V; R. 2628-9; Judgment, Pars. II, III, V, R. 2632-3). It enjoined them only because of the provisions as to the admission of new members—and only "until the primary wrong is remedied" (Op., R. 2599). The judgment permits the defendants to apply for modification or termination of the injunctions when the membership by-laws have been modified to comply with the requirements of the judgment as to membership (J., V, R. 2633).

Thus, in effect, the injunctions against the protection of the news reports are really indirect means of compelling AP to revise its arrangements as to membership.

It is difficult to see how there could be any objection to the provision that the AP news reports should not be furnished to anyone except AP members—prior to their publication by the AP members themselves—and the Government has not appealed from the decision of the court below that such an agreement is not illegal *per se*.

It has appealed, however, from the court's approval of the provision requiring members not to supply their local "spontaneous" news to non-members (R. 2657).

It would seem, however, that this provision also is reasonably in furtherance of the purpose for which AP was organized—a purpose which is innocent and lawful.

The news collected by the members would be of little value to AP if the members were free to disclose it to others before it could be published by the AP members themselves. The agreement comes within the familiar rule that covenants ancillary to the transfer of property and intended to protect the value of the thing sold are proper. The rule is particularly applicable where the nature of the property itself is confidential information.

The relative importance of the local "spontaneous" news furnished by the members has greatly diminished (Op., R. 2580; *supra*, pp. 13-14).

The Associated Press, UP, INS, and other agencies maintain their own news bureaus at the principal news sources throughout the country, and in foreign countries. At all the principal sources they employ their own direct representatives, including great numbers of "string" correspondents.

The word "spontaneous" is in itself a limitation. The by-law does not apply to any material "which has originated through deliberate and individual enterprise"—such as interviews with prominent men or commentaries upon the significance of the news itself (R. 79). There is a great deal of local news which is not "spontaneous." Thus a fire is spontaneous news—but an investigation of inefficiency in the fire department is a matter of individual enterprise—and therefore is not spontaneous news and not covered by the by-law (R. 2026, 2040).

The members are entirely free to sell their news—other than local spontaneous news—as they see fit, and many of them do so.

Neither does the by-law apply to news pictures or features or news which is not "local."

Generally speaking, "local" news is of interest principally in the locality itself. Anything which achieves a wider significance is covered promptly by direct representatives of the various news agencies.

All the news services—and hundreds of individual newspapers—maintain their own reporting staffs at Washington, where 60 to 75% of the general domestic news originates (R. 2210).

The Associated Press maintains a staff of 3,454 part-time or "string" correspondents throughout the United States (F. 19, R. 2608).

The United Press maintains a similar staff of 2,088 part-time or "string" correspondents (F. 44, R. 2612). The

International News Service maintains 1,864 part-time or "string" correspondents (F. 63, 2615).

The record is filled with evidence as to the completeness and comprehensiveness of the news coverage by the other agencies. The record contains testimony and affidavits from representatives of a very large number of successful non-AP papers to the effect that—regardless of the AP by-law—they receive complete and satisfactory coverage of local and international news from other agencies. (See *supra* pp. 25-32.)

The same thing also appears from the testimony of the managers of those agencies themselves. The General Manager of the United Press specifically declared in an affidavit filed herein (R. 1482) that the AP provision with regard to local "spontaneous" news has

> "not prevented UP from obtaining local news of events of a spontaneous origin occurring in the United States."

The United Press obtains domestic local news from its own full-time employees and string men, and from 560 daily newspapers, 24 semi-weekly newspapers, and 457 radio stations (F. 41, R. 2611). It advertises that more than 56,000 persons are available to contribute to its news coverage (R. 1557-8).

Similarly the president of King Features Syndicate—of which the INS is a department—testified that the exclusive furnishing of local "spontaneous" news by members of The Associated Press to AP has

> "not interfered with the gathering of news by International News Service" (R. 2169).

Like the UP, the INS obtains its news through its own employees and "string" correspondents, supplemented by

news from domestic and foreign newspapers, radio stations and other news agencies (F. 57, 58, 62, 63; R. 2614-5).

The growth and success of these other agencies—and of the papers which employ them—speak for themselves. They completely refute any *a priori* reasoning on the subject. If the Government contends otherwise, its argument is not supported by the record below.

