GRAIN FUTURES ACT: HEARINGS BEFORE THE COMMITTEE ON AGRICULTURE. HOUSE OF REPRESENTATIVES. SIXTY-SEVENTH CONGRESS, SECOND SESSION. JUNE 7, 8, 9 AND 12, 1922. SERIES CC

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COMMITTEE ON AGRICULTURE.

HOUSE OF REPRESENTATIVES.

SIXTY-SEVENTH CONGRESS, SECOND SESSION.

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MARVIN JONES, Texas.
PETER G. TEN EYCK, New York.

L. O. HAUGEN, *Clerk.*

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GRAIN FUTURES ACT.

COMMITTEE ON AGRICULTURE,
HOUSE OF REPRESENTATIVES,
Wednesday, June 7, 1922.

The committee met at 10 o'clock a. m., Hon. Gilbert N. Haugen (chairman) presiding.

There were present: Mr. Haugen, Mr. McLaughlin of Michigan, Mr. Purnell, Mr. Voigt, Mr. McLaughlin of Nebraska, Mr. Riddick, Mr. Tincher, Mr. Williams, Mr. Hays, Mr. Thompson, Mr. Gernerd, Mr. Clague, Mr. Clarke, Mr. Rainey, Mr. Aswell, Mr. Kincheloe, Mr. Jones, and Mr. Ten Eyck.

The CHAIRMAN. The committee has met this morning to give consideration to the subject of future trading. The Chair lays before the committee H. R. 11843. We will first hear from representatives of the department.

Mr. TINCHER. Yes; that is my understanding.

The CHAIRMAN. Mr. Morrill, we will be pleased to hear you now.

STATEMENT OF MR. CHESTER MORRILL, ASSISTANT TO THE SECRETARY OF AGRICULTURE, IN CHARGE OF ADMINISTRATION OF GRAIN FUTURES TRADING ACT.

Mr. MORRILL. Mr. Chairman, I do not know how far you wish me to go into the subject of the pending bill or just how much you wish in the way of information from me. If you would indicate the line you want me to follow I will try to do that.

Mr. TINCHER. Mr. Chairman, may I suggest that when we agreed the other day to call Mr. Morrill, it was my understanding that what we wanted to do was to go into the question of the legality of the bill and have him explain any changes between this bill and the former legislation. I think the committee understands the legislative status of this matter.

Mr. CLARKE. I would like him to go quite a little ways further than that. I would like to know just exactly what your interpretation is of the Supreme Court decision, from your viewpoint, and have you indicate just what was eliminated from the old bill.

Mr. TINCHER. I supposed that would be covered in a discussion of the legality of the proposed bill.

Mr. ASWELL. What is the new part of the bill?

Mr. MORRILL. I can indicate that as I go along.

Mr. ASWELL. Are you going clear through the bill again?

Mr. CLARKE. What I read into the decision and what somebody else may read into it may be materially different.

Mr. JONES. I suppose you have framed in your own mind your method of treating this subject, have you not?

Mr. MORRILL. Yes.

The CHAIRMAN. Have you in mind to take the bill up section by section and point out the changes and discuss the question of its legality?

Mr. MORRILL. I can answer the question as to the decision of the Supreme Court first, if you wish, and then take up the differences between the Capper-Tincher bill and the new Capper-Tincher bill.

The CHAIRMAN. Would you prefer to make your statement without being interrupted?

Mr. MORRILL. I think I can go right along but, of course, I am perfectly willing to answer any questions you may desire to ask.

The CHAIRMAN. I think the committee would leave it to you to decide whatever you desire to do in the matter.

Mr. MORRILL. The law which was before the Supreme Court was based upon the taxing power of Congress and provided for two separate taxes, one covered by section 3 on puts and calls and other similar transactions, and the other tax provided by section 4 on the general class of future trading that we know as futures.

The question directly before the Supreme Court was in regard to the constitutionality of section 4 and the interrelated provisions of the books which were placed there for the purpose of carrying out the general idea behind section 4. The Supreme Court held that section 4 and all the related provisions of a regulatory character are unconstitutional. It, however, did not hold section 3 to be unconstitutional because section 3 was confined to a tax and had no regulatory provisions except in so far as it might be necessary for the Treasury Department to take action to carry out the taxing provisions.

Mr. CLARKE. May I interrupt you just there? One of the great objects, as I understood it, presented here at the time and one of the reasons for this bill was that when the Government had undertaken to run down corners in wheat and grain and other things heretofore, they never had been able to obtain the information because a great many of the transactions were verbal or the records were destroyed. Now, under the decision of the Supreme Court, that part of the law still stands, does it not?

