

Commodity Futures Trading Commission
CEA CASES

NAME: GREAT WESTERN DISTRIBUTORS, INC., NATHANIEL E. HESS, CHARLES S. BORDEN, THOMAS F. HAYNES, AND HARTLEY L. HARRIS

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UNITED STATES DEPARTMENT OF AGRICULTURE

BEFORE THE SECRETARY OF AGRICULTURE

In re Great Western Distributors, Inc., Nathaniel E. Hess, Charles S. Borden
Thomas F. Haynes, and Hartley L. Harris, Respondents

CEA Docket No. 48

Report of Referee

Preliminary Statement

This is a disciplinary proceeding under the Commodity Exchange Act (7 U.S.C. Chapter 1), instituted by a complaint issued under section 6(b) of the Act (7 U.S.C. 9) on July 12, 1948, by I. W. Duggan, Acting Secretary of Agriculture, hereinafter called the complainant or the Government. The respondents are Great Western Distributors, Inc., and four of its officers and employees. The corporation has its principal offices in New York and a branch office in Chicago, and is a registered futures commission merchant under the Act, with membership trading privileges on the Chicago Mercantile Exchange, a contract market. Respondent Nathaniel E. Hess is Vice President of the corporation and directs and manages its business. He is a registered floor broker under the Act and a member of the Chicago Mercantile Exchange. Respondent Charles S. Borden is manager of the Chicago office of the corporate respondent, and is also a registered floor broker and member of the Chicago Mercantile Exchange. Respondent Thomas F. Haynes

is Secretary of the Corporate respondent, and Hartley L. Harris had some connection with the corporation at the time mentioned in the complaint.

The complaint charges that respondent Great Western Distributors, Inc., attempted to manipulate the price of a commodity in interstate commerce and for future delivery in violation of sections 6(b) and 9 of the Act (7 U.S.C. 9, 13), and attempted to corner and did corner a commodity in interstate commerce and for future delivery in violation of section 9 of the Act (7 U.S.C. 9, 13). These charges are based upon allegations that during November and December 1947, the corporate respondent purchased and held large quantities of December 1947 egg futures on the Chicago Mercantile Exchange and established a dominant and controlling long position in such futures; that this position was maintained and strengthened as the close of trading in December futures approached; that the respondent stood for and received substantially all the eggs delivered on the Chicago Mercantile Exchange in satisfaction of December 1947 futures and purchased and held large quantities of each eggs; that as a result of these purchases and deliveries the respondent obtained possession and control of the supply of deliverable eggs in Chicago and the surrounding area; that it offered such eggs for sale only at prices which rendered it unprofitable for short sellers to purchase them for delivery and compelled such sellers to cover their sales by the purchase of futures at prices fixed by the respondent; and that by means of these transactions the corporate

respondent attained a position where it could and did demand such prices as it saw fit for cash eggs and December 1947 egg futures from persons who had sold such futures and were obligated to deliver eggs or purchase futures in order to fulfill such contracts. The complaint further alleges that these transactions were carried out by the individual respondents in their capacity as officers and employees of the corporation, and that the operations were undertaken for the purpose and with the intent of widening the difference between the price of December 1947 and January 1948 egg futures contracts, and increasing or preventing a decrease in the price of eggs deliverable in satisfaction of December 1947 futures contracts.

On August 2, 1948, respondent Hartley L. Harris filed a separate answer. In view of the recommendations hereinafter contained, its content is immaterial. On December 22, 1948, an answer was filed on behalf of all the respondents. The answer admits the descriptive and jurisdictional statements in the complaint but denies the charges and the allegations upon which the charges are based. In support of these denials, the answer alleges that during the period in question the corporate respondent also sold December egg futures; that its long position in such futures steadily decreased after December 3, 1947; that it received eggs in satisfaction of December futures after trading in such futures had ceased on December 23, 1947; and that under the rules of the Chicago Mercantile Exchange deliveries

on futures contracts could be made from numerous cold storage warehouses in and outside of Chicago and on track in Chicago, and that fresh eggs could also be delivered on such contracts. The answer further alleges that the corporate respondent is engaged in the business of selling and distributing eggs, and that it bought and sold eggs during the period in question in the normal course of its business and at the usual profit; that prices of December 1947 egg futures decreased after December 5, 1947, and that prices of cash eggs decreased after December 11, 1947; and that the difference or spread between the prices of December and January futures during the period in question was due to causes other than the trading operations of the corporate respondent. By way of affirmative defense, the answer asserts that all trading in egg futures was conducted in accordance with the provisions of the Act and the rules of the Chicago Mercantile Exchange. It is also asserted that during the period in question the respondents filed daily and weekly reports through which the Commodity Exchange Authority was fully informed of their activities, that such activities were also subject to scrutiny by representatives of the Commodity Exchange Authority who supervised trading on the Chicago Mercantile Exchange and that, despite this information in the hands of the complainant, the corporation was not directed to liquidate any portion of its holdings or informed that its position might be manipulative, nor was its trading criticized in any manner. The answer concludes with a request that the complaint

be dismissed either before or after hearing.

On July 21, 1949, the respondents filed a supplemental answer which asserts that the complaint fails to allege any of the grounds set forth in section 6(b) of the Act (7 U.S.C. 9) as a basis for proceeding under that section. This supplemental answer also alleges that the Secretary of Agriculture did not, prior to institution of the proceeding, notify the respondents of the facts or conduct which formed the basis of the charges against them or afford them an opportunity to demonstrate or achieve compliance. It is further asserted in this connection that the conduct of the respondents was not wilful, that since the matters complained of occurred more than six months prior to issuance of the complaint there was no question of the public health, interest or safety

involved, and that under such circumstances the filing of the complaint without prior notice to the respondents rendered the proceeding unlawful. On October 18, 1949, while the hearing was in progress, the respondents filed a second supplemental answer to the complaint admitting that respondent Nathaniel E. Hess exercised management and control over the business of the corporate respondent and that the transactions in question were carried out under his direction and supervision, and denying that they were carried out under the direction and supervision of any of the other individual respondents, except that Charles S. Borden acted as floor broker for the corporate respondent during such period.

Will Rogers, Office of Hearing Examiners, United States Department of Agriculture, was assigned as referee in the proceeding and presided at the hearing. The respondents were represented by Benard Tomson of Bernstein, Weiss, Tomson, Hammer, and Parter, New York, and by George L. Siegel of Arvey, Hodes, and Mantynband, Chicago. Benjamin M. Holstein of the Solicitor's Office appeared as counsel for the Government. The hearing began in Chicago on July 26, 1949, and continued intermittently thereafter during the months of July, October and December 1949. Seventeen witnesses testified for the Government and ten for the respondent. Fifty-one exhibits were introduced in evidence on behalf of the Government and fifty on behalf of the respondents. At the conclusion of the hearing on December 9, 1949, counsel for both parties rested. No motions are pending other than the motion in the original answer for dismissal of the complaint after hearing. This motion is hereby denied.

