Commodity Futures Trading Commission
CEA CASES

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

CITATION: 10 Agric. Dec. 783

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(No. 2817)

In re GREAT WESTERN DISTRIBUTORS, INC., NATHANIEL E. HESS, CHARLES S. BORDEN, THOMAS F. HAYNES, and HARTLEY L. HARRIS. CEA Doc. No. 48. Decided June 20, 1951.

Denial of Trading Privileges -- Violation of Sections 6(b) and 9 of Act -- Attempt to Manipulate Prices -- Attempt to Corner and Cornering Commodity

Where the complaint charges that respondents attempted to manipulate prices of a commodity in interstate commerce and for future delivery on or subject to the rules of a board of trade in violation of sections 6 (b) and 9 of the act, that they attempted to corner and that they cornered such a commodity in violation of section 9 of the act, the Judicial Officer ordered that, effective on the 30th day after the date of this order, all contract markets shall deny all trading privileges to three of the respondents for a period of one year, and that the proceeding should be dismissed as against two of the respondents. *

* Reference to other points involved in this case will be found in Index-Digest and Subject-Index in this issue of Agriculture Decisions. -- Ed.

Weight of Evidence Showing Dominance or Control of Futures Market

The weight of the evidence is that respondents not only had a dominant and controlling position in the December futures market but that it acquired such a position knowingly and utilized its control intentionally to put on a "squeeze," that is, to pressure December futures prices upwards by means of its monopolistic powers over futures and cash storage eggs in Chicago. *

* Reference to other points involved in this case will be found in Index-Digest and Subject-Index in this issue of Agriculture Decisions. -- Ed.

Relevance of Position in Previous Period to Control of Market

Respondents' position in the December 1947 market during previous months such as October 1947, is not relevant to the question of control of the market in December. *

* Reference to other points involved in this case will be found in Index-Digest and Subject-Index in this issue of Agriculture Decisions. -- Ed.

Gross Position as Determining Control of Market

It makes little difference to the question of control of the market whether respondents' long futures position is regarded as net, i.e., by subtracting its small short December 1947 position from its long December 1947 position. It is the gross long or short position that the trade

looks to and the rules of the Chicago Mercantile Exchange do not permit the offsetting of existing contracts. *

* Reference to other points involved in this case will be found in Index-Digest and Subject-Index in this issue of Agriculture Decisions. -- Ed.

Factors Not Eliminating Presence of Domination or Control of Market

Dominance or control is not negatived because it was unnecessary for a majority of the shorts to have recourse to respondents for futures or cash storage eggs. *

* Reference to other points involved in this case will be found in Index-Digest and Subject-Index in this issue of Agriculture Decisions. -- Ed.

Effect of Availability of Commodity upon Manipulation of Market

The availability, for delivery in Chicago under the rules of the Chicago Mercantile Exchange, of fresh eggs or eggs stored outside of Chicago, at a greater cost than Chicago storage eggs, merely tends to limit the extent of manipulation possible, but does not automatically disprove manipulation or attempted manipulation. *

* Reference to other points involved in this case will be found in Index-Digest and Subject-Index in this issue of Agriculture Decisions. -- Ed.

Effect of Partial Liquidation of Long Position upon Manipulation of Market

Partial liquidation of respondents' long position by the sale of some December 1947 futures during December 1947 does not exclude the presence of a manipulative venture, as implied by respondents. *

* Reference to other points involved in this case will be found in Index-Digest and Subject-Index in this issue of Agriculture Decisions. -- Ed.

Circumstantial Proof of Manipulative Intent

Although there may be natural corners or squeezes without manipulative intent, manipulative intent can be demonstrated satisfactorily from a legal standpoint by circumstances alone, and the facts and circumstances in this case are more than adequate to warrant such a conclusion. *

* Reference to other points involved in this case will be found in Index-Digest and Subject-Index in this issue of Agriculture Decisions. -- Ed.

Actions Showing Manipulation of Prices

Putting on a "squeeze" deliberately, that is, taking and maintaining during a delivery month a large long line in relationship to known deliverable supplies in the market together with ownership or control over a substantial part of the deliverable supplies for the purpose of pressuring prices upward by means of the relative scarcity of supplies and futures thus created, is an undoubted manipulation in violation of the act and constitutes at the very least an attempt to manipulate prices. *

* Reference to other points involved in this case will be found in Index-Digest and Subject-Index in this issue of Agriculture Decisions. -- Ed.

Widening Spread between Futures Prices as Constituting Manipulation

Because respondents' plan was to pressure December futures prices upward to widen the spread between December and January futures prices, rather than merely for the purpose of raising December futures prices alone, does not absolve the transactions from the taint of manipulation. *

* Reference to other points involved in this case will be found in Index-Digest and Subject-Index in this issue of Agriculture Decisions. -- Ed.

Definition of "Manipulation"

Whatever definition of "manipulation" may be selected, it necessarily should include expressly or by implication the effecting of a price which would be different if the price-influencing efforts were absent, that is, not only the raising or lowering of prices by means directed to either such end but the prevention of prices from going up or going down according to free supply and demand conditions. It cannot be believed that it is not manipulation under the act to employ monopolistic methods to support and pressure prices for one month's futures in order to widen the spread between prices for that month's futures and the next month's futures. *

* Reference to other points involved in this case will be found in Index-Digest and Subject-Index in this issue of Agriculture Decisions. -- Ed.

Transactions as Falling within Definition of Corner

A corner in which respondents owned all the storage eggs in Chicago and prevented all the shorts from making delivery would be a perfectly tight corner, but the term applies alike to conditions less rigid in the way of control. The facts that respondents had contracts calling for two or three times the cash storage egg supply in Chicago, that it owned a substantial part of the cash supply, and that this was a dominant part of the supply in view of respondents' large, dominant and controlling long position, met the definition of "corner" used by the United States Supreme Court in United States v. Patten, 226 U. S. 525, 539, 540. *

* Reference to other points involved in this case will be found in Index-Digest and Subject-Index in this issue of Agriculture Decisions. -- Ed.

Possibility of Existence of Corner in One Market

There may be a corner in one market. *

* Reference to other points involved in this case will be found in Index-Digest and Subject-Index in this issue of Agriculture Decisions. -- Ed.

Dispensable Element of Corner

The fact that respondents did not carry a large long line beyond the close of trading with widespread defaults by the short or large scale deliveries of fresh eggs, is not an indispensable element of a corner. *

* Reference to other points involved in this case will be found in Index-Digest and Subject-Index in this issue of Agriculture Decisions. -- Ed.

Constitutional Law -- Constitutionality of Commodity Exchange Act

Respondents' contention that the act is unconstitutional for vagueness of the words "manipulate" and "corner" is untenable; although it is not appropriate for an administrative tribunal to adjudicate the constitutionality of an act committed to it for administration, reference may be made to Bartlett Frazier Co. v. Hyde, 65 F. (2d) 350 (C.C.A. 7th, 1933), cert. denied, 290 U.S. 654, in which the court resisted a similar attack. *

* Reference to other points involved in this case will be found in Index-Digest and Subject-Index in this issue of Agriculture Decisions. -- Ed.

Inapplicability of Section 9(b) of Administrative Procedure Act to Complaint in this Proceeding

The complaint charges that the violations alleged were intentional and the weight of the evidence supports the charges. Even in criminal prosecutions for violations of a statute, other than cases of moral turpitude, evil intent is not requisite, it being necessary only that actions be intentional as distinguished from accidental or inadvertent; therefore, "willfulness" as used in section 9(b) of the Administrative Procedure Act is present, and prior notice and opportunity to demonstrate or achieve compliance before the issuance of the complaint were not required. *

* Reference to other points involved in this case will be found in Index-Digest and Subject-Index in this issue of Agriculture Decisions. -- Ed.

Suspension of Trading Privileges -- Authority of Secretary to Suspend for Attempted Manipulation of Market Price

Unless the Congressional intent, as revealed in the act itself and in the legislative history, is to be completely disregarded, section 6(b) of the act should be regarded as vesting in the Secretary the authority to suspend the trading privileges of one who has attempted to manipulate the market price of a commodity in violation of the act; furthermore, section 6(b) authorizes administrative proceedings against any person who ". . . is violating or has violated . . ." any of the provisions of the act, and attempts to manipulate, attempts to corner, and corners are violations of section 9. The legislative history shows that the criminal penalties were additional to administrative sanctions. *

* Reference to other points involved in this case will be found in Index-Digest and Subject-Index in this issue of Agriculture Decisions. -- Ed.

Complaint as Not *Including Charges* of Failure to File Reports

Concerning the protestations that all required reports were filed, etc., it should be said that the violations charged and found did not include failure to file reports. Violations of regulations or provisions of the act other than those charged are not essentials of the violations charged and found. *

* Reference to other points involved in this case will be found in Index-Digest and Subject-Index in this issue of Agriculture Decisions. -- Ed.

Mr. Benjamin M. Holstein for Commodity Exchange Authority. Mr. Bernard Tomson of Bernstein, Weiss, Tomson, Hammer, and Parter, of New York, New York, and Mr. George L. Siegel of Arvey, Hodes, and Mantynband, of Chicago, Illinois, for respondents.

Decision by Thomas J. Flavin, Judicial Officer

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. 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

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. 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 cash 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 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.

