

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, ~~1916~~ 1917.

No. 370, 98



BOARD OF TRADE OF THE CITY OF CHICAGO ET AL.,
APPELLANTS,

vs.

THE UNITED STATES.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR
THE NORTHERN DISTRICT OF ILLINOIS.

FILED FEBRUARY 1, 1918.

(25,118)

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a In the District Court of the United States for the Northern
District of Illinois, Eastern Division.

In Equity. No. 8.

UNITED STATES OF AMERICA, Petitioner,

vs.

BOARD OF TRADE OF THE CITY OF CHICAGO et al., Defendants.

Mr. Charles F. Clyne, United States Attorney for the Northern
District of Illinois for Petitioner.

Mr. Henry S. Robbins, Solicitor for Defendants.

1 Pleas in the District Court of the United States for the North-
ern District of Illinois, Eastern Division, in Chancery sit-
ting, at the United States Court room, in the City of Chicago, in
said District and Division, before the Honorable Kenesaw M.
Landis, United States District Judge, for the Northern District
of Illinois, on Tuesday, the twenty-eighth day of December, being
one of the days of the December Term of said Court, begun Mon-
day, the twentieth day thereof, in the year of our Lord one thou-
sand nine hundred and fifteen, and of the Independence of the
United States of America, the one-hundred and fortieth year.

Present: Honorable Kenesaw M. Landis, Judge of said court,
presiding. John J. Bradley, United States Marshal for said dis-
trict and T. C. MacMillan, clerk of said court.

2 In the District Court of the United States for the Northern
District of Illinois, Eastern Division.

In Equity. No. 8.

UNITED STATES OF AMERICA, Petitioner,

vs.

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 McDougal, Joseph Simons,
Adolph Gerstenberg, Benjamin S. Wilson, L. Harry Freeman,
George B. Quinn, John A. Rogers, John R. Manff, and William
L. Gregston, Defendants.

Be it remembered, That heretofore to-wit: on the eleventh day
of February, 1913, came the Petitioner in the above entitled cause
by James H. Wilkerson, United States Attorney for the Northern
District of Illinois, acting under the direction of the Attorney Gen-
eral of the United States and filed in the Clerk's office of said Court
a certain Petition in words and figures following to-wit:

3 In the District Court of the United States for the Northern
District of Illinois.

In Equity. No. 8.

UNITED STATES OF AMERICA, Petitioner,
v.
BOARD OF TRADE OF THE CITY OF CHICAGO, and Others.

Petition in Equity.

James H. Wilkerson, United States Attorney, Northern District
of Illinois.

George W. Wickersham, Attorney General.

James A. Fowler, Assistant to the Attorney General.

3½ In the District Court of the United States for the Northern
District of Illinois.

In Equity.

UNITED STATES OF AMERICA, Petitioner,
v.
BOARD OF TRADE OF THE CITY OF CHICAGO and Others, Defendants.

To the Honorable Judges of the District Court of the United States
for the Northern District of Illinois, Sitting in Equity:

Now comes the United States of America, by James H. Wilkerson, United States attorney for the Northern District of Illinois, acting under the direction of the Attorney General of the United States, and brings this, its proceeding by way of petition, against Board of Trade of the City of Chicago, Edward Andrew, president; Frank B. Rice, vice president; Albert E. Cross, second vice president; and J. E. Cunningham, David S. Lasier, Leslie F. Gates, John Carden, Robert McDougal, Joseph Simons, Adolph Gerstenberg, Benjamin S. Wilson, L. Harry Freeman, George B. Quinn, John A. Rogers, John R. Manff, and William L. Gregston, directors of Board of Trade of the City of Chicago. The full names of these defendants whose initials are given in whole or in part are unknown to petitioner.

Petitioner complains and alleges as follows:

That defendant Board of Trade of the City of Chicago is a body politic and corporate, created by special act of the Legislature of the State of Illinois approved February 18, 1859, with power and authority by that name to sue and be sued, implead and be impleaded, receive and hold property and effects, real and personal, by gift, devise, or purchase, and dispose of the same by sale, lease, or otherwise, and to make such rules, regulations, and by-laws from time to time as its members may think proper or necessary for the govern-

ment of the corporation thereby created not contrary to the laws of the land.

