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INDUSTRIAL COMBINATIONS AND TRUSTS



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INDUSTRIAL COMBINATIONS AND TRUSTS

EDITED BY
WILLIAM S. STEVENS, PH. D.
Columbia University

New York
THE MACMILLAN COMPANY
1922

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TO PROFESSORS PATTEN, McCREA, MEADE AND JOHNSON OF THE WHARTON SCHOOL, UNIVERSITY OF PENNSYLVANIA, THE EDITOR DEDICATES THIS VOLUME OF READINGS, IN GRATEFUL REMEMBRANCE OF SYMPATHY, COUNSEL AND ENCOURAGEMENT.

IMPORTANT

THE editor desires to call attention to the following points:—

1. The editor is alone responsible for the typographical work in the volume. So far as possible it was attempted to reproduce the documents exactly as they were in the original. The editor believes that all the errors in spelling and construction have been duly noted. To have done the same with the very numerous errors in punctuation, use of parentheses, etc. etc., would have unnecessarily cumbered the pages. Such errors as are discovered therefore in this respect will probably be found to be errors in the originals.

2. Some of the court decisions were necessarily taken from advance copies as at the time the volume was made up they had not been published in the reports.

3. The paging in the Stanley and Interstate Commerce Committee Investigations differs somewhat in the first copies issued and the last.

4. The title of the Interstate Commerce Investigation reads in original, sometimes "Hearing" and at others "Hearings."

5. Lines and fictitious initials have been used instead of names in many places in Chapter XII.

6. Examination of the document beginning on page 118 will show that it resembles both a pooling agreement and a factor's agreement. As a single contract the party of the first part is constituted a factor of the Table and Stair Oil Cloth Association. Several of such contracts, however, were the basis of the pool. The document should be read both as a pooling and as a factor's agreement.

PREFACE

DURING the last two or three years while the editor of this volume was giving careful study to the subject of Trusts, he became more and more forcibly impressed by the need of a presentation of the subject that should be strictly impartial, that should advocate no theories, but yet should present the problems that arise in relation to Trusts comprehensively, and as they are. The realization of this need was increased by the fact that a large number of writers have shown the disposition to confuse the problems to which the Trust gives rise, with those that develop in connection with corporations and large scale production.

The publication of the Steel and Interstate Commerce Committee Investigations bridged many of the chasms which, in the opinion of the editor lay in the way of a satisfactory treatment of the subject from source material. Thereupon it was decided to attempt the present volume, a book that should not give the reader a second hand knowledge of the Trusts, but which should place before him the original documents themselves: pooling, Trust, factors and international agreements; court decisions and laws against Trusts; Trust methods of fixing prices, eliminating competition and restraining trade; the dissolution plans of dissolved Trusts; lease and license agreements of representative patent monopolies; and the views of eminent business and professional men as to the proper methods of handling this gigantic problem.

Throughout the preparation of the volume two purposes were held steadily in mind. The first was to design a volume that should place within the reach of the students in courses in Trusts in our colleges and universities, material of which much is, as the editor knows from personal experience, only too often difficult of access or else altogether unavailable. The second purpose of the editor was the collection of such a set of materials as would afford the ordinary reader who chances to be interested in Trusts, a fair knowledge at first hand of the historical development of the Trust movement in the United States, and a thorough comprehension of those problems in regard to them that the country is facing to-day.

The arrangement of the book has been devised by the editor with the idea, that, should it satisfactorily serve the ends for which it is designed, it may be possible to add new readings from the mass of material that is steadily accumulating upon the subject.

The editor wishes to make his acknowledgments to Dr. McCrea of the Wharton School, University of Pennsylvania, for valuable suggestions and criticisms in regard to head notes and to Mr. Lewis Abbott, a graduate student in the Wharton School, who in conjunction with the editor read the manuscript proof. Grateful acknowledgments are also due to Mr. O. J. Field of the Department of Justice for his prompt courtesy and unfailing kindness in supplying required documents and replying to numerous requests for information. The editor also desires to mention his obligations to Senator Clapp and Representative Stanley, each of whom furnished the editor with several copies of the investigations of which they were, respectively, in charge.

WILLIAM S. STEVENS.

UNITY, MAINE,
September, 1912.

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INDUSTRIAL COMBINATIONS AND TRUSTS

CHAPTER I

SPECIMENS OF EARLY POOLING

NOTE

THE industrial combination and trust movement as a feature of our national life may be said to date from the pools in the cordage industry about 1860. These combinations were shortly succeeded in the middle of the sixties by the organization of the Michigan Salt Association, and the first anthracite coal combination appears to have been formed in 1871. The pools of the anthracite coal roads continued a more or less intermittent and spasmodic existence down to the passage of the Interstate Commerce Act of 1887. Both the seventies and eighties were characterized by numerous combinations of the same type. Among these may be mentioned the Western Export Association, the United Refining Company, Gunpowder Manufacturers' Association, Kentucky Distilleries' Association, Wall Paper Association, Sand Paper Association, Upholsterers' Felt Association, Standard Envelope Company and others.

Space permits the reproduction of only three documents showing the form of organization and methods of these early combinations. So brief an examination may be justified first, by the fact that these pools are now chiefly of historic interest, and second that their organization and methods of operation have in nearly every case been substantially reproduced in more recent combinations whose agreements will be shown in other chapters.

The first exhibit in the following pages is the pooling agreement of the Gunpowder Manufacturers, which was adopted April 23, 1872. In essence it is a simple agreement for the maintenance of prices. In the second agreement, that of the Kentucky Distillers, we have an example of a pool formed primarily to divide output

and limit production. In the third member of this group, the Standard Envelope Company, we have probably the most interesting combination of the three. The Standard Envelope Company was a Massachusetts corporation with a capital of $5,100, incorporated by certain envelope manufacturers. It was a convenient method of harmonizing the interests of the different members, and was used as a medium for the pooling of profits and expenses. Another and supplementary agreement provided an arrangement for equalizing and keeping prices at a fixed rate, and also for equalizing losses and expenses.—Ed.

EXHIBIT 1

ARTICLES OF ASSOCIATION OF THE MANUFACTURERS OF GUNPOWDER [1]

We, the undersigned, Manufacturers of Gunpowder, for the purpose of ensuring an equitable adjustment of prices and terms for sales of powder throughout the United States, hereby agree to the subjoined Articles of Association, to which we severally pledge for ourselves, and all under our control, rigid and honorable adherence.

1st.—This Association shall be called "THE GUNPOWDER TRADE ASSOCIATION OF THE UNITED STATES," and comprises all manufacturers of Gunpowder in the United States, who now or hereafter may be admitted thereto; the present organization being composed of the following manufacturers, entitled to representation and vote at all meetings of the Association, as follows:

E. I. Dupont de Nemours & Co. . . . . Ten Votes.
Hazard Powder Company . . . . . Ten Votes.
Laflin & Rand Powder Company. . . . Ten Votes.
Oriental Powder Mills . . . . . Six Votes.
Austin Powder Company. . . . . Four Votes.
American Powder Company. . . . . Four Votes.
Miami Powder Company . . . . . Four Votes.

[1] *United States of America* v. *E. I du Pont, de Nemours and Company.* In the Circuit Court of the United States for the District of Delaware, Gov't. Ex. No. 96–b. Pet. Record, Exhibits, Vol. 1, pp. 476–479. The minutes of the same meeting that adopted this agreement show that a committee reported a scale of prices which was also adopted and made binding upon the Association. For a complete history of the powder combinations, see Stevens, Wm. S., Quarterly Journal of Economics, May, 1912, Vol. XXVI, pp. 444–481.—Ed.

2d.—The officers of this Association shall be a President, Vice-President, Secretary, and Treasurer, to be elected by ballot on the first meeting of this Association, and annually thereafter, and who shall hold office until others are elected in their stead.

3d.—It shall be the duty of the President to preside at all meetings of the Association, and on the written request of two members thereof, to call special meetings of the same. In case of his absence, the same duties will devolve upon the Vice-President. The Secretary shall attend all meetings of the Association, keep full record of their transactions, and issue such notices to the associates as the properly authorized officers may direct. The Treasurer shall have the custody of all funds belonging to the Association.

4th.—This Association shall meet quarterly: say in the first week in February, May, August, and November, of each year, at such time and place as may be agreed upon at the previous quarterly meeting, for the purpose of establishing prices if need be, of hearing and deciding appeals, and determining all questions relative to the trade that may be submitted to it.

5th.—A Council of five persons, associates, of whom three (3) shall constitute a quorum, shall be elected by this Association at their first meeting for organization, and annually thereafter, holding office till the election of their successors, in default of such annual election. Such Council shall meet weekly (or at the call of the chairman) in the City of New York, or elsewhere, as a majority of Council shall decide. To said Council shall be referred all questions of discrepancy and deviations from prices in the different home markets, all complaints in writing of infraction of agreement by any agent of any associated company or firm; they shall adjudicate upon the same, and the decision by a majority of the Council shall be final; provided, that any associate aggrieved by such decision may appeal to the next quarterly meeting of the Association, pending which he must submit to the decision of the Council.

6th.—Any manufacturer of Gunpowder desiring to be admitted a member of this Association, may at any time signify his wish in writing to the President thereof; when upon admission and on his signing the Articles of Association, the said manufacturer is at once entitled to participate in its benefits, as he is likewise bound by its obligations. No member of the Association shall withdraw from the same without having signified his intention so

to do, at least thirty days before such withdrawal, to the President, who shall at once call a special meeting of the Association.

7th.—The minimum prices for powder of the various sorts required for the trade shall be established and regulated by this Association.

8th.—Any funds necessary for the carrying out the provisions of these Articles shall be assessed by the Council upon the associates in proportion to the votes to which they are respectively entitled.

9th.—These Articles shall not be altered or amended, except by a vote of two-thirds of the members of the Association at a regular quarterly meeting and after at least thirty days' notice of the proposed alteration or amendment.

EXHIBIT 2

PROCEEDINGS OF THE KENTUCKY DISTILLERS AT THEIR MEETING IN LOUISVILLE, KENTUCKY, MAY, 1888[1]

1st. Determine the quantity of whisky to be made in 1889. On this point 11,000,000 gallons is recommended as the maximum.

2d. Of this quantity let there be distributed under the following rules 9,000,000 gallons, leaving 2,000,000 gallons as a reserve, to be placed in the hands of a committee of ten, consisting of two from each collection district, to be allotted in such quantities and to such signers as in the judgment of the committee may be required to even up the shares of each, when any injustice, all facts duly and impartially considered, has been done under the rule.

3d. Take the surveyed capacity of the distillers of the State, and, after excluding from consideration all houses with a daily capacity of less than 40 bushels, ascertain the percentage of capacity actually used for an assumed period of 156 days in producing the crop of 1886, if the distillery was not operated in 1887, or the crop of 1887, or an average of the two years, when no production was made in 1886 and 1887, the committee shall make a basis fairly and justly.

4th. Having ascertained as above the actual percentage of capacity used by each, multiply the surveyed capacity by this percentage and thus ascertain the number of bushels required to

[1] House Report No. 4165, 50th Cong., 2nd Session, 1888, pp. 33–36. This agreement followed one of similar character adopted in June, 1887.—Ed.

have produced the quantity of whisky in a run of 156 days that each actually produced in 1886 or 1887, or the average as may be taken as the basis.

5th. Having thus equalized all the houses and ascertained the relative number of bushels daily capacity, multiply this daily capacity by 104 days and 4¼ gallons to the bushel, and ascertain the gallons each is entitled to make.

Add these shares together, and if the total is less than 9,000,000 gallons, increase the days from 104 to the number required to produce the 9,000,000. If the total exceeds 9,000,000 gallons, reduce the days to the number required to produce the 9,000,000.

The different houses are entitled to make the shares thus obtained in such time during the season from July 1, 1888, to July 1, 1889, as may suit their convenience.

The committee will, after the above appointment is made, receive applications for allowance out of the 2,000,000 reserved, fixing a date in the future by which time all applications are to be filed with the committee. The allotment will be made not to exceed the 2,000,000 gallons in the aggregate, and in such quantities, if any, to each applicant as the facts presented may justify.

6th. The committee shall furnish each distiller with a statement of the share to which he is entitled under the rule, and also a statement of the allowances, if any, made out of the reserve; said statements to be signed by the committee.

7th. Five members of the committee shall constitute a quorum for business, but no allotment shall be made except at fixed time or times, of which ten days' notice must be given each applicant in writing. No member shall sit as a committeeman in considering his own application.

8th. The distillers forming this agreement shall elect a board of trustees, to consist of seven members, whose duty it shall be to enforce the agreement. The committee described in sections preceding this section shall be charged with the duty of obtaining to the agreement the signatures of such distillers as may be absent at the meeting, and shall, when this work is performed, deliver to the chairman of the board of trustees this agreement, and a statement giving the shares of each distiller.

9th. The board of trustees shall, within ten days after their election, elect a chairman, and is hereby authorized and directed to secure an office in the city of Louisville, and to appoint a competent secretary and fix his salary. The secretary shall keep a full

and complete record of the bond stock of the signers to this agreement, from reports received from each distiller, as directed in section 10.

10th. Each distiller is requested and directed to send the secretary, when the office is established, a full and complete statement of the 1886 and 1887 whiskies, by months, then in his distillery bonded warehouses, and from the 1st to the 5th of each succeeding month, a statement of the withdrawals and deposits by months, together with a check for such an amount per barrel of deposits as may be fixed by the board of trustees as sufficient to pay all expenses, provided such rate shall not exceed 4 cents per barrel deposited in bond.

11. A full and accurate account shall be kept of all moneys received and of all disbursements. The secretary shall furnish, not later than the 20th of each month, to each signer a full and complete statement of the bond stock of the signers by months and years, as of the last day of the preceding month.

12. The agreement to be signed is in substance the same as that signed in 1888. The amount as determined by the committee as the share of each is to be placed opposite each name by the trustees from the statements furnished by the committee. The trustees shall then mail to each signer a statement setting forth the quantity placed opposite the name of each. If said quantity differs from that as shown in the statements furnished each signer by the committee, said signer must at once report the fact to the trustees, who shall investigate and ascertain and correct the error, if any.

13. The committee in allotting the reserve of 2,000,000 gallons will give the fullest consideration to signers that were most conservative in 1886 and 1887, in order to give to such signers the proper reward for their consideration.

In event of any dispute or controversy except as provided in the next section, arising between the committee or trustee and any party to the contract, the same shall be settled by arbitrators, to be selected as follows: one by the committee or trustee and one by the party, and these two an umpire, whose award shall be final between the parties.

There shall be selected by the convention a committee of five men, one from each collection district, who shall be known as the board of appeal, to whom any party who deems himself aggrieved by any allotment of capacity may appeal, which appeal shall be made in ten days after notice of allotment and five days' notice

given to the committee from whom the appeal is prosecuted, and the decision of said committee to be made in ten days and be final.

That the committee to obtain the signatures to the contract shall not deliver the same to the trustee until said contract shall be signed and agreed by 85 per cent. of distilling capacity of the State, excluding from such capacity those producing only high wines, alcohol, and neutral spirits.

The delivery of the contract shall be conclusive evidence that said terms have been complied with.

That the allotment committee is authorized to employ a secretary and fix his salary for the time they shall be in existence.

The following committees were then appointed:

ALLOTMENT COMMITTEE

Second District.—M. V. Monarch and Geo. D. Mattingly.
Fifth District.—T. H. Sherley and R. W. Wathen.
Sixth District—T. J. Megibben and William Adams.
Seventh District.—E. H. Taylor, jr., and Jos. M. Kimbrough.
Eighth District.—John B. Thompson and D. L. Moore.

APPEAL COMMITTEE

Second District.—R. Monarch.
Fifth District.—Nicholas Miller.
Sixth District.—E. W. Bramble.
Seventh District.—James M. Saffell.
Eighth District—Walter Bennett.

The board of trustees for the ensuing year are:—Herman Beckurts, J. M. Atherton, Nicholas Miller, D. L. Moore, Jas. McSorley, R. Monarch, S. J. Ashbrook.

The following resolutions were offered and adopted:

By Mr. Megibben: That the allotment committee is authorized to confer with the committee of the highwine trust, and if possible secure the stoppage of production of bourbons by said trust in this and other States.

By Mr. Taylor: That a committee of three be appointed by the chairman to see the Commissioner of Internal Revenue, with a view to call his attention to and seek protection from vicarious manufacture at registered distilleries, and the manufacture of what are known as "new process" whiskies in this State.

Committee appointed: E. H. Taylor, jr., T. H. Sherley, T. J. Megibben.

By Mr. Sherley: Whereas, it is the practice of a number of distillers, after the packages have been filled from the receiving cistern to force hot air into the packages, or by other processes to color the spirits and give them the appearance of older goods, the same being placed on the market as the regular bourbon or sourmash whiskies: Therefore be it

Resolved, That all whiskies that undergo any treatment after they have been put into the barrels be known to the trade as "new process whisky," and should be so branded. Referred to special committee of three to lay before the Commissioner.

By Mr. Atherton: *Resolved*, By the distillers of Kentucky, in convention assembled, that we are opposed to the repeal of the tax on fruit brandies as ruinous to our trade, opening the door to fraud, and destructive of the whole internal-revenue system. Also to the proposition to operate any distillery without the supervision of a Government store-keeper as now provided by law.

The allotment committee under the Kentucky distillers' agreement for 1888–'89 have organized by electing Col. T. H. Sherley chairman, and T. M. Gilmore secretary.

In accordance with the distillers' agreement, which directs the trustees to organize within ten days after their election, a meeting of that body was called for 3 p. m. of the 2d instant at the office of the Circular, in this city. Those present were Herman Beckurts, James McSorley, John M. Atherton, and Nicholas Miller. F. S. Ashbrook, R. Monarch, and D. L. Moore were present by proxies. Mr. Herman Beckurts was unanimously elected chairman for the ensuing year, which office he accepted. T. M. Gilmore was elected secretary.

CONTRACT

LOUISVILLE, KY., *May* 24, 1888.

The undersigned do mutually agree and covenant each with all and every the other signers hereof and of certified true copies of the same as follows, to wit:

First. It is for the pecuniary advantage of each and every the parties hereto that each and every the other parties should not make more whisky during the season from July 1, 1888, to July 1, 1889, than is hereinafter set down opposite the signature of the

several parties as their agreed production during said distilling season, which amount shall be fixed and determined by the committee of allotment selected and appointed and authorized to act in accordance with the rules and regulations, as provided in the resolution adopted by the Kentucky distillers in convention assembled on May 24, 1888, and by the trustees, set opposite their signatures.

Second. It is further agreed that the several parties hereto can and do enter into this agreement with the other parties hereto, and assume the obligations hereinafter expressed, upon the mature and deliberate conviction that it is for the pecuniary benefit of each so to do.

Third. And the parties, in consideration of the premises and of $1 to each the other paid and of divers other valuable consideration each of them moving, do mutually agree and covenant that they will severally make during the distilling season from July 1, 1888, to July 1, 1889, the quantities of whisky to be determined and set opposite their signatures as hereinbefore provided; with full liberty and right, however, to each and every signatory hereto to manufacture as much more whisky as he may choose upon the conditions hereinafter set forth.

Fourth. If any party hereto shall conclude to make and does make whisky in excess of the amount so to be ascertained and set opposite his name, he shall and will pay, and hereby covenants and agrees to pay, within thirty days after the 1st day of July, 1889, unto the trustees hereinafter named, a sum of money equal to 20 cents for each proof gallon of whisky so by him made in excess of the production set opposite his signature; the same to be distributed by the said trustees unto the other signatories hereof not producing more than the amount set opposite their names as compensation to them for their refraining from so doing and to re-imburse to them the profit which they surrendered by not making a greater amount of whisky than is opposite their names set forth, and as an offset to the increased profits to such overproducer. The said distribution shall be by equal pro rata among those not making more than is set opposite their names, based upon the contemplated production of each as set forth.

Fifth. And the parties hereto recognizing fully the right of each to make as much whisky as he may choose, agree and covenant that the said sum of 20 cents per gallon so to be computed is a fair and just compensation and is fixed as the liquidated and indisputable remuneration to be made by such producer to those parties

hereto who for his profit and at this request refrain from making more than therein by them indicated and thereby lose profit which they might otherwise make.

Sixth. That Herman Beckurts, D. L. Moore, R. Monarch, J. M. Atherton, James McSorley, Nick Miller, and S. J. Ashbrook are named as trustees, and they, or a majority of them, may sue for any such remuneration in their own names, as trustees for the benefit of those concerned; and all outlays and expenses, including counsel fees, shall be paid out of the fund as provided in section 10 of the resolutions adopted on May 24, by the distillers' meeting.

Any vacancy occurring in said trusteeship by death, resignation, refusal to act, or other disability shall be filled by the other trustees.

The trustees may call meetings of the signatories at any time on ten days' notice given through the United States mail.

That no party to this agreement shall rent, lease, or otherwise dispose of the distillery property owned, operated, or controlled by him or them for the purpose of manufacturing therein any quantity of distilled spirits beyond the amount apportioned and alotted [1] to him or them hereunder; and anything done or device resorted to for such purpose or with such intent or effect shall render such party liable for all damages as herein provided.

Any signatory hereof shall have the right to transfer his allotment hereunder and the right to manufacture the same to any other signatory, in which case the signatory so acquiring may at his own distillery or that of the transfer manufacture such allotment in addition to his own personal allotment.

For the purpose of obtaining signatures to this agreement copies thereof may be circulated, each copy to be authenticated as a true copy by the chairman of the allotment committee, namely, T. H. Sherley, and signatures to such copies shall have full effect as though made to the original paper, and all such copies and the original shall be held and treated and have effect as a single paper.

EXHIBIT 3

AGREEMENT OF ENVELOPE MANUFACTURERS [2]

This agreement, made this 21st day of June, 1887, between the Morgan Envelope Company, the Whitcomb Envelope Company,

[1] Thus in original.—Ed.

[2] Report of the Senate Committee on General Laws on Investigation Relative to Trusts, N. Y. Sen. Doc. No. 50, 1888, pp. 468–470.

the White, Corbin & Co., the Holyoke Envelope Company, the Plimpton Manufacturing Company, the Berlin & Jones Envelope Company, Samuel Raynor & Co., J. O. Preble & Co., and Lewis J. Powers, doing business under the name of Powers Paper Company, parties of the first part, and the Standard Envelope Company, party of the second part.

Witnesseth: 1. The parties of the first part hereby severally agree that within fifteen days after the first day of each and every calendar month, beginning with the month of August next, they or it will render a sworn statement to the party of the second part, addressed to its treasurer, of the total number of thousands of envelopes they, the said parties of the first part, respectively, shall have sold and delivered during the previous calendar month, specifying in said statement how many of the envelopes so sold and delivered by them or it, have been sold and delivered to any of the other parties of the first part named in this agreement.

2. The parties of the first part hereby severally further agree to pay to the Standard Envelope Company, on the fifteenth day of the same month in which such statement is to be made, by the terms hereof, a tax of fifteen cents upon each and every thousand envelopes so sold and delivered by them or it, except upon the envelopes so sold and delivered by them or it to any of the other parties of the first part named in this agreement. This rate of tax may at any time be changed, by the written assent of any seven of the parties herein named as parties of the first part. It is understood and agreed, however, by and between the parties to this agreement, that no monthly statement is to be required and no monthly tax is to be paid upon the envelopes which are excluded from the terms and operation of the written agreement, of even date herewith, between the Morgan Envelope Company and twelve other manufacturers of envelopes, parties of the first part, and the Standard Envelope Company, part [1] of the second part.

3. Whereas said Standard Envelope Company, by written instrument, dated on or about April 30, 1887, has contracted with the firm of Lester & Wasley, of Norwich, Conn., for the purchase of all envelope machines to be made or sold by them during the five years then next ensuing (said Lester & Wasley having therein agreed not to furnish more than twenty-four machines during any one year), the parties of the first part hereby severally agree to purchase of said Standard Envelope Company, and to pay therefor

[1] Thus in original.—Ed.

the price of each machine named in said Lester & Wasley contract, for the number of machines that shall be allotted to said parties of the first part, respectively, by the directors of the said Standard Envelope Company, or in lieu of such purchase, if any party of the first part shall so elect, they or it, may decline to take any or all machines so allotted, and to pay said Standard Envelope Company the sum of $500 for each machine so declined.

4. To the performance of this agreement the parties hereto severally bind themselves, their and each of their executors and administrators, successors and assigns, for the term of five years. In witness whereof the various parties hereto have severally set their hands and seals, the day and year first above mentioned.

(Here follows list of signatures.)

CHAPTER II

REPRESENTATIVE TRUSTS

NOTE

SINCE the pool was primarily only a gentlemen's agreement and its provisions and regulations were unenforcible through the courts, it possessed certain disadvantages. But since the pool has persisted throughout the entire course of our industrial history since the Civil War and has been the form under which some of our more recent combinations have operated, it may be asserted that these disadvantages have been somewhat overestimated. Yet it is none the less true that there were certain undesirable features connected with it and very shortly a new form of combination was devised known as the Trust. For many years it was supposed that the Standard Oil Trust of 1882 was the first agreement of this character. More recent revelations, however, have shown that the original Trust agreement was made by this company in 1879. In consequence, both the agreement of 1879 and that of 1882 have been included under this group.

The Standard Oil Company did not long retain the monopoly of this new scheme of combination. Others saw plainly the advantages it afforded, and speedily adopted it. In the latter part of 1884 the American Cotton Oil Trust was organized in the State of Arkansas. It embraced some eighty-five concerns doing business throughout the South. In 1887 three other Trusts were formed. The Distillers' and Cattle Feeders' Trust was a successor to the Western Export Association, a pool of the whisky manufacturers north of the Ohio River which had been organized in 1881. The others organized in the same year were the National Lead Trust and the Sugar Trust. The technical name of the latter combination was the Sugar Refineries Company. It may also be noted than an abortive attempt was made to organize the Cordage Industry into a Trust. The Trust agreements reproduced here are all at the present time well known documents but it has none the less seemed advisable to include them in the space of this book for sake of completeness and for purposes of analyzation.—Ed.

