hold it void. For the Fifth Amendment commands that, however great the Nation's need, private property shall not be thus taken even for a wholly public use without just compensation. If the public interest requires, and permits, the taking of property of individual mortgagees in order to relieve the necessities of individual mortgagors, resort must be had to proceedings by eminent domain; so that, through taxation, the burden of the relief afforded in the public interest may be borne by the public.

Reversed.

HUMPHREY'S EXECUTOR *v.* UNITED STATES.*

CERTIFICATE FROM THE COURT OF CLAIMS.

No. 667. Argued May 1, 1935.—Decided May 27, 1935.

1. The Federal Trade Commission Act fixes the terms of the Commissioners and provides that any Commissioner may be removed by the President for inefficiency, neglect of duty, or malfeasance in office. *Held* that Congress intended to restrict the power of removal to one or more of those causes. *Shurtleff* v. *United States,* 189 U. S. 311, distinguished. Pp. 621, 626.
2. This construction of the Act is confirmed by a consideration of the character of the Commission—an independent, non-partisan body of experts, charged with duties neither political nor executive, but predominantly quasi-judicial and quasi-legislative; and by the legislative history of the Act. P. 624.
3. When Congress provides for the appointment of officers whose functions, like those of the Federal Trade Commissioners, are of legislative and judicial quality, rather than executive, and limits the grounds upon which they may be removed from office, the President has no constitutional power to remove them for reasons other than those so specified. *Myers* v. *United States,* 272 U. S. 52, limited, and expressions in that opinion in part disapproved. Pp. 626, 627.

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* The docket title of this case is: *Rathbun, Executor,* v. *United States.*

The *Myers* case dealt with the removal of a postmaster, an executive officer restricted to executive functions and charged with no duty at all related to either the legislative or the judicial power. The actual decision in the *Myers* case finds support in the theory that such an officer is merely one of the units in the executive department and, hence, inherently subject to the exclusive and illimitable power of removal by the Chief Executive, whose subordinate he is. That decision goes no farther than to include purely executive officers. The Federal Trade Commission, in contrast, is an administrative body created by Congress to carry into effect legislative policies embodied in the statute in accordance with the legislative standard therein prescribed, and to perform other specified duties as a legislative or as a judicial aid. Such a body cannot in any proper sense be characterized as an arm or an eye of the executive. Its duties are performed without executive leave and, in the contemplation of the statute, must be free from executive control. To the extent that it exercises any executive function—as distinguished from executive power in the constitutional sense—it does so in the discharge and effectuation of its quasi-legislative or quasi-judicial powers, or as an agency of the legislative or judicial departments of the Government. Pp. 627–628.

4. The authority of Congress, in creating quasi-legislative or quasi-judicial agencies, to require them to act in discharge of their duties independently of executive control cannot well be doubted; and that authority includes, as an appropriate incident, power to fix the period during which they shall continue in office, and to forbid their removal except for cause in the meantime. P. 629.
5. The fundamental necessity of maintaining each of the three general departments of government entirely free from the control or coercive influence, direct or indirect, of either of the others, has often been stressed and is hardly open to serious question. So much is implied in the very fact of the separation of the powers of these departments by the Constitution; and in the rule which recognizes their essential co-equality. P. 629.
6. Whether the power of the President to remove an officer shall prevail over the authority of Congress to condition the power by fixing a definite term and precluding a removal except for cause, will depend upon the character of the office. To the extent that, between the decision in the *Myers* case, which sustains the unrestrictable power of the President to remove purely executive officers, and the present decision that such power does not extend to an office

such as that here involved, there shall remain a field of doubt, such cases as may fall within it are left for future consideration and determination as they may arise. P. 631.

7. While the general rule precludes the use of congressional debates to explain the meaning of the words of a statute, they may be considered as reflecting light upon its general purposes and the evils which it sought to remedy. P. 625.
8. Expressions in an opinion which are beyond the point involved do not come within the rule of *stare decisis*. P. 626.

CERTIFICATE from the Court of Claims, propounding questions arising on a claim for the salary withheld from the plaintiff's testator, from the time when the President undertook to remove him from office to the time of his death.

Mr. Wm. J. Donovan, orally (*Messrs. Henry Herrick Bond* and *Ralstone R. Irvine* were with him on the brief) for Humphrey's Executor.

It is our position that § 1 of the Act evidences, under the rule *expressio unius,* the purpose of Congress to limit the power of the President to remove except for the causes stated, and then only with notice and hearing.

There is an important distinction between this Act and the one in *Shurtleff* v. *United States,* in that this Act specifies the tenure of office. The failure of the Customs Administrative Act so to specify was cited in the earlier case as a controlling reason why this Court would not impute an intention of Congress to limit the President's power of removal. This Court pointed out that in the absence of such a limitation, the incumbent would hold office during life. The reason which this Court gave for its construction of the language in that Act is therefore entirely absent in § 1 of the Federal Trade Commission Act.

Congress specifically provided that the Federal Trade Commissioners shall " continue in office for their respective terms." The Government contends that this

language applies only to the first Commissioners and that the phrase is an expression of style without legal significance. It does seem to me that the fair intendment of that phrase was to apply not to a particular category of Commissioners but to all Commissioners who would serve, and this fact of continuance in office with a fixed tenure is a fundamental distinction between this case and the *Shurtleff* case.

An examination of the debates taking place during the consideration of the Federal Trade Commission Act will show that the *Shurtleff* case was never mentioned. The Customs Administrative Act was never referred to. As a matter of fact, the debates in Congress and the reports of the committees bearing upon the Federal Trade Commission Act show that the phrase "inefficiency, neglect of duty and malfeasance in office" was taken directly from the Interstate Commerce Act, which was passed sixteen years before the *Shurtleff* case was decided.