Mr. MORRILL. The decision of the Supreme Court takes away from the Secretary of Agriculture the power to compel an exchange or its members to make any report or to open up its records because those provisions were for the purpose of carrying out section 4 and were regulatory in character, in the opinion of the Supreme Court.

Mr. GERNERD. Just why did the Supreme Court say that the Department of Agriculture could not carry out the purpose of section 4? I have the opinion before me, but I want your viewpoint.

Mr. MORRILL. Speaking with reference to the bill which was before the court, they held that it was manifestly passed in the belief by Congress that it could be carried out under the taxing power and there was no evidence in the bill of an intention to exercise any other power, such as the interstate commerce power, and in the absence of a declared intention in the bill or any language showing the intention to exercise some other power, the Supreme Court would not write that into the bill.

Mr. GERNERD. Therefore it declared this section unlawful just because of the taxing feature.

Mr. MORRILL. Just because it was under the taxing power.

Mr. GERNERD. Now, if we were to substitute for that the same provisions that are given to the interstate commerce work, it would declare the same to be constitutional; in other words, that is the inference to be drawn.

Mr. MORRILL. There are certain inferences in the opinion to which I will later refer.

Mr. KINCHELOE. Right there, let me get this question clear in my own mind. Of course, the Supreme Court decides this act unconstitutional because of the taxing power, and the present bill, as drawn here, undertakes to get around that and you have undertaken to draw a bill that will be constitutional by regulating interstate commerce.

Mr. MORRILL. Yes, sir.

Mr. KINCHELOE. Now, subsection a of section 2 of this bill undertakes to define interstate commerce. Is that the same provision, in substance, as was used to define interstate commerce in the packers' bill?

Mr. MORRILL. Yes, sir.

Mr. KINCHELOE. That is what I thought, and that is the reason I asked the question.

Mr. JONES. Let me ask you a question right there, while you are on that subject. Is it your opinion that Congress by virtue of the power that is granted to it to regulate interstate commerce has the power to prohibit interstate commerce?

Mr. MORRILL. No, sir; I am not taking that position, and this bill is not a prohibitory bill.

Mr. JONES. I am asking this question for information: I understand here that section 4 starts off with an absolute prohibition except and unless they will comply with certain things and conditions. Now, is not that an effort to prohibit interstate commerce entirely?

Mr. MORRILL. No; it is merely expressed by way of prohibition in order to secure regulation. A great many laws passed under the interstate commerce power declare certain things unlawful, which amount to a prohibition, but it is solely for the purpose of regulating interstate commerce, after all.

Mr. JONES. Of course, if the court, in construing this, pursued the same line of reasoning they did in the case here, they would hold that.

Mr. MORRILL. If I may, I would like to go on and point out certain things in the decision of the Supreme Court which throw light on this matter of the use of the commerce power, and it must be borne in mind that when I answered the question about the definition of interstate commerce, I am not taking the position that these transactions on the board of trade are in themselves interstate commerce. I will explain that remark more fully.

Mr. JONES. How are you going to connect them up?

Mr. MORRILL. In the decision of the Supreme Court, it called attention to certain language in the caption of the bill which was declared unconstitutional where they used the words, providing for the regulation of boards of trade, and called attention to the fact that the other provisions incidental to section 4 seemed to be wholly for the purpose of regulation, and in the opinion of the Supreme Court the bill showed on its face that the use of the taxing power was an incident instead of the main purpose of the bill.

In discussing the subject, I am going to merely quote certain sentences in the opinion. Of course, the whole opinion is available.

The Supreme Court said:

"It is impossible to escape the conviction"——

The CHAIRMAN (interposing). What are you reading from?

Mr. MORRILL. I am reading from the decision of the Supreme Court on page 8 of the pamphlet.

Mr. JONES. The last paragraph on page 8.

Mr. MORRILL (reading):

"It is impossible to escape the conviction, from a full reading of this law, that it was enacted for the purpose of regulating the conduct of business of boards of trade"—

Then I will skip a little bit—

"Indeed, the title of the act recites that one of its purposes is the regulation of boards of trade."

Then dropping down a little bit further:

"The manifest purpose of the tax is to compel boards of trade to comply with regulations, many of which can have no relevancy to the collection of the tax at all."

Then the Supreme Court goes on——

Mr. JONES. Just in that connection, does this present bill undertake to require any conditions that have no relevancy to interstate commerce?

Mr. MORRILL. We think not, but that is a matter that can be considered, and there is one that I will mention when I come to analyze the bill.

