

Pacific R. R. Co. v. Danuser, 6 S. W. (2d) 907. The title of the present act satisfies these requirements. One having but slight familiarity with earlier Missouri legislation would have known that upon the enactment of legislation dealing with corporations having a non-par stock, some method of assigning a value to such stock might appropriately be adopted in order to adapt and subject the new type of corporation to existing legislation. This purpose was plainly and sufficiently anticipated in the title of the present act. It was not necessary that the title should go further and indicate the earlier laws which were thus made applicable to the new type of corporation.

Affirmed.

MR. JUSTICE McREYNOLDS thinks the effect of the statute is to tax property beyond the state.

UNITED STATES *v.* AMERICAN LIVESTOCK
COMMISSION COMPANY ET AL.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES
FOR THE WESTERN DISTRICT OF OKLAHOMA.

No. 513. Argued March 5, 1929.—Decided May 20, 1929.

1. A boycott of one by others of the dealers or market agencies on a live-stock exchange may be an unfair practice within the meaning of the Packers & Stockyards Act. P. 436.
2. Though part of the dealings of a duly registered co-operative market agency may have been ultra vires, the maintenance of a general boycott against it on this account by other associations is not justified; and, under the Packers and Stockyards Act, the Secretary of Agriculture has authority to order the discontinuance of the discriminatory practice, to the extent at least that it applied to the legitimate business of the complainant. P. 437.
3. A co-operative association organized under the state laws and found by the Secretary of Agriculture to be duly registered as a market agency under the Packers & Stockyards Act is within the

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protection of that Act, notwithstanding that its powers are limited to the handling of the live-stock of its members. P. 438. 28 F. (2d) 63, reversed.

APPEAL by the United States from a decree of a District Court of three judges, which granted an injunction restraining the enforcement of an order of the Secretary of Agriculture requiring the discontinuance by respondents of a boycott of the Producers Commission Association at the Oklahoma National Stockyards.

Attorney General Mitchell, with whom *Assistant to the Attorney General Donovan* and *Mr. H. B. Teegarden*, Special Assistant to the Attorney General, were on the brief, for the United States.

Mr. C. E. Hall, with whom *Mr. Fred E. Suits* was on the brief, for appellees.

MR. JUSTICE HOLMES delivered the opinion of the Court.

This is a proceeding under the Packers & Stockyards Act, 1921, Act of August 15, 1921, c. 64, § 316, 42 Stat. 159, 168. U. S. Code, Title 7, § 217. The American Livestock Association and others seek an injunction against the carrying out of an order of the Secretary of Agriculture requiring them to discontinue a boycott by which they refused dealings with the Producers Commission Association at the Oklahoma National Stock Yards. A District Court of three judges granted the injunction. 28 F. (2d) 63. The United States appealed.

The Secretary found the existence of the boycott, the persistent refusal to buy or sell live stock from or to the Producers Commission Association, and that the American Livestock Association and its fellow conspirators thereby restrained commerce and discriminated unfairly against the Producers Commission Association contrary

to the statute. The appellees urge that there is nothing to prevent their dealing or refusing to deal with whom they choose. But we think that it does not need argument to show that a boycott of a dealer in a stockyard may be an unfair practice under the Act as it is found to have been in this case. *Eastern States Retail Lumber Dealers' Association v. United States*, 234 U. S. 600. We pass at once to the only real question in debate.

The Producers Commission Association is a coöperative association for mutual help under the laws of Oklahoma and is forbidden to "handle the agricultural or horticultural product of any non-member except for storage." It is agreed that "the record contains no evidence as to whether the live stock which the Producers Commission Association bought or sold or attempted to buy or sell upon the Oklahoma City Stockyards was or was not the live stock of its members." It is said so far as appears all the sales were *ultra vires* and that the appellees should not be enjoined from refusing to coöperate in an illegal act. But apart from the presumption that the corporation was acting only within its powers and from the burden resting on the doer of a *prima facie* illegal act, the boycott, to justify it, we agree with the Government that it would be absurd to suppose that a coöperative society organized for the special purpose of aiding its members should confine its business to the illegal sale of the products of non-members. If not all, we must assume that some at least of its business was legitimate and that to some extent it might sell live stock that its members produced. But the boycott was general, intended it would seem to drive the Producers Commission Association out of business. That association was a competitor of the appellees and the suggestion that it was acting *ultra vires* sounds like an afterthought and cannot be supposed to have been the motive for the act. It is said that motive does not matter, but motive may be very material when

it is sought to justify what until justified is a wrong. But, whatever the motive, nothing is shown or suggested by the evidence to justify the general boycott that the Secretary's order forbade. The Secretary's order should be enforced, but without prejudice to the right of the appellees to refuse to deal with the Producers Commission Association in matters beyond its power.

A suggestion was made that the last named association was not within the protection of the Act of Congress. We see nothing in the limitation of its powers to prevent it, the statute seems to recognize it, § 306 (f), and the corporation was found by the Secretary to be a market agency duly registered as such.

Decree reversed.

EX PARTE BAKELITE CORPORATION.

PETITION FOR WRIT OF PROHIBITION.

No. 17 Original. Argued January 2, 3, 1929.—Decided May 20, 1929.

1. The power of this Court to issue a writ of prohibition need not be determined in a case where, assuming the power to exist, there is no basis for exercising it. *P. 448.*
2. Article III of the Constitution does not express the full authority of Congress to create courts. Other Articles invest Congress with powers in the exertion of which it may create inferior courts and clothe them with functions deemed essential or helpful in carrying these powers into execution. *P. 449.*
3. Courts established under the specific power given in § 2 of Article III are called constitutional courts. They share in the exercise of the judicial power defined in that section, can be invested with no other jurisdiction, and have judges who hold office during good behavior, with no power in Congress to provide otherwise. *Id.*
4. Courts created by Congress in the exertion of other powers are called legislative courts. Their functions always are directed to the execution of one or more of such powers and are prescribed by Congress independently of § 2 of Article III; and their judges hold for such term as Congress prescribes, whether it be a fixed period of years or during good behavior. *Id.*