The Government says that the Federal Trade Commission and the Board of General Appraisers are not so unlike in nature as to call for a departure from the construction given in the *Shurtleff* case to the words in question, and that the two agencies are, in fact, strikingly similar in the relevant essentials of organization and functions.

However true that statement may be as to the present set-up of the Customs Court, it certainly is not an accurate statement of the situation as it existed at the time of the *Shurtleff* case; the legislative history of that Act shows this.

The Act of 1851 created 4 additional appraisers, whose duty it was to go from port to port to aid local appraisers in maintaining uniform appraisements throughout the country. They were removable at will by the President and were subordinate to and were regulated by the Secretary of the Treasury. The Customs Administrative Act,

1890, merely added to the functions previously performed by the general appraisers, the function of acting as a board of three to re-determine valuations made by a single appraiser. They were described in the Senate as taxing officers who had only the functions of such taxing officers—a purely executive office. The general appraisers were not to constitute an independent body. They were still subject to regulation by the Treasury; and the debates indicate no purpose to make their office more permanent in its nature than it had been before.

It was not until 1908 that the Board of General Appraisers was set up as an independent body, and it was not until 1926 that it was set up as a Court of Customs. Now, in contrast with the function of the general appraisers at the time of the *Shurtleff* case, that of the Federal Trade Commissioners is totally different.

As appears from the debates leading to the adoption of the Federal Trade Commission Act, it was intended to make this Commission independent of the Chief Executive. This Commission took over the duties of the Commissioner of Corporations. The duties of the Commissioner of Corporations were to inquire into the interstate activities of corporations and combinations and to report to the President.

In enacting the Federal Trade Commission Act, the proponents of the bill expressly declared that the President's domination of the Commissioner of Corporations had made that office ineffective for the purposes for which it was created. This is made clear in the report to the House by the author of the bill and chairman of the subcommittee of the House Interstate and Foreign Commerce Committee that had prepared it. He pointed out that in order to give dignity and standing to the Commission the bill was designed to confer upon it independent power and authority, and to do that it removed entirely from the control of the President and the Secretary of Com-

merce the investigations conducted by the Bureau of Corporations or the Commissioner of Corporations.

Again, the chairman of the Senate Interstate Commerce Commission, and the report of his Committee to the Senate, indicate the purpose to keep it free from the executive department of the Government and more particularly the office of the Attorney General. Sen. Rep. No. 597, 63d Cong., 2d Sess.

Up to now, I have been attempting to arrive at the intention of Congress by an examination of the debates and by an examination of the language of § 1, in which the words of limitation are used. But an examination of the Act in its entirety indicates that Congress intended the Commission to be free from the domination of the President because the duties and function of the Federal Trade Commission are inconsistent with an unrestricted power of removal in the President.

When acting as a Master in Chancery, it is clear that the Federal Trade Commission is acting as an agency of the Federal Court. Giving the President the unrestricted power of removal of the Federal Trade Commissioners would confer upon him the power to dominate that agency. Even when acting as a Master in Chancery, it should report a form of decree that is pleasing to him. However much it may be urged that such power should exist in the case of executive officers, it certainly was not the intention that such power should exist to control an agent of the court.

Under § 6 of the Act, the Federal Trade Commission has the duty to make certain investigations at the instance of Congress, to report its findings to Congress, to make special and annual reports to Congress and to submit recommendations for additional legislation. In making these reports, the Commission acts as an agency of Congress. This work undertaken by the Federal Trade Commission as a direct agent of Congress is perhaps the

most important single function performed by the Commission. The value of this work is directly dependent upon the maintenance of the Commission as an independent body.

The Government says that the power of removal is an executive function. They go to the point of asserting that this is unrestricted.

We say that the *Myers* case did not undertake to decide this question and that the Congress has the power to enact legislative standards for removal as well as for appointment, such standards to be applied by the President in the exercise of his executive power.

All legislative power given to the Federal Government is vested in the Congress. In this instance it has seen fit, in the Federal Trade Commission Act, to deal with unfair methods of competition in Commerce. This Court has held that it has the power to deal with such acts. It has also attempted to create an agency to aid the legislature in the preparation of legislation. There can be no doubt of the power of the legislative body to create such agencies as are necessary properly to advise it of facts that may be in aid of legislation. Consequently, there can be no doubt in this case that Congress had the right to create the Federal Trade Commission. This Court has held that it has that right. Since Congress has the right to legislate in this field, the Constitution specifically gives the Congress the power to pass all laws that are necessary and proper to carry out its purpose. Congress has believed that the success of the Federal Trade Commission Act is dependent upon maintaining the Commission as an independent body. To achieve this result they have attempted to place restrictions upon the President's power to remove without cause.

And, in limiting this power of removal, Congress has not infringed upon the constitutional powers of the President. Here it does not seek to participate in the execu-

tive power of removal. The executive act of removal remains in the President. Congress has merely enacted a legislative standard.

The fact that the Congress has repeatedly limited the President's freedom of choice in making nominations of executive officers has often been pointed out to this Court. These restrictions or limitations have been of different kinds and different forms. See dissenting opinion of Mr. Justice Brandeis in the *Myers* case, *supra.*

The enactment of a legislative standard to be met by appointees of the President has always been regarded both by the courts and the President as a legislative and not an executive function. No court has ever held that the enactment of such a legislative standard to be followed by the President in making nominations is an invalid limitation upon the appointing power of the Executive. And this in spite of the fact that the power of appointment is expressly vested in the President. The power of removal is not expressly vested. It is implied from his power as an executive and more particularly from his express power of appointment. Surely an implied power is no greater than one expressly conferred. It would seem that as Congress may limit the class from which appointments shall be made so also it could define the causes for removals.

