

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 willingness and agreement to assume contracts for film service exist-

ing between his predecessor and any of the distributors; and no contract for the delivery and display of a picture, other than one for delivery in the immediate future, could be made by any distributor with any new proprietor who had not assumed such outstanding contracts, unless he furnished cash security to the distributor, fixed as provided in the rules. The effect in such cases was to prevent the exhibitor who would not assume such obligations of his predecessor, from meeting the seasonal demands of his theatre by bookings for future deliveries of film through contracts made in advance, such as were customary and necessary in this business. The rules were sought to be justified as reasonable protection against a practice of evading film service contracts by transferring the theatres to which they related. *Held* that the arrangement conflicts with the Sherman Act. P. 55.

34 F. (2d) 815, reversed.

APPEAL from a decree of the District Court refusing an injunction in a suit under the Sherman Act and dismissing the bill on the merits.

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

The distributors of motion pictures, who together have a substantial monopoly of the business of distributing motion pictures, have agreed to coerce purchasers and lessees of motion picture theaters to assume the outstanding exhibition contracts of the former owners or operators. This coercion has been exercised by agreement or concerted action by the distributors through their representatives on the local film boards, not to make exhibition contracts with the new owner of a transferred theater unless he assumes his predecessor's exhibition contracts or deposits on each new contract whatever security, up to \$1,000, is listed by the credit committee composed of three members of the local film board. Although the agreement permits a new owner to obtain pictures by "spot

booking" without assuming contracts or putting up security, regular operation of a theater through "spot booking" is not practicable.

We submit that this case is governed by the numerous decisions of this Court condemning, as an illegal restraint of trade, any agreement not to deal, or even any concerted action by members of a trade having such a purpose and effect. This Court has also said that such an agreement is equally invalid where the restraint may be removed by complying with the conditions fixed by those imposing the restraint. And it is no justification of an illegal combination in restraint of trade that the primary object of the parties to the agreement is to protect themselves against trade conditions which they consider inimical. *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. Laylor*, 208 U. S. 274, 294; *Binderup v. Pathe Exchange*, 263 U. S. 291.

This Court has held that exchange of information between members of a trade association, which merely permits the individual members to conduct their business more closely in accord with conditions in the trade, is not illegal provided there be no express or implied agreement to act in concert on the basis of such information. *Maple Flooring Assn. v. United States*, 268 U. S. 563; *Cement Mfrs. Assn. v. United States*, 268 U. S. 588. There is a clear intimation in these opinions that an agreement to act in concert upon the basis of the information exchanged constitutes a combination in illegal restraint of trade. We submit that, in this case, the illegality of appellees' agreement is manifested by the fact that they did not even purport to furnish their members with information which would enable them individually to carry on their business more intelligently, but simply gave them the information necessary to enforce collec-

tively the decisions of their local agencies. *Eastern States Lumber Assn. v. United States*, 234 U. S. 600; *American Column & Lumber Co. v. United States*, 257 U. S. 377. Distinguishing: *Chicago Board of Trade v. United States*, 246 U. S. 231; *United States v. Fur Dressers Assn.*, 5 F. (2d) 869.

The view of the court below was that the restraint imposed by appellees was justified by their common interest in preserving the integrity of contractual obligations. This, we submit, is a doctrine which would sweep aside all limitations upon collective action by trade groups. Such "common interest" of the individual distributors is to be found in the fact that each enters into similar contracts with exhibitors and desires to have those contracts fulfilled. But the making of similar contracts, and an interest in enforcing one's own contracts, are not conditions peculiar to the motion picture industry. Even if members of an industry can under any circumstances combine to set up extra-legal machinery for enforcing contracts, certainly such a combination should not be sanctioned, where, as in this case, monopolistic power is exerted to require third persons to assume contracts for which they are not morally or legally liable.

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 appellees.

Fraudulent transfers had become a widespread evil and were causing the distributors heavy losses annually.

The effect of the credit rules has been to diminish the number of fraudulent transfers; the rules have benefited the industry and improved its ethics. They are normal and reasonable trade regulations. *Chicago Board of Trade v. United States*, 246 U. S. 231, 238; *Cement Mfrs. Assn. v. United States*, 268 U. S. 588, 604; *United States*

v. *King*, 229 Fed. 275, 278; *United States v. Fur Dressers Assn.*, 5 F. (2d) 869, 873.

The credit rules are directed against transfers made for the purpose of avoiding uncompleted contracts, to persons who are almost certainly in collusion with the transferors. The transferees at whom the rules are aimed may not have defaulted on their own contracts, but they are aiders and abettors of those who have.

The principle that concerted action against delinquent debtors is not actionable and that, as a result, to include a man's name on a circulated list of such persons may not be made the basis of an action for libel if he is in fact delinquent, was sustained in the following cases: *Putnal v. Inman*, 76 Fla. 553, 556; *Brewster v. Miller's Sons Co.*, 101 Ky. 368, 381; *Reynolds v. Plumbers' Protective Assn.*, 30 Misc. (N. Y.) 709, 712, 63 N. Y. Supp. 303; *Delz v. Winfree*, 6 Tex. Civ. App. 11; *Woodhouse v. Powles*, 43 Wash. 617, 621.

