the provision in the Code regarding straight killing.

Q. That is the reason you don't want to justify it? A. That is right.

Q. And you insisted on selling your coops as is? A. Yes.

Q. And you don't worry what happens to the slaughter house man? A. We are also slaughter house men, and we have to worry about that also.

Q. Your concern has a subsidiary that operates one slaughter house, is that right? A. That is right.

1050 Q. And there is some connection between the two? A. That is right.

Q. And what you do not dispose of in one place you dispose of in another? A. That is right.

Q. But what I am talking about is the concern that is not a commission merchant or has no branch known as a slaughter house market, I am talking about that concern. A. I am talking from a slaughter house point of view.

Q. In other words, in your opinion, you would rather have the slaughter house man lose the sale than let him pick five 5-pound chickens? A. Listen, you cannot lose the sale unless the man

has another slaughter house to go to where he can get it graded for size. If the customer wants a chicken and they cannot get it at 5 pounds, they will take 4½ or 5½ pounds, they won't say, "Because I cannot get a 5-pound chicken, I am not going to have chicken today."

Q. Suppose another slaughter house man is willing to sell it? A. Then I would lose the sale.

Q. And if the butcher has five customers that want a chicken, each weighing 5 pounds, he would insist on getting five chickens of 5 pounds each?

A. Yes.

Q. And if he could not get them he would lose the sale? A. He would get them. If not from a slaughter house, he would get them from the chicken dealer.

Q. Well, if he did not get them he would lose the sale? A. If he was a salesman he would sell 5½-pound chicken.

Q. Would you buy a size 6 hat if you wanted a size 6½? A. No, but you cannot eat a hat, but you can eat a chicken. I have gone to a store and wanted a 5-pound chicken and taken a 5½-pound chicken, but I would not take a larger size hat or larger size shoes.

Q. Wouldn't you draw a line, that if a man did not have any more money than for a 5-pound chicken—— A. Then he would take 4½ pounds

Q. Well, suppose he needs five. A. He cannot buy it. He can buy a 4½-pound chicken.

Q. When you buy your chickens, that is the commission merchant, do you fix the price before you purchase the chickens or after you get them into your possession? A. The commission merchant sells on consignment.

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Q. I mean those they sell on their own credit.

A. You mean those that sell their own bought poultry?

Q. That is right? A. Will you ask the question again?

The Court: Read it.

(Question repeated by the reporter.)

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A. Naturally, the man gets them in his possession and must have them available for inspection by the buyer before he can sell them or set the price.

Q. Then he has already made the agreement as to price with the seller, has he not? A. Already when?

Q. The commission merchant who buys it to his own credit. A. Yes.

Q. Before that poultry gets into his possession in New York City, is that right? A. That is right.

Q. He has already made an agreement as to the price, has he not, with the shipper? A. That is right.

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Q. So that in all cases merchandise is shipped from other States to the City of New York, on credit, the price is determined before shipment? A. I do not get your "on credit."

Q. There is a difference between consignment and credit? A. There is consignment and outright buying, that is the way we refer to it in the trade.

Q. Then let me rephrase the question. In all cases of outright buying, all these purchases that come into New York City or New York State, in all those instances the price is already determined before the poultry comes in? A. That is right.

Q. It is only in cases of consignment and depending upon the agreement between the parties that a price may be determined in the City of New York? A. That is right.

Q. And if the shipper sends poultry on consignment and specifies the price, then that price governs? A. Well, if he specifies the price, then isn't consignment; consignment is on the market, whatever the market is made without any specification as to price.

Q. Do you consider that as a definition of consignment? A. Yes, consignment is on a condition basis.

Q. In the poultry industry? A. Yes, sir.

Q. Is that limited to the poultry industry? A. I do not know whether it is limited to the poultry industry or not. They consign food products, food products are handled the same way, shipped in to be sold on the market; that is consignment.

Q. And without any specification as to a price? A. Without specification of the price.

Q. When you ship merchandise on consignment, do you specify the price at which it is sold? A. Then it is shipped on a guaranteed basis when you do that.

Q. Then there is another classification, is that it? A. That is right.

Q. One portion of the poultry coming into New York comes in on consignment but on a guaranteed basis, is that correct? A. Yes. If I may interrupt, I would like to explain the various ways that poultry is shipped in, and the various deals that a commission man may have with a shipper. You have a straight consignment basis, which is a straight commission; the commission man handles the poultry on a guaranteed basis;

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for instance, he would solicit a car of poultry and guarantee the man 18 cents; if the market goes to 17 cents, nevertheless, he gets his 18 cents. If the market goes to 19 cents, then he gets 19 cents. We handle poultry on the basis of a guaranteed price by the commission, and also buy track New York, and also buy track f.o.b. shipping point. Those are the various ways that live poultry is shipped to New York.

1061 Q. So that in the case where it is shipped on an outright sale or on a guaranteed basis, the price is determined at the point of sale? A. That is the price to the commission man.

Q. That is right. A. Not to the ultimate buyer.

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

Q. Then he sells it in New York City? A. That is right.

Q. And the price will vary from day to day? A. Depending on the available supply and demand.

Q. And isn't that the sole factor? A. Supply and demand?

1062 Q. That is correct, isn't it? A. That is right.

Q. Do you buy any of your merchandise at West Washington Market? A. We have been recently.

Q. When you are short? A. That is right.

Q. That is the only time you buy it there, is that correct? A. Or when there is a particular occasion that we need cheaper poultry; we go downtown to buy cheap poultry.

Q. When you need dearer poultry you get it elsewhere? A. We bring it in ourselves on a consignment basis. In other words, all the poultry that our particular company brings in on a consignment basis is top market poultry. If we

develop a demand for cheaper poultry on account of competitive conditions, we go downtown to buy our cheaper poultry.

Q. And these competitive conditions arrive from day to day? A. Sometimes, not necessarily always.

Q. Well, what do you mean by competitive conditions? A. Well, I can best cite that with an example. We have a competitor that has some very poor poultry, and he will call up one of our city customers and say here, we may be charging 20 cents for hens, and he will say, I have some hens and I will kill them for 17 cents. So the dealer then comes up to us and asks if we have got some 17-cent poultry. We will say, no, but today is Thursday and our buyer is down at the railroad and we will have them up in a couple of hours for you. We go out of our way to buy cheaper poultry so we may be on a competitive basis for cheaper poultry, but our particular company's policy is to handle top market poultry only.

