Legal Phases of Farmer Cooperatives

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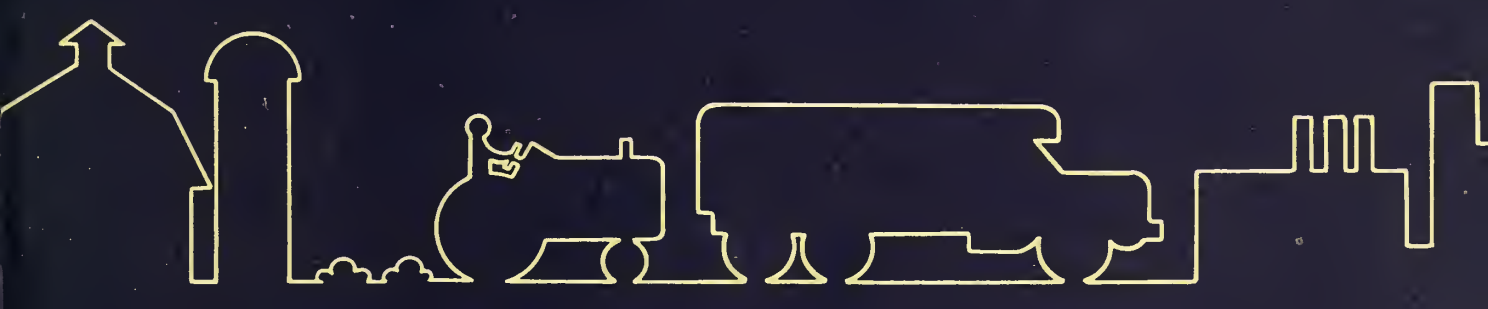
Antitrust Laws



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Farmer Cooperative Service
U.S. Department of Agriculture

PREFACE

The Department of Agriculture first published a bulletin on cooperatives and the law in October 1922. It was revised extensively in October 1929, May 1942, January 1959, and April 1972. The Department is publishing the 1976 revision of *Legal Phases of Farmer Cooperatives* in parts as well as in one complete publication. The other parts are *Sample Legal Documents* and *Federal Income Taxes.*

This part was prepared by Lyman S. Hulbert, an attorney in the private practice of law since his retirement from the Department of Agriculture in December 1950. He was the author of the original publication and also of the 1929 and 1942 revisions. It was updated in December 1975 by James R. Baarda of Farmer Cooperative Service.

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RECENT DEVELOPMENTS—ANTITRUST

In 1974, two important issues were decided by the Ninth Circuit Court of Appeals in the case of *Treasure Valley Potato Bargaining Association* v. *Ore-Ida Foods, Inc.*, 497 F. 2d 203 (9th Cir. 1974), *certiorari denied*, 419 U.S. 999 (1974).

Two potato bargaining associations were charged in a private action counterclaim with combining and conspiring with each other to restrain trade through an agreement to seek similar terms from purchasers of potatoes for processing. The protection of section 6 of the Clayton Act and section 1 of the Capper-Volstead Act was disputed, as was the qualification of the associations for the limited protection offered by the two Acts.

The defendants charged that, because the bargaining associations did not engage in the actual sale of their members' potatoes, they could not satisfy the requirements of "processing, preparing for market, handling, and marketing" as used in the Capper-Volstead Act. The court, however, held that the term "marketing" is broader than the term "sell." Marketing is an aggregate of functions, and bargaining implies activity on the part of the bargaining association that is included in those functions. Thus, an association that bargains on behalf of its members is an association within the meaning of section 6 of the Clayton Act and section 1 of the Capper-Volstead Act.

The two cooperatives had held numerous meetings and exchanged information concerning bargaining negotiations in progress. They bargained with the purchasers separately but agreed to seek similar terms. This activity was claimed to be a conspiracy and combination in restraint of trade, unprotected by either section 6 of the Clayton Act or by the Capper-Volstead Act.

The court looked to two sources to decide the extent of protection from antitrust violation. First, the terms of section 5 of the Cooperative Marketing Act of 1926 were cited by the

court as giving specific permission for the intercooperative exchange of information of the kind involved in the instant circumstances.

Second, the court looked to the specific provision of the Capper-Volstead Act authorizing the formation and use of marketing agencies in common among cooperatives. If a common marketing agency had been formed by the two potato bargaining associations, they could have done the very things through the agency that they were doing without the agency. Referring to the *"de minimus"* reasoning of the Supreme Court in *Sunkist Growers, Inc.*, v. *Winckler and Smith Citrus Products Co.*, 379 U.S. 19, 82 S. Ct. 1130, 8 L. Ed. 2d 305 (1962), the Circuit Court said:

> If section 1 of the Capper-Volstead Act . . . permits a common marketing agency, separate from the cooperatives themselves, it would follow that *without* such a separate agency, the associations may act together in marketing and make the make the necessary contracts to accomplish their legitimate purpose. If an act of the agent is lawful, the same act performed by the principal is also lawful (497 F. 2d 203, 214).

3 Antitrust Laws

To understand clearly the attitude of the courts toward early cooperative efforts in this country, it is important to have in mind the legal background with respect to monopolies and restraint of trade.

Common Law Traditions

For centuries the common law looked askance at anything that appeared to restrain trade or to reduce competition. One could hardly overemphasize the attitude of the early English courts with respect to these matters. *Bona fide* partnerships were apparently always held to be lawful, although the formation of a partnership might mean a reduction of one or more in the number of traders or dealers.

The common law attitude toward restraint of trade is illustrated by a Washington case[1] involving an association of milk dealers of the city of Seattle, which fixed the price of milk and through which the dealers agreed not to sell to each other's customers. The milk dealers were prosecuted and found guilty of conspiracy under common law principles.

It was early held at common law that if a man sold his business and entered into an agreement with the purchaser that he would not engage in the same business either at that place or any other place, or within a given area for a given period of time, or at any time, the agreement was illegal on the theory that it reduced the seller's opportunities for making a living.[2]

Gradually the attitude of the courts toward contracts of this kind relaxed, and today they are upheld generally, if the restric-

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[1] *State* v. *Erickson,* 54 Wash. 472, 103 P. 796. See also *People* v. *Milk Exchange,* 145 N.Y. 267, 45 Am. St. Rep. 609, 39 N.E. 1062, 27 L.R.A. 437 *affirming* 29 N.Y.S. 259, 77 Hun. 436.

[2] Anson on *Contracts,* Am. Ed., sec. 255 (1907).

tions on the right of the seller to engage in business are no greater than is reasonably necessary for the protection of the buyer.[3]

Further light is thrown on the state of the law toward acts deemed to be in restraint of trade by the statute passed by the English Parliament in the reign of Edward VI prohibiting forestalling, engrossing, and regrating.[4]

Forestalling consists of buying victuals on their way to market and before they reach it, with intent to sell again at a higher price.[5]

Engrossing was the buying at any place of certain necessities of life from producers with a view to resale at a higher price.

Regrating was the purchase of provisions at a fair or public market for the purpose of resale at a higher price in the same market or in any market within 4 miles thereof.

The early English statute restricting trading in victuals and provisions evidences the intention that such products should pass from the original producer to the consumer. In other words, the object of the statute was undoubtedly to keep the bridge short between the producer and the consumer. This statute against forestalling, engrossing, and regrating, as well as the other principles with reference to restraint of trade referred to, all became a part of the common law of this country to a large degree.[6] This should be kept in mind when considering the attitude of American courts toward early cooperative efforts.

Perhaps because of a change in economic and social conditions and perhaps because of the demonstrated inefficiency of such a statute, part of it was repealed in 1772 and the entire act in 1844.[7]

The statute enacted in 1844 by the English Parliament, which included the repeal of the statute against forestalling, engrossing, and regrating, stated that it was being repealed because the prohibited acts had come to be considered as favorable to the development of trade and not as restraining trade.

From the foregoing it is clear that common law principles and traditions against restraint of trade have been inherited.

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[3]*Lumbermen's Trust Co.* v. *Title Ins. & Inv. Co. of Tacoma,* 248 F. 212.

[4]Statutes at Large, 7 Edw. VI vol. 5, ch. 14.

[5]*Dutton* v. *Knoxville,* 121 Tenn. 25, 113 S.W. 381, 383, 130 Am. St. Rep. 748, 16 Ann. Cas. 1028.

[6]*State* v. *Eastern Coal Co.,* 29 R.I. 254, 70 A. 1, 132 Am. St. Rep. 817, 17 Ann. Cas. 96.

[7]*Standard Oil Co. of New Jersey* v. *United States,* 221 U.S. 1, 55, 31 S. Ct. 502, 55 L. Ed. 619, 34 L.R.A. (N.S.) 834, Ann. Cas. 1912D 734.

Early State Decisions

Some of the cases involving cooperatives that were decided by State courts prior to the enactment of cooperative statutes in the States concerned are discussed in the following paragraphs.

An Iowa case involving a cooperative, decided in 1913, was disposed of in accordance with what the court conceived to be the applicable common law principles. A bylaw of the association provided that any member of the association should forfeit 5 cents for every hundredweight of product or livestock sold to any competitor of the association.

A buyer of hogs, who operated in the territory in which the association functioned, brought an injunction suit to prevent the association from enforcing the bylaw. In holding against the association, the Supreme Court of Iowa said that the bylaw was in restraint of trade because the plaintiff was placed at a disadvantage and could not compete with the society in purchasing hogs from its members, and the members were not free to deal with plaintiff. If they dealt with him, he either forfeited his profits by reason of having to pay too much for his hogs, or they forfeited a part of the purchase price as a penalty for selling to him.[8]

In a Colorado case,[9] a bylaw provided that stockholders might sell grain to competitors of the association in a particular town by paying 1 cent per bushel to the association for all grain so sold.

A stockholder who had agreed to the bylaw sold 3,500 bushels of grain to a competitor of the association and the cooperative brought suit against him to recover $35. The bylaw was held invalid on the ground that it was in restraint of competition, and the association lost the suit.

The Colorado cases followed the Iowa cases. Other cases in which the courts held against the cooperatives involved, on the ground that they were operating in restraint of trade, are here given.[10]

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[8] *Reeves* v. *Decorah Farmers' Co-op Soc.,* 160 Iowa 194, 140 N.W. 844, 44 L.R.A. (N.S.) 1104 (1913); followed in *Ludewese* v. *Farmers' Mut. Co-op Co.,* 164 Iowa 197, 145 N.W. 475 (1914).

[9] *Burns* v. *Wray Farmers' Grain Co.,* 65 Colo. 425, 176 P. 487, 11 A.L.R. 1179 (1918); followed in *Atkinson* v. *Colorado Wheat Growers' Association,* 77 Colo. 559, 238 P. 1117 (1925).

[10] *Georgia Fruit Exchange* v. *Turnipseed,* 9 Ala. App. 123, 62 So. 542 (1913); *Ford* v. *Chicago Milk Shippers' Association,* 155 Ill. 166, 39 N.E. 651, 27 L.R.A. 298; *Maryland and Virginia Milk Producers' Association, Inc.* v. *United States,* 362 U.S. 458, 80 S. Ct. 847, 4 L. Ed. 2d 880 (1960).

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In each of the States where decisions adverse to cooperatives were rendered, later cases have been decided favorable to cooperatives. The Iowa Supreme Court[11] upheld the right of an association formed under the State cooperative act passed in 1921 to recover liquidated damages. In upholding the liquidated damages clause in the association's contract and in approving the validity of the association in general, the court apparently was of the opinion that the association was legal at common law. But in response to the argument that the cooperative act under which the association was organized violated an earlier statute of the State prohibiting pools and trusts, in that it authorized associations to provide for liquidated damages, the court said that the cooperative act "is as much a declaration of public policy as the earlier statute referring to pools and trusts."

The Colorado Supreme Court, in upholding the legal status of cooperatives, held that the public policy of the State had been expressly changed by the cooperative act enacted in 1923.[12]

Not all early cases involving cooperation were adverse to the associations concerned. In Illinois, New York, and Alabama,[13] it was held, apparently in pursuance of common law principles, that the associations involved were not operating in restraint of trade even though their contracts, or bylaws, provided for liquidated damages.

In Indiana,[14] the State Supreme Court, applying common law principles, upheld a cooperative's contention and ruled that it was not operating in restraint of trade.

State Antitrust Laws

Comparatively early in their history, nearly all of the States included provisions in their constitutions or statutes prohibiting monopolies, trusts, and restraint of trade. Efforts were made to except associations of farmers from these prohibitions, either by including an exception in the statute or by a proviso in the con-

[11] *Clear Lake Co-op Live Stock Shippers' Association* v. *Weir,* 200 Iowa 1293, 206 N.W. 297 (1925).

[12] *Rifle Potato Growers' Co-op Association* v. *Smith,* 78 Colo. 171, 240 P. 937 (1925); *Austin* v. *Colorado Dairymen's Coop. Association,* 81 Colo. 546, 256 P. 640.

[13] *Milk Producers' Marketing Co.* v. *Bell,* 234 Ill. App. 222 (1924); *Bullville Milk Producers' Association* v. *Armstrong,* 178 N.Y.S. 612, 108 Misc. Rep. 582 (1919); *Castorland Milk & Cheese Co.* v. *Shantz,* 179 N.Y.S. 131 (1919); *Ex parte Baldwin County Producers' Corporation,* 203 Ala. 345, 83 So. 69 (1919).

[14] *Burley Tobacco Society* v. *Gillaspy,* 51 Ind. App. 583, 100 N.E. 89 (1912).

stitution. For instance, in 1893 the State of Illinois passed an anti-trust act declaring that "the provisions of this act shall not apply to agricultural products while in the hands of the producer or raiser." This provision was later made the basis for a decision by the Supreme Court of the United States in the famous *Connolly* case.[15]

Briefly, the facts in the case were these: Connolly was indebted to the Union Sewer Pipe Company on two notes given on account of the purchase by him of some sewer pipe. When sued on the notes, Connolly claimed that the plaintiff was a trust, and as the antitrust act specifically stated that any purchaser of any article from any corporation operating as a trust was not liable for the purchase price, that he could not be held for the purchase price of the pipe.

The sewer pipe company claimed that the Anti-Trust Act of Illinois was void because it exempted products in the hands of the producer, which exemption, it contended, violated the 14th amendment of the constitution, to wit, the equal-protection clause. The Federal district court, in which the case originated, held that this was true, and the Supreme Court of the United States affirmed the decision.

In 1889, Texas enacted an antitrust act which contained language exempting agriculture identical with that contained in the Illinois act. The legality of this provision in the Texas act was questioned in a Federal court, which held that it violated the equal-protection clause in the 14th amendment.[16]

A provision in the Colorado Anti-Trust Act excepting therefrom any combination or association "the object and purposes of which are to conduct operations at a reasonable profit or to market at a reasonable profit those products which cannot otherwise be so marketed," caused the United States Supreme Court to hold the statute invalid.[17]

The Court said: "Such an exception in the statute leaves the whole statute without a fixed standard of guilt in an adjudication affecting the liberty of the one accused."

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[15]*Connolly* v. *Union Sewer Pipe Co.*, 184 U. S. 540, 22 S. Ct. 431, 46 L. Ed. 679 (1902); a similar conclusion was reached in Georgia in a like case, *Brown* v. *Jacobs' Pharmacy Co.*, 115 Ga. 429, 41 S.E. 553, 57 L.R.A. 547, 90 Am. St. Rep. 126.

[16]*In re Grice*, 79 F. 627 (N.D. Tex. Cir. 1897), 169 U. S. 284, 18 S. Ct. 323, 42 L. Ed 748 (1898).

[17]*Cline* v. *Frink Dairy Company*, 274 U. S. 445, 457, 47 S. Ct. 681, 71 L. Ed. 1146 (1927), *modifying Beatrice Creamery Co.* v. *Cline*, 9 F. 2d 176 (N. D. Colo. 1925).