Complainant and respondents filed briefs after the hearing within the time allotted by the referee. On July 11, 1950, respondents mailed to the Hearing Clerk a document entitled "Respondents' Reply Brief." This was some forty days after the close of the period for filing of briefs. On July 20, 1950, complainant requested that "Respondents' Reply Brief" be disregarded by the referee since the filing of reply briefs had not been requested at the hearing, are not provided for in the Rules of Practice, and since the parties will

have an opportunity for oral argument before the Secretary after the filing of the referee's report. The referee's report was well under way when respondents' reply brief was received. However, the reply brief has not been disregarded. A careful study of respondents' reply brief has been made along with the remainder of the record. Nothing was found in respondents' reply brief which is considered controlling or conclusive in this proceeding.

A brief summary of the principal points in evidence and of the contentions of the parties will be helpful.

Evidence Concerning Deliverable Supply. Oscar W. Olson, the business manager of the Chicago Mercantile Exchange, testified that under the rules of the Exchange (Government Exhibit 2) December 1947, futures contracts were refrigerator egg contracts which could be satisfied by the delivery of refrigerator eggs (also referred to herein as storage eggs) stored in approved cold storage warehouses located either in the City of Chicago or at certain points outside of Chicago, or by the delivery of fresh eggs if they were in refrigerator cars on track at Chicago or in approved cold storage warehouses in Chicago, that out-of-town deliveries were subject to certain time limitations and other restrictions, including sizeable discounts and allowances for freight charges, and that deliveries of fresh eggs would be without premiums to the delivering party (pp. 35-44). The nature and effect of these conditions will be discussed subsequently.

Various members of the trade who appeared as witnesses for both sides testified as to their practice and experience concerning deliveries in satisfaction of futures contracts. In general, this testimony was to the effect that fresh eggs or eggs located in warehouses outside of Chicago were seldom, if ever, delivered in satisfaction of December contracts (pp. 265-268, 298-299, 367-369, 385, 389-390, 767, 841). Delivery records maintained by the Commodity

Exchange Authority substantiated this testimony (pp. 248-250; Government Exhibit 17). There was no testimony to the contrary. The witnesses explained the absence of out of town deliveries and deliveries of fresh eggs by the fact that allowances on out of town deliveries and the premium value of fresh eggs made such deliveries economically impractical.

Evidence Concerning Transactions and Market Position of Great Western. Most of the evidence with respect to the corporate respondent's transactions and positions in the market is in the form of tabulations and charts. The Government introduced exhibits showing Great Western's daily transactions in December 1947 futures during November and December 1947, the daily total of all open contracts in such futures for the same period, and the daily percentage of such total held by Great Western (Government Exhibits 4, 7, 8, 24, 26). Exhibits were also introduced showing Great Western's acquisitions and dispositions of cash eggs and the increase in its cash egg inventory during December 1947, the distribution as between Great Western and other owners of deliverable eggs in Chicago warehouses on December 31, and

the same distribution with respect to all cash eggs in warehouses in Illinois and four other mid-western States on that date (Government Exhibits 9, 10). The Government also introduced evidence as to the disposition, in January 1948, of all cash eggs acquired by Great Western in December 1947 (Government Exhibit 13).

Dr. W. Edwards Beach, an economist employed by the Department as Chief of the Trading and Reports Division of the CEA, offered expert testimony for the Government. He stated that, in his opinion, Great Western had a dominant and controlling long position in the market throughout December 1947 (pp. 522, 532). He also testified that the increase in the corporate respondent's December inventory of storage eggs indicated a withholding from sale (pp. 523-532, 572, 706; Government Exhibits 33, 35).

W. T. Buster, Assistant Chief of the Compliance and Trade Practice Division of the Commodity Exchange Authority, testified that Great Western realized a profit of \$ 182,088.00 as a result of its futures operations (p. 419; Government Exhibits 22, 23).

Gerson Levin, who testified as an expert for the respondents, admitted that Great Western's futures position was large but denied that it was controlling (pp. 1086, 1177). He questioned certain Government exhibits because they were based upon Great Western's gross rather than its net futures position, and because they showed Great Western's futures position only during November and December rather than during the entire life of the December future (pp. 1128-1130,

1132, 1138, 1207-1209, 1215-1216; Respondent's Exhibits 42, 45). Respondent Hess testified that he did not withhold eggs from sale (p. 892).

Evidence of Conversation Between Hess and Seitz. Andrew E. Seitz, an employee of the Commodity Exchange Authority, testified for the Government that he interviewed respondent Hess privately in the letter's New York offices in February 1948, at which time Mr. Hess described in detail how he had appraised the cash egg situation in December 1947, how he planned and initiated the operation in question, how a shortage developed, how Great Western advanced its prices on futures and cash, and how it finally liquidated its futures at a profit and disposed of its remaining cash eggs in January (pp. 102-121, 1443-1444). Edward R. Tracy, an auditor in the New York office of the Commodity Exchange Authority, corroborated the time and place of this interview as testified to by Mr. Seitz (pp. 1446-1457). Mr. Hess denied that any interview occurred at the time and place specified by Mr. Seitz. He admitted having been interviewed at another time and place and gave a completely different version of what he told Mr. Seitz on that occasion (pp. 882-892, 918-922, 928, 944, 1021,

1411-1414). Mr. Hess' denials were corroborated generally by Mr. Harris. (pp. 1028-1030).

Evidence of Statements Made to L. D. Schreiber. Ludwig D. Schreiber, president of L. D. Schreiber and Company, brokers and dealers in butter and eggs, testified that during negotiations for

the sale of 71 carlots of eggs to Great Western in December 1947, Mr. Hess told him that he (Schreiber) was selling eggs too cheaply. Hess denied making this statement. Schreiber also testified that on two subsequent occasions Hess suggested an increase in the price at which Schreiber was offering the eggs to purchasers under an arrangement with Hess. Hess admitted these attempts to raise the price (pp. 292-295, 396, 941-942).

Evidence Concerning Prices and Price Movement. Most of the evidence with respect to prices and price movements is also in the form of charts and tabulations showing the relationship between December and January futures prices, and between cash egg prices and December futures prices, in 1947 and in various other years. In general, comparisons as between 1947 and these other years showed price relationships in 1947 different than those in all other years except the war years.

Dr. Beach testified that Great Western's controlling position in the market in December 1947 was the cause of an abnormal difference or spread between the prices of the December and January futures (pp. 459-468, 655-656; Government Exhibit 26). He also testified that an abnormal relationship between the price of fresh eggs and the price of December futures prevailed toward the close of trading in December 1947, due to Great Western's operations (pp. 510-514; Government Exhibits 31, 32).