That said act creating said defendant corporation further provides that said corporation shall have the right to admit and expel such persons as its members may see fit in the manner to be prescribed by the rules, regulations, and by-laws thereof.

That the objects of the said association, Board of Trade of the City of Chicago, as stated in its rules enacted pursuant to the provisions of said act of incorporation, are: To maintain a commercial exchange, to promote uniformity in the customs and usages of merchants, to inculcate principles of justice and equity in trade, to facilitate the speedy adjustment of business disputes, to acquire and disseminate valuable commercial and economic information, and generally to secure to its members the benefits of cooperation in the furtherance of their legitimate pursuits.

That it is provided by said rules enacted pursuant to said act of incorporation that the government of said Board of Trade of the City of Chicago is vested in a president, two vice presidents, and fifteen directors, who, including the president and vice presidents, shall be known as the board of directors of said association; and that all of the business and financial concerns of the association are managed and conducted in accordance with the charter, rules, regulations, and by-laws of the association so made under the direction of said board of directors. That defendant, Edward Andrew, is president, Frank B. Rice is vice president, Albert E. Cross is second vice president, and defendants J. E. Cunningham, David S. Lasier, Leslie F. Gates, John Carden, Robert McDougal, Joseph Simons, Adolph Gerstenberg, Benjamin S. Wilson, L. Harry Freeman, George B. Quinn, John A. Rogers, John R. Manff, and William L. Gregston are directors of said Board of Trade of the City of Chicago.

That said rules of said association further provide for the admission to membership in said association of persons who are approved by the board of directors upon payment of an initiation fee of ten thousand dollars, or upon the presentation of an unimpaired or unforfeited membership duly transferred, and provided that as a condition to admission to membership in said association the person so applying signs an agreement to abide by the rules,

4 regulations, and by-laws of said association and all amendments that may be made thereto.

That said Board of Trade of the City of Chicago has established and maintains in said city of Chicago a commercial exchange for the buying and selling of grain and other commodities and for carrying on transactions connected with the purchase and sale thereof.

That there are more than fifteen hundred members of said association; that said membership consists both of those who buy and sell grain and other commodities on commission and of those who are actual purchasers and sellers thereof, and also of those who are members of firms and corporations engaged in dealing in grain and other commodities, both on commission and as actual purchasers and sellers thereof, and who, as members of said association, are bound in the conduct of the business of said firms and corporations

with which they are connected, to observance of and compliance with the rules of said association. That by reason of the size of its membership and the large number of firms and corporations with which its members are connected, and which, by virtue of such connection, transact their business in accordance with the rules of said association, 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. That a large portion of said business is in grain

5 purchased in States other than Illinois for shipment to and delivery in Chicago, and in grain shipped from points in other States to Chicago for sale in the Chicago market; which said grain is an article of commerce among the States; and that a large part of the business transacted upon said exchange maintained by said Board of Trade of the City of Chicago is in connection with the purchase and sale and handling of such interstate shipments of grain.

That said Board of Trade of the City of Chicago, by reason of the number of its members and the great extent of the business carried on by said members and by the firms and corporations with which said members are connected, which, because of such membership, are subject to the rules of said Board of Trade, dominates and controls the market for grain, both as to amount sold and shipped in interstate commerce, and price thereof, throughout a large portion of the State of Illinois and the States adjoining it.

That a part of the business of the members of said Board of Trade and of the firms and corporations with which said members are connected consists in purchasing and dealing in grain throughout the territory tributary to Chicago, which includes the States of Wisconsin, Minnesota, Michigan, Illinois, Indiana, and other States, for shipment to and delivery at Chicago, and in purchasing and dealing in grain which has been shipped from points within said territory to Chicago and which is in transit to Chicago upon

6 the lines of the various carriers centering therein.