The Answers

On August 2, 1948, respondent Hartley L. Harris filed a separate answer. 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 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.

The Hearing

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 Bernard 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 Office of the Solicitor, United States Department of Agriculture, appeared as counsel for the complainant. 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 complainant and 10 for the respondents. Fifty-one exhibits were introduced in evidence on behalf of the complainant and 50 on behalf of the respondents. At the conclusion of the hearing on December 9, 1949, counsel for both parties rested.

Post-Hearing Procedure

Complainant and respondents filed briefs after the hearing within the time allotted by the referee. On July 11, 1950, respondents also filed a document entitled "Respondents' Reply Brief." This brief has also been considered.

The referee's report adopted substantially the recommendations of the complainant and proposed that the respondents Great Western Distributors, Inc., Nathaniel E. Hess and Charles S. Borden be found to have violated the act as charged in the complaint but that the complaint be dismissed as to respondents Thomas F. Haynes and Hartley L. Harris for lack of connection with the transactions in issue.

The respondents Great Western, Hess and Borden filed numerous exceptions to the referee's report and oral arguments upon

the exceptions was held before me in Washington, D.C., on December 19, 1950.

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, sometimes called "storage" eggs, stored in approved cold storage warehouses located in Chicago or at certain points outside 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 discounts and allowances for freight charges, and that deliveries of fresh eggs would be without premiums to the delivering party (pp. 35-44).

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 Chicago were seldom 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). The witnesses explained that the 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 complainant 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 complainant 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 of Agriculture as Chief of the Trading and Reports Division, Commodity Exchange Authority, offered expert testimony for the complainant. 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 Practices Division, Commodity Exchange Authority, testified that Great-Western realized a profit of $ 182,088 as a result of its December 1947-January 1948 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 complainant that he interviewed respondent Hess privately in the latter'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 1947 and January 1948 futures prices with the December-January relationship for a number of years commencing in 1932 and showing the relationship between

December 1947 futures prices and cash egg prices with such relationship for a period of years commencing also in 1932. In general, comparisons as between 1947 and these other years showed price relationships in 1947 different than those in all other years except certain years during World War II.

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, Poultry Branch, Production and Marketing Administration, testified for the complainant 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 mot 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; Respondents' Exhibits 17-20, 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; Respondents' 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). Hess and Borden testified generally that they did not attempt to manipulate or corner and that Great Western's futures and cash eggs were offered "at or near going prices."

Evidence Concerning Interstate Commerce

Trade witnesses who appeared for the complainant 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 Exhibits 20, 37; Respondents' Exhibits 2, 3).

Contentions and Issues

The complainant contends that the market position of the corporate respondent was large, dominant, and controlling, especially toward the close of trading in December 1947, because of its concentrated long interest in December futures and its ownership of a large part of the cash storage eggs in Chicago, that it 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 prices 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 complainant 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 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.

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 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 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. Respondent Thomas F. Haynes was at all times material to the issues herein and is now secretary of Great Western. He is not shown to have any connection with the transactions material to the issues herein.

6. Respondent Hartley L. Harris was at all times material to the issues herein and is now a registered floor broker under the provisions of the Commodity Exchange Act and a member of the Chicago Mercantile Exchange. During the months of November and December, 1947, and January 1948, he took no active part in the business of Great Western.

7. Great Western's trading in the December 1947 egg future on the Chicago Mercantile Exchange started on October 29, 1947. Commencing about November 12, 1947, it began a purchasing program which built up its long position to 292 carlots on December 2, 1947. It also had a small short position in the December future. On November 12, Great Western's holdings constituted 6.1 percent of the total open long contracts in the December future and on December 2, 1947, its 292 carlots long position was

39.5 percent of the total long interest. During this period and also during December 1947, 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. Great Western was engaged in a futures trading operation called a "spread" or "straddle" with the objective of profiting by a change in the differential between December 1947 and January 1948 futures prices.

8. The following table shows Great Western's trading in the December 1947 egg future during December 1947, total open contracts and Great Western's percentage of the total open contracts (Government Exhibits 4, 7):

Date		Purchases of December Futures	Sales of December Futures	Great Western's Long Position	Great Western's Short Position	Total Open Contracts	Great Western's Percentage of Total Open Contracts
Dec.	1	20	3	272		816	33.3
"	2	28	8	292		740	39.5
"	3	15	35	291	19	717	40.6
"	4	9	38	282	39	661	42.7
"	5	34	15	282	20	568	49.6
"	8	1	37	282	56	554	50.9
"	9	20	6	282	42	517	54.5
"	10	16	17	281	43	509	55.2
"	11	9	5	274	34	495	55.4
"	12	1	2	272	33	470	57.9
"	15	10	16	256	23	431	59.4
"	16	1	21	236	23	405	58.3
"	17	16		235	7	365	64.4
"	18		6	221	7	336	65.8
"	19	2	39	179	5	235	76.2
"	22		57	113	5	153	73.9
"	23	5	84	25		26	96.2
"	24			21			
"	26			20			
"	29			7			
"	30			6			
"	31						

9. The following table shows total stocks of shell eggs in storage in Chicago, both deliverable and undeliverable on futures contracts, stocks of shell eggs in storage in Chicago owned by

Great Western, Great Western's percentage of total stocks, and Great Western's long position in its percentage relationship to the stocks of such eggs owned by persons other than Great Western (Government Exhibit 9):

		Total Stocks Shell Eggs (Approx.)	Owned by Great Western (Approx.)	Great Western's Percentage of Total	Great Western's Long Position in Relationship to Stocks Owned by Other Persons
Dec.	1	316	18	5.7	
"	2	297	17	5.7	104.3
"	3	274	81	29.3	150.0
"	4	257	78	30.2	157.5
"	5	239	70	29.1	166.9
"	8	218	61	27.7	178.5
"	9	199	57	28.5	198.6
"	10	181	53	29.1	219.5
"	11	162	54	33.0	251.4
"	12	151	52	34.3	274.7
"	15	134	50	36.9	301.2
"	16	132	49	36.8	281.0
"	17	129	49	37.6	290.1
"	18	129	57	43.9	306:9
"	19	119	58	48.5	293.4
"	22	119	61	51.0	194.8
"	23	114	65	56.7	51.0
"	24	114	69	60.0	
"	26	107	70	64.9	
"	29	106	82	76.7	
"	30	105	77	72.9	
"	31	103	82	78.8	

10. At all times from December 2 until the last day of trading in the December future, December 23, the combined cash and long futures holdings of Great Western exceeded total stocks of refrigerator eggs in Chicago warehouses and during most of this period its combined holdings were twice as large as storage stocks (Government Exhibits 33, 34). On and after December 11, its total holdings of cash and long futures exceeded total holdings in the hands of all other persons, and on the last two trading days it held approximately twice as many cash eggs and long futures as all other persons combined (Government Exhibit 35).

11. The combined December long futures plus stocks of refrigerator eggs in Chicago of persons other than Great Western relative to December short futures is shown in the table below. The minus quantities shown represent carlot deficits of refrigerator eggs stored in Chicago which would not be satisfied by the shorts except by recourse to Great Western for covering futures purchases or for Chicago-stored refrigerator eggs (or by the use of fresh eggs or refrigerator eggs stored in approved warehouses outside of Chicago).

December	2	-- 12
"	3	-- 78
"	4	-- 64
"	5	-- 93
"	8	-- 68
"	9	-- 98
"	10	-- 110
"	11	-- 131
"	12	-- 140
"	15	-- 148
"	16	-- 129
"	17	-- 147
"	18	-- 142

"	19	-- 113
"	22	-- 50

12. (a) Great Western's weekly sales of cash eggs during November and December and the relation of sales to the average weekly inventory were as follows (computed from statistics in Government Exhibits 8, 9, 12, 37).

Week		Sales (carlots)	Average Inventory (carlots)	Percent of Sales to Inventory
Nov.	3-9	2		
"	10-16	24		
"	17-23	12	41.8	28.7
"	24-30	24	44.0	54.6
Dec.	1-7	26	52.8	49.2
"	8-14	21	55.4	37.9
"	15-21	7	52.6	13.3
"	22-28	2 *	66.2	3.0
"	29-31	8 **	80.3	6.2.

* Consigned to Great Western's New York office.

** Includes 3 carlots fresh eggs.

Between December 10 and December 28, a period of two and one-half weeks which included the crucial last few days of futures trading, Great Western sold only seven carlots of eggs to Chicago buyers. Two additional carlots were consigned to its New York office during this period and eight additional carlots were sold for out-of-town delivery. Out of the 64 carlots shown as sold in December, only 30 were sold for delivery in Chicago. The other 34 carlots were sold to out-of-town buyers or transferred to Great Western's New York office. December 18, 19, 22 and 23 were the last four days of trading in the December future. Great Western sold one carlot for delivery in Chicago on December 17, and then sold no more eggs to Chicago buyers until after trading in the December future had expired (Government Exhibit 37). The reduction in sales as the close of futures trading approached was not due to any shortage of eggs in the hands of Great Western as is apparent from the fact that its inventory increased while its sales decreased.

