liability is imposed is the common carrier. The statute is not like the Hours of Service Act of March 4, 1907, c. 2939, § 3, 34 Stat. 1415; Code, Title 45, § 63; that in terms extends the liability to officers and agents. It seems to us plain that as between the Board of Harbor Commissioners and California the carrier here is the State, by which it is agreed that the Road was owned and operated, which received such pay as was required for the work that was done, and which did the work for the purpose of facilitating the commerce of its principal port. The principal and its agents cannot both be the common carriers aimed at. One is and the other is not subjected to the penalty. One is superior, the other inferior. The superior is the one that operated the road and the one whose commands the others were bound to obey.

The suit is brought against the appellants individually. This is conceded by the Government and sufficiently appears from the declaration and from the judgment against them by name, entered after they had ceased to be members of the Board. Manifestly if we are right in what we have said the judgment is wrong and we are relieved from the duty of considering whether the Safety Appliance Act should be construed to embrace the State.

An answer to other questions proposed is unnecessary because of our conclusion that the judgment against the defendants cannot be sustained.

Judgment reversed.

PARAMOUNT FAMOUS LASKY CORPORATION ET AL. *v.* UNITED STATES.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

No. 83. Argued October 27, 1930.—Decided November 24, 1930.

Ten corporations, competitors in the business of supplying the film prints used by exhibitors of motion pictures throughout the Union and controlling 60% of that business, agreed amongst themselves to contract with exhibitors for future exhibition of pictures

only by a standard form of contract which, in connection with certain rules, required, among other things: That disputes and claims under the contract be submitted to a board of arbitration; that the award be accepted as conclusive; that, upon failure of the contracting exhibitor to submit to arbitration or to abide by an award, the distributor party to that contract, and all others having like contracts with such exhibitor, must demand security from him on each of their contracts; that those to whom he failed to pay security within a time fixed must suspend service under their contracts until he paid it or complied with the award; that when service under a contract had been so suspended ten days, the distributor party might cancel it; and that no distributor, having so suspended service, should resume it before the exhibitor furnished the security or obeyed the award. *Held:*

1. That the necessary and inevitable tendency of the agreement and combination is to produce material and unreasonable restraint of interstate commerce in violation of the Sherman Act. P. 41.

2. The fact that the standard exhibition contract and rules of arbitration were evolved after six years of discussion and experimentation does not show that they were either normal or reasonable regulations. The arrangement existing between the parties is unusual and necessarily and directly tends to destroy the kind of competition to which the public has long looked for protection. P. 43.

3. The Sherman Act seeks to protect the public against evils commonly incident to the unreasonable destruction of competition and no length of discussion or experimentation amongst parties to a combination which produces the inhibited result can give validity to their action. *Id.*

4. It may be that arbitration is well adapted to the needs of the motion picture industry; but when under the guise of arbitration parties enter into unusual arrangements which unreasonably suppress normal competition their action becomes illegal. *Id.*

5. In order to establish violation of the Sherman Act it is not necessary to show that the challenged arrangement suppresses all competition between the parties or that the parties themselves are discontented with the arrangement. The interest of the public in the preservation of competition is the primary consideration. P. 44.

6. The prohibitions of the statute cannot be evaded by good motives. *Id.*

34 F. (2d) 984, affirmed.

APPEAL from a decree of the District Court condemning an agreement and combination of appellants under the Sherman Act.

Messrs. Cornelius W. Wickersham and *John W. Davis,* with whom *Messrs. Henry W. Taft, Paxton Blair, Arthur L. Fisk, Jr.,* and *Gabriel L. Hess* were on the brief, for appellants.

The standard contract and rules of arbitration, having been evolved after six years of discussion and experimentation, are reasonable and normal regulations for the intelligent conduct of the industry; so that whatever restraint they produce falls short of unlawful coercion. *Chicago Board of Trade* v. *United States,* 246 U. S. 231, 238; *United States* v. *American Tobacco Co.,* 221 U. S. 106, 179; *Maple Flooring Assn.* v. *United States,* 268 U. S. 563, 583; *United States* v. *Addyston Pipe Co.,* 85 Fed. 271, 283, affirmed, 175 U. S. 211, 248.