C. C. Warren, Assistant Chief of the Commodity Programs Division of the Poultry Branch, Production and Marketing Administration,

Department of Agriculture, testified for the Government as a price expert. He stated that the available measures of supply of and demand for eggs in December 1947 indicated that prices should have been lower than those in December 1946 or in October and November 1947. He also characterized the December 1947 relationship between fresh egg prices and refrigerator egg prices as abnormal (pp. 1603-1613, 1624-1631, 1654-1655, 1672-1676, 1680-1685; Government Exhibits 41, 42, 43).

Mr. Levin testified for the respondents that, in his opinion, Great Western's position in the market in December 1947 was not the cause of the increase in the spread between the futures prices, that the December-January futures price spread was not unusual in December 1947, that prevailing prices were justified by the current supply and demand situation, by the general price level, and by changes in seasonal egg production (pp. 1086-1128, 1138-1141; Respondent's Exhibits 17-26 inclusive). He testified further that the futures price spread in December 1947 was not comparable with similar spreads in the thirties, and he disagreed with Dr. Beach's testimony that the price spreads in December 1944 and December 1945 were due to wartime regulations. He also maintained that the fresh-futures price relationship in December 1947 was not abnormal (pp. 1146, 1153-1174, 1364, 1367, 1474; Respondent's Exhibits 32, 33, 35, 37, 38, 39, 40).

Evidence Concerning Existence of Corner and Attempted Manipulation. Dr. Beach analyzed the transactions and market position of

Great Western in detail, and testified that they constituted a corner of cash eggs and December futures, in an attempt to manipulate the price (pp. 436-456, 520, 526-534). Four members of the trade testified generally to the effect that

a trader in the position of Great Western would create a tight market, or that there was in fact, a tight market or a "squeeze" in December 1947 (pp. 273-280, 300, 310-311, 391-392, 488-492, 499-507, 852-858).

Mr. Levin testified that, in his opinion, Great Western did not corner the egg market in December 1947 (pp. 1082-1083). Five members of the trade offered similar testimony on behalf of the respondents (pp. 757, 781-782, 799-800, 820-821, 835-836).

Evidence Concerning Interstate Commerce. Trade witnesses who appeared for the Government testified that eggs arrive in Chicago from production areas outside the State of Illinois, are bought and sold in Chicago, and are then shipped to consuming areas all over the country (pp. 270, 299, 393; Government Exhibit 20, 37; Respondents' Exhibit 2, 3).

Contentions and Issues. The Government contends that the market position of the corporate respondent was large, dominant, and controlling, especially toward the close of trading in December 1947, that it acquired all or substantially all of the cash eggs available for delivery on futures contracts and temporarily withheld cash and futures from sale, that these operations were planned, intended, and carried out

by the respondents in order to effectuate a corner and manipulate the price of eggs and egg futures to their financial advantage, and that the operations did in fact cause a "squeeze" or corner in the Chicago cash egg and egg futures market and caused a price movement in favor of Great Western which would not otherwise have taken place. As a corollary to these propositions, the Government contends also that there can be a corner in one city or one market, that the economic factors affecting the delivery of eggs in satisfaction of futures contracts cannot be ignored, and that because of these economic factors deliverable supplies of cash eggs consist of storage eggs located in Chicago warehouses and do not include out-of-town eggs or fresh eggs.

The respondents contend that Great Western's position was not dominant or controlling, that its December futures contracts were being offered on the Exchange, that the cash egg transactions were being offered on the Exchange, that the cash egg transactions were the usual operations incident to the corporate respondent's business, that there was no withholding of cash or futures from sale, that there was no intent to corner or manipulate the price, that the price which prevailed for cash and for futures was economically justifiable and not unusual or abnormal, and that there was no "squeeze" or corner for these reasons and for the additional reason that, under Exchange rules, out-of-town eggs and fresh eggs could be delivered in satisfaction of futures contracts.

The issues are framed by these opposing contentions. A more detailed analysis of the evidence covering the conclusions in this

report will be found in "Suggested findings of fact, conclusions and order on behalf of complainant, and brief in support thereof," under the heading "Conclusions and Brief." In order to clarify and substantiate the conclusions in this report the above mentioned analysis is incorporated by reference and made a part of this report.

The referee, after careful study of the entire record in this proceeding believes that the record supports the complainant's position and has therefore adopted with minor changes the suggested findings of fact, conclusions, and order submitted by the complainant.

FINDINGS OF FACT

1. Respondent Great Western Distributors, Inc., hereinafter called the corporation or Great Western, is a corporation organized under the laws of the

State of New York, with its principal place of business located at 99 Hudson Street, New York, New York, and a branch office located at 110 North Franklin Street, Chicago, Illinois. The business of the said corporation includes the purchase and sale of eggs in wholesale quantities and the purchase and sale of egg futures on the Chicago Mercantile Exchange. At all times material to these findings, the said corporation was registered as a futures commission merchant under the Commodity Exchange Act and had membership trading privileges on the Chicago Mercantile Exchange. The said corporation is so registered and has such privileges at the present time.

2. The Chicago Mercantile Exchange was a duly designated

contract market at all times material to these findings.

3. Respondent Nathaniel E. Hess, an individual, was at all times material to these findings and is now a registered floor broker under the Commodity Exchange Act, Vice President of Great Western, and a member of the Chicago Mercantile Exchange, such membership being registered for the use of Great Western. The said Nathaniel E. Hess formulated the policy of the corporate respondent at all times material to these findings, and determined, directed, controlled, and supervised the transactions hereinafter described.

4. Respondent Charles S. Borden, an individual, was at all times material to these findings, and is now a registered floor broker under the Commodity Exchange Act, manager of the Chicago Branch of Great Western, and a member of the Chicago Mercantile Exchange, such membership being registered for the use of the corporation. The said Charles S. Borden executed the futures transactions and made some of the cash transactions hereinafter described, was aware at all times of the position of the corporation in the egg futures and in the cash egg market in November and December 1947, and knew the purpose and effect of the transactions in egg futures and cash eggs executed for the account of the corporation during that period.

5. From November 12, 1947, to December 2, 1947, Great Western bought and sold large quantities of December 1947 egg futures on the Chicago Mercantile Exchange, with purchases exceeding sales to the extent that Great Western's long open contract position in such future

during this period increased from 42 carlots to a maximum of 292 carlots, or from 6.1 percent to 39.5 percent of the total of all open contracts in such future. During the same period, Great Western maintained a short open contract position in January 1948 egg futures approximately equal to its long open contract position in December 1947 egg futures.