Reasonable measures against losses by fraudulent debtors are forms of credit protection.

The ten-day period of investigation during which the new owner may "spot book" pictures prevents any unreasonable inconvenience to him.

The actual application and effect of the credit rules, and the absence of complaints, show the rules to be fair and reasonable.

The real burden of the Government's contention seems to be that the distributors should have permitted fraudulent transfers to continue unabated with consequent heavy losses to themselves. We submit that when those commonly interested are faced with financial losses due to a definite evil, they may combine to require reasonable security for their fragile and valuable property before placing it in the hands of those who have shown their willingness to be parties to a fraud.

MR. JUSTICE McREYNOLDS delivered the opinion of the Court.

The court below denied the relief sought by the United States. The parties are the same as those in *Paramount Famous Lasky Corporation v. United States*, just decided, *ante*, p. 30, and the opinion there contains sufficient description of them, their business and operations.

In 1926 the Appellee Distributors caused each of the thirty-two Film Boards of Trade to adopt written rules for establishment and operation of a local credit committee. These Committees were promptly organized and have continued to function as required. The prescribed rules provide—

That to correct abuses and unfair practices the president shall appoint a credit committee of three members to investigate and report the names of all persons who have acquired, by purchase or transfer, theatres in the territory within which the Film Board operates. The secretary of the Film Board shall be secretary of the committee and to him sales and transfers of theatres shall be promptly reported. These shall be placed upon a "Credit information list" and copies furnished to all members of the Film Board for their confidential information. Upon receipt of such list each member shall advise the secretary concerning its existing contracts for exhibition of pictures at the listed theatre and shall state whether the transfer provided that the new owner should assume and complete outstanding contracts.

That immediately upon receiving information of the transfer of a theatre the secretary shall request the new owner to furnish within five days references concerning his credit standing, etc., and to secure this information a prescribed form of questionnaire shall be sent out. The credit committee shall meet weekly to examine and report

upon the credit standing of new owners and furnish a copy of their report to members as confidential information. If a new owner fails to respond to the questionnaire, this fact shall be noted upon the credit information list. Also the credit committee shall indicate on the list every sale or transfer of a theatre which upon investigation it concludes was made by the previous owner for the purpose of avoiding or being relieved of uncompleted contracts for exhibiting pictures at such theatre. There shall also be indicated opposite the name of each theatre listed (excepting those whose new owners have agreed to assume and complete all existing contracts entered into by the prior owners, and of which agreement notice has been given to or received by the credit committee) the amount of cash security, not exceeding \$1,000, which in the judgment of the committee is a reasonable sum that members shall require to be deposited as security for the full and complete performance of each contract thereafter made and entered into for the exhibition of pictures at such theatre.

That no member of the Film Board shall enter into a contract for the exhibition of pictures at any theatre listed on the credit information list for a period of ten days from the date of the first appearance of such theatre upon the list nor thereafter unless the new owner or lessee of such theatre shall have paid in cash to such member with whom such owner or lessee desires to contract for pictures the amount of security specified on the credit information list. Certain contracts for "spot-booking," that is for a picture to be delivered in the immediate future, may be made within the ten day period and prior to the committee's report. The credit committee may from time to time remove from the credit information list the name of any theatre owned or operated by a new owner and thereafter members of the Film Board may contract with him.

That members upon demand of the credit committee shall furnish desired information, permit examination of books and records with respect to any exhibitor who has sold or transferred his theatre and has failed to provide for the assumption by the new owner of existing contracts. A member of the Film Board who violates any of these rules shall be subject to suspension or expulsion.

A copy of the "Questionnaire" is printed in the margin.* It asks for many particulars concerning the new

* Please answer each question, sign and return to—

CREDIT COMMITTEE

.....FILM BOARD OF TRADE

Address.....

1. Name of theatre.....
2. Street address..... City and State.....
Population of city..... Seating capacity.....
- ✓ Policy: Pictures () Vaudeville () Road Shows ().....
Number of days open each week..... Time of first performance..... a. m..... p. m.
What days do you have matinees..... Time of first performance
- Telephone No. of office.....; of residence.....
- Name of person, firm, or corporation, operating theatre.....
.....
- If a corporation give corporate name.....
- Name of president.....
- Name of treasurer.....
- Name of secretary.....
- Name of general manager.....
- Is stock of corporation or a substantial amount thereof owned or held by another corporation?.....
- If so, give name of corporation and names of officers and directors.....
.....
- If partnership, give names of partners.....
.....
- Who is authorized to enter into and sign contracts.....
.....
3. How will the contracts be signed.....
4. Is theater owned or leased.....If leased, state expiration date of lease.....

owner or transferee of the transferred theatre and especially demands specification of outstanding contracts for film service made by the previous owner and a declaration as to whether the new one has or will adopt them.