For the convenience of the Court we quote the opinion of the court below which fully supports the contentions of the defendants as to the reasonableness of these by-laws for the protection of the news reports against disclosure. It says (Op., R. 2598):

> "The second charge is against the by-law which forbids the communication of news by AP to non-members, and of 'spontaneous' news by members to non-members. The defendants answer as to the agreement not to disclose 'spontaneous' news, that it is ancillary to the collection and transmission to AP of that news itself. News, they argue,—as its very name implies—has no value after it has once been published; if a member were free to impart 'spontaneous' news to others who could use it before AP, the whole value of the grant would be gone. *Even if a member were allowed to impart it to others who could use it simultaneously, its chief value would be gone, for that rests upon priority.* As to the agreement that AP shall not impart news collected by it to non-members, similar considerations apply; they would lose all benefit of the expenses incurred in its collection unless they had priority. It is well settled, they continue, that a restrictive covenant necessary to the protection of property transferred is 'reasonable.' The most common one is an agreement not to compete with the buyer of a business, or of a professional practice, for a limited time and in a limited territory; but that, they insist, is only one

> example of the general doctrine, which many and various decisions support. *We quite agree with all this:* taken by themselves, and apart from the restrictions upon membership, both agreements would be valid; *it is essential to the protection* of *the main purpose that the member who furnishes 'spontaneous' news, or AP itself, shall not destroy the value of what is transferred by making it available to others, before it can be published.''*

Thus the court specifically found that both of the by-law provisions for the protection of the news against disclosure would be valid except for the provisions as to membership.

If the court erred in its finding as to the invalidity of the membership provisions, then of course the injunctions as to these secondary protective provisions should also automatically go out.

**The Canadian Press Agreement.***

The Canadian Press is a cooperative news-gathering agency in Canada. The Canadian Press and the AP are in a position to render supplementary service to each other by interchanging news. This they have done for a long period of years (the latest contract being dated November 1, 1935—R. 456; F. 134, R. 2625)—AP giving its news dispatches to The Canadian Press, and The Canadian Press in turn supplying its news to AP. '

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* The complaint contained charges of exclusive interchange agreements with agencies in certain other foreign countries, but the evidence shows beyond any question that there were no such agreements in existence and have not been for many years. AP collects its own foreign news at the source instead of depending on those foreign agencies.

The court below did not even mention these charges in its opinion, in its findings or in the decree, and no issue concerning them is now before the Court.

AP agrees not to disclose to anyone else in Canada the news furnished to The Canadian Press, for use in Canada, and similarly The Canadian Press agrees not to disclose or permit its members to disclose to anyone other than AP and its members the news supplied to AP for use in the United States.

All of the principal American news agencies—including AP, UP, INS, the Chicago Tribune, and The New York Times—have their own news-gathering facilities in Canada, and many AP newspapers have their own correspondents in Canada and have news-report exchange arrangements with Canadian newspapers (F. 137-139, R. 2626).

UP has a wholly-owned subsidiary—British United Press, Ltd.—which operates directly in Canada and covers Canadian news. 53 Canadian newspapers and 39 Canadian radio stations are subscribers to the news service of British United Press. UP and British United Press exchange their news reports (F. 137, 2626).

Mr. Williams, the Vice-President and General Manager of the United Press—which receives the Canadian news through its subsidiary, British United Press, Ltd.—categorically stated in his affidavit:

> "The British United Press, Ltd. has not been prevented from obtaining local Canadian news by reason of any provisions of the by-laws of The Canadian Press or otherwise." (R. 1483.)

The INS also covers the news in Canada. It maintains a staff of correspondents in the important cities of Canada (R. 2149).

The Chicago Tribune maintains an elaborate staff of correspondents in most of the principal cities of Canada

(R. 1996), and makes such news available through the Chicago Tribune-New York News Syndicate (R. 2001-2).

The New York Times has a long standing association with the Montreal, Canada, Gazette for obtaining Canadian news (R. 2088). All of the news developed by the staff of The New York Times, which it obtains from sources other than AP and commercial news agencies, is made available to American newspapers through The New York Times Syndicate (R. 2089-91).

The court below held that these supplementary interchange agreements between AP and The Canadian Press are reasonable and are not unlawful *per se* (C. VII, R. 2629). It enjoined the agreement of The Canadian Press not to supply its news for use in the United States to others than AP only because of the AP membership rules, and only so long as these rules remain unchanged (Op., R. 2599; C. VII, R. 2629; J. IV-V, R. 2632, 3). It did not enjoin the agreement of AP protecting the news supplied to The Canadian Press in Canada—being of the opinion that this was a matter for the Canadian authorities to determine. While the Government assigned error to this ruling, we are advised by the Government that it will not press that assignment on this appeal.