The sole question determined in the *Myers* case was that Congress could not compel the President to *share* with the Senate his power to remove executive officers. The power of removal is exclusively an executive function and Congress of course has no authority to appropriate to itself a power given exclusively to the President.

This fundamental distinction between the *Myers* case and the enactment of a legislative standard which the President must follow in the exercise of his exclusive power of removal was expressly recognized by counsel for

the United States in the argument in the *Myers* case. Solicitor General Beck, pages 88 to 98.

In this case the Government changes its position and says: "A limitation of the grounds of removal is at least as substantial an interference with the executive power as is a requirement that the Senate participate in the removal." This is not so. If the Senate participates it can prevent removal regardless of the merit of the case. But where, as here, the President alone has the power to remove, any legislative standard must be reasonable in view of the nature and function of the office affected.

In the *Myers* case, this Court reviewed at length the debates in the First Congress in connection with the "Decision of 1789." It found that those debates and that decision constituted a declaration by Congress that the President and not the legislature had the power to remove an executive officer. We submit that a further examination of those debates will disclose that the extent to which Congress may restrict the President's power to remove other than purely executive officers is dependent upon the nature and function of the office involved.

From these debates it is clear that a very definite factor in the minds of many sponsors of the bill before the first Congress was the fact that the nature and function of the office of the Secretary of Foreign Affairs were politically executive. With respect to such an executive officer it was their view that the President and not the Congress had the power of removal.

The significance of the distinction is this: While Congress has power to create an executive political office, control of that office should be in the hands of the President in order not to circumscribe the power of the President to control his agents. But in the case of an office such as the Federal Trade Commission, the nature of which

is not political, the function of which is quasi-judicial and quasi-legislative, in order to safeguard its independence of political domination it is necessary and proper to enact legislative standards which the President must follow.

This distinction between such executive officers and other officers of the Government was expressly recognized by James Madison who was the leader in the debate in 1789. 1 Annals of Congress, Col. 611–612, 613, 614. See *Marbury* v. *Madison,* 1 Cranch 137, 161; *Matter of Hennen,* 13 Pet. 230, 260; *U. S. ex rel. Goodrich* v. *Guthrie,* 17 How. 284; *McAllister* v. *United States,* 141 U. S. 174; *United States* v. *Perkins,* 116 U. S. 483; *Blake* v. *United States,* 103 U. S. 227; *Wallace* v. *United States,* 257 U. S. 541; *Shurtleff* v. *United States,* 189 U. S. 311; *Reagan* v. *United States,* 182 U. S. 419; *Embry* v. *United States,* 100 U. S. 680; *McElratt* v. *United States,* 102 U. S. 426.

The assumption made in the *Shurtleff* case, *supra,* that Congress can compel the President to afford notice and hearing if he chooses to remove for causes stated in the statute, is a refutation of the Government's argument that the President's power cannot be limited in any respect. Once you concede the validity of the restriction of notice and hearing, the rest is a matter of degree. The question is whether the restriction is necessary and proper to achieve the legislative purpose of Congress. I submit that the value of the Federal Trade Commission is dependent upon its independence of executive control. Otherwise it would be in the status of the Bureau of Corporations, the essential weakness of which was executive control. To insure that independence, it is necessary and proper to provide that Commissioners should be removed only for inefficiency, neglect of duty or malfeasance in office. And such a restriction, as Mr. Madison suggests, is within the spirit of the Constitution.

Solicitor General Reed, with whom *Assistant Attorney General Sweeney* and *Messrs. Paul A. Sweeney* and *M. Leo Looney, Jr.,* were on the brief, for the United States.

Section 1 of the Federal Trade Commission Act does not deprive the President of the power to remove a Commissioner except for inefficiency, neglect of duty, or malfeasance in office. *Shurtleff* v. *United States,* 189 U. S. 311, determined the meaning of identical language contained in a similar statute. The same language is to be found in the Acts creating the Interstate Commerce Commission (Feb. 4, 1887, c. 104, § 11, 24 Stat. 379, 383), the United States Shipping Board (Sept. 7, 1916, c. 451, § 3, 39 Stat. 728, 729), and the United States Tariff Commission (Sept. 8, 1916, c. 463, § 700, 39 Stat. 756, 795).

The opinions in *Myers* v. *United States,* 272 U. S. 52, make it clear that the rule of construction announced in the *Shurtleff* case is controlling with respect to the Federal Trade Commission Act. See 272 U. S., at pp. 171–172, 262, n. 30.

The Federal Trade Commission Act was enacted in 1914, containing language identical with that which had been construed in the *Shurtleff* case. In adopting the language used in the earlier Act, Congress must be considered to have adopted also the construction given by this Court to that language and to have made it a part of the enactment.

Five years after the decision in the *Shurtleff* case, the Customs Administrative Act, there involved, was amended to provide that a General Appraiser could be removed for inefficiency, neglect of duty, or malfeasance in office, "and no other" cause. C. 205, 35 Stat. 403, 406. The history of this amendment reveals that it was adopted in order to change the meaning of the Act as previously construed by this Court.

In a number of other statutes as well, Congress has attempted by explicit language to limit the removal power

to specified causes and no others. They include the Acts creating a Commissioner of Mediation and Conciliation (c. 6, § 11, 38 Stat. 103, 108); the Board of Tax Appeals (c. 234, § 900 (b), 43 Stat. 253, 336); the Railroad Labor Board (c. 91, § 306 (b), 41 Stat. 456, 470); the United States Coal Commission (c. 248, § 1, 42 Stat. 1446); the Board of Mediation (c. 347, § 4, 44 Stat. 577, 579); and the National Mediation Board (c. 691, § 4, 48 Stat. 1193).