Going on, the Supreme Court referred to the child-labor case and to other cases involving the taxing power, including the Veazie Bank case, involving State-bank notes, and the Oleomargarine case, and said:

"It was pointed out that in none of those cases did the law objected to show on its face, as did the child-labor tax law, detailed regulation of a concern or business wholly within the police power of the State."

Then the Supreme Court says:

"We come to the question, then, Can these regulations of boards of trade by Congress be sustained under the commerce clause of the Constitution? Such regulations are held to be within the police powers of the State. * * * There is not a word in the act from which it can be gathered that it is confined in its operation to interstate commerce. * * * Looked at in this aspect and without any limitation of the application of the tax to interstate commerce or to that which the Congress may deem from evidence before it to be an obstruction to interstate commerce, we do not find it possible to sustain the validity of the regulations as they are set forth in this act."

So you will see that the Supreme Court was plainly indicating that there was a field for consideration that had not been covered by the bill that was declared unconstitutional.

Now, the Supreme Court refers to the case of Ware & Leland *v.* Mobile County (209 U. S. 405), which involved a State tax upon transactions, and the State tax was upheld because the transactions themselves were not interstate commerce and because there was involved the question of a State tax.

Now, the Supreme Court expressly says:

"It follows that sales for future delivery on the board of trade are not in and of themselves interstate commerce. They can not come within the regulatory power of Congress as such, unless they are regarded by Congress, from the evidence before it, as directly interfering with interstate commerce so as to be an obstruction or a burden thereon." Referring to the case of United States v. Ferger (250 U. S. 199).

Later, the court goes on to say, referring to the Patten case (226 U. S. 525), involving cotton transactions on the New York Cotton Exchange, that "mere contracts for sales of cotton for future delivery which did not oblige interstate shipments were not interstate commerce, an indictment charging the defendants with having cornered the whole cotton market of the United States by excessive purchases of cotton for future delivery and thus conspired to restrain, obstruct, and monopolize interstate commerce in cotton, was sustained under the first and second sections of the Sherman antitrust law. This case like Stafford v. Wallace—which is the Packers and Stockyards case—followed the principles of Swift & Company v. United States (196 U. S. 375). In that case is found the origin of the definition of commerce contained in the packers and stockyards act.

Speaking directly with reference to what was held to be constitutional and unconstitutional in this bill, the Supreme Court said, on page 18:

"There are sections of the act to which under section 11 the reasons for our conclusion as to section 4 and the interwoven regulations do not apply. Such is section 9 authorizing investigations by the Secretary of Agriculture and his publication of results. Section 3, too, would not seem to be affected by our conclusion."

Mr. KINCHELOE. On those points you have put the same sections in this bill that were in the other bill?

Mr. MORRILL. Yes; as nearly as possible.

Then you will notice the court goes on and makes another statement referring to section 3:

"This is the imposition of an excise tax upon certain transactions of a unilateral character in grain markets which approximate gambling or offer full opportunity for it and does not seem to be associated with section 4. Such a tax without more would seem to be within the congressional power."

I think that gives the pertinent plats in the decision of the Supreme Court on the future trading act.

In the packers and stockyards decision—and in referring to the packers and stockyards decision I do not mean to imply that the proposed regulation of the future exchanges is strictly comparable with the packers and stockyards case, because there is quite a fundamental and essential difference between the two, still there are certain statements made in the packers and stockyards decision that have a bearing upon the matter before you.

The court says, on page 8, the first full paragraph:

"The object to be secured by the act is the free and unburdened flow of livestock from the ranges and farms from the West and the Southwest through the great stockyards and slaughtering centers on the borders of that region and thence in the form of meat products to the consuming cities of the country in the Middle West and East, or, still as live stock, to the feeding places and fattening farms in the Middle West or East for further preparation for the market."

Now, the court goes on and refers to the things that were in the minds of Congress about the regulation under the packers and stockyards' act and said:

"The chief evil is the monopoly of the packers enabling them unduly and arbitrarily to lower prices to the shipper who sells and unduly and arbitrarily to increase the price to the consumer who buys. Congress thought that the power to maintain this monopoly was aided by control of the stockyards. Another evil which it sought to provide against by the act, was exorbitant charges, duplications of commissions, deceptive practices in respect of prices, in the passage of the live stock through the stockyards, all made possibly by collusion between the stockyards management and the commission men on the one hand, and the packers and dealers on the other. Expenses incurred in the passage through the stockyards necessarily reduce the price received by the shipper and increase the price to be paid by the consumer. If they be exorbitant or unreasonable they are an undue burden on the commerce which the stockyards are intended to facilitate. Any unjust or deceptive practice or combination