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Q. By a cheaper poultry you mean chickens that are thinner? A. Yes, sir.

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Q. They can be used for human consumption? A. Yes, absolutely.

Q. And the price that a customer is going to pay depends on the class of person, does it not? A poor person would like to pay less, and a person who has better means would like to pay more, isn't that correct? A. It doesn't work out all of the time, sometimes the wealthier ones are the toughest ones and want to buy cheapest.

Q. Would you say that poor people eat chicken every day? A. As often as they can afford it.

1066

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Q. Then you would say that a consumption of the number of chickens or the pounds of poultry in the poultry industry depends on the ability to pay for it, doesn't it? A. To some extent.

Q. If a person is unemployed he is not apt to buy chickens? A. Not so readily.

Q. And if a great number of people are unemployed less chickens might be sold? A. Well, I am talking about live poultry particularly—

Q. Yes, we are talking about live poultry. A. Yes.

1067

Q. So that the economic factor of unemployment must be considered in determining whether we sell or consume more or less chickens, isn't that correct? A. Yes, absolutely.

Q. And if business is bad elsewhere it is bad in the poultry line, is it not? A. That is right.

Q. Do you know what the price ratio was a year ago at Chicago and New York? A. Between three and three and a half cents.

Q. Is it the same this year? A. No, it has dropped about a cent on account of difference in handling charges at the present time on the Chicago end.

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Q. You mean they are less now than they were last year? A. Yes, they have a different basis to work on.

Q. Leaving out the question of the reduction in handling charges, would you say that it is approximately the same as last year? A. Within a half a cent most of the time.

Q. The same the year before? A. I wouldn't remember that; I am more interested in the future, I am interested in what is going to happen.

Q. But for the last two years you would say that the price relationship was approximately the

same? A. Within a half a cent or so most of the time.

Q. And isn't it a fact that Chicago is more apt to be the price-determining factor than New York, in view of the fact that that is a central point? A. Absolutely not.

Q. You say no? A. Absolutely not.

Q. If there is a greater demand in Chicago for chickens, are the shippers more apt to dump them in Chicago than New York? A. It will be a temporary condition. It may last for a day or two.

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Q. There may be such a condition? A. Very temporarily.

Q. But there may be such a condition? A. Very temporarily.

Q. You are not in Chicago every day, are you? A. No, sir, but I know the Chicago market every day.

Q. Can you tell me what effect wage rate has upon the total amount of poultry that comes into any definite locality? A. That is an awfully large question. I could not attempt to answer. I do not even know what you mean by it.

1071

Q. You have stated on direct examination that where a merchant in the Borough of Brooklyn or the Borough of Bronx, pays less to his employees, that that fact would have some effect on the condition of the market, did you not? A. Yes.

Q. Did you mean the slaughter house market or the live poultry—— A. Live poultry market.

Q. (Continuing) —in New York City? A. The live poultry market.

Q. Can you tell us how the amount of wages paid to employees in a particular market in the Borough of Brooklyn would affect the entire

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price structure or the entire market of the live poultry industry? A. I can explain it best with an example again. If we have a competitor, and we have a competitor in Mount Vernon, and he is operating with non-union help, it enables him to sell poultry normally cheaper than we do, so it once again becomes necessary for us to go downtown and try to buy cheaper poultry to compete with his prices.

1073 Q. Are you taking into consideration quality of the poultry the man that pays less wages sells when you make that statement? A. Yes, for this reason: He sells strictly on a price basis, and we have salesmen going out, and our salesmen will certainly make up for the shortcomings of quality with a little salesmanship, and they will sell our poultry just as well as he will sell his.

1074 Q. Let me give you a simple example: A market man paying non-union wages, that is, less than a union concern pays, can afford to sell the same quality of merchandise, can he not, for less price than a person paying union wages selling the same quality of merchandise? A. The answer to that is, yes.

Q. So that necessarily does not mean that when a man underpays wages, he must necessarily sell inferior quality? A. No, but he places his competitor in a position where he has to go out and buy an inferior quality to compete with him on the price basis.

Q. Are you assuming that the public is so gullible that they will take an inferior grade in place— A. Not so gullible.

Q. (Continuing.) —of a superior grade? A. But they don't know poultry so well.

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1075

Q. You mean the average housewife does not know poultry? A. So well. I did not say they did not know anything about it.

Q. Isn't it a fact that the average housewife feels chickens to see whether they are fatty or otherwise? A. That does not tell the whole story, just by feeling.

Q. Can they do it? Do they do it? A. Some of them who know poultry well can do it, but a large proportion of them don't.

Q. You mean customers? A. Yes.

1076

Q. You mean they take what the butcher gives them? A. In some cases.

Q. Have you observed many stores? A. Yes, sir, a lot of stores.

Q. In other words, you spend your time between retail stores, market people, and commission merchants— A. And the country.

Q. And the country. You observe the New York Central Railroad statistics? A. That is right.

Q. You are all over? A. I keep moving all day long. That is my job.

1077

Q. Do you know that less chickens per pound came in in this year, beginning January to September, than the corresponding period of time of last year? A. What do you mean, less chickens per pound?

Q. Consisting of freight, expressed and trucked chickens? A. I know that up until last Saturday, New York was 200 carloads behind last year.

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

Q. That is in spite of the fact of the Code for the poultry industry? A. That is right.

Q. So your statement that the Code affected the quantity of poultry that came into the State of New York during its existence is not correct?

1078 *Theodore J. Tottis—By Govt.—Cross*

A. Oh, I disagree with you. What percentage of that was New York consumption behind last year up until the inception of the Code and since the inception of the Code——

Q. Do you know what it is? A. Offhand, accurately, no.

Q. Do you know approximately what it is? A. It has been slightly better up until the Jewish holidays, around the second week in September.

1079 Q. Isn't it a fact that in the month of September is the only month that the amount of poultry increased per pound, and that is because of the holidays coming in in September, or most of them? A. That is right.

Q. Do you know the percentages or the number of pounds of chickens that came in each and every month during this year and the corresponding months of last year? A. Will you repeat that?

(Reporter repeated last question.)

1080 A. What do you mean, percentage of chickens, ratio between fowl and chickens?

Mr. Heller: I will withdraw the question.

Q. I will make it simpler for you; Do you know the exact amount of poultry, freight, expressed and trucked, that came into the City of New York each and every month during this year and each and every month of the past year? A. Oh, I don't make any attempt to memorize statistics.