6. In December 1947, while other traders were liquidating, Great Western maintained its long open contract position in December futures substantially unchanged during most of the trading month. As a result, Great Western's long contracts as a percentage of the total open contracts in such future increased steadily, and on December 18, 1947, it held contracts calling for the delivery of 211 carlots or 65.8 percent of all open contracts. During the last three trading days in December 1947, Great Western held long contracts in the December future approximating 75 percent or more of all open contracts in such future. During these last three days Great Western liquidated 196 of the 211 December contracts or carlots which it held on December 18. During the month it continued to maintain a short open contract position in January 1948 egg futures approximately equal to its long open contract position in December 1947 egg futures.

7. The quantity of Great Western's December 1947 egg futures contracts was, at all times between December 10 and December 22, 1947, from two to three times as large as deliverable storage stocks of eggs

in Chicago owned by persons other than Great Western.

8. During the month of December 1947, Great Western purchased 82 carlots of refrigerator eggs stored in Chicago and received 46 carlots of refrigerator eggs in Chicago in satisfaction of its long December futures contracts. During the same period Great Western sold 59 carlots of refrigerator eggs stored in Chicago and shipped two carlots to its New York office. As a result of these transactions, Great Western increased its inventory of refrigerator eggs stored in Chicago from 15 carlots on November 30 to 82 carlots on December 31, 1947, and its percentage of the total stocks of shell eggs in Chicago warehouses, deliverable and undeliverable, from 4.4 percent to 78.8 percent. Ninety-six percent of all deliveries made on December 1947 futures contracts were received by Great Western in satisfaction of its long December position. Great Western made no deliveries on its short December position.

9. The 82 carlots of refrigerator eggs which Great Western held on December 31, 1947, were all deliverable in satisfaction of futures contracts, and represented 97.5 percent of all the deliverable eggs in Chicago warehouses on that date.

10. On December 31, 1947, eggs held by Great Western in warehouses in Chicago and Detroit represented 66 percent of all the eggs, deliverable and undeliverable, in warehouses in the States of Indiana, Illinois, Michigan, Ohio, and Wisconsin.

11. On and after December 12, 1947, the quantity of Chicago refrigerator eggs and long December futures held by Great Western exceeded the quantity of Chicago refrigerator eggs and long December futures in the hands of all other persons, and on December 22 and December 23, 1947, Great Western held approximately twice as many Chicago refrigerator eggs and long December futures as all other persons.

12. The December 1947 futures contract on the Chicago Mercantile Exchange was a refrigerator egg contract and represented the purchase and sale of refrigerator eggs for delivery in December 1947.

13. Under the rules of the Chicago Mercantile Exchange December 1947 futures contracts could be satisfied by the delivery of refrigerator eggs located in approved cold storage warehouses in the city of Chicago or outside of Chicago, or by the delivery of fresh eggs located in approved Chicago warehouses or on track in Chicago.

14. The delivery of refrigerator eggs in warehouses outside of Chicago was subject to allowance by the seller of the futures contract to the buyer thereof, of 22 1/2 cents per case plus freight from the point of delivery to Chicago. Delivery in warehouses outside of Chicago could not be tendered after 9:00 a.m., December 22, 1947. Trading in December futures continued until the close of business December 23, 1947.

15. In the fall and winter months, the price of fresh eggs is normally higher than the price of refrigerator eggs. In December 1947, except for the last day or two of futures trading, the price of fresh eggs was substantially higher than the price of refrigerator eggs. Under the rules of the Chicago Mercantile Exchange, the seller of a December 1947 futures contract who delivered fresh eggs in satisfaction thereof could not collect any premium from the buyer of the contract by reason of such delivery.

16. Street stocks or floor stocks were not deliverable as such in satisfaction of December 1947 futures contracts. To the extent that such stocks were composed of fresh eggs, such fresh eggs were deliverable, but only if they were assembled in carlots containing the minimum number of individual lots of

specified sizes and placed in an approved cold storage warehouse in Chicago or in refrigerator cars on track in Chicago at the expense of the person making delivery.

17. By reason of the premiums and penalties described in Findings 14, 15, and 16, above, deliveries in satisfaction of refrigerator egg contracts are normally and usually made by delivering refrigerator eggs located in approved cold storage warehouses in Chicago. This was true in December 1947. It was not the practice of the trade to deliver eggs in warehouses outside of Chicago in satisfaction of futures contracts, nor to deliver fresh eggs in satisfaction of refrigerator contracts, and such deliveries were abnormal and indicative of a squeeze or tight market situation.

18. Because of the economic factors involved, as described in paragraphs 14, 15, and 16 above, the supply of eggs available for delivery in satisfaction of December 1947 futures contracts on the Chicago Mercantile Exchange consisted of refrigerator eggs in Chicago warehouses and did not include eggs located in out-of-town warehouses, fresh eggs, or street stocks.

19. Between November 24 and December 14, 1947, the weekly volume of sales of cash eggs by Great Western's Chicago office averaged over 20 carlots. Thereafter and until December 31, the weekly volume of such sales averaged less than seven carlots. Between November 24 and December 31, 1947, Great Western's average weekly inventory increased from 44.0 carlots to 80.3 carlots.

20. During the last four days of trading in the December 1947 future Great Western sold no cash eggs for delivery in Chicago. During these four days Great Western's Chicago office consigned two carlots to its New York office and sold two carlots for delivery in New York.

21. On December 30, 1947, Great Western sold five carlots of refrigerator eggs which were delivered back to it on the following day in satisfaction of its long December futures position.

22. The production of eggs increases in the late fall and winter months. Due to the progressive increase in fresh production in December and January there is a progressive decline in demand for refrigerator eggs in those months, and those remaining on the market in January are generally disposed of at reduced prices for processing.

The situation in the winter of 1947-1948 was as described above.

23. In December 1947 the egg trade, including respondent Hess, expected a good volume of fresh eggs to reach the market in January.

24. The 82 carlots of eggs in the Chicago inventory of Great Western on December 31, 1947, were refrigerator eggs which had been acquired at December prices either as cash purchases or in satisfaction of long December futures. Eighty of these 82 carlots were delivered by Great Western on its short January contracts, resulting in a loss. They could have been delivered by Great Western in December on sales of December futures, or sold as cash eggs during December at prevailing prices for refrigerator eggs, and Great Western knew that unless this were done the disposition in January would entail a loss.

25. In December 1947, Great Western withheld both egg futures and cash eggs from the market.

26. On February 24, 1948, respondent Hess was interviewed with respect to Great Western's operations in November and December 1947, by Andrew E. Seitz, an investigator in the New York office of the Commodity Exchange Authority. During the course of this interview Mr. Hess stated that he often conducted operations in different futures which depended for their profit on a widening of price differences, that he started the operations in question when the December-January futures price spread was at a low point, that he expected an abnormal

shortage of eggs in December and believed that he would need only to wait for developments, that he received cash eggs on his

December futures, bought other cash eggs and also sold cash eggs, that as the situation developed holders of short December contracts could no longer obtain cash eggs for delivery, that he gradually advanced the price of his long December futures at the same time offering to sell his cash eggs at his own price, that he finally liquidated his December futures at an increase in the spread of from four and one-half to five cents per dozen, that his short January futures position was used to dispose of the cash eggs obtained during December, and that he considered everything done as entirely legal.

