WALLACE ET AL. *v.* CUTTEN.

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

No. 747. Argued April 27, 1936.—Decided May 18, 1936.

Section 6 (b) of the Grain Futures Act, which provides that if the Secretary of Agriculture has reason to believe that any person "is violating" the Act or the regulations thereunder, or "is attempting" to manipulate the market price of grain in violation of the Act, he may require such person to show cause why he should not be suspended from trading in Contract Markets, cannot be construed as authorizing suspension for wrong-doing that occurred more than two years before the filing of the complaint with the Secretary. P. 236.

80 F. (2d) 140, affirmed.

CERTIORARI, 297 U. S. 701, to review a decree setting aside on appeal an order whereby the commission established by the Grain Futures Act directed all "contract markets" (grain exchanges designated by the Secretary of Agriculture) to refuse to the respondent Cutten all trading privileges for the period of two years.

Mr. Wendell Berge, with whom *Solicitor General Reed, Assistant Attorney General Dickinson,* and *Mr. Leo F. Tierney,* were on the brief, for petitioners.

The construction given § 6 (b) by the Circuit Court of Appeals renders that section impracticable and ineffective as a means of dealing with persons who violate the provisions of the Grain Futures Act or attempt to manipulate the market price of grain.

The requirements of reports from individual traders is of the utmost importance in the statutory scheme set up by the Grain Futures Act. Full and complete knowledge as to the activities of individual traders is essential if the regulatory authority is effectively to prevent manipulation of the market price.

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Because of the nature of the reporting, it is virtually impossible to apprehend a trader in the act of violating the reporting requirements. A violation of those requirements occurs and falls into the class of past transactions at one and the same moment. Apprehension cannot be contemporaneous with commission. Under the construction for which respondent contends, there is no way in which the Commission can proceed against one who violates the reporting requirements. If that construction is adopted, § 6 (b), as the court below said, will be rendered "sterile." This result cannot be escaped by contending that § 6 (b) applies to some past offenses and not to others. In any event, if § 6 (b) applies to any past offenses it must apply to those committed by respondent, because the Commission proceeded in this case as promptly as possible consonant with a full investigation of the secret and complicated transactions carried on by respondent.

If the jurisdiction of the Commission to enter an order under § 6 (b) were dependent upon final action sufficiently prompt to affect a trader before a violation was completed, it would be utterly impossible to observe the procedural requirements which the law establishes. There is no merit in the argument that the Commission's power under § 6 (b) is coincident with the existence or present threat of wrongdoing and ceases with the termination of such wrong-doing or threat. If the power of the Commission were so limited, then the term of suspension which the Commission might impose would likewise be limited because the preventive purpose would not be furthered by prolonging suspension beyond the present existence of threat or violation. But the continuation of a violation could not in any event last beyond the moment at which a suspension order becomes effective. If respondent's contentions are sound, every order would become illegal the moment it became effective because the

order would then and thereafter relate to an offense which the order itself had terminated and relegated to the past. No construction should be adopted which thus devitalizes the statute and makes a mockery of legislation designed to be remedial.

The amount of time necessary to dispose of violations is not always within the Commission's control. In this case, investigation was begun as soon as the Grain Futures Administration had reasonable cause to suspect the existence of respondent's illegal conduct. A cursory survey of the documentary evidence in this case shows that a long period of time was necessarily consumed in uncovering involved transactions deliberately designed and executed to avoid detection. The construction of § 6 (b) urged by respondent puts a premium on craftiness by permitting successful concealment to thwart the Commission's authority.

In this connection it is significant that the Grain Futures Act does not provide for cease and desist orders against those who violate the reporting requirements. If all that Congress intended was to give the Commission summary powers to act against violators caught in the commission of an offense, it would appear that the Commission would have been empowered to enter cease and desist orders which would have had the practical effect of stopping present violations. The fact that the Grain Futures Act does not provide for a criminal punishment for violation of the reporting requirements, in no way tends to prove that § 6 (b) was not intended to be effective as a means of barring from trading privileges those who violate the Act or attempt to manipulate the market price of grain.