That the contract was discussed at a trade practice conference and approved by the Federal Trade Commission is evidence of its reasonableness.

The impetus toward standardization came from the exhibitors themselves. A uniform contract had become a trade necessity. They were largely responsible for its terms. These aim to combat specific evils and are reasonably commensurate with the necessities of the case .

The procedure adopted and the standardization resulting are in line with a current industrial trend. Arbitration is well adapted to the needs of the motion picture industry. The necessity for the speedy termination of disputes results from the concatenation of interests in each particular film. Not only is the carrying on of litigation a costly process, involving the retention by the distributors of local counsel in scores of different towns where a dispute with an exhibitor might arise, but it is costly by reason of its slowness. For during the pendency

of a suit over a film, the distributor can do nothing to mitigate his damages, and by the end of the litigation the film may have a greatly reduced rental value or none at all. Similarly, an exhibitor at the end of a litigation may find himself forced to exhibit a picture so ancient that its exhibition would injuriously affect his good will.

Arbitration has an ethical aspect; it has stabilized the industry, improved its moral tone and eliminated causes of friction. Current public policy, as manifested in recent statutes, favors arbitration.

The manner in which the contract and rules have worked out in practice, and the significant absence of complaints, reflect their reasonable character. There has been no reduction of competition.

The enforcement methods are reasonable and have been applied fairly by the film boards of trade.

It is not at all uncommon, in the case of a credit bureau or association, for all the members of the association, either by agreement or following their individual business judgment, to refuse to deal with a customer listed as delinquent. This practice has over and over again been sanctioned by the courts and is regarded as perfectly proper. *United States* v. *Fur Dressers Assn.*, 5 F. (2d) 869; *Putnal* v. *Inman*, 76 Fla. 553; *Brewster* v. *Miller's Sons Co.*, 101 Ky. 368; *Reynolds* v. *Plumbers' Assn.*, 30 Misc. 709, 63 N. Y. Supp. 303; *Delz* v. *Winfree*, 6 Tex. Civ. App. 11; *Woodhouse* v. *Powles*, 43 Wash. 617. Cf. *Cement Mfrs. Assn.* v. *United States*, 268 U. S. 588, 604; *United States* v. *King*, 229 Fed. 275, 278.

The exhibitors have given unequivocal evidence of their endorsement of the contract and rules. The decree is inconsistent with the facts stipulated of record as well as with the court's findings of fact.

The injunction should be directed solely against the so-called "supplemental agreements."

Assistant to the Attorney General O'Brian, with whom *Attorney General Mitchell* and *Messrs. Claude R. Branch, Charles H. Weston,* and *C. Stanley Thompson,* Special Assistants to the Attorney General, were on the brief, for the United States.

The distributors of motion picture films, who together control the business of distribution, have agreed not to contract with any exhibitor for the future exhibition of films unless the exhibitor accepts the arbitration provisions of the standard exhibition contract. These provisions require the exhibitor to submit all claims or controversies arising under that contract to arbitration according to the rules of arbitration incorporated therein. These provisions and rules further permit and require enforcement of arbitration and arbitration awards by a simultaneous demand, by every distributor having a contract with an exhibitor who has not complied with an arbitration award on any contract with a distributor, for payment of security on every existing contract and, if the required security is not paid, for suspension of service on his contracts. The distributors also may cancel any contract upon which service has been so suspended for a period of ten days. This Court has frequently held that similar combinations not to deal, or to deal only on conditions imposed by the combination, constitute an illegal restraint of trade. *Eastern States Lumber Assn.* v. *United States,* 234 U. S. 600; *Anderson* v. *Shipowners Assn.,* 272 U. S. 359; *Montague & Co.* v. *Lowry,* 193 U. S. 38; *Loewe* v. *Lawlor,* 208 U. S. 274; *Binderup* v. *Pathe Exchange,* 263 U. S. 291; *Thomsen* v. *Cayser,* 243 U. S. 66; *Addyston Pipe Co.* v. *United States,* 175 U. S. 211; *Cement Mfrs. Assn.* v. *United States,* 268 U. S. 588; *Wolff Company* v. *Industrial Court,* 262 U. S. 522; *In re Debs,* 158 U. S. 564, 581; *Majestic Theatre Co.* v. *United Artists Corp.,* 43 F. (2d) 991.