27. On December 3, 1947, respondent Hess approached L. D. Schreiber, a dealer in eggs, and told the latter that he (Schreiber) was selling eggs too cheaply. After some negotiations, respondent Hess purchased 71 carlots of refrigerator eggs from Schreiber for the account of Great Western. These eggs had been delivered to Schreiber in satisfaction of November 1947 futures contracts and were located in approved cold storage warehouses in Chicago. After their purchase by Great Western, Hess and Schreiber entered into an arrangement whereby Schreiber offered the eggs for sale to others and reimbursed Great Western at an agreed price for sales made under this arrangement. On two occasions the reaftrer, Hess suggested to Schreiber that there be an increase in the price at which these eggs were being offered by Schreiber, but Schreiber refused to raise the price and discontinued the offerings after about 10 carlots had been sold under the arrangement.

28. During November and December 1947, prices of the December future were higher than prices of the January future. Between November 12, 1947, and the close of trading in the December future, the spread between the prices of the December and January futures, based on the closing prices of those futures, increased from 0.17 cents per dozen to 8.12 cents per dozen.

29. During the last week of trading in the December 1947 future, the weekly average spread between the prices of the December and January futures was 5.94 cents per dozen, which was more than three times the comparable spread in the ten years 1933-1941, and 1948, more than twice that in 1946, and substantially in excess of that in 1932. In 1944 and 1945, the comparable spread was 6.19 cents per dozen and 6.28 cents per dozen, respectively.

30. The net increase in the average weekly spread between December and January futures prices over a period of seven weeks immediately preceding the close of trading in the December 1947 future was 5.67 cents per dozen. This increase was greater than that in any comparable period between 1932 and 1948. It was more than five times as great as the increase in the corresponding period during seven years, 1933-1935, 1937, 1938, 1940, 1941; more than twice as great as the increase in 1932, 1945, and 1946; and substantially greater than in 1944. During the corresponding period in the years 1936, 1939, and 1948, the spread between the prices of these two futures decreased,

the price of the December future declining in relation to that of the January future.

31. Because of conditions incident to the war, including ceiling regulations established by the Office of Price Administration and the absence of free trading in the egg market, the December-January futures price spreads which prevailed in December 1944 and December 1945 do not furnish a basis for price comparison purposes with other years.

32. Because of a concentrated large long interest in the December 1946 future, coupled with a corresponding short position in the January 1947 future

by the same person, the December-January futures price spread which prevailed in December 1946 does not furnish a basis for price comparison purposes with other years.

33. On December 11, 1947, the differential between the price of fresh eggs in Chicago and the price of the December future was 6.85 cents per dozen. From that date until the last day of trading in the December future the price of fresh eggs fell, while the price of the December future first fell then rose during the last week of trading, so that on the last trading day in that future the price of the future was within one-half cent of the price of fresh eggs.

34. During the years 1932 to 1941 inclusive, and 1944 to 1946, inclusive, an opposite movement between the price of fresh eggs in Chicago and the price of the December future during the last week of trading in that future occurred only in 1941. During the years 1932

to 1941, inclusive, and 1944 to 1947, inclusive, the price of fresh eggs and the price of the December future reached equality in December only in 1932 and 1941. A congested market situation existed in December 1932 and December 1941.

35. The price of December futures in December 1947 reflected the price of refrigerator eggs in December 1947.

36. The supply of eggs in the United States and in the Chicago market in December 1947 exceeded supplies in October and November 1947 and in December 1946. The demand for eggs in the United States and in the Chicago market in December 1947 was less than the demand in October and November 1947 and in December 1946.

37. The production of eggs in the month of December has, for several years prior to and including 1947 and 1948, shown a generally progressive increase relative to January production.

38. During December 1947, Great Western Distributors, Inc., acquired and maintained a large and controlling long position in December 1947 egg futures and actual eggs.

39. During December 1947, price relationships between December and January futures and between fresh eggs and December futures or refrigerator eggs, were abnormal. These abnormal relationships were caused by the operations of Great Western Distributors, Inc.

40. Cash eggs bought and sold in the city of Chicago are produced in Illinois and in States outside of Illinois, moved into Chicago for storage and consumption, and are shipped from Chicago to States outside of Illinois.

41. There is nothing in the record to indicate that Mr. Haynes had any connection with the transactions disclosed in this proceeding. Mr. Haynes was Secretary of Great Western at the time in question.

42. There is nothing in the record to show that Mr. Harris had any connection with the execution of the transactions disclosed in this proceeding.

CONCLUSIONS

The acquisition and holding of a large and controlling long position in a commodity future, together with the acquisition and withholding from sale of all or a dominant portion of the deliverable cash supply, for the purpose of manipulating the price, constitutes a corner under the Commodity Exchange Act.

In a broad sense, "a corner occurs whenever a commodity (or the right thereto) which has been sold for delivery is so controlled by the purchaser that the seller cannot make delivery except by buying from the purchaser." n1 In *United States v. Patten*, 226 U.S. 525, 539, 540 (1913), the United States

Supreme Court stated that the following was an acceptable definition of a corner:

"The control of all or a dominant portion of a commodity with the purpose of artificially enhancing the price, one of the important features of which is the purchase for future delivery, coupled with a withholding from sale for a limited time;"

n1 Goldstein, Benj. F., Marketing a Farmer's Problem (1928) 127.

In the Encyclopedia of the Social Sciences the following definition by Professor S. S. Huebner appears,

"Corner, speculative. A corner may be defined as a plan of manipulation whereby one operator or more secures possession of all or substantially all of a given commodity or of the shares of a given issue of stock available for delivery upon the outstanding contracts of short sellers, in order to compel such sellers to settle at an arbitrary and abnormal price imposed by the operator of the scheme."

Referring specifically to commodity markets, Professor Huebner describes two kinds of corner as follows:

". . . those which involve the actual cornering of the nation's supply of a commodity and those which are operated with a view of 'squeezing the shorts' by making it impossible for them to deliver on contracts for a particular month. The latter type of corner occurs frequently and as a rule does not affect consumers. The manipulator merely acquires control of the deliverable supply of the commodity in the particular city where the produce exchange is located. He keeps his program secret until the end of the month. Short sellers for the option for that particular month are obliged to make delivery by the last business day of the month. If they are unable because of lack of time to bring adequate amounts into the city the short sellers are not in a position to meet their commitments and are therefore required to settle their contracts with the manipulator on his own terms." n2

n2 III Encyclopedia of the Social Sciences (1937 ed.) 408, 409.