EXHIBIT 1

STANDARD OIL TRUST AGREEMENT OF 1879 [1]

Whereas the Standard Oil Company of Cleveland, Ohio, holds the possession of certificates for certain stocks and interests which it is desirable to distribute among the parties entitled thereto; and whereas such stocks and interests now stand in the names of several persons, and it is desirable for convenience in dividing them that all be transferred to trustees, and that the same be so transferred by the Standard Oil Company, by each party holding the same, and by every person holding or claiming an interest therein.

Now, in consideration of the foregoing, and of the sum of one dollar to us paid, and other considerations satisfactory to us, we, the undersigned, hereby grant, assign, transfer, and convey all our right, title, and interests and all the right, title, and interest of each and every one of us of whatever name and nature in and to all and singular the following-described stocks and interests, to wit:

Entire capital stock of Long Island Oil Company.
2,700 shares capital stock of Devoe Manufacturing Co.
Entire capital stock of Charles Pratt & Co.
5,059 shares capital stock of Baltimore United Oil Co.
525 shares capital stock of Keystone Refining Co.
Entire capital stock of Sone & Fleming Manufacturing Co., Limited.
Entire capital stock of Atlantic Refining Co.
Entire capital stock of Standard Oil Co. (of Pennsylvania).
Entire capital stock of Model Oil Co.
1,775 shares capital stock of American Lubricating Oil Co.
Entire capital stock of Camden Consolidated Oil Co.
2,268 shares capital stock of Central Refining Co.
700 shares capital stock of Maverick Oil Co.
Entire capital stock of Republic Refining Co.
400 shares capital stock of Waters-Pierce Oil Co.

[1] *Standard Oil Co. of New Jersey et al.* v. *U. S. of America.* In the Supreme Court of the United States, Brief for the United States, Appendix A, Vol. I, pp. 414-416.

300 shares capital stock of Consolidated Tank Line Co.

Entire capital stock of American Transfer Co.

41,590 shares capital stock of United Pipe Lines.

Entire interest in and capital stock of Paine, Ablett & Co., Limited.

145/175ths of entire interest in and capital stock of Eclipse Lubricating Oil Co., Limited.

3/4ths of entire interest in and capital stock of H. C. Van Tine & Co. (Limited).

7/8ths of entire interest in and capital stock of Galena Oil Works (Limited).

Entire capital stock of Smith's Ferry Oil Transpn. Co.

14,713 (old) shares stock and interest in Producers' Consolidated Land & Petroleum Co.

Special investment at Oil City, Pa.

Business and property of Star Oil Co., Erie, Pa.

Business and property of Warden, Frew & Co., Philadelphia, Pa.

Entire capital stock of Philadelphia Refining Co.

Entire capital stock of Olean Petroleum Co. (Limited).

Entire capital stock of Columbia Conduit Co. and also all other interests of every kind and description held by the Standard Oil Company or in which it has any interest which can be or by right ought to be divided and distributed among the parties entitled thereto, without affecting its proper, legitimate, and efficient operations as a corporation, to Myron R. Keith, George F. Chester, and George H. Vilas, as trustees, to have and to hold said stocks and interests to them and their survivors and successors, in trust nevertheless for the following purposes, to wit: To hold, control, and manage the said stocks and interests for the exclusive use and benefit of the following-named persons and in the following proportions named:

Charles Pratt	2700/35000	thereof.
Horace A. Pratt	15/35000	"
Henry H. Rogers	910/35000	"
C. M. Pratt	200/35000	"
Wm. Rockefeller	1600/35000	"
O. B. Jennings	818/35000	"
W. H. Macy	59/35000	"

W. H. Macy, jr.	28/35000	thereof.
Estate of Josiah Macy	892/35000	"
A. J. Pouch	178/35000	"
J. A. Bostwick	1872/35000	"
Warden, Frew & Co.	485/35000	"
Chas. Lockhart	1408/35000	"
Wm. C. Warden	1292/35000	"
O. H. Payne, trustee	61/35000	"
S. V. Harkness	2925/35000	"
H. M. Flagler	3000/35000	"
Daniel Bushnell	97/35000	"
Jos. L. Warden	98/35000	"
J. J. Vandergrift	500/35000	"
F. A. Arter	35/35000	"
Gustave Heye	178/35000	"
L. G. Harkness	178/35000	"
Hanna & Chapin	263/35000	"
A. M. McGregor	118/35000	"
D. Brewster	409/35000	"
W. C. Andrews	990/35000	"
Horace A. Hutchins	111/35000	"
John D. Archbold	350/35000	"
John D. Rockefeller	8984/35000	"
J. N. Camden	200/35000	"
W. P. Thompson	132/35000	"
D. M. Harkness	323/35000	"
O. H. Payne	2637/35000	"
John Huntington	584/35000	"
W. T. Wardell	78/35000	"
H. W. Payne	292/35000	"

and to divide and distribute the same as soon as they can conveniently do so between the said persons for whose benefit they hold the same as aforesaid, and in the respective proportions aforesaid; with full power and authority to the survivors of the said trustees in case of the death of either of them to nominate and appoint a successor to such deceased trustee if they shall think it expedient so to do or else to continue the said trust without filling such vacancy.

In witness whereof the Standard Oil Co. has, by its president and secretary, duly authorized thereto, set its name and affixed

its corporate seal, and the others of the undersigned have hereto set their hands and seals this eighth day of April, A. D. 1879.

STANDARD OIL COMPANY,
By JOHN D. ROCKEFELLER,
Prest.

Attest:
H. M. FLAGLER, *Secy.*
(Here follows list of signatures.)

EXHIBIT 2

STANDARD OIL TRUST AGREEMENT AND SUPPLEMENTAL TRUST AGREEMENT OF 1882 [1]

This agreement, made and entered upon this second day of January, A. D. 1882, by and between all the persons who shall now or may hereafter execute the same as parties thereto, witnesseth:

I. It is intended that the parties to this agreement shall embrace three classes, to wit:

(1) All the stockholders and members of the following corporations and limited partnerships, to wit:

Acme Oil Co. (New York), Acme Oil Co. (Pennsylvania), Atlantic Refining Co., of Phila.; Bush & Co. Limited, Camden Consolidated Oil Co., Elizabethport Acid Works, Imperial Refining Co., Limited, Chas. Pratt & Co., Paine, Ablett & Co., Limited, Standard Oil Co. (Ohio), Standard Oil Co. (Pittsburg), Smith's Ferry Oil Trans. Co., Solar Oil Co. Limited, Sone & Fleming Mfg. Co., Limited.

Also all the stockholders and members of such other corporations and limited partnerships as may hereafter join in this agreement at the request of the trustees herein provided for.

(2) The following individuals, to wit:

W. C. Andrews, John D. Archbold, Lide K. Arter, J. A. Bostwick, Benj. Brewster, D. Bushnell, Thomas C. Bushnell, J. N. Camden, Henry L. Davis, H. M. Flagler, Mrs. H. M. Flagler, H. M. Hanna, and George W. Chapin, D. M. Harkness, D. M. Harkness, trustee; S. V. Harkness, John Huntington, H. A. Hutchins, Chas. F. G. Heye, O. B. Jennings, Chas. Lockhart, A. M. McGregor, Wm. H. Macy, Wm. H. Macy, jr., estate of Josiah Macy, jr., Wm.

[1] Appendix. Report of Industrial Commission, Vol. I, pp. 1221–26.

H. Macy, jr., executor; O. H. Payne, O. H. Payne, trustee; Chas. Pratt, Horace A. Pratt, C. M. Pratt, A. J. Pouch, John D. Rockefeller, Wm. Rockefeller, Henry H. Rogers, W. P. Thompson, J. J. Vandergrift, Wm. T. Wardwell, W. G. Warden, Joseph L. Warden; Warden, Frew & Co., Louise C. Wheaton, Julia H. York, George H. Vilas, M. R. Keith, Geo. F. Chester, trustees.

Also all such individuals as may hereafter join in this agreement at the request of the trustees herein provided for.

(3) A portion of the stockholders and members of the following corporations and limited partnerships, to wit:

American Lubricating Oil Co., Baltimore United Oil Co., Beacon Oil Co., Bush & Denslow Manuf'g Co., Central Refining Co., of Pittsburg; Chesebrough Manuf'g Co., Chess-Carley Co., Consolidated Tank Line Co., Inland Oil Co., Keystone Refining Co., Maverick Oil Co., National Transit Co., Portland Kerosene Oil Co., Producers' Con'd Land and Petroleum Co., Signal Oil Works, Limited, Thompson and Bedford Co., Limited, Devoe Manuf'g Co., Eclipse Lubricating Oil Co., Limited, Empire Refining Co., Limited, Franklin Pipe Co., Limited, Galena Oil Works, Limited, Galena Farm Oil Co., Limited, Germania Mining Co., Vacuum Oil Co., H. C. Van Tine & Co., Limited, Waters-Pierce Oil Co.

Also stockholders and members (not being all thereof) of other corporations and limited partnerships who may hereafter join in this agreement at the request of the trustees herein provided for.

II. The parties hereto do covenant and agree to and with each other, each in consideration of the mutual covenants and agreements of the others, as follows:

(1) As soon as practicable a corporation shall be formed in each of the following States, under the laws thereof, to-wit: Ohio, New York, Pennsylvania and New Jersey; provided, however, that instead of organizing a new corporation, any existing charter and organization may be used for the purpose when it can advantageously be done.

(2) The purposes and powers of said corporations shall be to mine for, produce, manufacture, refine, and deal in petroleum and all its products, and all the materials used in such business, and transact other business collateral thereto. But other purposes and powers shall be embraced in the several charters such as shall seem expedient to the parties procuring the charter, or, if necessary to comply with the law, the powers aforesaid may be restricted and reduced.

(3) At any time hereafter, when it may seem advisable to the trustees herein provided for, similar corporations may be formed in other States and Territories.

(4) Each of said corporations shall be known as the Standard Oil Co. of————(and here shall follow the name of the State or Territory by virtue of the laws of which said corporation is organized).

(5) The capital stock of each of said corporations shall be fixed at such an amount as may seem necessary and advisable to the parties organizing the same, in view of the purpose to be accomplished.

(6) The shares of stock of each of said corporations shall be issued only for money, property, or assets equal at a fair valuation to the par value of the stock delivered therefor.

(7) All of the property, real and personal, assets, and business of each and all of the corporations and limited partnerships mentioned or embraced in class (1) shall be transferred to and vested in the said several Standard Oil companies. All of the property, assets, and business in or of each particular State shall be transferred to and vested in the Standard Oil Co. of that particular State, and in order to accomplish such purpose the directors and managers of each and all of the several corporations and limited partnerships mentioned in class first are hereby authorized and directed by the stockholders and members thereof (all of them being parties to this agreement) to sell, assign, transfer, convey, and make over, for the consideration hereinafter mentioned, to the Standard Oil Co. or companies of the proper State or States, as soon as said corporations are organized and ready to receive the same, all the property, real and personal, assets, and business of said corporations and limited partnerships. Correct schedules of such property, assets, and business shall accompany each transfer.

(8) The individuals embraced in class second of this agreement do each for himself agree, for the consideration hereinafter mentioned, to sell, assign, transfer, convey, and set over all the property, real and personal, assets, and business mentioned and embraced in schedules accompanying such sale and transfer to the Standard Oil Company or Companies of the proper State or States, as soon as the said corporations are organized and ready to receive the same.

(9) The parties embraced in class third of this agreement do covenant and agree to assign and transfer all of the stock held by

them in the corporations or limited partnerships herein named, to the trustees herein provided for, for the consideration and upon the terms hereinafter set forth. It is understood and agreed that the said trustees and their successors may hereafter take the assignment of stocks in the same or similar companies upon the terms herein provided, and that whenever and as often as all the stocks of any corporation and limited partnership are vested in said trustees the proper steps may then be taken to have all the money, property, real and personal, of said corporation or partnership assigned and conveyed to the Standard Oil Company of the proper State on the terms and in the mode herein set forth, in which event the trustees shall receive stocks of the Standard Oil Company equal to the value of the money, property, and business assigned, to be held in place of the stocks of the company or companies assigning such property.

(10) The consideration for the transfer and conveyance of the money, property, and business aforesaid to each or any of the Standard Oil Companies shall be stock of the respective Standard Oil Company to which said transfer or conveyance is made, equal at par value to the appraised value of the money, property, and business so transferred. Said stock shall be delivered to the trustees hereinafter provided for, and their successors, and no stock of any of said companies shall ever be issued except for money, property, or business equal at least to the par value of the stock so issued, nor shall any stock be issued by any of said companies for any purpose except to the trustees herein provided for, to be held subject to the trusts hereinafter specified. It is understood, however, that this provision is not intended to restrict the purchase, sale, and exchange of property of said Standard Oil Companies as fully as they may be authorized to do by their respective charters, provided only that no stock be issued therefor except to said trustees.

(11) The consideration for any stock delivered to said trustees as above provided for, as well as for stocks delivered to said trustees by persons mentioned or included in class third of this agreement, shall be the delivery by said trustees, to the persons entitled thereto, of trust certificates hereinafter provided for, equal at par value to the par value of the stocks of the said Standard Oil companies so received by said trustees, and equal to the appraised value of the stocks of other companies or partnerships delivered to said trustees. (The said appraised value shall be determined in a manner agreed

upon by the parties in interest and said trustees.) It is understood and agreed, however, that the said trustees may, with any trust funds in their hands, in addition to the mode above provided, purchase the bonds and stocks of other companies engaged in business similar or collateral to the business of said Standard Oil companies. on such terms and in such mode as they may deem advisable, and shall hold the same for the benefit of the owners of said trust certificates, and may sell, assign, transfer, and pledge such bonds and stocks whenever they may deem it advantageous to said trust so to do.

III. The trusts upon which said stocks shall be held, and the number, powers, and duties of said trustees, shall be as follows:

(1) The number of trustees shall be nine.

(2) J. D. Rockefeller, O. H. Payne, and Wm. Rockefeller are hereby appointed trustees, to hold their office until the first Wednesday of April, A. D. 1885.

(3) J. A. Bostwick, H. M. Flagler, and W. G. Warden are hereby appointed trustees, to hold their office until the first Wednesday of April, A. D. 1884.

(4) Chas. Pratt, Benj. Brewster, and John D. Archbold, are hereby appointed trustees, to hold their office until the first Wednesday of April, A. D. 1883.

(5) Elections for trustees to succeed those herein appointed shall be held annually, at which election a sufficient number of trustees shall be elected to fill all vacancies occurring either from expiration of the term of office of trustee or from any other cause. All trustees shall be elected to hold their office for three years, except those elected to fill a vacancy arising from any cause except expiration of term, who shall be elected for the balance of the term of the trustee whose place they are elected to fill. Every trustee shall hold his office until his successor is elected.

(6) Trustees shall be elected by ballot by the owners of trust certificates or their proxies. At all meetings the owners of trust certificates who may be registered as such on the books of the trustees may vote in person or by proxy, and shall have one vote for each and every share of trust certificates standing in their names; but no such owner shall be entitled to vote upon any share which has not stood in his name thirty days prior to the day appointed for the election. The transfer books may be closed for thirty days immediately preceding the annual election. A majority of the shares represented at such election shall elect.

(7) The annual meeting of the owners of said trust certificates for the election of trustees and for other business shall be held at the office of the trustees in the city of New York on the first Wednesday of April of each year, unless the place of meeting be changed by the trustees, and said meeting may be adjourned from day to day until its business is completed. Special meetings of the owners of said trust certificates may be called by the majority of the trustees at such times and places as they may appoint. It shall also be the duty of the trustees to call a special meeting of holders of trust certificates whenever requested to do so by a petition signed by the holders of 10 per cent in value of such certificates. The business of such special meetings shall be confined to the object specified in the notice given therefor. Notice of the time and place of all meetings of the owners of trust certificates shall be given by personal notice as far as possible and by public notice in one of the principal newspapers in each State in which a Standard Oil Co. exists at least ten days before such meeting. At any meeting, a majority in the value of the holders of trust certificates represented consenting thereto, by-laws may be made, amended, or repealed relative to the mode of election of trustees and other business of the holders of trust certificates; provided, however, that said by-laws shall be in conformity with this agreement. By-laws may also be made, amended, and repealed at any meeting, by and with the consent of a majority in value of the holders of trust certificates, which alter this agreement relative to the number, powers, and duties of the trustees and to other matters tending to the more efficient accomplishment of the objects for which the trust is created, provided only that the essential intents and purposes of this agreement be not thereby changed.

(8) Whenever a vacancy occurs in the board of trustees more than sixty days prior to the annual meeting for the election of trustees, it shall be the duty of the remaining trustees to call a meeting of the owners of the Standard Oil Trust certificates for the purpose of electing a trustee or trustees to fill the vacancy or vacancies. If any vacancy occurs in the board of trustees, from any cause, within sixty days of the date of the annual meeting for the election of trustees, the vacancy may be filled by a majority of the remaining trustees, or, at their option, may remain vacant until the annual election.

(9) If, for any reason, at any time, a trustee or trustees shall be appointed by any court to fill any vacancy or vacancies in said

board of trustees, the trustee or trustees so appointed shall hold his or the respective office or offices only until a successor or successors shall be elected in the manner above provided for.

(10) Whenever any change shall occur in the board of trustees, the legal title to the stock and other property held in trust shall pass to and vest in the successors of said trustees without any formal transfer thereof; but if at any time such formal transfer shall be deemed necessary or advisable it shall be the duty of the board of trustees to obtain the same, and it shall be the duty of any retiring trustee, or the administrator or executor of any deceased trustee, to make said transfer.

(11) The trustees shall prepare certificates, which shall show the interest of each beneficiary in said trust, and deliver them to the persons properly entitled thereto. They shall be divided into shares of the par value of $100 each, and shall be known as "Standard Oil Trust certificates," and shall be issued subject to all the terms and conditions of this agreement. The trustees shall have power to agree upon and direct the form and contents of said certificates, and the mode in which they shall be signed, attested, and transferred. The certificates shall contain an express stipulation that the holders thereof shall be bound by the terms of this agreement, and by the by-laws herein provided for.

(12) No certificates shall be issued except for stocks and bonds held in trust, as herein provided for, and the par value of certificates issued by said trustees shall be equal to the par value of the stocks of said Standard Oil Companies, and the appraised value of other bonds and stocks held in trust. The various bonds, stocks, and moneys held under said trust shall be held for all parties in interest jointly, and the trust certificates so issued shall be the evidence of the interest held by the several parties in this trust. No duplicate certificates shall be issued by the trustees except upon surrender of the original certificate or certificates for cancellation, or upon satisfactory proof of the loss thereof, and in the latter case they shall require a sufficient bond of indemnity.

(13) The stocks of the various Standard Oil Companies held in trust by said trustees shall not be sold, assigned, or transferred by said trustees, or by the beneficiaries, or by both combined, so long as the trust endures. The stocks and bonds of other corporations held by said trustees may be by them exchanged or sold and the proceeds thereof distributed pro rata to the holders of trust certificates, or said proceeds may be held and reinvested

by said trustees for the purposes and uses of the trust; provided, however, that said trustees may from time to time assign such shares of stock of said Standard Oil Companies as may be necessary to qualify any person or persons chosen or to be chosen as directors and officers of any of said Standard Oil Companies.

(14) It shall be the duty of said trustees to receive and safely to keep all interest and dividends declared and paid upon any of the said bonds, stocks, and moneys held by them in trust, and to distribute all moneys received from such sources or from sales of trust property or otherwise by declaring and paying dividends upon the Standard Trust certificates as funds accumulate, which in their judgment are not needed for the uses and expenses of said trust. The trustees shall, however, keep separate accounts and receipts from interest and dividends, and of receipts from sales or transfers of trust property, and in making any distribution of trust funds, in which moneys derived from sales or transfers shall be included, shall render the holders of trust certificates a statement showing what amount of the fund distributed has been derived from such sales or transfers. The said trustees may be also authorized and empowered by a vote of a majority in value of holders of trust certificates, whenever stocks or bonds have accumulated in their hands from money purchases thereof, or the stocks or bonds held by them have increased in value, or stock dividends shall have been declared by any of the companies whose stocks are held by said trustees, or whenever from any such cause it is deemed advisable so to do, to increase the amount of trust certificates to the extent of such increase or accumulation of values and to divide the same among the persons then owning trust certificates pro rata.

(15) It shall be the duty of said trustees to exercise general supervision over the affairs of said several Standard Oil Companies, and as far as practicable over the other companies or partnerships, any portion of whose stock is held in said trust. It shall be their duty as stockholders of said companies to elect as directors and officers thereof faithful and competent men. They may elect themselves to such positions when they see fit so to do, and shall endeavor to have the affairs of said companies managed and directed in the manner they may deem most conducive to the best interests of the holders of said trust certificates.

(16) All the powers of the trustees may be exercised by a majority of their number. They may appoint from their own number an executive and other committees. A majority of each committee

shall exercise all the powers which the trustees may confer upon such committee.

(17) The trustees may employ and pay all such agents and attorneys as they may deem necessary in the management of said trust.

(18) Each trustee shall be entitled to a salary for his services not exceeding twenty-five thousand dollars per annum, except the president of the board, who may be voted a salary not exceeding thirty thousand dollars per annum, which salaries shall be fixed by said board of trustees. All salaries and expenses connected with or growing out of the trust shall be paid by the trustees from the trust fund.

(19) The board of trustees shall have its principal office in the city of New York, unless changed by vote of the trustees, at which office, or in some place of safe deposit in said city, the bonds and stocks shall be kept. The trustees shall have power to adopt rules and regulations pertaining to the meetings of the board, the election of officers, and the management of the trust.

(20) The trustees shall render at each annual meeting a statement of the affairs of the trust. If a termination of the trust be agreed upon, as hereinafter provided, or within a reasonable time prior to its termination by lapse of time, the trustees shall furnish to the holders of the trust certificates a true and perfect inventory and appraisement of all stocks and other property held in trust, and a statement of the financial affairs of the various companies whose stocks are held in trust.

(21) The trust shall continue during the lives of the survivors and survivor of the trustees in this agreement named, and for twenty-one years thereafter; provided, however, that if at any time after the expiration of ten years two-thirds of all the holders in value, or if after the expiration of one year 90 per cent of all the holders in value of trust certificates shall, at a meeting of holders of trust certificates called for that purpose, vote to terminate this trust at some time to be by them then and there fixed, the said trust shall terminate at the date so fixed. If the holders of trust certificates shall vote to terminate the trust as aforesaid, they may, at the same meeting, or at a subsequent meeting called for that purpose, decide by vote of two-thirds in value of their number the mode in which the affairs of the trust shall be wound up, and whether the trust property shall be distributed or whether part, and if so, what part shall be divided and what part sold, and whether

such sales shall be public or private. The trustees, who shall continue to hold their offices for that purpose, shall make the distribution in the mode directed, or, if no mode be agreed upon, by two-thirds in value as aforesaid, the trustees shall make distribution of the trust property according to law. But said distribution, however made, and whether it be of property, or values, or of both, shall be just and equitable, and such as to insure to each owner of a trust certificate his due proportion of the trust property or the value thereof.

(22) If the trust shall be terminated by the expiration of the time for which it is created, the distribution of the trust property shall be directed and made in the mode above provided.

(23) This agreement, together with the registry of certificates, books of accounts, and other books and papers connected with the business of said trust, shall be safely kept at the principal office of said trustees.

(Signatures.)

SUPPLEMENTAL AGREEMENT

Whereas in and by an agreement dated January 2, 1882, and known as the Standard Trust agreement, the parties thereto did mutually covenant and agree, *inter alia*, as follows, to wit: That corporations to be known as Standard Oil Companies of various States should be formed, and that all of the property, real and personal, assets, and business of each and all of the corporations and limited partnerships mentioned or embraced in class first of said agreement should be transferred and vested in the said several Standard Oil Companies; that all of the property, assets, and business in or of each particular State should be transferred to and vested in the Standard Oil Company of that particular State, and the directors and managers of each and all of the several corporations and associations mentioned in class first were authorized and directed to sell, assign, transfer, and convey, and make over to the Standard Oil Company or Companies of the proper State or States, as soon as said corporations were organized and ready to receive the same, all the property, real and personal, assets and business of said corporations or associations; and whereas it is not deemed expedient that all of the companies and associations mentioned should transfer their property to the said Standard Oil Companies at the present time, and in case of some companies and associations it may never be deemed expedient that the said

transfer should be made, and said companies and associations go out of existence; and whereas it is deemed advisable that a discretionary power should be vested in the trustees as to when such transfer or transfers should take place, if at all: Now, it is hereby mutually agreed between the parties to the said trust agreement, and as supplementary thereto, that the trustees named in the said agreement and their successors shall have the power and authority to decide what companies shall convey their property as in said agreement contemplated, and when the said sales and transfers shall take place, if at all, and until said trustees shall so decide, each of said companies shall remain in existence, and retain its property and business, and the trustees shall hold the stocks thereof in trust, as in said agreement provided. In the exercise of said discretion the trustees shall act by a majority of their number as provided in said trust agreement. All portions of said trust agreement relating to this subject shall be considered so changed as to be in harmony with this supplemental agreement.

In witness whereof, the said parties have subscribed this agreement this 4th day of January, 1882.

(Duly signed by the same parties.)

EXHIBIT 3

DEED

THE SUGAR REFINERIES COMPANY [1]

The undersigned, namely:

Havemeyers & Elder, The DcCastro [2] and Donner Sugar Refining Company, F. O. Matthiessen & Wiechers' Sugar Refining Company, Havemeyer Sugar Refining Company, Brooklyn Sugar Refining Company, the firm of Dick & Meyer, the firm of Moller, Sierck & Company, North River Sugar Refining Company, the firm of Oxnard Brothers, the Standard Sugar Refinery, the Bay State Sugar Refinery, the Boston Sugar Refining Company, the Continental Sugar Refinery and the Revere Sugar Refinery, for the purpose of forming the board hereinafter provided for and for other purposes hereinafter set forth, enter into the following agreement:

[1] Report of the Senate Committee on General Laws on Investigation Relative to Trusts. N. Y. Sen. Doc. No. 50, 1888, pp. 644–651.

[2] Thus in original.—Ed.

NAME

The board herein provided for shall be designated by the name of The Sugar Refineries Company.