Q. Did you examine the statistics? A. Yes.

Q. Do you know? A. I know that for about the first three or four months our consumption was behind last year. From then on up until the 1st

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1081

of September it was ahead of last year, and since the holidays it has fallen behind again.

Q. Let me read to you from the Government statistics. I read to you from a copy of Government's Exhibit 12. A. I have not seen that, sir.

Q. I will read it to you. A. Is that freight or truck or combined?

Q. All three together. Your statement was that the first three months— A. First three or four months—

Q. —was a drop? A. Right.

Q. This year, is that correct? A. Yes.

1082

Mr. Rice: If your Honor please, may the witness see the exhibit?

Mr. Heller: I will show the exhibit to the witness. I have no objection.

Q. Now, look for January of this year and January of last year. I want to ask you a question. Did we get more this year or less? In the second column. A. More.

Q. Then your statement before was incorrect, was it not? A. I am talking about the period. I make no attempt to memorize month by month. I am not a statistical bureau.

1083

Q. And the second month, was it more or less? A. Less.

Q. And in the third month? A. Slightly more.

Q. And will you look— A. Wait a minute. in the fourth month was considerably less, so the total for three or four months was under last year.

Q. All right. Now figure them all up together for the eight months. No, wait a minute.

Q. Is it more or less? A. My statement was at the present time, until last Saturday, New

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York was 200 carloads under last year. I said the first four months were under last year and in the next four months or three months it has picked up considerably over last year, and the slump has come in about the last month.

Q. And last month, as a matter of fact, was the month of the Jewish holidays, is that correct, that is September? A. Well, the last month, the statistics, as I go by, Ernie Barry's quotations, which are issued every Saturday, in which they give freight car unloadings and the express and truck receipts for the past week, the previous week and the corresponding week last year, and that is what I am basing my figure on, they do not necessarily check very accurately with these.

1085

Q. You mean his are different than these? A. They are not exactly the same, there may be a variation in a month of a half a dozen cars.

Q. And during the entire eight months' period we received less this year than last year? A. That's right.

Q. And five of those eight months were months when the Code of the industry was in full force and effect? A. I would not put it just that way; the first four months when we did not have the Code, we were behind the last year and when the Code first went into effect we were slightly ahead of last year.

1086

Q. During the entire period of five months while the Code was in effect were we ahead or behind? A. I did not segregate since the Code or before the Code; I went by the course of the year up until the present time.

Q. Am I correct in saying that during the first five months we received 4,174 this year, and

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1087

4,256 of last year? A. I will get a pencil out and add them up if you want me to.

Q. You haven't made any estimate yourself?

A. No, my opinion as I go along from time to time, I am making no attempt to regulate any statistics or recall statistics that I looked at six months or a year ago.

Q. But there is no question in your mind now that during the eight months of this year we received less than during the same period of eight months last year? A. According to these figures that is so.

1088

Q. And you are willing to take that as true?

A. Yes.

Q. That is all. Just a minute.

The Court: You were referring to what exhibit, Mr. Heller?

Mr. Rice: He was referring to Government's Exhibit 12, your Honor.

Q. Are you familiar with the general business conditions in all the industries during the past two or three years? A. I am not an economist by any means.

1089

Q. In other words, you confined yourself only to the live poultry industry? A. Plus general reading.

Q. Well, do you know that the condition in this industry runs proportionately as to any other industry as to wages and as to business? A. I don't understand how you mean that.

Q. Well, if there was a great decrease in employment in other industries during the past three years would not there be a corresponding decrease in employment in this industry? A.

1090 *Theodore J. Tottis—By Govt.—Cross*

There would be to some extent, but not corresponding.

Q. Have you computed any table which will enable you to testify just what the economic condition of the entire United States had in this particular industry? A. I am not an economist.

Q. Well, as to wages and as to business failures. A. I don't profess to be an economist.

1091 Q. Well, can you really attribute any condition honestly to the trade provisions of the Code in the live poultry industry? A. To this extent; that if your poultry consumption dropped off 23,000,000 pounds last year, it was not due solely to the economic condition because the consumers of dressed poultry was just as seriously affected as the consumers of live poultry, and dressed poultry increased approximately, in consumption last year, as the live poultry industry lost.

Q. Well, where do you get your figures that we dropped 23,000,000? A. Approximately, I said.

1092 Q. But where did you get them from? A. They are B. A. I. figures, I am talking 1933 against 1932.

Q. You say now there was a drop in consumption in the year 1933 of—— A. Of live poultry in the metropolitan district.

Q. You say that? A. Yes.

Q. Definitely? A. Yes.

Q. How many pounds? A. Somewhere around twenty or twenty-five millions.

Q. Twenty or twenty-five million? A. That is not in last year alone, I am talking from about the peak of consumption to last year, that is around 1930 or '31 to last year, from the time the slump set in.

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1093

Q. And you now claim that between 1931 and 1933 there was a drop of how many pounds? A. In the twenties, twenty to twenty-five.

Q. Over that period of time? A. That's right.

Q. I mean you have averaged them up? A. I did not.

Q. You added them year by year? A. No.

Q. Well, how do you arrive at that figure? A. The difference between the consumption in 1933 and the difference in consumption in 1930; that the tendency of the live poultry consumption has been downward and the tendency of the dressed poultry consumption has been upward, to practically the same amount.

1094

Q. Are you familiar with the Government statistics of the United States Department of Agriculture, the Bureau of Agricultural Economics in Washington, D. C.? A. Yes.

Q. Have you read them? A. Yes.

Q. Well, will you take this statement as correct; the number of chickens sold from farms in 1933 were 387,784,000, being 4 3/10ths per cent. more than in 1932, and 9 4/10ths per cent. more than in 1931? A. What has that to do with the live poultry industry. I am talking about our conditions here. I don't know how much poultry is on the farms throughout the United States.

1095

Q. Do you mean to convey to the jury that in New York City alone there was a drop of so many millions of pounds? A. From our peak of consumption, yes.

Q. Now what was the amount of the consumption in 1931? A. I don't remember statistics, I do not attempt to bear them in mind, but I know that the trend was downward.

1096 *Theodore J. Tottis—By Govt.—Cross*

Q. Well, how much did we consume in 1932?

A. I don't remember the statistics.

Mr. Rice: If your Honor please, I might in fairness inform counsel that the Government is going to offer full statistics on the drop in consumption.