The means adopted by appellants to enforce such arbitration by a concerted demand for the payment of security, to be followed by suspending service on the contract if security is not forthcoming, is also an unreasonable restraint of trade. This Court has indicated that it is illegal for members of a trade group to agree not to extend credit to customers whose accounts with any member of the group are overdue. *Cement Mfrs. Assn.* v. *United States,* 268 U. S. 588.

The arbitration provisions of the standard exhibition contract and the manner in which they have been enforced are unfair and unjust to the exhibitors. All exhibitors outside the State of New York are compelled to arbitrate under the law of a foreign jurisdiction. The situation of distributors in so arbitrating is very different, since they are large companies guided by New York counsel. Distributors can always appear in person before the arbitration boards, which sit in certain central cities where the distributors have exchange managers. Exhibitors, on the other hand, in very many cases can not afford the time or money necessary to travel to these cities to present their arbitration cases in person. The secretary of the arbitration board participates in their deliberations and frequently the secretary of the board is the secretary of the local film board, an association of the local exchange managers of the distributors. The distributor representatives on the arbitration boards are chosen by a highly organized group in constant personal contact with each other. There is no comparable organization or personal contact of the exhibitors from whom exhibitor members of the arbitration boards are selected. In addition, the general counsel of the distributors' national organization has influenced the decisions of the arbitration boards by constant interpretation, instruction, and advice to the distributor members of these boards. The records of an

arbitration board which were stipulated to be typical of the operation of other arbitration boards show that almost all claims presented by distributors were decided in their favor, although exhibitors were successful in only a little over half of the claims presented by them and also, and perhaps more important, that over ninety-four per cent. of the claims on which the board acted were filed by distributors.

The history and antecedents of the arbitration provisions of the standard contract indicate that a great majority of the exhibitors whose theaters are not owned or controlled by distributors or producers disapprove these provisions.

MR. JUSTICE MCREYNOLDS delivered the opinion of the Court.

By this proceeding the United States seek to prevent further violation of Section 1, Act of Congress approved July 2, 1890 (Sherman Act), c. 647, 26 Stat. 209, through an alleged combination and conspiracy to restrain interstate commerce in motion picture films.

Appellants are the Paramount Famous Lasky Corporation and nine other Corporations (Distributors), producers and distributors throughout the Union of sixty per cent of the films used for displaying motion pictures by some 25,000 theatre owners (Exhibitors); the Motion Picture Producers and Distributors of America, a corporation with class "B" membership composed of the above-mentioned Distributors; and thirty-two Film Boards of Trade, which severally function within certain defined Regions.

Each Distributor produces and then distributes films through its own exchanges maintained in thirty-two centrally located cities—Albany, Atlanta, Chicago, Los Angeles, etc. Each of these exchanges has a manager and under his supervision contracts are made for the use of

his Distributor's films within the designated territory or region and thereafter placed in the hands of the Exhibitors. Other Distributors, who with Appellants control 98% of the entire business, also have managers with like duties in the same cities. In each Region all of these managers are associated through and constitute the entire membership of the local Film Board of Trade.

Under the common practice, in the Spring, when most of the pictures are still only in contemplation, each Distributor announces its intended program of distribution for twelve months. After this announcement Exhibitors are solicited to enter into written contracts for permission to display such of the pictures as they desire. And as no Distributor can offer enough pictures to supply the average Exhibitor's full requirement, he must deal with several.

Under an agreement amongst themselves Appellant Distributors will only contract with Exhibitors according to the terms of the Standard Exhibition Contract, dated May 1, 1928. Ordinarily neither party gives security for compliance with such agreements, by cash deposit or otherwise.