The Federal Trade Commission describes a corner in the grain market as follows:

"In a successful corner the cornering interest comes to own all the deliverable grain in the market where the corner is run, either by directly buying up the

cash grain in addition to the futures or by reason of the available cash grain all being delivered on future contracts to the cornerer before the delivery month ends, leaving still a large open short interest that cannot find grain with which to fulfill its contracts and must buy of what is presumably the only long interest left in the market, that is, the cornering interest." n3

n3 VII Report of the Federal Trade Commission on the Grain Trade (1926) 243.

Similar definitions are given by other authorities on trading in commodities.
n4

n4 Hoffman, G. W., Futures Trading Upon Organized Commodity Markets in the United States (1932) 317; Baer, J. B., and Woodruff, G. P., Commodity Exchanges (1935) 146; Smith, J. G., Organized Produce Markets (1922) 113;

Emery, H. C., Speculation on the Stock and Produce Exchanges of the United States (1896) 173.

Great Western acquired and maintained a large and controlling long position in December 1947 egg futures and actual eggs, constituting a corner.

The Government proved that Great Western's December cash position as well as its December futures position was controlling. Insofar as the cash position is concerned, the respondents offered nothing to refute this proof unless it be the argument that out-of-town eggs and fresh eggs were available to the shorts. That argument is completely answered in the following discussion with respect to deliverable

supplies.

Refutation of the proof that Great Western's future position was controlling was attempted by contending that (1) the position decreased steadily after December 2, (2) the position should be calculated on a net basis, and (3) it should include holdings-during September and October. The first of these contentions is untrue. The second is immaterial because even if accepted it would show Great Western's position substantially the same. The third contention is frivolous. The net result is that the respondents have entirely failed to meet the evidence that their position in both the futures and the cash market was controlling (Finding 38).

The supply of eggs available for delivery in satisfaction of December 1947 futures contracts consisted of refrigerator eggs in Chicago warehouses.

The Government's position, as indicated by the testimony of Dr. Beach (pp. 532-533), is that the eggs to be considered as the supply available for delivery in satisfaction of December 1947 futures consisted of refrigerator eggs in approved Chicago cold storage warehouses and, because of economic factors and as a matter of history, did not include eggs located in out-of-town warehouses, fresh eggs, or street stocks. The respondents oppose this position. They have contended throughout this proceeding that holders of short contracts were not limited to stocks of Chicago refrigerator eggs in making deliveries. They point out that in December 1947 the rules of the

Chicago Mercantile Exchange also permitted the delivery of refrigerator eggs located in a number of approved out-of-town warehouses, and the delivery of fresh eggs located in approved Chicago warehouses or on track in Chicago (pp. 1175-1179, 1236-1238; Answer, paragraph 3). The contention was also made that street stocks or floor stocks in Chicago constituted a source of eggs for delivery (pp. 768-770, 773-777). This argument implies, of course, that it was necessary for Great Western to control all of these sources of supply before it could be said, that a corner existed and that no corner could exist as long as eggs from any of these sources were available at any price. These contentions cannot be sustained.

Great Western withheld from sale both December futures and cash eggs.

The above conclusion is based on Findings 19-25, inclusive. After analyzing the facts, Dr. Beach concluded that there was withholding (pp. 572, 706). In the light of the testimony with respect to the limited market for refrigerator eggs in December and January, some of which was offered by the respondents and their own witnesses, and in view of the facts with respect to the respondents' cash egg sales in December and their acquisition and disposition of the December inventory, only one conclusion is possible. These cash egg dealings did not represent normal merchandising operations. They were part of a withholding program in furtherance of a manipulative venture

aimed at cornering the market.

Great Western intended to corner the market and to manipulate the price.

That Great Western intended to corner the market and manipulate the price is proved by the admissions of respondent Hess to Andrew E. Seitz, by his transaction with L. D. Schreiber, and by the nature of the operations in question.

We believe that the testimony of Mr. Seitz as corroborated by Mr. Tracy, the circumstances surrounding the 71 carlot transaction, and the general character of Great Western's operations as a whole, compel the conclusion that respondent Hess planned and intended to corner the market and manipulate the price. Indeed, any one of these three factors would be highly persuasive in that direction. Their cumulative effect leaves no room for doubt.

There was a manipulated price in December 1947 which was caused by Great Western's operations.

The evidence proves that Great Western attempted to and did cause an abnormal and unprecedented widening of the differential or spread between the prices of the December 1947 egg future and the January 1948 egg future on the Chicago Mercantile Exchange. The progressive widening of the spread between the prices of these two futures was the consummation of the corner and enabled Great Western to realize a substantial profit. This was the type of operation planned by Mr. Hess. According to the testimony of Mr. Seitz,

Mr. Hess stated that he often conducted operations consisting of the purchase of one future and the sale of another, in which the profit depended upon a widening of the difference between the prices of the two futures, and that in this case he bought December futures and sold January futures (pp. 108-109). Mr. Bagnell, Chief of the Compliance and Trade Practice Division of the Commodity Exchange Authority, described an operation of this type in detail, and illustrated how and why a profit would result only if there was a price movement on the part of either one or both futures which had the result of increasing this differential (pp. 49-53).

Throughout December 1947 Great Western maintained a short position in the January future approximately equal to its relatively large long position in the December future (Government Exhibit 4), and this straddle or spread position was so managed as to bring about the intended widening of the differential or spread between the prices of the two futures. Because holders of short contracts were required to cover their short positions by buying and tendering deliverable eggs or by buying December futures, the purchase and holding by Great Western of a large quantity of December futures exerted upward pressure on the price of the December future. This pressure was increased by Great Western's acquisition and withholding of cash eggs which it received in satisfaction of its December long position or bought for cash. The sales of January futures which were held open in short position had a depressing effect upon the price of the

January futures. This depressing effect was accentuated by common knowledge in the trade that the deliverable eggs being carried over through December by Great Western would be a drag on the market and would finally have to be disposed of during January, either as deliveries on January futures or in the cash market.

An auxiliary effect of the transactions in this case was the creation of an abnormal relationship between the price of December futures or refrigerator eggs and the price of fresh eggs.

Compliance with Chicago Mercantile Exchange rules is immaterial.

The respondents maintain that Great Western's trading was at all times conducted in accordance with the rules of the Chicago Mercantile Exchange (Answer, Paragraph 15). We cannot decide this question, nor is it necessary that we do so. To begin with, the Chicago Mercantile Exchange does not undertake to control its members' cash positions or such cash transactions as the 71 carlot purchases from Schreiber. Corner and manipulation are end results which are brought about by many and various means. While all exchanges have a duty under the Act to prevent manipulation and corners, n21 it is clear that no set of rules could be precise enough to cover all the possible means by which these results could be achieved. Even if the situation were otherwise, the respondents' contention would be immaterial

because compliance with exchange rules is not per se compliance with the law. The latter is an independent obligation. That the respondent failed to fulfill it has been demonstrated.

n21 7 U.S.C. 7(d)

Institution of this proceeding required an extended investigation by the Commodity Exchange Authority.