That in the dealings upon said Board of Trade transactions relating to said grain which has not yet reached the Chicago market are designated as transactions in grain "to arrive." That a large portion of said shipments of said grain to arrive is from points without the State of Illinois; and that said grain throughout the course of said transactions upon said Board of Trade with reference to it is the subject of commerce among the States; and that it is the practice and course of business among the members of said Board of Trade and the firms and corporations with which they are connected and who transact their business in accordance with its rules to make purchases of said grain to arrive prior to its shipment or while it is in transit to Chicago and to contract concerning the price which is to be paid for it upon its arrival at its destination at the Chicago market.

That with reference to transactions in said grain to arrive said Board of Trade has adopted for observance in the dealings of its members and of the firms and corporations with which its members are connected the following rule:

Sec. 33. A. The board of directors is hereby empowered to establish a public "call" for corn, oats, wheat, and rye to arrive, to be held in the exchange room immediately after the close of the regular session of each business day.

7 B. Contracts may be made on the "call" only in such articles and upon such terms as have been approved by the "call" committee.

C. The "call" shall be under the control and management of a committee consisting of five members appointed by the president with the approval of the board of directors.

D. Final bids on the "call" less the regular commission charges for receiving and accounting for such property may be forwarded to dealers. It is the intent of this rule to provide for a public competitive market for the articles dealt in, and that with such market all making of new prices by members of this association shall cease until the next business day.

E. Any transaction of members of this association made with intent to evade the provisions of this rule shall be deemed uncommercial conduct, and upon conviction such member shall be suspended from the privileges of the association for such time as the board of directors may elect.

That said rule of said Board of Trade is now in force and effect and that all of the members of said Board of Trade have combined and are acting in concert to maintain and enforce said rule and are observing the same both in the transaction of their own business and in that of the firms and corporations with which they are connected and will continue so to do unless restrained by the injunction of this honorable court.

8 That the regular sessions of said Board of Trade upon business days are from nine-thirty o'clock a. m. to one-fifteen o'clock p. m., with the exception of Saturday, and that the session upon Saturday is from nine-thirty o'clock a. m. to twelve o'clock m., and that said Board of Trade is closed upon Sundays and holidays.

That the purpose and intent of said Board of Trade and its members in the enactment of said rule, and in combining and acting in concert to maintain it, was and is to prevent all competition among the members of said Board of Trade and the firms and corporations with which said members are connected in dealings relating to corn, oats, wheat, and rye to arrive from the time of the public "call" immediately after the close of the regular session of each business day until the opening of the session of said Board of Trade upon the next business day, and to fix and control the prices to be offered and paid for said wheat, corn, oats, and rye to arrive, and thereby to restrain trade and commerce therein.

That said members of said Board of Trade have combined and conspired together and are combining and conspiring together to establish said public "call" and to maintain said rule with reference thereto as above set forth, and that the effect of said combination and conspiracy has been and is to fix and control during the periods

Between the regular sessions of said Board of Trade the prices to be offered and paid for wheat, corn, oats, and rye to arrive.

That said combination so to fix and control prices extends to the transactions and dealings of all of the members of said Board of Trade and to all the firms and corporations with which said members are connected and that by reason of the large number of said members and their domination of the Chicago market the effect of said combination to observe and enforce said rule has been and is to fix and control arbitrarily during the time when said Board of Trade is not open for business, prices of said grain to arrive as above set forth; and that said combination extends not only to transactions in Chicago but to transactions throughout the entire country with respect to wheat, corn, oats, and rye to be received at Chicago and to be disposed of upon the Chicago market.

That said combination as prescribed by said rule and as above set forth is an absolute agreement to fix and control the prices of said wheat, corn, oats, and rye to arrive during the time when said Board of Trade is closed, and that but for said combination among the members of said Board of Trade, as evidenced by said rule, the members of said Board of Trade and the firms and corporations with which they are connected would, during the time between the sessions of said Board of Trade, compete with each other in fixing the prices to be paid for said wheat, corn, oats, and rye to arrive, and in sending out bids therefor, and that but for said rule and the observance thereof by the members of said Board of Trade the prices to be offered to be paid for said wheat, corn, oats, and rye to arrive would, during the time when said Board of Trade is closed, be determined by competition.