In the Federal Trade Commission Act, the provision that each Commissioner shall " continue in office " for the term specified, is used only with reference to the " first Commissioners." As to their " successors," the Act provides simply that they " shall be appointed for terms of seven years." The phrase " continue in office," applying as it does only to the original appointees, is obviously an expression of style without legal significance. The term prescribed is not a grant of tenure but a limitation. *Parsons* v. *United States,* 167 U. S. 324; *Burnap* v. *United States,* 262 U. S. 512, 515.

The specification of certain grounds for removal may serve to indicate a policy regarding the holding of office, guiding but not limiting the President's discretion in exercising the removal power. In addition, the specification has the effect of requiring notice and hearing if an officer is removed for one of the causes designated. *Shurtleff* v. *United States,* 189 U. S. 311, 317.

Statutes not infrequently enumerate powers which are not intended to be exclusive. *Springer* v. *Philippine Islands,* 277 U. S. 189, 206; *Continental Illinois National Bank & Trust Co.* v. *Chicago, R. I. & P. Ry. Co.,* 294 U. S. 648.

It is true, as the legislative history of the Act indicates, that the Commission was intended to be or to become an experienced and informed body, free from certain of the handicaps that were deemed to inhere in departmental

organization. But there is nothing in the language or the legislative history of the Act to suggest that these purposes were thought to require a limitation of the removal power to the causes named. Nor are the Federal Trade Commission and the Board of General Appraisers so unlike in nature as to call for a departure by the Court from the construction given in the *Shurtleff* case to the words in question. The two agencies are, in fact, strikingly similar in the relevant essentials of organization and functions.

The Act of 1890 provided for "general appraisers," from whose decisions appeals lay to a board consisting of three of the general appraisers; and from the decisions of the board an appeal could be taken to a circuit court. The general appraisers were authorized to administer oaths and to cite persons to appear before them. Not more than five of the nine general appraisers could be members of the same political party. The board of general appraisers has been characterized as a tribunal clothed with judicial power to determine the classification of imported goods and the duties which should be imposed thereon. *United States* v. *Kurtz,* 5 Ct. Cust. App. 144, 146; *Marine* v. *Lyon,* 65 Fed. 992, 994; compare *United States* v. *Lies,* 170 U. S. 628, 636. The nature of its functions is revealed by the fact that in 1926 the name of the board of general appraisers was changed to the United States Customs Court. Act of May 28, 1926, c. 411, 44 Stat. 669.

The independence which Congress sought for the Federal Trade Commission does not depend upon an implied limitation of the removal power such as that contended for by the plaintiff. The Commission was left free from the continuing supervision of a departmental head; its membership was required to represent more than one political party; and the terms of its members were arranged to expire at different times. In later Acts creating similar commissions, these factors alone have apparently been deemed sufficient to secure the objective of an inde-

pendent body. Compare, for example, the Acts creating the United States Employees' Compensation Commission (c. 458, 39 Stat. 742); the Federal Radio Commission (c. 169, 44 Stat. 1162); the Federal Power Commission (c. 572, 46 Stat. 797); The Federal Home Loan Bank Board (c. 522, § 17, 47 Stat. 725, 736); the Securities and Exchange Commission (c. 404, § 4, 48 Stat. 885); and the Federal Communications Commission (c. 652, § 4, 48 Stat. 1066). Each of these Acts provides that not more than a bare majority of the members of the Commission shall belong to the same political party; and each provides that the members of the Commission shall have overlapping terms. In none of these Acts did Congress impose any limitation on removal. The effect of this omission is that the power of removal is unrestricted, since the power to remove, at least in the absence of constitutional or statutory provision, is an incident of the power to appoint. *Parsons* v. *United States,* 167 U. S. 324; *Burnap* v. *United States,* 252 U. S. 512, 515; *Wallace* v. *United States,* 257 U. S. 541, 544. Whatever the reason for the omission in these Acts, it is clear at all events that it was not regarded as nullifying the other safeguards of independence which are included in these Acts as in the Federal Trade Commission Act.

It is submitted, therefore, that it is a settled rule of construction that the mere statutory enumeration of causes for which an appointee may be removed does not confine the exercise of the President's power to removal for one or more of those causes; that there is nothing in the language or history of the Federal Trade Commission Act to suggest that Congress departed from this established meaning.

The construction for which the plaintiff contends not only is at variance with the applicable decisions of this Court, but raises constitutional questions of a serious nature. In the case at bar such a construction "should

not be made in the absence of compelling language." *Missouri Pacific R. Co.* v. *Ault,* 256 U. S. 554, 559.

If the Court should be of the opinion that § 1 of the Federal Trade Commission Act deprives the President of the power to remove a Commissioner except for one or more of the causes stated, we submit that the provision is unconstitutional. *Myers* v. *United States,* 272 U. S. 52, 172.

A statute limiting the President's removal power to removal for certain causes is as unwarranted an interference with the executive power as is a statute requiring participation by the Senate in a removal. Participation by the Senate in removal is closely allied with the necessity of securing its advice and consent for the appointment of a successor to the officer removed. In fact, Senatorial approval of a subsequent appointment is regarded as tantamount to approval of the removal. *Wallace* v. *United States,* 257 U. S. 541; 258 U. S. 296. No such merging of Senatorial functions characterizes the requirement that the President may remove for certain causes only. The power of the President to remove an officer in whom he does not have adequate confidence is effectively thwarted, and the consent of the Senate to the appointment of a qualified successor is of no avail.

If Congress can provide that the President may remove only for inefficiency, neglect of duty, or malfeasance in office, it presumably could provide that he might remove only for malfeasance in office or only for neglect of duty. The result would be that the President would have no power, even with the aid of the Senate, to remove an admittedly inefficient officer in the executive branch of the Government.