This Standard Contract is an elaborate document, covering eight pages of the record. Under it the Distributor licenses the Exhibitor to display specified photo plays at a designated theatre on definite dates. Provision is made for cash payment three days in advance of any shipment, time and place of delivery, return of the prints, etc., etc. Section 18 (copied in the margin)* provides in substance that each party shall submit any controversy that may

*Eighteenth. The parties hereto agree that before either of them shall resort to any court to determine, enforce or protect the legal rights of either hereunder, each shall submit to the Board of Arbitration (established or constituted pursuant to the Rules of Arbitration filed with the American Arbitration Association, 342 Madison Avenue, New York City, bearing date May 1, 1928 and identified by the sig-

arise to a Board of Arbitration, in the city where the Distributor's Exchange is located, established under and controlled by written rules adopted May 1, 1928; accept as conclusive the findings of this Board; and forego the right to trial by jury. And further:

"In the event that the Exhibitor shall fail or refuse to consent to submit to arbitration any claim or controversy arising under this or any other Standard Exhibition Con-

---

natures of the Contract Committee appointed at the 1927 Motion Picture Trade Practice Conference, a copy of which will be furnished to the Exhibitor upon request in the city wherein is situated the exchange of the Distributor from which the Exhibitor is served or if there be no such Board of Arbitration in such city then to the Board of Arbitration in the city nearest thereto (unless the parties hereto agree in writing that such submission shall be made to a Board of Arbitration located in another specified city), all claims and controversies arising hereunder for determination pursuant to the said Rules of Arbitration and the rules of procedure and practice adopted by such Board of Arbitration.

The parties hereto further agree to abide by and forthwith comply with any decision and award of such Board of Arbitration in any such arbitration proceeding, and agree and consent that any such decision or award shall be enforceable in or by any court of competent jurisdiction pursuant to the laws of such jurisdiction now or hereafter in force; and each party hereto hereby waives the right of trial by jury upon any issue arising under this contract, and agrees to accept as conclusive the findings of fact made by any such Board of Arbitration, and consents to the introduction of such findings in evidence in any judicial proceeding.

In the event that the Exhibitor shall fail or refuse to consent to submit to arbitration any claim or controversy arising under this or any other Standard Exhibition Contract which the Exhibitor may have with the Distributor or any other distributor or to abide by and forthwith comply with any decision or award of such Board of Arbitration upon any such claim or controversy so submitted, the Distributor may, at its option, demand, for its protection and as security for the performance by the Exhibitor of this and all other existing contracts between the parties hereto, payment by the Exhibitor of an additional sum not exceeding $500 under each existing contract, such sum to be retained by the Distributor until the complete performance

tract which the Exhibitor may have with the Distributor or any other distributor or to abide by and forthwith comply with any decision or award of such Board of Arbitration upon any such claim or controversy so submitted, the Distributor may, at its option, demand, for its protection and as security for the performance by the Exhibitor of this and all other existing contracts between the parties hereto, payment by the Exhibitor of an additional sum not exceeding $500 under each existing contract, such sum to

---

of all such contracts and then applied, at the option of the Distributor, against any sums finally due or against any damages determined by said Board of Arbitration to be due to the Distributor, the balance if any to be returned to the Exhibitor; and in the event of the Exhibitor's failure to pay such additonal sum within seven (7) days after demand, the Distributor may by written notice to the Exhibitor suspend service hereunder until said sum shall be paid and/or terminate this contract.

In the event that the Distributor shall fail or refuse to consent to the submission to arbitration of any claim or controversy arising under this or any other Standard Exhibition Contract providing for arbitration which the Distributor may have with the Exhibitor, or to abide by and forthwith comply with any decision or award of such Board of Arbitration upon any such claim or controversy so submitted, within the number of days specified in Article Twenty-Second opposite the name of the City in which such Board of Arbitration is located, the Exhibitor may at his option terminate this and any other existing contract between the Exhibitor and the Distributor by mailing notice by registered mail within two (2) weeks after such failure or refusal, and in addition the Distributor shall not be entitled to redress from such Board of Arbitration upon any claim or claims against any exhibitor until the Distributor shall have complied with such decision, and in the meanwhile the provisions of the first paragraph of this Article Eighteenth shall not apply to any such claim or claims.

