

IN THE DISTRICT COURT OF THE UNITED STATES
Northern District of Illinois.

UNITED STATES OF AMERICA	(
Petitioner,)	
-vs-	(IN EQUITY.
)	
BOARD OF TRADE OF THE CITY	(
OF CHICAGO, and others,)	
Defendants.	(

THE ANSWER OF ALL THE DEFENDANTS.

Now come the defendants, Board of Trade of the City of Chicago, Edward Andrew, Frank B. Rice, Albert E. Cross, J.E.Cunningham, David S. Lasier, Leslie F. Gates, John Carden, Robert McDougall, Joseph Simons, Adolph Gerstenberg, Benjamin S. Wilson, L. Harry Freeman, George B. Quinn, John A. Rogers, John R. Mauff, and William L. Gregson,, and for answer to so much of said bill as they are advised it is necessary or material for them to make answer to, say:

I. That defendants admit that the Board of Trade of the City of Chicago is a corporation, as alleged in said bill, and has the charter powers therein alleged, and that the objects of said Association are stated in its rules, and are as alleged in said bill; and that by its rules the government of said corporation is vested in such officers and directors, and that the defendants (other than said Board of Trade) are at the present time its officers and directors, as alleged in said bill; and that all of the business and financial concerns of the association are managed and conducted in

accordance with its charter, rules and bylaws under the direction of its said board of directors, and that its rules provide for the admission of persons to membership in the manner alleged in said bill, and defendants aver that a copy of said rules are attached to this answer and made a part hereof as Exhibit "A".

> II. That defendants admit that said Board of Trade has established and now maintains in said city of Chicago a commercial exchange as alleged in said bill, and that it has more than 1500 members, some of whom transact each of the different kinds of business described in said bill, and that in the conduct thereof said members are required to comply with said rules so far as they apply to said business of said members, and that said Board of Trade has become and is a great commercial center for the transaction of business in wheat, corn, oats, rye and other grain; but these defendants deny that said Board of Trade dominates or controls the market in grain either as to the amount sold or shipped from other states to Illinois, or as to the prices thereof throughout a large part of the State of Illinois or the States adjoining.

III. These defendants aver that said Board of Trade does not itself buy or sell any grain or other commodity, or otherwise engage in trade - its only business being that of providing a place in the city of Chicago where its members may advantageously meet to contract with each other respecting the purchase and sale of grain and provisions, and that to that end said Board of Trade has enacted and enforces (against its members only) certain rules governing the conduct of its members in said exchange room and in their relations to each other.

3.

and to their customers, and also respecting the contracts and transactions made by its members either for themselves or as agents for others.

That the principal business of its members is that of making with each other contracts and transactions for the purchase and sale of grain and provisions for present and future delivery, and that said contracts for present delivery relate to and cover grain, which has already arrived in Chicago - much of it having been theretofore consigned by the owners thereof from other places within and without the state of Illinois to members of said Board of Trade in the city of Chicago for the purpose of being there sold upon such exchange by said members as the agents of said owners -, and that said contracts for future delivery in many instances relate to grain, which at the time of making of the contracts relating thereto is either in transit to Chicago or is by the owners thereof after the making of said contracts shipped to Chicago, for the purpose of being there delivered upon said contracts for future delivery, and that for the purpose of facilitating said purchases and sales for future delivery by its members on said exchange, and creating a broader and more constant market, so that it would be practical at all times during certain hours of each business day for such members to readily buy and sell such commodities for future delivery upon such exchange, and also for the purpose of promoting the comfort and convenience of such of its members as are engaged in such trading, said Board of Trade has found it advisable and necessary to create, establish and maintain certain market hours, to-wit; between 9:30 A.M. and 1:15 P.M. - except on Saturdays when the market

4.

hours are from 9:30 A.M. to 12:00 M.,- and to confine such future trading by its members to said market hours, and that to that end said Board of Trade many years ago enacted a rule (Rule XVI, Sec. 1), that no trades or contracts for future delivery of grain or provisions should be made or offered to be made by members of said Board of Trade in its exchange room, or in the immediate vicinity thereof at any other time than within said market hours, and provided in such rule that for any violation thereof a member should be suspended, and for a second violation be expelled, from the privileges of said association; and that the existence of said rule has been beneficial, not only in that it has made a better, more constant and broader market for members to trade in, and non-members through members as their agents to sell and buy grain and provisions upon, but also it has conduced to the health, comfort and welfare of said members, and that in thus limiting the trading by its members to such market hours it has but followed a practice and precedent established by most commercial exchange in this country as well as in Europe, among whom it has always been customary to limit to a more or less extent the hours for trading.

IV. That another kind of trading in the commodities aforesaid, which is participated in by said members upon said exchange, consists in the buying and selling of grain "to arrive", wherein owners of grain already in transit to, or about to be shipped to, Chicago, offer to sell it to members of said Board to be delivered and paid for upon its arrival in Chicago; that many such owners, who are not themselves members of said Board of Trade, employ members thereof as their agents

5.

to make such contracts upon such exchange with other members thereof (who are often acting as agents for other purchasers), and that a large volume of trading in grain to arrive takes place daily, and for years has taken place daily, during its market hours upon the exchange of said Board of Trade between its members.

And these defendants admit that, as applicable to such trading, and to control the conduct of its members in respect thereto, the members of said Board of Trade, in pursuance to its by-laws, on July 18, 1906, adopted as one of its rules Section 33, which is set out in the bill herein, and that said rule since the adoption thereof has been, and is now, in full force and effect, and that such members respect and comply therewith.