The Anti-Trust Act of California was amended so as to contain a similar exception and this statute was likewise held invalid.[18]

Inasmuch as the Supreme Court of the United States found that the Court of Appeals of Kentucky had construed the constitution, the antitrust statute, and the statute of that State authorizing persons to pool crops of wheat, tobacco, and other farm products raised by them "for the purpose of obtaining a higher price than they could get by selling them separately," as meaning that "any combination for the purpose of controlling prices" was lawful "unless for the purpose or with the effect of fixing a price that was greater or less than the real value of the article," it held the antitrust statute unconstitutional as affording no standard of conduct that could be known in advance and complied with.[19]

On similar grounds, a statute of Kentucky was held unconstitutional in a case in which a farmer had entered into a pooling contract covering his tobacco and then had disposed of his tobacco contrary to such contract, thereby violating such statute.[20]

The effect of the decision by the Supreme Court of the United States in the *Connolly* case and of the lower Federal court in the Texas case was to invalidate the antitrust statutes of the States in question, assuming that the court decisions in question were given full force and effect.

On reflection, this conclusion is distinctly different from holding that farmers are barred from forming cooperatives. On the contrary, the effect of the decisions referred to, and of any other similar decisions that might be rendered, is merely to leave a State without any antitrust legislation.

The decision of the United States Supreme Court in 1928, in a case involving the Burley Tobacco Growers' Cooperative Association, indicated a change of attitude on the part of that court toward the right of States to provide expressly for the organization of associations,[21] and in 1940 the *Connolly* case was specifically overruled.[22]

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[18] *Blake* v. *Paramount Pictures,* 22 F. Supp. 249 (S.D. Calif. 1938).

[19] *International Harvester Company* v. *Kentucky,* 234 U.S. 216, 220, 221, 34 S. Ct. 853, 58 L. Ed. 1284 (1914).

[20] *Collins* v. *Kentucky,* 234 U.S. 634, 34 S. Ct. 924, 58 L. Ed. 1510 (1914).

[21] *Liberty Warehouse Co.* v. *Burley Tobacco Growers' Co-op Marketing Association,* 276 U. S. 71, 48 S. Ct. 291, 72 L. Ed. 473 (1928), *affirming* 208 Ky. 643, 271 S.W. 695 (1925).

[22] *Tigner* v. *Texas,* 310 U.S. 141, 60 S. Ct. 879, 84 L. Ed. 1124, 130 A.L.R. 1321 (1940).

Most of the State statutes providing for the incorporation of agricultural marketing cooperatives now include a provision to the effect that a cooperative incorporated under such a statute does not thereby violate the antitrust laws of the State.[23]

In an Ohio case[24] involving a milk bargaining association, incorporated under a cooperative statute containing an exemption provision, the court stated that "unless contracts made under and by virtue of this act are in their restraint of trade unreasonable as to character, scope or operation, they are valid and binding obligations." Thus, the court did not give the statutory provision in question a literal interpretation.

The Supreme Court of Florida refused to hold the antitrust statute of that State unconstitutional because agricultural and horticultural nonprofit associations were exempt therefrom by the terms of that statute and by the cooperative marketing act of the State. The court said:

> Orderly, systematized cooperative marketing associations which are authorized to prevent a sacrifice of the products described in the exempting statutes and to realize reasonable profits thereon have no analogy to financial combinations in restraint of trade and by a parity of reason no analogy to combinations of skill and labor in the same enterprises to accomplish the same lawful purposes.[25]

In a Texas case[26] decided by an intermediate court, it appeared that producers began the formation of an association with the intention of incorporating under the cooperative act of Texas. But they failed to incorporate, and later sought to enjoin a member from violating his contract.

The court held that the contract of the association violated the antitrust act of the State, but it also held that if the association had

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[23]See, for example, the Kentucky Agricultural Cooperative Associations Act, KRS 272.295.

[24]*Stark County Milk Producers' Association* v. *Tabeling,* 129 Ohio St. 159, 194 N.E. 16, 19, 98 A.L.R. 1393 (1934); Hanna, John, *Cooperative Milk Marketing and Restraint of Trade,* 23 Ky. L.J. 217 (1935).

[25]*Brock* v. *Hardie,* 114 Fla. 670, 154 So. 690, 695. See also *Williams* v. *Quill,* 277 N.Y. 1, 12 N.E. 2d 547, *appeal dismissed,* 303 U.S. 621, 58 S. Ct. 650, 82 L. Ed. 1085.

[26]*Fisher* v. *El Paso Egg Producers' Association,* 278 S.W. 262 (Tex. Civ. App.).

been incorporated under the cooperative act of Texas it would have been exempt from the antitrust act by reason of the exemption language contained in the act.

In a later case,[27] however, the State of Texas had instituted civil proceedings against certain oil companies for the recovery of penalties. It was contended by the oil companies that inasmuch as the penal code of Texas purported to exempt agricultural products and livestock from the operation of the penal antitrust laws so long as they were in the hands of the producer and as the Cooperative Marketing Act of Texas contained a provision like that given above, the civil antitrust laws of Texas were invalid under the 14th amendment of the Constitution of the United States.

In holding otherwise, the court pointed out that the exemption from the penal statute did not affect the civil antitrust laws of the State because the latter are distinct and separate from the former. A majority of the court was of the view that even if the provision in the Cooperative Marketing Act of the State purporting to exempt cooperatives from the antitrust laws was to be construed as having this effect, this did not invalidate the State's antitrust laws.

The court, however, in what appears to be dicta, expressed the view that if the exemption provision were to be so construed, this might invalidate, at least in part, the Cooperative Marketing Act of the State. In this connection the court said:

> . . . that a corporation created under this act may do the legitimate things for which it is created. We do not assume that they will make contracts or adopt methods of carrying on their business in clear violation of the antitrust laws. . . . If it should be held, however, that the Cooperative Marketing Act was intended to give the corporations to be formed thereunder the power and authority to do any of the things denounced by our antitrust laws, and should it further be held that the giving of such power and authority created an unreasonable and unconstitutional classification in favor of such corporations, such holdings would render the Cooperative Marketing Act, at least to that extent, unconstitutional; and if it should be held that the Cooperative Marketing Act, or any of its provisions, is

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[27] *State* v. *Standard Oil Co.,* 130 Tex. 313, 107 S.W. 2d 550, 557 (1937).

unconstitutional, such holding would not in any way affect the antitrust laws.

The Chief Justice expressed the personal opinion that the purpose of the exemption was to exempt marketing associations from the operation of the antitrust laws of the State and because of this purpose that it was null and void, being in conflict with a provision of the constitution of the State which declares that "all free men, when they form a social compact, have equal rights."

In this connection, he pointed out that the exemption in the statute was not in favor of farmers as a class but simply in favor of corporations of farmers incorporated under this particular Act and, he said, a construction of the statute "granting immunity to corporations composed of farmers, but at the same time denying immunity to farmers individually and to unincorporated associations of farmers for similar purposes—is of course condemned by our Constitutions, both State and Federal."

Many large-scale associations have been formed in various States under cooperative marketing acts. Questions pertaining to the validity of these statutes and the legality of the associations formed under them, and especially, as to whether the associations were monopolies or were restraining trade, have been repeatedly before the courts.[28]

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[28] *Jellesma* v. *Tampa Better Milk Producers' Association,* 109 Fla. 200, 147 So. 463; *Tobacco Growers' Co-op Association* v. *Jones,* 185 N.C. 265, 117 S.E. 174, 33 A.L.R. 231 (1923); *Kansas Wheat Growers' Association* v. *Schulte,* 113 Kan. 672, 216 P. 311 (1923); *Oregon Growers' Co-op Association* v. *Lentz,* 107 Ore. 561, 212 P. 811 (1923); *Brown* v. *Staple Cotton Co-op Association,* 132 Miss. 859, 96 So. 849 (1923); *Northern Wisconsin Co-op Tobacco Pool* v. *Bekkedal,* 182 Wis. 571, 197 N.W. 936 (1923); *Dark Tobacco Growers' Co-op Association* v. *Dunn,* 150 Tenn. 614, 266 S.W. 308 (1924); *Potter* v. *Dark Tobacco Growers' Co-op Association,* 201 Ky. 441, 257 S.W. 33 (1923); *Colma Vegetable Association* v. *Bonetti,* 91 Cal. App. 103, 267 P. 172 (1928); *Dark Tobacco Growers' Co-op Association* v. *Mason,* 150 Tenn. 228, 263 S.W. 60 (1924); *Minnesota Wheat Growers' Co-op Marketing Association* v. *Huggins,* 162 Minn. 471, 203 N.W. 420 (1925); *List* v. *Burley Tobacco Growers' Co-op Association,* 114 Ohio St. 361, 151 N.E. 471 (1926); *Washington Cranberry Growers' Association* v. *Moore,* 117 Wash. 430, 201 P. 773, 204 P. 811, 25 A.L.R. 1077 (1922); *Phez Co.* v. *Salem Fruit Union.* 103 Ore. 514, 201 P. 222, 25 A.L.R. 1090, 205 P. 970 (1922); *Burley Tobacco Growers' Coop. Association* v. *Rogers,* 88 Ind. App. 469, 150 N.E. 384 (1926); *Nebraska Wheat Growers' Association* v. *Norquest,* 113 Neb. 731, 204 N.W. 798 (1925); *Clear Lake Co-op Live Stock Shippers' Association* v. *Weir,* 200 Iowa 1293, 206 N.W. 297 (1925); *Lee* v. *Clearwater Growers' Association,* 93 Fla. 214, 111 So. 722 (1927); *Rifle Potato Growers' Co-op Association* v. *Smith,* 78 Colo. 171, 240 P. 937 (1925). See also 41 C.J. 166.

The exact basis for the conclusion of the court in each instance that the association involved was not a monopoly, or was not engaged in restraint of trade from a legal standpoint, varies, but all the cases, either expressly[29] or by implication,[30] hold that the statutory public policy of the State had been changed so as to render associations legal which, under old standards, would have been regarded as illegal.

This line of reasoning appears to be correct in all instances in which a State has enacted statutes providing for the incorporation and organization of associations of farmers.

Clearly, if a State has enacted a statute providing for the incorporation of associations of producers and authorizing such associations to enter into contracts with their members covering the handling and marketing of their produce, such a statute should take precedence over a prior statute of the State against trusts and restraint of trade.[31]

Most State statutes that have been enacted for the incorporation and operation of associations of producers were enacted subsequent to the antitrust statutes of the States. The last statute is an expression of the legislature of the State of equal rank with the earlier expression of the State legislature, and the fact that it is of later date causes it to modify the earlier statute against restraint of trade.[32]

This is true whether or not the cooperative act under which an association is formed contains a provision declaring that associations formed thereunder are not to be deemed to be in restraint of trade. In fact, the courts in many of the cases decided under cooperative statutes containing this exemption clause have not referred in their opinions to this provision.

In some instances, cases have arisen in which the antitrust

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[29] *Rifle Potato Growers' Co-op Association* v. *Smith,* 78 Colo. 171, 240 P. 937 (1925); *Northern Wisconsin Co-op Tobacco Pool* v. *Bekkedal,* 182 Wis. 571, 197 N.W. 936 (1925); *Kansas Wheat Growers' Association* v. *Schulte,* 113 Kan. 672, 216 P. 311 (1923).

[30] *Brown* v. *Staple Cotton Co-op Association,* 132 Miss. 859, 96 So. 849 (1923); *List* v. *Burley Tobacco Growers' Co-op Association,* 114 Ohio St. 361, 151 N.E. 471 (1926).

[31] *Clear Lake Co-op Live Stock Shippers' Association* v. *Weir,* 200 Iowa 1293, 206 N.W. 297 (1925).

[32] *Rifle Potato Growers' Co-op Association* v. *Smith,* 78 Colo. 171, 240 P. 937 (1925); *Northern Wisconsin Co-op Tobacco Pool* v. *Bekkedal,* 182 Wis. 571, 197 N.W. 936 (1925); *Clear Lake Co-op Live Stock Shippers' Association* v. *Weir,* 200 Iowa 1293, 206 N.W. 297 (1925).

prohibitions of the State were contained in its constitution. Of course, in instances of this kind, it was necessary for the court to find that the association was not, in fact, within the scope of this provision of the constitution.[33]

In a few instances, however, the courts have attached some significance to the fact that the association was formed under a cooperative statute that contained a provision in effect expressly exempting associations formed thereunder from the antitrust laws of the State.[34]

In one case,[35] a cooperative, along with other corporations and business units, was sued by the State of Wisconsin, the complaint charging a violation of the State's antitrust laws. The basis of the complaint was that the defendants, who distributed 94 percent of the fluid milk in Milwaukee County, had maintained uniform prices after meetings between them. The court held that the complaint stated a cause of action since an agreement to fix prices could be inferred from the uniformity after they had been together in a meeting. This case also illustrates that a cooperative, although free to organize, may be capable of engaging in practices which violate the State's antitrust laws.

Federal Antitrust Laws

The Federal antitrust laws are broad and comprehensive (15 U.S.C. 1 *et seq.*). They cover many pages. They apply to cooperatives doing business in interstate commerce just as they do to other business concerns, except for the limited exemption conferred upon qualified agricultural cooperatives by section 6 of the Clayton Act, the Capper-Volstead Act, or by agreements with the Secretary of Agriculture, each of which will be discussed later.

Sherman Anti-Trust Act and "Rule of Reason"

In 1890, Congress passed the Sherman Anti-Trust Act.[36] The first section of this Act, as amended, reads as follows:

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[33] *Brown* v. *Staple Cotton Co-op Association,* 132 Miss. 859, 96 So. 849 (1923).

[34] *Lee* v. *Clearwater Growers' Association,* 93 Fla. 214, 111 So. 722 (1927); *Tobacco Growers' Co-op Association* v. *Jones,* 185 N.C. 265, 117 S.E. 174, 33 A.L.R. 231 (1923).

[35] *State* v. *Golden Guernsey Dairy Cooperative,* 257 Wis. 254, 43 N.W. 2d 31.

[36] 26 Stat. 209, 15 U.S.C.A. 1 *et. seq.*

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Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is declared to be illegal: *Provided,* That nothing contained in sections 1 to 7 of this title shall render illegal, contracts or agreements prescribing minimum prices for the resale of a commodity which bears, or the label or container of which bears, the trademark, brand, or name of the producer or distributor of such commodity and which is in free and open competition with commodities of the same general class produced or distributed by others, when contracts or agreements of that description are lawful as applied to intrastate transactions, under any statute, law, or public policy now or hereafter in effect in any State, Territory, or the District of Columbia in which such resale is to be made, or to which the commodity is to be transported for such resale, and the making of such contracts or agreement, providing for the establishment or maintenance of minimum resale prices on any commodity herein involved, between manufacturers, or between producers, or between wholesalers, or between brokers, or between factors, or between retailers, or between persons, firms, or corporations in competition with each other. Every person who shall make any contract or engage in any combination or conspiracy declared by sections 1 to 7 of this title to be illegal shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be punished by fine not exceeding fifty thousand dollars, or by imprisonment not exceeding one year, or by both said punishments, in the discretion of the court. (July 2, 1890, ch. 647, § 1, 26 Stat. 209; Aug. 17, 1937, ch. 690, title VIII, 50 Stat. 693; July 7, 1955, ch. 281, 69 Stat. 282.)

At the time that the Sherman Act was under consideration in Congress an amendment was offered thereto reading as follows:

Provided, That this act shall not be construed to apply to any arrangements, agreements, or combinations

between laborers made with a view of lessening the number of hours of their labor or of increasing their wages; *nor to any arrangements, agreements, associations, or combinations among persons engaged in horticulture or agriculture made with the view of enhancing the price of their own agricultural or horticultural products.* (Emphasis supplied.)

This amendment was defeated.[37]

In construing this statute, the United States Supreme Court has repeatedly held that only unreasonable restraints are prohibited thereby.[38]

In the cases just cited the Supreme Court announced the so-called "rule of reason." It is now settled that under the Federal antitrust acts the courts are primarily concerned with how the defendant employs its power and strength, and the legality of a large industrial unit depends not on its size but upon the character of the business methods employed. Conglomerates are increasingly facing court action. But bigness which has come about through development along normal lines and without unfair practices or wrongful acts does not constitute illegality.