OBJECTS

The objects of this agreement are:

1. To promote economy of administration and to reduce the cost of refining, thus enabling the price of sugar to be kept as low as is consistent with a reasonable profit.
2. To give to each refinery the benefit of all appliances and processes known or used by the others, and useful to improve the quality and diminish the cost of refined sugar.
3. To furnish protection against unlawful combinations of labor.
4. To protect against inducements to lower the standard of refined sugar.
5. Generally to promote the interests of the parties hereto in all lawful and suitable ways.

BOARD

The parties hereto who are not corporations shall become such before this deed takes effect.

Each corporation subscribing hereto agrees and the parties hereto who are not corporations agree as to the corporations which they are to form, that all the shares of the capital stock of all such corporations shall be transferred to a board consisting of eleven persons, which may be increased to thirteen by vote of the majority of the members of the entire board, the two additional members to belong respectively to the first and second classes hereinafter provided for.

Any member of the board may be removed by vote of two-thirds of the members of the entire board, in case of incapacity or neglect, or refusal to serve.

Any member may resign by filing written notice of his resignation with the secretary of said board.

Vacancies during the term of office of members shall be filled by appointment, by vote of the majority of the members of the entire board.

A member appointed to fill a vacancy shall hold office until the expiration of the term of the member in whose place he is

appointed, which new appointee shall succeed to all the rights, duties and obligations of his predecessor under this deed.

Vacancies by expiration of office shall be filled at the annual meeting of the holders of certificates herein provided for, or at such other times as shall be prescribed by the board.

Such annual meetings shall be held in the city of New York in the month of June, and notice shall be given to each certificate holder of record, of every meeting of certificate holders, by mailing to him at least seven days before said meeting, a notice of the time, place and objects of such meeting. Holders of certificates shall vote according to the number of shares for which they hold certificates. They may vote by proxy.

The board may make by-laws. All arrangements for meetings, elections, and all details not herein specifically provided for, shall be made by the board. A member of the board may act by proxy for any other member with like effect as if he were present and acting.

A majority of the members of the board shall constitute a quorum for the transaction of business. The action of a board meeting, by a majority vote of such meeting, shall have the same effect as the unanimous action of the board, except as herein otherwise provided, and that to authorize the appropriation of money, bonds or shares, shall require the assent either written or expressed by vote at a board meeting, of at least a majority of the members of the entire board.

No member of the board shall, during the time that he holds office, buy or sell sugar, or be interested directly or indirectly in the purchase or sale of sugar, whether for the purpose of speculation or otherwise, without a vote of a majority of the members of the entire board. For any violation of this provision, he may be removed as a member of the board and shall be liable to account for profits which shall be realized by him to the board for the *pro rata* benefit of the certificate holders.

As it is desirable that the board shall consist of members who are largely interested in the properties and the business contemplated it is hereby agreed that oll [1] members of the board shall be free to join in or become parties to agreements and transactions which the several boards of directors, hereinafter referred to, or this board, may arrange, to the same extent and in the same manner, and with the like effect, as if they were not members of the board.

[1] Thus in the original.—Ed.

The said board may transfer, from time to time, to such persons as it may be desired to constitute trustees or directors or other officers of corporations, so many of the shares as may be necessary for that purpose, to be held by them subject to the provisions of this instrument, such transfers may be executed by the president and treasurer of the board, in behalf of and as attorneys of the board, for that purpose and to be retransferred when so requested by the board.

The first board shall consist of the persons hereinafter mentioned. They shall hold office as follows, and until their successors shall be elected:

Members of the First Class.

Harry O. Havemeyer, F. O. Matthiessen, John E. Searles, Jr., Julius A. Stursberg, to hold office seven years.

Members of the Second Class.

Theodore A. Havemeyer, Joseph B. Thomas, John Jurgensen; Hector C. Havemeyer withdrew and Mr. Parsons substituted, to hold office five years.

Members of the Third Class.

Charles H. Senff, William Dick, to hold office three years.

At the expiration of the terms of the third class, and of each successive class, their successors, as members of such class, shall be elected for seven years.

OFFICERS.

The board shall appoint from its members a president, vice-president and treasurer, and it shall also appoint a secretary, who may or may not be a member of the board. The board may, from time to time, create other offices and appoint the persons to fill them. It may appoint committees. It shall designate the duties and prescribe the powers of the several officers and committees.

PLAN.

The several corporations, parties to this agreement shall maintain their separate organization, and each shall carry on and conduct its own business.

The capital stock of each corporation shall be transferred to the board, and in lieu of the same, certificates not exceeding fifty millions of dollars, divided into five hundred thousand shares, each of

one hundred dollars, shall be issued by the board and distributed as hereinafter provided.

The certificate shall be in the following form:

No..... Shares.

Shares One Hundred Dollars Each.

THE SUGAR REFINERIES COMPANY.

This is to certify that.....is entitled to .....shares of the Sugar Refineries Company.

This certificate is issued under and subject to the provisions of a deed dated the sixteenth day of August, one thousand eight hundred and eighty-seven.

The shares represented by this certificate are transferable by the holder and his personal representatives in person or by attorney, upon the books of the board, and not otherwise, and only upon the surrender of this certificate.

They entitle the holder to the rights and are subject to the provisions mentioned in the deed.

The interest of the holder is in the proportion of the number of shares represented by this certificate to the entire number of shares outstanding. The total amount represented by outstanding certificates, and the terms of the deed may be changed from time to time by a majority in interest as therein provided.

In witness whereof the board has caused this certificate to be signed by its president and treasurer, and the seal of [L. S.] the board to be affixed hereto, the.....day of....., one thousand eight hundred and eighty.....

For value received.....do hereby assign, transfer and set over unto.....shares of those represented by the within certificate, and.....do hereby constitute and appoint.....attorney, irrevocable, for..... and in.....name and stead, to transfer the said shares upon the books kept for the purpose under the direction of the within board.

The assignee by accepting this transfer assents to the terms of the deed referred to in the certificate as the same shall be changed from time to time.

Witness hand and seal this.....day of....., one thousand eight hundred and eighty.

TITLE.

The shares of the capital stock of the several corporations to be transferred to the board as herein provided shall be transferred to the names of the members of the board as trustees, to be held by them and by their successors as members of the board strictly as joint tenants.

By the death, resignation or removal of any member of the board the whole title shall remain in the others. All members ceasing to be such shall execute such instruments as may be necessary, if any, to keep the title vested in the persons who from time to time shall be members of the board.

The Board shall hold the stock transferred to it with all the rights and powers incident to stockholders in the several corporations and subject only to the purposes set forth in this deed.

DIVISION OF INTEREST.

The several corporations shall be entitled to the shares in the following proportions of the fifty millions of dollars, viz.:

Havemeyer & Elder.
DeCastro & Donner Sugar Refining Company.
F. O. Matthiessen & Weichers Sugar Refining Company.
The Havemeyer Sugar Refining Company.
The Brooklyn Sugar Refining Company.
Dick & Meyer.
Moller, Sierck & Company.
Oxnard Brothers.
North River Sugar Refining Company.
Standard Sugar Refinery.
Boston Sugar Refining Company.
Bay State Sugar Refinery.
Continental Sugar Refinery.
Revere Sugar Refinery.

Each refinery and the corporation to which it belongs shall be freed from liability and indebtedness by the parties interested in it; or such parties, if the board shall approve, may provide in cash for such indebtedness or liability, leaving the same to stand at the pleasure of the board; except that the employe's contracts shown in the schedules hereto annexed, and the contracts with Havemeyer and Elder, the F. O. Matthiessen and Weichers Sugar Refining

Company and the Bay State Sugar Refinery pending for improvements and enlargements, shall continue as liabilities.

Annexed hereto are schedules in general terms of the properties of the several refineries. The properties are guaranteed to correspond with the schedules by the parties interested therein, who are to make good any deficiency. On the complete execution of this agreement each of the said parties shall make a full inventory of the property not embraced in such schedules and useful for the conduct of the business, on hand or contracted for, including raw and refined sugars, molasses, sugars in process, syrups, bone black, fuel barrels, packages, charcoal and other supplies, and such inventory is to be examined and the articles appraised at their present cash value (except as to sugar and molasses to arrive which are to be appraised at their market value on arrival) by a committee of five persons as follows:

Theodore A. Havemeyer, F. O. Matthiessen, Julius A. Stursberg, John E. Searles, Jr., and Joseph B. Thomas.

The value of such property as fixed by four-fifths of the appraisers shall be paid for in cash by the said board to the treasurer of each corporation.

Bone black may at the option of the board be paid for in cash or in the bonds hereinafter provided for, or in certificates at a rate for bonds or certificates to be fixed by a vote of a majority of the members of the entire board.

The property shall remain with the refinery where it is, to be used by it, except as such refinery shall make a different disposition of it.

In consideration of the transfers of their stock to the board the said board shall also pay to Havemeyers & Elder the sum of..... .....to the F. O. Matthiessen & Weichers Sugar Refining Company, the sum of.....and to the Bay State Sugar Refining Company the sum of.....on account of payments already made on pending contracts for improvements and enlargements.

Additional shares to the amount of $400,000, less fifteen per cent, to be left with the board as hereinafter provided, shall be received by Moller, Sierck & Co., for improvements and enlargements of capacity of their refinery now in progress, when said improvements are completed, and the increased capacity demonstrated.

The shares assigned to the several refineries shall be distributed by them to and among the parties interested therein.

Each holder of stock in a refinery company shall be entitled to so many of the shares allotted to such refinery as shall be in proportion of his stock to the capital of his company.

Shares for stockholders of any refinery company who shall not surrender their stock, may, under the direction of the board, be deposited for their account with the right to receive the same upon the surrender of their stock.

Of the shares allotted to the several refineries they shall leave fifteen per cent with the board, and those shares and any shares not allotted of the fifty millions of dollars, except as herein otherwise provided, shall be subject to be disposed of by the board, either for the acquisition of other refineries to become parties to this deed, payment for additional capacity, or by appropriations to the several refineries.

But in no case shall any appropriation be made to or any action be taken by any corporation without the approval of its board of directors, and no action shall be taken by the board which shall create liability by it or by its members.

PROFITS.

The profits arising from the business of each corporation shall be paid over by it to the board hereby created, and the aggregate of said profits, or such amount as may be designated for dividends shall be proportionately distributed by said board, at such times as it may determine, to the holders of the certificates issued by said board for capital stock as hereinbefore provided.

FISCAL ARRANGEMENTS.

The funds necessary to enable the said board to make the payments herein provided to be made by it, may be raised by mortgage to be made by the corporations or either, any or all of them on their property, and by such other means as shall be satisfactory to such board.

In case any mortgage shall be laid on the property of any corporation by its directors or stockholders the holders of certificates shall, within a time to be fixed by said board, have the right at such uniform rates as said board shall arrange, to have the bonds, certificates or other evidence of debts or interest in proportion to their respective holdings. Any parts which shall not be thus taken may be disposed of by said board.

CHANGES.

The number of shares and the total amount thereof, issuable by said board, may, from time to time, be increased or diminished by deed executed by a majority in value of the certificate holders.

The provisions of this deed may from time to time be changed by deed executed by not less than a majority in interest of the certificate holders, provided no change shall be made which shall discriminate to the disadvantage of the certificate holders as between themselves.

ACQUISITION OF OTHER REFINERIES.

The capital stock of other sugar refining companies and of companies whose business relates directly or indirectly to sugar refining (in every instance to be incorporated) may be transferred to said board with the consent of a majority thereof at valuations and upon terms satisfactory to it to be held by said board under and subject to all the terms of this deed, and certificates may be issued therefor by said board and may be sold by it to provide funds for such purchase or purchases, and any such corporation or corporations shall thereupon become a party to this deed upon causing the same to be duly signed in its behalf.

CUSTODY OF DEED.

This deed, when executed by the parties hereto, shall be delivered to the president of the board, who shall have the sole and independent custody and control of the same, and the said deed shall not be shown or delivered to any person or persons whatsoever except by the express direction and order of the board.

A copy of the said deed shall be lodged with a member of the board residing in Boston, Massachusetts, which shall be held by him under the same conditions and in the same manner as the original deed.

In witness whereof the parties have hereto set their seals and affixed their names, these presents to become binding when completely executed by all the parties, and to take effect from October 1st, 1887.

Dated August 16th, 1887.

(Signatures.)

EXHIBIT 4

DISTILLERS' AND CATTLE FEEDERS' TRUST [1]

Whereas it is designed to form a trust to be known as the Distillers and Cattle Feeders' Trust, for the purpose of securing intelligent co-operation in the business of distilling spirits from grain or other material, malting, and the feeding of live-stock, and the sale of the products thereof in home and foreign markets, and to do all other business incidental to those enumerated: Therefore,

It is mutually agreed by all who may sign this agreement, or become at any time the holders of the certificates of trust herein provided for, as follows:

First. The trust herein created shall be vested in nine trustees.

Second. William N. Hobart, George K. Duckworth, Lewis H. Green, Peter J. Hennessy, Alfred Bevis, Joseph B. Greenhut, Warren H. Corning, Adolph Woolner, and John H. Francis are hereby appointed trustees, to hold their office until the 1st day of May, A. D. 1888, or until their successors are elected and qualified.

Third. The trustees shall prepare certificates which shall show the interest of each beneficiary in said trust, and deliver them to the persons entitled thereto. The certificates shall be divided into shares of the par value of $100 dollars [2] each, and shall be known as "The Distillers and Cattle Feeders' Trust Certificates." The trustees shall have full power to agree upon and direct the form and contents of said certificates and the mode in which they shall be executed, attested, and transferred. The certificates shall contain an express stipulation that the holders thereof shall be bound by the terms of this agreement and by the by-laws herein provided for.

Fourth. No certificates shall be issued except for stock, as hereinafter provided, and the par value of the certificates issued shall represent as nearly as possible the actual cash value of the stock held by the trustees in trust. The certificates shall be the best evidence of the amount of interest of the beneficiaries in the trust. No duplicate shall be issued by the trustees except upon surrender of the original certificate and cancellation of the same, or upon satisfactory proof of the loss thereof, and the giving of a satisfactory bond of indemnity.

[1] House Report, No. 4165, 50th Congress, 2nd Sess., pp. 57–61.
[2] Thus in original.—Ed.

Fifth. Each subscriber hereto agrees to assign and transfer absolutely to said trustees the number of shares of capital stock of the particular corporation or corporations indicated in article six of this agreement, in consideration of which said trustees do hereby agree to execute and deliver to each subscriber trust certificates, as above specified, for the number of shares, which certificates, at the par value thereof, shall represent the cash value of the stock so delivered. The value of the capital of any corporation whose stock shall be assigned to said trustees shall be first agreed upon between said trustees and the stockholders willing to transfer the same, and after it is agreed upon there shall be no discrimination in the purchase price as between stockholders of the same corporation transferring their shares at the same time.

Sixth. This agreement shall take effect as soon as those holding a majority of stock in the following corporations, formed or to be formed, to wit: The Storrs Distilling Company by the Mill Creek Distilling Company; The Maddux Hobart Company by Maddux, Hobart & Co.; the White Mills Distilling Company by George K. Duckworth; the Great Western Distilling Company; Monarch Distilling Company; Woolner Brothers' Distilling Company; Peoria Distilling Company; Birmingham Distilling Company by Chicago Distilling Company; Missouri Distilling Company by Mound City Distilling Company, have transferred the same to said trustees. Thereafter the said trustees and their successors shall have power to purchase other stocks of the same companies or of companies organized for conducting the same business, or any of the businesses hereinbefore specified, and may issue therefor certificates of trust equal at par value to the cash value of the stocks so purchased, or shall have power to lease the premises of such companies, paying therefor such rental as they may deem proper, whenever, in their judgment, it is for the best interests of the trust to lease rather than purchase.

Seventh. All stocks sold and transferred to said trustees shall be held by them and their successors for the benefit of all the owners of said trust certificates. No stocks so held by said trustees shall be sold or surrendered by said trustees, during the continuance of this trust, without the consent of a majority, in number and value, of the holders of trust certificates: *Provided, however,* That said trustees may from time to time assign such shares of stock as may be necessary to qualify any person or persons chosen

or desired to be chosen as directors of any companies, the stocks of which are held by said trustees.

Eighth. That said trustees shall have power to cause corporations to be formed for the purposes and with all or any of the powers specified in section 1 of this agreement: *Provided*, That the stock of such corporations shall be issued for cash or for property at its cash value, and shall be issued to or be purchased by said trustees in the manner provided in section 6 of this agreement.

Ninth. Said trustees shall receive and safely keep all moneys received from dividends or interest upon stocks or moneys held in trust, and shall distribute the same, as well as all moneys received from sales of trust property, by declaring and paying monthly dividends upon said trust certificates as funds accumulate which are not needed for the uses and expenses of the Trust. The trustees shall, however, keep separate accounts of receipts from dividends and interest, and of receipts from sales of trust property, and in declaring any dividend in which moneys derived from sales of trust property are included shall render the holders of trust certificates a statement showing what amount of the fund distributed was derived from such sales or transfers.

Tenth. The trustees shall render to the holders of trust certificates at each annual meeting a statement of the receipts and disbursements of the trust for the year. They shall, also, whenever demanded by a majority in value of the holders of trust certificates, furnish a true and perfect inventory and appraisement of all property held in trust, and a statement as full as possible of the financial affairs of the various companies whose stocks are held in trust.

Eleventh. Said trustees shall exercise supervision, so far as their ownership of stocks enables them to do, over the several corporations or associations whose stock is held by said trustees. As stockholders of said corporations they shall elect, or endeavor to elect, honest and competent men as directors and officers thereof, who shall be paid a reasonable compensation for their services. They may elect themselves as such directors and officers, and shall endeavor to secure such judicious and efficient management of such corporations as shall be most conducive of the interests of the holders of trust certificates.

Twelfth. None of the powers of the trustees can be exercised except by unanimous vote of their full number either in person or by proxy, except in the election of officers as provided in the

by-laws: *Provided*, That no proxy to represent a trustee can be given to or be voted by any person other than a trustee; and in case of a disagreement among the trustees upon any matter, a majority of such trustees may call a special meeting of the holders of certificates, as herein provided for, to whom shall be submitted the matter of disagreement, and a decision of a majority in value of the holders of trust certificates present in person or by proxy, shall be final, or such matter of disagreement may be submitted at any regular meeting. The whole or any part of the foregoing provision of this article may be modified by any by-law now or hereafter adopted by the certificate holders. The said trustees may appoint from their own number an executive committee, and may appoint other committees composed wholly or partly of persons not of the board of trustees, and delegate to such committees such of their powers as they may deem advisable. A majority of each committee may exercise all the powers conferred upon such committee.

Thirteenth. The trustees may employ and pay all such agents and attorneys as they may find it necessary to employ in the management of said trust.

Fourteenth. Each trustee shall be entitled to a salary for his services of $10 per day: *Provided, however*, That such salary may be increased by a majority of the certificate holders at any regular or special meeting. All salaries and expenses connected with, and growing out of, the execution of the trust, shall be paid by the trustees from the trust fund.

Fifteenth. The board of trustees shall have its principal office in the city of Chicago, subject to change by a vote of the trustees, at which office, or in a place of safe deposit adjacent thereto, the stocks held in trust shall be kept.

Sixteenth. All powers and duties vested in the trustees herein named shall vest in, and be exercised by, the successors of said trustees, appointed as herein prescribed.

Seventeenth. Elections for trustees to succeed those herein appointed shall be held annually. At the first annual election three trustees shall be elected to hold their office for one year, three to hold their office for two years, and three to hold their office for three years; thereafter three trustees shall be elected annually to take the place of those retiring, to hold their office for three years, except those elected to fill a vacancy arising from any cause except expiration of term, who shall be elected for the balance of the term of the trustees whose place they are elected to fill. Every

trustee shall hold his office until his successor is elected and qualified.

Eighteenth. No person shall be eligible to the office of trustee unless he shall at the time of his election be the actual owner of at least five hundred shares of trust certificates, which shall stand in his name on the books of the trust, and which certificates, or an amount of not less than five hundred shares, he shall continue to be the actual owner of during his term of service, and the ownership shown as above provided.

Nineteenth. Trustees shall be elected by ballot by the owners of trust certificates or their proxies. At all meetings the owners of trust certificates who shall be registered as such on the books of the trustees may vote in person or by proxy, and shall have one vote for each and every share of trust certificates standing in their names; but no such owner shall be entitled to vote upon any share which has not stood in his name thirty days prior to the day appointed for the election. The transfer books shall be closed for thirty days immediately preceding the annual election. A majority of the shares represented at such elections shall elect.

Twentieth. The annual meeting of the owners of said trust certificates, for the election of trustees and for other business, shall be held at the office of the trustees on the Wednesday nearest the 15th day of April, of each year, and said meetings may be adjourned from day to day until its business is completed. Special meetings of the owners of trust certificates may be called by a majority of the trustees at such times and places as they may appoint. It shall also be the duty of the trustees to call a special meeting of the holders of trust certificates whenever requested so to do by a petition signed by the holders of 33 1/3 per cent. in value of such certificates. The business of such special meetings shall be confined to the objects specified in the notice given therefor. Notice of the time and place of all meetings of the owners of trust certificates shall be given by mailing a notice to the address of each certificate holder, so far as known, at least ten days before such meeting.

Twenty-first. At any meeting by-laws may be made, amended, and repealed by not less than two-thirds in value of the holders of trust certificates: *Provided, however*, That said by-laws shall be in conformity with this agreement. By-laws may be also adopted by the trustees: *Provided, however*, that said by-laws shall not be inconsistent with any by-laws which have been or may be adopted by the holders of trust certificates, nor with this trust agreement.

Twenty-second. Whenever a vacancy occurs in the board of trustees from any cause other than the expiration of the term of office, the remaining trustees may appoint a trustee to fill the vacancy until the next annual meeting, or at their option may call a meeting of the owners of trust certificates for the purpose of electing a trustee to fill the vacancy or vacancies.

Twenty-third. If, for any reason, at any time, a trustee or trustees shall be appointed by any court to fill a vacancy or vacancies, the trustee or trustees so appointed shall hold his or their office or offices only until his or their successor or successors shall be appointed or elected in the manner above provided for.

Twenty-fourth. It shall be obligatory upon all trustees to attend each and every meeting of the board of trustees, either in person or by proxy, and in the event of any trustee absenting himself from three successive meetings or failing to be represented by proxy at such meetings, then, in such case, the office held by such trustee shall be considered vacant, and the vacancy be filled as hereinbefore provided.

Twenty-fifth. Whenever any change shall occur in the board of trustees the legal title to the stock and other property held in trust shall pass to and vest in the successors of said trustees without any formal transfer thereof. But formal transfer shall be made, and it shall be the duty of the board of trustees to obtain the same, and it shall be the duty of any retiring trustee, or the executor or administrator of any deceased trustee, to make such transfer.

Twenty-sixth. The trust shall continue for twenty-five years from this date and shall thereafter continue until terminated by a vote of 66 2/3 per cent. in value of the holders of certificates at a meeting called for that purpose. After 66 2/3 per cent. in value of the holders of trust certificates shall vote to terminate the trust as aforesaid, they may at the same meeting, or at a subsequent meeting called for that purpose, decide by a vote of 51 per cent. of their number the mode in which the affairs of the trust shall be wound up, and whether the trust shall be distributed, or whether it shall be sold and the value thereof distributed, or whether part, and if so, what part, shall be divided and what part shall be sold, and whether such sales shall be public or private. The trustees, who shall continue to hold their offices for that purpose, shall wind up the affairs of the trust in the mode agreed upon by the holders of trust certificates as aforesaid.

Form of trust certificate.

No.———— Shares of $100 each. ——— shares.

DISTILLERS AND CATTLE FEEDERS' TRUST.

Designs

This is to certify that ——— ——— is entitled to ——— shares in the equity to the property held by the trustees of the Distillers and Cattle Feeders' Trust, transferable only on the books of said trustees on surrender of this certificate. This certificate is issued upon condition that the holder or any transferee thereof shall be subject to all the provisions of the agreement creating said trust, and by the by-laws adopted in pursuance of said agreement as fully as if ——— ——— had signed the said trust agreement.

Witness the hands of the president, secretary, and treasurer of the ——— board of trustees, this ——— day of ———, A. D. 188–, at the ——— ———.

——— ———, *President.*
——— ———, *Treasurer.*
——— ———, *Secretary.*

[Back]

For value received ——— ——— hereby sell and transfer to ——— ——— ——— shares of the Distillers and Cattle Feeders' Trust, standing in my name on the books of said trust. And ——— hereby irrevocably appoint ——— ——— attorney to make the necessary transfer upon the books of said trust in accordance with the regulations thereof, and upon the conditions expressed upon the face of this certificate.

Dated ——— ———, 188–.

In presence of ———.

(Here follows list of signatures.)

CHAPTER III

LEGISLATIVE OPPOSITION TO THE TRUST

NOTE

THE development of the Trust type of combination aroused a storm of opposition. This was scarcely remarkable. The power, intangibility and secrecy of the organization, its extra-legal character and its lack of amenability to law all ran counter to American ideas of justice and legality. The opposition rapidly gathered strength. Under the pressure of public sentiment both the Republican and Democratic parties—although it was recognized that the campaign would be fought out on the tariff issue—inserted Anti-Trust planks in their respective Presidential platforms in the conventions of 1888. This action later bore fruit in the passage of the Sherman Anti-Trust Act of 1890. In the meantime, the State Legislatures had not been idle. The latter eighties and early nineties witnessed a flood of State Anti-Trust legislation, which swept the entire country. Kansas, Nebraska, Maine, Michigan, North Carolina, Iowa, Kentucky and Illinois were conspicuous leaders in the movement. By 1894, the statute books of about twenty States showed legislation of one kind or another looking toward the suppression of Trusts, Pools and other combinations. The exhibits in this chapter have been intended merely to give an idea of this legislation.—Ed.

EXHIBIT 1

THE SHERMAN ANTI-TRUST LAW [1]

An act to protect trade and commerce against unlawful restraints and monopolies.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

[1] Act of July 2, 1890, 26 U. S. Stats. at Large, 51st Cong., 1st Sess., chap. 647, p. 209.