The allegation that The Canadian Press agreement has restrained others in the collection of Canadian news was denied in the AP Answer (R. 124) and in view of such denial and the evidence adduced to the contrary there is no basis of uncontroverted fact by reason of which this Court on this motion can find that the Canadian agreement had any such results.

## IV.

### The Decision Below Is in Conflict With the Public Policy Embodied in the First Amendment.

As previously shown, the effect of the judgment below and the reasoning on which it is based—is to subject The Associated Press to permanent supervision. It does this upon a novel and discriminatory principle which applies to the press—because it is the press—and does not apply to other men.

The public policy embodied in the First Amendment is that the press should be more free—or at least not less free—than other industries. It requires that the press shall not be put in leading strings—that, so far as humanly possible, it shall be free from discriminating and complicated administrative or judicial controls.

The defendants do not wish to be misunderstood. They do not claim special privileges for their own benefit. The interest to which they refer is the interest of the public itself, because of the indispensable function of the press in any free society.

It serves on the one hand to interpret to the people the wishes of the Government. It serves on the other hand to interpret to the Government the wishes of the people. As said by this Court in *Grosjean* v. *American Press Co.*, 297 U. S. 233, 250:

> "A free press stands as one of the great interpreters between the Government and the people. To allow it to be fettered is to fetter ourselves."

Neither does the press claim immunity from the application of general laws—applicable to all members of the community.

But this is not a question of wage scales—or fire laws—or hours of labor. This is a discriminatory law—applicable to the press where it would not be applicable to other men.

It says that the press may be regulated—and it undertakes to regulate it—in such a manner that it shall have less freedom than others.

It denies to members of the press the right to enjoy the fruits of their own industry. It denies them the freedom to work under the same incentives which other men enjoy. It inevitably subjects them to living in permanent danger of being called to answer in contempt proceedings, without trial by jury, for "violations" of vague and intangible obligations.

It takes from the press the right to their own "copy"—the product of their minds—and compels them to share it with others before they publish it themselves.

It violates the fundamental right defined by Milton as early as 1644 in his *Areopagitica—A Speech for the Liberty of Unlicensed Printing*—as

> "The just retaining to each man his several copy: which God forbid should be gainsaid."

We should be unrealistic and naive indeed if we did not realize that there is a dynamic law that once an industry is subjected to an administrative control—peculiar to itself—that control constantly increases—and never retreats. Once the principle of public-utility obligation is accepted—detailed administrative control inevitably follows. That supervision breeds more supervision is a political principle which has the force of natural law.

To be truly free—to perform its public function—the press must be both bold and fearless. It is inconceivable that true freedom of the press could exist if the press were subjected to such controls. It is entirely possible that a

conscientious government would administer such powers with caution. But experience teaches that whenever men have power they will use it—both directly and indirectly.

And any government which can control the press will be irresistibly tempted to do so.*

It is not necessary that such control should be direct. Indeed, control by indirection may be all the more dangerous—because more subtle, more insidious, and therefore more difficult to demonstrate and to resist.

No press can be bold and daring if it is subject to controls which can restrict and hamper it—in a thousand unseen ways—unless it is subservient to the government in power. If the press is subject to pressure or intimidation, the greatest bulwark of popular government is destroyed.

The defendants in this case have watched what has happened in other countries. It is their business to do so. They fear—and rightly fear—anything that might prove to be the first step in the same direction here. To use a homely simile—they fear that if they get even a hand in the wringer, everything else will follow.

Recent history shows only too well the strength of those fundamental forces which tempt governments to the expan-

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* It is not necessary to show that the supervisory power set up by this decree has as yet been actually abused.

> "Proof of an abuse of power has never been deemed a requisite for attack on the constitutionality of a statute purporting to license the dissemination of ideas. * * * It is not merely the sporadic abuse of power by the censor but the pervasive threat inherent in its very existence that constitutes the danger to freedom of discussion." (*Thornhill* v. *Alabama,* 310 U. S. 88, at 97.)

