proceeds derived from the sale of such lands should be deposited in the United States Treasury to the credit of the Indians of the Spokane reservation. It was under the provisions of this act that the decedent of the defendant in error obtained his patent.

This summary of the stipulated facts points to the inevitable decision of the case.

[1, 2] The Commissioner of Indian Affairs, under the direction of the Secretary of the Interior, was charged with the management of all Indian affairs and matters arising out of Indian relations (R. S. §§ 441, 463, 2058, 2149 [Comp. St. 1916, §§ 681, 716, 4000, 4152]), and clearly he commissioned Col. Watkins in advance to treat with the Spokane tribe for the setting apart to them of a permanent reservation through an agreement such as that of August, 1877. The plaintiff in error concedes, as it must, that if the Secretary of the Interior approved the action taken by Col. Watkins prior to the filing*of the plat of its line on October 4, 1880, the reservation must be considered as lawfully established and the lands thereby removed beyond the scope of the grant to the railroad company. Wilcox v. Jackson, 13 Pet. 498, 512, 10 L. Ed. 264; Wolsey v. Chapman, 101 U. S. 755, 769, 25 L. Ed. 915; Wood v. Beach, 156 U. S. 548, 15 Sup. Ct. 410, 39 L. Ed. 528; United States v. Mid West Oil Co., 236 U. S. 459, 35 Sup. Ct. 309, 59 L. Ed. 673; C., M. & St. P. Ry. Co. v. United States, 244 U. S. 351, 357, 37 Sup. Ct. 625, 61 L. Ed. 1184. And reservations made by heads of bureaus, such as the Commissioner of the General Land Office, or the Commissioner of Indian Affairs, in the administration of the matters committed to their charge stand upon the same footing, where the Secretary of the Interior is informed of their action and where, as in this case, he either expressly or tacitly approves the same. Spencer v. McDougal, 159 U. S. 62, 15 Sup. Ct. 1026, 40 L. Ed. 76.

Such being the law, we cannot doubt that the sound inference from the stipulated facts as we have stated them is that, with full understanding of the situation the Secretary of the Interior and the Commissioner of Indian Affairs approved the action of Col. Watkins not later, certainly, than the sending of his report to the Senate on January 23, 1878, which was almost three years prior to the filing of the railway company's plat, and that the executive order of the President on January 18, 1881, simply continued and gave formal sanction to what had been done before.

That the reservation was in fact made and the lands exclusively devoted to the use of the Indians from the date of the agreement of August, 1877, is beyond controversy; that no objection was ever made by his superiors to the action taken by Col. Watkins is equally clear, and to hold that for want of a formal approval by the Secretary of the Interior, all of the conduct of the government and of the Indians in making and ratifying and in good faith carrying out the agreement between them, even to the extent of protecting the reservation by*military forces from* intrusion, is without effect, would be to subordinate the realities of the situation to mere form, for the delay in the issuing of the formal executive order of the President under the circumstances can be attributed only to the exigencies of the public business; by his representative, the Secretary of the Interior, he had approved the setting apart of the lands to the use of the Indians almost three years before.

The judgment of the Circuit Court of Appeals will be affirmed, for the reason that the Spokane Indian reservation was lawfully created prior to the filing of the plat of the line of the plaintiff company on October 4, 1880.

Affirmed.

(246 U. S. 231)

BOARD OF TRADE OF CITY OF CHICAGO et al. v. UNITED STATES.

(Argued Dec. 18 and 19, 1917. Decided March 4, 1918.)

No. 98.