Faithful execution of the laws may require more than freedom from inefficiency, neglect of duty, or malfeasance in office. Particularly in the case of those officers entrusted with the task of enforcing new legislation, such

as the Securities Act of 1933, which embodies new concepts of federal regulation in the public interest, faithful execution of the laws may presuppose wholehearted sympathy with the purposes and policy of the law, and energy and resourcefulness beyond that of the ordinarily efficient public servant. The President should be free to judge in what measure these qualities are possessed and to act upon that judgment. *Myers* v. *United States,* 272 U. S. 52, 135.

The so-called legislative functions performed by the Federal Trade Commission do not differ in nature from those performed by the regular executive departments. Reports to Congress on special topics are made by the Commission; but such reports are likewise made by the heads of departments.

The Federal Trade Commission is not a judicial tribunal. *Federal Trade Comm'n* v. *Eastman Kodak Co.,* 274 U. S. 619, 623. We need not consider, therefore, whether the President's power to remove a judge of a court not established under Art. III of the Constitution may be restricted by Congress. Cf. *McAllister* v. *United States,* 141 U. S. 174.

The so-called quasi-judicial functions of the Commission are not different from those regularly committed to the executive departments. Functions so committed include the determination of a wide range of controversies respecting such important matters as immigration, *Lloyd Sabaudo Societa* v. *Elting,* 287 U. S. 329; internal revenue and customs duties, *Blair* v. *Oesterlein Machine Co.,* 275 U. S. 220; *Louisiana* v. *McAdoo,* 234 U. S. 627; public-land claims, *United States* v. *Hitchcock,* 190 U. S. 316; pension claims, *Decatur* v. *Paulding,* 14 Pet. 497; use of the mails, *Houghton* v. *Payne,* 194 U. S. 88; practices at stockyards, *Tagg Bros. & Moorhead* v. *United States,* 280 U. S. 420; trading in grain futures, *Chicago Board of Trade* v. *Olsen,* 262 U. S. 1.

It cannot be questioned that the head of a department, however numerous or important may be his functions of this kind, is subject to removal by the President without limitation by Congress, under the decision in the *Myers* case, *supra*. An attempt to distinguish, in respect of the President's removal power, between various administrative agencies would logically require distinctions also between the same agency at different times.

Mr. Justice Sutherland delivered the opinion of the Court.

Plaintiff brought suit in the Court of Claims against the United States to recover a sum of money alleged to be due the deceased for salary as a Federal Trade Commissioner from October 8, 1933, when the President undertook to remove him from office, to the time of his death on February 14, 1934. The court below has certified to this court two questions (Act of February 13, 1925, § 3 (a), c. 229, 43 Stat. 936, 939; 28 U. S. C. § 288), in respect of the power of the President to make the removal. The material facts which give rise to the questions are as follows:

William E. Humphrey, the decedent, on December 10, 1931, was nominated by President Hoover to succeed himself as a member of the Federal Trade Commission, and was confirmed by the United States Senate. He was duly commissioned for a term of seven years expiring September 25, 1938; and, after taking the required oath of office, entered upon his duties. On July 25, 1933, President Roosevelt addressed a letter to the commissioner asking for his resignation, on the ground " that the aims and purposes of the Administration with respect to the work of the Commission can be carried out most effectively with personnel of my own selection," but disclaiming any reflection upon the commissioner personally or upon his services. The commissioner replied, asking time to con-

sult his friends. After some further correspondence upon the subject, the President on August 31, 1933, wrote the commissioner expressing the hope that the resignation would be forthcoming and saying:

"You will, I know, realize that I do not feel that your mind and my mind go along together on either the policies or the administering of the Federal Trade Commission, and, frankly, I think it is best for the people of this country that I should have a full confidence."

The commissioner declined to resign; and on October 7, 1933, the President wrote him:

"Effective as of this date you are hereby removed from the office of Commissioner of the Federal Trade Commission."

Humphrey never acquiesced in this action, but continued thereafter to insist that he was still a member of the commission, entitled to perform its duties and receive the compensation provided by law at the rate of $10,000 per annum. Upon these and other facts set forth in the certificate, which we deem it unnecessary to recite, the following questions are certified:

"1. Do the provisions of section 1 of the Federal Trade Commission Act, stating that 'any commissioner may be removed by the President for inefficiency, neglect of duty, or malfeasance in office,' restrict or limit the power of the President to remove a commissioner except upon one or more of the causes named?

"If the foregoing question is answered in the affirmative, then—

"2. If the power of the President to remove a commissioner is restricted or limited as shown by the foregoing interrogatory and the answer made thereto, is such a restriction or limitation valid under the Constitution of the United States?"

The Federal Trade Commission Act, c. 311, 38 Stat. 717; 15 U. S. C. §§ 41, 42, creates a commission of five

members to be appointed by the President by and with the advice and consent of the Senate, and § 1 provides:

"Not more than three of the commissioners shall be members of the same political party. The first commissioners appointed shall continue in office for terms of three, four, five, six, and seven years, respectively, from the date of the taking effect of this Act, the term of each to be designated by the President, but their successors shall be appointed for terms of seven years, except that any person chosen to fill a vacancy shall be appointed only for the unexpired term of the commissioner whom he shall succeed. The commission shall choose a chairman from its own membership. No commissioner shall engage in any other business, vocation, or employment. Any commissioner may be removed by the President for inefficiency, neglect of duty, or malfeasance in office. . . ."

Section 5 of the act in part provides:

"That unfair methods of competition in commerce are hereby declared unlawful.

"The commission is hereby empowered and directed to prevent persons, partnerships, or corporations, except banks, and common carriers subject to the Acts to regulate commerce, from using unfair methods of competition in commerce."

In exercising this power, the commission must issue a complaint stating its charges and giving notice of hearing upon a day to be fixed. A person, partnership, or corporation proceeded against is given the right to appear at the time and place fixed and show cause why an order to cease and desist should not be issued. There is provision for intervention by others interested. If the commission finds the method of competition is one prohibited by the act, it is directed to make a report in writing stating its findings as to the facts, and to issue and cause to be served a cease and desist order. If the order is disobeyed, the commission may apply to the appropriate circuit court of

appeals for its enforcement. The party subject to the order may seek and obtain a review in the circuit court of appeals in a manner provided by the act.