Any such termination by either party, however, shall be without prejudice to any other right or remedy which the party so terminating may have by reason of any such breach of contract by the other party.

The provisions of this contract relating to arbitration shall be construed according to the law of the State of New York.

be retained by the Distributor until the complete performance of all such contracts and then applied, at the option of the Distributor, against any sums finally due or against any damages determined by said Board of Arbitration to be due to the Distributor, the balance, if any to be returned to the Exhibitor; and in the event of the Exhibitor's failure to pay such additional sum within seven (7) days after demand, the Distributor may by written notice to the Exhibitor suspend service hereunder until said sum shall be paid and/or terminate this contract."

The Rules of Arbitration provide for a Board, three of whom shall be members of the local Film Board of Trade and three proprietors or managers of theatres in its region. This Arbitration Board shall have power to determine the controversy, make findings, direct what shall be done with respect to the dispute; "and shall fix the maximum amount" (not exceeding $500) which each Distributor may demand as security pursuant to the arbitration clause in the event of the failure of the Exhibitor to submit to arbitration or to comply with the award. The secretary of the Board of Arbitration is required to notify the secretary of the Film Board of Trade of the name and address of each Exhibitor found to have refused to arbitrate or comply with an award, and the maximum amount of security (not above $500) found by the Board. "On receipt of any such notice, each member having a contract (or representing a distributor having a contract) containing the arbitration clause with any such exhibitor shall demand payment by such exhibitor of such sum as in the judgment of such member or distributor shall be sufficient to protect such member or distributor in the performance of each contract with such exhibitor. Said sum shall not exceed the actual value of any print thereafter to be delivered under each such contract plus the maximum amount fixed by the Board of Arbitration as

aforesaid. Thereafter each distributor (represented in the membership) to whom such exhibitor shall have failed within seven (7) days to pay the amount of security so demanded by such distributor shall proceed to suspend service under each such contract until such exhibitor shall have furnished such security or complied with the decision of such Arbitration Board. If service under any such contract shall be so suspended for a period of ten days such contract, at the option of the distributor, may then be cancelled. No member or distributor having so suspended service under any such contract with such exhibitor shall thereafter resume service under any such contract unless and until such exhibitor shall have furnished said security to such member or distributor or shall have complied with the decision of the Arbitration Board. Upon the happening of either of such events service under such contract shall be promptly resumed by such member or distributor."

The record discloses that ten competitors in interstate commerce, controlling sixty per cent of the entire film business, have agreed to restrict their liberty of action by refusing to contract for display of pictures except upon a Standard Form which provides for compulsory joint action by them in respect of dealings with one who fails to observe such a contract with any Distributor, all with the manifest purpose to coerce the Exhibitor and limit the freedom of trade.

The United States maintain that the necessary and inevitable tendency of the outlined agreement and combination (described with greater detail in the opinion below) is to produce material and unreasonable restraint of interstate commerce in violation of the Sherman Act. *Eastern States Lumber Assn.* v. *United States,* 234 U. S. 600, 614; *Binderup* v. *Pathe Exchange,* 263 U. S. 291, 312. The court below accepted this view and directed an ap-

propriate injunction against future action under the unlawful plan. We agree with its conclusion and the challenged decree must be affirmed.

The Appellants claim: (1) The Standard Exhibition Contract and Rules of Arbitration dated May 1, 1928, having been evolved after six years of discussion and experimentation, are reasonable and normal regulations; so that whatever restraint follows falls short of unlawful coercion. (2) Arbitration is well adapted to the needs of the motion picture industry. (3) The manner in which the Contract and Rules have worked out in practice, and the significant absence of complaints, reflect their reasonable character. (4) The decree is inconsistent with the stipulated facts, also with the Court's findings of fact.