That the regular sessions of said Board of Trade occupy only about one-half of the time ordinarily devoted to the carrying on of trade and commerce in said city of Chicago, and that the effect of the observation and maintenance of said rule is that during at least one-half of said time devoted to the carrying on of trade and commerce in said city of Chicago the prices for said wheat, corn, oats, and rye to arrive are arbitrarily determined, fixed, and controlled by said combination and agreement with reference to the price to be offered and paid therefor.

That a large portion of said wheat, corn, oats, and rye to arrive with reference to which said rule above set forth is applied by the members of said Board of Trade and the firms and corporations to which they belong and which are covered by said rule and affected by its maintenance, consists of shipments of said wheat, corn, oats, and rye from points without the State of Illinois to said city of Chicago, and that said shipments are made and carried on over the lines of divers carriers through said northern district of Illinois, and that said combination as above set forth is a combination in restraint of inter-state commerce in violation of the provisions of the act of Congress of July 2, 1890, entitled "An act to protect trade and commerce against unlawful restraints and monopolies."

In consideration whereof, and inasmuch as adequate remedy in

11 the premises can be obtained only in this court, the United States of America prays this honorable court to order, adjudge, and decree that the combination and conspiracy hereinabove described is unlawful and that all of the acts done or to be done to carry it out are in violation of the act of Congress of July 2, 1890, entitled "An act to protect trade and commerce against unlawful restraints and monopolies;" that said defendant, Board of Trade of the City of Chicago, and each and every member thereof, and each of the defendants to this petition may be perpetually enjoined from doing any act in pursuance of or for the purpose of carrying out said combination and conspiracy, and may be perpetually enjoined from entering into any combination or agreement fixing the bids which may be offered to dealers between the regular sessions of said Board of Trade for wheat, corn, oats, and rye to arrive, and may be perpetually enjoined from taking any steps for the enforcement of said rule of said Board of Trade above set forth, and that the petitioner may have such further relief as the nature of the case may require and the court may deem proper in the premises.

To the end, therefore, that the United States of America may obtain the relief to which it is justly entitled in the premises, may it please this honorable court to grant to it writs of subpoena directed to each and every one of defendants, commanding them and each of them to appear herein and answer, but not under oath, answer under oath being hereby expressly waived, the allegations contained in the foregoing petition, and to obey and perform
12 such order and decree as the court may make in the premises and upon the hearing hereof to permanently enjoin the defendants as hereinabove prayed, and pending a final hearing of this case, cause a temporary restraining order to issue enjoining the defendants and each of them and each of their officers and agents and servants as hereinabove prayed.

JAMES H. WILKERSON,
*United States Attorney,
Northern District of Illinois.*

GEORGE W. WICKERSHAM,
Attorney General.

J. A. FOWLER,
Assistant to the Attorney General.

(Endorsed:) Filed Feb. 11, 1913, at 3.30 o'clock, P. M. T. C. MacMillan, Clerk.

13 And on the same day to-wit: the eleventh day of February, 1913, a certain Chancery Subpoena issued out of the clerk's office of said Court, directed to the Marshal of said District to execute. Said Subpoena, together with the Memorandum thereto attached and the Marshal's return endorsed thereon is in words and figures following to-wit:

14 UNITED STATES OF AMERICA,
Northern District of Illinois, Eastern Division, ss:

The President of the United States of America to Board of Trade of the City of Chicago, Edward Andrew, President; Frank B. Rice, Vice-President; Albert E. Cross, Second Vice-President, and 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. Manly and William L. Gregston, Directors of Board of Trade of the City of Chicago, Greeting:

We Command You and Every of You, That you be and appear before our Judges of our District Court of the United States of America, for the Northern District of Illinois, at Chicago, in the Eastern Division of said District, on or before the twentieth day after service of this writ, exclusive of the day of service, to answer or otherwise defend against a certain bill in equity this day filed by United States of America, Petitioner, in the Clerk's office of said Court in the City of Chicago, then and there to receive and abide by such judgment and decree as shall then or thereafter be made, upon pain of judgment being pronounced against you by default.

To the Marshal of the Northern District of Illinois to Execute.

Witness the Honorable Kenesaw M. Landis, the District Court of the United States of America, for the Northern District of Illinois, at Chicago aforesaid, this eleventh day of February, in the year of our Lord Nineteen hundred and thirteen and of our Independence the 137th year.