(b) During the month Great Western also received or "stopped" 49 out of a total of 51 carlots of eggs delivered in Chicago in satisfaction of December futures which was 96 percent of all such deliveries. Great Western made no deliveries on its short December position. On December 30, it sold five carlots of refrigerator eggs which were delivered back to it on the following day in satisfaction of its long position. The 82 carlots which it owned on December 31 were all deliverable and represented 97.5 percent of all the deliverable eggs in Chicago warehouses on that date. On that date also, 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.

13. 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 thereafter, 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.

14. In December 1947, Great Western temporarily withheld December futures and cash storage eggs from the market.

15. (a) 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. 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.

(b) 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 a.m. December 22, 1947, although trading in December futures continued until the close of business December 23, 1947, and delivery of Chicago storage eggs or fresh eggs could be made thereafter for the remainder of the month.

(c) 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.

(d) 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.

16. By reason of the penalties and premiums described immediately above in Finding of Fact 15, deliveries in satisfaction of refrigerator egg futures contracts are normally and usually made by delivering refrigerator eggs located in approved cold storage

warehouses in Chicago. This was true in December 1947. Deliveries of fresh eggs or out-of-town storage eggs, because of the additional expense involved, are infrequent and indicative of a squeeze or tight market situation. Therefore, in determining whether there has been a corner or manipulation, or attempts to achieve any such end, the deliverable Chicago-stored refrigerator eggs should be considered the deliverable supply.

17. The production of eggs increases in the late fall and winter months. Due to the progressive increase in fresh-egg 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. In December 1947, the egg trade, including respondent Hess, expected a good volume of fresh eggs to reach the market in January.

18. Despite the facts shown in Finding 17 immediately above, the 82 carlots of eggs in the Chicago inventory of Great Western on December 31, 1947, acquired at December prices either as cash purchases or in satisfaction of futures were delivered by Great Western on its short January contracts resulting in a loss on those eggs. Some could have been delivered by Great Western on its short December contracts or some could have been sold as cash eggs at December prices.

Great Western knew that it was likely that disposition in January would entail a loss on these eggs.

19. The following table shows closing prices during December 1947 for December futures and the amounts by which the January futures prices were less than December futures prices, that is, the "spread":

Date		Closing prices December futures	Spread
Dec.	1	53.50	1.82
"	2	53.00-53.05	3.22
"	3	53.60	3.70
"	4	54.10-54.25	3.87
"	5	55.45-55.50	4.22
"	8	55.25	4.12
"	9	54.60-54.65	4.05
"	10	54.65	4.20
"	11	54.65	4.47
"	12	52.75	4.50
"	15	53.10-53.25	4.72
Dec.	16	52.50	5.00
"	17	50.50-50.65	4.50
"	18	52.00	5.00
"	19	51.30-51.40	5.20
"	22	52.75	6.87
"	23	53.50	8.12

20. (a) 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.

(b) 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.

(c) 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. 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.

21. (a) 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.

(b) 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. The following table gives the prices for December futures and fresh eggs on the last trading day for these years (Government Exhibit 32) :

Year	Future	Cash
1932	28-1/2	28
1933	15-3/8	19
1934	22-1/2	29-1/2
1935	19-7/8	25
1936	26-1/2	28-1/2
1937	21-1/4	24-1/2
1938	21-7/8	24-1/2
1939	13.90	19
1940	20.65	22-1/2
1941	33.75	33-1/4
1944	40.60	44.42
1945	42.95	49.30
1946	34.50	40.75
1947	53.50	54.00

22. (a) The daily market letters issued by James E. Bennett & Co., Commission Merchants, Produce Division, made the following statements on the egg market on the days indicated:

December 11, 1947. "The December deal continues very tight with only 52 cars traded today and an open commitment of 509 cars at start of business today. On yesterday's trading of 121 cars the commitment was reduced only 6 cars, and it appears that the big interest holding the largest block of deliverable eggs, and also apparently long the December contract are standing firm, and at the same time merchandising each day a fair percentage of their holdings."

December 18, 1947. "However, the open interest in the December contract is still large -- 357 cars this morning after delivery, and there were only 32 trades in this contract today and there are only 3 more trading days left for December eggs. Of the 77,665 cases still in Chicago, at least 30,000 cases belong to the large interest that is reportedly long the December contract, and there is considerable talk of the shorts being unable to deliver, and they may be forced to pay higher prices to cover."

December 19, 1947. "The withdrawals in Chicago today amounted to only 371 Cases, and practically everybody is entirely on fresh eggs, and about the only possibility existing for a renewed interest in storage would be some sub zero weather that might reach down into the deep south, and be extended long enough to choke off the fresh production. The only support in the market is through one large broker who owns the bulk of the deliverable eggs in Chicago and who has been stopping all of the recent deliveries. However, this broker has a spread out -- short Januarys and long Decembers, and the fact that shorts are unable to deliver Decembers in any quantity has widened the spread to around 525 points, and at this difference they apparently are willing to uncouple the spread."

December 22, 1947. "At the start of business today there were 235 cars Decembers still open, against which there were only 9 deliveries and tomorrow is the last day of trading. The deliveries today were stopped by the broker who has accepted all recent deliveries and who is also reportedly long the December contract. Of the 81 cars of Decembers traded today, 59 of these were sold by this broker, who was very firm in his asking prices on a scale up. There are not more than 100 cars of deliverable eggs in Chicago, and with one cash interest in control of the majority of them, look for continued tightness until trading terminates in the December contract tomorrow. Whether or not they will be retendered on the December contract or carried into January at a 6 cent discount is highly problematical."

December 23, 1947. "There were only 4 cars of eggs tendered today against the December contract, all of them going to the same cash interest that has taken all recent deliveries, and who own bulk of the deliverable eggs in Chicago. These people were firm in their asking price today for the December eggs and the shorts were practically forced to cover bulk of the Decembers between 53.25 and 53.50 range."

December 24, 1947. "There also about 100 cars of storage eggs hanging over the market in the hands of one broker, who may or may not elect to deliver early in January, and with the very limited demand for storage eggs, this could prove very bearish."

December 30, 1947. "While the sharp break in the fresh egg market today may tend to stimulate business, at the same time weather conditions are moderate, and we must look for progressively increasing production, and with fresh eggs currently selling at 50 cents, don't see much on the upside for January storage eggs, and we must also take into consideration the fact that one large eastern house still has on hand approximately 75 cars of storage eggs that could be delivered at any time in January. There was one car of fresh eggs delivered today against December contracts, leaving 7 cars still open in this delivery."

(b) The Uhlmann Grain Company's "Weekly Commodity Letter" had this to say in its issue of December 15, 1947:

"The December contracts, in our opinion, are not being liquidated rapidly enough, and we do not understand why longs will not accept present prices because any eggs that may be delivered to them may have to be redelivered on January contracts for about 5 cents per dozen less. On the other hand, we also do not understand why shorts, who have no eggs to deliver, will not cover, because there does not appear to be enough storage eggs of deliverable grade to fill even half of the open commitment if the longs remain stubborn."

23. 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 between spots and futures or between different futures options which depended for profits on a narrowing or widening of the differences, that in this case operations were instituted in November by the purchase of spot eggs and November futures and by the sale of January futures. At the time of institution, he said that eggs were plentiful and the differences between spots and future at a low point. Mr. Hess told Seitz that he believed that all he would have to do would be to "sit and wait" for market developments, that some of the November contracts were liquidated by the receipt of cash eggs on expiration of the contracts and that others were transferred into December futures contracts. Hess told Seitz also that cash eggs were continually sold to customers in their regular business operations. He said that during December a shortage of eggs developed. He said, also, that

cash eggs were received in delivery against some of the long December futures until the shortage became acute and the shorts were no longer able to buy the eggs to deliver. He claimed that the December futures price was gradually raised by himself but that he continually offered to sell all of his December futures (at his prices) "so that there was no corner" in the market. His prices found no takers, he said, so they were continually, though slightly, raised, and he claimed that he finally liquidated the futures at an increase in the differential of 4-1/2 to 5 cents. He maintained, however, that he continually offered to sell cash eggs to those short of December futures and that "therefore no corner existed." The January short futures position was maintained, he explained, so that any excess of spot eggs remaining after completion of the December operations could be easily liquidated.

24. The prices of December futures in December 1947 reflected prices of refrigerator eggs in December 1947.

25. 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. 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.

26. Great Western had a large, dominant and controlling position during December 1947 in the December 1947 futures market with its concentrated long interest and its ownership of a substantial part of storage eggs in Chicago deliverable upon the egg futures contracts. During December 1947 up into the last day of trading, December 23, 1947, Hess and Borden intentionally maintained for Great Western a large, dominant and controlling position in the December 1947 future market and intentionally so employed this position and Great Western's cash stocks of storage eggs in Chicago so as to apply pressure upward on December 1947 futures prices and storage egg prices in Chicago for the purpose of widening the spread between December 1947 and January 1948 futures prices.

27. December 1947 futures prices during December 1947 were supported and increased above what they would have been by means of the activities of Hess and Borden on behalf of Great Western described above, and the spread between December 1947

and January 1948 futures prices was widened as a result of these efforts.

28. 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 arc shipped from Chicago to states outside of Illinois.