United States v. *United States Steel Corporation,*[39] involved the legality of this corporation, a combination of approximately 180 separate units. The court applied the principles referred to, and although the corporation controlled 50 percent of the steel industry of the United States, it was held not to be in restraint of trade. However, size "is an earmark of monopoly power."[40]

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[37]21 Cong. Rec. 2726 (1890).

[38]*Standard Oil Co. of New Jersey* v. *United States,* 221 U.S. 1, 31 S. Ct. 502, 55 L. Ed. 619, 34 L.R.A. (N.S.) 834, Ann. Cas. 1912D 734; *United States* v. *American Tobacco Co.,* 221 U.S. 106, 31 S. Ct. 632, 55 L. Ed. 663; *Apex Hosiery Company* v. *Leader,* 310 U.S. 469, 60 S. Ct. 982, 84 L. Ed. 1311. See also *United States* v. *American Medical Association,* 110 F. 2d 703, *affirmed,* 317 U.S. 519, 63 S. Ct. 326, 87 L. Ed. 434; *Ford Motor Co.* v. *Webster Auto Sales,* 361 F. 2d 874; *United States* v. *Arnold Schwinn and Co.,* 388 U.S. 365, 87 S. Ct. 1856, 18 L. Ed 2d 1249.

[39]251 U.S. 417, 40 S. Ct. 293, 64 L. Ed. 343, 8 A.L.R. 1121.

[40]*United States* v. *Griffith,* 334 U.S. 100, 68 S. Ct. 941, 92 L. Ed. 1236; *United States* v. *Columbia Steel Co.,* 334 U.S. 495, 68 S. Ct. 1107, 92 L. Ed. 1533; *Clark Marine Corp.* v. *Cargill, Inc.,* 226 F. Supp. 103, *affirmed,* 345 F. 2d 79, *certiorari denied,* 382 U.S. 1011.

In the *Chicago Board of Trade* case,[41] the legality of a rule adopted by the Board of Trade of Chicago which prohibited its members from purchasing or offering to purchase, during the period between the session of the board termed the "call" and the opening of the regular session of the next business day, grain "to arrive" at a price other than the closing bid at the "call," was held not to violate the Sherman Act. In this case it was said, "The true test of legality is whether the restraint imposed is such as merely regulates and perhaps thereby promotes competition or whether it is such as may suppress or even destroy competition."

A case which well illustrates the "rule of reason" is that of *National Window Glass Manufacturers.*[42] There, the Supreme Court of the United States passed upon a situation in which all the manufacturers of hand-blown glass and all the labor (union) to be had for this work entered into an arrangement under which it was agreed that certain of the factories only would operate for a specified period during which all the labor would be employed by those factories; then, during another specified period, the remainder of the factories would operate with all the labor, and the other factories would not then operate. In view of all the facts involved, it was held that there was no violation of the law. It is true that the court referred to the fact that the price of glass was virtually determined by those engaged in the manufacture of machine-blown glass, but the fact remains that an economic arrangement, involving the complete closing of certain factories during a specified period and the operation of only certain other factories during that period, was upheld.

In a case[43] involving an organization of coal producers the Supreme Court in upholding the legality of the organization said:

> The mere fact that the parties to an agreement eliminate competition between themselves is not enough to condemn it.

The court further said:

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[41] *Board of Trade of the City of Chicago* v. *United States,* 246 U.S. 231, 38 S. Ct. 242, 62 L. Ed. 683.

[42] *National Association of Window Glass Manufacturers* v. *United States,* 263 U.S. 403, 44 S. Ct. 148, 68 L. Ed. 358.

[43] *Appalachian Coals, Inc.* v. *United States,* 288 U.S. 344, 360, 374, 53 S. Ct. 471, 77 L. Ed. 825.

> The fact that the correction of abuses may tend to stabilize a business, or to produce fairer price levels, does not mean that the abuses should go uncorrected or that cooperative endeavor to correct them necessarily constitutes an unreasonable restraint of trade.

The Supreme Court has also declared that those engaged in the same line of business may, through their trade associations, freely exchange information regarding goods on hand, the amount of unfilled orders, and the prices at which sales have been made.[44]

The court has, however, refused to apply the "rule of reason" in instances in which manufacturers of the same product have agreed upon a schedule of prices.[45] In cases of this character the court regards the fixing of prices as in itself a violation of the Sherman Act and will not inquire into the reasonableness of such prices.

A group health cooperative was granted relief from illegal opposition by the American Medical Association and a local medical society.[46] Another health cooperative obtained injunctive relief against a local medical society in a State court.[47]

A tobacco marketing association was granted relief from an illegal exclusion from the market.[48]

Antitrust Violations Cited

The limited exemptions for cooperatives have been very much overemphasized. There are many ways by which the antitrust laws may be violated. For instance, agreeing with others to fix prices,[49]

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[44] *Maple Flooring Manufacturers' Association* v. *United States,* 268 U.S. 563, 45 S. Ct. 578, 69 L. Ed. 1093; *Cement Manufacturers' Protective Association* v. *United States,* 268 U.S. 588, 45 S. Ct. 586, 69 L. Ed. 1104. But see *Federal Trade Commission* v. *Cement Institute,* 333 U.S. 683, 68 S. Ct. 793, 92 L. Ed. 1010. See also 44 Stat. 803, 15 U.S.C.A. 17.

[45] *United States* v. *Trenton Potteries Co.,* 273 U.S. 392, 47 S. Ct. 377, 71 L. Ed. 700; *Ethyl Gasoline Corp.* v. *United States,* 309 U.S. 436, 60 S. Ct. 618, 84 L. Ed. 852.

[46] *American Medical Association* v. *United States,* 317 U.S. 519, 63 S. Ct. 326, 87 L. Ed. 434.

[47] *Group Health Cooperative of Puget Sound* v. *King County Medical Soc.,* 237 P. 2d 737 (Wash.).

[48] *American Federation of Tobacco Growers, Inc.* v. *Neal,* 183 F. 2d 869. See also *Danville Tobacco Ass'n* v. *Bryant-Buckner Associates, Inc.,* 372 F. 2d 634; *Roberts* v. *Fuquay-Varina Tobacco Board of Trade, Inc.,* 223 F. Supp. 212; *Bale* v. *Glasgow Tobacco Board of Trade, Inc.,* 223 F. Supp. 739, 339 F. 2d 281.

[49] *United States* v. *Borden Company,* 308 U. S. 188, 60 S. Ct. 182, 84 L. Ed.

agreeing with others not to sell to a particular person,[50] agreeing on a division of territory or of customers,[51] engaging in predatory acts or practices,[52] participating in a boycott,[53] or carrying out a "merger"[54] are a few of the ways such laws may be violated; and it is immaterial whether a cooperative qualifies under section 6 of the Clayton Act or the Capper-Volstead Act.

Officers, directors, or agents of a cooperative, like those of any other business corporation that violates the penal provisions of the antitrust laws, may be prosecuted if they are in any way responsible for the violation.[55]

If an officer or director of a cooperative or other corporation had no connection with a violation of the antitrust laws, he is not personally liable.[56]

Generally speaking a cooperative—like any other seller—may sell to some and refuse to sell to others.[57] Those interested should ascertain what changes, if any, have been made in this and like principles by State or Federal civil rights laws.

It has been held that in the absence of monopolistic power, a seller may refuse to deal with anyone.[58] The Supreme Court of the United States has stated that a "manufacturer of a product other equivalent brands of which are readily available may select his

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181 (1939); but see *United States* v. *Maryland Cooperative Milk Producers, Inc.*, 145 F. Supp. 151 (D.D.C. 1956).

[50] See *Sunkist Growers, Inc.* v. *Winckler & Smith Citrus Products Co.*, 370 U.S. 19, 82 S. Ct. 1130, 8 L. Ed. 2d 305 (1962).

[51] *United States* v. *Arnold Schwinn and Co.*, 388 U.S. 365, 87 S. Ct. 1856, 18 L. Ed. 2d 1249.

[52] *Maryland and Virginia Milk Producers' Association, Inc.* v. *United States*, 362 U.S. 458, 80 S. Ct. 847, 4 L. Ed. 2d 880 (1960).

[53] *Knuth* v. *Erie-Crawford Dairy Co-op Ass'n*, 395 F. 2d 420 (3rd Cir. 1968); *Boise Cascade International, Inc.* v. *Northern Minnesota Pulpwood Producers Association*, 294 F. Supp. 1015 (D. Minn. 1968). But see *Knuth* v. *Erie-Crawford Dairy Cooperative Ass'n*, 326 F. Supp. 48 (N.D. Pa. 1971), *affirmed in part and reversed in part and remanded*, 463 F. 2d 470 (3rd Cir. 1972).

[54] *Maryland and Virginia Milk Producers' Association, Inc.*, v. *United States*, 362 U.S. 458, 80 S. Ct. 847, 4 L. Ed. 2d 880 (1960).

[55] *United States* v. *Milk Distributors Association, Inc.*, 200 F. Supp. 792.

[56] *Cape Cod Food Products* v. *National Cranberry Ass'n*, 119 F. Supp. 900 (D. Mass 1954).

[57] *United States* v. *Colgate & Co.*, 250 U.S. 300, 39 S. Ct. 465, 63 L. Ed 992.

[58] *U.S.* v. *Arnold Schwinn and Co.*, 388 U.S. 365, 87 S. Ct. 1856, 18 L. Ed. 2d 1249; *Englebrecht* v. *Dairy Queen Company of Mexico, Missouri*, 203 F. Supp. 714.

customers and for this purpose he may 'franchise' certain dealers to whom he will sell his goods."[59]

Cooperatives as well as other sellers should keep in mind that the terms and conditions of a sale contract may violate the antitrust laws.

It has been held that if there is no conspiracy or monopolization involved, a seller "may normally refuse to deal with a buyer for any reason or with no reason whatever."[60]

Refusal of a cooperative to sell milk to a would-be buyer unless it terminated its discounting policy was not a violation of the antitrust laws of Ohio.[61]

It is a violation of the antitrust laws for a seller, cooperative or otherwise, to enter into a contract with a purchaser under which the purchaser agrees not to use or deal in the goods of a competitor if this should substantially lessen competition or tend to create a monopoly.[62]

A cooperative, like any other seller, may violate the antitrust laws by the terms of its selling contract. If it attempts to control the price at which the products may be resold, such a violation may occur.[63] If the contract of a seller operates to restrict the buyer as to the territory in which, or persons to whom, he may resell the product—"whether by explicit agreement or by silent combination or understanding with his vendee"—there is a *per se* violation of section 1 of the Sherman Act.[64]

A competitor of a milk marketing cooperative unsuccessfully charged that the cooperative violated the antitrust laws when it loaned money to some retail stores that agreed to buy all the milk that they needed from the cooperative as long as such loans were outstanding.[65]

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[59] *Atalanta Trading Corp.* v. *Federal Trade Commission,* 258 F. 2d 365; see also *Isaly Dairy Company of Pittsburgh* v. *United Dairy Farmers,* 250 F. Supp. 99; *Ace Beer Distributors, Inc.* v. *Kohn, Inc.,* 318 F. 2d 283.

[60] *Amplex of Maryland, Inc.* v. *Outboard Marine Corporation,* 380 F. 2d 112.

[61] *Superior Dairy* v. *Stark County Milk Producers Ass'n,* 89 Ohio App. 26, 100 N.E. 2d 695.

[62] *Columbia River Packers Ass'n* v. *Hinton,* 34 F. Supp. 970, *reversed,* 117 F. 2d 310, *reversed,* 315 U.S. 143, 62 S. Ct. 520, 86 L. Ed. 750.

[63] *Bergjans Farm Dairy Co.* v. *Sanitary Milk Products,* 241 F. Supp. 476; *United States* v. *Milk Drivers and Dairy Employees Union,* 153 F. Supp. 803.

[64] *United States* v. *Arnold Schwinn & Co.,* 388 U.S. 365, 87 S. Ct. 1856, 18 L. Ed. 2d 1249.

[65] *Curlys Dairy, Inc.* v. *Dairy Cooperative Association,* 202 F. Supp. 481.

The Supreme Court of the United States has said if "a manufacturer sells products to his distributor subject to territorial restrictions upon resale, a *per se* violation of the Sherman Act results. And, as we have held, the same principle applies to restrictions of outlets with which the distributors may deal and to restraints upon retailers to whom the goods are sold."[66]

On the other hand, our highest court held in that case that a "manufacturer" who delivered goods to a handler on a consignment or agency basis could impose restrictions respecting their sale unless they "unreasonably" restricted competition which the court held did not occur. In another case in which the handlers received the commodities on a consignment or agency basis, our highest court held that the restrictions on their sale unreasonably restricted competition and hence violated the antitrust laws.[67]

In some instances, it should be legally possible for a cooperative to deliver goods on a consignment or agency basis and thus obtain the right to impose various restrictions, such as the price at which the goods might be sold without violating the antitrust laws. But in such instances, the absolute title to the goods must be in the cooperative and all of the risks and responsibilities relative thereto must be in the cooperative.

How about refusal to sell?

One court has stated that "a manufacturer's or a distributor's discretion as to whom it will sell is not unlimited. If the refusal to deal is a device used to acquire a monopoly, *United States* v. *General Motors Corporation,* 121 F. 2d 376 (7th Cir. 1941); or to fix prices, *FTC* v. *Beech-Nut Packing Co.,* 257 U.S. 441, 42 S. Ct. 150, 66 L. Ed. 307 (1922); or to establish market dominance and drive out competitors, *Lorain Journal Co.* v. *U. S.,* 342 U. S. 143, 72 S. Ct. 181, 96 L. Ed. 162 (1951), or as part of a boycott, *Klors, Inc.* v. *Broadway-Hale Stores, Inc.,* 359 U. S. 207, 79 S. Ct. 705, 3 L. Ed. 2d 741 (1959); it would be illegal. These are *per se* violations—restraints which are inherently bad, and any contract, combination or conspiracy used to accomplish such a result is unreasonable and is therefore prohibited."[68]

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[66] *United States* v. *Arnold Schwinn & Co.,* 388 U.S. 365, 87 S. Ct. 1856, 18 L. Ed. 2d 1249.

[67] *Simpson* v. *Union Oil Co.,* 377 U.S. 13, 84 S. Ct. 1051, 12 L. Ed. 2d 98.

[68] *L.S. Good & Company* v. *H. Daroff & Sons, Inc.,* 263 F. Supp. 635. See also *Ace Beer Distributors, Inc.* v. *Kohn, Inc.,* 318 F. 2d 283; *Six Twenty-Nine Productions, Inc.* v. *Rollins Telecasting, Inc.,* 365 F. 2d 478.

Now, how about like prices? A court has declared: "But conscious parallelism is not, in and of itself, a violation of antitrust laws." If, for instance, all that a seller does is copy the price list of a competitor, there is no violation of the antitrust laws.[69]

Another court has said: "We are clear that mere uniformity of prices in the sale of a standardized commodity such as milk is not in itself evidence of a violation of the Sherman Anti-Trust Act."[70]

In a case involving a milk bargaining cooperative the court declared that "full supply contracts are illegal when made for the purpose of eliminating and suppressing competition."[71]

It has been held that the use by a milk bargaining cooperative of the classified use pricing system was not a violation of the antitrust laws.[72]

It should be remembered that any contract, agreement, or arrangement that violates the antitrust laws is unenforceable by any of the parties thereto.[73]

If competitors agree not to employ each others' employees, this appears to be a violation of the antitrust laws.[74]

A group boycott by a big chainstore, several manufacturers, and their distributors of a single store was held illegal under section 1 of the Sherman Act, although there were other stores handling appliances of the same character nearby. The Court said, "Monopoly can as surely thrive by the elimination of such small businessmen, one at a time, as it can by driving them out in large groups."[75]

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[69] *Lyons* v. *Westinghouse Corporation,* 235 F. Supp. 526.