5. Name of lessor.....If owned, state name of owner.....
6. On what date was theater taken over.....
7. Place where and date of recording bill of sale.....
8. Admission prices.....
9. Condition of projection machines.....
10. Have you or your operator inspected them, if not, do you agree to have them inspected within thirty days.....
11. Model of machines.....Year.....
12. Name theaters heretofore conducted, stating location of each.....
13. If you have never been engaged in the exhibition of pictures, state previous business.....
14. Bank references.....
15. Other references.....
16. Specify contracts for film service made by previous owner:

Name of distributor	Date of contract	No. pictures unplayed
.....
.....
.....
17. Specify contracts you have assumed.....
18. If you have not assumed the previous owner's contracts, will you assume them?.....
 (If your answer to this question is "yes," fill out and sign the attached agreement of assumption.)

The undersigned represents and warrants that the answers to the foregoing questions are true and are made to induce the members of the above-named film board of trade to contract with the undersigned owner or lessee for the exhibition of motion pictures at the above-named theater.

Signature.....
Owner Lessee (strike out one).

Dated.....19

The definite point of attack in this proceeding is the agreement for the creation and operation of the Credit Committees and their use under prescribed rules to restrict freedom of sales by Distributors and of purchases by Exhibitors.

Assumption of Contracts

.....19..

Know all men by these presents, that the undersigned.....

owner of the Theatre, in consideration of one dollar lessee lawful money of the United States in hand paid, the receipt of which is hereby acknowledged, and other valuable considerations, hereby agrees to assume, carry out, and fully perform each of the contracts now existing between and the following distributors: (Name of previous owner)

.....
.....
.....
.....

for the exhibition of pictures at said theatre from the above date.

Table with 4 columns: Distributors, Date of contract, No. pictures unplayed, Class (features, comedies, news, other shorts). Rows of dotted lines for data entry.

(New lessee New owner) (Strike out one) Theatre
Address.....

Statement of financial condition

Statement of.....
Individual Corporation Partnership (strike out one)
Operating..... Theatre

To CREDIT COMMITTEE OF THE FILM BOARD:

For the purpose of inducing the members of the film board of trade to contract with the undersigned owner (or lessee) for the exhibition

Ten Producers and Distributors of films, controlling 60% of the business, agreed to contract with Exhibitors only according to a Standard Form and then combined through thirty-two local Film Boards of Trade with other Distributors, who with themselves control 98% of the entire business. The Film Boards appoint Credit Committees and these operate under the Rules above outlined. The obvious purpose of the arrangement is to restrict the liberty of those who have representatives on the Film Boards and secure their concerted action for the purpose of coercing certain purchasers of theatres by excluding them from the opportunity to deal in a free and untrammelled market.

Reference to what has just been said in *Paramount Famous Lasky Corporation v. United States*, ante, p. 30, and to the opinions in *Eastern States Lumber Assn. v.*

of motion pictures at the Theatre, I (or we) warrant and represent that the following is a true and correct statement of my (or our) financial condition on the day of, 19.., and agree that in case any change occurs that materially reduces my (or our) ability to pay all claims and demands against me (or us) or materially increases my (or our) liabilities or decreases my (or our) assets, I (or we) will forthwith notify you in writing to such effect.

ASSETS				LIABILITIES			
Cash on hand, and in bank.....				Notes payable.....			
Notes receivable.....				Money borrowed.....			
Real estate (how valued).....				Accounts payable.....			
Furniture and fixtures.....				Mortgages—real estate.....			
Screen, machines, chairs.....				Chattel trusts.....			
All other assets consisting of:				Mortgages on personalty and fixtures.....			
.....				All other liabilities consisting of:			
.....						
.....						
Total.....				Total.....			

Net worth as of this date \$.....

.....
Exhibitor.

United States, 234 U. S. 600, *United States v. American Oil Co.*, 262 U. S. 371, *Binderup v. Pathe Exchange*, 263 U. S. 291, and *Anderson v. Shipowners Assn.*, 272 U. S. 359, will suffice, we think, to show the challenged arrangement conflicts with the Sherman Act.

The court below erred in reaching a different conclusion and its decree must be reversed. The cause will be remanded for further proceedings in conformity with this opinion.

Reversed.

CROOKS, COLLECTOR OF INTERNAL REVENUE,
v. HARRELSON ET AL.

CERTIORARI TO THE CIRCUIT COURT OF APPEALS FOR THE
EIGHTH CIRCUIT.

No. 24. Argued October 31, 1930.—Decided November 24, 1930.

1. Section 402 of the Revenue Act of 1918 provides that the value of the gross estate of a decedent shall be determined by including the value at the time of his death of all property "(a) To the extent of the interest therein of the decedent at the time of his death which after his death is subject to the payment of the charges against his estate and the expenses of its administration and is subject to distribution as part of his estate." *Held* that the requirements that a property interest, to be included, shall be subject to the payment of the charges against the estate and the expenses of administration must be taken, as they are expressed, in the conjunctive; that charges against the estate and expenses of administration are different and distinct things, and that when, by the state law, an interest in real estate, though subject to the former, is not subject to the latter, it forms no part of the gross estate for the purpose of the federal estate tax. *United States v. Field*, 255 U. S. 257. P. 58.
2. To justify departure from the letter of an Act of Congress as leading to absurd results, the absurdity must be so gross as to shock the general moral or common sense; there must be something to make plain the intent of Congress that the letter shall