The policy of the First Amendment requires that such encroachments be prevented in their very inception. As said in *West Va. Board of Education* v. *Barnette,* 319 U. S. 624, 641:

> "It seems trite but necessary to say that the First Amendment to our Constitution was designed to avoid these ends by avoiding these beginnings."

sion of their power and facilitate their progress in that direction.

The power to control the press possesses an almost irresistible attraction—because it gives the power to control without the use of force—by conditioning the minds of the people.

Freedom of the press has disappeared in nearly all the countries of the world—and always under the plea that such a step is necessary to protect the "public interest."*

**Effect of the Judgment Below.**

What is the step that has been taken here?

As previously shown, the effect of the judgment below and the public-utility principle on which it is based, means

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* As said by Mr. Chief Justice Stone in his dissenting opinion in *Minersville School District* v. *Gobitis,* 310 U. S. 586, at 604:

> "History teaches us that there have been but few infringements of personal liberty by the state which have not been justified, as they are here, in the name of righteousness and the public good, * * *."

Goebbels, when abolishing freedom of the press in Germany, purported to do so on the ground that he was in reality setting the press free—saying:

> "These shackles are now to be cut. The liberated [sic] press shall serve the state alone, its one and supreme boss! The editors of all Germany are to be elevated to organs of the state, responsible only to the state, and no longer to the advertisers."
>
> (The Rise and Fall of the House of Ullstein, pp. 33-34.)

In Argentina recently an attempt was made to control the freedom of the press under the guise of a requirement for the registration of editors. An editorial in *La Prensa,* resisting this regulation, said:

> "It is no secret for anyone what happened in Italy with the advent of the Fascist regime: the press lost its independence and soon was converted into an instrument of the totalitarian state.
>
> "All at once newspapers were deprived of their special attributes to give them the same aspect with the same creed and tone. It was enough to read one paper to read all, monotonous and submissive. The Italian journalist was converted

that the court has assumed permanent supervision over The Associated Press and, by a parity of reasoning, over other comparable news-gathering agencies. From now on, everything that AP does which in any way affects the question of membership will be subject to recurrent actions—in summary proceedings for contempt—by the Department of Justice and by any paper which regards itself aggrieved. The AP must act at its peril with respect to every applicant for membership in deciding

(1) whether he shall be admitted at all;

(2) the terms of admission—i. e., what terms are "equal";

(3) the terms of continuing to be a member and of enjoying the rights of membership—since logically that follows—so that even after admission the members will have a right to raise the question of "equality" of treatment;

(4) the conditions under which AP can discipline or expel its members.

Thus the members of AP are deprived of the privileges enjoyed by other men—namely,

(1) freedom to choose their own associates;

(2) freedom to enjoy the fruits of their own enterprise.

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into a functionary and a member of the official party. With his independence died his initiative, will and talent.

* * * * * *

"Among us, besides having to inscribe in the register to exercise the profession, there is the obligation to renew every two years one's professional card with appeal, if renewal is denied, to a special tribunal, the majority of whom would be government functionaries.

"To ask permission to be free is to confess one's self a slave."

(Editorial from *La Prensa,* Feb. 22, 1944, re-printed in The New York Times, February 23, 1944.)

They are deprived of the right to retain for themselves their own "copy"—they must share it with others before they publish it themselves.

The very industry—and the only one—whose freedom is guaranteed by the Constitution is the only one subjected to this doctrine. Instead of having more freedom, it has less freedom. It is in effect deprived of the right to conduct a *private* cooperative. It is subjected to discriminatory and burdensome controls.

**No Clear Necessity—**
**No Clear and Present Danger.**

Many cases have come before this Court in recent years involving the First Amendment. These cases all lay down one fundamental principle—namely, that regulation which limits freedom of speech and of the press cannot be justified except by clear necessity—by clear and present danger. "The substantive evil must be extremely serious, and the degree of imminence extremely high."*

In the very recent case of *West Va. Board of Education* v. *Barnette,* 319 U. S. 624 (1943), this Court reviewed the earlier cases and summed up their doctrine in the following words (p. 639):

> "The right of a State to regulate, for example, a public utility may well include, so far as the due-process test is concerned, power to impose all of the restrictions which a legislature may have a 'rational basis' for adopting. But freedoms of speech and of press, of assembly and of worship, may not be infringed on such slender grounds. They are susceptible of restriction only to prevent grave and immediate danger to interests which the State may lawfully protect."