Mr. Heller: He is an expert and I would like to examine him if you don't mind.

1097 The Court: He has a right to cross examine, Mr. Rice.

Q. Do you know that the difference between 1933 and 1932 was only 748 carloads? A. How many pounds is that?

Q. How many pounds in a carload? A. 18,000.

Q. Multiply that by 748 and might not the fact that people had no money last year have some bearing on the question of whether we consumed more or less poultry? A. Not unless you knew the increase in the consumption of dressed poultry.

1098 Q. Is it cheaper? A. No.

Q. It would cost more? A. Yes.

Q. Some people's tastes change, do they not? A. Not in the live poultry consuming group.

Q. You mean it is impossible for a person to switch from live to dressed poultry? A. Unless they get a lot of poor unedible live poultry, because people who have been brought up on live poultry do not care to change, but if a person goes out and buys a lot of inferior poultry, they are the ones that have swung over to the dressed poultry and that is why we have suffered by it.

Q. You have suffered personally by it? A. The industry has.

Q. Didn't you testify on direct examination up to a short time ago the market man, coming into the market, was compelled to take whatever the commission merchant gave him, do you remember that statement you made this morning?

A. Yes.

Q. Weren't you the cause of the entire situation? A. Yes.

Q. It was you that forced the small merchants like the Schechters to buy whatever you gave them, is that correct? A. I wouldn't put it just that way, not our particular company.

1100

Q. Generally the commission merchants, isn't that correct? A. Yes.

Q. They had to take what you gave them? A. Yes.

Q. Otherwise they couldn't get poultry? A. That is right, they couldn't get poultry around New York.

Q. That is right. A. That is why we got the Code to remedy it.

Q. When was the lowest peak as far as business is concerned? A. I am not an economist, Mr. Heller.

1101

Q. When was it in the poultry business? A. Last year was about our poorest year.

Q. Was it poorer than in 1932? A. In view of consumption, yes.

Q. In view of sales as far as commission merchants are concerned? A. Well, naturally you read it there, some seven hundred and some odd cars less than in 1932.

Q. Does that mean that you lost money last year? A. The industry in general.

Q. Yes. A. I can't speak for them, not the dealers in general.

1102 *Theodore J. Tottis—By Govt.—Redirect*

Q. Do you know that the industry in general lost money this year? A. Yes.

Q. Losing every day? A. Every day.

Q. And nothing can help a situation like that except general economic results, is that it? A. I feel that by strict enforcement of our Code it will be a force to help us, because we requested the Code to abolish the very evils that have gotten us into this trouble.

1103 Q. You mean you requested the Code? A. I did, yes.

Q. So he would have to take whatever you would give him? A. No, not at all, so he wouldn't have to take whatever we gave him.

Q. Isn't it a fact that he has to take a coop without selection? A. He has to take it straight, but he doesn't have to take poor inedible poultry.

Q. But he has to take it straight? A. That is right.

Q. And the only limitation is upon him, isn't that it? A. That is right, at the present time.

Mr. Heller: That is all.

1104 *Redirect examination by Mr. Rice:*

Q. Mr. Tottis, what causes a commission man to import poor quality poultry? A. Well, both the demand, and the fact that if he gets it in he can sell it.

Q. If the sale of unfit poultry is prohibited will the commission men continue to bring it in? A. Absolutely not.

Q. Will the shipper continue to ship it? A. No, sir.

Q. Then is it a fact that the buyer's demand fixes the quality of poultry that is shipped into

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1105

New York, by buyers I mean the market men's demands. A. Absolutely.

Q. And if the market man is prohibited from selling unfit poultry, then it will not be shipped into New York? A. Absolutely.

Q. Are you familiar with the definition of a cull as given in the Live Poultry Code? A. Yes, sir.

Q. Do you know where that definition came from? A. The industry, I believe, defined it.

Q. How does the industry ordinarily define the term cull? A. A bird that is unfit for human consumption.

1106

Q. How is it defined in the Live Poultry Code? A. Poultry unfit for human consumption.

Q. The same way? A. Yes, sir, but apparently the Government has a different definition of it.

Q. You mean another branch of the Government? A. Another branch of the Government, that poultry unfit for human consumption is the trade name for cull regardless of what the West calls it or anybody else, the trade in the East, in New York refers to poultry unfit for human consumption as a cull, and anything that is better than that, that is fit for human consumption and poor is referred to as undesirable or a second.

1107

Mr. Rice: Mr. Heller, may I see that document where you stated that the Government called culls in New York City merely inferiors?

(Mr. Heller hands document to Mr. Rice.)

Mr. Heller: It is at the bottom of the page.

1108

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Mr. Rice: I wish to offer in evidence the page 14 of this bulletin entitled, "Wholesale Marketing of Live Poultry in New York City, dated May, 1929, Technical Bulletin No. 107, Official Government Document."

Mr. Heller: Objected to as wholly incompetent.

The Court: Didn't you use it in cross-examination?

1109

Mr. Heller: He can ask him any question that he likes, and so can I.

The Court: But if you quote an authority the authority may be presented.

Mr. Heller: I have no objection to introducing the part that I read, cut that out and put that in.

The Court: Whatever part you referred to is admissible, but the whole book is inadmissible.

Mr. Heller: I just read three lines, he can offer that.

1110

Mr. Rice: If your Honor please, Mr. Heller read three lines it is true from this book, and upon questioning from the witness Mr. Heller stated to the witness that this definition of culls was a definition in relation to New York poultry. Now, I proposed to show by offering the entire page in evidence that this definition relates to poultry throughout the country, and does not relate to New York City.

The Court: Let me look at it.

Mr. Heller: I merely read the definition given by the Government.

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1111

The Court: But if it is a general one and not a restricted one, he can offer that in to show what it is.

Mr. Heller: I stated what it was it is stated in the definition.

The Court: No. I will admit that paragraph. I am not going to admit the whole page. You may offer that one paragraph in evidence that he read a part of.

Mr. Heller: I read the bottom that is all I read just at the bottom there.

The Court: I can't help it I will let the whole paragraph in, but not the rest of the page, it has no relation to it, just that one printed paragraph, the statistics have nothing to do with it.

1112

Mr. Rice: Very well, your Honor, I will comply with Mr. Heller's request and offer in evidence only the statement which he read at the bottom of the page.