SEC. 1. Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is hereby declared to be illegal. Every person who shall make any such contract or engage in any such combination or conspiracy, shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be punished by fine not exceeding five thousand dollars, or by imprisonment not exceeding one year, or by both said punishments, in the discretion of the court.

SEC. 2. Every person who shall monopolize, or attempt to monopolize, or combine or conspire with any other person or persons, to monopolize any part of the trade or commerce among the several States, or with foreign nations, shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be punished by fine not exceeding five thousand dollars, or by imprisonment not exceeding one year, or by both said punishments, in the discretion of the court.

SEC. 3. Every contract, combination in form of trust or otherwise, or conspiracy, in restraint of trade or commerce in any Territory of the United States or of the District of Columbia, or in restraint of trade or commerce between any such Territory and another, or between any such Territory or Territories and any State or States or the District of Columbia, or with foreign nations, or between the District of Columbia and any State or States or foreign nations, is hereby declared illegal. Every person who shall make any such contract or engage in any such combination or conspiracy, shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be punished by fine not exceeding five thousand dollars, or by imprisonment not exceeding one year, or by both said punishments, in the discretion of the court.

SEC. 4. The several circuit courts of the United States are hereby invested with jurisdiction to prevent and restrain violations of this act; and it shall be the duty of the several district attorneys of the United States, in their respective districts, under the direction of the Attorney-General, to institute proceedings in equity to prevent and restrain such violations. Such proceedings may be by way of petition setting forth the case and praying that such violation shall be enjoined or otherwise prohibited. When the parties complained of shall have been duly notified of such petition the court shall proceed, as soon as may be, to the hearing and determination of the case; and pending such petition and before final decree, the court may at any time make such temporary restraining order or prohibition as shall be deemed just in the premises.

SEC. 5. Whenever it shall appear to the court before which any proceeding under section four of this act may be pending, that the ends of justice require that other parties should be brought before the court, the court may cause them to be summoned, whether they reside in the district in which the court is held or not; and subpœnas to that end may be served in any district by the marshal thereof.

SEC. 6. Any property owned under any contract or by any combination, or pursuant to any conspiracy (and being the subject thereof) mentioned in section one of this act, and being in the course of transportation from one State to another, or to a foreign country, shall be forfeited to the United States, and may be seized and condemned by like proceedings as those provided by law for the forfeiture, seizure, and condemnation of property imported into the United States contrary to law.

SEC. 7. Any person who shall be injured in his business or property by any other person or corporation by reason of anything forbidden or declared to be unlawful by this act, may sue therefor in any circuit court of the United States in the district in which the defendant resides or is found, without respect to the amount in controversy, and shall recover three fold the damages by him sustained, and the costs of suit, including a reasonable attorney's fee.

SEC. 8. That the word "person," or "persons," wherever used in this act shall be deemed to include corporations and associations existing under or authorized by the laws of either the United States, or the laws of any of the Territories, the laws of any State, or the laws of any foreign country.

EXHIBIT 2

KANSAS [1]

Be it enacted by the Legislature of the State of Kansas:

SECTION 1. That all arrangements, contracts, agreements, trusts or combinations between persons or corporations made with a view or which tend to prevent full and free competition in the importation, transportation or sale of articles imported into this state, or in the product, manufacture or sale of articles of domestic growth or product of domestic raw material, or in the loan or use of money, or to fix attorneys' or doctors' fees, and all

[1] State of Kansas, Session Laws of 1889, Chap. CCLVII, pp. 389 ff.

arrangements, contracts, agreements, trusts or combinations between persons or corporations designed or which tend to advance, reduce or control the price or the cost to the producer or to the consumer of any such products or articles, . . ., are hereby declared to be against public policy, unlawful and void.

SEC. 2. It shall not be lawful for any corporation to issue or to own trust certificates, other than the regular and lawfully authorized stock thereof, or for any corporation, agent, officer or employés, or the directors or stockholders of any corporation, to enter into any combination, contract or agreement with any person or persons, corporation or corporations, or with any stockholder or director thereof, the purpose and effect of which combination, contract or agreement, shall be to place the management or control of such combination or combinations, or the manufactured product thereof, in the hands of any trustee or trustees, with the intent to limit or fix the price or lessen the production and sale of any article of commerce, use, or consumption, or to prevent, restrict, or diminish the manufacture or output of any such article.

SEC. 3. That all persons entering into any such arrangement, contract, agreement, trust, or combination, or who shall, after the passage of this act, attempt to carry out or act under any such arrangement, contract, agreement, trust or combination described in sections one or two of this act, either on his own account or as agent or attorney for another, or as an officer, agent or stockholder of any corporation, or as a trustee, committee, or in any capacity whatever, shall be guilty of a misdemeanor, and on conviction thereof shall be subject to a fine of not less than one hundred dollars and not more than one thousand dollars, and to imprisonment not less than thirty days and not more than six months, or to both such fine and imprisonment, in the discretion of the court.

EXHIBIT 3

KENTUCKY [1]

(Act May 20, 1890)

POOLS—TRUSTS—CONSPIRACIES

§ 3915. **Defined and prohibited.** That if any corporation under the laws of Kentucky, or under the laws of any other State or

[1] The Kentucky Statutes, 1894, Chap. 101, Secs. 3915–3919, pp. 1267–68.

country, for transacting or conducting any kind of business in this State, or any partnership, company, firm or individual, or other association of persons, shall create, establish, organize or enter into, or become a member of, or a party to, or in any way interested in any pool, trust, combine, agreement, confederation or understanding with any other corporation, partnership, individual or person, or association of persons, for the purpose of regulating or controlling or fixing the price of any merchandise, manufactured articles or property of any kind, or shall enter into, become a member of, or party to, or in any way interested in any pool, agreement, contract, understanding, combination or confederation, having for its object the fixing or in any way limiting the amount or quantity of any article of property, commodity or merchandise to be produced or manufactured, mined, bought or sold, shall be deemed guilty of the crime of conspiracy, and punished therefor as provided in the subsequent sections of this act.

§ 3916. **Trust certificates—when sale of unlawful.** It shall not be lawful for any corporation to issue or to own, have or sell any trust certificates or stocks, or for any corporation's agent, officer or employe, agent or director, or any corporation to enter into, either verbally or in writing, any combinations, contract, agreement or understanding with any person or persons, corporation or corporations, or with any director, agent or officer thereof, the purpose or effect of which combination, contract, agreement or understanding would be to place the management, control or any part of the business of such combination or association, or the manufactured product thereof, in the hands or under the control, in the whole or in part, of any trustee or trustees, or agents, or any person whatever, with the intent, or to have the effect to limit, fix, establish or change the price of the production or sale of any article of property or of commerce, or to prevent, restrict, or in any way diminish the manufacture or output of any such article or property.

§ 3917. **Penalties imposed on corporations and officers.** If any corporation, company, firm, partnership or person, or association of persons, shall, by court of competent jurisdiction, be found guilty of any violation of any of the provisions of this act, such guilty party shall be punished by a fine of not less than five hundred dollars, and not more than five thousand dollars. Any president, manager, director or other officer or agent, or receiver of any corporation, company, firm, partnership or any corporation, company,

firm or association, or member of any corporation, firm or association, or any member of any company, firm or other association, or any individual found, by a court of competent jurisdiction, guilty of any violation of this act shall be punished by a fine of not less than five hundred dollars nor more than five thousand dollars, or may be imprisoned in the county jail not less than six months nor more than twelve months, or may be both so fined and imprisoned in the discretion of the court or jury trying the case.

§ 3918. **Contract in violation of law void.** Any contract or agreement or understanding in violation of the provisions of the preceding sections of this act shall be null and void; and any purchasers of property or article, or of any commodity, from any individual, firm, company or corporation transacting business contrary to the preceding sections of this act, shall not be liable for the price or payment of such article or commodity or property, and may plead and rely on this act as a complete defense to any suit for such price or payment.

§ 3919. **Charter of corporation forfeited upon conviction.** If any corporation created or organized by or under the laws of this State shall be indicted and convicted for any violation of any of the provisions of this act, such indictment, trial and conviction in any court of competent jurisdiction shall have the effect to forfeit the charter of such corporation without any further proceedings on the subject of the forfeiture of its charter; but any corporation whose charter is so forfeited shall have the right of appeal as is provided in other cases, and the filing of the bond as is required by law shall suspend the judgment of forfeiture until same is passed upon by the court to which the case is appealed.

EXHIBIT 4

MICHIGAN [1]

SECTION 1. *The People of the State of Michigan enact*, That all contracts, agreements, understandings and combinations made, entered into, or knowingly assented to, by and between any parties capable of making a contract or agreement which would be valid at law or in equity, the purpose or object or intent of which shall

[1] Public Acts and Joint and Concurrent Resolutions of the Legislature of the State of Michigan, 1889, No. 225, p. 331 ff.

be to limit, control, or in any manner to restrict or regulate the amount of production or the quantity of any article or commodity to be raised or produced by mining, manufacture, agriculture or any other branch of business or labor, or to enhance, control or regulate the market price thereof, or in any manner to prevent or restrict free competition in the production or sale of any such article or commodity, shall be utterly illegal and void, and every such contract, agreement, understanding and combination shall constitute a criminal conspiracy. And every person who, for himself personally, or as a member or in the name of a partnership, or as a member, agent, or officer of a corporation, or of any association for business purposes of any kind, who shall enter into or knowingly consent to any such void and illegal contract, agreement, understanding or combination, shall be deemed a party to such conspiracy. And all parties so offending shall, on conviction thereof, be punished by fine of not less than fifty dollars, nor more than three hundred dollars, or by imprisonment in the county jail not more than six months, or by both such fine and imprisonment at the discretion of the court. And the prosecution for offenses under this section may be instituted and the trial had in any county where any of the conspirators became parties to such conspiracy, or in which any one of the conspirators shall reside: *Provided, however*, That this section shall in no manner invalidate or affect contracts for what is known and recognized at common law and in equity as contracts for the "good will of a trade or business;" but all such contracts shall be left to stand upon the same terms and within the same limitations recognized at common law and in equity.

SEC. 2. Every contract, agreement, understanding, and combination declared void and illegal by the first section of this act shall be equally void and illegal within this State, whether made and entered into within or without this State.

SEC. 3. The carrying into effect, in whole or in part, of any such illegal contract, agreement, understanding or combination as mentioned in the first section of this act and every act which shall be done for that purpose by any of the parties or through their agency or the agency of any one of them, shall constitute a misdemeanor, and on conviction the offenders shall be punished by imprisonment in the State prison not more than one year, or in the county jail not more than six months, or by a fine not less than one hundred nor more than five hundred dollars, or by both such fine and imprisonment in the discretion of the court.

EXHIBIT 5

NORTH CAROLINA [1]

An act to prohibit trusts in the State of North Carolina, and to provide for the punishment of persons connected with them.

The General Assembly of North Carolina do enact:

SECTION 1. That all combinations and trusts as defined by this act are unlawful, and dangerous to the liberty of the people, and are hereby forbidden to be formed or carried on in this State.

SEC. 2. That a trust is an arrangement, understanding or agreement, either private or public, entered into by two or more persons or corporations for the purposes of increasing or reducing the price of the shares of stock of any company or corporation, or of any class of products, materials or manufactured articles, beyond the price that would be fixed by the natural demand for or the supply of such shares, products, materials or manufactured articles; and any attempt to carry out such purpose shall be evidence that such arangement,[2] understanding or agreement exists.

SEC. 3. That any persons, company or corporation who shall form, or attempt to form, a trust in this State, or the agent or the representative of any trust in any State or county, who shall attempt to carry on operations in this State, shall be guilty of a misdemeanor, and upon conviction may be fined not more than ten thousand dollars or may be imprisoned not more than ten years for each offense.

SEC. 4. That any person, company or corporation who enter into an arrangement, understanding or agreement not to mine, manufacture, buy, sell or transport more than a certain specified amount of any goods, products or commodities within a specified time, will have violated section three of this act and will be liable to indictment therefor; and any person, company or corporation who give bond or make a forfeit of any kind not to break such arrangement, understanding or agreement shall be guilty of a misdemeanor, and on conviction thereof shall be fined or imprisoned, or both, in the discretion of the court.

SEC. 5. That any merchant, broker, manufacturer or dealers in raw materials of any kind, or the agent of such persons, who shall

[1] Laws and Resolutions of the State of North Carolina, 1889, Chap. 374, pp. 372–373.

[2] Thus in original.—Ed.

sell any particular class of goods, raw materials or manufactured articles for less than actual cost for the purpose of breaking down competitors, shall be guilty of a misdemeanor, and upon conviction may be fined or imprisoned, or both, in the discretion of the court: *Provided*, that nothing contained in this act shall operate or be construed so as to forbid or prevent any person or persons who desire and intend to purchase any article or commodity for his or their own use or consumption, from combining or otherwise lawfully acting so as to protect or help themselves from imposition in the cost or purchase price of such articles or commodities as they or either of them may design and intend to use or consume.

SEC. 6. That this act shall be in full force and effect from and after the first day of May of the year one thousand eight hundred and eighty-nine.

CHAPTER IV

JUDICIAL ATTACK ON THE TRUST

NOTE

EVEN before the passage by the State Legislatures and Congress of the mass of legislation referred to in the note to the preceding chapter the assault upon the trust form of combination had been begun through the judicial arm of government under existing law. The first gun of the attack was fired by the State of Louisiana against the American Cotton Oil Trust early in 1887, in an attempt to have that combination declared an illegal association, so far as its operations in the State of Louisiana were concerned, and to secure the liquidation and winding up of its affairs. This proceeding was shortly followed by a suit brought by the Attorney General of the State of New York against the North River Sugar Refining Company, one of the members of the Sugar Refineries Company. Almost simultaneously therewith, the same trust was assailed in the Superior Court of California. In 1890 the State of Ohio began an action against the Standard Oil Company of Ohio, and in the same year, Nebraska brought suit against the Nebraska Distilling Company which had become a member of the Distillers and Cattle Feeders' Trust. Finally in 1891, a Federal Court declined positively to prevent a corporation by means of an injunction from violating a covenant made by it in consideration of its admission to a trust. In order to make absolutely clear the grounds upon which the illegality of the Trust was based, excerpts from some of these decisions have been given in the following pages.—Ed.

EXHIBIT 1

STATE EX REL. ATTORNEY *v.* STANDARD OIL COMPANY [1]

MINSHALL, J. Three questions arise upon the pleadings: 1. Should the defendant, The Standard Oil Company, be regarded as a party in its corporate capacity, to the agreement constituting the

[1] 49 Ohio St. 137; 30 N. E. 279.

Standard Oil Trust. 2. Had the company power to become a party to such an agreement. 3. If so, is the right of the state to demand a forfeiture of its corporate franchises, or of the power to make and perform such agreements, barred by lapse of time.

1. It will be observed on reading the answer, that while the defendant denies that it "entered into or become a party to either or both of the agreements in said petition set forth," and also, "denies that it has at any time or in any manner acquiesced in, or observed, performed or carried out either or both of said agreements," it does not deny the averment of the petition, that "all of the owners and holders of its capital stock, including all the officers and directors of said company, signed said agreements." Nor could it have been the intention to do so, as the answer proceeds to admit, "that it," the corporation, "is informed and believes that the individuals named in the agreement, being the same individuals who executed" it, "did enter into the agreements set forth" in the petition; claiming "that said agreements were agreements of individuals in their individual capacity and with reference to their individual property, and were not, nor were they designed to be, corporate agreements." The claim is based upon the argument, that the corporation is a legal entity separate from its stockholders, that in it are vested all the property and powers of the company, and can only be affected by such acts and agreements as are done or executed on its behalf by its corporate agencies acting within the legitimate scope of their powers. That its stockholders are not the corporation, that their shares are their individual property, and that they may each and all dispose of, and make such agreements affecting their shares, as best suit their private interests; and that no such acts and agreements of stockholders, subservient of their private interests, can be ascribed to the company as a separate entity, though done and concurred in by each and all of its stockholders.

. . . . . .

Now, so long as a proper use is made of the fiction, that a corporation is an entity apart from its shareholders, it is harmless, and, because convenient, should not be called in question; but where it is urged to an end subversive of its policy, or such is the issue, the fiction must be ignored, and the question determined, whether the act in question, though done by shareholders, that is to say, by the persons united in one body, was done simply as

individuals and with respect to their individual interests as shareholders, or was done ostensibly as such, but, as a matter of fact, to control the corporation and affect the transaction of its business, in the same manner as if the act had been clothed with all the formalities of a corporate act. This must be so, because, the stockholders having a dual capacity, and capable of acting in either, and a possible interest to conceal their character when acting in their corporate capacity, the absence of the formal evidence of the character of the act, cannot preclude judicial inquiry on the subject. If it were otherwise then, in one department of the law, fraud would enjoy an immunity awarded to it in no other.

Therefore, the real question we are now to determine is, whether it appears from the face of the pleadings, giving effect to all the denials of fact contained in the answer, that the execution of the agreement set forth in the petition, should be imputed to the association of persons constituting The Standard Oil Company of Ohio, acting in their corporate capacity.

The agreement provides in the first place that the parties to it shall be divided into three classes, the first class to embrace all the stockholders and members of certain corporations and limited partnerships, the defendant, The Standard Oil Company of Ohio, being one. It is then covenanted by the parties, that, as soon as practicable a corporation shall be formed in each of certain states, under the laws thereof, Ohio being one, to mine for, produce, manufacture, refine and deal in petroleum and all its products; with the proviso, however, that instead of organizing a new corporation, any existing one "may be used for the purpose when it can advantageously be done," and in Ohio the defendant has been so used.

In a subsequent part of the agreement, nine trustees are selected, their powers and duties are defined, and provision made for the selection of their successors.

As will hereafter appear, it is made the duty of the parties to the agreement, to transfer their stocks or interests in their respective companies or firms, to these trustees, who hold the same in trust, but with the power to vote on the same as though the real owners; in consideration of which, trust certificates are issued to the owners, who, as the owners of such certificates, elect the successors of the trustees.

It is then provided that all the property, assets and business of the corporations and limited partnerships embraced in the first class "shall be transferred to and vested in the said several Stand-

ard Oil Companies." And in order to accomplish this purpose, it is provided that "the directors and managers of each and all of the several corporations and limited partnerships mentioned in class first, are hereby authorized and directed by the stockholders and members thereof (all of them being parties to this agreement), to sell, assign, transfer, convey and make over, for the consideration hereinafter mentioned, to the Standard Oil Company or companies, of the proper state or states, as soon as said corporations are organized and ready to receive the same, all the property, real and personal, assets and business, of said corporations and limited partnerships."

Now, in the case of the defendant, it will be observed, that this contemplated, and could not have been accomplished, without corporate action. The Standard Oil Company of Ohio was required to transfer all its property, assets and business to a new company to be organized in the state; and this was to be accomplished by the obligation imposed on its members and stockholders, all of whom are parties to the agreement, to authorize and require the directors and managers to make the transfer. The property and assets of the corporation could only be transferred by a corporate act, and the agreement could not in this respect, be carried into effect, other than by such corporate act; and clearly indicates that the purpose of the stockholders of the defendant, in becoming a party to it, was to affect their property and business as a corporation; in other words, was to act in their corporate, and not in their individual, capacity.

. . . . . .

Applying then the principle that a corporation is simply an association of natural persons, united in one body under a special denomination, and vested by the policy of the law with the capacity of acting in several respects as an individual, and disregarding the mere fiction of a separate legal entity, since to regard it in an inquiry like the one before us would be subversive of the purpose for which it was invented, is there, upon an analysis of the agreement, room for doubt that the act of all the stockholders, officers and directors of the company in signing it, should be imputed to them as an act done in their capacity as a corporation? We think not, since thereby all the property and business of the company is, and was intended to be, virtually transferred to the Standard Oil Trust, and is controlled, through its trustees, as effectually as

if a formal transfer had been made by the directors of the company.

. . . . . .

It therefore follows, as we think, from the discussion we have given the subject, that where all, or a majority, of the stockholders comprising a corporation, do an act which is designed to affect the property and business of the company, and which, through the control their numbers give them over the selection and conduct of the corporate agencies, does affect the property and business of the company, in the same manner as if it had been a formal resolution of its board of directors; and the act so done is *ultra vires* of the corporation and against the public policy, and was done by them in their individual capacity for the purpose of concealing their real purpose and object, the act should be regarded as the act of the corporation; and, to prevent the abuse of corporate power, may be challenged as such by the state in a proceeding in *quo warranto*.

2. That the nature of the agreement is such as to preclude the defendant from becoming a party to it, is, we think, too clear to require much consideration by us. In the first place, whether the agreement should be regarded as amounting to a partnership between the several companies, limited partnerships and individuals, who are parties to it, it is clear that its observance must subject the defendant to a control inconsistent with its character as a corporation. Under the agreement all but seven of the shares of the capital stock of the company have been transferred by the real owners to the trustees of the trust, who hold them in trust for such owners; and being enjoined by the terms of the agreement to endeavor to have "the affairs" of the several companies managed in a manner most conducive to the interests of the holders of the trust certificates issued by the trust, have the right, in virtue of their apparent legal ownership and by the terms of the agreement, to select such directors of the company as they may see fit, nay more, may in fact select themselves. The law requires that a corporation should be controlled and managed by its directors in the interest of its own stockholders, and conformable to the purpose for which it was created by the laws of its state. By this agreement, indirectly it is true, but none the less effectually, the defendant is controlled and managed by the Standard Oil Trust, an association with its principal place of business in New York City, and organized for a purpose contrary to the policy of our laws. Its object

was to establish a virtual monopoly of the business of producing petroleum, and of manufacturing, refining and dealing in it and all its products, throughout the entire country, and by which it might not merely control the production, but the price at its pleasure. All such associations are contrary to the policy of our state and void. *Salt Co. v. Guthrie*, 35 Ohio St. 666; *Emery v. Ohio Candle Co*, 47 *id.* 320.

. . . . . .

3. The defendant relies upon a provision in section 6789, Revised Statues,[1] as a bar to the action. That provision is as follows:

"Nothing in this chapter contained shall authorize an action against a corporation for forfeiture of charter, unless the same be commenced within five years after the act complained of was done or committed."

It is contended, however, by counsel for the plaintiff, that this section does not apply to a proceeding instituted on behalf of the state by the attorney general to forfeit the charter of a corporation; that it was only intended to apply to like proceedings by prosecuting attorneys. The argument is based upon what is claimed to have been the law prior to the revision, and that there could have been no intention to change it in this regard by the above provision. We cannot adopt this conclusion.

. . . . . .

But the whole of § 6789, Revised Statutes, is not quoted by the defendant; it further proceeds: "Nor shall an action be brought against a corporation for the exercise of a power or franchise under its charter which it has used and exercised for a term of twenty years." Therefore within that time such a proceeding may be brought. The defendant, as we have shown, in making and entering into the trust agreements, exercised a power for which it had no authority under the laws of this state, and is continuing to perform the agreement on its part. . . .

EXHIBIT 2

STATE *v.* NEBRASKA DISTILLING COMPANY[2]

MAXWELL, J.

This is an action of *quo warranto* brought in this court to obtain a forfeiture of the defendant's corporate franchise. One Woolsey

[1] Thus in original.—Ed.

[2] 29 Neb. 700; 46 N. W. 155

was permitted to intervene in the case. An answer was filed by the defendants and the cause referred to Judge Pound to take the testimony and find the issues of facts, . . .

. . . . . .

Section 123 of chapter 16, Comp. Stats., provides that "Any number of persons may be associated and incorporated for the transaction of any lawful business," etc. It is also provided in chapter 15 that "So much of the common law of England as is applicable, and not inconsistent with the constitution of the United States, with the organic law of this territory, or with any law passed or to be passed by the legislature of this territory, is adopted and declared to be law within said territory." These provisions of statute were passed before the admission of the state into the Union and have continued in force ever since. A corporation therefore can only be organized under our laws for a lawful purpose, and any acts done by such corporation for the accomplishment of a purpose not lawful is unauthorized, in excess of its powers, and therefore illegal and void. The acts of a corporation, to be unlawful, need not necessarily be *mala prohibita* or *malum in se*, although such acts are illegal in all cases, but any act of a corporation which by the terms of its charter it is not authorized to do, is in excess of its powers and therefore unlawful.

Contracts in total restraint of trade, as that a person shall not carry on his business anywhere in the state, are void, no matter what the consideration may be, because the effect of such contract must be injurious to the public. The early cases in regard to contracts in restraint of trade were reviewed by Parker, Ch. J., in *Mitchel v. Reynolds*, 1 P. Wm.'s 181, decided in 1711, and it was held, in effect, that contracts in total restraint of trade were void, and that contracts in partial restraint of trade were also void, unless there was a sufficient consideration and a good reason for entering into the contract. In *Horner v. Ashford*, 3 Bing., 322, contracts in total restraint of trade were held to be void. To the same effect are *Homer v. Graves*, 7 Bing., 735; *Hayward v. Young*, 2 Chitty R., 407. These cases have generally been followed in this country. A well considered case on this subject is *Lange v. Werk*, 2 O. St., 520, in which it was held that before such contract can be enforced, it must appear by the pleadings and proofs that the restraint is partial, that it is reasonable, and founded on a good consideration, and this seems to be the law at the present time. (*Law-*

rence v. Kidder, 10 Barb., 641; *Pierce v. Fuller*, 8 Mass., 223; *Palmer v. Stebbins*, 3 Pick., 188; *Whitney v. Slayton*, 40 Me., 231; *Nobles v. Bates*, 7 Cow., 307; *Duffy v. Shockey*, 11 Ind., 71; *Bowser v. Bliss*, 7 Blackf., 344; *Beard v. Dennis*, 6 Ind., 204; *Chappel v. Brockway*, 21 Wend., 158.)

Whatever tends to destroy competition and create a monopoly is contrary to public policy and therefore unlawful. (*Coal Co. v. Coal Co.*, 68 Pa. St., 173; *Craft v. McConoughy*, 79 Ill., 346; *Railroad Company v. Collins*, 40 Ga., 582; *Hazelhurst v. Railroad Co.*, 43 id., 13; *Trans. Co. v. Pipe Line Co.*, 22 W. Va., 600; *People v. C. G. & T. Co.*, 22 N. E. Rep., 798; *Richardson v. Buhl*, 43 N. W. Rep., 1102.) In the latter case it was held that a contract in furtherance of a monopoly and growing out of transactions in connection therewith, is against public policy, and although the question was not raised by the parties, yet the court of its own motion took notice of its illegal character and held it void. . . .