CONCLUSIONS

I

The complaint charges that respondents attempted to 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 sections 6(b) and 9 of the act, that they attempted to corner and that they cornered such a commodity in violation of section 9 of the act. n1

n1 Section 6(b). "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 has manipulated or is attempting to manipulate the market

> price of any commodity, in interstate commerce, or for future delivery on or subject to the rules of any board of trade . . . ."
>
> Section 9. "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 . . . ."

Many of the facts outlined above concerning Great Western's December 1947-January 1948 futures trading operation are not in dispute. For example, it is not controverted by the respondents that Great Western was long December and short January approximately the same amount, that is, that it had out a "spread" or "straddle" which depended for profit upon a widening of the differential between December and January futures prices, that Great Western maintained a long December position from December 2 through December 10 which at all times was between 290 and 280 carlots, that it continued to maintain a long position in excess of 200 carlots from December 11 through December 19 after which date there were only two trading days in the future remaining, that it went into the last day of trading, December 23, with a long position of 113 carlots, that during December Great Western held a steadily increasing percentage of the total open interest, that Great Western obtained ownership of a substantial part of the stocks of storage eggs in Chicago during December, that Great Western's long December contracts plus its stocks of storage eggs in Chicago greatly exceeded stocks of storage eggs in Chicago owned by other persons, that during most of the month Great Western's long position alone exceeded the total stocks of storage eggs in Chicago, and that Great Western received 96 percent of all deliveries made upon the December futures contracts.

Although the basic facts as to Great Western's large long interest in relationship to available deliverable supplies of storage eggs in Chicago and its holdings of cash storage eggs cannot be denied, the respondents insist that Great Western's position was not dominant and controlling. The undisputed facts demonstrate that Great Western had such a position during December. Its percentage of the total open long contracts climbed steadily from 33.3 percent on December 1 to 76.2 percent on December 22. At the same time it held a substantial portion of the cash storage eggs in Chicago and, from December 2 through December 22, there were numerous short contracts which could not be offset or satisfied by delivery of Chicago storage eggs without recourse to Great Western for cash eggs or futures. Certainly Great Western held a dominant and controlling position on the long side in the December 1947 futures market. What interest Great Western had in the December market during previous months, such as October, which the respondents think should be considered, is not relevant to the question of its control of the market in December. It makes little difference, either, if Great Western's long position is regarded as net, that is, by subtracting its small short December position from its long December position. It is the gross long or short positions that the trade looks to and, as a matter of fact, the rules of the Chicago Mercantile Exchange do not permit the offsetting of existing contracts. Dominance or control is not negatived, as suggested by the respondents, because it was not necessary for a majority of the shorts to have recourse to Great Western for futures or cash storage eggs.

II

The respondents argue throughout the proceeding that there could be no control of the market by Great Western, no manipulation or corner and no attempt to do so because out-of-town storage eggs and fresh eggs could be delivered by the shorts upon their contracts. The overwhelming weight of the evidence, including testimony by the respondents' witnesses, is that such deliveries were not usual because they are too expensive in relationship to deliveries of Chicago storage eggs. The allowance of 22-1/2 cents per case plus a freight rate averaging one cent a dozen from nearby points (pp. 207-208), for example, would amount to about $ 315 per carlot, a very sizable figure. Freight rates from more distant points of course would be higher. Moreover, out-of-town storage eggs could not be tendered for delivery after 9 a.m. on December 22.

Fresh eggs are normally higher priced than refrigerator eggs and were so in December 1947. No premium was

allowed for delivery of fresh eggs upon refrigerator egg contracts. Respondents' argument then that no manipulation or corner could take place or that no attempt to do so could be had so long as out-of-town storage eggs and fresh eggs were available to the shorts is of little merit. It is similar to the argument sometimes made that rules of commodity exchanges providing for fixing limits on daily prices and for determining a fair market price plus a penalty where shorts default prevent the existence of manipulation or corners or attempted manipulation on the long side. Such rules may tend to discourage manipulation and corners by putting a ceiling upon the extent of manipulation possible and upon the profits that might be expected from a "squeeze" or corner, but their existence does not automatically disprove manipulation or attempted manipulation. Similarly here, the availability for delivery of supplies more costly than Chicago storage eggs merely tends to limit the extent of manipulation possible.

III

We think that the weight of the evidence is that Great Western not only had a dominant and controlling position in the December futures market but that it acquired such a position knowingly and utilized its control intentionally to put on a "squeeze," that is, to pressure December futures prices upwards by means of its monopolistic powers over futures and cash storage eggs in Chicago. The respondents disclaim any such purpose. They insist that there was no manipulative intent present. They point to Great Western's sales of cash and futures during December, they claim that its cash and futures were for sale at all times during December, and they say that Great Western was engaged in normal business practices.

First, it should be observed that, despite the respondents' confusing attempts to describe the transactions in issue in terms of merchandising and "hedges", the essential characteristics of Great Western's December 1947-January 1948 egg futures operation are speculative in nature. Whether Great Western's holdings of cash eggs were or were not large from the standpoint of a merchandiser of cash eggs, they were large and of great importance in relationship to other available deliverable storage eggs in Chicago and Great Western's large long line of December futures.

As to Great Western's sales of cash eggs during December, it is not surprising that some cash eggs were sold and such sales are not inconsistent with manipulation. Great Western is a merchandiser of eggs. It held on, however, to a large part of the

deliverable storage eggs in Chicago, and it is significant, as shown by Finding of Fact 12(a), that Great Western made very few sales of its Chicago storage eggs to Chicago buyers after December 10. As the critical last few days of trading in the December future approached, it made no sales to Chicago buyers. It sold one carlot on December 17 and sold no more to Chicago buyers until after trading closed on December 23. It carried into January 82 carlots of storage eggs acquired at December prices which were delivered on its January short contracts at lower January prices. Some of the eggs were cash purchases and others were acquired by delivery to Great Western on its long Decembers. The market generally and respondent Hess expected January prices to be lower than December. It is not a normal business practice nor a normal futures trading practice to hold a commodity for disposal at a time when the price is expected to be lower. The respondents place the blame for part of their December inventory of cash eggs upon deliveries by the shorts. Great Western was practically the only long to take delivery. When asked on cross-examination why he did not liquidate Great Western's long position to avoid the acquisition of eggs for disposal at lower January prices, Mr. Hess answered only that he "didn't want to" (pp. 1008-1009). According to his testimony, Hess bought the 71 cars from Schreiber on December 3, 1947, to have cash eggs for Great Western to sell. Yet he admitted the several attempts to raise the prices for these eggs described in Finding of Fact 13 and a number of these cars were not sold but were delivered on Great Western's short January contracts. The respondents make another point that according to Warren's evidence the market for cash storage eggs was poor in the latter half of December. There certainly was a demand in Chicago for such eggs from the shorts on the December contract. The only conclusion we can come to as to the alleged offers to sell cash eggs at all times during December is that the respondents were trying to make cash storage eggs in Chicago difficult or impossible to acquire for delivery upon December futures contracts in its price-raising venture.

As to its sales of futures during December, it is to be noted that it also made heavy purchases and continually maintained a long position liquidated at a much slower pace than the rate of liquidation of the total open interest. The respondents seem to imply that any partial liquidation of Great Western's long position or any sale of futures excludes the presence of a manipulative venture. This is completely fallacious defense although it has sometimes succeeded in the past in beclouding a, manipulative picture. It is not necessary for the crime of conspiracy to monopolize

trade under the Sherman Act to show power and intent to exclude all competition (American Tobacco Co. v. United States, 328 U.S. 781, 789 (1946)), just as it is not necessary for the crime of embezzlement that the embezzler steal all the money in his custody. Sales of part of a long position do not mean that the remaining long position is not dominant, controlling and being used for manipulative purposes. The extensive liquidation on December 23 and Great Western's offers to sell at 53.50 on the last day of trading, far from being evidence of normal trading or the absence of a manipulative scheme, are weighty indications of the kind of manipulation charged. Offering to sell just ahead of the market or at a price which represents a manipulated price, as we shall see shortly, is no meritorious defense. Concerning the protestations that its futures were for sale at all times, the facts as to its long position are uncontroverted. Great Western was pushing the market, was pressuring prices, and there can be little doubt that, as reported in Finding of Fact 22, the "near going prices" referred to by the respondents as offering prices by Great Western were on the "up" side on an ascending scale.

IV

Of course, there may be natural corners or squeezes without manipulative intent. n2 Manipulative intent is sometimes difficult to prove. Nevertheless, it can be demonstrated satisfactorily from a legal standpoint by circumstances alone. Wright v. Securities and Exchange Commission, 112 F.(2d) 89, 92, 93 (C.C.A. 2d, 1940); see Note, Manipulations of the Stock Markets Under the Securities Laws (1951) 99 U. of Pa. L. Rev. 651. In this case, the facts and circumstances alone are more than adequate to warrant such a conclusion. But when there are added the admissions of Hess to Seitz, the evidence is practically conclusive on the question of manipulative intent. The respondents seek strenuously to discredit Seitz's testimony, but we agree with the referee that this testimony is much more credible than that of Hess on the matter. Seitz testified that he visited Great Western's New York offices on three occasions to interview Hess on Great Western's December 1947 operations, that he saw Hess on these three occasions, February 17, 20, and 24, 1948, that he had brief conversations with Hess and Harris on February 17 and on February 20 in an office on the west side of the suite but that on February 24, 1948, he had a private interview with Hess in an office on the east side of the suite at which time Hess made the statements set out in Finding of Fact 23. Seitz testified that the interview lasted about an hour and then he made a memorandum of the interview within two or three days thereafter. This memorandum was introduced in evidence (Government Exhibit 6). He testified further that the dates for these interviews were ascertained from time records required to be kept in connection with his official duties and that another Commodity Exchange Authority employee, Edward R. Tracy, accompanied him on February 17 and February 24. Tracy testified that on February 24 he was at Great Western's New York office with Seitz and that Seitz left him for about an hour in order to interview Hess. Tracy also testified that he did not see Harris in Great Western's offices on February 24.

n2 See e.g., VII Report of the Federal Trade Commission on the Grain Trade (1926) 248.