1. Monopolies ⟹24(2)—Pleading ⟹362(1) — Suits to Prevent or Restrain — Evidence—Striking Out Matter.

In a suit to restrain a board of trade from enforcing a rule prohibiting its members from purchasing or offering to purchase grain between sessions of the board at a price other than the closing bid, as in violation of the Anti-Trust Act, July 2, 1890, c. 647, 26 Stat. 209, it was error to strike from the answer allegations concerning the history and purpose of such rule, and to exclude evidence on that subject, as the legality of an agreement or regulation does not depend on whether it restrains competition, and the true test of legality is whether the restraint imposed is such as merely regulates or such as may suppress or even destroy competition, and to determine that question the court must consider the facts peculiar to the business, its conditions before and after the restraint was imposed, the nature of the restraint, and its effect actual or probable.

2. Monopolies ⟹17(1) — Combinations Prohibited—Rules of Board of Trade.

Such rule was a reasonable regulation consistent with the provisions of the Anti-Trust Act, where it merely restricted the period of price-making by prohibiting price-making after the close of the session, and was restricted in its operation to the purchase of grain "to arrive" or grain already in transit, which constituted a small part of the day's sales of grain, and applied only during a small part of the business day and only to grain shipped to Chicago, and not to other markets to which most of the territory tributary to Chicago was also tributary, and where it had no appreciable effect on general market prices, but helped to improve market conditions by creating a public market for grain "to arrive" in the place of private bids, by bringing more of the trading in such grain into the regular market hours, by bringing buyers and sellers into more direct relations, by distributing the business in such grain among a larger number of receivers and commission mer-

chants, by increasing the number of country dealers, supplying them more regularly with bids, and increasing the number of bids received by them from competing markets, by eliminating risks necessarily incident to a private market and enabling country dealers to do business on a smaller margin by enabling them to sell grain "to arrive" which they would otherwise have been obliged to ship to commission markets or sell for future delivery, by enabling Chicago grain merchants to trade on a smaller margin, and by enabling those engaged in trading in grain to arrive to fulfill their contracts by tendering grain to arrive on any railroad, whereas formerly shipments had to be made over the particular railroad designated by the buyer.

Appeal from the District Court of the United States for the Northern District of Illinois.

Suit by the United States against the Board of Trade of the City of Chicago and others. From a decree in favor of the government, defendants appeal. Reversed, with directions.

Mr. Henry S. Robbins, of Chicago, Ill., for appellants.

Mr. G. Carroll Todd, Asst. Atty. Gen., for the United States.

*235 *Mr. Justice BRANDEIS delivered the opinion of the Court.

Chicago is the leading grain market in the world. Its Board of Trade is the commercial center through which most of the trading in grain is done. The character of the organization is described in Board of Trade v. Christie Grain & Stock Co., 198 U. S. 236, 25 Sup. Ct. 637, 49 L. Ed. 1031. Its 1600 members include brokers, commission merchants, dealers, millers, maltsters, manufacturers of corn products and proprietors of elevators. Grains there dealt in are graded according to kind and quality and are sold usually "Chicago weight, inspection and delivery." The standard forms of trading are: (a) Spot sales; that is, sales of grain already in Chicago in railroad cars or elevators for immediate delivery by order on carrier or transfer of warehouse receipt. (b) Future sales; that is, agreements for delivery later in the current or in some future month. (c) Sales "to arrive"; that is, agreements to deliver on arrival grain which is already in transit to Chicago or is to be shipped there within a time specified. On every business day sessions of the Board are held at which all bids and sales are publicly made. Spot sales and future sales are made at the regular sessions of the Board from 9:30 a. m. to 1:15 p. m., except on Saturdays, when the session closes at 12 m. Special sessions, termed the "call," are held immediately after the close of the regular session, at which sales "to arrive" are made. These sessions are not limited as to duration, but last usually about half an hour. At all these sessions transactions are between members only; but they may trade either for themselves or on behalf of others. Members may also trade privately with one another at any place, either during the sessions or after, and they may trade with nonmembers at any time except on the premises occupied by the Board.[1]

Purchases of grain "to arrive" are made largely from country dealers and farmers throughout the whole territory tributary to Chicago, which includes besides Illinois and Iowa, Indiana, Ohio, Wisconsin, Minnesota, Missouri, Kansas, Nebraska, and even South and North Dakota. The purchases are sometimes the result of bids to individual country dealers made by telegraph or telephone either during the sessions or after; but most *237 *purchases are made by the sending out from Chicago by the afternoon mails to hundreds of country dealers, offers to buy at the prices named, any number of carloads, subject to acceptance before 9:30 a. m. on the next business day.

