tomers of another or to the trade generally an account of a court proceeding which is misleading, the continuance of such practice may be enjoined. *Asbestos Shingle Co. v. Johns-Manville Co.* (C. C. S. D. N. Y., 1911) 189 Fed. 611; *Rollman Mfg. Co. v. Universal Hardware Works* (C. C. A. 3, 1916) 238 Fed. 568; *Gerosa v. Apeo Mfg. Co.*, (C. C. A. 1, 1924) 299 Fed. 19; *Price Hollister Co. v. Warford Corporation* (D. C. S. D. N. Y., 1926) 18 Fed. (2nd) 129; *Haver Co. v. Sesquicentennial Exhibition Association* (D. C. E. D. Pa., 1928) 26 Fed. (2nd) 821; *Gardner Sign Co. v. Claude Neon Lights, Inc.* (D. C. W. D. Pa., 1929) 36 Fed. (2nd) 827. The courts in creating these exceptions based their decisions on a tenuous property interest in the complainants.

Two recent cases, *Maytag Co. v. Meadows Mfg. Co.* (C. C. A. 7, 1929) 35 Fed. (2nd) 403 and *Dehydro Inc. v. Treotlite Co.* (D. C. N. D. Okla., 1931) 53 Fed. (2nd) 273, held that such actions as these are not actions to enjoin a libel or slander but rather to enjoin a party from committing acts constituting unfair competition, and from destroying the plaintiff's business. See Walsh, *On Equity*, 267. The principal case could have been decided along the same lines. By not doing so the Court seems to be out of line with the modern tendency.

The exceptions tend to show that the courts are not in sympathy with the alleged rule "equity will not enjoin a libel" and they are willing to bring about the opposite result by indirect means. The courts have still failed to take the direct course because of precedent.

O. J. G. '37.

INTERSTATE COMMERCE COMMISSION—EVIDENCE ADMISSIBLE ON JUDICIAL REVIEW OF DECISION.—The Interstate Commerce Commission issued an order prescribing divisions, between northern and southern carriers, of through rates on citrus fruit from Florida points to destinations in official classification territory. The northern carriers sued in equity to enjoin, set aside, and annul these orders on the ground that the prescribed divisions were confiscatory. The court dismissed the petitions but in so doing, held, that in considering the issue of confiscation the court is not limited to evidence introduced before the Commission. It entertained additional evidence upon this issue. *Baltimore and Ohio Ry. v. United States*, (D. C. E. D. Va. 1934) 9 Fed. Supp. 181.

Though at first, in accordance with the Statute, (24 Stat. 384, [1887], 49 U. S. C. A. 16) the Supreme Court gave to the findings of fact by the Commission the effect only of prima facie evidence, *I. C. C. v. Ala. Midland R. Co.* (1897) 164 U. S. 144, it stressed the importance of having all the facts disclosed before the Commission and expressly disapproved any method of procedure on the part of the railroads which led them to withhold part of their evidence from the Commission and to produce it for the first time in the courts. *Cin., N. O. & Tex. Pac. R. v. I. C. C.* (1896) 162 U. S. 184, 196; *Texas & P. R. Co. v. I. C. C.* (1896) 162 U. S. 197. As cases became increasingly numerous the courts realized more and more the expediency of having the Commission pass upon the intricate questions of fact. The Hep-

burn Amendment (34 Stat. 584, 591 [1906,] 49 U. S. C. A. 1) as to enforcement of non-reparation orders, left the scope of judicial review entirely undefined and provided, "and the court shall prosecute such inquiries and make such investigations, through such means as it shall deem needful in the ascertainment of the facts at issue or which may arise upon the hearing of such petition. If, upon such hearing as the court may determine to be necessary, it appears that the order was regularly made and duly served, and that the carrier is in disobedience of the same, the court shall enforce obedience to such order by a writ of injunction, or other proper process, mandatory or otherwise. . . ." Nor was the scope of review defined as to injunction proceedings to set aside an order of the Commission. 36 Stat. 542 (1910); 38 Stat. 220 (1913). The court took this opportunity to view the findings of fact by the Commission as conclusively correct and confined itself to determining whether, in the light of those findings from the facts presented before the Commission, the order involved a violation of the Constitution, a want of conformity to statutory authority, or such an arbitrary exercise of power as to transcend the authority conferred. *Proctor and Gamble Co. v. United States* (1912) 225 U. S. 282. The court cannot rehear the case and retry questions of fact. Neither can it review or revise the discretion of the Commission where discretion is allowed by law; it can only approve or disapprove for the reasons mentioned. The matter is heard in court solely on the record, as in an ordinary error proceeding, and no new evidence is admissible. *United States v. L. & N. R. Co.* (1914) 235 U. S. 314; *I. C. C. v. Union Pac. R. Co.* (1912) 222 U. S. 541; *I. C. C. v. Ill. Cent. R.* (1910) 215 U. S. 452.