. . . . . .

In *Salt Co. v. Guthrie*, 35 O. S., 666, it is said: "Public policy unquestionably favors competition in trade to the end that its commodities may be afforded to the consumer as cheaply as possible, and is opposed to monopolies which tend to advance market prices to the injury of the general public," etc.

In *Navigation Co. v. Railway Co.*, 130 U. S., 1, the supreme court of the United States, in speaking of the proper construction of articles of association of corporations organized under general laws, says: "We have to consider, when such articles become the subject of construction, that they are, in a sense, *ex parte*. Their formation and execution—what shall be put into them, as well as what shall be left out—do not take place under the supervision of any official authority whatever. They are the production of private citizens, gotten up in the interest of the parties who propose to become corporators, and stimulated by their zeal for the personal advantage of the parties concerned rather than the general good. . . . These articles, which necessarily assume, by the sole actions of the corporators, enormous powers, many of which have been heretofore considered of a public character, sometimes affecting the interests of the public very largely and very seriously, do not commend themselves to the judicial mind as a class of instruments requiring or justifying any very liberal construction. Where the question is whether they conform to the authority given by

statute in regard to corporate organizations, it is always to be determine upon just construction of the powers granted therein, with a due regard for all the other laws of the state upon that subject. . . . The manner in which these powers shall be exercised, and their subjection to the general laws of the state, and its general principles of public policy, are not in any sense enlarged by inserting in the articles of association the authority to depart therefrom."

This, we think is a correct construction of the law relating to such articles and we adopt the same. Alcohol is an article of commerce. It is applied to a thousand uses in arts and manufactures. The amount which is rectified and used as intoxicating drinks forms but a very small part of the quantity actually distilled, and being an article of commerce, any contract creating a monopoly therein is against public policy and void. A corporation can exercise no powers except such as are granted to it, by the charter under which it exists. (*Thomas v. R. Co.* 101 U. S., 71; *O. Ry. Co. v. O. Ry. Co.*, 130 *id.*, 1.) It is no part of the powers of the Distilling Company to sell all its property, real and personal, together with its franchise and powers necessary to properly carry on the business. (*O. Ry. Co. v. O. Ry. Co., supra.*) The fact that the corporation has authority to put an end to its existence by a vote of a majority of its stockholders, in which event it may proceed to settle up its affairs, dispose of its property, and divide its capital stock and surrender its charter to the state, does not authorize it to terminate its existence by a sale and disposal of all its property and rights. (*Id.*)

The findings in this case, to which no objection is made, clearly show that the object of the Distilling Company in entering into the illegal combination was to destroy competition and create a monopoly, not only by limiting the production of alcohol, but by dismantling as many distilleries as the trust saw fit, absolutely prevent the manufacture of the article except in a few establishments controlled by the trust, and thus it would be enabled to control prices, prevent production, and create a monopoly of the most offensive character. *Any contract entered into with such an object in view is, under the laws of this state, null and void, and the conveyance from the Distilling Company to the trust was in contravention of the authority conferred by the statutes on that company in excess of the powers granted by its charter, and against public policy and void, and no title passed by such conveyance.*[1] . . .

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[1] Italics are the editor's.

. . . The act of 1889, in relation to trusts, has not been referred to, and its application to this case will be further considered.

EXHIBIT 3

PEOPLE *v.* NORTH RIVER SUGAR REFINING COMPANY [1]

FINCH, J. The judgment sought against the defendant is one of corporate death. The State, which created, asks us to destroy; and the penalty invoked represents the extreme rigor of the law. Its infliction must rest upon grave cause, and be warranted by material misconduct. The life of a corporation is indeed less than that of the humblest citizen, and yet it envelopes great accumulations of property, moves and carries in large volume the business and enterprise of the people, and may not be destroyed without clear and abundant reason.

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Two questions, therefore, open before us: first, has the defendant corporation exceeded or abused its powers, and, second, does that excess or abuse threaten or harm the public welfare.

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. . . We find disclosed by the proof that it has become an integral part and constituent element of a combination which possesses over it an absolute control, which has absorbed most of its corporate functions, and dictates the extent and manner and terms of its entire business activity. Into that combination, which drew into its control sixteen other corporations engaged in the refining of sugar, the defendant has gone, in some manner and by some process, for as an unquestionable truth we find it there. All its stock has been transferred to the central association of eleven individuals denominated a "Board"; in exchange it has taken and distributed to its own stockholders certificates of the board carrying a proportionate interest in what it describes as its capital stock; the new directors of the defendant corporation have been chosen by the board, made eligible by its gift of single shares, and liable to removal under the terms of their appointment at any moment of independent action. It has lost the power to make a dividend, and is compelled to pay over its net earnings to the master whose servant it has become. Under the orders of that master it has ceased

[1] 121 N. Y. 582; 24 N. E. 834.

to refine sugar, and by so much, has lessened the supply upon the market. It cannot stir unless the master approves, and yet is entitled to receive from the earnings of the other refineries, massed as profits in the treasury of the board, its proportionate share for division among its own stockholders holding the substituted certificates. In return for this advantage it has become liable to be mortgaged, not for its own corporate benefit alone, but to supply with funds the controlling board when reaching out for other and coveted refineries. No one can look these facts fairly in the face without being compelled to say that the defendant is in the combination and in to stay. Indeed, so much is with great frankness admitted on the part of the appellant. Its counsel concedes that the stock was transferred "to the board mentioned in the agreement and on the terms and for the purposes mentioned in the agreement; and that this action effectually lodged the control of the defendant company, so far as such control can be secured by the voting power, in that board."

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The combination, therefore, framed by the deed was a trust; and, if created by the corporations, or in any respect the consequence or product of their action, some inevitable results would be certain to follow. But here we encounter the stronghold of the appellant's argument which is, that if the corporations are in some manner in the combination, they are there solely as the result of a contract other than their own; are there without corporate action on their part; and so are sufferers and not sinners. The reasoning leading to that result is so severely technical as to have suggested a justification almost reminding one of an apology. We are called upon to sever the corporation, the abstract legal entity, from the living and acting corporators; as it were, to separate in our thought the soul from the body, and, admitting the sins of the latter to adjudge that the former remains pure.

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. . . I think there may be actual corporate conduct which is not formal corporate action; and where that conduct is directed or produced by the whole body, both of officers and stockholders, by every living instrumentality which can possess and wield the corporate franchise, that conduct is of a corporate character, and if illegal and injurious may deserve and receive the penalty of disso-

lution. There always is, and there always must be, corporate conduct without formal corporate action where the thing challenged is an omission to act at all. A corporation organized in the public interest, with a view to the public welfare, and in the expectation of benefit to the community, which is the motive of the State's grant, may accept the franchise and hold it in sullen silence, doing nothing, resolving nothing, furnishing no formal corporate action upon which the State can put its finger and say, this the corporation has done by the agency through which it is authorized to act. That is corporate conduct which the State may question and punish without searching for a formal corporate act. The directors of a corporation, its authorized and active agency, may see the stockholders perverting its normal purposes by handing it over, bound and helpless, to an irresponsible and foreign authority, and omit all action which they ought to take, offer no resistance, make no protest, but silently acquiesce as directors in the wrong which as stockholders they have themselves helped to commit. That again is corporate conduct, though there be an utter absence of directors' resolutions. It is asked what they could have done to prevent the organization of the trust; how they were negligent and unfaithful as corporate officers by their omission to act; what good a mere protest or objection would have accomplished; what effective form their resistance could have assumed? The answer is that they could have refused to recognize the illegal trust transfer of the stock; they could have declined to register the new ownership upon their stock-books; they could have said, and acted upon their words, that the original stockholders remained not only the beneficial, but the legal owners of the stock; and, if the board trustees appealed to the law, the resisting directors could challenge the legality of the transfer as moulded by the combination agreement, and might have defeated the trust and shattered it at the outset of its career. So much they could have done as corporate officers; so much it was their duty to have done as representatives of the corporation; and when, beyond that corporate neglect, they recognized the validity of the stock transfers in trust, put the new and unlawful ownership upon their books, and accepted its votes in the choice of new directors who were to throttle the independence of the corporation and chain it to the will of the trust, I think we must shut our eyes in wilful blindness if we fail to see both corporate neglect and corporate action.

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The abstract idea of a corporation, the legal entity, the impalpable and intangible creation of human thought is itself a fiction, and has been appropriately described as a figure of speech. It serves very well to designate in our minds the collective action and agency of many individuals as permitted by the law; and the substantial inquiry always is what in a given case has been that collective action and agency. As between the corporation and those with whom it deals, the manner of its exercise usually is material, but as between it and the State, the substantial inquiry is only what that collective action and agency has done, what it has, in fact, accomplished, what is seen to be its effective work, what has been its conduct. It ought not to be otherwise. The State gave the franchise, the charter, not to the impalpable, intangible and almost nebulous fiction of our thought, but to the corporators, the individuals, the acting and living men, to be used by them, to redound to their benefit, to strengthen their hands and add energy to their capital. If it is taken away, it is taken from them as individuals and corporators, and the legal fiction disappears. The benefit is theirs, the punishment is theirs, and both must attend and depend upon their conduct; and when they all act, collectively, as an aggregate body, without the least exception, and so acting, reach results and accomplish purposes clearly corporate in their character, and affecting the vitality, the independence, the utility, of the corporation itself, we cannot hesitate to conclude that there has been corporate conduct which the state may review, and not be defeated by the assumed innocence of a convenient fiction.

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It remains to determine whether the conduct of the defendant in participating in the creation of the trust, and becoming an element of it was illegal and tended to the public injury and we may consider the two questions together and without formal separation.

It is quite clear that the effect of the defendant's action was to divest itself of the essential and vital elements of its franchise by placing them in trust; to accept from the State the gift of corporate life only to disregard the conditions upon which it was given; to receive its powers and privileges merely to put them in pawn; and to give away to an irresponsible board its entire independence and self-control. When it had passed into the hands of the trust, only a shell of a corporation was left standing, as a seeming obedience to the law, but with its internal structure destroyed or re-

moved. Its stockholders, retaining their beneficial interest, have separated from it their voting power, and so parted with the control which the charter gave them and the State required them to exercise. It has a board of directors nominally and formally in office, but qualified by shares which they do not own, and owing their official life to the board which can end their power at any moment of disobedience. It can make no dividends whatever may be its net earnings, and must incumber its property at the command of its master, and for purposes wholly foreign to its own corporate interests and duties. At the command of that master it has ceased to refine sugar, and without any doubt for the purpose of so far lessening the market supply as to prevent what is termed "overproduction." In all these respects it has wasted and perverted the privileges conferred by the charter, abused its powers, and proved unfaithful to its duties. But graver still is the illegal action substituted for the conduct which the State has a right to expect and require. It has helped to create an anomalous trust which is, in substance and effect, a partnership of twenty separate corporations. The State permits in many ways an aggregation of capital, but mindful of the possible dangers to the people, overbalancing the benefits, keeps upon it a restraining hand and maintains over it a prudent supervision, where such aggregation depends upon its permission and grows out of its corporate grants. It is a violation of law for corporations to enter into a partnership. (*N. Y. & S. C. Co. v. F. Bank*, 7 Wend. 412; *Clearwater v. Meredith*, 1 Wall. 29; *Whittenton Mills v. Upton*, 10 Gray, 596.)

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. . . It is said, however, that a consolidation of manufacturing corporations is permitted by the law, and that the trust or combination or partnership, however it may be described, amounts only to a practical consolidation which public policy does not forbid because the statute permits it. (Laws of 1867, chap. 960; Laws of 1884, chap. 367.) The refineries did not avail themselves of that statute. They chose to disregard it, and to reach its practical results without subjection to the prudential restraints with which the State accompanied its permission. If there had been a consolidation under the statute, one single corporation would have taken the place of the others dissolved. They would have disappeared utterly, and not, as under the trust, remained in apparent existence to threaten and menace other organizations and occupy the ground

which otherwise would be left free. Under the statute the resultant combination would itself be a corporation deriving its existence from the State, owing duties and obligations to the State, and subject to the control and supervision of the State, and not, as here, an unincorporated board, a colossal and gigantic partnership, having no corporate functions and owing no corporate allegiance. Under the statute the consolidated company taking the place of the separate corporations could have as capital stock only an amount equal to the fair aggregate value of the rights and franchises of the companies absorbed; and not as here a capital stock double that value at the outset and capable of an elastic and irresponsible increase. The difference is very great and serves further to indicate the inherent illegality of the trust combination.

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And so we have reached our conclusion, and it appears to us to have been established, that the defendant corporation has violated its charter and failed in the performance of its corporate duties, and that in respects so material and important as to justify a judgment of dissolution. Having reached that result, it becomes needless to advance into the wider discussion over monopolies and competition and restraint of trade and the problems of political economy. Our duty is to leave them until some proper emergency compels their consideration. Without either approval or disapproval of the views expressed upon that branch of the case by the courts below, we are enabled to decide that in this State there can be no partnerships of separate and independent corporations, whether directly, or indirectly through the medium of a trust; no substantial consolidations which avoid and disregard the statutory permissions and restraints, but that manufacturing corporations must be and remain several as they were created, or one under the statute.

The judgment appealed from should be affirmed with costs.

All concur.

CHAPTER V

THE HOLDING COMPANY

NOTE

LONG before the attack on the trust form of combination had ceased, the problem of the type of combination which should succeed it had been solved. Until about 1870 the weight of English authority had been against the power of one corporation or company to become a shareholder in another, unless such power should have been expressly conferred. In this country the courts had inclined to the same view of the matter. In numerous cases, in the State courts, it had been repeatedly held that no corporation had the implied right to purchase the shares of another company for purposes of control, although it might come into possession of such stock as security for a debt or, in some cases, if the transaction could be regarded as one reasonable or necessary for effectuating the objects for which the company was incorporated. In the Federal courts, a similar attitude was taken.

No more than the implied right to hold the stock of another corporation existed did any statutory enactments prior to 1889 authorize such procedure. In that year, however, the State of New Jersey passed the noteworthy,—or notorious,—amendment to her corporation law permitting such action, a step in which she was subsequently followed by other states as well. The exhibits in this group have been designed to explain this development.—Ed.

GROUP 1

POWER OF ONE CORPORATION TO HOLD STOCK IN ANOTHER

EXHIBIT 1

DE LA VERGNE REFRIGERATING MACHINE COMPANY *v.* GERMAN SAVINGS INSTITUTION [1]

(Supreme Court of the United States, October 30, 1899.)

Statement by Mr. Justice BROWN:

[1] 175 U. S., 40.

This was a consolidation of eight actions brought by the German Savings Institution and seven other plaintiffs, in the Circuit Court of the city of St. Louis, against the De La Vergne Refrigerating Company and John C. De La Vergne, its president and principal stockholder, personally, for a failure to deliver to plaintiffs certain stock in the Refrigerating Company.

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The principal question in this case is whether, under the laws of New York providing for the organization of manufacturing corporations, such corporations are authorized to purchase the stock of a rival corporation for the purpose of suppressing competition and obtaining the management of such corporation.

The facts of the case are substantially as follows: The Consolidated Ice Machine Company (hereafter referred to as the Consolidated Company) was a corporation organized under the laws of Illinois, and was engaged in the business of manufacturing and selling refrigerating and ice-making machines. The entire amount of issued stock of such corporation was $100,000, held in various proportions by the plaintiffs in this consolidated cause. Having become insolvent, the company, on October 14, 1890, made an assignment under the general laws of Illinois, for the benefit of creditors, to one Jenkins, who, at the date of the contract sued upon, was engaged in winding up its business.

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However this may be, subsequently to the assignment, and on April 16, 1891, the company itself, by its president as party of the first part, and its stockholders as parties of the second part, entered into an agreement with the De La Vergne Refrigerating Machine Company, a corporation organized under the laws of New York (hereinafter called the Refrigerating Company,) as party of the third part, and John C. De la Vergne, of the State of New York, president of that company, as party of the fourth part. This agreement is the basis of the action. After reciting that the Refrigerating Company was willing to acquire such right as the Consolidated Company and its stockholders could assign in and to the assets of such company; that under the laws of Illinois the Consolidated Company was not entitled to the possession of its assets in the hands of the assignee until its obligations had been discharged; that the Refrigerating Company was incorporated with a stock of $350,000 when its assets were worth $1,400,000;

and that its stockholders were considering a plan of increasing the stock to $2,000,000, of which $1,000,000 was to be turned over to the Consolidated Company under the terms of the agreement:

Therefore, in view of these facts, the Consolidated Company and its stockholders covenanted with the Refrigerating Company and its president, De la Vergne, to sell and convey unto the Refrigerating Company all their right, title and interest in and to the assets of the party of the first part, subject to the payment of its obligations, and subject to the custody thereof in the legal custodian, R. E. Jenkins, assignee as aforesaid.

The second clause contained a covenant to issue to the stockholders of the Consolidated Company fully paid up stock in the Refrigerating Company to the amount of $100,000 in certain specified proportions to each stockholder.

By the fourth clause, the stockholders agreed within ten days from the date of the agreement to assign to De la Vergne, for the benefit of the Refrigerating Company, all stock of the insolvent company which had been issued, and which they guaranteed had been paid in full; and within sixty days thereafter the Refrigerating Company and its president agreed to issue and deliver to the stockholders of the Consolidated Company stock in the Refrigerating Company to the amount of $100,000.

By the fifth clause, the stockholders in the Consolidated Company covenanted to accept in lieu of the stock of the Refrigerating Company, $100,000 in cash, at the option of De la Vergne, the president of the company.

By the seventh clause, the stockholders of the Consolidated Company agreed that for a period of ten years they would not enter into or become engaged in the selling or making of refrigerators or ice machines, directly or indirectly, within the United States, excepting the state of Montana.

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. . . There was also a covenant that the Consolidated Company would not engage in a similar business within ten years from the date of the contract. The Refrigerating Company, however, did not avail itself of this opportunity to compromise with the creditors of the Consolidated Company, but allowed the assignee to dispose of the assets, which, on a forced sale, lacked $150,000 of being sufficient to pay the debts of the Consolidated Company.

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But as the powers of corporations, created by legislative act, are limited to such as the act expressly confers, and the enumeration of these implies the exclusion of all others, it follows that, unless express permission be given to do so, it is not within the general powers of a corporation to purchase the stock of other corporations for the purpose of controlling their management.

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Not only is this true as a general rule, but by the law of the State of New York, under which this corporation was organized, *i. e.* "An act to authorize the formation of corporations for manufacturing, mining, mechanical and chemical purposes," passed February 17, 1848, it was declared in section eight that "it shall not be lawful for such company to use any of their funds for the purchase of any stock in any other corporation." This language is clear and explicit, and evidently covers purchases of stock in other corporations, whether engaged in the same or different business.

In this connection, however, our attention is called to an act passed by the legislature of New York, June 7, 1853, (chapter 333,) amendatory of the act of 1848, the second section of which enacts that "the trustees of such company may purchase mines, manufactories and other property necessary for their business, and issue stock to the amount of the value thereof in payment therefore." [1] The position of the plaintiffs in this connection is that, under the authority to purchase "other property necessary for their business," it was competent for manufacturing corporations to purchase the stock of other similar corporations. But we do not so read the act. Its evident object was to permit manufacturing corporations to purchase mines from which they could extract their own ore, or manufactories of raw material, such as pig iron or lumber, which could furnish to them material to be worked up into their own products; and in case such purchases involved a larger outlay than their present resources would justify, to issue new stock "to the amount of the value thereof in payment therefor." But there is nothing to indicate that the legislature intended to authorize them to purchase the stock of competing corporations, or corporations engaged in other business. It is only property necessary for their own current business they were authorized to purchase.

Another act amending the general corporation act of 1848, passed April 28, 1866, (chapter 838,) was intended for a similar purpose.

[1] Thus in original.—Ed.

By section three it was enacted that "It shall be lawful for any manufacturing company heretofore or hereafter organized under the provisions of this act or the act hereby amended, to hold stock in the capital of any corporation engaged in the business of mining, manufacturing or transporting such materials as are required in the prosecution of the business of such company, so long as they shall furnish or transport such materials for the use of such company, and for two years thereafter and no longer; and the trustees of such company shall have the same power with respect to the purchase of such stock and issuing stock therefor as are now given by law with respect to the purchase of mines, manufactories and other property necessary to the business of manufacturing companies. But the capital stock of such company shall not be increased without the consent of the owners of two thirds of the stock, to be obtained as provided by sections twenty-one and twenty-two of the act hereby amended."

The object of this act was evidently much the same as that of the prior act of 1853, that is, to enable manufacturing corporations to produce their own ore and manufacture their own raw materials. To meet the exigencies of this statute it is necessary that the company, whose stock is purchased, should at the time of the purchase be engaged in the business of mining, manufacturing or transporting such materials as are required in the prosecution of the business of the purchasing company; and the right is limited to such time as they shall furnish or transport such materials for the use of such company, and for two years thereafter. It clearly has no application to a case where a manufacturing company purchases the stock of an insolvent rival concern which has ceased to do business, and whose stock is bought for the evident purpose of preventing a reorganization, and of obtaining its patronage.

In the Revised Statutes of New York of 1889, c. 18, vol. 3, p. 1959, there is also an act, to which our attention is called by a supplemental brief, permitting manufacturing companies to increase or diminish their capital stock to any amount which may be sufficient and proper for the purposes of the corporation, and also to extend their business to any other manufacturing business subject to the provisions of the act.

That neither of these acts were intended to give authority to corporations to purchase stock of other corporations engaged in the same business is evident from a subsequent act approved June 7, 1890, to take effect May 1, 1891, the fortieth section of which provides that ". . . no corporation shall use any of its funds in the

purchase of any stock of its own or any other corporation, unless the same shall have been *bona fide* pledged, hypothecated or transferred to it, by way of security for, or in satisfaction or part satisfaction of, a debt previously contracted in the course of its business, or shall be purchased by it at sales upon judgments, orders or decrees which shall be obtained for such debts or in the prosecution thereof. Any domestic corporation transacting business in this State, and also in other States or foreign countries, may invest its funds in the stocks, bonds or securities of other corporations owning lands in this State or other States, if dividends have been paid on such stocks continuously for three years immediately before such loans are made, or if the interest on such bonds or securities is not in default, and such stock, bonds and securities shall be continuously of a market value twenty per cent greater than the amount loaned or continued thereon."

Had the former acts given the unlimited authority to purchase insisted upon by the plaintiffs, this act would have been entirely unnecessary, and instead of enlarging the power previously possessed, would have operated as a restriction upon it. That this act of 1890 does not assist the plaintiffs is evident not only from the fact that the act did not take effect until after the contract was made, but from the further fact that it merely authorizes corporations to *invest their funds* in the stocks, bonds or securities of other corporations if dividends have been paid for three years before the loans are made; or if the interest on their securities is not in default, and such securities are worth twenty per cent greater than the amount loaned thereon. This act evidently refers to loans and not to purchases, since the section expressly provides that no corporation shall use its funds in the purchase of any stock, either of its own or any other corporation, unless by way of security for antecedent debts.

The truth is, that the legislature of New York, instead of repealing the prohibitory clause in the original act of 1848, concerning the purchase of stock in other corporations, has modified it but slightly, by slow degrees, and in special cases, to enable a manufacturing corporation to control more perfectly its own legitimate business operations, and has thereby manifested the more clearly its intention to preserve the original inhibition.

Our conclusion upon this branch of the case is that, as the main, if not the sole, object of the purchase from the plaintiffs was to acquire their stock in the Consolidated Company, such purchase was *ultra vires* the Refrigerating Company.

GROUP 2

DIFFERENCE BETWEEN THE TRUST AND THE HOLDING COMPANY

EXHIBIT 1

STANDARD OIL CHANGES FROM A TRUST TO A HOLDING COMPANY.[1]

1. On March 2, 1892, a judgment was rendered in a suit brought in the Supreme Court of Ohio by the State of Ohio on the relation of the Attorney General, against the Standard Oil Co. (of Ohio), after hearing upon Bill and Answer. This decision rendered it inadvisable to continue the form of organization provided by the Trust Agreement for the management of the common properties. The certificate holders thereupon adopted the resolution set forth on pages 64–5 of the Government's Bill of Complaint, providing for the dissolution of the Trust. This resolution was adopted pursuant to Article 21st of the Trust Agreement.

Up to the time of the adoption of the resolution for the dissolution of the Trust in 1892, many of the companies named in the Trust Agreement, and most of those organized or acquired subsequent to the formation of the Trust, had continued as separate corporate organizations. At that time a great many of these organizations which no longer served any particular purpose were dissolved.

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2. The stocks of a number of important companies that had been held by the trustees were transferred directly to the Standard Oil Company (New Jersey) and have ever since been held by that Company. Among the stocks that have been so held in continuous ownership by the Standard Oil Co. (New Jersey) are the Chesebrough Manufacturing Company, Continental Oil Company, Galena Oil Works, Limited, Signal Oil Works, Limited, Standard Oil Company (Iowa), Vacuum Oil Company and the Waters-Pierce Oil Company, (Pet. Ex. 253, vol. 7, p. 448).

3. The changes effected in the companies about the time of the resolution for the dissolution of the Trust left in the hands of the Trustees stock of the following companies:

[1] *United States of America* v. *Standard Oil Company (N. J.) et al.* · Brief for Defendants on the Facts, In the Circuit Court of the United States for the Eastern Division of the Eastern Judicial District of Missouri, Vol. I, pp. 76–85.

Anglo-American Oil Co. Ltd.
Atlantic Refining Co.
Buckeye Pipe Line Co.
Eureka Pipe Line Co.
Forest Oil Co.
Indiana Pipe Line Co.
National Transit Co.
New York Transit Co.
Northern Pipe Line Co.
Northwestern Ohio Natural Gas Co.
Ohio Oil Co.
Solar Refining Co.
Southern Pipe Line Co.
South Penn Oil Co.
Standard Oil Co. (New Jersey)
Standard Oil Co. (Indiana)
Standard Oil Co. (Kentucky)
Standard Oil Co. (of New York)
Standard Oil Co. (of Ohio)
Union Tank Line Co.