Section 6, among other things, gives the commission wide powers of investigation in respect of certain corporations subject to the act, and in respect of other matters, upon which it must report to Congress with recommendations. Many such investigations have been made, and some have served as the basis of congressional legislation.

Section 7 provides:

"That in any suit in equity brought by or under the direction of the Attorney General as provided in the antitrust Acts, the court may, upon the conclusion of the testimony therein, if it shall be then of opinion that the complainant is entitled to relief, refer said suit to the commission, as a master in chancery, to ascertain and report an appropriate form of decree therein. The commission shall proceed upon such notice to the parties and under such rules of procedure as the court may prescribe, and upon the coming in of such report such exceptions may be filed and such proceedings had in relation thereto as upon the report of a master in other equity causes, but the court may adopt or reject such report, in whole or in part, and enter such decree as the nature of the case may in its judgment require."

First. The question first to be considered is whether, by the provisions of § 1 of the Federal Trade Commission Act already quoted, the President's power is limited to removal for the specific causes enumerated therein. The negative contention of the government is based principally upon the decision of this court in *Shurtleff* v. *United States,* 189 U. S. 311. That case involved the power of the President to remove a general appraiser of merchandise appointed under the Act of June 10, 1890, 26 Stat. 131. Section 12 of the act provided for the appointment by the President, by and with the advice and con-

sent of the Senate, of nine general appraisers of merchandise, who "may be removed from office at any time by the President for inefficiency, neglect of duty, or malfeasance in office." The President removed Shurtleff without assigning any cause therefor. The Court of Claims dismissed plaintiff's petition to recover salary, upholding the President's power to remove for causes other than those stated. In this court Shurtleff relied upon the maxim *expressio unius est exclusio alterius*; but this court held that, while the rule expressed in the maxim was a very proper one and founded upon justifiable reasoning in many instances, it "should not be accorded controlling weight when to do so would involve the alteration of the universal practice of the government for over a century and the consequent curtailment of the powers of the executive in such an unusual manner." What the court meant by this expression appears from a reading of the opinion. That opinion—after saying that no term of office was fixed by the act and that, with the exception of judicial officers provided for by the Constitution, no civil officer had ever held office by life tenure since the foundation of the government—points out that to construe the statute as contended for by Shurtleff would give the appraiser the right to hold office during his life or until found guilty of some act specified in the statute, the result of which would be a complete revolution in respect of the general tenure of office, effected by implication with regard to that particular office only.

"We think it quite inadmissible," the court said (pp. 316, 318), "to attribute an intention on the part of Congress to make such an extraordinary change in the usual rule governing the tenure of office, and one which is to be applied to this particular office only, without stating such intention in plain and explicit language, instead of leaving it to be implied from doubtful inferences. . . . We cannot bring ourselves to the belief that Congress ever

intended this result while omitting to use language which would put that intention beyond doubt."

These circumstances, which led the court to reject the maxim as inapplicable, are exceptional. In the face of the unbroken precedent against life tenure, except in the case of the judiciary, the conclusion that Congress intended that, from among all other civil officers, appraisers alone should be selected to hold office for life was so extreme as to forbid, in the opinion of the court, any ruling which would produce that result if it reasonably could be avoided. The situation here presented is plainly and wholly different. The statute fixes a term of office, in accordance with many precedents. The first commissioners appointed are to continue in office for terms of three, four, five, six, and seven years, respectively; and their successors are to be appointed for terms of seven years—any commissioner being subject to removal by the President for inefficiency, neglect of duty, or malfeasance in office. The words of the act are definite and unambiguous.

The government says the phrase "continue in office" is of no legal significance and, moreover, applies only to the first commissioners. We think it has significance. It may be that, literally, its application is restricted as suggested; but it, nevertheless, lends support to a view contrary to that of the government as to the meaning of the entire requirement in respect of tenure; for it is not easy to suppose that Congress intended to secure the first commissioners against removal except for the causes specified and deny like security to their successors. Putting this phrase aside, however, the fixing of a definite term subject to removal for cause, unless there be some countervailing provision or circumstance indicating the contrary, which here we are unable to find, is enough to establish the legislative intent that the term is not to be curtailed in the absence of such cause. But if the intention of

Congress that no removal should be made during the specified term except for one or more of the enumerated causes were not clear upon the face of the statute, as we think it is, it would be made clear by a consideration of the character of the commission and the legislative history which accompanied and preceded the passage of the act.

The commission is to be non-partisan; and it must, from the very nature of its duties, act with entire impartiality. It is charged with the enforcement of no policy except the policy of the law. Its duties are neither political nor executive, but predominantly quasi-judicial and quasi-legislative. Like the Interstate Commerce Commission, its members are called upon to exercise the trained judgment of a body of experts "appointed by law and informed by experience." *Illinois Central R. Co.* v. *Interstate Commerce Comm'n,* 206 U. S. 441, 454; *Standard Oil Co.* v. *United States,* 283 U. S. 235, 238–239.

The legislative reports in both houses of Congress clearly reflect the view that a fixed term was necessary to the effective and fair administration of the law. In the report to the Senate (No. 597, 63d Cong., 2d Sess., pp. 10–11) the Senate Committee on Interstate Commerce, in support of the bill which afterwards became the act in question, after referring to the provision fixing the term of office at seven years, so arranged that the membership would not be subject to complete change at any one time, said:

"The work of this commission will be of a most exacting and difficult character, demanding persons who have experience in the problems to be met—that is, a proper knowledge of both the public requirements and the practical affairs of industry. It is manifestly desirable that the terms of the commissioners shall be long enough to give them an opportunity to acquire the expertness in dealing with these special questions concerning industry that comes from experience."