[70] *Pevely Dairy Co.* v. *United States,* 178 F. 2d 363, 369. See also *United States* v. *Maryland and Virginia Milk Producers' Ass'n,* 90 F. Supp. 681, 686; *Independent Iron Works, Inc.* v. *U.S. Steel Corp.,* 322 F. 2d 656, *certiorari denied,* 375 U.S. 922, 84 S. Ct. 267, 11 L. Ed. 2d 165; *Theatre Enterprises* v. *Paramount,* 346 U.S. 537, 74 S. Ct. 257, 95 L. Ed. 273.

[71] *Maryland and Virginia Milk Producers' Ass'n* v. *United States,* 193 F. 2d 907 (D.C. Cir. 1951).

[72] *Maryland and Virginia Milk Producers' Ass'n* v. *United States*, 193 F. 2d 907 (D.C. Cir. 1951).

[73] *E. Bennet and Sons* v. *National Harrow Co.,* 186 U.S. 70, 22 S. Ct. 747, 46 L. Ed. 1058; *Associated Press* v. *Taft-Ingalls Corp.,* 340 F. 2d 753; *Rathe* v. *Yakima Valley Grape Growers,* 30 Wash. 2d 436, 192 P. 2d 349.

[74] *Nichols* v. *Spencer International Press, Inc.,* 371 F. 2d 332.

[75] *Klors* v. *Broadway-Hale Stores,* 359 U.S. 207, 79 S. Ct. 705, 3 L. Ed. 2d 741 (1959).

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It has been held that exclusive dealing arrangements violate the antitrust laws only if a jury may find from all the circumstances that the effect may be to substantially lessen competition or tend to create a monopoly.[76]

Treble Damages

The Clayton Act (15 U.S.C. 15) provides that any person who is injured "in his business or property by reason of anything forbidden in the antitrust laws may sue" and "shall recover threefold the damages by him sustained and the cost of suit including a reasonable attorney's fee."

In order to maintain a suit under section 15, the plaintiff must establish that there has been a violation of the antitrust laws committed by the defendant that has injured the plaintiff "in his business or property." If the plaintiff establishes such a violation, he is entitled to recover three times the amount of his actual damages. Several cooperatives have been sued under section 15.

In a Texas case, under that section, the jury found that the cooperative had violated its agreement to sell milk to the plaintiff in gallon containers apparently because of arrangements with other distributors of milk who opposed selling milk in gallon containers. The jury found for the plaintiff in the amount of $100,000 which was trebled to $300,000, plus attorney fees.[77]

Section 5(a) of the Clayton Act "makes a final judgment or decree in any civil or criminal proceeding brought by or on behalf of the United States *prima facie* evidence in subsequent private suits 'as to all matters respecting which said judgment or decree would be an estoppel as between the parties thereto' and "Section 5(b) tolls the statute of limitations set out in Section 4B from the time suit is instituted by the United States regardless of whether a final judgment or decree is ultimately entered."[78]

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[76] *Lessig* v. *Tidewater Oil Co.*, 327 F. 2d 459, *certiorari denied,* 377 U.S. 993, 84 S. Ct. 1920, 12 L. Ed. 2d 1046. See also *American Infra-Red Radiant Co.* v. *Lambert Industries,* 360 F. 2d 977, *certiorari denied,* 385 U.S. 920, 87 S. Ct. 233, 17 L. Ed. 2d 144; *Isaly Dairy Company of Pittsburgh* v. *United Dairy Farmers,* 250 F. Supp. 99.

[77] *North Texas Producers Ass'n* v. *Young,* 308 F. 2d 235 (5th Cir. 1962), *certiorari denied,* 372 U.S. 929, 83 S. Ct. 874, 9 L. Ed. 2d 733 (1963).

[78] *Minnesota Mining* v. *N.J. Wood Co.,* 381 U.S. 311, 85 S. Ct. 1473, 14 L. Ed 2d 405.

It has been held that "the individuals through whom a corporation acts and who shape its intentions can be held liable on a charge of attempted monopolization."[79]

The Supreme Court of the United States said, "The California Agricultural Prorate Act authorizes the establishment, through state officials of programs for the marketing of agricultural commodities produced in the state so as to restrict competition among the growers and maintain prices in the distribution of their commodities to packers." A program for the marketing of raisins was established by such officials and it was then attacked on the ground that it violated the Federal antitrust laws. But the Supreme Court held that this program, which was the result of State action, was not covered by such laws.[80] State action for helping farmers is a means that should not be overlooked.

No action may be maintained under sections 4 and 16 of the Clayton Act for a violation of section 3 of the Robinson-Patman Act because it is not a part of the antitrust laws.[81]

A treble damage suit against a cooperative charged with engaging in predatory activities to obtain a monopoly was upheld and the Capper-Volstead Act was held to be no defense.[82] In a situation arising out of an illegal merger, the services of a magazine sales supervisor were terminated and he then sued for treble damages. The court held that his complaint stated a cause of action.[83] Apparently any employee who is damaged by a violation of the antitrust laws may maintain a suit for treble damages.[84]

A treble damage suit was brought against Sunkist Growers, Inc., because it was claimed that it had conspired with others to refuse to sell oranges to the plaintiff, but the suit failed.[85] In another like suit against the same cooperative it was alleged that

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[79] *Tillamook Cheese & Dairy Ass'n* v. *Tillamook County Cream Ass'n*, 358 F. 2d 115, 118.

[80] *Parker* v. *Brown,* 317 U.S. 341, 63 S. Ct. 307, 87 L. Ed. 315; see also *E. W. Wiggins Airways, Inc.* v. *Massachusetts,* 362 F. 2d 52, *certiorari denied,* 385 U.S. 947, 87 S. Ct. 320, 17 L. Ed. 2d 226; *Alabama Power Co.* v. *Alabama Electric Cooperative, Inc.,* 394 F. 2d 672.

[81] *Nashville Milk Co.* v. *Carnation Co.,* 355 U.S. 373, 78 S. Ct. 352, 2 L. Ed. 2d 340.

[82] *April* v. *National Cranberry Ass'n* 168 F. Supp. 919 (D. Mass. 1958).

[83] *Dailey* v. *Quality School Plan, Inc.,* 380 F. 2d 484.

[84] *Nichols* v. *Spencer International Press, Inc.,* 371 F. 2d 332; *Radovich* v. *National Football League,* 352 U.S. 445, 77 S. Ct. 390, 1 L. Ed. 2d 456.

[85] *Sunkist Growers, Inc.* v. *Winckler & Smith Citrus Products Co.,* 370 U.S. 19, 82 S. Ct. 1130, 8 L. Ed. 2d 305 (1962).

the cooperative was a monopoly and that it did not qualify for exemption under the Capper-Volstead Act, and the court found that it did not so qualify.[86] After Sunkist was reorganized, it was held to meet the conditions of the Capper-Volstead Act in a decision of the Federal District Court of California in *Case-Swayne Co., Inc.* v. *Sunkist Growers, Inc.*, 355 F. Supp. 408 (C. D. Calif. 1971).

Not all suits of this character are successful. One failed because it was found that the sales made by a competitor allegedly below cost to put the plaintiff out of business "were entirely of a local nature."[87]

Another suit brought by a cooperative failed because it was not established that the price paid by the defendant for milk was a fictitious price not determined by competition.[88]

It was held that a treble damage suit is not limited to plaintiffs in a direct contractual or competitive status with the defendant.[89]

The weight of authority supports the right of a cooperative to maintain a treble damage suit.[90]

Six small dairy processors successfully brought a treble damage suit against a large milk cooperative, its general manager, president, treasurer, and one of its directors. It was alleged and established that the defendants had conspired with various retail stores to fix the resale price of milk and that the defendants had engaged in unlawful price discrimination. The conspiracy with the

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[86] *Case-Swayne Co.* v. *Sunkist Growers, Inc.*, 389 U.S. 384, 88 S. Ct. 528, 19 L. Ed. 2d 621 (1967), *rehearing denied,* 390 U.S. 930 (1968).

[87] *Ewing-Von Allman Dairy Co. and C. Icecream Co.* v. *C and C Icecream Co.*, 109 F. 2d 898.

[88] *Marion County Cooperative Ass'n* v. *Carnation Co.*, 214 F. 2d 557; see also *Louisiana Farmers' P. U.* v. *Great Atlantic and Pacific T. Co.*, 40 F. Supp. 897, *reversed and remanded,* 131 F. 2d 419.

[89] *South Carolina Council of Milk Producers, Inc.* v. *Newton,* 360 F. 2d 414, *certiorari denied,* 385 U.S. 934, 87 S. Ct. 295, 17 L. Ed. 2d 215. See also *Peelers Company* v. *Wendt,* 260 F. Supp. 193; *Sanitary Milk Producers* v. *Bergjans Farm Dairy, Inc.*, 368 F. 2d 679.

[90] *American Cooperative Serum Ass'n* v. *Anchor Serum Co.*, 153 F. 2d 907, *certiorari denied,* 329 U.S. 721, 67 S. Ct. 57, 91 L. Ed. 625; *Tillamook Cheese and Dairy Ass'n* v. *Tillamook County Cream Ass'n,* 358 F. 2d 115; *South Carolina Council of Milk Producers, Inc.* v. *Newton,* 360 F. 2d 414, *certiorari denied,* 385 U.S. 934, 87 S. Ct. 295, 17 L. Ed. 2d 215; *Peelers Company* v. *Wendt,* 260 F. Supp. 193, *Sanitary Milk Producers* v. *Bergjans Farm Dairy, Inc.*, 368 F. 2d 679. But see *Farmers Coop. Oil Co.* v. *Socony-Vacuum Oil Co., Inc.*, 133 F. 2d 101; *Louisiana Farmers' Protective Union, Inc.* v. *Great Atlantic and Pacific Tea Company of America, Inc.*, 131 F. 2d 419.

retail stores involved a secret cash rebate of 5 cents for each half gallon of milk in a paper carton. Damages were recovered by the plaintiffs and the defendants were enjoined.[91]

In a treble damage suit against a milk cooperative, it was charged that the cooperative conspired with milk processors to fix the price of milk shipped into Pennsylvania by using rebates. The court held that this sufficiently alleged violations of the Sherman Act to withstand a motion to dismiss.[92]

The picketing of retail stores to get them to stop handling the milk of a certain distributor and to handle the milk of a cooperative at which picketing was at least partially successful was permanently enjoined as in violation of sections 1 and 2 of the Sherman Antitrust Act.[93]

In a criminal case in which a milk cooperative was charged with conspiring with milk distributors to fix the price of milk, the defendants unsuccessfully contended that only intrastate commerce was involved, and that the order of the Secretary of Agriculture relating to the price to be paid farmers barred the action.[94]

It is settled that on a sale of commodities under which title passes to the buyer, a contract under which the buyer is bound to resell only at prices fixed by the seller is an unlawful restraint of trade, except where permitted by section 1 of title 15 of the U.S. Code (fair trade practice acts).[95]

Mergers and Consolidations

Mergers and consolidations may result in violations of the antitrust laws. Section 7 of the Clayton Act (15 U.S.C. 18) for-

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[91] *Bergjans Farm Dairy Co.* v. *Sanitary Milk Producers,* 241 F. Supp. 476, *affirmed,* 368 F. 2d 679; see also *Tillamook Cheese & Dairy Association* v. *Tillamook County Creamery Ass'n,* 358 F. 2d 115.

[92] *Knuth* v. *Erie-Crawford Dairy Co-op Association,* 395 F. 2d 420. But see *Knuth* v. *Erie-Crawford Dairy Cooperative Ass'n,* 326 F. Supp. 48 (N.D. Pa. 1971), *affirmed in part and reversed in part and remanded,* 463 F. 2d 470 (3d Cir. 1972).

[93] *Otto Milk Co.* v. *United Dairy Cooperative Ass'n,* 261 F. Supp. 381. The judgment of the lower court was affirmed in an elaborate opinion in 388 F. 2d 789. See also *Boise Cascade International, Inc.* v. *Northern Minnesota Pulpwood Producers Association,* 294 F. Supp. 1015 (D. Minn. 1968).

[94] *United States* v. *Universal Milk Bottling Service,* 85 F. Supp. 622.

[95] *United States* v. *Paramount Pictures,* 334 U.S. 131, 68 S. Ct. 915, 92 L. Ed. 1260; *Gannon* v. *Federated Milk Producers Ass'n, Inc.,* 11 Utah 2d 421, 360 P. 2d 1018.

bids any corporation in commerce to acquire the stock or any part thereof of another corporation and forbids any corporation subject to the jurisdiction of the Federal Trade Commission to acquire the whole or any part of the assets of another corporation if the effect of such acquisition "may be substantially to lessen competition or tend to create a monopoly."

There is no exemption of cooperatives and they appear to be technically subject to said section to the same extent as other corporations.[96] In reading the statutory prohibition, emphasis should be placed on the words "may be."

Donald F. Turner, then Assistant Attorney General in Charge of the Antitrust Division, gave a talk in 1966 entitled "Agricultural Cooperatives and the Anti-Trust Laws." In speaking of one cooperative merging with another cooperative on the same level, he said: "In particular as a cooperative appears to be entitled to acquire some degree of market power simply by enrolling new members in its organization, it should have the right to acquire this same power through horizontal merger when the merger is identical for all practical purposes to an increase in the size of one of the cooperatives through the voluntary accession of new members. Thus, if at the time a merger between two cooperatives is to take place each member of the cooperative is free to withdraw and to be reimbursed the value of his share in the organization, the merger seems equivalent to the voluntary enrollment of new members into the organization and as such no more subject to attack under the antitrust laws than that organization would be if it had enlisted the same members originally."[97]

The Supreme Court has said: "Possible economies cannot be used as a defense to illegality. Congress was aware that some mergers which lessen competition may also result in economies but it struck the balance in favor of protecting competition."[98]

The Supreme Court of the United States held that the Proctor and Gamble Company must divest itself of all the assets it acquired from the Clorox Chemical Company; and that in the case of any merger, whether it is horizontal, vertical, conglomerate, or a

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[96] See speeches by William J. Boyd, Jr., Chief, Division of Mergers, Federal Trade Commission, entitled "Merger Enforcement and Cooperatives" (1968) and "Mergers and Cooperatives" (1969).

[97] See *The Cooperative Accountant,* Vol. XIX, No. 2, p. 22.

[98] *Federal Trade Commission* v. *Proctor and Gamble Co.,* 386 U.S. 568, 87 S. Ct. 1224, 18 L. Ed. 2d 303.

product extension merger, that its legality must be tested by whether it may substantially lessen competition.[99]

In a Los Angeles case, an acquisition was found to be an illegal merger where a grocery chain with retail sales that ranked third in the area acquired another grocery chain having retail sales ranking sixth, although the combined sales of both in 1960 were only 7.5 percent of the total retail sales of all groceries sold in the Los Angeles market area each year.[100]

Another merger case involved a milk bargaining cooperative in the District of Columbia. After the merger, the cooperative furnished about 86 percent of the milk used in the District of Columbia and its metropolitan area.

In this case, it was held that the purchase by the cooperative of all of the assets of an independent milk dealer, the principal competitor of the dealers who purchased milk from the cooperative, was a violation of section 7; and because of this violation, the cooperative was required to sell as a going concern all of the assets that it had purchased.

It was specifically held that neither section 6 of the Clayton Act nor the Capper-Volstead Act in any way authorized the merger; and that the evidence clearly showed that competition had been lessened. The argument that the Capper-Volstead Act, in providing that cooperatives that meet its conditions may make "the necessary contracts and agreements" to effect its purposes, authorized the purchase of the assets was completely rejected.[101]

It is possible for those contemplating a merger to submit the facts involved to either the Department of Justice or the Federal Trade Commission for a conditional ruling on the question of whether the proposed merger if consummated would violate the antitrust laws. But even if a favorable ruling is received, this would not prevent the bringing of a treble damage suit by someone who claimed he was damaged by the merger.