In 1906 the Board adopted what is known as the "call" rule. By it members were prohibited from purchasing or offering to purchase, during the period between the close of the call and the opening of the session on the next business day, any wheat, corn, oats or rye "to arrive" at a price other than the closing bid at the call. The call was over, with rare exceptions, by 2 o'clock. The change effected was this: Before the adoption of the rule, members fixed their bids throughout the day at such prices as they respectively saw fit; after the adoption of the rule, the bids had to be fixed at the day's closing bid on the call until the opening of the next session.

In 1913 the United States filed in the District Court for the Northern District of Illinois, this suit against the Board and its executive officers and directors, to enjoin the enforcement of the call rule, alleging it to be in violation of the Anti-Trust Law of July 2, 1890, c. 647, 26 Stat. 209. The defendants admitted the adoption and enforcement of the call rule, and averred that its purpose was not to prevent competition or to control prices, but to promote the convenience of members by restricting their hours of business and to break up a monopoly in that branch of the grain trade acquired by four or five warehousemen in Chicago. On motion of the government the allegations concerning the purpose of establishing the regulation were stricken from the record. The case was then heard upon evidence; and a decree was entered which declared that defendants became parties to a combination or conspiracy to restrain interstate and foreign trade and commerce "by adopting, acting upon and enforcing" the "call" rule; and en- *238 joined them from*acting upon the same or from adopting or acting upon any similar rule.

[1, 2] No opinion was delivered by the District Judge. The government proved the ex-

[1] There is an exception as to future sales not here material.

istence of the rule and described its application and the change in business practice involved. It made no attempt to show that the rule was designed to or that it had the effect of limiting the amount of grain shipped to Chicago; or of retarding or accelerating shipment; or of raising or depressing prices; or of discriminating against any part of the public; or that it resulted in hardship to any one. The case was rested upon the bald proposition, that a rule or agreement by which men occupying positions of strength in any branch of trade, fixed prices at which they would buy or sell during an important part of the business day, is an illegal restraint of trade under the Anti-Trust Law. But the legality of an agreement or regulation cannot be determined by so simple a test, as whether it restrains competition. Every agreement concerning trade, every regulation of trade, restrains. To bind, to restrain, is of their very essence. The true test of legality is whether the restraint imposed is such as merely regulates and perhaps thereby promotes competition or whether it is such as may suppress or even destroy competition. To determine that question the court must ordinarily consider the facts peculiar to the business to which the restraint is applied; its condition before and after the restraint was imposed; the nature of the restraint and its effect, actual or probable. The history of the restraint, the evil believed to exist, the reason for adopting the particular remedy, the purpose or end sought to be attained, are all relevant facts. This is not because a good intention will save an otherwise objectionable regulation or the reverse; but because knowledge of intent may help the court to interpret facts and to predict consequences. The District Court erred, therefore, in striking from the answer *allegations concerning the history and purpose of the call rule and in later excluding evidence on that subject. But the evidence admitted makes it clear that the rule was a reasonable regulation of business consistent with the provisions of the Anti-Trust Law.

First. The nature of the rule: The restriction was upon the period of price-making. It required members to desist from further price-making after the close of the call until 9:30 a. m. the next business day; but there was no restriction upon the sending out of bids after close of the call. Thus it required members who desired to buy grain "to arrive" to make up their minds before the close of the call how much they were willing to pay during the interval before the next session of the Board. The rule made it to their interest to attend the call; and if they did not fill their wants by purchases there, to make the final bid high enough to enable them to purchase from country dealers.

