

with the first venture, and that nothing can prevent the success of another crop." So he signs a new contract embracing the indebtedness of the old one and goes further into debt. He again plants his good acres with useless stock and does all the irrigating, cultivating, and harvesting. The crooked operator then handles whatever crop the grower may get, questionable as it may be, and retains all the proceeds of the sale for himself, because there is not enough to liquidate the purchase price of the bulbs, seeds, or plants with which the operator started. The balance still due on the contract gives the promoter the whip hand over the grower.

To this sorry record of fraud and deception there is no ready answer. But education may avert disaster: The intelligent grower, alerted to the tricks that may be played upon him, and aware of the aid provided by regulatory statutes, may evade the deadfalls and ambushes waiting for him on the dangerous trail leading from farm to market. (*C. J. Carey.*)

Some Rules for the Produce Business

The services of the commission merchant, broker, and dealer make it possible for a producer to concentrate on production.

Some problems have attended the increase in utilization of agents' services. They have had to do with the determination of an agent's reliability and responsibilities; setting up standard trade terms; provision for impartial determination of quality; verification and evaluation of an agent's accountings and actions; and providing for handling contracts and disputes.

At first, some undesirable individuals were attracted to the produce business because large amounts of credit could be obtained and profits could be made quickly. The buyer, seller, and agent were usually far apart, and the absence of regulations made it hard to check the statements of a dishonest operator. If a dispute arose regarding the quality of merchandise, the shipper had difficulty in proving that the goods met contract specifications. If legal action became necessary, the shipper would have to sue in the receiver's State. Early State laws pertained mostly to movement of goods within States but did not regulate commodities in interstate commerce.

At the turn of the century, commission merchants, dealers, brokers, and producers were greatly concerned over the loose manner in which the business was being conducted. Honest dealers found it difficult to carry on their business in competition with the minority of dishonest operators. One result was the formation of trade associations, which served to identify and evaluate the operation of members.

Shortly before the First World War, interest developed in the possibility of Federal legislation to regulate the marketing of fresh fruit and vegetables. Preliminary studies to that end were conducted by the Department of Agriculture and representatives of growers, shippers, and receivers. A report was issued in 1917 by a joint council of trade associations concerning bills before the Congress designed to make certain practices unlawful and to authorize the Secretary of Agriculture to take steps to facilitate distribution, to license handlers, and to prescribe regulations governing the conduct of the business.

In the First World War, the United States Food Administration formulated regulations requiring the licensing of all handlers of fresh fruit, vegetables, and certain other products and prescribing rules to be followed. The regulations became effective November 1, 1917.

Conferences were held in 1921 by the Department of Commerce and the Department of Agriculture with representatives of the various trade associations. The result was the adoption of rules for the conduct of the produce business—including such matters as the correct form of records, the facts that would be shown on accounts sales, and the enrollment of persons, firms, and associations which would agree to be bound by the rules.

To bring about a further standardization of trading practices, the Department of Agriculture in 1925 developed a plan of voluntary registration and arbitration of disputes. The plan proposed that the Department would enter into cooperative agreements with handlers of fresh fruit and vegetables in wholesale quantities, whereby they agreed to be governed by the standard trading rules, to keep adequate records, to allow examination of the records, and to settle disputes by arbitration. By November 11, 1926, agreements had been signed by 788 persons, who handled more than half a million cars of produce a year. The plan was abandoned, however, when the Produce Agency Act was passed in 1927.

That act makes it a misdemeanor, punishable by fine or imprisonment, or both, for any person who receives fruit, vegetables, dairy or poultry products, or other perishable products to be sold for somebody else to make fraudulent accounting or false or misleading statements, with an intent to defraud, or to dump produce without good cause.

As the act applied only to the handling and disposition of products received in interstate trade for sale on consignment, some persons believed that further regulatory measures should be enacted to apply to all types of contracts involving the purchase, sale, and consignment of fruit and vegetables.