If a corporation is failing and the termination of the enterprise seems inevitable, it may be merged with another corporation without violating the law;[102] and if a firm is closing out its business

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[99] *Federal Trade Commission* v. *Proctor and Gamble Co.*, 386 U.S. 568, 87 S. Ct. 1224, 18 L. Ed. 2d 303.

[100] *United States* v. *Von's Grocery Co.*, 384 U.S. 270, 86 S. Ct. 1478, 16 L. Ed. 2d 555.

[101] *Maryland and Virginia Milk Producers' Association, Inc.* v. *United States*, 362 U.S. 458, 80 S. Ct. 847, 4 L. Ed. 2d 880 (1960).

[102] *International Shoe Co.* v. *Federal Trade Commission*, 280 U.S. 291, 50 S.

because of financial difficulties it may sell its plant to a competitor.[103]

Section 6 of the Clayton Act

Following the passage of the Sherman Act, as larger and larger marketing and bargaining associations of producers were formed, the question of the application of the Sherman Act to such associations claimed the attention of agricultural leaders. To clarify the situation, when the Clayton Act[104] was enacted in 1914, language was included in section 6 thereof with reference to the status of organizations of farmers. This section reads as follows:

> The labor of a human being is not a commodity or article of commerce. Nothing contained in the antitrust laws shall be construed to forbid the existence and operation of labor, agricultural, or horticultural organizations, instituted for the purposes of mutual help, and not having capital stock or conducted for profit, or to forbid or restrain individual members of such organizations from lawfully carrying out the legitimate objects thereof; nor shall such organizations, or the members thereof, be held or construed to be illegal combinations or conspiracies in restraint of trade, under the antitrust laws.

It seems to be generally agreed that this section prevents the dissolution of an organization which meets the conditions it prescribes; namely, that it is a "labor, agricultural, or horticultural organization;" that it is "instituted for the purposes of mutual help" and does not have "capital stock;" and last, is not "conducted for profit."

However, the few decisions of the courts relative to this section indicate that it does not enable such organizations, if they desire, to adopt methods of conducting their operations denied to other lawful business organizations. In a case[105] decided by the

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Ct. 89, 74 L. Ed. 431. See also *United States* v. *Diebold, Inc.,* 369 U.S. 654. But see *Citizen Publishing Company* v. *United States,* 394 U.S. 131, 89 S. Ct. 297, 22 L. Ed. 2d 148.

[103] *Beegle* v. *Thomson,* 138 F. 2d 875.

[104] 38 Stat. 730, 731, 15 U.S.C.A. 17.

[105] *Duplex Printing Press Co.* v. *Deering,* 254 U.S. 443, 469, 41 S. Ct. 172, 65 L. Ed. 349, 16 A.L.R. 196. See also *Buyer* v. *Guillan,* 271 F. 65; *United States* v.

Supreme Court involving the legality of a secondary boycott by a labor organization it was said:

> . . . As to [section] 6, it seems to us its principal importance in this discussion is for what it does *not* authorize, and for the limit it sets to the immunity conferred. The section assumes the normal objects of a labor organization to be legitimate, and declares that nothing in the antitrust laws shall be construed to forbid the existence and operation of such organizations or to forbid their members from *lawfully* carrying out their *legitimate* objects; and that such an organization shall not be held in itself—merely because of its existence and operation—to be an illegal combination or conspiracy in restraint of trade. But there is nothing in the section to exempt such an organization or its members from accountability where it or they depart from its normal and legitimate objects and engage in an actual combination or conspiracy in restraint of trade. And by no fair or permissible construction can it be taken as authorizing any activity otherwise unlawful, or enabling a normally lawful organization to become a cloak for an illegal combination or conspiracy in restraint of trade as defined by the antitrust laws.

In a case[106] involving solely a farmer cooperative, the Department of Justice brought a criminal complaint for violations of the Federal antitrust laws. The United States district court, without mentioning the Sherman Act, dismissed the indictment against the cooperative on the sole grounds of section 6 of the Clayton Act.

The court said a farmer cooperative, acting alone and not in concert with others, cannot be prosecuted as a monopoly, for to do so would " . . . scuttle the plain language of the Clayton Act as to cooperatives, as antilabor courts scuttled the labor provisions of the same Act . . . "

Borden Company, 308 U.S. 188, 60 S. Ct. 182, 84 L. Ed. 181 (1939), *reversing* 28 F. Supp. 177 (N.D. Ill. 1939); *Apex Hosiery Company* v. *Leader*, 310 U.S. 469, 60 S. Ct. 982, 84 L. Ed. 1311.

[106] *United States* v. *Dairy Co-op Association,* 49 F. Supp. 475 (D. Ore. 1943).

The Aroostook Potato Shippers' Association, acting through a committee, blacklisted certain buyers of potatoes.[107] Members of the association were forbidden, under penalty, to deal with such buyers. Persons outside the association who dealt with persons so blacklisted were also blacklisted and boycotted. The defendants, members of the association, were indicted for a conspiracy in restraint of trade and were fined.

The court said with reference to the contention that section 6 relieved the defendants:

> . . . I do not think that the coercion of outsiders by a secondary boycott, which was discussed in my opinion on the former indictment, can be held to be a lawful carrying out of the legitimate objects of such an association. That act means, as I understand it, that organizations such as it describes are not to be dissolved and broken up as illegal, nor held to be combinations or conspiracies in restraint of trade; but they are not privileged to adopt methods of carrying on their business which are not permitted to other lawful associations.

Section 6 of the Clayton Act is still in effect and is not repealed by the Capper-Volstead Act.

The restricted scope and effect of section 6 of the Clayton Act is shown by the following quotation from an opinion by the Supreme Court. The language of that section "shows no more than a purpose to allow farmers to act together in cooperative associations without the associations as such being 'held or construed to be illegal combinations or conspiracies in restraint of trade, under the antitrust laws' as they otherwise might have been."[108]

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[107] *United States* v. *King,* 229 F. 275 (D. Mass. 1915), 250 F. 908, 910 (D. Mass. 1916). Boycotting is not protected by the Capper-Volstead Act. *Boise Cascade International, Inc.* v. *Northern Minnesota Pulpwood Producers Association,* 294 F. Supp. 1015 (D. Minn. 1968). But see *Knuth* v. *Erie-Crawford Dairy Cooperative Ass'n,* 326 F. Supp. 48 (N.D. Pa. 1971), *affirmed in part and reversed in part and remanded,* 463 F. 2d 470 (3rd Cir. 1972). See also *Marshall Durbin Farms, Inc.* v. *National Farmers Organization, Inc.,* 446 F. 2d 353 (5th Cir. 1971).

[108] *Maryland and Virginia Milk Producers Association, Inc.* v *United States,* 362 U.S. 458, 80 S. Ct. 847, 4 L. Ed. 2d 880 (1960).

Capper-Volstead Act

The Capper-Volstead Act became a law on February 18, 1922. It is entitled "An Act To authorize association of producers of agricultural products," and reads as follows:

> *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That persons engaged in the production of agricultural products as farmers, planters, ranchmen, dairymen, nut or fruit growers may act together in associations, corporate or otherwise, with or without capital stock, in collectively processing, preparing for market, handling, and marketing in interstate and foreign commerce, such products of persons so engaged. Such associations may have marketing agencies in common; and such associations and their members may make the necessary contracts and agreements to effect such purposes: *Provided, however,* That such associations are operated for the mutual benefit of the members thereof, as such producers, and conform to one or both of the following requirements:
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> First. That no member of the association is allowed more than one vote because of the amount of stock or membership capital he may own therein, or,
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> Second. That the association does not pay dividends on stock or membership capital in excess of 8 per centum per annum.
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> And in any case to the following:
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> Third. That the association shall not deal in the products of nonmembers to an amount greater in value than such as are handled by it for members.
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> Sec. 2. That if the Secretary of Agriculture shall have reason to believe that any such association monopolizes or restrains trade in interstate or foreign commerce to such an extent that the price of any agricultural product is unduly enhanced by reason thereof, he shall serve upon such association a complaint stating his charge in that respect, to which complaint shall be attached, or contained therein, a notice of hearing, specifying a day and place not less than thirty days after the service thereof, requiring the association to show cause why an order should not be made directing it to

cease and desist from monopolization or restraint of trade. An association so complained of may at the time and place so fixed show cause why such order should not be entered. The evidence given on such a hearing shall be taken under such rules and regulations as the Secretary of Agriculture may prescribe, reduced to writing, and made a part of the record therein. If upon such hearing the Secretary of Agriculture shall be of the opinion that such association monopolizes or restrains trade in interstate or foreign commerce to such an extent that the price of any agricultural product is unduly enhanced thereby, he shall issue and cause to be served upon the association an order reciting the facts found by him, directing such association to cease and desist from monopolization or restraint of trade.[109] On the request of such association or if such association fails or neglects for thirty days to obey such order, the Secretary of Agriculture shall file in the district court in the judicial district in which such association has its principal place of business a certified copy of the order and of all the records in the proceeding, together with a petition asking that the order be enforced, and shall give notice to the Attorney General and to said association of such filing. Such district court shall thereupon have jurisdiction to enter a decree affirming, modifying, or setting aside said order, or enter such other decree as the court may deem equitable, and may make rules as to pleadings and proceedings to be had in considering such order. The place of trial may, for cause or by consent of parties, be changed as in other causes.

The facts found by the Secretary of Agriculture and recited or set forth in said order shall be prima facie evidence of such facts, but either party may adduce

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[109]Senator Lenroot, during the debate on this bill in Congress said: "If the Secretary of Agriculture finds that there is a monopolization or restraint of trade, and also an undue enhancement of price, then under the bill as it would read if amended he is directed to issue an order, not against the undue enhancement of price, but against the monopolization or restraint of trade. In other words, when these facts exist the order goes against the monopoly, against the restraint of trade, and the command will be that they must desist from such monopolization or restraint of trade; and a mere abandonment of the undue enhancement of price will not be a defense." 62 Cong. Rec. 2269 (1922).

additional evidence. The Department of Justice shall have charge of the enforcement of such order. After the order is so filed in such district court and while pending for review therein the court may issue a temporary writ of injunction forbidding such association from violating such order or any part thereof. The court may, upon conclusion of its hearing, enforce its decree by a permanent injunction or other appropriate remedy. Service of such complaint and of all notices may be made upon such association by service upon any officer or agent thereof engaged in carrying on its business, or on any attorney authorized to appear in such proceeding for such association, and such service shall be binding upon such association, the officers, and members thereof.[110]

Section 6 of the Clayton Act refers only to nonstock organizations, so that an association of producers formed with capital stock would not seem to be entitled to the benefits thereof. Owing to this fact and for the further purpose of making the status of the association of producers under the Federal antitrust laws more clear than was done by section 6 of the Clayton Act, the Capper-Volstead Act was passed.[111]

Mr. Volstead, in discussing the bill, said:

> The objection made to these organizations at present is that they violate the Sherman Antitrust Act, and that is upon the theory that each farmer is a separate business entity. When he combines with his neighbor for the purpose of securing better treatment in the disposal of his crops, he is charged with a conspiracy or combination contrary to the Sherman Antitrust Act. Businessmen can combine by putting their money into corporations, but it is impractical for farmers to combine their farms into similar corporate form. The object of this bill is to modify the laws under which business organizations are now formed, so that farmers may take

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[110]42 Stat. 388; 7 U.S.C. 291 and 292.

[111]See "Exemption For Cooperatives" by John E. Noakes, 19 A.B.A. Antitrust Section 407, and Noakes, *Agricultural Cooperatives*, 33 A.B.A. Antitrust L.J. 7 (1967). See also list of published material relating to antitrust laws on p. 320.

advantage of the form of organization that is used by business concerns. It is objected in some quarters that this repeals the Sherman Antitrust Act as to farmers. That is not true any more than it is true that a combination of two or three corporations violates the act. Such combinations may or may not monopolize or restrain trade. Corporations today have all sorts of subsidiary companies that operate together, and no one claims they violate this act.[112]

Senator Capper, in discussing the bill, said:

Mr. President, the cooperative marketing bill as it was offered in both the Senate and House seeks simply to make definite the law relating to cooperative associations of farmers and to establish a basis on which these organizations may be legally formed. Its purpose is to give to the farmer the same right to bargain collectively that is already enjoyed by corporations. The bill is designed to make affirmative and unquestioned the right which already is generally admitted, but which, in view of the Sherman law, is subject to nullifying interpretation by those whose interests are not identical with those of the farmer, and who for one reason or another may be in a position to obtain an interpretation advantageous to themselves and embarrassing or detrimental to the members of cooperative organizations.

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While it seems evident that Congress intends that the farmer shall not be prosecuted for acting collectively in the marketing of his product, yet the Federal law is such that these prosecutions may be threatened or actually brought against him. The farmer does not relish the possibility of being prosecuted for an alleged violation of law, even though he feels fairly certain that he would not be convicted.[113]

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[112]61 Cong. Rec. 1033 (1921).
[113]62 Cong. Rec. 2057, 2059 (1922).

Before the enactment of the Capper-Volstead Act, there was at least uncertainty as to whether the elimination of the competition among farmers by their acting through a cooperative did not constitute a violation of the antitrust statutes.[114] The Act, which in effect is an amendment of the antitrust statutes, authorizes and sanctions the elimination of such competition.

The fundamental object and result of the Capper-Volstead Act is to authorize farmers to unite in organizations that may or may not be incorporated, which organizations, insofar as the assembling, the processing, the handling, and the marketing of the products dealt in by the association are concerned, may act with the same force and effect as though all the agricultural products in question were being handled by one farmer.[115]

The reports of the committees of Congress that reported out the measure and the debates in Congress with reference thereto show that it was the intention of Congress that the Capper-Volstead Act should exempt associations of farmers, when they operate along normal business lines, from the Federal antitrust statutes. In other words, the fact that an association that meets the conditions of the Act controls the handling and marketing of all of a given agricultural product would not of itself, standing alone, cause the organization to be in violation of such statutes, and the restraint of trade caused thereby would not amount to a violation of the law on the part of the association.

This view is also supported by one case.[116] The court's charge to the jury in that case stated:

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[114]"The uncertainty of the legal status of farm organizations which conduct business in a collective way has had a paralyzing effect on the efforts of men and associations who are brought together so that they may more economically and efficiently administer their affairs. In some sections of the country, I am informed, officers and members of such organizations have been arrested, indicted, and even thrown into prison." Mr. Calder, in the debate in the Senate concerning the Capper-Volstead Act. 62 Cong. Rec. 2217 (1922). For a discussion of instances in which the officers of cooperative associations were arrested on account of alleged violations of antitrust laws, see article entitled *The Battle of Milk* by Professor Boyle (formerly of Cornell University), in the Saturday Evening Post of November 13, 1937. See also *Maryland and Virginia Milk Producers' Association, Inc.* v. *United States,* 362 U.S. 458, 80 S. Ct. 847, 4 L. Ed. 2d 880 (1960).

[115]See *Minnesota Wheat Growers Co-op Marketing Association* v. *Huggins,* 162 Minn. 471, 203 N.W. 420 (1925).

[116]*Cape Cod Food Products* v. *National Cranberry Association,* 119 F. Supp. 900, 907 (D. Mass. 1954). See also *United States* v. *Dairy Co-op Asso-*

> It is not unlawful under the antitrust acts for a Capper-Volstead cooperative, such as the National Cranberry Association admittedly is, to try to acquire even 100 percent of the market if it does it exclusively through marketing agreements approved under the Capper-Volstead Act. . . .

The Capper-Volstead Act was passed subsequent to the antitrust statutes and insofar as there is any conflict it should control. An association that meets the conditions of the Capper-Volstead Act is not free to engage in any course of conduct which it might see fit to adopt. For instance, if it should engage in unfair competition, that would subject it to the jurisdiction conferred upon the Federal Trade Commission by the Act[117] creating it. Again, abnormal conduct on the part of an association might subject it to the jurisdiction of the Department of Justice of the United States for a violation of the antitrust laws.