The respondents also contend that during the time in question they submitted periodic reports of their trading to the Commodity Exchange Authority, and that such trading was also subject to scrutiny by the agency's representatives. They point out that, despite this information which the Government had, it did not inform Great Western that its trading was manipulative or contrary to law in any way (Answer, Paragraph 16).

The Commodity Exchange Authority calls attention to a violation only when it determines that a violation exists. Such a determination is necessarily based upon a full investigation in order to obtain complete information. In this case it was not possible for the Commodity Exchange Authority to determine in December that a manipulative operation was under way. The cash transactions of Great Western were not required to be and were not in fact reported to the Commodity Exchange Authority. It was necessary to obtain such information from examination of Great Western's records and then to appraise these cash transactions and positions in the light of the cash position of other owners of eggs in the Chicago area. This latter information had to be obtained from an examination of records of warehouses

in the Chicago area and records of other egg dealers (p. 71).

The nature and effect of Great Western's futures operations could only be appraised in the light of this information and of factors such as the evidence of withholding, the 71 carlot purchase from Schreiber, and Hess' statements to Seitz. None of this was known to the Commodity Exchange Authority in December. The investigation of Great Western's transactions began shortly after January 1948, and proceeded to within one month of the issuance of the complaint (pp. 80-81). Accordingly, the fact that the respondents were not accused while the transactions were being consummated certainly does not mean that the Government considered those transactions to be within the law.

The complaint alleges a proper basis for this proceeding.

The respondents further contend that the complaint fails to allege any of the grounds set forth in section 6(b) of the Act (7 U.S.C. 9) and they maintain that this proceeding is, therefore, unauthorized (Supplemental Answer, Paragraph 17). This contention is based upon the language of section 6(b) which is as follows:

"If the Secretary of Agriculture has reason to believe that any person . . . is violating or has violated any of the provisions of this act, or any of the

rules and regulations made pursuant to its requirements, or has manipulated or is attempting to manipulate the market price of any commodity . . ."

Counsel for the respondents pointed out that the complaint, issued in July 1948, charges that the respondents attempted to manipulate

the price in December 1947, and argued that under the above language there was no jurisdiction over a past attempt to manipulate as distinguished from an actual past manipulation. He cited *Wallace v. Cutten*, 298 U.S. 235, wherein the Court construed the language "is violating any provision of this act or is attempting to manipulate" as including only present violations, and he stressed the fact that when the Act was amended in 1936, after the *Cutten* decision, the phrase "is attempting to manipulate" was left unchanged. Counsel recognized the fact that section 9 of the Commodity Exchange Act (7 U.S.C. 13) specifically includes past as well as present attempts to manipulate, but he distinguished section 9 on the ground that it covers criminal actions only and not administrative proceedings. He also questioned the right of the Secretary to proceed under section 6(b) for a corner violation as distinguished from manipulation because corner is mentioned only in section 9 in connection with criminal prosecutions (pp. 4-7, 12-13).

That the present language of section 6(b) covers past as well as present attempts to manipulate has been decided. In *re General Foods Corporation*, et al, 6 Agric. Dec. 288 (6 A.D. 288). In that decision the Judicial Officer stated (pp. 316-317):

"After a reading of the legislative history of the section, particularly the committee hearings. . . . , one finds it hard to believe that Congress in legislating to remedy the defect in the statute revealed by the *Cutten* decision did not intend to cover attempts as well as established manipulation of price. Any doubts are resolved by the language in the first

part of the sentence incorporating in section 6(b) any existing or past violations of other provisions of the act. Section 9 of the act provides in part as follows: 'Any person who . . . shall manipulate or attempt to manipulate the price of any commodity in interstate commerce, or for future delivery on or subject to the rules of any board of trade, or who shall corner or attempt to corner any such commodity . . . shall be deemed guilty of a misdemeanor . . .' Section 6(b) authorizes jurisdiction where any person has violated any of the provisions of the act, one of which is the prohibition and the penalty for any person who shall . . . attempt to manipulate . . . or who shall . . . attempt to corner. . . ."

The above decision answers all of the contentions of opposing counsel with respect to the scope of section 6(b) of the act.

The Commodity Exchange Act is constitutional.

Counsel for the respondents also argued that the Commodity Exchange Act was unconstitutional for failure to define the terms "corner" and "manipulate." This point also has been decided adversely to the respondents. *Bartlett Frazier Co. v. Hyde*, 65 F(2d) 350, (U.S.C.A, 7th, 1933) cert. denied, 290 U.S. 654 (1933), involved a proceeding under the Grain Futures Act, the predecessor of the Commodity Exchange Act. On appeal, it was argued that the act was unconstitutional for failure to define the term "manipulate." The Court disposed of this contention in the following language:

"If there were merit in this suggestion it would seem that in the *Olsen* case the court would not have failed to discover it. In several instances the opinion employs the word manipulation': The court then quoted passages from the opinion in the *Olsen* case in which the term 'manipulation' was used. Even if we

were disposed to attribute to the term undue uncertainty or indefiniteness, Chicago Board of Trade v. Olsen would forbid."

Even if the matter were an open question, the Commodity Exchange Act could not be held unconstitutional at this stage of this proceeding. It is not for an administrative official to pass upon the constitutionality of a statute which the Congress of the United States has entrusted to him for administration. n22 Accordingly, the respondents' contentions on this point cannot stand.

n22 Panitz et al v. District of Columbia, 112 F. (2d) 139 (App. D.C. 1940).

The violations were willful and the respondents were not entitled to notice under the Administrative Procedure Act.

In their supplemental answer and at the hearing, the respondents maintained that the alleged violations were not willful and that failure to notify the respondents in writing and allow them an opportunity to demonstrate or achieve compliance, as required by Section 9 of the Administrative Procedure Act (5 U.S.C. 1008), renders this proceeding unauthorized and void (Answer, Paragraph 18; pp. 3-4, 10-12). Section 9 of the Administrative Procedure Act provides in part as follows:

"Except in cases of willfulness or those in which the public health, interest, or safety requires otherwise, no withdrawal, suspension, revocation, or annulment of any license shall be lawful unless, prior to the institution of agency proceedings therefor, facts or conditions which may warrant such action shall have been called to the attention of the licensee by the agency in writing and the licensee shall have been accorded opportunity to demonstrate or achieve compliance with all lawful requirements."

It is clear that where willfulness is an element of the alleged violation, no notice or opportunity to demonstrate or achieve compliance

are necessary under the Administrative Procedure Act. Paragraph 14 of the complaint alleges, in part, as follows:

"Respondent Great Western Distributors, Inc., conducted the operations described in paragraphs 8 to 13, inclusive, for the purpose and with the intent of widening the spread between the price of December 1947 and January 1948 egg futures contracts on the Chicago Mercantile Exchange, and for the purpose of increasing or preventing a decrease in the price of eggs deliverable in satisfaction of futures contracts on such Exchange. In furtherance of such purposes and intent, the said respondent, etc."