The Court: You can do that, or you can have the whole paragraph if you want.

Mr. Rice: I will offer only the statement at the bottom.

1113

The Court: You see the statistics are no part of the case.

Mr. Rice: If your Honor please, counsel agrees that it may be read into the record in lieu of offering it as an exhibit.

The Court: Yes, that is very much better.

Mr. Rice: "Culls, poultry which is fit for human consumption but which may be thin, lacking vigor, or deformed or blemished in such a way as to render it salable only at considerable discount from prevailing prices for live poultry of its class."

1114 *Theodore J. Tottis—By Govt.—Redirect*

I think in connection with that if your Honor please, the title of the pamphlet be considered a part of the exhibit. I have already read that into the record.

The Court: Surely.

Q. Mr. Tottis, the live poultry business has been suffering for the past few years, has it not? A. Yes, sir, financially.

1115 Q. Have there been slaughter house men and commission men who have gone through bankruptcy? A. Yes, sir.

Q. In fact, the company that you were associated with went through bankruptcy, did it not? A. Yes, sir.

Q. And were you the only one? A. No, sir.

Q. How many were there, approximately? A. There are so many that it is hard to keep track of.

1116 Q. Do you think that 50 per cent. of the slaughter house markets have gone through bankruptcy in the course of the last four or five years? A. I don't believe it would run that high.

Q. What percentage would you estimate? A. I would estimate about 20 per cent., that is, either through bankruptcy or through reorganization, with settlements, the equivalent of it.

Q. What were the economic conditions under which the poultry slaughter houses went into bankruptcy?

Mr. Heller: I object to that. He is not qualified to testify to that.

Mr. Rice: I am asking him about the economic conditions —

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1117

The Court: He did not ask him what caused them. He asked him what the conditions were.

Mr. Heller: He said he was no economist. He could not answer me, he would not answer me.

The Court: He said he knew about this particular business.

Mr. Heller: I do not think even a proper foundation has been laid for this question.

The Court: Let us find out what he knows about it.

1118

Mr. Heller: Exception.

Q. Do you know what the competitive conditions were in the live poultry slaughter house business during this period when 20 per cent. of them went through bankruptcy? A. I just merely stated it was very chaotic.

Q. In what respect? A. Impossible to get a price for the poultry, impossible to get your operating expenses out of poultry.

Q. What were some of the competitive practices existing during that time? A. The very ones that have been enumerated in the Code, selling poultry unfit for human consumption, uninspected poultry, secret rebates. It was to eliminate those very practices that the industry requested this code.

1119

Q. I believe on cross examination you indicated that you had been in the electrical engineering business. A. Yes, sir.

Q. Prior to the time that you were in the poultry business? A. Yes, sir.

Q. Have you a degree? A. Yes, sir.

Q. What degree is it? A. Mechanical engineer.

1120 *Theodore J. Tottis—By Govt.—Redirect*

Q. Are you a graduate of some college? A. Yes, sir.

Q. What college? A. New York University.

Q. You were not in the live poultry business as a live poultry dealer prior to 1926? A. No, sir.

Q. But did you have an opportunity to observe some portions of the live poultry business prior to that time?

Mr. Heller: He has answered that.

1121 The Court: He has already testified about that at some length.

Mr. Rice: On cross examination.

The Court: I say but he did testify about that at some length, no matter what examination.

Mr. Rice: Very well.

The Court: If you want to ask him any specific thing that was omitted, but he told you what his opportunities were, and that he did investigate.

1122 Q. Prior to the time that the Code became effective you were familiar with the inspection of live poultry? A. Yes, sir.

Mr. Heller: That has been gone over at great length.

The Court: There may be some special question. He has given you his experience pretty broadly, I think.

Q. And you are familiar with the inspection of poultry as it has existed since the Code came into effect? A. Yes, sir.

Q. And in your direct examination you were comparing the inspection prior to the Code and after the Code, were you not? A. Yes, sir.

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1123

Q. Do you know whether the conditions in the live poultry business prior to the adoption of the Code in May, 1934, were worse than the conditions in other industries, generally speaking?

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

Q. (Continuing.) Or better?

The Court: He said he was not an economist and he could not tell about other industries. He answered that before.

1124

Mr. Rice: Very well.

Q. You were asked on cross examination whether it would not be possible to inspect the poultry prior to shipment. Now, in your opinion would it be practicable to make the inspection prior to shipment instead of at the time of the receipt of the poultry in New York? A. It would not be—the inspection out there would not be any particular advantage because there are three to seven days in transit, and the condition of the poultry could change so, but the grading should be done in the country, not the inspection. Inspection does not mean anything with infectious diseases until just at the time you buy it. Grading is a different question. It should be graded out there.

1125

The Court: So the jury will understand just what you mean, explain “grading.”

Q. Yes, will you please explain what you mean by grading? A. By grading means to separate the unhealthy and the unfit poultry from the good poultry and to separate it by size, because at

1126 *Theodore J. Tottis—By Govt.—Redirect*

ous seasons of the year there is a demand for either small birds or large birds, and if the poultry were graded by size out in the country, then when it arrived here it could be bought by the slaughter house operator, according to size, paying a different price for birds under four pounds than he would for over four pounds, and in that way you would be able to satisfy your customers without having to give them a seven-pound chicken when they ask for a three-pound chicken. You could give it to them reasonably close to the demand. That grading should be done in the country. The inspection, which is for health, unfit poultry, will always have to be performed on this end.

1127

Q. How would that grading at the point of shipment be brought about? A. It could be brought about very easily.

Q. Does the practice of straight killing have any bearing upon that? A. Straight killing would force immediately, by immediately I would say within a week, you would be forced to grade your poultry out in the country before it comes into New York. If I can explain this at the present time?

1128

Q. Surely. A. With straight killing being enforced at the present time, a market man will go out and buy ten coops and he is not supposed to grade that. He is supposed to sell it straight; but at the present time he can very readily go into his place at midnight or one o'clock in the morning, when nobody is around, and grade all his various coops by size, and then when a woman comes in, when his trade comes in in the morning, he has it selected fairly well. A butcher can come in and say, "I want 15 heads of small fowl and 25 heads of large fowl," or the same for

chicken, and he has graded them during the night so he can go right there; and if a woman wants a four-pound fowl, he can give her something that is reasonably close. To do that after it is bought straight is a violation of the Code. If straight killing could be or would be enforced all the way down the line at the present time, that grading would immediately be forced back into the country, it would be a function of the shipper to grade it, and then you would know just how you stand with your poultry and you could satisfy your trade better than you could at the present time.