So far as the price at which an association offers its products for sale is concerned, its reasonableness, if a question with reference thereto should arise, is to be determined by the Secretary of Agriculture.

If he "shall have reason to believe that any such association monopolizes or restrains trade in interstate or foreign commerce to such an extent that the price of any agricultural product is unduly enhanced thereby," he may, following a hearing, issue an order directing such association to cease and desist from monopolization or restraint of trade.

This Act has no application to purely purchasing associations, cooperative stores, or associations engaged in rendering farm business services for the reason that it relates only to associations that are composed of farmers, planters, ranchmen, dairymen, nut or fruit growers who are engaged in collectively processing, preparing for marketing, handling, and marketing in interstate and foreign commerce the products of persons so engaged, and then

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ciation, 49 F. Supp. 475 (D. Ore. 1943); *Shoenberg Farms, Inc.* v. *Denver Milk Producers Inc.,* 231 F. Supp. 266.

[117]38 Stat. 730, 15 U.S.C.A. 12. Several complaints have been brought against cooperatives by the Federal Trade Commission. For example, see *Carpel Frosted Foods, Inc.,* FTC Order No. 5482; *Florida Citrus Mutual,* FTC Doc. No. 6074; *C.H. Musselman Co., et al.,* FTC Doc. No. 6041. See also *Boise Cascade International, Inc.* v. *Northern Minnesota Pulpwood Producers Association,* 294 F. Supp. 1015 (D. Minn. 1968).

only with such associations as have complied with the conditions of the statute.

The question of whether an association is liable for income taxes is one that is not resolved by this Act. An association's liability for income taxes is to be determined by the income tax statutes and the regulations issued under them.

The Capper-Volstead Act in no way attempts to "restrict or stifle production."[118]

This Act does not provide for the incorporation of cooperatives and it makes no provision for their formation. Those interested in organizing or incorporating such associations should look to the laws of their respective States relating thereto.

Congress, under the Constitution, has control over interstate and foreign commerce, and this Act deals only with the operation of associations in such commerce, and then only with such associations as comply with certain conditions prescribed therein.

The test which those interested in an association should apply to learn if their association comes within the scope of the Act is: Does the association meet the conditions set forth therein? These conditions are as follows:

A. "That persons engaged in the production of agricultural products as farmers, planters, ranchmen, dairymen, nut or fruit growers may act together in associations, corporate or otherwise, with or without capital stock, in collectively processing, preparing for market, handling, and marketing in interstate and foreign commerce, such products of persons so engaged."

This and other language in the Act make it plain that a cooperative, to come within the Act, must be composed of producers.[119] Probably, in those isolated instances in which nonproducers become members of an association through inheritance or otherwise by operation of law contrary to the policy of the association, or in which producers cease to be such, the association being one which is incontrovertibly controlled and dominated by its producer members, would not, because of such nonproducer members, if it otherwise complied with the terms of the

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[118]Keegan, M.J., *Power of Agricultural Cooperative Associations to Limit Production,* 26 Mich. L. Rev. 648-673 (1928).

[119]*Case-Swayne Co.* v. *Sunkist Growers,* 389 U.S. 384, 88 S. Ct. 528, 19 L. Ed. 2d 621 (1967), *rehearing denied,* 390 U.S. 930, 88 S. Ct. 846 (1968). The Department of Justice has raised the question whether a member who uses "contract growers" is a producer. See Dept. of Justice Press Release dated Nov. 17, 1971.

Act, fall without its provisions. Such association should take such measures as are compatible with law to eliminate and exclude voting nonproducers from membership. This is true, whether it is incorporated or unincorporated, and whether it is organized with or without capital stock.

B. Associations that desire to come within the Act must be operated for the mutual benefit of the members thereof, as such producers, and conform to one or both of the first two of the following requirements: First, that no member of the association is allowed more than one vote because of the amount of stock or membership capital he may own therein, or Second, that the association does not pay dividends on stock or membership capital in excess of 8 per centum per annum. And in any case to the following: "Third. That the association shall not deal in the products of nonmembers to an amount greater in value than such as are handled by it for members."

Associations must comply with either the first or second conditions and may comply with both. As the first condition embodies the one-man one-vote principle, associations operating on this basis, or which elect to operate on this basis, need not, unless they wish to do so, give consideration to the second condition. Of course, an association, if it desires, may operate in accordance with both of these conditions, but it will come within the scope of the Act by complying with only one of them, if it complies with the other conditions of the Act.

If an association elects to operate under the second condition, dividends on stock or membership capital are limited to 8 percent per annum. This does not mean that voting stock may be owned by or sold to nonproducers so far as this Act is concerned. Only associations whose voting stock is held by or whose membership is made up of producers can come within the Act. It is not necessary for associations that operate under the Act to pay dividends in any amount unless they elect to do so. It is entirely a matter of choice with them. If, however, an association elects to operate under the second condition, dividends, if paid, must not exceed 8 percent per annum.

All associations that wish to operate under the Act must meet the third condition, which is that the value of the products handled for nonmembers shall not exceed the value of those handled for members. This condition does not mean that an association must handle any business for nonmembers. It may do so or not, as it sees fit. If it does handle such business, however, the Act specifically provides that the value of the products handled for nonmembers

must not exceed the value of the products handled for members.

The Act provides that such associations must be "operated for the mutual benefit of the members thereof as such producers."[120] This and other language in the statute means that all commodities handled which are not produced by the members must be regarded as nonmember business. Therefore, commodities purchased by members and delivered to an association constitute nonmember business. In this connection, the Committee on the Judiciary of the Senate which had the bill in charge, in its report thereon said:

> The bill before us during the last session authorized the organization of associations dealing in "products of their members." The bill now under consideration authorizes them to deal in the "products of persons so engaged." Obviously, under the former the associations would be restricted in their dealings to members; in the latter, though they are restricted as to the character of the products in which they may deal, it is clear that they may deal with any person in such products, whether he be a member or not.
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> The bill has for its purpose the removal of obstacles, if such there be in the Federal statutes, in the way of the organization of cooperative farm marketing associations, a purpose with which the majority, at least, of your committee is in full sympathy. It maybe, and probably is, true that such associations cannot operate with the highest degree of success, or with that degree of success which your committee would be glad to see attend their efforts, unless they are permitted to deal to some extent in the products of nonmembers similar in character to those handled for the members. But the protection of the statute ought not to be given to a small number of persons of the classes named in the bill who contribute from their own farms an inconsiderable quantity of the product handled by the association.[121]

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[120] In holding that an organization met the requirements of the Capper-Volstead Act, the court said the organization was not required to make distributions to its members by way of dividends or otherwise to qualify under the Act. *Waters* v. *National Farmers Organization,* 328 F. Supp. 1229 (S.D. Ind. 1971).

[121] 62 Cong. Rec. 2121 (1922).

Cooperative associations of egg producers acting together are protected by the Capper-Volstead Act.[122]

Under section 2 of the Act, it is the duty of the Secretary of Agriculture, if he believes that any association operating under it monopolizes or restrains trade in interstate or foreign commerce to such an extent that the price of any agricultural product is unduly enhanced by reason of such monopoly or restraint of trade, to serve upon such association a complaint with respect to such matters, requiring the association to show cause why an order should not be issued directing it to cease and desist from monopolization or restraint of trade.

After a hearing, if the Secretary of Agriculture believes that such an association monopolizes or restrains trade in interstate or foreign commerce to such an extent that the price of any agricultural product is unduly enhanced thereby, the Act provides that he shall issue an order reciting the facts found by him and directing such association to cease and desist from monopolization or restraint of trade.

If such order is not complied with by the association within 30 days, the Secretary of Agriculture is then required to file a certified copy of the order issued by him, together with certified copies of all records in the matter, in the district court of the United States in the judicial district in which such association has its principal place of business.

The Department of Justice has charge, under the Act, of the enforcement of such order. The district court of the United States is given jurisdiction to affirm, modify, or set aside the order or to enter such other decree as it may deem equitable.

The Capper-Volstead Act permits an association meeting its conditions to have a complete monopoly in the handling and the marketing of the agricultural products with which it is concerned, but this monopoly must be obtained in a legal manner.

Like any other business entity not engaged in the operation of a public utility or business whose rates are fixed by law, it may determine the prices at which it may offer its goods for sale. As a result, the only agency that is authorized to proceed against an association on account of undue enhancement alone is the Secretary of Agriculture, and his authority to do so is specifically

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[122] *United Egg Producers* v. *Bauer International Corporation,* 312 F. Supp. 319 (S.D. N.Y. 1970); and see 311 F. Supp. 1375 (S.D. N.Y. 1970).

conferred by statute.[123] Moreover, the conferring of this specific authority on the Secretary of Agriculture is a denial of the existence of such authority in other agencies.[124]

The fact that a cooperative may have unduly enhanced the prices of the agricultural products which it is engaged in marketing gives the Secretary of Agriculture jurisdiction to proceed against the association, and because the Secretary of Agriculture is specifically given this jurisdiction, the question of whether there has been an undue enhancement of prices is a matter for his exclusive determination.

Common Marketing Agencies

Associations meeting the terms and conditions of the Capper-Volstead Act may have a common marketing agency. By means of such an agency two or more eligible cooperatives may legally eliminate competition among them by having such an agency. It should be possible also to thus reduce marketing costs and expenses. Each of the associations that is a member of a common marketing agency must comply with all of the conditions of the Capper-Volstead Act. Such associations and a common marketing agency formed by them may not enter into abnormal transactions such as price fixing or other agreements with third persons which are contrary to the antitrust laws. If an association enters into agreements or transactions which amount to a violation of the antitrust statutes, it is amenable thereto and the Department of Justice may proceed against it.[125]

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[123] *Tobacco Growers' Co-op Association* v. *Jones,* 185 N.C. 265, 117 S.E. 174, 33 A.L.R. 231 (1923).

[124] "That remedy is in the Secretary of Agriculture exclusively. If he does not move, absolutely nobody can move, and the bill does not give the individual, it does not give any association, any right to go into court and have these prices reviewed." Mr. Husted, 59 Cong. Rec. 8021 (1920). *Cf. Silberschein* v. *United States,* 266 U.S. 221, 45 S. Ct. 69, 69 L. Ed. 256, and *Mara* v. *United States,* 54 F. 2d 397.

[125] *United States* v. *Borden Company,* 308 U.S. 188, 204, 60 S. Ct. 182, 84 L. Ed. 181 (1939), *reversing* 28 F. Supp. 177 (N. D. Ill. 1939). See also *United States* v. *Hutcheson,* 312 U. S. 219, 61 S. Ct. 463, 85 L. Ed. 788 (1941). In *United States* v. *Maryland Cooperative Milk Producers, Inc. and Maryland and Virginia Milk Producers' Association, Inc.,* 145 F. Supp. 151 (D. D. C.), decided October 16, 1956, the defendants, each of which were an association of producers of milk, were indicted for conducting an unlawful combination and conspiracy to fix prices for milk sold to distributors, which in turn was supplied to the Government. A motion for judgment of acquittal on the grounds that their conduct was

On the other hand, as an independent organization an association meeting the terms of the Capper-Volstead Act, or a common marketing agency composed of such associations, has all the general rights, powers, and privileges that a businessman or ordinary business corporation possesses. For instance, as businessmen and other business corporations may select their customers, an association of farmers may likewise do so.[126] A cooperative, like any other organization, has the right at common law to select its members.[127] How this and like principles may have been changed, if at all, by State and Federal civil rights laws should be ascertained.

In connection with the right of associations to select their own members, it will be remembered that this, in essence, means that they may determine the producers from whom they will receive agricultural products for handling and marketing. It is a common right of businessmen and corporations to determine the parties from whom they will purchase goods, and a cooperative in determining who may become members thereof is simply determining from whom it will acquire commodities. Under normal circumstances an association may enter into an agreement to furnish a dealer with all of a given commodity that his business may require.[128]

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exempt under section 6 of the Clayton Act and the Capper-Volstead Act was granted. The district judge said: "* * * a combination between two or more agricultural cooperatives to fix prices of their products is exempt from the antitrust laws provided no other person that is not of such an organization or a member of such a group is a part of the combination."

[126] *Federal Trade Commission* v. *Raymond Brothers-Clark Co.*, 263 U. S. 565, 44 S. Ct. 162, 68 L. Ed. 448. 30 A.L.R. 1114 (1924).

[127] *Cf. Associated Press* v. *United States,* 326 U.S. 1, 65 S. Ct. 1416, 89 L. Ed. 2013.

[128] *Federal Trade Commission* v. *Curtis Publishing Company,* 260 U.S. 568, 43 S. Ct. 210, 67 L. Ed. 408; *Arkansas Brokerage Co.* v. *Dunn & Powell, Inc.*, 173 F. 899, 35 L.R.A. (N.S.) 464; *Barnes* v. *Dairymen's League Coop. Association,* 222 N.Y.S. 294, 220 App. Div. 624; *Wiseman* v. *Dennis,* 156 Va. 431, 157 S.E. 716; *Castorland Milk & Cheese Co.* v. *Shantz,* 179 N.Y.S. 131 (1919; *American Fur Manufacturers Association* v. *Associated Fur Coat and Trimming Manufacturers,* 291 N.Y.S. 610, 161 Misc. 246; *Dairy Cooperative Association* v. *Brandes Creamery,* 147 Ore. 488, 30 P. 2d 338 (1934), 147 Ore. 503, 30 P. 2d 344 (1934); *Stark County Milk Producers' Association* v. *Tabeling,* 129 Ohio St. 159, 194 N.E. 16, 98 A.L.R. 1393 (1934); *Cole Motor Car Company* v. *Hurst,* 228 F. 280; *American Sea Green Slate Company* v. *O'Halloran,* 229 F. 77; *Virtue* v. *Creamery Package Manufacturing Company,* 227 U.S. 8, 33 S. Ct. 202, 57 L. Ed. 393, *affirming* 179 F. 115, 102 C.C.A. 413; *Sussex* v. *Carvel Corp.*, 332 F. 2d 505,

In a New York case, nonunion workers were denied the right to enjoin the carrying out of a closed shop contract entered into by their employer with a labor union which compelled these workers to become members of the union if they were to continue their employment.[129]

The court, in upholding the right of the labor union to enter into a closed shop agreement, said:

> As before stated, there is nothing in the present case before us to indicate that any injury was sought or intended to the plaintiffs or nonunion members, but that the object of the contract and of the action of the defendant labor union is to advance its own interests and ability of its members through the closed shop, to meet on even terms their employers in present or future negotiations.[130]

May a cooperative prescribe resale prices for commodities which it sells?

Generally, in the absence of a statutory authorization, agreements of this character are invalid.[131]

On the other hand, it appears to be established that a seller may refuse to deal with those who do not adhere to the schedule of resale prices prescribed by him and that a seller may announce that he may refuse to deal with those who do not adhere to such a price schedule.

In a certain case[132] the Supreme Court said:

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certiorari granted, 379 U.S. 885, *dismissed,* 381 U.S. 125; *Isaly Dairy Co. of Pittsburgh* v. *United Dairy Farmers,* 250 F. Supp. 99; but see *Denison Mattress Factory* v. *Spring-Air Co.,* 308 F. 2d 403. Fletcher Cyc. Corp. (Perm. Ed.), Vol. 10, sec. 5010, p. 836; 3 Williston on *Contracts,* p. 2896. Ballantine, W., *Cooperative Marketing Associations,* 8 Minn. L. Rev. 1-27 (1923).

[129] *Williams* v. *Quill,* 227 N.Y. 1, 12 N.E. 2d 547, *appeal dismissed,* 303 U.S. 621, 58 S. Ct. 650, 82 L. Ed. 1085. See also Mills, David N., *Labor Law—Right of Union to Deny Membership to Applicant,* 40 Mich. L. Rev. 310 (1941).