On the other hand, Hess testified that he saw Seitz on only two occasions, that nothing of importance took place during the first visit but that on the second visit he had a conversation with Seitz in the west office, that his secretary was present part of the time and that Harris was present during the entire interview. He described the conversation as consisting of an explanation by him of Great Western's straddle and hedge techniques which he thought Seitz might be seeking for a Government publication, but he denied making the statements attributed to him by Seitz. Harris corroborated Hess to the extent that he testified that Hess did not make these statements but he could recall only the general subject-matter of the conversation. Neither Hess nor Harris made any memorandum of the interview and relied upon their memories. Seitz testified at the hearing on July 26, 1949, when Hess was present but Harris did not know of Seitz' testimony as to what was said by Hess until about October 10, 1949, and Hess did not inform his counsel that Seitz version was not true at the time Seitz was testifying or while Seitz was available for cross-examination. Hess' delay in making known his denial or lack of agreement with Seitz as to what he, Hess, said, the improbability that Seitz on an official investigation would be satisfied with the simple exposition of the elementary principles of hedging and straddling which Hess claims is all that he discussed in an interview lasting an hour, Hess' evasive tactics and reluctance on cross-examination -- all these tend to make more believable the testimony of Seitz supported as it is by a memorandum prepared within two or three days thereafter. Harris' memory or his credibility appear to be less than perfect because his separate answer to the complaint states that he severed his connection with Great Western on May 1, 1948, but in his testimony he stated that he left the firm's employ on February 1, 1948 (pp. 1027-1028).

Putting on a "squeeze" deliberately, that is, taking and maintaining during a delivery month a large long line in relationship

to known deliverable supplies in the market together with ownership or control over a substantial part of the deliverable supplies for the purpose of pressuring prices upward by means of the relative scarcity of supplies and futures thus created, is in our opinion an undoubted manipulation in violation of the act and constitutes at the very least an attempt to manipulate prices. VII Report of the Federal Trade Commission on the Grain Trade (1926) 244; Baer and Saxon, Commodity Exchanges and Futures Trading (Harper & Bros. 1949) 83; Baer and Woodruff, Commodity Exchanges (Harper & Bros. 1935) 146; Emery, Speculation on the Stock and Produce Exchanges of the United States (Columbia U. 1896) 175; Hoffman, Future Trading Upon Organized Commodity Markets in the United States (U. of Pa. Press 1932) 315-316; Cotton Prices Hearings Before a Subcommittee of the Committee on Agriculture and Forestry United States Senate Pursuant to S. Res. 142, 70th Cong., 1st Sess. (1928), particularly pages 169, 203-214, and the Report of the Subcommittee on Agriculture and Forestry on S. Res. 142; Hearings Before Senate Committee on Agriculture and Forestry on H. R. 6772, 74th Cong., 2d Sess. (1936), particularly pages 124 and 162. Because Great Western's plan was to pressure December futures prices upward to widen the spread between December and January futures prices rather than merely for the purpose of raising December futures prices alone does not absolve the transactions from the taint of manipulation. This type of market operation is not as novel as the respondents seem to think it is, it was thoroughly explored in the case of cotton during the subcommittee hearings pursuant to S. Res. 142, 70th Cong., 1st Sess., referred to above, and it was described by the Chairman of the Senate Committee on Agriculture and Forestry on the floor of the Senate during the progress of the legislation which became the Commodity Exchange Act. n3

n3 "MR. SMITH . . . It was also testified that some of the big traders would sell Europe and buy America, which is called a straddle. The same thing was done in the grain market. Not only would they sell Europe, or buy, as the case might be, to their advantage, and sell America, a straddle, as it is called, but they would have enough of the commodity and enough money to put one down and the other up, and then reap the reward of the manipulation. It went so far that they would straddle from one month to another month; that is, they would buy one month and put the price for that month out of all relation to the price of a near month, and then they would put in their 'spot' wherever they had created an advantageous place to put it." 80 CONG. REC. 7910 (1936).

Page 256, Vol. VII. Report of the Federal Trade Commission on the Grain Trade (1926), has this to say:

"While the ordinary conception of a corner or squeeze considers only the holdings of the dominant long interest in the near or current option, it is not necessary that the interest in question be a wide-open speculator. The bought near option may be protected by a sold deferred option. The spread will limit losses and, if the deferred price is favorable, will make it feasible to take grain on delivery in the squeezed near month without being under pressure to dispose of it promptly."

V

Not only did respondents Great Western, Hess and Borden attempt to manipulate December 1947 egg futures prices but the weight of the evidence in our opinion is that they succeeded. Dr. Beach testified that Great Western's large, dominant and controlling long December position, together with its ownership of a substantial part of the storage egg supply in Chicago coupled with the January short sales by Great Western, caused a widening of the spread between December and January futures prices. He found almost perfect correlation between the widening of the spread and Great Western's increasing percentage of the total open December interest. Finding 20 shows that the average weekly spread between December and January futures prices for the last week of trading in the December 1947 future and the net increase in the average weekly spread between December 1947 and January 1948 futures prices over a period of seven weeks immediately preceding the close of trading were abnormal. Finding 21 shows that the relationship between December futures prices and prices for fresh eggs was abnormal. Both Dr. Beach and Warren, as did also witnesses for the respondents, testified that normally refrigerator egg prices are lower than prices of fresh eggs during the fall months and that as the season advances and as refrigerator eggs decline in quality and fresh egg production begins to increase, the differential between fresh egg and refrigerator egg prices generally widens. Despite this normal situation, there was a rise in price for December futures during the last few days of trading while fresh egg prices were declining in Chicago so that on the last day of trading there was only a one-half cent difference. Together with Hess' admission to Seitz, this evidence is more than enough to conclude that the December 1947 futures price was manipulated on the upward side by Great Western's tactics.

Respondents point out that the December 1947 futures price was 53.60 on December 2, that it went up to 55.50 on December 5, then declined until it went to a low of 50.50 on December 17, and gradually went up for the next three or four days to 53.50. They argue that because of the declines and the fluctuations, there was no manipulation of price by Great Western. They dispose of the complainant's evidence as to the abnormally wide spread between the December and January futures prices by claiming that there is no standard of normality and they similarly discard the fresh-futures price relationship as a test of artificiality in futures prices. Whether prices of December futures were consistently and steadily

driven up at all times during trading in December is not the exclusive yardstick for determining whether the prices were manipulated. Whatever definition of "manipulation" may be selected, it necessarily should include expressly or by implication the effecting of a price which would be different if the price-influencing efforts were absent, that is, not only the raising or lowering of prices by means directed to either such end but the prevention of prices from going up or going down according to free supply and demand conditions. We cannot believe that it is not manipulation under the act to employ monopolistic methods to support and pressure prices for one month's futures in order to widen the spread between prices for that month's futures and the next month's futures. n4 But, in any event, during the last few days of trading, the critical period in any squeeze, the price did rise significantly. Respondents minimize this rise and the substantial equality between fresh and December futures prices on the last day of trading by saying that there is historically a small rise in futures prices at such a time and a tendency for fresh and futures prices to approach each other. The reason given is the necessity of the shorts to make covering purchases (Respondents' Brief, p. 23), an admission which is inconsistent with the respondents' defense that all prices in issue were the result of supply and demand conditions generally for eggs and free trading opinion as to such conditions. In December 1947 the necessity of the shorts to cover was created by Great Western's concentrated long interest and its holdings of deliverable supplies deliberately employed for this purpose.

n4 In United States v. Socony-Vacuum Oil Co., 310 U. S. 150, 223 (1940), the Court said that "market manipulation in its various manifestations is implicitly an artificial stimulation applied to (op at times a brake on) market prices, a force which distorts those prices, a factor which prevents the determination of those prices by free competition alone." In the Twentieth Century Fund's The Security Markets (1935) 144, the following definition of manipulation is used: ". . . the word manipulation will mean planned effort by an individual or group of individuals to make the market price of a security behave in some manner in which it would not behave if left to adjust itself to uncontrolled or uninspired supply and demand." Dictionary definitions or those culled from other authorities which speak only of forcing prices up or down are not complete or are inaccurate unless they are interpreted to mean the effecting of a price which is higher or lower than it ought to be. A price which is maintained artificially by deliberate efforts when it should be lower is a manipulated price just as much as a price which has been raised artificially from a pre-existing market price.