Of these twenty companies, only three antedate the Trust agreement of 1882, to wit, the Standard Oil Co. (of Ohio) itself, the Atlantic Refining Co., all the stock of which had been held for the benefit of the Standard Oil stockholders since 1874, and the National Transit Co., which had been organized by Standard Oil interests. Of the remaining seventeen companies, six were pipe line companies, all of which had been organized and their properties created by Standard Oil interests for the common benefit of the certificate holders. The Anglo-American Oil Co., Ltd., the Solar Refining Co., the Standard Oil Co. (Indiana), the Standard Oil Co. (Kentucky), the Standard Oil Co. (New Jersey), the Standard Oil Co. of New York and the Union Tank Line had all been organized by the Standard Oil trustees, and no one else had ever held any of their stock. Their capital had been paid for with the common moneys of the holders of the trust certificates, or with the properties of companies whose stocks were held by the trustees for their account. The South Penn Oil Co., the Ohio Oil Co. and the Forest Oil Co. were producing companies. The first had been originally organized by the Standard Oil trustees, and a large part of the properties of the others had been conveyed to them by com-

panies organized by the Standard Oil trustees. The only one of the twenty companies of which the Standard Oil trustees did not own the entire stock was the Northwestern Ohio Natural Gas Co. (Def. Exhibits 271 & 272, vol. 19, pp. 643–4). Stocks of these twenty companies were the stocks to be distributed among the holders of Standard Oil Trusts certificates, pursuant to the resolution of March, 1892.

4. The Trustees to liquidate the Standard Oil Trust named in the resolution of March, 1892, notified all the certificate holders of the proposed distribution of stocks and requested them to submit their trust certificates for exchange into the stock of the twenty companies. (J. D. Archbold, vol. 17, p. 3384.) Several of the larger holders of certificates at once made the exchange, receiving shares and fractional shares in each of the several companies, bearing in each case the same proportion to the amount of stocks in those companies held by trustees that the trust certificates previously held by them had borne to the total amount of the trust certificates outstanding. The smaller certificate holders showed great reluctance about making the exchange. (J. D. Archbold, vol. 17, pp. 3384–5). . . .

5. The unity of the business was universally recognized. Stocks in the separate companies had no recognized value, and were not bought or sold except as part of the group of stocks together representing an interest in the business as a whole. The common ownership was necessarily recognized in the conduct of the business of the separate companies and the entire business carried on with a view to the interests of the common owners.

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. . . The same people, in the same relations, continued. (J. D. Rockefeller, vol. 16, p. 3190.). . . .

After the dissolution, as I have already stated, the election of the different companies was by this stock, and the administration of its affairs, its particular affairs, and the matter of the sale of its products was made as before, I suppose. Of course, in the matter of the distribution of these products I have not been concerned or interested or taken any part for long years; but let us take, for example, the Standard Oil Company of Ohio, of which I had been the President. As a practical question what would be done, I suppose, would be that the Standard Oil Company of Ohio would supply the trade which it could supply to the best advantage . . .

and it would be just the thing that was the natural thing to do in that regard. These properties were all of the one ownership. . . . I mean that these people who had not returned their certificates and taken their interests in the constituent companies yet held the original trust certificates, and that was their evidence of their interest in the business; that relation was not changed. (J. D. Rockefeller, vol. 16, p. 3192) I suppose that as a matter of fact these companies, all being owned by the same people, would not be managing their separate businesses except in the way that would be the most productive for all the separate businesses. (J. D. Rockefeller, vol. 16, p. 3193) . . . The control of those different companies in each case was, as I have stated, by the stock holdings, and those companies were then, as now, in this common ownership. . . . There was no change of interest of the parties concerned; that is, every man had just the precise proportion of all this business that he had had before, and so fast as these trust certificates were cancelled, then, instead of having one certificate to represent that precise interest, he had an interest in each one of those companies. (J. D. Rockefeller, vol. 16, p. 3194).

. . . . . .

TENTH. Upon the acquisition of the stocks of all the companies by the Standard Oil Company (New Jersey) each shareholder in the twenty companies became a shareholder in the Standard Oil Co. (New Jersey) in the same proportion in which he had held stock in each of the twenty Companies or in which stock therein had been held for his account by the Trustees.

In 1899, the stock of the Standard Oil Company (New Jersey) was increased from $10,000,000, divided into 100,000 shares, to $110,000,000, divided into $100,000 shares preferred stock, and 1,000,000 shares of common stock. The outstanding stock was to be treated as preferred stock.

On June 19, 1899, the following resolution was adopted by the Board of Directors of the Standard Oil Co. (New Jersey). (Pratt, vol. 1, pp. 83-4):

"The president or one of the vice-presidents and the treasurer or one of the assistant treasurers, be and are hereby authorized to issue certificates of common stock of this company and deliver the same, in purchase of the stocks of the following companies,

at the rate of one share of common stock of this company for the following fractional shares, to wit:

Anglo-American Oil Company, Ltd.	26,000/972,500
The Atlantic Refining Company	50,000/972,500
The Buckeye Pipe Line Co.	200,000/972,500
Eureka Pipe Line Company	50,000/972,500
Forest Oil Company	55,000/972,500
Indiana Pipe Line Co.	20,000/972,500
National Transit Company	509,104/972,500
New York Transit Company	50,000/972,500
Northern Pipe Line Company	10,000/972,500
The Northwestern Ohio Nat. Gas Co.	32,785/972,500
Ohio Oil Company	80,000/972,500
The Solar Refining Co.	5,000/972,500
Southern Pipe Line Co.	50,000/972,500
South Penn Oil Co.	25,000/972,500
Standard Oil Co. of Indiana	10,000/972,500
Standard Oil Co. of Kentucky	10,000/972,500
Standard Oil Co. of N. J. preferred stock	100,000/972,500
Standard Oil Co. of N. Y.	70,000/972,500
Standard Oil Co. of Ohio	35,000/972,500
Union Tank Line Company	35,000/972,500

Common stock of the Standard Oil Company (New Jersey) was issued to an amount exactly equal to the amount of trust certificates outstanding at the time of the dissolution of the Trust.[1] The actual exchanges of stock are set out in detail in Defendants' Exhibit 388 (vol. 19, p. 894). *Few of the smaller holders of trust certificates exchanged their certificates for stock in the twenty companies.*[1] The total number of stockholders in the separate companies never exceeded one hundred. (Def. Ex. 388, vol. 19, p. 894.) In June, 1899, there were still outstanding unexchanged over 300,000 shares of trust certificates. (Pet. Ex. 250, vol. 7, pp. 427–429.)

After the adoption of the resolution of June 19, 1899, a method was devised *to enable the small certificate holders to obtain the benefit of the resolution without going to the trouble of actually themselves obtaining the stocks to which their trust certificates entitled them and which, under the terms of the resolution, they had to have in order to obtain common stock of the Standard Oil Co. (New Jersey).*[1] This method is described on p. 3665, vol. 17, of the record.

[1] Italics are the editor's.

In the first instance shares of the Standard Oil Co. (New Jersey) were issued to both Mr. Rockefeller and Mr. Flagler and the shares owned by them respectively in the twenty companies. *In 1899 and afterwards various holders of trust certificates in relatively small amounts, to avoid the inconvenience to them of converting such certificates into shares or fractional shares of the twenty companies for the purpose of transferring such shares or fractional shares to the Standard Oil Co. (New Jersey) transferred their trust certificates to Mr. Rockefeller or Mr. Flagler, and received from them shares of the Standard Oil Co. (New Jersey) owned by Mr. Rockefeller or by Mr. Flagler, as the case might be.*[1] Mr. Rockefeller and Mr. Flagler later converted the certificates so transferred by them into the shares of the twenty companies, and then transferred those shares to the Standard Oil Co. (New Jersey) for its shares. The exchange of stocks was substantially completed in 1900. (Def. Ex. 388, vol. 19, opp. p. 894.)

Each holder of stock in each of the twenty companies received the same proportion of the common stock of the Standard Oil Co. (New Jersey) that he had theretofore held in the stock of each of the twenty companies distributed by the Trustees.

GROUP 3

HOLDING COMPANY LAWS

EXHIBIT 1

STATE OF NEW JERSEY [2]

And be it enacted, That the directors of any company incorporated under this act may purchase mines, manufactories or other property necessary for their business, or the stock of any company or companies owning, mining, manufacturing or producing materials, or other property necessary for their business, and issue stock to the amount of the value thereof in payment therefor, and the stock so issued shall be declared and be taken to be full-paid stock and not liable to any further call, neither shall the holder thereof be liable for any further payments under any of the provisions of this act; . . .

[1] Italics are the editor's.

[2] Acts of the 113th Legislature of the State of New Jersey, 1889. Chap. CCLXV, Sec. 4, p. 414.

EXHIBIT 2

STATE OF NEW YORK [1]

Any stock corporation, domestic or foreign, now existing or hereafter organized, except monied corporations, may purchase, acquire, hold and dispose of the stocks, bonds and other evidences of indebtedness of any corporation, domestic or foreign, and issue and exchange therefor its stock, bonds or other obligations if authorized so to do by a provision in the certificate of incorporation of such stock corporation, or in any certificate amendatory thereof or supplementary thereto, filed in pursuance of law, or if the corporation whose stock is so purchased, acquired, held or disposed of, is engaged in a business similar to that of such stock corporation, or engaged in the manufacture, use or sale of the property, or in the construction or operation of works necessary or useful in the business of such stock corporation, or in which or in connection with which the manufactured articles, product or property of such stock corporation are or may be used, or is a corporation with which such stock corporation is or may be authorized to consolidate.

EXHIBIT 3

STATE OF DELAWARE [2]

SECTION 133. Any corporation created under the provisions of this act may purchase, hold, sell, assign, transfer, mortgage, pledge or otherwise dispose of, the shares of the capital stock of, or any bonds, securities or evidence of indebtedness created by any other corporation or corporations of this State or any other State, county, nation or government, and while owner of said stock may exercise all the rights, powers and privileges of ownership including the right to vote thereon.

EXHIBIT 4

STATE OF MAINE [3]

SECTION 14. Any corporation organized under chapter forty-eight of the revised statutes may purchase, hold, sell, assign,

[1] Laws of New York, 1892, Chap. 688, Art. III, Sec. 40, p. 1834.
[2] Laws of the State of Delaware, 1899, Chap. 273, Sec. 133, pp. 500–501.
[3] Laws of the State of Maine, 1901, Chap. 229, Sec. 14, p. 243.

transfer, mortgage, pledge or otherwise dispose of the shares of the capital stock of, or any bonds, securities or evidences of indebtedness created by any other corporation or corporations of this or any other state, territory or country, and while owner of such stock may exercise all the rights, powers and privileges of ownership, including the right to vote thereon.

CHAPTER VI

FORMATION OF THE UNITED STATES STEEL CORPORATION

NOTE

It was only after careful consideration that the editor decided to incorporate in this volume anything in regard to the formation of the United States Steel Corporation. His hesitancy was due to the fact that the organization of this concern has been repeatedly written up: by Bridge in his "Inside History," by Meade in his "Trust Finance," by Berglund in his "United States Steel Corporation," and last, but not least, by the Commissioner of Corporations in his recent report. The circumstances lying back of the formation of this gigantic corporation are therefore well known. Two considerations finally led to the insertion of an account of the organization of the combination. The first was the desire for completeness; the second, the fact that a careful perusal of the somewhat conflicting testimony before the Stanley Committee appeared to afford a more interesting story of the consolidation than has as yet appeared, more especially as it was from the lips of those who were most prominent in the matter.—Ed.

EXHIBIT 1

TESTIMONY OF JOHN W. GATES [1]

The CHAIRMAN. The United States Steel Corporation was formed about 1901, was it not?

Mr. GATES. 1901; yes, sir. It started in 1900 and finished in 1901.

The CHAIRMAN. At that time was there any danger of a second demoralization in prices on account of the attitude of Mr. Carnegie toward the rest of these concerns? I believe up to that time a great many of them had been getting certain products from him, and manufacturing certain products themselves. In other words, along in 1898 or 1899 the Federal Steel Co. had its orbit or its scope of activities pretty well defined, did it not, and the other companies

[1] Hearings before the Committee on Investigation of the United States Steel Corporation, 62nd Cong., 2nd Sess., 1911–1912, pp. 30–32, 40 and 44.

in the same way? Each had its own sphere of operations? They did not impinge one upon the other to any great extent?

Mr. GATES. Well, I would have to explain by making a statement. Mr. Morgan, along about 1899 or 1900, organized the National Tube Co. by the acquisition of the stock of the National Tube Co., just out of Pittsburg, and the Riverside Steel Co., near Wheeling, and two or three more tube concerns, and they were making a good deal of money in the manufacture of tubes. Mr. Carnegie took it into his head that he would build a railroad from Lake Erie points—from some point on Lake Erie to his various works around Pittsburg—and that he would also build a tube works; and he proposed to build this tube works, if my memory serves me aright, at Ashtabula, Ohio, where a great deal of the ore is unloaded. Mr. Hill and Mr. Morgan had dined together—James J. Hill—and Mr. Morgan had expressed to Mr. Hill the fear that if Carnegie went into the building of railroads he would demoralize the entire railroad situation as he had demoralized the steel situation, and that if he built a tube works at Ashtabula it would result in a demoralization of the prices of tubes. Mr. Morgan had just put the National Tube Co. together. After considerable talk between Mr. Hill and Mr. Morgan, Mr. Hill suggested to Mr. Morgan that he talk to me. Mr. Morgan said that we were not very friendly, and he asked Mr. Hill to come over to see me and see if I would meet him and talk about the situation, which I agreed to do. I had a talk with Morgan, and he asked me how I would suggest we could stop Carnegie from building this railroad and building this tube works; and I told him in my opinion there was only one man to talk to that had any influence with Mr. Carnegie, and that was Charley Schwab. He wanted to call in Frick. I said, "If you do, you will never make a trade with Mr. Carnegie." Well, he said, "Will you get Schwab on for a conference?" I said I would. I asked him where he wanted the conference, and he said he would prefer to have it at Philadelphia at the Bellevue-Stratford Hotel—no, the Bellevue Hotel. The Stratford was not built. I called Charley up on the telephone from New York and asked him if he would come over to Philadelphia, and intimated to him it was something pretty important. He said he would come over that night.

Next morning was very stormy. It snowed and blew and was very cold, and Mr. Morgan called my son up and asked him to come over.

He went over, and Mr. Morgan explained to him that he had got a severe cold and his doctor would not let him go out; that he was afraid he would catch more cold; and would he go back and get me to arrange to have Schwab come on to New York. My son came back and reported to me, and I called Mr. Schwab up—he was at the Bellevue Hotel at Philadelphia—and asked him to come over. He came over and dined with me at the Manhattan Club, and we went up to Mr. Morgan's house about 9 o'clock in the evening. We discussed the possibility of pouring oil on the troubled waters and saving the situation. I think Mr. Schwab and I stayed there until about 6 o'clock the next morning. When we left a tentative plan had been drawn up for the purpose of getting the various corporations into one concern. Judge Moore, who was in the National Steel Co.——

The CHAIRMAN. I do not want to interrupt you, but the one concern to which you referred was the embryonic United States Steel Corporation?

Mr. GATES. The United States Steel Co. Judge Moore and Mr. Frick felt very sore over the $1,000,000 that they had paid to Carnegie, for which they got nothing. Schwab stated that Mr. Carnegie would agree to anything he would suggest. He pulled a letter out of his pocket and showed it to Morgan and me, showing that he had a contract with Carnegie to pay him $1,000,000 a year for five years. We went on and laid out the plan of the United States Steel Corporation without consultation with Frick, who was a large owner. Then, as I understood it—but this only hearsay evidence——

The CHAIRMAN. Explain that plan as you go along.

Mr. GATES. It was the plan that was adopted.

The CHAIRMAN. That is, for a holding company?

Mr. GATES. For a holding company. Judge Moore got hold of Carnegie, I was told, and said to Carnegie: "If you are going to take bonds in payment of your property, make those bonds cover the National Steel Co. as well as your own." Now, Mr. Carnegie demanded that of Morgan, and it enabled the National Steel Co., in my opinion, to get $50,000,000 more for their property than it was worth, because Carnegie would not turn his over unless they had a mortgage on the National, and the rest of us had to suffer. That is about the history of the United Steel.

The CHAIRMAN. You spoke about pouring oil on the troubled waters and relieving the situation. What was the trouble with the situation?

Mr. GATES. The trouble was that Carnegie had threatened to build the tube mill at Ashtabula and a railroad to haul his own ore down.

The CHAIRMAN. He was going to build a railroad to come into competition with the existing railroads?

Mr. GATES. Yes; and a tube plant to tear the National Tube, that Morgan had just put together, all to pieces.

The CHAIRMAN. He was going to give Morgan trouble, both in his manufacturing industry and with his common carrier?

Mr. GATES. It looked that way.

The CHAIRMAN. And it was to obviate this anticipated competition that this tentative plan was drawn up that afterwards became the United States Steel Corporation?

Mr. GATES. Yes, sir.

The CHAIRMAN. How long was it from the time you got started until this industrial accouchement actually occurred?

Mr. GATES. It was 60 days, I should say, or less—maybe 40 days. We worked pretty fast.

The CHAIRMAN. There was a thorough understanding, except as to details, as to the method of operation and what each man was to get, and what his relations were to be to his fellows, before the articles of incorporation were ever drawn up, was there not?

Mr. GATES. I think they drew up the articles of incorporation for the United States Steel Corporation originally for $10,000, and then they gradually extended it as necessity arose. As each concern came in they would increase a few million or hundred million.

The CHAIRMAN. Mr. Carnegie, I believe, got $320,000,000 in bonds, did he not, for his property—for the Carnegie Co.?

Mr. GATES. He got $320,000,000 for what he had offered at $100,000,000 or $160,000,000 the year before, and got $1,000,000 forfeit.

. . . . . .

The CHAIRMAN. I am now trying to get at what was the trouble. Was it not competition and threatened competition between these companies?

Mr. GATES. It was the threat of Carnegie to build a railroad from Ashtabula to his works at Pittsburg and to build a tube plant in competition with the National Tube Works, which Morgan had just finished.

The CHAIRMAN. Was not he also threatening to go into the entire iron and steel business—that is, to compete with the Bridge Co. and with the Steel Hoop Co. and the Sheet & Plate Co.? Was he not threatening to do all those things?

Mr. GATES. Mr. Carnegie had been in the wire business and we bought him out. He put in $1,000,000 and we bought him out for half a million. [Laughter.]

The CHAIRMAN. Was he not threatening to go back into that business?

Mr. GATES. We never had any fear of Carnegie.

The CHAIRMAN. Mr. Carnegie was also threatening to go into the tin-plate business, was he not, at that time?

Mr. GATES. I guess he was threatening the whole line.

The CHAIRMAN. He was threatening the whole line?

Mr. GATES. He was trying to sell out, and he bought, you see, at a good price. [Laughter.]

The CHAIRMAN. And the result of this threat along the whole line enabled him to sell this property that he had given an option on at $150,000,000 for about $500,000,000?

Mr. GATES. That is inference on your part. The facts are that he gave an option for $100,000,000 or $160,000,000 and got $320,000,000 a little later.

. . . . . .

Mr. BEALL. The real cause of complaint against Mr. Carnegie was that he would not abide by the agreement, but would insist on cutting the price?

Mr. GATES. He was like a bull in a china shop. He would get a thing into his head once in a while and go and do absurd things, that I really think he did not think much about.

Mr. BEALL. Would those absurd things usually result in reducing the price of steel products?

Mr. GATES. It might, or it might advance them. You could not tell what he would do.

Mr. BEALL. The fear was that if he carried out his plan there would be a competing line of railroad, as well as——

Mr. GATES. I can not state it any plainer than Mr. Morgan stated it to Mr. Schwab and me—that if Mr. Carnegie should build this tube works at Ashtabula and a railroad from Ashtabula to his works in the Pittsburg district it would demoralize the whole situation. That was Mr. Morgan's statement and not mine.

EXHIBIT 2

TESTIMONY OF ELBERT H. GARY[1]

Mr. LITTLETON. J. Edward Simmons?

Mr. GARY. Yes; J. Edward Simmons. Mr. Simmons, I think, at the request of Mr. Frick, gave a dinner in New York, and invited Mr. Schwab, Mr. Morgan, and various other people to the dinner. Mr. Schwab made a little statement at that dinner concerning the steel business that made quite an impression on Mr. Morgan.

Mr. YOUNG. Do you remember what the nature of that statement was—what it related to?

Mr. GARY. It was concerning the great ability of the Carnegie Co. and concerning its cost of production, concerning its export business, which at that time, though small from the present standpoint, was considerable; and of course I have no doubt what Mr. Schwab had in mind was the idea of showing that it would be a great thing in [2] the Federal Steel should see its way clear to acquiring the Carnegie Steel Co.

Mr. YOUNG. Did he say anything about the conditions of competition in the steel business at that time?

Mr. GARY. I was not there, and I do not know that he did. I am not sure about that. I doubt it. But the next thing I heard about it, one Sunday morning early, Mr. Robert Bacon came to my home.

Mr. YOUNG. Who was that?

Mr. GARY. Mr. Robert Bacon, who was then a partner in the firm of J. P. Morgan & Co.—then a member of the firm—came to my home early Sunday morning, and said that the night before Mr Schwab had surprised Mr. Morgan by bringing him a letter from Mr. Carnegie stating that he, Mr. Carnegie, would sell his properties and take his pay in bonds secured on the properties, as I remember. He did not say anything to me about Mr. Gates having been there with Mr. Schwab. I can not deny that; I have no knowledge on the subject, but I am very sure that Mr. Schwab is mistaken in his statement.

Mr. YOUNG. You mean Mr. Gates is mistaken in his statement?

Mr. GARY. I mean Mr. Gates is mistaken in his statement that during that night a plan was formulated for the organization of the

[1] Hearings before the Committee on Investigation of United States Steel Corporation, 62nd Cong., 2nd Sess. 1911–1912, pp. 205–211, 219–221.

[2] Thus in original.—Ed.

United States Steel Corporation. I know that could not be true, from what followed. That is, he is mistaken in supposing that that is true; that is what I mean. I do not know; I have no knowledge of his being there. I never heard of it until I read it in his testimony. It is not, to my mind, important whether he was there or not, but I think it is of some importance to consider whether they formulated, that night, a plan for the organization of the United States Steel Corporation. Anyhow, Mr. Bacon did not say anything to me about Mr. Gates or anybody else. He simply had that letter in which Mr. Carnegie offered to sell his properties and take his pay in bonds.

Mr. YOUNG. Did he fix any price on them?

Mr. GARY. Yes; the price was fixed; the price afterwards paid in bonds. Mr. Bacon said Mr. Morgan requested him to come and see me early in the morning and present the whole question to me and get my opinion as to whether or not it was a practical business proposition or not. Mr. Bacon and I went over the matter thoroughly, it seems to me, until lunch time. I think Mr. Bacon then went back to Mr. Morgan and came again in the afternoon and stayed with me until very late that evening, going over the matter.

At that time, from the standpoint of the Federal Steel Co., the great necessity was for having additional finishing mills, and having a corporation of sufficient capital and strength to be able to increase very materially its lines of business, particularly its export business, which at that time was comparatively small. As indicated in what I have referred to as a little article I wrote for the World in 1900, I had referred to this subject matter of export business being necessary, and of the ability of a large and rich corporation to increase that export business, that being one of the objects of a large combination of capital. Germany, for instance, at the present time with a capacity of something like 9,000,000 tons a year—not to attempt to speak with strict accuracy—exports about 50 per cent of it to foreign countries, to neutral ports all over the world, and other foreign manufacturers have a large and increasing export business. We had a very small export business in this country of steel products, and it was necessary to do something to increase that, to secure and maintain a position in the trade, in our contest for a fair share of foreign business, that is the business that came from neutral ports all over the world; and I went into that subject very carefully with Mr. Bacon on that day, and there was a good deal of discussion between him and me in regard to the price which

Mr. Carnegie asked for his properties. I knew Mr. Carnegie had given an option on his interest in these properties at a much less sum, within two years. I have forgotten the exact date. But in the meantime the values of properties had very materially increased, particularly as to ore and coal properties, and the Carnegie Co. had shown by the results of its business that its earning capacity was increasing very rapidly, and that therefore its properties were much more valuable than they were at the time that that option was given.

Mr. BARTLETT. Was the Carnegie Co. a corporation or a partnership?

Mr. GARY. It was a corporation at that time. Without being certain about the names, I think the Carnegie Co.——

The CHAIRMAN. "Limited," it was called?

Mr. GARY. No, sir; the Carnegie Co., the corporation, took over the Carnegie Steel Co. (Ltd.), a partnership, under the laws of Pennsylvania, and that was the owner of various subsidiary companies.

I said to Mr. Bacon, "There are a good many things to consider about this. If we can complete a corporation that is large enough and rich enough, wit[1] sufficient financial resources, to furnish us adequate finishing mills and enable us to increase our export business as it ought to be increased, I believe that this proposition is at least worth considering." And it was then agreed between us that I should meet Mr. Morgan at his bank at 11 o'clock on Monday. I did meet him there, and he and I spent some time going over this matter, and I explained to him in detail the business reasons for entertaining this proposition, at least, and finally said to him, "It seems to me, if you think of this being practicable, we should start from the Federal Steel Co., and therefore the first thing to do is to call in the Federal Steel people who are in the management—practically in control—of this corporation."

Thereupon we telephoned for Mr. Norman B. Ream, who has been here, and who was one of the directors of the Federal Steel Co., who lived in Chicago but who happened to be in New York that morning, as I knew, because I had a letter from him that morning from Chicago, and Mr. H. H. Rogers, another director of the Federal Steel Co., Mr. D. O. Mills, another director, Mr. H. H. Porter, another director, and we got into telephonic communication, through Mr. Ream or otherwise, with Mr. Marshall Field, of Chicago, another director; and when these gentlemen came to-

[1] Thus in original.—Ed.

gether, in my way I attempted to present to them the possibilities of an organization that would seem to me to be desirable and successful, and that would be a good, fair, business proposition, and that would meet what seemed to me to be the necessities, from the standpoint of the business of manufacturing and selling iron and steel in this country in competition with the other countries of the world, and Mr. Morgan said that so far as he was concerned he knew this would involve financial operations that were very important and very responsible, and anyone might hesitate in regard to it, and yet if we gentlemen reached the conclusion that it was a good business proposition and perfectly proper and safe and reliable from a business standpoint and every other way, he would consider acting as the financial sponsor or manager of a syndicate. After a good deal of discussion and consideration, while there was some opposition—a considerable opposition in the first place, particularly on the part of Mr. Porter—these gentlemen assented; and that is where we started.