V. But these defendants deny that either the purpose or intent of said Board of Trade or its members in the enactment of said rule was, or is, to prevent competition among members of said Board of Trade, or the firms or corporations with which said members are connected, in dealings in oats, corn, wheat, and rye, to arrive, as alleged in said bill, or that either such purpose or intent was, or is, to fix or control the prices to be offered and paid for said wheat, corn, oats and rye to arrive, or to thereby restrain trade or commerce therein.

And these defendants further deny that the effect of said maintenance, or observance of said rule has been, or is, to fix or control arbitrarily during the time when said Board of Trade is not open for business the prices of said grain to arrive or is to impair or prevent competition among persons contracting to buy or sell grain to thereafter arrive in the city of Chicago.

6.

VI. That defendants aver that some years before the adoption of said rule four or five persons entered into an agreement with the Chicago Board of Trade and the members of said Board of Trade to lease and control the leases from the railroad companies whose lines terminated in Chicago, or otherwise, control of practically all the grain elevators in Chicago, which were used as public (Class "A") warehouses, and were conveniently located as respects rail and lake transportation, and they have since severally operated the same as such Warehouses, and have also themselves built and thereafter operated other like grain elevators, they thus together controlling practically all such public grain elevators or warehouses in Chicago, and each of them combining with his business of public elevator proprietor that of grain buyer; and each such proprietor used his said elevators for the storage of grain purchased and owned by himself. That this ownership by said grain dealers of said public elevators enabled them to drive out of such business other grain buyers which they did by over-bidding such other purchasers of grain and thus in effect giving away a portion of their storage charges, and that by reason of this and other advantages, which said warehousemen had by reason of ~~their~~ operating such warehouses, said warehousemen were able to, and did, acquire a practical monopoly of the business of purchasing and selling grain to arrive in Chicago, and they were thereby enabled to crush out, and they had prior to the adoption of said rule in part succeeded in crushing out, competition among buyers of grain to arrive in Chicago, and that as a result said warehousemen had, prior to the adoption of said rule, been enabled to purchase, and were purchasing, more than three-quarters of all the grain arriving in Chicago.

That in conjunction with said terminal elevators in Chicago, said public warehousemen had, prior to the adoption of said rule, also acquired control of sundry smaller warehouses adjacent to railroads at many country places within the principal grain-producing states, and that by arrangement among themselves said warehousing business was so apportioned among them that each of them acquired and controlled exclusively the elevator system of one or more railroad lines or systems without interference therewith on the part of any of said others; and that it was also a part of such arrangement or understanding between said elevator owners that the one operating said warehouse system on any such railroad should be the only one of them to bid for grain "to arrive" in Chicago over said road; and that it was also, prior to the adoption of said rule, a frequent practice of said elevator proprietors to agree among themselves each afternoon upon the prices which all should adopt in their bids to be sent that day to persons in the country for grain "to arrive" in Chicago; and that by reason of the facts aforesaid many members of the Board of Trade - who would otherwise have joined in the bidding - ceased either to bid on said exchange for grain "to arrive" in Chicago or to send out bids therefor to the persons in the country, and ceased to solicit or accept from country shippers consignments of grain to be sold "to arrive" in Chicago; and that competition in bidding for grain "to arrive" in Chicago had, prior to the passage of this rule, become very much restricted.

Defendants aver that the only purpose or intention of said Board of Trade and its members in adopting, and of its officers and directors in enforcing, said rule - other than that of pro-

noting the convenience of its action in extending the hours of business it was to increase competition among those engaged in buying and selling grain "to arrive" in Chicago by enlarging the number of members of said Board, who would participate in such bidding for grain "to arrive", not only upon said Exchange and among the members of said Board of Trade, but also the number of those who would send out bids to the country for grain "to arrive".

These defendants further aver that the effect of said adoption and enforcement of said rule has been, and is, to very much increase the number of members of said Board of Trade who bid upon said exchange for grain "to arrive", and of those who send out bids to owners of grain in the country; and a further effect of said rule has been, and is, that many more members of said Board of Trade are since, and because of, the existence of said rule, engaged upon said exchange in the business of receiving and selling grain "to arrive", and that this has resulted not only in better prices being obtained by those wishing to sell, in Chicago, grain "to arrive", but in providing in Chicago a broader market and more purchasers for such grain "to arrive", and that the adoption and observance of said rule has very much promoted and increased competition in said trade and thereby increased prices in said sales, and has been beneficial and advantageous to all persons connected therewith, either as buyers or sellers of grain sold "to arrive" in Chicago.

And having fully answered said bill, these defendants

pray to be hence dismissed, with their costs in this behalf sustained.

Board of Trade of the City of Chicago

Edward Andrew
 Frank B. Rice
 Albert E. Cross
 J. E. Cunningham
 David S. Lavier
 Leslie F. Gates
 John Calden
 Robert Mc Dougall
 Joseph Simons
 Adolph Gerstenberg
 Benjamin S. Wilson
 L. Harry Freeman
 George B. Quinn
 John A. Rogers
 John R. Mauff
 William L. Elgson
 By Thompson Their Counsel.

United States of America ()
Northern District of Illinois) ss:
Cook County ()

EDWARD ANDREW being first duly sworn, deposes and says that he is President of Board of Trade of the City of Chicago, one of the defendants named in the foregoing Answer, and as such is authorized to make this affidavit. That he has read the foregoing Answer, and knows the contents thereof, and that the same is true of his own knowledge, except as to those matters therein stated to be upon information and belief, and as to those matters, he believes it to be true.

Edward Andrew

SUBSCRIBED and sworn to before me
this 29th day of April, A D 1913.

Theodore E. Klein
Notary Public.