Second. The scope of the rule: It is restricted in operation to grain "to arrive." It applies only to a small part of the grain shipped from day to day to Chicago, and to an even smaller part of the day's sales; members were left free to purchase grain already in Chicago from any one at any price throughout the day. It applies only during a small part of the business day; members were left free to purchase during the sessions of the Board grain "to arrive," at any price, from members anywhere and from non-members anywhere except on the premises of the Board. It applied only to grain shipped to Chicago; members were left free to purchase at any price throughout the day from either members or non-members, grain "to arrive" at any other market. Country dealers and farmers had available in practically every part of the territory called tributary to Chicago some other market for grain "to arrive." Thus Missouri, Kansas, Nebraska, and parts of Illinois are also tributary to St. Louis; *Nebraska and Iowa, to Omaha; Minnesota, Iowa, South and North Dakota, to Minneapolis or Duluth; Wisconsin and parts of Iowa and of Illinois, to Milwaukee; Ohio, Indiana and parts of Illinois, to Cincinnati; Indiana and parts of Illinois, to Louisville.

Third. The effects of the rule: As it applies to only a small part of the grain shipped to Chicago and to that only during a part of the business day and does not apply at all to grain shipped to other markets, the rule had no appreciable effect on general market prices; nor did it materially affect the total volume of grain coming to Chicago. But within the narrow limits of its operation the rule helped to improve market conditions thus:

(a) It created a public market for grain "to arrive." Before its adoption, bids were made privately. Men had to buy and sell without adequate knowledge of actual market conditions. This was disadvantageous to all concerned, but particularly so to country dealers and farmers.

(b) It brought into the regular market hours of the Board sessions, more of the trading in grain "to arrive."

(c) It brought buyers and sellers into more direct relations; because on the call they gathered together for a free and open interchange of bids and offers.

(d) It distributed the business in grain "to arrive" among a far larger number of Chicago receivers and commission merchants than had been the case there before.

(e) It increased the number of country dealers engaging in this branch of the business; supplied them more regularly with bids from Chicago; and also increased the number of bids received by them from competing markets.

(f) It eliminated risks necessarily incident to a private market, and thus enabled country dealers to do business on a smaller margin. In that way the rule made it possible for them to pay more to farmers without raising the price to consumers.

*241 *(g) It enabled country dealers to sell some grain to arrive which they would otherwise have been obliged either to ship to Chicago commission merchants or to sell for "future delivery."

(h) It enabled those grain merchants of Chicago who sell to millers and exporters, to trade on a smaller margin and by paying more for grain or selling it for less, to make the Chicago market more attractive for both shippers and buyers of grain.

(i) Incidentally it facilitated trading "to arrive" by enabling those engaged in these transactions to fulfill their contracts by tendering grain arriving at Chicago on any railroad, whereas formerly shipments had to be made over the particular railroad designated by the buyer.

The restraint imposed by the rule is less severe than that sustained in Anderson v. United States, 171 U. S. 604, 19 Sup. Ct. 50, 43 L. Ed. 300. Every Board of Trade and nearly every trade organization imposes some restraint upon the conduct of business by its members. Those relating to the hours in which business may be done are common; and they make a special appeal where, as here, they tend to shorten the working day or, at least, limit the period of most exacting activity. The decree of the District Court is reversed with directions to dismiss the bill.

Reversed.

Mr. Justice McREYNOLDS took no part in the consideration or decision of this case.

(246 U. S. 242)

SEARS v. CITY OF AKRON.

(Argued Jan. 21 and 22, 1918. Decided March 4, 1918.)

No. 105.