Mr. YOUNG. At that time was anything contemplated except the joinder of the Federal Steel Co. and the Carnegie Co.? Had it grown any larger?

Mr. GARY. It had grown in the conversation, yes; no doubt about it. Various other companies were mentioned, particularly the Wire Co., the Tube Co., and the Bridge Co., and later the National Steel Co., because I believe it is true that Mr. Carnegie insisted that the National Steel should be acquired. I never knew until I read Mr. Gates's testimony that that was the result of Mr. Moore going to Mr. Carnegie and suggesting that. That may be true. I have no knowledge on the subject, but I do remember, during the negotiations, during the conversations, that the National Steel was spoken of.

Mr. YOUNG. Was Mr. Moore largely interested in the National Steel at that time?

Mr. GARY. Yes; he was the dominant factor there. There was a group of men consisting of Mr. Moore, Mr. Reid, and Mr. Leeds, who were dominant in that company, and three other companies, the Tin Plate Co., the American Sheet Steel Co., and the American Hoop Co., whatever its technical name may have been; and, since you have asked that question, later came the consideration of the Rockefeller ores, with what was attached. The first proposition was as to whether or not we could organize a complete corporation which should be self-contained, which should be in a position to

operate at the lowest cost of production, and which would have sufficient finishing mills and sufficient capital to be able to compete with other manufacturers throughout the world.

It was on that basis we started this organization; it was on that basis we completed it.

. . . . . .

It has been suggested here, and with reason, based on facts, that there was some competition between some of the companies which were taken into the United States Steel Corporation. There is no effort whatever to get away from the exact facts in regard to that, and I will be glad to give you—I think I can give you pretty accurately—just what that competition was; but, compared with the whole proposition taken up at that time, there was comparatively little competition between the different companies that went into the United States Steel Corporation, as I understand it, and in my opinion, from my viewpoint.

The Carnegie Steel Co. and the Illinois Steel Co. were in competition in the manufacture of rails, one located at Pittsburg and the other at Chicago, the territories being quite remotely situated. The Carnegie mills largely supplied a territory which was not supplied by the Illinois Steel Co., and the Illinois Steel Co. a territory which was not supplied to any extent—to any large extent—by the Carnegie Co.

Then in plate to some extent the same applies between the Carnegie Co. and the Federal Steel Co., that is, through subsidiary companies of the Federal Steel Co. I will give you that a little more completely later, if you will allow me, because I do not want to disguise or minimize what that competition was; but in my opinion the competitive feature applicable to these different companies was incidental. It was not the principal factor, not the important factor; certainly it was not so considered by me, not so stated, and not in our minds at that time; and in saying that I do not want to minimize the fact that there was competition, and I would be glad to give that to you exactly as it existed.

Mr. YOUNG. We would be very glad to have it.

Mr. GARY. I have not undertaken to say anything about the previous organizations of these subsidiary companies, and I am not trying to conceal that, at all. I have little knowledge in regard to them, except as to the Federal Steel. I did know, however, because I had been somewhat connected with it at an earlier day, that the

Wire Co. had put together some wire companies which were in competition. That we had nothing to do with. We took the Wire Co. and all these other companies as we found them at the time. I did not know anything about the Tube Co. and I did not know anything about the Bridge Co. Mr. Roberts is here, and he can tell you all about the Bridge Co., and others can tell you all about the other companies. I knew little about them, and I doubt whether Mr. Morgan knew much about them. He had, though, in the way of financing or representing syndicates, I believe, some relation with the Tube Co. and with the Bridge Co.

It has been stated during this investigation, I think, that there were threats on the part of Mr. Carnegie to build a tube mill, and that was an important factor. If that is so, I did not know of that, I did not hear of that, and I have no comments to make about it. It certainly was not spoken of in our deliberations. I had heard that Mr. Carnegie was considering—had said something about—building a railroad from Pittsburg to New York, and that had disturbed the Pennsylvania Railroad people. I had no knowledge on that subject. I do not remember to have heard it referred to at that time.

Mr. YOUNG. You are sure you heard no conversation by Mr. Morgan in regard to that railroad proposition?

Mr. GARY. I do not remember to have heard anything about it, but I do not say that he did not speak about it. Of course others might correct me. I had heard, I know, that Mr. Carnegie talked of building a railroad from Pittsburg to New York because he got into some altercation with the Pennsylvania Railroad Co. in regard to freights from Pittsburg to New York. But I have heard a great deal—I have seen more or less in the newspapers—about a desire, a disposition, to eliminate Mr. Carnegie, and all that. I do not know. Mr. Carnegie was no doubt anxious to sell his properties at what he then considered was a good price and what he now considers was a very small price, as he has stated repeatedly and with emphasis, and we were desirous of securing the Carnegie properties and the other properties for the reasons I have given, and we secured them at the best prices obtainable, every one of them. If we paid too much, it was because we could not help ourselves; we could not get them without. I was in very close connection with this proposition from the beginning, as I have stated, until the corporation was organized, being at Morgan's every day a part of the day and with the counsel in the case another part of most of the days.

When it came to deciding upon the form of organization, the charter, and by-laws, and all that sort of thing, I was present and participated in it. Nothing was said about the form of the corporation until some time after the first meeting. I am very sure that up to that time Mr. Morgan had never given any thought to it, and certainly from that time Mr. Gates never had anything whatever to do with it except in representing, with others, the Wire Co., in trying to get all he possibly could for himself and other stockholders.

Mr. BARTLETT. May I ask you a question there? This was in 1901, was it?

Mr. GARY. In 1901.

Mr. BARTLETT. At the time of the formation of the Federal Steel Co.?

Mr. GARY. No, no; the United States Steel. The Federal Steel was organized in the summer of 1908. I think it required two or three months' work—about three months' work—before we commenced operations; or, at least, the company was embarked about the 1st of November, 1908.[1]

Mr. BARTLETT. Was it in 1905[2] that the threat was abroad, or suggested, or afloat, that Mr. Carnegie was to build this tube works and the railroad?

Mr. GARY. Judge Bartlett, I never heard anything about the tube works, and I do not know anything about that.

Mr. BARTLETT. I find in Mr. Schwab's testimony before the Ways and Means Committee in 1908, the following on that subject:

Mr. COCKRAN. And in 1901, when there was an announcement or threat that there would be some competition through Mr. Carnegie's going into the tubing business, the Carnegie Co. going into it, there was another consolidation in which they were all merged in one company, and the price continued the same?

Mr. SCHWAB. Quite correct.

That is from Mr. Schwab's testimony before the Ways and Means Committee.

Mr. GARY. I want to say this. I believe, so far as the business part of the organization of the United States Steel Corporation is concerned, that I am as familiar as anyone with it. I think I had more to do with that proposition than anyone else. I think Mr. Morgan relied upon me to a large extent with reference to the business part of it, and the question of a tube company, a proposed

[1] Dates thus in original. Should be 1898, the year the Federal Steel Co. was formed.—Ed.

[2] Date in error.—Ed.

tube mills, by Mr. Carnegie, did not enter into the calculations, so far as I know. I can not say what was in Mr. Carnegie's mind or in the minds of others.

Mr. BARTLETT. On page 1641 of the same hearing before the Ways and Means Committee, Mr. Schwab testified as follows:

> Mr. SCHWAB. The consolidation, as you term it, of the steel corporations in about the year 1901 came about in this way:
> Mr. Morgan asked me if Mr. Carnegie wanted to sell his interests in iron and steel; that he then had large interests in the Federal and other companies. I approached Mr. Carnegie, and Mr. Carnegie said he would sell, and we sold our company to Mr. Morgan, under conditions with which you are all familiar. We knew the properties Mr. Morgan controlled and upon which he was to give us a mortgage bond, and that is all there was to it.

Mr. GARY. I, of course, can not speak for anyone else but myself. I have given my recollection of the facts leading up to and resulting in the formation of the United States Steel Corporation, from my standpoint, and from my own connection and knowledge. I can not speak for others. I do not know what was in their minds. I only know of my connection.

. . . . . .

Mr. YOUNG. Now, you will remember when we adjourned last night you were just starting to make a statement of the competition which existed between the different units of the United States Steel Corporation before they were consolidated into that company. Please proceed with that.

Mr. GARY. The Carnegie Steel Co., the subsidiary companies of the Federal Steel Co., the American Steel Hoop Co., and the National Steel Co. were to some extent in competition. The four companies were not competitive with one another on all the lines of the production of the respective companies. The greater part of the National Steel Co.'s product was billets and sheet bars and were sold to the American Tin Plate and also to the Sheet Steel Co. I thought I could give you now the percentage perhaps of the competition, but I can not do that without further inquiry.

The American Wire & Steel Co., the National Tube Co., the American Tin Plate Co., the American Sheet Steel Co., the American Bridge Co., and the Lake Superior Consolidated Iron Mines were not in competition with one another or with the other companies. When we commenced business——

Mr. YOUNG (interposing). Before you go on with that, will you state what were the articles manufactured by these companies in the first group; what competing company did compete?

Mr. GARY. I stated that the other day about as fully as I can. I would say that the principal competition was between the Illinois Steel Co. and the Carnegie Co. in the sense of making the same articles or some of the same articles; they were substantially in competition. I do not wish to minimize that. That is true in the manufacture of rails particularly. So far as products are concerned, they were in substantial competition, and I would say that those were the principal articles.

However, as you know, the freight rates from Pittsburg to Chicago are quite large and I believe at that time were in the neighborhood of $3 per ton. The market of the Illinois Steel Co. was in the great and growing West largely. That is, they supplied largely the western railroads who had terminals in Chicago, and of course they did, to some extent, furnish rails to railroads which came from the East and had their terminals in Chicago, but the Carnegie Steel Co. in turn had a natural market which surrounded its plant—that is, the railroads having terminals in Pittsburg—and when you consider the respective territory or fields of the two, there was not so much competition as it would appear, although it is the fact that the Carnegie Co. did in time come into the western field and into territories which were not controlled to the extent at that time at least of selling rails, I believe, as low as $16 a ton, at a time when the Illinois Steel Co. was considering going into the hands of a receiver and came very near it. It did not pay any dividends, so far as I know, and I believe it did not pay any dividends at all, up to 1899.

Mr. BARTLETT. Right there. When was the Federal Steel Co. formed?

Mr. GARY. In 1898.

I believe, perhaps, if unrestricted and unchecked destructive competition had gone on the Illinois Steel Co. would undoubtedly have been driven out of business and, perhaps, I might say more. I do not say it with a view of casting any reflection upon anyone's management, but it is not at all certain that if the old management or the management which was in force at one time had continued, the Carnegie Co. would not have driven entirely out of business every steel company in the United States. Perhaps you are sufficiently familiar with the facts to determine whether that is a justi-

fied statement, but certainly that is the opinion of a great many different people, notwithstanding conditions had improved after the Federal Steel Co. was formed and everyone was getting on a better basis and we had reached the point where we saw it was possible to organize a company which would be self-contained and which would, as I have said, secure a very large proportion of the export business.

EXHIBIT 3

TESTIMONY OF CHAS. M. SCHWAB[1]

The CHAIRMAN. Tell us who sat next to you.

Mr. SCHWAB. Mr. Morgan sat next to me on my right and Mr. Simmons at my left. There were distinguished men of New York present—Mr. Harriman, Mr. Morton, Mr. Carnegie, Mr. Phipps, and a great number—70 or 80. The names are probably available, if you would like to have them. I went home from that dinner to Pittsburg, and thought no more about the matter for some time. One day I had a telephone call from Mr. John Gates, from New York, a long distance call, who asked me if I would meet Mr. Morgan in Philadelphia the following day. I told him that I would. I went to Philadelphia, and Mr. Gates telephoned that Mr. Morgan was ill, and so I met Mr. Morgan at his house in New York, I think, the day following, or probably the same day. Very shortly, at any rate.

Mr. Morgan then asked me to go over with him again in more detail the substance of what I had talked about at the dinner, and we spent several hours in doing so. There were other gentlemen present at that meeting, and the whole matter was discussed most thoroughly from the point of view that I have spoken of at that interview.

The CHAIRMAN. You were the only speaker at that dinner?

Mr. SCHWAB. I was.

The CHAIRMAN. And you spoke for an hour or so?

Mr. SCHWAB. I would say so; yes, sir.

The CHAIRMAN. And Mr. Morgan requested that you go over with him again in detail fully all the arguments that you had made at the previous dinner?

Mr. SCHWAB. I will not say arguments—statements of fact, statements of opinion, rather; quite so. Then, of course, he asked

[1] Hearings before the Committee on Investigation of United States Steel Corporation, 62nd Cong., 2nd Sess., 1911–1912, pp. 1278–79, 1311–14.

me questions about it, and finally said to me, within a day or so, that he was fully convinced about the advantages of such an organization.

The CHAIRMAN. That is, one corporate entity?

Mr. SCHWAB. The Steel Corporation as to-day formed; yes.

He asked me if I could get a price from Mr. Carnegie at which he would sell his works. I had not taken the matter up with Mr. Carnegie at all, had not spoken to him of my visit to Mr. Morgan. In the course of a week or so, spending the day with Mr. Carnegie, a favorable opportunity arrived, and I did tell him what I had said to Mr. Morgan, and advised Mr. Carnegie, at his age and with his desire in life, philanthropic in character, that he ought to sell his plant, and I told him how I thought it might be done. It was with a great deal of reluctance that Mr. Carnegie finally did agree to sell his plant, and I might say to you that it was my opinion that he afterwards regretted very much that he had made a price upon his plant.

The CHAIRMAN. Did Mr. Morgan indicate to you anything about the limit of cost at which those properties could be bought? In other words, were you instructed to get an option at not to exceed $500,000,000, for instance, or to buy them at any price?

Mr. SCHWAB. No; I had no authority to negotiate anything of that kind?

The CHAIRMAN. Was there any concern on the part of the purchasers as to the price?

Mr. SCHWAB. My only advice from Mr. Morgan was to get a price from Mr. Carnegie, at which price he would see if they could afford to purchase the property. I got the price from Mr. Carnegie and took it to Mr. Morgan, and beyond being consulted with reference to general views, values of the properties, probable earnings, and so forth, I had nothing further to do with the organization of the United States Steel Corporation.

. . . . . .

Mr. BARTLETT. The consolidation, as I understand, of the United States Steel Corporation was about 1901?

Mr. SCHWAB. Yes, sir.

Mr. BARTLETT. Prior to the consolidation, there were not only rumors, but a purpose on the part of the Carnegie Steel Co. to extend its business in building tube works?

Mr. SCHWAB. There has been a report current that the Carnegie Steel Co. threatened to extend into the line of tubes prior to the formation of the United States Steel Corporation, and that that had something to do with the formation of the United States Steel Corporation. I want to say that the Carnegie Steel Co.'s intention to extend their lines into tubes was the same practice that they had followed in all their manufacturing, which was to gradually extend their lines of manufacture into different articles. That is what we intended to do in tubes, and there was no threat or menace or anything regarding it.

Mr. BARTLETT. Except the publication in the newspapers that they intended to do so?

Mr. SCHWAB. I do not know whether it was published at that time, or after the formation of the United States Steel Corporation.

The CHAIRMAN. Was that not the statement of Mr. Carnegie, mentioned by Mr. Gates, that he was going to put up a tube mill on Lake Erie——

Mr. SCHWAB (interrupting). At Conneaut.

The CHAIRMAN. That is on the line of the Lake Erie & Bessemer road?

Mr. SCHWAB. Yes, sir.

The CHAIRMAN. Did not that disturb very vitally the tube company?

Mr. SCHWAB. Well, if it did, I did not know. I knew Mr. Converse and other people connected with the tube industry. I visited their works at the time. I prepared the plans for the works at Conneaut, and from all I knew of their feelings, they were not seriously alarmed at our going into the tube business. They felt that it was inevitable that the company should do so.

The CHAIRMAN. Is Mr. Converse a man who would be seriously alarmed unless there was something seriously alarming?

Mr. SCHWAB. He is very reliable.

The CHAIRMAN. He is a man like most all the ironmasters—a man of good nerve, fine business sense and courage?

Mr. SCHWAB. He is.

The CHAIRMAN. And if he or his company were alarmed they would be apt to have some reason?

Mr. SCHWAB. I think so.

The CHAIRMAN. I want to call your attention to an excerpt of the minutes of the National Tube Co., dated January 15, 1901. That was about the time?

Mr. SCHWAB. I think so.

The CHAIRMAN. I quote from a copy made by Mr. MacRae, the accountant for the committee, copied by him and verified by him from the minutes of the National Tube Co. He is, I believe, the president of the Certified Accountants of New York:

Book marked "No. 1," National Tube Co., from January 15, 1901, to date, containing all minutes of said company.

Here, under this date, I find this entry:

Rumors of new competition, etc. Mr. Converse said that there were rumors that the Carnegie Co. is about to install and operate a tube works with a capacity of 280,000 tons per annum.

Was that about the size of the anticipated tube works?

Mr. SCHWAB. Probably; yes, sir.

The Chairman (reading):

It is well known the tendency, lately so conspicuous, to establish a community of ownership or a unified control over great industries as the only means of restraining destructive competition, lead to the incorporation of various great companies.

Was that the motive that led to the incorporation of the Carnegie Steel Co.?

Mr. SCHWAB. It was not my understanding of the motive. May I be permitted to tell you something relative to this tube company at this point that might be of interest?

. . . . . .

The CHAIRMAN. To return to this matter—

During the 18 months this corporation has run there has never been a time when it could not have manufactured to advantage and profit material in competition with nearly all of the numerous industrial groups, including the Carnegie Co., but the policy of the management so far has been that except forced by self-protection, this company would not displace a ton of its neighbor's product by entering any other lines than strict tubular goods. It has rigidly confined itself to this principle up to this time. The Carnegie Co. is now enjoying trade in plates on ships at the rate of about 150,000 tons per annum with the National Transit Co., a department of the Standard Oil Co.

Is that true?

Mr. SCHWAB. We sold the Standard Oil Co. a great many plates; yes, sir; that is true.

The CHAIRMAN (reading):

This is more than equal to any tonnage which the Carnegie Co. has ever made for tubular purposes. From this it will be seen that the Carnegie Co. interests have been protected through the care and friendliness of the Standard Oil—

Is that true?

Mr. SCHWAB. Well, I was not aware of it.

The CHAIRMAN (reading):

And National Companies, and under the full belief warranted by the facts, statements, and circumstances, that such an arrangement would fully satisfy the Carnegie Co. in their ample demand for their full measure of steel tonnage for conversion into tubular products. In all of the arrangements between the National Steel, Republic, American Sheet Steel & Plate, and others of the industrial steel groups, it has been the unwritten law that each group should confine itself to the fabrication of its own specialties and should voluntarily refrain from using constant surplus of material by the production of the special product of its neighbors. If this unwritten law is to be ruthlessly disregarded by the Carnegie Co., it will, of course, have a broader significance than the mere competition with our own products.

Did you know that?

Mr. SCHWAB. I never heard of it.

The CHAIRMAN. Did not Mr. Converse, or any member of his company ever tell you, or tell the Carnegie Steel Co. that the construction of these tube works, as Mr. Gates has testified to, would be considered as a declaration of war?

Mr. SCHWAB. He certainly never told me.

The CHAIRMAN. Did you know or did anybody inform you that if those works were constructed gentlemen's agreements were going to smash, and, to use a crude expression, "Devil take the hindmost"?

Mr. SCHWAB. I never heard of it.

The CHAIRMAN (reading):

It is the intention of your officers to continue their efforts to strengthen our position at all important plants, increase our raw-material supply, to reduce the fixed charges thereat, and to combine to manage the affairs of this company conservatively and economically.

Did you ever hear of that?

Mr. SCHWAB. I know that Mr. Converse would naturally do that.

EXHIBIT 4

TESTIMONY OF ANDREW CARNEGIE [1]

Mr. STERLING. I want to ask you one or two other questions. In your opinion, could the United States Steel Co. have been organized with any reasonable prospect or hope of being a very im-

[1] Hearings before the Committee on Investigation of United States Steel Corporation, 62nd Cong., 2nd Sess., 1911–1912, pp. 2377–82, 2438–39, 2445–46, 2505–13.

portant factor in the manufacture of steel and iron in this country until they had bought the Carnegie Steel Co.?

Mr. CARNEGIE. Judge, I do not want to flatter our old concern. I leave other people to judge about the Carnegie Steel Co.

Mr. STERLING. I would like to have your opinion about it.

Mr. CARNEGIE. That would be an interested opinion. I would be an interested witness on that. Excuse me from being compelled to praise our own organization.

Mr. STERLING. I will ask you this question, then:

Did you take into consideration, when you fixed a price on the Carnegie Steel property, the fact that this new organization, which evidently was seeking to take in all the iron and steel properties they could—did you take into consideration the fact, in fixing the price, that they could not get along without your property?

Mr. CARNEGIE. Judge, I am delighted that you asked me that question. Listen. We considered $250,000,000 a fair price, and Messrs. Moore considered it a fair price, or they would not have paid $2,000,000 for the option, would they? I will ask you a question.

Mr. STERLING. I would not think so.

Mr. CARNEGIE. Thank you.

After a time we were advised of the necessity for a broader charter than the limited manufacturing company gives in Pennsylvania. and we said, "We shall capitalize it. Two hundred and fifty million dollars for the Carnegie Steel Co. would have given them a bargain. We will capitalize it at the $250,000,000, and we will take the Frick Coke Co. all in, at $70,000,000, making $320,000,000."

That is how we got the $320,000,000.

Judging anything by to-day, Judge, considering what we put in for $320,000,000, if any man bought it for three times that amount he would be safe.

Mr. STERLING. You did get more than that for it when you sold it to the United States Steel Corporation?

Mr. CARNEGIE. Yes. Why? Mr. Schwab has stated that clearly.

Mr. STERLING. Yes.

Mr. CARNEGIE. And he has more to do with these things than any of us. He was in charge, and he is able and bright.

Mr. Schwab came to me one day and said to me:

Mr. Carnegie, Mr. Morgan spoke to me this morning, and as you and he have always been good friends and Morgan & Co. have always been your agents in banking, he said he did not like to approach you on the subject, but he would like to know whether you are willing to retire from business.

I said:

Well, Schwab, that depends upon my partners. You know my scheme of life—that I have resolved that my old age is to be spent not in accumulating but in distributing surplus wealth, and I am ready to go any time; but it shall be as my partners say.

He said the partners were all willing. And he came back a few days afterwards and said that Mr. Morgan would like to know what terms I would take for my steel interests. And Mr. Schwab said to me:

I think the option we gave—$250,000,000 and of course the Frick $70,000,000, making $320,000,000—was a fair option. I think they would have made a great deal of money if they had taken it. It was cheap.

Mr. STERLING What did you mean by saying, "Of course the Frick $70,000,000"? Do you mean the H. C. Frick Coke Co.? I want that for the sake of the record. I understood what you meant, but for the sake of the record, is that it?

Mr. CARNEGIE. Yes. That made $320,000,000.

And Mr. Schwab said, and he has testified since, that between the time that we gave the last option and this time he figured up approximately that we had gained $100,000,000; that our properties and everything else were worth that; and therefore he thought it would be a fair option to give Morgan adding that to-day; and I agreed with him.

Mr. STERLING. That would be $420,000,000?

Mr. CARNEGIE. Yes; exactly.

Mr. STERLING. But you sold it for more than $420,000,000?

Mr. CARNEGIE. I did not, sir.

Mr. STERLING. You did not?

Mr. CARNEGIE. No, sir. I sold it and got two hundred and twenty millions of bonds. I did not get any common stock.

The world is altogether mistaken about that. All that I asked Morgan was $420,000,000; and it was taken at that; and I owned just about half, and I got $213,000,000.

All this talk about my holding for a high price and everything of that sort, gentlemen, has no more foundation than that you held for it. I considered what was fair; and that is the option that Morgan got. Schwab went down and arranged it. I never saw Morgan on the subject nor any man connected with him. Never a word passed between him and me. I gave my memorandum and Morgan saw it was eminently fair. I have been told many times since by

insiders that I should have asked $100,000,000 more and I could have gotten it easily.

Once for all I want to put a stop to all this talk about Mr. Carnegie forcing high prices for anything.

There is the truth, gentlemen.

Mr. STERLING. It has been said in this hearing, Mr. Carnegie, and if it is true you can corroborate it, and if it is not, you ought to have the right to refute it, that the Carnegie Steel Co. got a great deal more than its property was worth, for the reason that that company knew or considered that its property was absolutely necessary to the United States Steel Corporation in order to make it a successful monopoly of the steel and iron business.

Mr. CARNEGIE. Gentlemen, we had made up our plans and bought, I think, 5,000 acres of land at Conneaut, and we were going to put up works there that would have revolutionized things, and that had no reference to Mr. Morgan, and with no more idea that Mr. Morgan would have an option than that you would. We went on totally regardless of anything of that kind. Our plans were being made, and if we had not sold out we would have been a considerable concern by this time. That is quite true.

. . . . . .

Mr. GARDNER. I understood you to say, Mr. Carnegie, that you and Mr. Schwab decided together that $420,000,000 was a fair valuation for the Carnegie Steel Co.?

Mr. CARNEGIE. Yes. Mr. Schwab had some statements. I can not give them to you now, but Mr. Schwab can give you the whole matter. He attended to those things.

I never saw Morgan; I never saw any of his agents; never spoke to any other man about it except Schwab, and then just one or two sentences. Morgan would like to get my price. Schwab sat down and we talked it over, and I said:

Yes; I am quite willing to sell at four hundred and twenty millions.

And Mr. Schwab has stated here that it was approximately as he estimated the advance we had made between the two options.