[130] *Williams* v. *Quill,* 277 N.Y. 1, 12 N.E. 2d 547, *appeal dismissed,* 303 U.S. 621, 58 S. Ct. 650, 82 L. Ed. 1085.

[131] *Miles Medical Company* v. *Park & Sons Company,* 220 U.S. 373, 31 S. Ct. 376, 55 L. Ed. 502.

[132] *Federal Trade Commission* v. *Beech-Nut Packing Company,* 257 U.S. 441, 42 S. Ct. 150, 66 L. Ed. 307, 19 A.L.R. 882, (1922).

> By these decisions[133] it is settled that in prosecutions under the Sherman Act a trader is not guilty of violating its terms who simply refuses to sell to others, and he may withhold his goods from those who will not sell them at the prices which he fixes for their resale. He may not, consistently with the act, go beyond the exercise of this right, and by contracts or combinations, express or implied, unduly hinder or obstruct the free and natural flow of commerce in the channels of interstate trade.

The restrictions of the foregoing statement are as applicable to a cooperative as to any other type of business concern; and a cooperative may prescribe resale prices only under conditions in which any other business concern could do likewise.[134]

Agricultural associations, especially in the case of milk, frequently enter into contracts agreeing to furnish distributors with all the milk they may need during a given period.

One case involving this type of situation has been before the courts.[135] The Maryland and Virginia Milk Producers' Association, which controlled a large percentage of the milk in the District of Columbia metropolitan area, entered into full-supply contracts with some of the major milk distributors.

As a defense to indictment under section 3 of the Sherman Act, the Capper-Volstead Act's provisions were invoked. The indictment was first dismissed, but the Court of Appeals reinstated it, apparently relying on a charge of concerted action between the cooperative and outsiders.

On a second appeal, the Court of Appeals reversed conviction of the defendants for failure to show that the agreements were made for the purpose of eliminating competition from independent sources of supply. This decision appears to make permissible a marketing cooperative's sales contracts which require purchasers to obtain their full supply from the association, where the contracts

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[133] *United States* v. *Colgate & Company,* 250 U.S. 300, 39 S. Ct. 465, 63 L. Ed. 992, 7 A.L.R. 433; *Frey & Son, Inc.* v. *Cudahy Packing Company,* 256 U.S. 208, 41 S. Ct. 451, 65 L. Ed. 892; *United States* v. *Schrader's Son, Inc.,* 252 U.S. 85, 40 S. Ct. 251, 64 L. Ed. 471.

[134] See *Ethyl Gasoline Corporation* v. *United States,* 309 U.S. 436, 60 S. Ct. 618, 84 L. Ed. 852; *Biddle Purchasing Company* v. *Federal Trade Commission,* 96 F. 2d 687; *Armand Company* v. *Federal Trade Commission,* 78 F. 2d 707.

[135] *United States* v. *Maryland & Virginia Milk Producers' Association, Inc.,* 179 F. 2d 426, 193 F. 2d 907 (D.C. Cir. 1951).

are reasonably ancillary to effectuation of the cooperative's legitimate marketing objectives.

However, under other circumstances, the Supreme Court of the United States has considered full-supply contracts to be in violation of the antitrust laws.[136] Accordingly, no full-supply or exclusive contract should be entered into without fully considering whether a violation of the antitrust laws would result.

In general, as long as an association is acting alone and on its own initiative, it appears to have the same latitude in the conduct of its business that is possessed by any businessman, and it appears that third persons may deal with an association accordingly.[137]

On the other hand, it must not be assumed that the Capper-Volstead Act confers rights or privileges on associations that meet its conditions which are not possessed by other entities. If such associations enter into conspiracies or combinations with third persons, they are as amenable to prosecution under the antitrust laws as any other organizations.

This is made clear by the following quotation from the opinion of the Supreme Court of the United States in the *Borden* case.[138]

> . . . We cannot find in the Capper-Volstead Act . . . an intention to declare immunity for the combinations and conspiracies charged in the present indictment. Section 6 of the Clayton Act, enacted in 1914, had authorized the formation and operation of agricultural organizations provided they did not have capital stock or were conducted for profit, and it was there provided that the antitrust laws should not be construed to forbid members of such organizations "from lawfully carrying out the legitimate objects thereof." They were not to be

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[136] *Standard Oil Co. of California* v. *United States,* 337 U.S. 293, 69 S. Ct. 1051, 93 L. Ed. 1371; *Federal Trade Commission* v. *Motion Picture Advertising Service Co., Inc.,* 334 U.S. 392, 73 S. Ct. 361, 97 L. Ed. 426.

[137] 61 Cong. Rec. 1033 (1921).

[138] *United States* v. *Borden Company,* 308 U.S. 188, 60 S. Ct. 182, 84 L. Ed. 181 (1939), *reversing* 28 F. Supp. 177 (N.D. Ill. 1939). See also *Liberty Warehouse Co.* v. *Burley Tobacco Growers' Co-op Marketing Association,* 276 U.S. 71, 48 S. Ct. 291, 72 L. Ed. 473 (1928), *affirming* 208 Ky. 643, 271 S.W. 695 (1925); *Farmers' Livestock Commission Company* v. *United States,* 54 F. 2d 375; *Board of Trade of City of Chicago* v. *Wallace,* 67 F. 2d 402 (7th Cir. 1933); *United States* v. *Dried Fruit Association of California,* 4 F.R.D. 1; *Marketing Assistance Plan, Inc.* v. *Associated Milk Producers, Inc.,* 338 F. Supp. 1019 (S.D. Tex. 1972).

held illegal combinations. The Capper-Volstead Act, enacted in 1922, was made applicable as well to cooperatives having capital stock. The persons to whom the Capper-Volstead Act applies are defined in § 1 as producers of agricultural products, "as farmers, planters, ranchmen, dairymen, nut or fruit growers." They are authorized to act together "in collectively processing, preparing for market, handling, and marketing in interstate and foreign commerce" their products. They may have "marketing agencies in common," and they may make "the necessary contracts and agreements to effect such purposes."

The right of these agricultural producers thus to unite in preparing for market and in marketing their products, and to make the contracts which are necessary for that collaboration, cannot be deemed to authorize any combination or conspiracy with other persons in restraint of trade that these producers may see fit to devise. In this instance, the conspiracy charged is not that of merely forming a collective association of producers to market their products but a conspiracy, or conspiracies, with major distributors and their allied groups, with labor officials, municipal officials, and others, in order to maintain artificial and non-competitive prices to be paid to all producers for all fluid milk produced in Illinois and neighboring States and marketed in the Chicago area, and thus in effect, as the indictment is construed by the court below, "to compel independent distributors to exact a like price from their customers" and also to control "the supply of fluid milk permitted to be brought to Chicago." 28 F. Supp. 180-182. Such a combined attempt of all the defendants, producers, distributors and their allies, to control the market finds no justification in § 1 of the Capper-Volstead Act.

Nor does the court below derive its limitation of the Sherman Act from § 1. The pith of the court's conclusion is that under § 2 an exclusive jurisdiction with respect to the described cooperative associations is vested, in the first instance, in the Secretary of Agriculture, and that, until the Secretary acts, the judicial

power to entertain a prosecution under the Sherman Act cannot be invoked. Section 2 of the Capper-Volstead Act does provide a special procedure in a case where the Secretary of Agriculture has reason to believe that any such association "monopolizes" or restrains interstate trade "to such an extent that the price of any agricultural product is unduly enhanced." Thereupon the Secretary is to serve upon the association a complaint, stating his charge with notice of hearing. And if upon such hearing the Secretary is of the opinion that the association "monopolizes," or does restrain interstate trade to the extent above mentioned, he then is to issue an order directing the association "to cease and desist" therefrom. Provision is made for judicial review.

We find no ground for saying that this limited procedure is a substitute for the provisions of the Sherman Act, or has the result of permitting the sort of combinations and conspiracies here charged unless or until the Secretary of Agriculture takes action. That this provision of the Capper-Volstead Act does not cover the entire field of the Sherman Act is sufficiently clear. The Sherman Act authorizes criminal prosecutions and penalties. The Capper-Volstead Act provides only for a civil proceeding. The Sherman Act hits at attempts to monopolize as well as actual monopolization. And § 2 of the Capper-Volstead-Volstead Act contains no provision giving immunity from the Sherman Act in the absence of a proceeding by the Secretary. We think that the procedure under § 2 of the Capper-Volstead Act is auxiliary and was intended merely as a qualification of the authorization given to cooperative agricultural producers by § 1, so that if the collective action of such producers, as there permitted, results in the opinion of the Secretary in monopolization or unduly enhanced prices, he may intervene and seek to control the action thus taken under § 1. But as § 1 cannot be regarded as authorizing the sort of conspiracies between producers and others that are charged in this indictment, the qualifying procedure for which § 2 provides is not to be deemed to be designed to take the place of, or to postpone or prevent, prosecution under § 1 of the

Sherman Act for the purpose of punishing such conspiracies.

It is significant that the Supreme Court in its opinion in the *Borden* case said that orders or agreements entered into by the Secretary of Agriculture pursuant to the Agricultural Marketing Agreement Act "would of course be a defense to a prosecution under the Sherman Act to the extent that the prosecution sought to penalize what was thus validly agreed upon or directed by the Secretary."

It is submitted that the opinion in the case from which the foregoing quotations were taken may, therefore, be regarded as establishing the constitutionality of the Capper-Volstead Act.

Neither section 6 of the Clayton Act nor the Capper-Volstead Act authorize an association to engage in predatory practices.[139] In the *Maryland and Virginia Milk Producers'* case, the Supreme Court said:

> The complaint charging monopolization alleged that the Association had "[t]hreatened and undertaken diverse actions to induce or compel dealers to purchase milk from the defendant [Association], and induced and assisted others to acquire dealer outlets" which were not purchasing milk from the Association. It also alleged that the Association "[e]xcluded, eliminated, and attempted to eliminate others, including producers and producers' agricultural cooperative associations not affiliated with defendant, from supplying milk to dealers." Supporting this charge the statement of particulars listed a number of instances in which the Association attempted to interfere with truck shipments of nonmembers' milk, and an attempt during 1939-1942 to induce a Washington dairy to switch its non-Association producers to the Baltimore market. The statement of particulars also included charges that the Association engaged in a boycott of a feed and farm supply store to compel its owner, who also owned an Alexandria dairy, to purchase milk from the Association, and that it compelled a dairy to buy its milk by using the leverage of that dairy's indebtedness to the Association. We are

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[139] *Maryland and Virginia Milk Producers' Association, Inc.* v. *United States*, 362 U.S. 458, 80 S. Ct. 847, 4 L. Ed. 2d 880 (1960). See also *Marketing Assistance Plan, Inc.* v. *Associated Milk Producers, Inc.*, 338 F. Supp. 1019 (S.D. Tex. 1972).

> satisfied that the allegations of the complaint and the statement of particulars, only a part of which we have set out, charge anticompetitive activities which are so far outside the "legitimate objects" of a cooperative that, if proved, they would constitute clear violations of § 2 of the Sherman Act by this Association, a fact, indeed, which the Association does not really dispute if it is subject to liability under this section. It was error for the District Court to dismiss the § 2 charge.

In other words, the Court held that predatory acts like those referred to in the foregoing quotation were not authorized or protected by section 6 of the Clayton Act or by the Capper-Volstead Act, but were in violation of the antitrust laws.

The judgment of the district court, finding a violation of section 7 of the Clayton Act and section 3 of the Sherman Act, was affirmed by the Supreme Court of the United States and the district court's dismissal of the charges under section 2 of the Sherman Act was reversed and the case remanded for a trial; but the case was ended by a consent decree.

A treble damage suit was brought against Sunkist Growers, Inc., and Exchange Orange Products Company, a wholly owned subsidiary of Sunkist, charging that they had conspired with two other corporations and with a lemon cooperative composed of part of the local associations of Sunkist to refuse to sell oranges to the plaintiff. It was apparently agreed by the parties to this suit that Sunkist met the conditions of the Capper-Volstead Act.

In the trial court, the jury found damages to the plaintiff in the amount of $500,000. A judgment for treble this amount plus attorney fees, less some minor offsets, was entered. Sunkist and its wholly owned subsidiary then appealed to the Ninth Circuit Court of Appeals (284 F. 2d 1) and this Court affirmed the decision of the trial court on the question of liability but reversed the trial court on the amount of damages, expressing the view that they were too high.

Sunkist and its wholly owned subsidiary then carried the case to the Supreme Court of the United States which granted certiorari "limited to the issue of the immunity of interorganizational dealings among the three cooperatives from the conspiracy provisions of the antitrust laws." The three cooperatives were Sunkist, its wholly owned subsidiary, and the lemon cooperative.

Sunkist and its wholly owned subsidiary claimed that the case had been submitted to the jury under instructions that would have

permitted "the jury to find an illegal conspiracy among them and Exhange Lemon Products Company, a cooperative processing association owned and operated exclusively by a number of lemon-grower associations, all of which are members of Sunkist Growers, Inc."

It was their contention that "under the exemptions from the antitrust laws granted agricultural associations . . . Sunkist, Exchange Orange, and Exchange Lemon, being made up of the same growers and associations, cannot be charged with conspiracy among themselves."

The Supreme Court agreed. It said, "Since we hold erroneous one theory of liability upon which the general verdict may have rested—a conspiracy among petitioners and Exchange Lemon—it is unnecessary for us to explore the legality of the other theories," and the Court then reversed and remanded the case which it is understood was settled.[140]

Sunkist was later involved in another suit brought by Case-Swayne Company, a manufacturer of single-strength orange juice and other blended orange juices.[141] A treble damage complaint was filed against Sunkist alleging "that the Sunkist system was a conspiracy in restraint of trade in violation of Section 1 of the Sherman Act, the effect of which was to limit sharply the supply of product citrus fruit available to petitioner during the period covered by the complaint."

The complaint was dismissed by the trial court. The Court of Appeals for the Ninth Circuit (369 F. 2d 449), while holding that there was evidence that Sunkist monopolized or attempted to monopolize trade in the relevant market, said that Sunkist qualified as a cooperative organization under the Capper-Volstead Act and therefore could not be held liable for an intraorganizational conspiracy to restrain trade.

The Supreme Court granted certiorari. In its opinion it said: "The issue is whether Sunkist is an association of 'persons engaged in the production of agricultural products as . . . fruit growers' within the meaning of the Capper-Volstead Act, notwithstanding that certain of its members are not actually growers. We hold that it is not."

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[140] *Sunkist* v. *Winckler & Smith Citrus Products Co.*, 370 U.S. 19, 82 S. Ct. 1130, 8 L. Ed. 2d 305 (1962).

[141] *Case-Swayne Co.* v. *Sunkist Growers, Inc.*, 389 U.S. 384, 88 S. Ct. 528, 19 L. Ed. 2d 621 (1967). *rehearing denied,* 390 U. S. 930 (1968).

Generally speaking, the 1,200 members of Sunkist were organized into local associations and the local associations were in turn members of district exchanges. The Supreme Court said: "The vast majority of these local associations—about 80% by number and 82% by volume of fruit marketed by the Sunkist system—are, it is stipulated, cooperative associations in which all members are fruit growers."

Some 15% by number handling about 13% of the fruit in the Sunkist system were local associations composed exclusively of nonproducers who purchased the fruit that they marketed through the Sunkist system. Such local associations were also referred to as agency associations.

In this connection, the Supreme Court said: "Moreover the agency associations participate in the control and policy making of Sunkist even though they may be profit making operations." In other words, the nonproducer members had the same status as producer members, including the right to vote.

The case did not involve the question of nonmember business, but only involved the question of whether Sunkist had the protection of the Capper-Volstead Act in view of its nonproducer members. The court held that these nonproducer members barred Sunkist from using the Capper-Volstead Act as a defense to the suit based on section 1 of the Sherman Act.