The fact that § 6 (a) uses the words "has failed or is failing" whereas § 6 (b) uses the words "is violating" and "is attempting to manipulate" is not conclusive of the meaning of § 6 (b).

Section 6 (b), as construed by petitioners, is constitutional. Respondent's contention that § 6 (b), as construed by petitioners, is unconstitutional, rests upon the unwarranted assumption that so construed the section would be a criminal statute.

Messrs. Francis X. Busch, Orville J. Taylor, and *James J. Magner* were on the brief for respondent.

The theory of statutory regulation expressed in the Grain Futures Act contemplates the self-regulation of the licensed contract markets by the governing boards thereof, under governmental supervision. The responsibility for the making and filing of its reports, whether by the board or the members, for the prevention of the manipulation of prices and dissemination of false and misleading market information, is made a condition precedent and subsequent to the continued enjoyment by the contract market of its designation as such.

Comparison of the provisions of § 6 (a) and (b) and § 9 of the Grain Futures Act, requires the conclusion that § 6 (b) was intended only to provide a method for purging the contract markets of current practices seeking to manipulate the market price of grain. The section was not intended to authorize the institution of purely punitive proceedings long after the practices have ceased.

In each case arising under the statute, the essential inquiry is whether or not the evidence received will justify the conclusion that the accused person is attempting to manipulate the market price of grain, and each case presents a new and separate inquiry.

In the case at bar, it was neither alleged, nor proved, that the respondent was attempting to manipulate the market price of grain at the time of the filing of the complaint. The complaint was not initiated in accordance with either the letter or the intent of the statute.

If § 6 (b) may be invoked by the Secretary of Agriculture after the passage of three years, it can be invoked after the passage of ten years. To construe the Act as authorizing the Secretary to proceed thereunder at any time selected by him would be contrary to the national policy as expressed in statutes of limitations for far more serious offenses.

Examination of the legislative history of the Future Trading Act (the immediate statutory predecessor of the Grain Futures Act), indicates that the intent and purpose of the legislation was the prevention and frustration of manipulative practices.

The scrutiny, consideration and revision to which § 6 of the original Future Trading Act was subjected when it reached the Senate Committee on Agriculture and Forestry, which added § 6 (b), precludes any conclusion that the differing language employed in the respective sections was the result of "inadvertence." It appears from the context of the respective sections and from the testimony of witnesses before the Committee that the language of each section was advisedly chosen. It is apparent that the Congress recognized that in the one section it was dealing with the licensed contract market, as such, and in the other section, dealing with the rights of individuals.

It is not consistent with our theory of government to permit the fact of guilt and the duration, extent and nature of punishment, to be determined and adjudged by legislative agencies.

Authorities involving the revocation of licenses by administrative agencies are not here applicable, since the Congress of 1922 did not undertake to require licenses from individuals making contracts for the future delivery of grain.

The Commission's conclusion that respondent attempted to manipulate the market price of wheat during

1930 and 1931, which is predicated primarily upon the failure to comply with reporting requirements of the Secretary of Agriculture during 1930 and 1931, is not supported by the weight of the evidence.

MR. JUSTICE BRANDEIS delivered the opinion of the Court.

Section 6 (b) of the Grain Futures Act, September 21, 1922, c. 369, 42 Stat. 998, 1001, provides that if the Secretary of Agriculture has reason to believe that any person "is violating" any provision of the Act, or any rules and regulations made pursuant thereto, or "is attempting" to manipulate the market price of grain in violation of the provisions of the Act, the Secretary may serve upon the person a complaint stating his charge in that respect and requiring him "to show cause why an order should not be made directing that all contract markets until further notice of the said commission refuse all trading privileges thereon to such person." The commission referred to is a board "composed of the Secretary of Agriculture, the Secretary of Commerce, and the Attorney General," before whom the hearing on the complaint is had. This case is here to review a decree of the United States Circuit Court of Appeals for the Seventh Circuit which set aside an order entered by the commission under that section. Certiorari was granted on account of the novelty and importance of the question presented.