1130

Q. Does the practice of straight killing refer to purchases made by consumers from their butchers? A. No, only to the butcher and chicken dealer from the wholesale slaughter house.

Q. That is, it relates only to the relationship between wholesaler and retailer? A. To the two middle men, yes, sir.

Q. Now, does the butcher or retail poultry dealer very often buy only four or five chickens? A. The chicken dealer?

1131

Q. Yes, do the retail poultry dealers and the butchers very often buy only four or five chickens at a time from the wholesaler? A. It sometimes happens—you mean the wholesale slaughter house market?

Q. Yes. A. It happens fairly regularly with butchers, but not with chicken dealers. They buy in large volumes, very seldom less than a coop lot, but the butcher may have occasion to go to the market and buy in fairly small quantities.

Q. Well, if a butcher wants chickens that weigh five pounds and only five pounds, where could he

1132 *Theodore J. Tottis—By Govt.—Redirect*

go to get them? A. To the chicken dealer that buys in large volume.

Q. Is that the custom of the trade? A. It has been in the past before the trade was spoiled by us, by grading directly for them.

Q. In your opinion would that be the custom of the trade as to those particular purchases by butchers if the straight killing were enforced? A. Absolutely.

1133 Q. Now, on cross examination you were asked whether you heard the testimony of Dr. Ives to the effect that some of the chickens in the back part of the coop could not be seen by the inspector, and I believe you stated you disagreed with Dr. Ives? A. Yes, sir.

Q. Will you state what your observation has been?

Mr. Heller: I object to him impeaching his own witness, your Honor.

1134 The Court: He is not impeaching him. Two witnesses can disagree, but that is not impeaching; they can disagree as to their belief without impeaching.

Mr. Rice: I submit the witness really disagrees with Mr. Heller's interpretation.

The Court: But I have ruled in your favor.

Mr. Heller: Exception.

A. As I said before, the deck will hold approximately, varying 25 to 30 to 32 heads of hens, and hold 30 to 40 heads of chicken. That poultry, by an inspector walking in, he can see all of those crowded up against the rail on the inside of the car, and he can see all the birds on the outside that are up against the screen, and when

he has to inspect the car for crop content, he has to stand up with his arm on a level with the deck and he can look into the coop, and he has to go in at arm's length, and he has to push birds aside so it is easy for him to see the deck and to get a very accurate condition on the health of the poultry in there.

Q. How long does it take an inspector to look through one coop of poultry? A. I was talking about inspection in a car, Mr. Rice.

Q. One deck—I mean, how long does it take an inspector to look through one deck of chickens to inspect them all for health? A. Well, if he feels like hurrying he can do it somewhere between one and two minutes in each deck.

Q. He can do it efficiently in that time? A. Certainly.

Q. And see every bird? A. Yes, sir.

Q. Now, on cross examination you were asked whether chicken cholera could be ascertained without a post-mortem? A. I can recognize it in the advanced stage, but there are any number of people who do extension work in the country that can recognize it practically at any stage.

Q. Well, how about the other poultry diseases? Can they be recognized without a post-mortem? A. Yes, a lot of them.

Q. Most of them? A. Most of them.

Q. Approximately what percentage of the freight poultry coming into New York is consigned to the commission men on an agency basis? A. That would be strictly a guess on my part.

Q. Well, I want your estimate. A. It is a personal business that they will never tell. Roughly, over half—we have any number of firms in New York whom we know are absolutely on a straight

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consignment basis. I would say offhand 60 to 75 per cent. of the poultry is on a consignment basis and at times it may run higher. That is purely a guess on my part.

Mr. Rice: That is all.

Recross examination by Mr. Heller:

Q. Are you familiar with the fact that the inspector is allowed 17 minutes to examine a car?
A. He must inspect it in 17 minutes?

1139 Q. Are you familiar with the rule that he is only allowed 17 minutes for each car? A. I have never seen them do it in any specified or restricted period of time. They invariably take 20 minutes to a half hour and I did not know that any such regulation existed.

Q. You have actually timed them? A. Yes.

Q. You made that a specialty, too, did you? A. No, but you see, for instance, the Tennessee Egg Company wants to know exactly how his poultry is handled when it arrives in New York. He has a form sheet that he requires to be filled out as to what time the railroad delivered the car to our siding, what time the car man was informed by the commission house to get ready for unloading; what time they told him to be ready; what times he got through feeding; what time the inspector came into the car; what time he got out; and what time the car started to work; what time it was finished.

1140 Q. Where did you make this record, in the Bronx Terminal? A. Yes.

Q. That did not happen in the West Washington Market? A. That I don't know; I do not care to go into it down there. If an inspector

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1141

is in a car for 20 minutes or 10 minutes down there it is no concern of mine.

Q. Well, all but two terminals are down at the West Washington Market? A. All but three.

Q. And one inspector is assigned to your market and the rest are all down at the West Washington Market? A. Dr. Ives would be better qualified to tell you that than I.

Q. Your opinion differs with Dr. Ives because of your experience in the Bronx Terminal—
A. You mean in length of time?

Q. Yes; it is possible that there is a rule for the West Washington Market of a limit of 17 minutes and not in the Bronx? A. No, because that rule would apply to all terminals.

1142

Q. Do you know that there is such a provision? A. I do not.

Q. There are about 128 tiers to a car? A. Yes.

Q. And each inspector inspects these particular tiers piled one on top of the other? A. That is right.

Q. And then they put their hand in and feel some of the birds, is that right? A. Yes.

Q. And they look at them? A. Yes.

1143

Q. And by that they see if they can catch any disease by looking at them? A. Yes.

Q. And they pass from chicken to chicken? A. Yes.

Q. Now, do you sell to the market people at all? A. Well, our commission firm sells to market people.

Q. Well, how many? A. On and off; we may sell to a dozen different ones. We do not make it a special practice to bring in poultry particularly for resale, except to our own slaughtering company. The bulk of it goes to them.

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Q. In other words, you are really a purchaser for your own slaughtering concern? A. For our commission company.