After Sunkist was reorganized, it was held to meet the conditions of the Capper-Volstead Act by a Federal District Court in California in *Case-Swayne Co., Inc.* v. *Sunkist Growers, Inc.*, 355 F. Supp. 408 (C.D. Calif. 1971).

In the case of *United States v. Grower-Shipper Vegetable Association of California,* Civil Action No. 30561, N.D. California, the Government enjoined the defendants from limiting the production of lettuce and from destroying lettuce already grown. In due course, the case was dismissed because the lettuce agreement involved had expired, and this decision was affirmed in 344 U.S. 901.[142]

A cooperative meeting the conditions of the Capper-Volstead Act may have a legally achieved monopoly and may be a member of a common marketing agency. The fact that a court might hold that the words in that Act reading "and such associations and their

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[142]See *Agricultural Cooperatives and the Antitrust Law* by Stanley N. Barnes, then Assistant Attorney General in Charge of Antitrust Division, American Cooperation 1953, p. 26.

members may make the necessary contracts and agreements to effect such purposes" may confer some additional immunity. But, generally speaking, any such cooperative may violate the antitrust laws just the same as any other business concern.

One court summed up the situation by saying: "As has been mentioned, the Supreme Court in *Maryland and Virginia Milk Producers' Association* v. *United States, supra,* has now settled the principle that farmers may act together in a cooperative association, and the *legitimate objects* of mutual help may be carried out by the association without contravening the antitrust laws, *but that otherwise, the association acts as an entity with the same responsibility under Section 2 of the Sherman Act as if it were a private business corporation."* [143] (Emphasis added.)

A number of cases have arisen under the Fisheries Co-Operative Marketing Act (15 U.S.C. 521), which is similar in language and purpose to the Capper-Volstead Act, and the Fisheries Act has consistently been construed in the same way that the Capper-Volstead Act has been.[144]

The Grain Futures Act provides that associations of producers meeting certain terms and conditions may be admitted to membership on boards of trade, subject to that Act, but does not define what shall constitute such a cooperative. An association was denied membership in the Chicago Board of Trade Clearing Corporation and instituted proceedings for the purpose of obtaining membership. The commission provided for by the Grain Futures Act suspended the Board of Trade of the City of Chicago because it refused to admit the cooperative to membership in the Board of Trade Clearing Corporation and the Board of Trade then appealed.

The court held that the Capper-Volstead Act should be used as a guide in determining if the cooperative was a cooperative from the standpoint of the Grain Futures Act; and also that if upon further consideration by the commission, necessitated by the insufficiency of the evidence, it was found that the cooperative had done more business with nonmembers than with members, it

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[143] *North Texas Producers Association* v. *Metzger Dairies, Inc.,* 348 F. 2d 189 (5th Cir. 1965), *certiorari denied,* 382 U.S. 977 (1966).

[144] *McHugh* v. *United States,* 230 F. 2d 252; *Manaka* v. *Monterey Sardine Industries,* 41 F. Supp. 531; *Local 36 of International Fishermen & Allied Workers of America* v. *United States,* 177 F. 2d 320; *Hinton* v. *Columbia River Packers Ass'n,* 131 F. 2d 88. See also Garstang, *Fisheries,* 33 A. B. A. Antitrust L.J. 14 (1967).

would not be entitled to membership in the Board of Trade Clearing Corporation.[145]

Among other things the court said:

> The Capper-Volstead Act, which authorized cooperative associations, was to that extent in derogation of the antitrust laws; and it was clearly the intent of Congress, in adopting the act, to guard against creation thereunder of combinations that might tend to monopoly beyond the extent authorized by the Capper-Volstead Act.

In the case earlier cited, which involved the Farmers' Livestock Commission Company, it was held that the Act authorizes associations to have marketing agencies in common. In this connection, the following is taken from an opinion of the Attorney General of the United States:

> This language fairly imports that such producers, for such purposes, may cooperate through any organization, incorporated or unincoporated, for the accomplishment of the purposes stated, so long as the only persons interested in the organization are producers, and its operations are conducted solely for their mutual benefit. The statute imposes no restriction upon the business forms of cooperation and association which may be employed to effectively organize cooperative associations of agricultural producers for handling and marketing their products. Obviously, it is convenient, if not indeed necessary, to any effective cooperative association, that local associations should act through centralized marketing agencies in disposing of the products of their members, and that they should, in representation of their members, hold stock in such centralized marketing agencies; I cannot doubt, in view of the purpose of the Capper-Volstead Act, that such methods of cooperation and association between agricultural producers were intended to be authorized under the very broad language of this statute.[146]

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[145] *Board of Trade of City of Chicago* v. *Wallace,* 67 F. 2d 402, 408 (7th Cir. 1933).

[146] 36 Ops. Att'y Gen. 326, 339.

In view of the interpretation placed upon the antitrust statutes by the Supreme Court of the United States in several cases, it is arguable that the Capper-Volstead Act was not, strictly speaking, required for the purpose of giving authority to farmers to form associations, but that the organization of cooperative associations was permissible under the antitrust statutes.

In a case involving the right of independent producers of coal to act together in the marketing of coal, the Supreme Court said:

> We agree that there is no ground for holding defendants' plan illegal merely because they have not integrated their properties and have chosen to maintain their independent plants, seeking not to limit but rather to facilitate production. We know of no public policy, and none is suggested by the terms of the Sherman Act, that, in order to comply with the law, those engaged in industry should be driven to unify their properties and businesses, in order to correct abuses which may be corrected by less drastic measures. Public policy might indeed be deemed to point in a different direction. If mere size of a single, embracing entity is not enough to bring a combination in corporate form within the statutory inhibition, the mere number and extent of the production of those engaged in a cooperative endeavor to remedy evils which may exist in an industry, and to improve competitive conditions, should not be regarded as producing illegality. The argument that integration may be considered a normal expansion of business, while a combination of independent producers in a common selling agency should be treated as abnormal—that one is a legitimate enterprise and the other is not—makes but an artificial distinction. The Anti-Trust Act aims at substance. Nothing in theory or experience indicates that the selection of a common selling agency to represent a number of producers should be deemed to be more abnormal than the formation of a huge corporation bringing various independent units into one ownership.[147]

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[147] *Appalachian Coals, Inc.* v. *United States,* 288 U.S. 344, 376, 53 S. Ct. 471, 77 L. Ed. 825. See also *Filene's Sons Co.* v. *Fashion Originators' Guild of America, Inc.,* 14 F. Supp. 353; *Spielman Motor Sales Co., Inc.* v. *Dodge,* 8 F.

Many articles have been written about section 6 of the Clayton Act and the Capper-Volstead Act. Some of them are listed on page 320.

Robinson-Patman Act

The Robinson-Patman Act (15 U.S.C. 13 *et seq.*) was enacted in 1936. It applies to cooperatives just as it does to other business concerns.

The Act prohibits the sale of commodities of the same grade and quality at prices that are discriminatory.[148] The Act provides "that nothing herein contained shall prevent differentials which make only due allowance for differences in the cost of manufacture, sale, or delivery resulting from the differing methods or quantities in which such commodities are to such purchasers sold or delivered."

Thus the Act permits a seller, if he desires to do so, to give a buyer every saving attributable to quantity purchases of the merchandise in question. Someone has said that one object of the Act was to enable a small dealer to buy merchandise on a basis of substantial equality with the prices paid by a large dealer.

The Federal Trade Commission has held on several occasions that quantity discounts, based upon deliveries to a chain store system, should be determined by the quantities delivered to each individual warehouse.[149]

Sellers under the Act may classify their customers according to function as wholesalers or jobbers and retailers and may within reasonable limits accord to each class a special price or series of prices.

Supp. 437; *Indiana Farmer's Guide Publishing Co.* v. *Prairie Farmer Publishing Co.*, 70 F. 2d 3, *reversed in* 293 U.S. 268, 55 S. Ct. 182, 79 L. Ed. 356.

As to the "rule of reason" mentioned in *Appalachian Coals, Inc.*, see *Standard Oil of New Jersey* v. *United States,* 221 U.S. 1, 31 S. Ct. 502, 55 L. Ed. 619, 34 L.R.A. (N.S.) 834, Ann. Cas. 1912D 734; *United States* v. *American Tobacco Co.*, 221 U.S. 106, 31 S. Ct. 632, 55 L. Ed. 663; *United States* v. *United States Steel Corporation,* 251 U.S. 417, 40 S. Ct. 293, 64 L. Ed. 343, 8 A.L.R. 1121; *Board of Trade of the City of Chicago* v. *United States,* 246 U.S. 231, 38 S. Ct. 242, 62 L. Ed. 683; *National Association of Window Glass Manufacturers* v. *United States,* 263 U.S. 403, 44 S. Ct. 148, 68 L. Ed. 358. See also *The Rule of Reason in Loose-knit Combination,* 32 Colum. L. Rev. 291 (1932).

[148] *Tri-Valley Packing Association* v. *F.T.C.,* 329 F. 2d 694, 60 F.T.C. 2073 (9th Cir. 1964).

[149] Docket No. 3299, *H.C. Brill Company, Inc.*

A case which dealt with functional classification involved county farm bureaus. County farm bureaus purchased seed inoculants at jobbers' prices less 20 per cent. They then sold to jobbers, to retailers, and to consumers on a functional price basis. In holding the sales to the county farm bureaus in violation of the Robinson-Patman Act, the Federal Trade Commission said:

> These county farm bureaus are direct competitors of independent retail merchants buying at higher prices. When, in fact, jobbing services are rendered by State or county farm bureaus, nothing herein contained shall preclude jobber prices on that portion which is jobbed.[150]

In determining whether a given sale is discriminatory, the net amount received by the seller for the goods is all important. This means that all terms, discounts, and allowances for services and concessions of every character and description must be taken into consideration.

Although the statute does not require that the terms of sale be identical in each case, yet if by means of the terms given, a price advantage is obtained, this would appear to violate the law.

While a seller who grants a discriminatory price thereby violates the law under section 2 (f) of the Act, the buyer is guilty of violating the statute only in case he knows that the price allowed him is discriminatory.

In all cases, for differences in prices of goods to constitute a violation of the statute, there must be a tendency to create a monopoly or to injure competition.[151]

If a seller follows the practice of making allowances for advertising and for promotional expenses, such allowances must be made available to all competing buyers on proportionally equal terms.

Under the statute, the only persons entitled to be paid brokerage are those who function independently as brokers. A buyer may not receive, either directly or through a subsidiary, brokerage fees or allowances in lieu thereof from the seller on pur-

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[150] *American Co-op Serum Ass'n* v. *Anchor Serum Co.*, 153 F. 2d 907, *certiorari denied*, 329 U.S. 721, 67 S. Ct. 57, 91 L. Ed. 625, *rehearing denied*, 329 U.S. 826.

[151] Docket No. 2935, *Kraft-Phoenix Cheese Corporation.*

chases of goods, even though some services may be rendered by the buyer in connection with their sale.[152]

The payment of commissions to a federated cooperative on sales made by a manufacturer to its member cooperatives was held to be a violation of law.[153]

In a case involving a cooperative, it was held that it could refuse to sell in carload lots to a potential buyer and that this did not violate the statute.[154]

Under certain conditions promotional allowances may be made to a buyer without the seller violating 15 U.S.C. 13(d).[155]

A contract that violates the Robinson-Patman Act is not enforceable.[156]

The fact that the Act permits a cooperative to pay patronage dividends does not authorize a cooperative to violate other provisions of that Act or to engage in practices forbidden by that Act.[157]

In a treble damage action under section 2 of the Clayton Act, as amended by the Robinson-Patman Act, it appeared that the Standard Oil Company of California had sold gasoline and oil to its brand dealers at lower prices than it charged plaintiff who was in competition with them, and this was held to be a violation of law. In addition, the company sold gasoline to Signal Oil at a price lower than it charged plaintiff; and Signal Oil then sold this gasoline to its subsidiary Western Hyway, which in turn sold this gasoline to its subsidiary Regal Stations Company, which was a competitor of the plaintiff.

The plaintiff contended and the jury found that the lower prices charged Signal Oil were passed on to its subsidiary Western Hyway and then on to Western's subsidiary, Regal Stations Company. The trial of this case resulted in a judgment, after trebling the damages found by the jury and after adding attorney fees, of $1,298,213.71, which was approved by the Supreme Court.[158]

[152] *Western Fruit Growers Sales Co.* v. *F.T.C.,* 322 F. 2d 67.

[153] *Kentucky Rural Elec. Co-op Corp.* v. *Moloney Elec. Co.,* 282 F. 2d 481, *certiorari denied,* 365 U.S. 812, *rehearing denied,* 365 U.S. 855; *Quality Bakers of America* v. *F. T. C.,* 114 F. 2d 393.

[154] *Ben B. Schwartz & Sons, Inc.* v. *Sunkist Growers, Inc.,* 203 F. Supp. 92.

[155] *Atalanta Trading Corp. v. Federal Trade Commission,* 258 F. 2d 365.

[156] *Rathe v. Yakima Valley Grape Growers,* 30 Wash. 2d 436, 192 P. 2d 349.

[157] *Quality Bakers of America* v. *Federal Trade Commission,* 114 F. 2d 393. *Special Position, If Any, Of Cooperative Under Robinson-Patman Act,* G.N. Shameyo, M.H. Van Sustern, 1950 Wis. L. Rev. 119-129.

[158] *Perkins* v. *Standard Oil Co.,* 395 U.S. 642 (1969).

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Classification of Agriculture

The provisions of the Capper-Volstead Act, excepting producers' associations from the antitrust laws to the extent indicated in the discussion under "Antitrust Laws," appear to be founded on a real distinction and to be entirely reasonable. Agriculture is fundamentally different from other industries.

The number engaged in agriculture or any branch of it, the distances separating them, the conditions incident to the production of agricultural products, the inherent difficulties involved in controlling acreage, the variableness of production due to climatic conditions—the caprice of the seasons—and the number of agricultural products that may be substituted for each other seem to afford a reasonable basis for classification. Other instances of classification appear to have no more justification. For instance, the Federal Trade Commission Act[1] condemns unfair competition by those engaged in interstate or foreign commerce, but banks are specifically excepted from the provisions of that Act, which has been repeatedly upheld by the Supreme Court of the United States.[2]

There appears to be nothing in the Capper-Volstead Act that could be said to violate any clause in the Federal Constitution.

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[1]38 Stat. 717; 15 U.S.C. 41 *et seq.*

[2]*Federal Trade Commission* v. *Gratz,* 253 U.S. 421 (1920); *Federal Trade Commission* v. *Winsted Hosiery Co.,* 258 U.S. 483 (1922).

OTHER PUBLICATIONS AVAILABLE

More detailed information on particular steps in the cooperative-forming process is in other publications of the Farmer Cooperative Service listed below. For copies, write Farmer Cooperative Service, U.S. Department of Agriculture, Washington, D.C. 20250.

Capper-Volstead Impact on Cooperative Structure. Joseph G. Knapp. 1975. Information 97. 42 pp.

Understanding Capper-Volstead. David Volkin. 1974. Reprint 392 from News for Farmer Cooperatives. 5 pp.

Improving Management of Farmer Cooperatives. Milton L. Manuel. Revised 1973. General Report 120. 47 pp.

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Managing Farmer Cooperatives. Kelsey B. Gardner. 1963. Educational Circular 17. 20 pp.

How the Adjustable Revolving Fund Capital Plan Works. Nelda Griffin. 1963. General Report 111. 8 pp.

What Are Patronage Refunds? Kelsey B. Gardner. 1963. Information 34. 15 pp.

Handling Net Margins Under the New Tax Law. Raymond J. Mischler. 1963. Information 39. 12 pp.

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FARMER COOPERATIVE SERVICE
U.S. DEPARTMENT OF AGRICULTURE

Farmer Cooperative Service provides research, managment, and educational assistance to cooperatives to strengthen the economic position of farmers and other rural residents. It works directly with cooperative leaders and Federal and State agencies to improve organization, leadership, and operation of cooperatives and to give guidance to further development.

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