In view of the above charge, there is no basis for the statement by opposing counsel that "There is nothing in this complaint which indicates willfulness" (p. 11). Paragraph 14 of the complaint is a clear allegation that the acts were intentional and for the purpose of creating a price movement -- in other words, willful. Since the complaint alleges that the acts were willful and since the evidence proves that they were in fact willful, the requirement in section 9 of the Administrative Procedure Act has no application.

Respondents Great Western Distributors, Inc., Nathaniel E. Hess, and Charles S. Borden were responsible for the violations. The complaint should be dismissed as against Thomas F. Haynes and Hartley L. Harris.

Nathaniel E. Hess has admitted his responsibility for these transactions as the directing and supervising officer of the corporation, which is equally liable. The other individual respondents disclaim all responsibility. The second supplemental answer to the complaint denies that the transactions in question were carried out under the

direction or supervision of any of the individual respondents other than Nathaniel E. Hess, except that Charles S. Borden acted as floor broker for the corporate respondent during the period in question. The Government accepts this contention insofar as it applies to Thomas F. Haynes and Hartley L. Harris. There is nothing in the record to indicate the connection with these transactions of Mr. Haynes, who was Secretary of Great Western at the time in question, and it is recommended that the complaint be dismissed as against him. Nor is there any evidence to dispute the contention that Mr. Harris had no connection with the execution of these transactions, and the Government also recommends that the prayer for dismissal as against this respondent, contained in his separate answer, be granted.

With respect to Charles S. Borden, the case is otherwise. Mr. Borden was manager of the Chicago office of Great Western Distributors, Inc. He was in communication with Mr. Hess daily, either in person or by telephone and was in his confidence (pp. 987-989). Complete records of all cash and futures transactions for Great Western's account were maintained in the Chicago office of the firm (p. 1066). Reports to the Commodity Exchange Authority with respect to futures trading were prepared in that office under the direction of Mr. Borden (pp. 1066-1067). He acted as floor broker for Great Western on the Chicago Mercantile Exchange, which meant that he himself made the purchases and sales of December and January futures for Great Western's

account on the floor of the Exchange. He also made purchases and sales of cash eggs for Great Western (pp. 1067-1074). All of the above facts are contained in the testimony of Mr. Borden and Mr. Hess.

Mr. Olsen, Business Manager of the Exchange, testified that when had occasion to take up matters of business with Great Western, he brought these matters to the attention of Mr. Borden (pp. 1685-1696). He also testified that in the early part of December 1947 he told Mr. Borden that Great Western's commitments in the market "were large enough, and that they should not make any further purchases." (pp. 1705-1706). He also testified that near the close of trading in December 1947 he suggested to Mr. Borden that Great Western's transactions be closed out (p. 1706). This evidence proves conclusively that Borden knew what Great Western was doing, and that insofar as the Exchange was concerned he represented Great Western. This is sufficient to make him equally chargeable with the corporation and with respondent Hess. The single fact that the latter may have had final authority is not controlling. Respondent Borden acted with knowledge and should not be permitted to say, in effect, that if he violated the law, it was because his superior ordered him to do so.

The responsibility of Mr. Hess and Mr. Borden for the operations of Great Western appears in Findings 3 and 4.

SUMMARY

The acquisition and holding of a large and controlling long

position in a commodity future, together with the acquisition and withholding from sale of a dominant portion of the deliverable cash supply, for the purpose of manipulating the price, constitutes a corner under the Commodity Exchange Act. A corner can exist in one city or in one market and, because of economic impediments, this was true in the Chicago egg market in December 1947. The corporate respondent acquired and maintained a dominant and controlling position in that market, and withheld both cash eggs and egg futures from sale. The respondents planned and conducted these operations for the purpose of manipulating the price and, as a result, an unusual and abnormal price movement took place by reason of which Great Western profited to the extent of \$ 182,000. That transactions on the Chicago Mercantile Exchange affect interstate commerce has been found by Congress. That the Chicago cash egg market is an interstate market has been proved in this proceeding.

Great Western Distributors, Inc., Nathaniel E. Hess, and Charles S. Borden willfully and intentionally cornered a commodity in interstate commerce and for future delivery on or subject to the rules of a board of trade, and attempted to and did manipulate the price of a commodity in interstate commerce, and for future delivery on or subject to the rules of a board of trade, in violation of the Commodity Exchange Act, as charged in the complaint.

The principal purpose of the Commodity Exchange Act, stated as a finding by the Congress in section 3 of the Act (7 U.S.C. 5), is

the prevention of manipulation of prices. The Act prohibits manipulation or attempted manipulation in clear and specific terms and also prohibits the means by which that objective is commonly achieved -- cornering. The violation of these provisions is serious because it tends to defeat the primary objective which the Act seeks to accomplish -- the preservation of orderly marketing processes in the interest of a sound economy. "Manipulations . . . for speculative profit, though not carried to the extent of a corner or complete monopoly, exert a vicious influence and produce abnormal and disturbing temporary fluctuations of prices that are not responsive to actual supply and demand and discourage not only . . . justifiable hedging but disturb the normal flow of actual consignments." Board of Trade v. Olson, 262 U.S. 1, 39 (1923).

The sanction imposed should be consonant with the nature of the violation. A recent proceeding involving manipulation was "In re Reuben Earl McGuigan, 5 Agric. Dec. 249 (5 A.D. 249). In that proceeding, the respondent advised traders to enter into transactions which would influence prices to the respondent's advantage. The Judicial Officer decided that the respondent had manipulated prices and stated that the denial of trading privileges "should not be for a short period." 5 Agric. Dec. 251 (5 A.D. 251). An indefinite order of suspension of trading privileges, entered April 11, 1946, is still in effect. The operations of the respondents in this proceeding were on a much broader scale and had a more disturbing effect on the market than those of Mr. McGuigan. After a

consideration of all the factors, we are of the opinion that the circumstances connected with these violations require a denial of trading privileges for a period of two years.

All points raised in this proceeding have been carefully considered whether they appear or do not appear in this report.

PROPOSED ORDER

It is proposed that an order be issued as follows: Effective on the 30th day after the date of this order, all contract markets shall deny all trading privileges to the respondents, Great Western Distributors, Inc., Nathaniel E. Hess, and Charles S. Borden, for a period of two years. The proceeding is dismissed as against Thomas F. Haynes and Hartley L. Harris.

Copies of this decision and order shall be sent by registered mail or delivered in person to the parties and to each contract market under the Act.

/s/ WILL ROGERS

Will Rogers

Referee

August 29, 1950.