After several years of study by members of the industry and legislators, the Perishable Agricultural Commodities Act became law in 1930. It was

designed to suppress unfair and fraudulent practices and to promote more orderly marketing of perishable agricultural commodities in interstate and foreign commerce. It applies to all persons doing business as commission merchants, dealers, or brokers who handle fresh or frozen fruit or vegetables in interstate or foreign commerce, except if the commodity is of the individual's own raising or purchased in small quantities solely for sale at retail. They must hold a license issued by the Department of Agriculture or be subject to fines. License fees of 15 dollars a year are deposited in a special fund and used to defray the expense of administering this act, the Produce Agency Act, and the Export Apple and Pear Act.

The Perishable Agricultural Commodities Act prohibits such unfair practices as rejection without reasonable cause (goods might otherwise be rejected if prices are falling fast); failure to deliver without reasonable cause; making false and misleading statements (for example, untrue statements made to induce a person to make a contract he would not make if he knew the true details); making incorrect accountings on consignments; failure to pay promptly for commodities purchased or received on consignment; misrepresenting the grade, the quality, condition, or State or country of origin; and altering Federal inspection certificates.

Persons and firms licensed under the act are required to keep for 2 years accounts and records that will adequately disclose all transactions involved in the business.

Any person who has reason to believe that the act has been violated may file a complaint with the Department. Appropriate investigation is made. If deemed necessary, an audit of the books and records of the party complained against is made by an agent authorized by the Secretary.

If a violation of the act is found, the person is informed and given opportunity to make settlement. In recent

years, more than 2,500 complaint cases have been filed each year. About 90 percent of them have been settled informally. More than 1 million dollars each year has been recovered for the complaining parties.

If the investigation shows a probable violation of the act and the party complained against refuses to settle, a formal complaint is accepted from the complaining party. A copy of the formal complaint and a copy of the report of investigation made by the Department are served on the party complained against. He is given 20 days in which to settle or file an answer. If settlement is not made, the case is then referred to the Solicitor of the Department for legal action.

An order issued later by the judicial officer may dismiss the proceeding for lack of proof or other causes or may award reparation to the complaining party. If the party against whom reparation is awarded does not pay the award, or file an appeal with a United States District Court, within 30 days from the date of the order, his license becomes suspended by operation of law and it is illegal for him to operate as a commission merchant, dealer, or broker in fruit and vegetables. The Department is prohibited from issuing a license to any person who has failed to pay a reparation award issued against him within 2 years of the date of the application for license.

Disciplinary proceedings are authorized in the act. They are instituted by the Secretary of Agriculture or persons to whom he delegates authority.

Following requests by a majority of members of the fruit and vegetable industry for speedy disposition of bona fide disputes, the Department has undertaken informal arbitration of controversies. After all parties have signified in writing their willingness to arbitrate a complaint filed under the act and after facts and evidence have been submitted, the Department's staff in Washington studies and evaluates the facts and reaches a decision, which is

accepted as final by the parties to the complaint. The entire matter is settled quickly and inexpensively and without publicity or lengthy litigation.

An average of 2,335 cases a year have been handled since 1930. More than half of the complaints alleged failure to account and pay. About a fourth alleged rejection without reasonable cause or failure to deliver.

Trade terms and definitions were promulgated, as provided in the act, and are used as a basis for making contracts for purchase and sale of perishable farm goods. The United States Standards established by the Department for fruit and vegetables are also widely used as a basis of trading.

Eight amendments have been made to the original act. The latest authorized an increase in the license fee from 10 dollars to 15 dollars a year. The others were designed to strengthen the position of the honest dealer.

The act has afforded protection to the grower, shipper, commission merchant, broker, and dealer. It has reduced the number of arguments, minimized risk, prevented losses, and lowered marketing costs. (*Ted C. Curry.*)

Agents and Buyers

A common cause of disputes is the seller's misunderstanding of the status of the agents or buyers with whom he is dealing.

A producer who ships his products to a distant point should first make sure whether the party with whom he is negotiating is representing him as his selling agent or is merely a buyer bargaining with him for the purchase of his product.