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* *Bridges* v. *California,* 314 U. S. 252, 263.

What is the "clear and present danger" in the present case? Not monopoly—not domination—not restraint upon access to news events—not inadequacy of competition—not indispensability—not poor service—the court specifically found that

> "AP has for many years furnished to its members news reports which embody the highest standards of accurate, non-partisan and comprehensive news reporting" (F. 26, R. 2609).

The court did not even find a "danger" of any kind whatever. It relied entirely upon a vague and shadowy doctrine of "illumination."

And even this doctrine is not a choice between darkness and light. There was no contention that the facts—the straight news—are not published. There is no contention even that the distinctive AP news—news bearing the "personal impress" of these defendants—will not be published. Indeed the whole point is that they desire to publish it themselves. The question is not whether it shall be published—but merely *who* shall publish it.

The question is not one of clear and present danger. On the contrary—it is the exceedingly controversial question whether more light and better light will be produced by putting the press of the United States in leading strings than by leaving its members to operate under the same driving incentives that society relies upon in the case of other men.

The real danger is the one created by the action of the court itself—namely, the application of such a discriminatory doctrine to the press.

**The Public Policy of the First Amendment.**

It is not necessary, for the purposes of this case, however, to hold that the judgment below rises to the dignity of actual violation of the First Amendment. The Court is not here faced with the necessity of determining whether Congress has exceeded its constitutional power by a discriminatory statute directed specifically at the press.

It is enough, for the purposes of this case, that the First Amendment is the embodiment of a far more fundamental public policy* which comes directly in conflict with the nebulous and speculative public policy which was the sole basis of the decision of the majority below and in their view justified the conversion of press agencies into public utilities.

The effect of the First Amendment is not confined to the strict letter of its prohibitions. To apply a phrase once used by Mr. Justice Holmes, its underlying principle is so vital and far-reaching that its positive prohibitions are surrounded by a "penumbra."** It is more than a mere command to Congress not to cross certain rigid boundaries which mark the extreme limits to which Congress may go. It is also a declaration of national policy whose connotations embody all the history which lies behind it and which should serve as a guide not only to Congress but to the courts whenever questions of "policy" arise—long before the boundaries themselves are reached.

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* In *Grosjean* v. *American Press Co.*, 297 U. S. 233, 245, this Court said that the First Amendment

> "Expresses one of those 'fundamental principles of liberty and justice which lie at the base of all our civil and political institutions'."

** Mr. Justice Holmes used this vivid and illuminating expression in his dissenting opinion in *Olmstead* v. *U. S.*, 277 U. S. 438, 469, with respect to the Fourth and Fifth Amendments.

The majority below were in error in thinking that the First Amendment—and the policy which it embodies—prohibit only direct restriction upon printing. They seemed to think that there was no room for the application of the policy of the First Amendment because—so they said—the effect of their action was "not to restrict AP members as to what they shall print" (Op., R. 2600).

This language reflects an old and narrow view of freedom of the press even narrower than the views expressed by Blackstone, whose error was later pointed out by Cooley.* Such narrow views have long since been abandoned by this Court.**

Freedom of the press extends not merely to direct restriction of what the press shall print, but to the protection of every essential step in the whole process of collecting, printing and distributing the news.

It prohibits discriminatory taxation. *Grosjean* v. *American Press Co.*, 297 U. S. 233.

It prohibits interference with distribution of news. *Martin* v. *Struthers*, 319 U. S. 141, 143; *Lovell* v. *Griffin*, 303 U. S. 444, 452; *Schneider* v. *State*, 308 U. S. 147, 160; *Thornhill* v. *Alabama*, 310 U. S. 88, 102; *Sun Publishing Co.* v. *Walling*, 140 F. (2) 445, 449-450 (C. C. A. 6th).

It prohibits punishment subsequent to publication. *Near* v. *Minnesota*, 283 U. S. 697, 713-723.

It involves the right to remain silent as well as the right to speak. *West Va. Board of Education* v. *Barnette*, 319 U. S. 624, 634.

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* *Cooley Constitutional Limitations*, 8th ed., p. 885.

** See for example the discussion in *Near* v. *Minnesota*, 283 U. S. 697, 714-715; 718-719; *Grosjean* v. *American Press Co.*, 297 U. S. 233, 248, 249.