April 11, 1934, the Secretary of Agriculture caused such a complaint to be served upon Arthur W. Cutten. It recited that during the years 1930 and 1931 he was, and since had been, continuously a member of the Chicago Board of Trade; and that by its regulations made pursuant to the Grain Futures Act he was required:

"to report to the Grain Futures Administration his net position in futures owned or controlled by him, long or short, by grain and by future, when he had net open

commitments in any one future equal to or in excess of 500,000 bushels. . . ." [and also] "daily trades made by him on the Board of Trade, in futures in which he owned or controlled open commitments equal to or in excess of 500,000 bushels."

The complaint alleged further that:
"during the years 1930 and 1931 [he] conspired and colluded with various persons and grain firms of the Board of Trade to conceal his trading and position in the market from the Grain Futures Administration. In furtherance of said conspiracy, respondent made inaccurate, incorrect and false reports of his position in the market to the Grain Futures Administration, failed and refused to report accurately and correctly his position in the market and trades made by him," etc.

Then followed, in 44 numbered paragraphs, specifications of Cutten's alleged violations of the regulations and the Act on dates between March 6, 1930 and December 31, 1931.

A referee was appointed to take the evidence. The hearings before him began on May 14, 1934. Upon the opening of those proceedings, Cutten moved to quash the complaint on the ground that § 6 (b) empowered the Commission to act only against persons who are presently committing offences; and that consequently, it had no authority to deny to him trading privileges for violations committed more than two years prior to the institution of the proceedings against him. The referee, without passing upon the motion to quash, proceeded to take the evidence; the hearings before him were concluded May 24, 1934; then the commission heard the complaint on briefs and oral argument; and before it the motion to quash was renewed. On February 12, 1935, the commission overruled the motion; made findings of fact on the evidence; concluded that Cutten's conduct "constitutes a violation of the Grain Futures Act,

and the Rules and Regulations made pursuant thereto"; and ordered that "all contract markets refuse all trading privileges thereon to Arthur W. Cutten for a period of two years from March 1, 1935."

This suit was brought to set aside that order. The Circuit Court of Appeals held that the power conferred by § 6 (b) is remedial, not punitive; that it is limited to suspending a trader who "is violating any of the provisions of this Act, or is attempting to manipulate the market price of any grain," in other words, one who is presently committing an offence; that at the time of the filing of the complaint there was no wrong existing to be remedied, the latest wrongdoing complained of having occurred more than two years before the filing of the complaint by the Secretary of Agriculture; that, therefore, the commission was without authority to entertain the complaint, and should have granted the motion to quash. 80 F. (2d) 140.

The Government argues that, since violations of the reporting requirements by their very nature cannot be detected during the course of commission, the literal construction thus given to § 6 (b) renders it impractical and ineffective as a means of dealing with those persons who violate any of the provisions of the Act or attempt to manipulate the market price of grain. Incidents in the history of the legislation are cited to support the Government's contention. In reply, it is argued that ample remedy is afforded by other provisions of the Act; that these confer broad power over boards of trade; and that the boards of trade may control their own members. It is urged that for the construction given to § 6 (b) by the lower court support may be found in the different language employed in § 6 (a). For it authorizes the commission to suspend "or to revoke the designation of a board of trade as a 'contract market' upon a showing that such board of trade has failed or is failing to comply"

with the requirements prescribed. Attention is also called to the penalty provisions of § 9.

It would be inappropriate for us to discuss these, and other, arguments presented. The language of § 6 (b) is clear; and on the face of the statute, there can be no doubt concerning the intention of Congress. As was said in *Iselin* v. *United States,* 270 U. S. 245, 250–251: "The statute was evidently drawn with care. Its language is plain and unambiguous. What the Government asks is not a construction of a statute, but, in effect, an enlargement of it by the court, so that what was omitted, presumably [possibly] by inadvertence, may be included within its scope. To supply omissions transcends the judicial function." *A fortiori,* it may not be done for the purpose of making punishable action which, on the face of the statute, is merely to be prevented. Compare *United States* v. *Weitzel,* 246 U. S. 533, 542–543.

Affirmed.