Q. Occasionally you accommodate other slaughter house people? A. A few regularly and a few occasionally.

Q. And it is limited to about 12 customers? A. Yes.

Q. And that is the extent of your company's business? A. Yes.

1145 Q. And you take in about a car a week? A. How is that?

Q. How many cars a week do you bring in? A. Well, we handled 258 last year. We handle about 5,000,000 pounds of poultry a year.

Q. How many cars a week? A. An average of five cars a week.

Q. Five times 52 would be how much? A. 260.

Q. You bring in five cars a week? A. Yes.

Q. And that is for the use of your retail slaughter concern? A. Our wholesale slaughtering concern.

1146 Q. And how much is that, would you say? A. An average of 80,000 pounds a week.

Q. And how many of those five cars do you consume in your own slaughtering concern? A. It would be a little over five cars, the equivalent, go through the slaughtering house.

Q. You mean out of the five cars that come in you consumed? A. We bring in five cars and we truck stuff besides, and some of the car lot poultry goes to outside buyers.

Q. Well, what is the amount of trucked poultry that comes in? A. To our place?

Q. Yes. A. In certain seasons in a week it will run a half a car and in some seasons three cars.

Q. So on an average would you say six cars a week, taking into consideration the trucking and the railroad poultry? A. Somewhere between seven and eight cars.

Q. And out of the seven cars of poultry you use five for your own use, that is, your subsidiary company, and two you sell to other slaughter house concerns? A. Two or three cars.

Q. That is your extent of the business? A. That is right.

Q. And you said that there were 20 per cent. failures last year in your industry? A. In the last couple of years.

Q. How many years do you take into consideration? A. Three. It was purely a guess on my part, naturally.

Q. It is not a statement of fact? A. No, it is a statement of my opinion.

Q. And that 20 per cent. failed during the last two years, that is your opinion also? A. Yes.

Q. You couldn't give us the names of the firms that failed which would aggregate 20 per cent. of the total number, could you? A. No.

Q. And you do not know that more than ten firms went into bankruptcy, do you? A. I do not keep a record of bankruptcies; I am not particularly interested in that.

Q. You do not know whether 15 firms went out of business during the last two years, do you? A. At least that many.

Q. You know that that many did? A. I couldn't start to enumerate them.

Q. But you know some went out of business? A. Yes.

1150 *Theodore J. Tottis—By Govt.—Recross*

Q. Some may have liquidated and paid their creditors in full? A. May have.

Q. You do not know whether they actually filed petitions in bankruptcy in the Federal Court, do you? A. No.

Q. You do not know that they actually made composition agreements with their creditors? A. No.

The Court: We will take a recess for a few moments.

1151

Q. Am I correct in stating that you said it takes about 20 minutes or 30 minutes to inspect a car per inspector? A. Yes.

Q. Did you say about a minute or two for a tier? A. About a minute.

Q. And there are 126 tiers. That would make it about 126 minutes? A. No; he does not inspect every tier. He is not supposed to.

Q. Oh, he skips some tiers? A. Yes.

Q. In other words, he does not examine every tier? A. No, he takes a cross section of the car.

1152

Q. In other words, he chooses indiscriminately one, two or three tiers? A. No; they have a special pattern to go by. It may be in the form of a Z across the top, down diagonally, and across the bottom or it may be in the shape of a cross. They have various forms. It is a cross section of the car. It is not every single tier.

Q. Let us get this straight then. If he were to examine every tier, it would take him 126 minutes. A. Yes.

Q. That would be about a little over two hours? A. Well, six minutes over.

Q. And that would mean that he would examine some part of the tier? A. In that time he could examine each tier pretty thoroughly.

Q. But actually they don't do that? A. That is right.

Q. They spend only 20 minutes? A. That is right.

Q. And after examining or stamping, as we call it, certain tiers, why, they mark it O.K. for consumption, or give them an inspection certificate? A. That is right.

Q. If the commission men refused to handle unfit poultry would any unfit poultry come into the City of New York? A. Not unless it went directly to a slaughter house.

Q. Assuming that all the poultry, that is, we are considering only the poultry that comes in by freight to the different markets, if these commission merchants would refuse to accept unfit poultry, would any unfit poultry come into the State or City of New York? A. No.

Q. It would be an impossibility? A. Yes.

Q. It is only by virtue of the fact that they are willing to accept it that it comes in? A. You said it would be an impossibility. It would be an impossibility, as I say, unless it went directly to the slaughter houses.

Q. We are now talking about freight poultry coming into the market. I say, under that circumstance alone, because they come into the freight terminals, that is because the commission merchants are willing to accept them? A. That is right.

Q. And as to grading, I believe you have expressed yourself that the best place would be, and ultimately they would be graded at the source of shipment? A. That is right.

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Q. And that would obviate this business of selecting chickens? A. Yes.

Q. So they would be able to grade 5-pound chickens in separate crates, and 3's and 4's, and so on? A. They would be able to grade it by desirable sizes as it is demanded.

1157 Q. And under the present Code provision, if a man wants to, as you said, grade these chickens at night time, he could avoid complying with the Code, is that right? A. Well, the way the Code is phrased, they would not be permitted to do that. It is to be brought in graded.

Q. Right, but if someone wants to do it at night time, you said he would be able to avoid complying with the Code? A. He would avoid compliance.

Q. And he would take advantage over the next man, wouldn't he? A. Yes, sir. That is right.

1158 Q. Then the element of wages would have nothing to do with this industry were the poultry graded at the source of shipment? A. No, I would not say that, because if a man can undersell me, despite the fact that it is graded, I am going to ask for second-grade poultry instead of top grade poultry.

Q. But the poultry would be graded, would it not? A. Yes.

Q. At the source? A. Yes.

Q. And if I pay a man less wages and sell the first-class grade of merchandise, that wage scale would not affect that scale, would it? A. Not the top grade.

Mr. Heller: That is all.

Mr. Rice: That is all.

(Witness excused.)

W. T. Termohlen—By Govt.—Direct

1159

W. T. TERMOHLEN, called as a witness on behalf of the Government, having been first duly sworn, testified as follows:

Direct examination by Mr. Rice:

Q. Mr. Termohlen, what is your occupation?

A. At the present time I am principal agricultural economist in charge of the poultry unit of the general crop section of the Agricultural Adjustment Administration. I am located in Washington, D. C.

1160

Q. Have you had experience in analyzing the economics in relation to the poultry industry?

A. Yes, sir, I have.

Q. Over what period of time? A. Since 1921. It would be necessary for me to give you a brief history in order to answer that question.