This Court in *International News Service* v. *Associated Press*, 248 U. S. 215, emphasized that The Associated Press involves "the very facilities and processes of publication" (p. 235).

So, here, it includes the right of these defendants to refuse to disclose to others their own "copy" until they have had an opportunity to publish it themselves.

Freedom of the press is not something which is to be narrowly construed. It is entitled to the broadest possible construction. As this Court said in *Bridges* v. *California,* 314 U. S. 252, 262, the First Amendment is

> "a command of the broadest scope that explicit language, read in the context of a liberty-loving society, will allow."

## Conclusion.

To repeat—the public policy which underlies the First Amendment is that, so far as humanly possible, the press should be left free. It should not be subjected to discriminatory and hampering legislation. If regulated at all, it should only be for reasons of the gravest necessity.

Such regulations should be imposed—not by courts which are ill-equipped to determine or administer such matters—but only by Congress itself.

Certainly so grave a step as transferring the press from the field of private enterprise to the status of a regulated public utility is the last thing which the courts should do on their own motion—and the last thing that should be done at all so long as any possible alternative exists.

The present case involves no question of monopoly—of domination—of power over others—or inadequacy of competition. The court below acted solely on the basis of a nebulous and exceedingly controversial public policy unsupported by law or by the record in this case—and in

direct conflict with the public policy embodied in the First Amendment.

Its decision should be reversed and the case dismissed.

Respectfully submitted,

JOHN T. CAHILL,
Attorney for The Associated Press, *et al.*

THURLOW M. GORDON,
MORRIS HADLEY,
TIMOTHY N. PFEIFFER,
ROBERT T. NEILL,
GEORGE NEBOLSINE,
JERROLD G. VAN CISE,
JOHN W. NIELDS,
Of Counsel.

October 23, 1944.

## Appendix.

### Statutes Involved.

(1) The Sherman Act of July 2, 1890, Sections 1, 2 and 4 (Act of July 2, 1890, C. 647, Secs. 1, 2 and 4, 26 Stat. 209, as amended by 36 Stat. 1167 and 50 Stat. 693, 15 U. S. C. Secs. 1, 2 and 4):

> "[Section 1.] Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is hereby declared to be illegal * * *. Every person who shall make any contract or engage in any combination or conspiracy hereby declared to be illegal shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be punished by fine not exceeding $5,000, or by imprisonment not exceeding one year, or by both said punishments, in the discretion of the court.
>
> "Sec. 2. Every person who shall monopolize or attempt to monopolize, or combine or conspire with any other person or persons, to monopolize any part of the trade or commerce among the several States, or with foreign nations, shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be punished by fine not exceeding five thousand dollars, or by imprisonment not exceeding one year, or by both said punishments, in the discretion of the court.
>
> "Sec. 4. The several district courts of the United States are hereby invested with jurisdiction to prevent and restrain violations of this act; and it shall be the duty of the several district attorneys of the United States, in their respective districts, under the direction of the Attorney-General, to institute proceedings in equity to prevent and restrain such violations. Such proceedings may be by way of petition setting forth the case and praying that such

violation shall be enjoined or otherwise prohibited. When the parties complained of shall have been duly notified of such petition the court shall proceed, as soon as may be, to the hearing and determination of the case; and pending such petition and before final decree, the court may at any time make such temporary restraining order or prohibition as shall be deemed just in the premises''

(2) The Clayton Act of October 15, 1914, Section 15 (Act of October 15, 1914, c. 323, Sec. 15, 38 Stat. 736, 15 U. S. C. Sec. 25):

''Sec. 15. The several district courts of the United States are hereby invested with jurisdiction to prevent and restrain violations of this Act, and it shall be the duty of the several district attorneys of the United States, in their respective districts, under the direction of the Attorney General, to institute proceedings in equity to prevent and restrain such violations. Such proceedings may be by way of petition setting forth the case and praying that such violation shall be enjoined or otherwise prohibited. When the parties complained of shall have been duly notified of such petition, the court shall proceed, as soon as may be, to the hearing and determination of the case; and pending such petition, and before final decree, the court may at any time make such temporary restraining order or prohibition as shall be deemed just in the premises. Whenever it shall appear to the court before which any such proceeding may be pending that the ends of justice require that other parties should be brought before the court, the court may cause them to be summoned, whether they reside in the district in which the court is held or not, and subpoenas to that end may be served in any district by the marshal thereof.''