[SEAL.]

T. C. MacMILLAN, *Clerk*,
By JOHN H. R. JAMAR,
Deputy Clerk.

Memorandum.

The defendants are required to file their answer or other defense in the Clerk's office on or before the twentieth day after service hereof upon them, excluding the day of service; otherwise the said bill may be taken pro confesso.

T. C. MacMILLAN, *Clerk*,
By JOHN H. R. JAMAR,
Deputy Clerk.

15 I have served this writ within my district in the following manner to-wit:

Upon the within named Board of Trade of the City of Chicago by delivering a true copy thereof to Edward Andrew, President of said Board of Trade at Chicago, Illinois, February 13th, 1913.

Upon the within named Edward Andrew, President, Frank B. Rice, Vice President, and Albert E. Cross, Second Vice President, by delivering to each of them personally a true copy thereof at Chicago, Illinois, February 13th, 1913. Upon T. E. Cunningham, named in writ, J. E. Cunningham, David S. Lasier, Leslie F. Gates,

John Carden, Robert McDougal, Joseph Simons, Adolph Gerstenberg, Benjamin S. Wilson, L. Harry Freeman, George B. Quinn, John A. Rogers John R. Mauff, named in writ John R. Manff, and William L. Gregson, named in writ, William L. Gregston, Directors of the Board of Trade of the City of Chicago, by delivering to each of them personally a true copy thereof at Chicago, Illinois, February 13th, 1913.

LUMAN T. HOY, U. S. Marshal,
By WM. H. GRIFFITH, Deputy.

17 Services, \$34.00
1 mile, .06

\$34.06

(Endorsed:) Filed Feb. 14, 1913. T. C. MacMillian, Clerk.

16 And on to-wit: the seventh day of May, 1913, came the defendants in said entitled cause by their solicitor, and filed in the clerk's office of said court their certain Answer in words and figures following to-wit:

17 *Answer.*

In the District Court of the United States, Northern District of Illinois.

In Equity.

UNITED STATES OF AMERICA, Petitioner,

vs.

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 McDougal, 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 admis-

sion 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 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 such 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; be-

20 tween 9:30 A. M. and 1:15 P. M.—Except on Saturdays when the market 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 again 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
21 members thereof as their agents 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 there with.

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.

22 VI. That defendants aver that some years before the adoption of said rule four or five persons engaged extensively in purchasing grain to arrive in Chicago—and who were also members of said Board of Trade—also severally acquired by 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.

23 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 per-

sons 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 promoting
24 the convenience of its members by restricting their hours of business—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
25 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. 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. MANFF,
WILLIAM L. GREGSON,
By HENRY S. ROBBINS,

Their Counsel,

26 UNITED STATES OF AMERICA,
Northern District of Illinois, Cook County, ss:

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.

(Signed)

EDWARD ANDREW.

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

(Signed)

THEODORE E. REIN,

[NOTARIAL SEAL.]

Notary Public.

(Endorsed:) Filed May 7, 1913, T. C. MacMillan, Clerk.

27 And on to-wit: the thirteenth day of May, 1913, in the record of proceedings thereof in said entitled cause before the Hon. Kenesaw M. Landis, Judge of said Court, appears the following entry to-wit:

8.

UNITED STATES OF AMERICA

VS.

BOARD OF TRADE OF THE CITY OF CHICAGO et al.

It is ordered by the Court that the motion of the United States Attorney to set this cause for trial be and the same is hereby entered and continued until May 15th.

28 And on to-wit: the fifteenth day of May, 1913, in the record of proceedings thereof in said entitled cause before the Hon. Kenesaw M. Landis, Judge of said Court, appears the following entry to-wit:

8.

UNITED STATES OF AMERICA

VS.

BOARD OF TRADE OF THE CITY OF CHICAGO et al.

Upon motion of the United States Attorney, it is ordered by the Court that this cause be set down for trial on December 1st, at 10:30 A. M.

29 And on to-wit: the eighteenth day of November, 1913, in the record of proceedings thereof in said entitled cause