The report declares that one advantage which the commission possessed over the Bureau of Corporations (an executive subdivision in the Department of Commerce which was abolished by the act) lay in the fact of its independence, and that it was essential that the commission should not be open to the suspicion of partisan direction. The report quotes (p. 22) a statement to the committee by Senator Newlands, who reported the bill, that the tribunal should be of high character and " independent of any department of the government. . . . a board or commission of dignity, permanence, and ability, independent of executive authority, except in its selection, and independent in character."

The debates in both houses demonstrate that the prevailing view was that the commission was not to be " subject to anybody in the government but . . . only to the people of the United States "; free from " political domination or control " or the " probability or possibility of such a thing "; to be " separate and apart from any existing department of the government—not subject to the orders of the President."

More to the same effect appears in the debates, which were long and thorough and contain nothing to the contrary. While the general rule precludes the use of these debates to explain the meaning of the words of the statute, they may be considered as reflecting light upon its general purposes and the evils which it sought to remedy. *Federal Trade Comm'n* v. *Raladam Co.*, 283 U. S. 643, 650.

Thus, the language of the act, the legislative reports, and the general purposes of the legislation as reflected by the debates, all combine to demonstrate the Congressional intent to create a body of experts who shall gain experience by length of service—a body which shall be independent of executive authority, *except in its selection,* and free to exercise its judgment without the leave or hindrance

of any other official or any department of the government. To the accomplishment of these purposes, it is clear that Congress was of opinion that length and certainty of tenure would vitally contribute. And to hold that, nevertheless, the members of the commission continue in office at the mere will of the President, might be to thwart, in large measure, the very ends which Congress sought to realize by definitely fixing the term of office.

We conclude that the intent of the act is to limit the executive power of removal to the causes enumerated, the existence of none of which is claimed here; and we pass to the second question.

Second. To support its contention that the removal provision of § 1, as we have just construed it, is an unconstitutional interference with the executive power of the President, the government's chief reliance is *Myers* v. *United States,* 272 U. S. 52. That case has been so recently decided, and the prevailing and dissenting opinions so fully review the general subject of the power of executive removal, that further discussion would add little of value to the wealth of material there collected. These opinions examine at length the historical, legislative and judicial data bearing upon the question, beginning with what is called " the decision of 1789 " in the first Congress and coming down almost to the day when the opinions were delivered. They occupy 243 pages of the volume in which they are printed. Nevertheless, the narrow point actually decided was only that the President had power to remove a postmaster of the first class, without the advice and consent of the Senate as required by act of Congress. In the course of the opinion of the court, expressions occur which tend to sustain the government's contention, but these are beyond the point involved and, therefore, do not come within the rule of *stare decisis.* In so far as they are out of harmony with the views here set forth, these expressions are disapproved. A like situation was

presented in the case of *Cohens* v. *Virginia,* 6 Wheat. 264, 399, in respect of certain general expressions in the opinion in *Marbury* v. *Madison,* 1 Cranch 137. Chief Justice Marshall, who delivered the opinion in the *Marbury* case, speaking again for the court in the *Cohens* case, said:

"It is a maxim, not to be disregarded, that general expressions, in every opinion, are to be taken in connection with the case in which those expressions are used. If they go beyond the case, they may be respected, but ought not to control the judgment in a subsequent suit, when the very point is presented for decision. The reason of this maxim is obvious. The question actually before the Court is investigated with care, and considered in its full extent. Other principles which may serve to illustrate it, are considered in their relation to the case decided, but their possible bearing on all other cases is seldom completely investigated."

And he added that these general expressions in the case of *Marbury* v. *Madison* were to be understood with the limitations put upon them by the opinion in the *Cohens* case. See, also, *Carroll* v. *Lessee of Carroll,* 16 How. 275, 286–287; *O'Donoghue v. United States,* 289 U. S. 516, 550.

The office of a postmaster is so essentially unlike the office now involved that the decision in the *Myers* case cannot be accepted as controlling our decision here. A postmaster is an executive officer restricted to the performance of executive functions. He is charged with no duty at all related to either the legislative or judicial power. The actual decision in the *Myers* case finds support in the theory that such an officer is merely one of the units in the executive department and, hence, inherently subject to the exclusive and illimitable power of removal by the Chief Executive, whose subordinate and aid he is. Putting aside *dicta,* which may be followed if sufficiently persuasive but which are not controlling, the necessary reach of the decision goes far enough to include

all purely executive officers. It goes no farther;—much less does it include an officer who occupies no place in the executive department and who exercises no part of the executive power vested by the Constitution in the President.

The Federal Trade Commission is an administrative body created by Congress to carry into effect legislative policies embodied in the statute in accordance with the legislative standard therein prescribed, and to perform other specified duties as a legislative or as a judicial aid. Such a body cannot in any proper sense be characterized as an arm or an eye of the executive. Its duties are performed without executive leave and, in the contemplation of the statute, must be free from executive control. In administering the provisions of the statute in respect of "unfair methods of competition"—that is to say in filling in and administering the details embodied by that general standard—the commission acts in part quasi-legislatively and in part quasi-judicially. In making investigations and reports thereon for the information of Congress under § 6, in aid of the legislative power, it acts as a legislative agency. Under § 7, which authorizes the commission to act as a master in chancery under rules prescribed by the court, it acts as an agency of the judiciary. To the extent that it exercises any executive function—as distinguished from executive power in the constitutional sense—it does so in the discharge and effectuation of its quasi-legislative or quasi-judicial powers, or as an agency of the legislative or judicial departments of the government.*

* The provision of § 6 (d) of the act which authorizes the President to direct an investigation and report by the commission in relation to alleged violations of the anti-trust acts, is so obviously collateral to the main design of the act as not to detract from the force of this general statement as to the character of that body.