1. CONSTITUTIONAL LAW ⟹125—IMPAIRMENT OF OBLIGATION OF CONTRACTS—RIGHTS OF CORPORATIONS.

Gen. Code Ohio 1910, § 10128, provides that any company organized to build dams or for constructing and maintaining canals, etc., to carry water to any plant or power house where electricity is generated or for erecting and maintaining lines to carry and transmit electricity, etc., may appropriate so much private land as is deemed necessary for its pipes, poles, reservoir, etc., as well as land overflowed and for the erection of tanks and reservoirs for the storage of water, etc. *Held*, that a corporation organized under the general laws to construct and operate a power system acquired by its incorporation no contract right protected from impairment by Const. U. S. art. 1, § 10, to have the quantity of water available for development by it undiminished.

2. CONSTITUTIONAL LAW ⟹129 — IMPAIRMENT OF OBLIGATION OF CONTRACTS—RIGHTS OF CORPORATIONS.

If a power company by eminent domain or otherwise acquires riparian lands or specific rights in the use and flow of water from riparian owners, these constitute property acquired under its charter, and not contract rights expressed or implied in the grant of the charter.

3. CONSTITUTIONAL LAW ⟹126—IMPAIRMENT OF OBLIGATION OF CONTRACTS—AMENDMENT OR REPEAL OF CHARTERS.

Under Const. Ohio art. 13, § 2, providing that corporations may be formed under general laws but that all such laws may from time to time be altered or repealed, the contract inhering in the charter of a power company as distinguished from its property acquired under the charter was subject to the state's reserved power to amend or repeal, and, if necessary to justify a city's acts in appropriating water from certain rivers under Act May 17, 1911 (102 Ohio Laws, p. 175), authorizing it to do so, such act may be treated as an amendment of the power company's charter making its rights subject to those of the city.

4. CONSTITUTIONAL LAW ⟹126 — REVOCATION OF RIGHTS OF CORPORATIONS.

Whether or not, under the general laws of Ohio, the adoption of a plan of water power development by a power company vested in it a preferential right as against rival power companies or municipalities to appropriate the property embraced in such plan, the state, under Const. Ohio art. 13, § 2, retained the power to revoke any such right to appropriate property until it had been acted upon by acquiring the property authorized to be taken.

5. MUNICIPAL CORPORATIONS ⟹323(1)—PUBLIC IMPROVEMENTS — INJUNCTION—PERSONS ENTITLED.

The riparian rights of a power company consisting of a small parcel of land extending to high-water mark below a dam and reservoir constructed by a city for water supply purposes, a contract with a riparian owner below the dam for a portion of the river bed with a right to regulate flowage, and options for other lands and rights, all of which were apparently acquired after the city's water development was practically completed, did not entitle such company to relief by injunction against the further construction of the dam and reservoir and the diversion of water.

6. CONSTITUTIONAL LAW ⟹118, 281 — EMINENT DOMAIN ⟹167(2) — DETERMINATION OF NECESSITY—DUE PROCESS OF LAW—IMPAIRING OBLIGATIONS OF CONTRACT.

Gen. Code Ohio 1910, §§ 3677-3697, so far as it authorizes municipalities to determine the necessity for the taking of private property for water supply purposes without the owners having an opportunity to be heard as to such necessity, does not violate Const. U. S. art. 1, § 10, or Amendment 14.

7. EMINENT DOMAIN ⟹67 — NECESSITY OF TAKING—DETERMINATION.

While the question whether the purpose of a taking is a public one is judicial, the necessity and the proper extent of a taking is a legislative question, though the Legislature may refer such issues, if controverted, to the court for decision.

8. CONSTITUTIONAL LAW ⟹24—ADOPTION OF CONSTITUTION — REPEAL OF PRIOR ORDINANCES.

A city ordinance appropriating water from a river for the purpose of a water supply, providing for a proceeding for the assessment of compensation, and providing for the issuance of bonds for the payment of the costs and expenses of the appropriation, which became effective September 10, 1912, was not repealed by the new Constitution of Ohio adopted September 3, 1912, but not effective until November 15, 1912, and which, in article 18, § 5, provides a right to a referendum on such ordinances, as the ordinance was a valid existing law when the new Constitution became operative though no action had been taken under it.