However, since as regards reparation proceedings the Hepburn Amendment left statutory language unchanged, the Court has held itself bound by the words, "shall be prima facie evidence," (34 Stat. at. L. 584, 590, 1906) and a trial *de novo* is allowed. *Penn. R. Co. v. Minds* (1910) 250 U. S. 368; *Mills v. Lehigh Valley R. Co.* (1915) 238 U. S. 473.

The prevailing line of decisions has held that while the legislature cannot withhold from the courts the power of judicial review of facts bearing upon questions of constitutional right, such review is confined to the evidence introduced before the Commission, and if any new evidence is discovered the case should be remanded to the administrative body. *Ohio Valley Water Co. v. Ben Avon Borough* (1920) 253 U. S. 287; *Tagg Bros. and Moorhead v. United States* (1930) 280 U. S. 420; *Dayton-Goose Creek R. Co. v. United States* (1924) 236 U. S. 456; *Bluefield Co. v. Public Service Com.* (1923) 262 U. S. 679. A break in this line of decisions is *Crowell v. Benson* (1931) 285 U. S. 22, which granted a trial *de novo* as to findings, by the United States Compensation Commission, of questions of "jurisdictional" fact in the awarding of reparation. As was recognized by Mr. Justice Brandeis in a vigorous dissent, the *Ohio Valley Case*, supra, was improperly relied upon by the Court as supporting the holding that a trial *de novo* in court of fact questions bearing upon the issue of confiscation is required. *Crowell v. Benson*, supra, at p. 91. The limited effect of this case was quickly recognized. *Voehl v. Indemnity Ins. Co.* (1933) 288 U. S. 162;

Green v. Crowell, Deputy Com'r (1934) 69 Fed. (2nd) 762; *Bethlehem Shipbuilding Corp. v. Monahan* (1932) 57 Fed. (2nd) 217; *Kropp v. Parker* (1934) 8 Fed. Supp. 290. *In Krentz et al. v. Durning* (1934) 69 Fed. (2nd) 802, 804, the court said, "were not its scope *(Crowell v. Benson)* so confined, it would have overthrown the accepted procedure of the Interstate Commerce Commission, the Federal Trade Commission, the Shipping Board, the Board of Tax Appeals, and we should suppose, the assessment of damages in admiralty by a commissioner."

The present case relies on *Mfr's R. v. United States* (1918) 246 U. S. 457, at 480-490, as holding that new evidence is admissible on the issue of confiscation. In that case the United States contended that the findings of the Commission upon the subject of confiscation were not subject to attack upon evidence not presented to the Commission. The Court said, "We can not sustain this objection in its entirety." It went on to say, that though correct practice required that all pertinent evidence should first be submitted to the Commission, and that thus it could not approve the procedure in this case, since the issue of confiscation was in the case the Court should deal with it. Except in this doubtful precedent, it has been held, in non-reparation cases, that the courts are limited to a review of the evidence taken before the Commission. *United States v. L. & N. R. Co.*, supra; *I. C. C. v. Union Pac. R. Co.*, supra; *L. & N. R. Co. v. United States* (1914) 218 Fed. 89; *Oregon R. R. & N. Co. v. Fairchild* (1912) 224 U. S. 510; *I. C. C. v. Ill. Cent. R. Co.* (1910) 215 U. S. 452. Thus it seems that the court in the principal case has relied upon a solitary case rather than upon much more clearly defined counter authority.

P. A. M. '36.

ORAL CONTRACTS—STATUTE OF FRAUDS—NOT TO BE PERFORMED IN ONE YEAR.—Plaintiff sued defendant on an oral promise to pay a note of defendant's brother, renewed for one year, from proceeds of an insurance policy insuring the life of his brother, when received by the promisor as beneficiary, if the maker died before the end of a year. *Held,* that the oral promise was invalidated by the statute of frauds provision adopted in New York in April, 1933 (chap. 616 of Laws of 1933, amending sec. 31 of the Personal Property Laws), which provision declares void all agreements not in writing "performance of which is not to be completed before the end of a lifetime." *Terminello v. Bleecker* (July, 1935) 280 N. Y. Supp. 326.

The instant case is the first reported case to adjudicate upon the statute as amended, and the case is directly within the provisions of the act since the alleged promise did not become operative until the death of the promisor's brother, therefore, the performance of the contract by the promisor was not to be completed before the end of the maker's lifetime.

The statutes of most jurisdictions do not include such a provision: (that they do not) see R. S. Mo. 1929 sec. 2967; Cahill's Ill. Rev. Statutes, chap. 59, sec. 1; but provide only that contracts not to be performed within one year, to be valid, must be in writing. Most jurisdictions, therefore, hold that where an obligation is to continue during the lifetime of a specified