On the side of affirmative defense, the respondents presented an expert witness, Gerson Levin, a former employee of the United States Department of Agriculture, who introduced considerable evidence to show that the December futures price in December was ". . . pretty well in line with what we term the supply-demand situation." He supplied data concerning the production, supply, and demand for eggs, withdrawals of eggs from storage, the relationship

between egg prices and corn, hog and cheese prices in December 1947 as compared with previous years, and changes in the seasonal production pattern for eggs.

He was of the opinion that there was a very strong, firm market situation in December 1947.

Examining Levin's evidence we find that his production, supply, and demand data are relative to prior periods, which would indicate that his conclusions as to December 1947 prices being fair market prices would be relative to the prices during the prior periods. He reaches his price conclusions, however, only by relationship to prior production, supply and demand data and makes no general economic study to show that futures prices in December were justified absolutely, not relatively, by economic conditions generally in December 1947.

More close study of Levin's production data designed to disclose a production decline shows that the data were not available to enter into trading opinion in December 1947. The data used, revised estimates by the United States Department of Agriculture, were not issued until January 1948 or later. The data available to form trading opinion in December 1947 indicated more layers on farms as of December 1, 1947, than December 1, 1946, which would be generally associated with lower prices.

Levin's evidence as to a decline in supply is weak. He shows receipts in three groups of markets in the last quarter of 1946 and 1947, together with percentage changes between the years and between the weeks in 1947 (Respondents' Exhibits 17, 20, 21). Supplies in the Pacific Coast markets and the group known as the Four Markets (New York, Chicago, Philadelphia, Boston) were more abundant in December 1947 than they were in December 1946 (p. 1317; Respondents' Exhibit 17). In the Midwest Primary Markets and in the Four Markets, the weekly trend in December 1947 was up (pp. 1626-1628; Respondents' Exhibits 20, 21). The Four Markets group in which supplies were not only more abundant but were rising includes Chicago. Levin did not give supply figures for Chicago separately nor did he investigate the supply situation for Chicago. Warren, however, demonstrated for the complainant that during most of December 1947 receipts in Chicago were approximately 40 percent greater than they were in December 1946 and constituted about one-third of all receipts in the Four Markets group (p. 1603; Government Exhibit 41). Mr. Warren testified that Chicago receipts should rank high in the order of importance in determining market supplies and that the trade in Chicago considered Chicago receipts independently and not as merely part of the Four Markets group (pp. 1623, 1665). Mr. Levin did not explain the basis upon which he included figures from the Pacific Coast, a deficit producing area which does not normally ship eggs to Chicago, and omitted figures for Chicago, the market with which this proceeding is concerned (p. 1318).

The supply data presented by Mr. Levin also failed to include Eastern Auction Markets receipts (p. 1318). Mr. Warren testified that Eastern Auction Markets receipts were important indicators of supply, and were posted by the Chicago Mercantile Exchange and widely used by the trade including Chicago dealers (pp. 1600, 1668). Receipts in this group of markets in December 1947 ranged from 7 to 17 percent above December 1946 (pp. 1669-1671; Government Exhibit 40). The only indication of reduced receipts was in the Midwest Primary Markets. Mr. Warren testified that the Midwest Primary Markets figures represent only 7.3 percent of the eggs produced in the states covered and from past experience he would say that declines in receipts shown by these figures do not necessarily indicate lower egg supplies for the United States. He believed that these figures should rank low in evaluating the overall supply picture, especially since four other recognized measures of supply showed increases (pp. 1623-1624, 1667).

The demand data offered by the respondents consist of statistics showing movement into retail channels in three cities, Chicago, San Francisco and Los Angeles (Respondents' Exhibits 22, 23). It is presented in the same form as the supply data. These demand data fail to prove that any increase in demand took place. During most of December 1947 consumption in San Francisco and Los Angeles was below consumption in December 1946. In both of these cities the trend in relation to the previous year was downward, and the weekly trend in December 1947 was also downward. In Chicago, consumption during the entire month of December 1947 was definitely below that of the previous year. No trend is discernible, either in relation to the previous year or previous weeks (pp. 1625-1626; Respondents' Exhibits 22, 23). It would also seem that the Chicago figures should rank first in importance because of the size of Chicago compared with either San Francisco or Los Angeles. Mr. Levin did not give any additional weight to the Chicago data on account of this factor (pp. 1343-1345).

Mr. Levin investigated only three measures of supply. Out of a total of five recognized measures of supply, four showed more receipts in December 1947 than in December 1946. Among these four is the Chicago market. We also find that, insofar as the evidence shows seasonal changes or weekly trends, it indicates that during most of December 1947 receipts were either rising or

steady. We find further that all currently available measures of demand showed less consumption in December 1947 than in December 1946 and that they also showed the seasonal consumption trend either declining or steady during most of December 1947. Mr. Warren analyzed this evidence of supply and demand in detail, and stated as follows: "So, on balance, weighing the available supply data and weighing the available demand data, I think I have to conclude that with respect to those measures only egg prices in December of 1947 have full reason to be lower than they were in October and November of 1947 and also lower than they were in December, 1946" (pp. 1629-1630).

Mr. Levin admitted, as was obvious, that receipts in Chicago in December 1947 were in excess of receipts in December 1946 and that consumption was below. His answer to the question as to how that situation justified a higher price was that "prices aren't dependent only on the receipts figures at Chicago" (p. 1350). In the face of the fact that the over-all picture was substantially the same as that in Chicago, this explanation is not an answer.

Levin also finds support for the December 1947 futures prices in the withdrawals of storage stocks. He introduced evidence to demonstrate that withdrawals as a percent of the previous year were greater than storage holdings as a percent of the previous year. The conclusion he would draw from these data is one of rapid depletion of stocks and heavy demand resulting in a strong market situation for refrigerator egg prices in December.

Whatever deductions might be made from these data for periods prior to mid-December 1947, the conclusion of Levin does not apply to the critical period in the trading in the December 1947 future. As Mr. Warren pointed out in his testimony, there was a decline in withdrawals prior to mid-December and thereafter withdrawals became insignificant with withdrawals, for example, of only 8,000 cases on December 17 out of stocks of 167,000 cases. Such a decline in withdrawals is of course logical and consistent with the approaching end of the season for storage eggs for consumptive purposes and with the other market factors in evidence such as the downward movement of fresh egg prices. Respondents seem to concede that the nation-wide market for storage eggs was poor after mid-December because they invoke Warren's evidence as the reason for their relatively few sales of storage eggs after mid-December in answering the complainant's charge that Great Western withheld its cash eggs from the market in the cornering effort. This concession of the respondents which is clearly demonstrated by the evidence, namely that the market for

storage eggs generally, that is nation-wide, was poor after about the middle of December 1947, explodes their basic affirmative defense that December 1947 futures prices were the result only of supply and demand conditions which caused a "very strong, firm market."

Levin's evidence also added rationalization for December 1947 refrigerator egg futures prices by showing that these prices were low in relationship to corn, hog and cheese prices in December 1947 as compared with such relationships over a period of years. First of all, Levin uses monthly averages of prices and uses the average of each day's closing prices for his December futures price which tends to cover up any manipulative price movements. He admits that corn and hogs were in short production in 1947; that an unusual price rise in the price of corn occurred in November-December, 1947, and that the demand for pork was high. The average price of corn in December 1947 was approximately twice as high as the average price in any other year. The fact that there were low egg-corn, egg-hog and egg-cheese ratios in December 1947 relative to other years proves little or nothing insofar as justifying December 1947 futures prices is concerned. Moreover, the price ratios for other years vary radically and no sound or reliable deduction as to the appropriate level for December futures prices can be drawn from this type of evidence.

An additional defense invoked by Levin is changes in the egg industry during recent years, including a change in the seasonality of egg production. He emphasized that January production of eggs has risen to 8 percent of the year's output whereas in the twenties and thirties January production was only 5 or 6 percent of annual production. On the other hand, he stated that the whole period of December 1947-January 1948 was highly inflationary, that the index of prices paid farmers for January 1948 was at its all time high. He concludes somewhat illogically it would appear that the December futures prices in December were economically justified and a fair market value. If Levin intended to imply that the spread between December 1947 futures prices and January 1948 futures prices should be greater than the historical spread because of increased production of eggs in January in recent years, the implication is not warranted because part of the change in the pattern of the egg industry is that production in December has also increased and at an even greater rate than the rate of increased production in January (pp. 1765-1777; Government Exhibits 50, 51). And what bearing his reference to the high index of prices paid farmers in January 1948 has on December 1947 futures prices is difficult to see when on other points the

respondents cite lower egg prices to producers in January than in December to justify the width of the spread in December between December and January futures prices. He quotes also from a publication of the United States Department of Agriculture, the September 1946 issue of the "Poultry and Egg Situation," for which the witness had some responsibility when he was an employee of the Department. This publication points out changes in the seasonality of production of eggs and concludes that there has resulted a "leveling out of egg consumption and prices." How this change and this publication support a wider than normal spread between December and January futures prices is not only elusive but seems the converse of what should be deduced from the publication.