Q. Will you review briefly your experience as a poultry economist and the training which you had as a poultry economist prior to the time you become such? A. In 1921 I enrolled in the Iowa State College in the Agricultural Department, in poultry husbandry, as a Veterans' Bureau student.

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Q. And what does poultry husbandry deal with? A. Poultry husbandry, as we use it in colleges, deals with the raising of poultry, the breeding, the feeding, the housing and nutrition and covers not in general detail such subjects as marketing.

I graduated in 1925, I went to three summer schools as well as the regular school year so that I actually had five college years. I had one year of college prior to the war. At that time I had taken an engineering course. Then in 1925, after graduation, I went to work for a feed concern,

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the Albert Dickinson Company at Chicago, Illinois. I worked throughout the middle west and I had charge of their service work as it related to poultry, principally poultry as handled in the poultry plants throughout the middle west. I worked with that concern until the Fall of 1926. I spent most of my time in the State of Iowa, Minnesota, South Dakota, and into Wisconsin, and Illinois, Missouri and Kansas, going into probably some 60 or 65 houses, that I spent anywhere from one day to six months' time.

1163

Q. Now during that time did you have occasion to study the poultry marketing conditions?

A. Yes, that is one of the reasons that I took the job. While I was doing my under-graduate work I took considerable economics, over and above what I needed in my regular course because I realized that there was an opportunity to train myself as a marketing specialist in poultry practice. I could not find anyone that was trained, from an educational standpoint, in that particular phase, and therefore I wanted to get practical experience and I felt that this job that I had taken would give me this practical experience. I expected, after being on it a certain length of time, to go back to college.

1164

The occasion arose in 1926—I had an opportunity of going back to school on a part-time basis, doing research work in poultry marketing. I enrolled in the Fall of 1926, to take my master's degree in agricultural economics, specializing in poultry marketing and as part-time research assistant. I nearly completed my work in the summer of 1927—I would have completed it at the end of that Summer but an appropriation made possible the employment of some men

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in Iowa on marketing work and I was put on as extension poultry marketing specialist with the rank of assistant professor, in August of 1927. I kept that position and also served part of my time as a researcher's assistant in an agricultural experimentation. Agricultural extension work is a type of work that you carry the information that is obtained from the experiment station out to the farmers throughout the state. I also inaugurated a new plan of carrying information to the people who were marketing the products, these shippers that had been told about here today, the concentrators of the product and I carried on a great many meetings with them. I continued that work until August of 1933, at which time I was called to Washington by the Agricultural Adjustment Administration to take over the present job that I have.

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Q. What are your functions as head of the poultry unit of the Agricultural Adjustment Administration? A. To administer, under the policies established, the aspects that come under the National Industrial Recovery Act as they relate to unfair trade practices in the administration set up in Codes. All of the labor aspects are handled by the National Recovery Administration. We have nothing to do with that in our unit. Then, we maintain activities that relate to the Agricultural Adjustment Act as fits in with the poultry industry.

1167

Q. And in connection with those functions have you had occasion to study the live poultry industry of the metropolitan area of New York? A. Yes.

Q. And what study have you made? A. We have made studies in regard to this industry,

1168 *W. T. Termohlen—By Govt.—Direct*

beginning last August when we were requested by members of the industry to start through a code of fair competition.

1169 Q. Do you mean August of 1933? A. August of 1933, yes, sir. I spent a great deal of time myself coming to New York and discussing this with members of the industry and with people who were acquainted in the industry. Since January I have had in my employ one man who has devoted practically all of his time to analyzing this live poultry industry. Last December I employed one statistician who has spent part of his time analyzing certain statistical phases of the industry and then about two months ago I employed another man as a statistician. We are hoping to develop a program or project which will be of an economic——

Mr. Heller: Well, if your Honor pleases, we have had his qualifications and I do not think that what he hopes is quite relevant.

1170 The Court: Yes, we will leave that for the future.

Q. What programs have you worked on, Mr. Termohlen, with respect to the live poultry industry of New York?

Mr. Heller: May we get the date of that?

Mr. Rice: Since August, 1933.

A. Since August of 1933, we have carried on up until April very direct activity in regard to the development of this code. I have a fairly complete record of the important parts of that activity. Since that time we have cooperated

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with the Code Authority, since I am a member of the Advisory Committee having been appointed by the Secretary of Agriculture. We also have cooperated in the gathering of certain statistical information at various times.

Q. How many members are there of the Code Advisory Committee? A. 15 from the trade, 1 member from the National Recovery Administration, and myself from the Agricultural Adjustment Administration.

Q. And you are appointed by Secretary Wallace for that purpose? A. That is correct.

1172

Q. The Secretary of Agriculture? A. That is correct.

Q. Are you familiar with the circumstances under which the Live Poultry Code was negotiated and adopted?

Mr. Heller: That is objected to as entirely too broad and indefinite.

The Court: I do not know just what it means.

Mr. Rice: This is a preliminary question, your Honor, to establish whether or not he is familiar with the facts under which the Live Poultry Code came into being.

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Mr. Heller: We take judicial notice that the Code has been enacted, whatever is in there is in there.

The Court: It seems to me that that is pretty broad.

Mr. Rice: Very well, I will rephrase the question.

The Court: Just get down to the case, because I think that covers much more than we have here.

1174 *W. T. Termohlen—By Govt.—Direct*

Q. Mr. Termohlen, when was the Live Poultry Code adopted? A. April 13th, I believe was the date.

The Court: 1934?

The Witness: 1934, and became effective on the 23rd of April.

Q. That is, it became effective ten days after it was signed by the President? A. That is right.

1175 Q. And prior to that time had the Agricultural Adjustment Administration studied the live poultry industry of New York City? A. Yes.

Q. On what occasions? A. Well, it was so many occasions that I have a history, a case history of every step that we used in the process of developing this and I make no effort to remember every specific date in my head what dates it was that people came to Washington and so forth because we have been handling so many different Codes but I do have a case history and I can give you those dates.

1176 Q. Do you know whether or not the industry requested a code for the live poultry industry? A. Yes.

Mr. Heller: That is objected to.

The Court: It is alleged that it was requested by the industry.

Q. Will you answer that fully? A. It is necessary for an industry to request a code of fair competition under the National Recovery Act, Section 3-A, is the section which calls for trade organizations, associations or groups from the trade to request a code of fair competition. We have nothing to do——