If Congress is without authority to prescribe causes for removal of members of the trade commission and limit executive power of removal accordingly, that power at once becomes practically all-inclusive in respect of civil officers with the exception of the judiciary provided for by the Constitution. The Solicitor General, at the bar, apparently recognizing this to be true, with commendable candor, agreed that his view in respect of the removability of members of the Federal Trade Commission necessitated a like view in respect of the Interstate Commerce Commission and the Court of Claims. We are thus confronted with the serious question whether not only the members of these quasi-legislative and quasi-judicial bodies, but the judges of the legislative Court of Claims, exercising judicial power (*Williams* v. *United States,* 289 U. S. 553, 565–567), continue in office only at the pleasure of the President.

We think it plain under the Constitution that illimitable power of removal is not possessed by the President in respect of officers of the character of those just named. The authority of Congress, in creating quasi-legislative or quasi-judicial agencies, to require them to act in discharge of their duties independently of executive control cannot well be doubted; and that authority includes, as an appropriate incident, power to fix the period during which they shall continue in office, and to forbid their removal except for cause in the meantime. For it is quite evident that one who holds his office only during the pleasure of another, cannot be depended upon to maintain an attitude of independence against the latter's will.

The fundamental necessity of maintaining each of the three general departments of government entirely free from the control or coercive influence, direct or indirect, of either of the others, has often been stressed and is hardly open to serious question. So much is implied in

the very fact of the separation of the powers of these departments by the Constitution; and in the rule which recognizes their essential co-equality. The sound application of a principle that makes one master in his own house precludes him from imposing his control in the house of another who is master there. James Wilson, one of the framers of the Constitution and a former justice of this court, said that the independence of each department required that its proceedings "should be free from the remotest influence, direct or indirect, of either of the other two powers." Andrews, The Works of James Wilson (1896), vol. 1, p. 367. And Mr. Justice Story in the first volume of his work on the Constitution, 4th ed., § 530, citing No. 48 of the Federalist, said that neither of the departments in reference to each other "ought to possess, directly or indirectly, an overruling influence in the administration of their respective powers." And see *O'Donoghue* v. *United States, supra,* at pp. 530–531.

The power of removal here claimed for the President falls within this principle, since its coercive influence threatens the independence of a commission, which is not only wholly disconnected from the executive department, but which, as already fully appears, was created by Congress as a means of carrying into operation legislative and judicial powers, and as an agency of the legislative and judicial departments.

In the light of the question now under consideration, we have reëxamined the precedents referred to in the *Myers* case, and find nothing in them to justify a conclusion contrary to that which we have reached. The so-called "decision of 1789" had relation to a bill proposed by Mr. Madison to establish an executive Department of Foreign Affairs. The bill provided that the principal officer was "to be removable from office by the President of the United States." This clause was changed to read "whenever the principal officer shall be removed

from office by the President of the United States" certain things should follow, thereby, in connection with the debates, recognizing and confirming, as the court thought in the *Myers* case, the sole power of the President in the matter. We shall not discuss the subject further, since it is so fully covered by the opinions in the *Myers* case, except to say that the office under consideration by Congress was not only purely executive, but the officer one who was responsible to the President, and to him alone, in a very definite sense. A reading of the debates shows that the President's illimitable power of removal was not considered in respect of other than executive officers. And it is pertinent to observe that when, at a later time, the tenure of office for the Comptroller of the Treasury was under consideration, Mr. Madison quite evidently thought that, since the duties of that office were not purely of an executive nature but partook of the judiciary quality as well, a different rule in respect of executive removal might well apply. 1 Annals of Congress, cols. 611–612.

In *Marbury* v. *Madison, supra,* pp. 162, 165–166, it is made clear that Chief Justice Marshall was of opinion that a justice of the peace for the District of Columbia was not removable at the will of the President; and that there was a distinction between such an officer and officers appointed to aid the President in the performance of his constitutional duties. In the latter case, the distinction he saw was that "their acts are his acts" and his will, therefore, controls; and, by way of illustration, he adverted to the act establishing the Department of Foreign Affairs, which was the subject of the "decision of 1789."

The result of what we now have said is this: Whether the power of the President to remove an officer shall prevail over the authority of Congress to condition the power by fixing a definite term and precluding a removal except for cause, will depend upon the character of the office; the *Myers* decision, affirming the power of the President

alone to make the removal, is confined to purely executive officers; and as to officers of the kind here under consideration, we hold that no removal can be made during the prescribed term for which the officer is appointed, except for one or more of the causes named in the applicable statute.

To the extent that, between the decision in the *Myers* case, which sustains the unrestrictable power of the President to remove purely executive officers, and our present decision that such power does not extend to an office such as that here involved, there shall remain a field of doubt, we leave such cases as may fall within it for future consideration and determination as they may arise.

In accordance with the foregoing, the questions submitted are answered.

Question No. 1, Yes.
Question No. 2, Yes.

MR. JUSTICE MCREYNOLDS agrees that both questions should be answered in the affirmative. A separate opinion in *Myers* v. *United States*, 272 U. S. 178, states his views concerning the power of the President to remove appointees.

MOBLEY *v.* NEW YORK LIFE INSURANCE CO.

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

No. 751. Argued May 6, 1935.—Decided May 27, 1935.

1. Repudiation of a contract by one of the parties to it, to be sufficient in any case to entitle the other to treat the contract as absolutely and finally broken and recover damages as upon total breach, must at least amount to an unqualified refusal, or declaration of inability, substantially to perform. P. 638.
2. A refusal by a life insurance company to pay a monthly disability benefit to an insured, based merely upon an honest, but mistaken.