In the posthearing procedures, the respondents insist that December futures prices in December represented free trading opinion as to the value of eggs in December and that January futures prices in December represented free trading opinion as to the value eggs would have in January. They seek to bolster this view by reference to the spread between average prices received by farmers for eggs in December and average prices received by farmers in January which was greater than the spread between December and January futures prices on December 23, 1947. The respondents' comparison is between unlike objects. We are concerned with December and January futures prices for refrigerator eggs in December. The respondents would have us believe that free trading opinion was that eggs in general on December 23 were worth 8 cents a dozen more than eggs would be worth just a week later. The width of the spread was due to manipulation and the manipulative effect of the squeeze is seen in the fact that prices for storage eggs in Chicago dropped immediately after the squeeze was over. According to the James E. Bennett & Co.'s market news letter of December 26, 1947 (contained in Government Exhibit 21), the market was working on a 46-cent price for storage eggs compared with 53.50 on December 24.

We cannot place as much faith in Olson's testimony that there was a liquid market in December as the respondents do. Olson had found it necessary to warn Borden in early December 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 suggested to Borden near the close of trading in December that Great Western's transactions be closed out. Moreover, Mr. Olson's definition of "liquid market" leaves plenty of room for manipulation. He described a liquid market as one that enables "a seller to sell a fair quantity of the commodity without too large a change in the market and enables a purchaser to buy a fairly large quantity of the commodity without changing the market materially -- a market that has a fair quantity of bids and offers" (p. 94). [Emphasis supplied.]

On this entire part of the case, the respondents' defense is so wholly unrealistic as to admit of no effect upon December futures prices by Great Western's holdings, conceded to be large by Levin, even though no manipulative intent be considered present. The attempted justification of December prices, apart from Great Western's activities, in terms of supply, demand and other free market factors, fails by a wide margin to meet or overcome the evidence that December futures prices were prices manipulated by the respondents.

VI

There is no definition of corner in the act. Numerous authorities on the subject are cited, principally text-writers, giving descriptions or definitions of corners. We have concluded that Great Western had a large, dominant and controlling position during December 1947 in December futures by virtue of its concentrated long interest and its ownership of a substantial portion of the deliverable supplies of storage eggs in Chicago, that it intentionally utilized its controlling and dominant position to "squeeze" up December futures prices and that it-succeeded. A number of shorts were placed in the position of having to come to Great Western for covering purchases of futures at the "squeezed-up" prices or for cash storage eggs, the prices for which, of course, followed futures prices. The only alternatives were the delivery of more expensive out-of-town eggs, which was not available after 9 a.m. on December 22, or the delivery of fresh eggs which was also more costly than delivery of Chicago storage eggs. By the end of December, Great Western owned practically all the deliverable storage eggs in Chicago -- the typical aftermath of a cornering operation.

The facts and circumstances come under the designation of "corner." In United States v. Patten, 226 U.S. 525, 539-540 (1913), a decision cited by both complainant and the respondents, the Court described a corner as follows:

"Upon the second argument the defendants contended, and counsel for the Government expressly conceded, that 'running a corner' consists, broadly speaking, in acquiring control of all or the dominant portion of a commodity with the purpose of artificially enhancing the price, 'one of the important features of which,' to use the language of the Government's brief, 'is the purchase for future delivery, coupled with a withholding from sale for a limited time;' and as this definition is in substantial accord with that given by lexicographers and juridical writers, we accept it for present purposes although observing that not improbably in actual usage the expression includes modified modes of attaining substantially the same end. [Emphasis supplied.]

The complainant and the respondents also cite S. S. Huebner's article on "Corners" in the Encyclopaedia of Social Sciences (1937 ed.). Levin, respondents' expert witness, quoted a part of the first paragraph of the article as follows:

"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 settlement price imposed by the operator of the scheme."

The complainant adds the following material from another paragraph :

"With respect to produce markets it is important to note another twofold classification of corners: those which involve the actual cornering of the nation's supply of the commodity and those which are operated in some one exchange center only with a view to '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 seriously. 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 near 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 shipments into the city the short sellers are not in position to meet their commitments and are therefore required to settle their contracts with the manipulator on his own terms." [Emphasis supplied.]

Levin admitted the applicability of this material to the subject-matter of the proceeding but preferred the more general statement he used as the one "more commonly accepted . . . than the specific one" (p. 1235). Under these and practically all the definitions

and descriptions referred to by the parties, Great Western ran a corner on the December 1947 storage egg futures market unless it should be regarded as necessary to a corner that Great Western own all the cash storage eggs in Chicago and prevent all the shorts from making delivery. Such a corner would be a perfectly tight corner but the term corner applies alike to conditions less rigid in the way of control. Great Western had contracts calling for two or three times the cash storage egg supply in Chicago and it owned a substantial part of the cash supply, a dominant part of the supply in view of its large, dominant and controlling long position. This meets the definition used by the United States Supreme Court in United States v. Patten, supra.

The respondents set up numerous reasons for the absence of a corner. Some of these have been decided against the respondents above, e.g., their arguments that Great Western did not have a controlling and dominant position and that there was no artificial or manipulated price. In addition, there is the contention that there can be no corner because there were available deliverable supplies of out-of-town storage eggs and fresh eggs. This view is based upon the theory that as long as there are deliverable supplies anywhere, at least in the United States, there can be no corner because it is the responsibility of the shorts at whatever the cost to obtain and deliver such supplies. It is true that some of the spectacular corners in grain of years ago involved control of the commercial visible supply of the grain in the United States. Some of the descriptions of corners by the text-writers are based upon these widely publicized corners. That is not to say, however, that a manipulative operation of lesser size which does not need such scope for the manipulator's objectives is not a corner in violation of the act. There may be a corner in one market. In United States v. Patten, 187 Fed. 664, 668 (1911), the court adopted as the definition of "corner" the definition in Eddy on Combinations (§§ 72, 73) as follows:

"Broadly speaking, a 'corner' is the securing of such control of the immediate supply of any product as to enable those operating the 'corner' to arbitrarily advance the price of the product . . . . Ordinarily a 'corner' is created by operations upon boards of trade or stock exchanges and by dealings in options and futures." [Emphasis supplied.]

Dr. Beach testified that in his opinion a corner consisted of "the purchase and holding of a large and controlling long position in a future, usually coupled with the acquisition and withholding from sale for a limited time of such a substantial part of the cash

supply readily available for delivery that holders of short futures contracts are squeezed and must come to the cornerer to settle or cover their contracts upon terms determined by the cornerer. In effect the short sellers must buy from the long interest what they have sold to him" (pp. 437-438). [Emphasis supplied.] Lawson et al v. Boyden et al., 160 III. 613, 43 N.E. 781 (1896), dealt with a corner where the No. 2 corn in Chicago was' controlled and in Samuels v. Oliver, 130 111. 84, 22 N.E. 499 (1889), the court described as a corner the control of the cash wheat in St. Louis by long interests. See also Huebner's article on "Corners" in the Encyclopaedia of Social Sciences, supra. In addition, in this case, out-of-town storage eggs could not be tendered for delivery after 9 a.m. on December 22, 1947. Therefore, such supplies did not exist for delivery purposes after that time. Fresh eggs, while deliverable, cost more than storage eggs and their availability does not mean that there was not a corner in Chicago storage eggs, the subject of the contract.

Another point raised by the respondents is that there was no corner because Great Western liquidated heavily on the last day or two of trading so that when trading closed on December 23 the small stocks of Chicago storage eggs were sufficient for deliveries for the few short contracts outstanding. In other words, the respondents suggest that because Great Western did not carry a large long line beyond the close of trading with widespread defaults by the shorts or large scale deliveries of fresh eggs, there was no corner. Here again, the respondents are setting up as indispensable elements of a corner characteristics of some notorious corners of the past. The exchange rules n5 provided for a price settlement on defaults at a fair market price plus a penalty which amounted only to a minimum of 1/8 of a cent and a maximum of 3 cents a dozen. Any operation of the all-out type hailed by the respondents as the only true corner would have been glaringly visible, would have been more likely to cause institution of disciplinary proceedings by the Exchange, might not have been as profitable as what was done, and was not necessary from the respondents' standpoint who were interested in widening the spread between December and January rather than a corner in December solely for the sake of cornering December. The operation involved here, the "squeeze", is a variety of corner and the terms are generally used synonymously. n6

n5 Government Exhibit 1, p. 51.

n6 "A "squeeze' is a little corner occurring in futures for one month." Baer and Woodruff, supra. at p. 146. "It is not in the big movements, but in the half corners or 'squeezes' that manipulation is most effective . . . ." Emery, supra, at p. 175. "While we have never had a corner since 1910, we have had in recent years a succession of annoying premiums on the near deliveries. The trade calls these minor corners a 'squeeze.' Such an operation - differs from a corner in that the managers will always supply whatever contracts are wanted, but at a price. They select a certain difference, say 200 points premium, and at that figure they will supply all the near month contracts desired." Hubbard, W. Hustace, Cotton and the Cotton Market (D. Appleton & Co. 1927) 396.

"The term 'squeeze', however, is used to indicate something like an intentional corner that falls short of it in completeness and in price enhancement. From the point of view of profits obtained the squeeze is likely to be more successful than the corner, because the cornerer suffers from inability to 'bury the corpse'; i.e., to dispose of the grain taken on futures without greatly depressing prices. The great accumulation of cash grain generally found in the hands of the cornering interest must often be disposed of at a sacrifice, involving a loss almost, if not quite, equal to the gain on the futures sold to the shorts who cover in the pit." VII Report of the Federal Trade Commission, supra, at p. 244.