"Founded upon broad conceptions of public policy, the prohibitions of the statute [Sherman Act] were enacted to prevent not the mere injury to an individual which would arise from the doing of the prohibited acts, but the harm to the general public which would be occasioned by the evils which it was contemplated would be prevented, and hence not only the prohibitions of the statute but the remedies which it provided were co-extensive with such conceptions." *Wilder Mfg. Co.* v. *Corn Products Co.*, 236 U. S. 165, 174. "The purpose of the Sherman Act is to prohibit monopolies, contracts and combinations which probably would unduly interfere with the free exercise of their rights by those engaged, or who wish to engage, in trade and commerce—in a word to preserve the right of freedom to trade." *United States* v. *Colgate & Co.*, 250 U. S. 300, 307. "The fundamental purpose of the Sherman Act was to secure equality of opportunity and to protect the public against evils commonly incident to destruction of competition through monopolies and combinations in restraint of trade." *Ramsay Co.* v. *Bill Posters Assn.*, 260 U. S. 501, 512. "The Sherman Act was in-

tended to secure equality of opportunity and to protect the public against evils commonly incident to monopolies and those abnormal contracts and combinations which tend directly to suppress the conflict for advantage called competition—the play of the contending forces ordinarily engendered by an honest desire for gain." *United States* v. *American Oil Co.*, 262 U. S. 371, 388.

The fact that the Standard Exhibition Contract and Rules of Arbitration were evolved after six years of discussion and experimentation does not show that they were either normal or reasonable regulations. That the arrangement existing between the parties cannot be classed among "those normal and usual agreements in aid of trade and commerce" spoken of in *Eastern States Lumber Assn.* v. *United States, supra,* 612, is manifest. Certainly it is unusual and we think it necessarily and directly tends to destroy "the kind of competition to which the public has long looked for protection." *United States* v. *American Oil Co., supra,* 390.

The Sherman Act seeks to protect the public against evils commonly incident to the unreasonable destruction of competition and no length of discussion or experimentation amongst parties to a combination which produces the inhibited result can give validity to their action. Congress has so legislated "as to prevent resort to practices which unduly restrain competition or unduly obstruct the free flow of such commerce, and private choice of means must yield to the national authority thus exerted." *Eastern States Lumber Assn.* v. *United States, supra,* 613.

It may be that arbitration is well adapted to the needs of the motion picture industry; but when under the guise of arbitration parties enter into unusual arrangements which unreasonably suppress normal competition their action becomes illegal.

In order to establish violation of the Sherman Act it is not necessary to show that the challenged arrangement suppresses all competition between the parties or that the parties themselves are discontented with the arrangement. The interest of the public in the preservation of competition is the primary consideration. The prohibitions of the statute cannot ". . . be evaded by good motives. The law is its own measure of right and wrong, of what it permits, or forbids, and the judgment of the courts cannot be set up against it in a supposed accommodation of its policy with the good intention of parties, and it may be, of some good results." *Standard Sanitary Mfg. Co.* v. *United States,* 226 U. S. 20, 49.

Upon examination of the record we cannot say that the decree of the court below is inconsistent with the stipulated facts or with proper regard to what that court held in respect of the facts.

The challenged decree must be

Affirmed.

UNITED STATES *v.* FIRST NATIONAL PICTURES, INCORPORATED, ET AL.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

No. 95. Argued October 27, 28, 1930.—Decided November 24, 1930.

Ten competing corporations, which controlled 60% of the business of supplying the motion picture films used by theatres throughout the Union and had agreed amongst themselves upon a standard form of licensing contract for dealing with exhibitors (see *Paramount Corporation* v. *United States, ante,* p. 30,) thereafter combined with other distributors, who with themselves controlled 98% of the film distribution, in establishing certain rules. Under these, whenever a theatre changed hands, the credit and business arrangements of the new proprietor were inquired into, partly through an elaborate questionnaire addressed to him, special attention being given to his wiliingness and agreement to assume contracts for film service exist-