In the Senate Committee Hearings, particularly pp. 124-125, on H.R. 6772, 74th Cong., 2nd Sess., "corner" and "squeeze" are used interchangeably in connection with the proposed provision, now 7 U.S.C. § 7a(4), for a period after trading for delivery. In fact, this part of the act mentions only "squeeze" and "market congestion" and does not use the term "corner."

See Kent v. Miltenbarger, 13 Mo. App. 503, 506 (1883), for the following description of "corner": "It appears that delivery is always contemplated, not as a thing which will be necessarily insisted upon, but as a thing which the purchaser may insist upon. It sufficiently appears that this is the one thing which gives vitality to such contracts and which enables those who, during a particular month are on the successful side of them to get up what is known as a 'corner'." This happens when a much greater amount of any given commodity has been sold for future delivery within a given period than can be purchased in the market. The buyers, who are called in the slang of the exchanges the 'longs' then insist upon delivery, and by this means succeed in running up the prices to a fictitious point, at which the 'deals' are "rung out" between the dealers by the payment of differences, or where the purchasers insist upon it, by actual delivery." [Emphasis supplied.]

VII

The respondents attack the statute as unconstitutional for vagueness of the words "manipulate" and "corner." It may not be appropriate for us to adjudicate the constitutionality of an act committed to us for administration (Panitz et al. v. District of Columbia, 112 F(2d) 139 (App. D.C. 1940)), but we may refer to Bartlett Frazier Co. v. Hyde, 65 F.(2d) 350 (C.C.A. 7th, 1933), cert. denied, 290 U.S. 654, in which the court said of a similar attack:

"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."

Another objection raised is failure to comply with Section 9(b) of the Administrative Procedure Act (5 U.S.C 1008) n7 in the issuance of the complaint. The complaint charges that the violations alleged were intentional and the weight of the evidence supports the charges. Even in criminal prosecutions for violations of a statute, other than cases of moral turpitude, evil intent is not requisite, it being necessary only that actions be intentional as distinguished from accidental or inadvertent. See e.g., United States v. Perplies, 165 F.(2d) 874, 875 (C.C.A. 7th, 1948). Therefore, "willfulness" as used in Section 9(b) of the Administrative Procedure Act is present, and prior notice and opportunity to demonstrate or achieve compliance before the issuance of the complaint were not required.

n7 "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."

A further bar to this proceeding is urged on the ground that the complaint states no violation of section 6 (b) of the act because this part of the act does not cover past attempts to manipulate and does not mention corner or attempt to corner which are contained only in section 9 dealing with violations punishable by criminal proceedings. The administrative remedies authorized by the act extend to past attempts to manipulate the market as well as to current attempts. Section 6(b) of the Grain Futures Act provided that the Secretary of Agriculture could suspend the trading privileges of a person if he "is violating" any of the provisions of the act or if he "is attempting to manipulate the market price" of grain in violation of the act. Section 9 of the act contained no provisions with respect to manipulation. In Cutten v. Wallace, 80 F.(2d) 140 (C.C.A. 7th, 1935), the court held that the Secretary of Agriculture could not suspend the trading privileges of a person for a past attempt to manipulate the market since, under the Grain Futures Act, the Secretary's jurisdiction only empowered him to prevent current attempts to manipulate the market. Although the court thought that it was "rather difficult to understand" why Congress only proscribed present attempts to manipulate the market, the court said that it was "for Congress to amend its legislation."

Pending the outcome of the review of the Cutten case by the Supreme Court, H. R. 6772 (which became the Commodity Exchange Act) was introduced to correct the "manifest mistake" n8 in the Grain Futures Act disclosed by the Cutten case. Before the Commodity Exchange Act was enacted into law, the Supreme Court on May 18, 1936, affirmed the decision of the circuit court in Wallace v. Cutten, 298 U.S. 229. On June 15, 1936, the Commodity Exchange Act was enacted, and Section 6(b) of the Grain Futures Act was amended to authorize the Secretary to suspend the trading- privileges of a person who "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, in interstate commerce, or for trade . . ." Also, provisions proscribing manipulation were added to section 9 of the act. Viewed in the light of its legislative history, it is plain that Section 6(b) of the Commodity Exchange Act should be interpreted to permit the Secretary of Agriculture to suspend the trading privileges of one who has attempted to manipulate the market price of a commodity. Several Senators, including Senator Pope, explained in detail the grave defect that the Cutten case revealed in the Grain Futures Act n9 and made plain the necessity for changing the statute in view of the Cutten decision. The House Committee on Agriculture also explained that the Grain Futures Act was amended "to clarify the language of section 6 of the act in its application to manipulations of and attempts to manipulate the market price of any commodity." n10 Unless the Congressional intent, as revealed in the act itself and in the legislative history, is to be completely disregarded, section 6(b) of the act should be regarded as vesting in the Secretary the authority to suspend the trading privileges of one who has attempted to manipulate the market price of a commodity in violation of the act.

n8 80 CONG. REC. 1451 (1936).

n9 80 CONG. REC. 1451, 6159, 6160, 7847, 78.12, 7853, 7858 (1936).

n10 H. R. 421, 74th Cong., 1st Sess. (1936) 8.

Furthermore, section 6(b) authorizes administrative proceedings against any person who ". . . is violating or has violated . . ." any of the provisions of the act and attempts to manipulate, attempts to corner and corners are violations of section 9. The legislative history shows that the criminal penalties were additional to administrative sanctions. n11 n11 Senator Pope, a member of the Senate Committee on Agriculture and Forestry, explained on the floor the provisions of H.R. 6772 (which became the Commodity Exchange Act) and said (80 CONG. REC. 6160 (1036):

"As the law now is, a speculator may go into the market, violate the rules of the exchange and of the Government commission, manipulate the trading, make false reports, corner the market on some commodity, and make millions of dollars in profits; and if he gets all that done before a complaint is filed against him he may escape without any penalty. * * * The present bill amends the law by making it applicable to past' offenses, and enlarges the penalty to a maximum fine of $ 10,000 and 1 year's imprisonment, besides losing trading privileges in the market." [Emphasis supplied.]

VIII

The respondents further submit that they filed all reports required by the Commodity Exchange Authority, that they violated no regulations and that Commodity Exchange Authority representatives in Chicago found nothing wrong with Great Western's

activities. There is no need at this stage to point out that matters such as those in issue are not simple. Full investigations are necessary and appraisal of all the pertinent facts, including some such as Great Western's holdings of cash storage eggs which were not required to be reported. The investigation of Great Western's transactions began shortly- after January 1948 and continued until a month before the issuance of the complaint (pp. 80-81). The fact that the Commodity Exchange Authority representatives in Chicago did not charge the respondents during December 1947 with violations of the act is certainly no proof of the absence of violations. Concerning the protestations that all required reports were filed, etc., the violations charged and found did not include failure to file reports. Violations of regulations or provisions of the act other than those charged are not essentials of the violations charged and found.

IX

At the expense of having a long decision, we have sought to set out and discuss all the important considerations in the case. Naturally any arguments, objections, suggestions, exceptions, etc., of the respondents that are inconsistent with this decision and order are overruled whether or not specifically mentioned.

As shown by Findings of Fact 5 and 6, respondents Haynes and Harris were not connected with the matters in issue and should be dismissed as respondents. Hess, however, was the directing and supervising officer for Great Western. Borden disclaims individual responsibility but he was manager of Great Western's Chicago office, he communicated with Hess daily, he maintained complete records in the Chicago office of Great Western's cash and futures transactions, he acted as floor broker in the futures transactions involved and bought and sold cash eggs for Great Western, he was warned by Olson as to futures purchases by Great Western, and he was clearly aware of the plan being carried out and he participated therein. He 's equally chargeable with the corporation and Hess for the violations found.

The violations found are serious and of wide-spread effect. They were accomplished deliberately by professionals who knew what they were doing. Indeed, Great Western, Hess and Borden were found to have manipulated butter prices on the Chicago Mercantile Exchange in a decision and order of the Assistant Secretary of Agriculture on March 10, 1941, C.E.A. Docket No. 21.

After careful consideration, it is concluded that all trading privileges of Great Western, Hess and Borden should be suspended for a period of one year.

It appears from a document filed on April 11, 1951, by the complainant (1) that Great Western filed a statement on September 21, 1950, notifying the Commodity Exchange Authority that its corporate name was changed to Great Western Food Distributors, Inc., (2) that the Great Western Food Distributors, Inc., is but a continuation of the corporation organized in 1933 as Great Western Distributors, Inc., without any change but that of the name of the corporation, and (3) that Great Western Food Distributors, Inc., was registered as a futures commission merchant for the balance of the year 1950 and is so registered for the year 1951. Accordingly, any order in this proceeding should run against Great Western Food Distributors, Inc., instead of Great Western Distributors, Inc.

ORDER

Effective on the 30th day after the date of this order, all contract markets shall deny all trading privileges to the respondents Great Western Food Distributors, Inc., Nathaniel E. Hess, and Charles S. Borden, for a period of one year. The proceeding is dismissed as against Thomas F. Haynes and Hartley L. Harris.

Copies of this decision and order shall be served by registered mail or in person upon the parties and each contract market under the act.

LOAD-DATE: June 8, 2008