Mr. GARDNER. I wanted to know whether $420,000,000 was the sum you set as the value of the Carnegie Co.

Mr. CARNEGIE. To Mr. Morgan.

Mr. GARDNER. Did you mean $420,000,000 in cash or $420,000,000 of the securities of the new company?

Mr. CARNEGIE. I was quite willing to take the 5 per cent bonds of the company. You know they are quoted at 115, and I took them at par. I do not regret doing so.

Mr. GARDNER. Are you aware that the United States Steel Corporation issued against the Carnegie Co. $492,000,000 worth of securities?

Mr. CARNEGIE. I am not, sir. I never heard of it.

Mr. GARDNER. It is a fact.

Mr. CARNEGIE. I have never heard of it.

Mr. GARDNER. To be accurate, $492,006,160 was the amount of securities of the United States Steel Corporation which were put out to purchase the Carnegie Co.

Mr. CARNEGIE. Mr. Gardner, that is another surprise this morning. I do not know what they did with it. This I assure you: I did not get more than two hundred and thirteen millions of bonds—not one cent more; nor was I a party to any arrangement——

Mr. GARDNER. You took your payment entirely in bonds?

Mr. CARNEGIE. I did.

. . . . . .

Mr. GARDNER. I want to ask a practical question to clear my mind. Mr. Gates, in his evidence, stated Mr. Carnegie was going to build some tube works at Ashtabula. He meant Conneaut, did he not?

Mr. CARNEGIE. Yes, sir.

Mr. GARDNER. He spoke about your purpose to build a railroad. Was there any such proposition, or was that a mistake of Mr. Gates?

Mr. CARNEGIE. Therein Mr. Gates was quite correct.

Mr. GARDNER. Was it a railroad to be built from Pittsburgh to the sea?

Mr. CARNEGIE. Yes; I told you yesterday that Mr. Vanderbilt sent for me——

Mr. GARDNER (interposing). I mean in 1900?

Mr. CARNEGIE. Yes. We had a survey. We were intending to build a railroad to the sea.

Mr. Gardner: From Pittsburgh to the sea?

Mr. CARNEGIE. Yes.

Mr. GARDNER. Mr. Gates said, "And a railroad from Ashtabula to his works in the Pittsburgh district."

Mr. CARNEGIE. Yes. From Conneaut.

Mr. GARDNER. He said Ashtabula.

Mr. CARNEGIE. It doesn't matter.

Mr. GARDNER. And that railroad was already built, was it not?

Mr. CARNEGIE. Yes.

Mr. GARDNER. I just wanted to get the facts in my mind.

Mr. CARNEGIE. Yes, sir.

Mr. GARDNER. And this railroad you thought of building was another proposition entirely, was it?

Mr. CARNEGIE. Yes, sir; and let me tell you, Mr. Gardner, it was this threatening extension of railways, and especially to continue the Conneaut road to the coke ovens of the Pittsburgh district, that induced the president and the vice president of the Pennsylvania Road to ask an interview with me. I detailed that to you yesterday.

Mr. GARDNER. That was a little earlier. I wanted to get at the truth or otherwise——

Mr. CARNEGIE (interrupting). That truth is quite true.

Mr. GARDNER. About the statement that about the time when the United States Steel Corporation was formed, it was your intention to build tube works at Conneaut and a railroad from Pittsburgh to the sea.

Mr. CARNEGIE. Yes, sir; and we bought ground for the purpose, as I told you.

Mr. GARDNER. I understand.

Mr. CARNEGIE. And also the plans Mr. Schwab was working on, and he informed me that he would break ground in April, and that in a year he would have those works running.

Mr. GARDNER. The contemporary evidence is much clearer on that than it is on the railroad proposition. Did you not take any further steps than having the surveys made for the railroad?

Mr. CARNEGIE. No; the Pennsylvania road sent for me, as I told you——

Mr. REED, Sr. (interposing). May I explain that? What Mr. Carnegie is talking about happened in 1896, when the Bessemer road was built. What you are talking about, Mr. Gardner, was in 1900, or along about there. We had a survey corps out running a line from Pittsburgh to connect with the Western Maryland Railroad. Our idea was to get to Baltimore with a short line. We had not done anything except start the surveying corps. We did not form any corporation or anything of that sort.

Mr. GARDNER. It was a matter seriously discussed?

Mr. REED, Sr. Yes, sir.

. . . . . .

Mr. BEALL. Now, about this railroad——

Mr. CARNEGIE. Which one?

Mr. BEALL. That one that was dreamed about about the time that the Steel Corporation was organized; that one that was to tap the Western Maryland, I believe, and reach to Baltimore. I have a little curiosity to know just what was contemplated in the construction of that railroad; what kind of a road it was to be; what was its purpose; what was the ultimate end and object in view?

Mr. CARNEGIE. The ultimate end was to give Pittsburgh competition of railroads. She was under a vast, strong monopoly.

Mr. BEALL. That is, of the Pennsylvania Railroad?

Mr. CARNEGIE. I told you this morning.

Mr. BEALL. Yes.

Mr. CARNEGIE. I told you that this morning; how I had seen flour shipped through the streets of Pittsburgh to New York from Chicago cheaper than we could ship it from Pittsburgh to New York.

Mr. BEALL. Yes. This railroad was to reach deep water, tidewater?

MR. CARNEGIE. Certainly.

MR. BEALL. At Baltimore?

MR. CARNEGIE. Yes; by a connection with one of the railroads—the Western Maryland, I think.

MR. BEALL. And through the Chesapeake Bay out to the ocean? It was intended that that should be a competitor of the Pennsylvania Railroad?

Mr. CARNEGIE. Certainly. That was the object. And the Baltimore & Ohio also.

Mr. BEALL. What would have been the mileage of that road? Could you give us an approximation of it?

Mr. CARNEGIE. It would have to be a guess. Judge Reed, what would you say the distance was?

Mr. REED, Sr. May I answer, Mr. Chairman?

The CHAIRMAN. Certainly.

Mr. REED, Sr. We would have had to build about 156 miles from the Union Railroad to a connection with the Western Maryland's extension at Cumberland.

The same road has been built to-day by the Pittsburgh & Lake Erie over the line we surveyed, and will be opened in a couple of months.

Mr. BEALL. What system of roads does that now belong to—the New York Central?

Mr. REED, Sr. No, sir; it is being built by the Western Maryland and the Pittsburgh & Lake Erie, as I understand it. The Pittsburgh & Lake Erie is a New York Central road.

I do not know who owns the Western Maryland road exactly. It is owned around Baltimore, I think.

Mr. BEALL. That has proven to be a very profitable railroad?

Mr. REED, Sr. It has not been opened up as yet. It is to be opened up in about two months. It would have been a profitable road if we had built it. It is the shortest line to Baltimore from Pittsburgh.

. . . . . .

The CHAIRMAN. Until a few years or a very short period before the formation of the United States Steel Corporation there were, I believe, three large steel companies engaged in the manufacture of semifinished products—the National Steel Co., the Federal Steel Co., and the Carnegie Steel Co. All three of these companies, I believe, were holding companies, I believe. Is that correct.

Mr. CARNEGIE. They were holding companies.

Mr. REED. Is that a question of Mr. Carnegie as to whether there were any other manufacturers of semifinished products?

The CHAIRMAN. No.

Mr. CARNEGIE. Those three were?

The CHAIRMAN. There were these three large holding companies, engaged in the manufacture of semifinished products?

Mr. CARNEGIE. What do you call semifinished products?

Mr. REED, Sr. Billets.

Mr. CARNEGIE. We did not sell billets.

The CHAIRMAN. By that I mean the products of steel which were sold, which were marketable commodities in your hands, but which were raw materials to the concern which took them in that shape and manufactured them to a still higher degree.

Mr. CARNEGIE. We sold billets, Judge Reed says; and skelp, and so on. I do not know to what extent.

The CHAIRMAN. I will explain my meaning more fully, Mr. Carnegie.

For instance, in the Carnegie Co. you had your blast furnaces?

Mr. CARNEGIE. Yes.

The CHAIRMAN. You sold pig iron, did you not?

Mr. CARNEGIE. No. We used our pig iron.

The CHAIRMAN. You did not sell pig iron at all?

Mr. CARNEGIE. No; I do not think we ever did.

The CHAIRMAN. The pig iron or the hot metal, usually spoken of as pig iron, you conveyed in ladles to your furnaces?

Mr. CARNEGIE. Yes.

The CHAIRMAN. And from that iron you made steel?

Mr. CARNEGIE. Yes.

The CHAIRMAN. Did you sell steel billets?

Mr. CARNEGIE. Yes; I think we sold steel billets.

The CHAIRMAN. Those billets were purchased by tube companies or by companies making rails or by companies making any number of things and made into finished products, were they not?

Mr. CARNEGIE. Yes; I think that was rather in the early days, was it not?

The CHAIRMAN. Until a few years before the formation of the United States Steel Corporation.

You did not sell steel ingots, for instance?

Mr. CARNEGIE. No.

The CHAIRMAN. You manufactured them immediately?

Mr. CARNEGIE. Yes.

The CHAIRMAN. You sold billets and you sold sheet and tin plate bars, did you not?

Mr. CARNEGIE. It was such a small part of our business that I never went into that very much.

The CHAIRMAN. Did you not sell millions of tons of billets to such companies as the Shelby Steel Tube Co.?

Mr. CARNEGIE. We sold billets; but millions of tons? No; that is far beyond anything that I know of. I do not pretend to know what the amount was that we sold. But, in answer to your question, yes; we sold billets.

The CHAIRMAN. Did not the concerns which afterwards formed the American Steel & Wire Co., until a few years before the formation of the United States Steel Corporation, buy their raw material, as a rule, from the Federal Steel Co., the Carnegie Steel Co., or the National Steel Co.?

Mr. CARNEGIE. I have no doubt they bought billets. I should think they would scarcely buy billets from us in Pittsburgh when they had the Chicago mills so near.

The CHAIRMAN. These finishing mills, like the American Steel & Wire Co., the National Tube Co., the American Sheet & Tin Plate Co., the Shelby Steel Tube Co., and other like concerns, hundreds of others, nail mills, and the like, as a rule, bought their raw materials

from these large companies making the semifinished products, and then carried them still further in the state of manufacture toward the highly finished product; is not that true?

Mr. CARNEGIE. Quite so.

The CHAIRMAN. You remember when the American Steel & Wire Co. was formed, do you not?

Mr. REED, Sr. Give the year.

Mr. REED. 1899, was it not?

The CHAIRMAN. 1889, I believe.

Do you remember when the National Tube Co. was formed and when the American Sheet & Tin Plate Co. was formed, Mr. Carnegie?

Mr. CARNEGIE. No.

The CHAIRMAN. They were all formed between 1897, I believe, and 1900. Is that right?

Mr. REED, Sr. Yes.

The CHAIRMAN. I do not carry any figures in my mind.

I see that Mr. Herbert Knox Smith, in his report on the steel industry, makes this statement, after a résumé and report of these various finishing concerns and their formation into large holding companies:

> Immediately, however, came the next step—

That is, after the formation of the American Sheet & Tin Plate Co. and the American Steel & Wire Co., and the others—

> Immediately, however, came the next step. These great concerns almost simultaneously began the final linking up of the chain of production. Once begun by one concern, others followed in self-defense. The "secondary" companies began to reach back, acquiring ore reserves and crude steel plants. For example, in 1900, the Steel & Wire Co., whose supply of materials had previously been purchased mainly from the Carnegie or the Federal Co., planned to make its own steel; likewise the National Tube Co. The "primary" concerns, finding these, their chief customers, turning into rivals, retaliated by reaching forward to the manufacture of finished products.
>
> Paramount in importance was the ore. The recognition of that importance came strangely late, but, once recognized, it became an axiom that no large concern could stay in the business unless fortified by its own ore reserves. By 1900 the bulk of the Lake ore was in the hands of less than a dozen companies, with a similar concentration in coking coal.
>
> Such efforts on the part of these great concerns, in striving each to "integrate," to make itself wholly independent, threatened to result in a great and sudden increase and duplication of the steel producing and finishing capacity of the country, and to involve them also in an invasion of each other's business.

Do you remember when that transition stage was occurring?

Mr. CARNEGIE. I think that is remarkably well described. I think that gives you the situation.

The CHAIRMAN. I think so.

Again, quoting from page 18 of Mr. Smith's report:

> Thus there was suddenly revealed to the industry what the trade press at the time called "the impending struggle of the giants," a contest between great concerns who, under such circumstances, might be forced to work out in rigorous competition the survival of the fittest.
>
> Such were the conditions in the steel industry in 1900. The spark that lighted the train was the threat of the Carnegie Co. to erect a great tube plant near Cleveland, thus invading the field of finished manufacture.

I read that word "threat" because it is so written here. I do not mean to imply that.

Mr. CARNEGIE. I quite understand, Mr. Chairman.

The CHAIRMAN. I do not mean to imply that you made any threat. I would rather be inclined to believe that your determination to build this great tube company would naturally cause some concern to your competitors.

Mr. CARNEGIE. The National Tube Co. was one with which we had an agreement. They bought billets from us, and they made their tubes. They were at McKeesport.

Mr. REED, Sr. Their main plant was at McKeesport, and they had another at Riverside, near Wheeling.

Mr. GARDNER. There were some 10 tube plants of the National Tube Co.?

Mr. REED, Sr. They have about eight, I believe.

Mr. CARNEGIE. May I confirm an impression from the Judge, because he knows and I do not?

The CHAIRMAN. Certainly.

Mr. CARNEGIE. My impression is that the National Tube Co. had been reorganized and put upon the market, had it not, by Mr. Moore?

Mr. REED, Sr. The National Tube Co. has nothing to do with Mr. Moore.

Mr. CARNEGIE. But there were others. What had the National Tube Co. to do with it?

Mr. REED, Sr. Will the committee permit me to state?

Mr. CARNEGIE. I do not know how these steel mills were situated, as to the details.

Mr. REED. The National Tube Co. was independent. It was not

affiliated with any concern. The National Steel Co. was Judge Moore's concern, that supplied the raw material for the sheet and tin plate and steel hoof business.

Mr. GARDNER. The National Tube Co. was regarded as one of the Morgan group, was it not?

Mr. REED. Yes.

Mr. GARDNER. The National Steel Co. was regarded as one of the Moore group?

Mr. CARNEGIE. Why was it regarded as one of the Morgan group —the National Tube Co.?

Mr. REED, Sr. It has been reorganized and financed through Mr. Morgan's office.

Mr. CARNEGIE. Now we are getting at it. I remember. I was afraid to state it until it was confirmed. The National Steel Tube Co.——

The CHAIRMAN. I do not want to interrupt you, Mr. Carnegie, but I think you can answer two questions at once, because I shall refresh your memory still further, so that you can tell me about the whole transaction.

Mr. CARNEGIE. I shall be delighted, Mr. Chairman.

The CHAIRMAN. I asked Mr. Schwab about it.

Mr. CARNEGIE. What do you want to ask me about it for, if you asked Schwab? [Laughter.] Let me see what Schwab said, and I will know what was done. It will refresh my memory at once.

The CHAIRMAN. All right. He did not remember it until I called it to his attention, and then he said he did remember it.

I read now from the minutes of the National Tube Co., from January 15, 1901, to date, containing all minutes of the said company:

Mr. Converse said that there were rumors that the Carnegie Co. is about to install and operate a tube works, with a capacity of 280,000 tons per annum.

Mr. CARNEGIE. That is from the minutes?

The CHAIRMAN. Yes. This is from the minutes of the National Tube Co., and shows what they were thinking about what you were doing:

Mr. Converse said that there were rumors that the Carnegie Co. is about to install and operate a tube works, with a capacity of 280,000 tons per annum.

During the 18 months this corporation has run there has never been a time when they could not have manufactured to advantage and profit material in competition with nearly all of the numerous industrial groups, including the Carnegie Co., but the policy of the management so far has been that, except forced by self-protection, this company would not displace a ton of its neigh-

bor's product by entering any other lines than strict tubular works. It has rigidly confined itself to this principle up to this time. The Carnegie Co. is now enjoying trade in plates on ships at the rate of about 150,000 tons per annum with the National Transit Co., a department of the Standard Oil Co.

This is more than equal to any tonnage which the Carnegie Co. has ever made for tubular purposes. From this it will be seen that the Carnegie Co. interests have been protected through the care and friendliness of the Standard Oil and national [1] companies, and under the full belief, warranted by the facts, statements, and circumstances, that such an arrangement would fully satisfy the Carnegie Co. in their ample demand for their full measure of steel tonnage for conversion into tubular products. In all of the arrangements between the National Steel, Republic, American Sheet Steel & Plate, and others of the industrial steel groups it has been the unwritten law that each group should confine itself to the fabrication of its own specialties and should voluntarily refrain from using constant surplus of material by the production of the special product of its neighbors. If this unwritten law is to be ruthlessly disregarded by the Carnegie Co., it will, of course, have a broader significance than the mere competition with our own products.

Mr. REED, Sr. What did Mr. Schwab say to that?

The CHAIRMAN. I asked him, "Did you know that?" and he replied, "I never heard of it." Mr. Schwab said he knew nothing about it.

I am asking you, Mr. Carnegie, if you remember at that time this protest of the tube company against your constructing that mill at Conneaut?

Mr. CARNEGIE. I never heard a word of it. If Schwab tells you that he was ignorant of it, I can not account for its being in circulation.

The CHAIRMAN. That was on the minutes of this tube company. That is what they did think about it. Why was it, do you know, that they were protesting so vigorously against your constructing those tube works? Could they not make tubes just as cheap as you could with that mill?

Mr. CARNEGIE. You must ask somebody else than me, Mr. Chairman. I can not conceive of it. All of this is new to me. I never heard of it before.

The broad way that I understood the thing was this: We furnished tubes for the National Tube Co. and they finished them; but they resolved to erect blast furnaces. This is the story as I remember it: They went on to erect their blast furnaces. Then, of course, they were able to make their own material, billets, etc. That is how they left us.

[1] Thus in original.—Ed.

The CHAIRMAN. You say, "That is how they left us." You mean they left you without a customer?

Mr. CARNEGIE. Yes. They were not satisfied with manufacturing the bilelts[1] into tubes. They wanted to make the whole thing through.

The CHAIRMAN. I see.

Mr. CARNEGIE. We had been looking for a site where we could put additional works, where we could extend; and it did not require much consideration to let us see that if we, having that Conneaut Harbor, put a modern steel plant there, the ore would come there and be dumped from the boat right in the furnace yard. And Mr. Schwab drew plans. The mill was 1,100 feet long, and the ore stood there, and the coke was brought up from our own mines in the cars which had taken the ore down to our mills, and which would otherwise have returned empty; and there we stood, with the raw material there, and the finished tubes would come out here [indicating], with all new, modern machinery, no men hardly, all rolls conveying the masses without hand labor, and all that.

Mr. Schwab showed me that plan, just as he did the plan for the great plant for the open-hearth furnaces at Homestead, and I said: "Schwab, what difference can you make?" And he said, "Mr. Carnegie, not less than $10 a ton."

Of course, you must remember that the tube works were very old, and had been running for a long while, and this project of our[1] was a total departure. So he said: "A difference of $10 a ton."

When the National Tube Co. left us and began to build furnaces for themselves, then we decided that we would build at Conneaut.

That was one reason. That was not the whole reason. I had a great desire to get into the manufacture of steel cars, because I saw that they were bound to supersede wooden cars, just as I saw that iron bridges were bound to succeed wooden bridges.

That was the situation. That is all I know of our relations to the National Tube Co.

The CHAIRMAN. You were in a position to make them for $10 a ton less than your competitors?

Mr. CARNEGIE. Yes. And I have talked to Schwab since about it, and he said: "Yes. I could have fulfilled my estimate there easily."

The CHAIRMAN. I find here in this report of Herbert Knox Smith: "Mr. Carnegie's personal view of the situation."

[1] Thus in original.—Ed.

That is the tube situation.

Mr. Carnegie's personal view of the situation may be authoritatively stated as follows:

The National Tube Co. formerly obtained its steel billets from the Carnegie Co., but decided to erect blast furnaces and mills to supply itself. Naturally, the Carnegie Co. then announced that it would be forced to erect mills to finish its own products into tubes.

The intention of the Carnegie interests to extend their manufacture of finished lines had, indeed, been contemplated for some time. In an interview in the London Iron and Steel Trades Review, of May 12, 1899, Mr. Carnegie was quoted as saying:

This is from the New York Evening Post, January 21, 1901.

Yes, we have been erecting several new departments, including what I believe will be the largest axle factory in the world. Why, it may be asked, should steel makers make plates for other firms to work up into boilers when they can manufacture the boilers themselves; or beams and girders for bridges when they can turn out and build up the completed article; or plates for pipes when they can make the pipes?

I think the next step to be taken by steel makers will be to furnish finished articles ready for use. In the future the most successful firms will be those that go the furthest in this direction.

Mr. CARNEGIE. That prophecy has come true.

Mr. GARDNER. I want to ask Mr. Carnegie a question, if I may, Mr. Chairman.

The CHAIRMAN. Certainly.

Mr. GARDNER. In this Conneaut plant you proposed to smelt the iron and carry it through?

Mr. CARNEGIE. Oh, yes; we proposed to have great blast furnaces of the most approved style.

Mr. GARDNER. You were going to take the iron ore right off the Lakes and turn it into tubes and material for steel cars?

Mr. CARNEGIE. And listen: We had to take ore down to Pittsburgh—150 miles.

Mr. GARDNER. Yes.

Mr. CARNEGIE. The ore would be there at Conneaut, coming right off the Lakes. The cars would be coming back empty from Pittsburgh, and there are our coke works, and we would load our coke into those empty cars and take that fuel to Conneaut, and the difference between the cost of hauling that coke to Conneaut and hauling the empty cars back would be only a cent or two per ton; the difference between a loaded train of ore going down and an empty train of cars coming back for train service is only 1 cent. It costs 11 cents for train service coming down and 12 cents for the loaded

cars going up. We would have had that tremendous advantage there. I wonder that the steel company, instead of going to Gary—this is my private opinion, not to be publicly spread; this is confidential [laughter]—I wonder that instead of going to Gary they did not do what we proposed. If they had spent half the money at Conneaut, according to our plans, instead of spending double at Gary, the steel stock would have been worth more than it is to-day. [Laughter.]

Mr. GARDNER. Let me understand what you just said about train service.

Under the old system it cost you 12 cents for hauling the ore—just for the car service?

Mr. CARNEGIE. For the train service—the locomotive, engineer, and so on.

Mr. GARDNER. The actual cost of running the train, without respect to the cost of the roadbed or interest on your money, and all that, but just the train service?

Mr. CARNEGIE. Yes.

Mr. GARDNER. It cost you 12 cents a ton from Conneaut to Pittsburgh, and 11 cents a ton to haul back the empty cars?

Mr. CARNEGIE. No——

Mr. REED, Sr. This was all prophetic.

Mr. CARNEGIE. They were all loaded cars.

Mr. GARDNER. In your proposition; yes. But before you thought of Conneaut, then you had to haul your ore down from Lake Superior to Pittsburgh at a train-service cost of 12 cents a ton?

Mr. CARNEGIE. That is what I was told.

Mr. REED. From Lake Erie to Pittsburgh?

Mr. GARDNER. From Lake Erie to Pittsburgh; yes, I should say. And hauling back the empty cars cost you 11 cents a ton over the same route?

Mr. CARNEGIE. Yes.

Mr. GARDNER. If you built your plant at Conneaut, it meant this: That your ore would be landed at Conneaut and would be converted into steel at Conneaut, instead of going all the way down to Pittsburgh. Meanwhile, you would be getting your coke from an intermediate point, to wit, Lorain?

Mr. REED. No; from Connellsville.

Mr. CARNEGIE. From our own coke ovens; from the Frick Coke Co.

Mr. GARDNER. From the H. C. Frick Coke Co. at Pittsburgh?

Mr. REED. Connellsville.

Mr. CARNEGIE. At Connellsville, which is in the Pittsburgh region.

Mr. GARDNER. You would be getting your coke in trains which in their northward trip would be full, and on their southbound trip would be empty?

Mr. CARNEGIE. Let me explain.

We had a great many blast furnaces at Pittsburgh, to which we had to take ore, you understand?

Mr. GARDNER. I see. So that you would have a full trip for the cars both ways?

Mr. CARNEGIE. Yes. We balanced the coke and the ore.

Mr. GARDNER. I see the idea. You would haul your coke north to Conneaut, and you would haul your ore for your blast furnaces to Pittsburgh?

Mr. CARNEGIE. Yes; and therefore the coke for Conneaut would cost us nothing, practically, for hauling.

Mr. GARDNER. I get the idea exactly. The transportation of it was so much clear gain, because you had to pay 11 cents, anyway, for those cars to return. Is that the idea?

Mr. CARNEGIE. Yes. And therefore we saved so much. We got our coke delivered at Conneaut for 11 cents, and we got our ore delivered at Conneaut a great deal cheaper than at Pittsburgh.

Mr. GARDNER. I see. You had a full trainload coming back, instead of having an empty train coming back, for which you would have had to pay 11 cents, anyway?

Mr. CARNEGIE. My dear sir, the railroad had to be maintained, whether the cars were going up empty or not. Do you get that point, Mr. Chairman?

The CHAIRMAN. All of them, and then some.

Mr. GARDNER. I think I understand that; but I do not think you understand my question that I asked you a while ago. I think your counsel will explain.

The CHAIRMAN. As I understand, your road had to be maintained?

Mr. CARNEGIE. Certainly.

The CHAIRMAN. The same number of cars had to be run?

Mr. CARNEGIE. Certainly.

The CHAIRMAN. You had in each train a certain number of empty cars, and the only real additional cost, then, was the train service for moving these empty cars along with the other cars that carried ordinary freight. Is that it?

Mr. CARNEGIE. It was all clear profit. The railroad expenditures, the interest, the deterioration of the railroad, and all that was the same. But if you hauled an empty train north to Conneaut it cost you for service 11 cents, because the locomotives used a little less fuel hauling empty cars down than it did hauling loaded cars up.

The CHAIRMAN. I see. At that point, realizing these great advantages, you did not talk about that? That was not generally known, was it?

Mr. CARNEGIE. We did not publish it in the newspapers. [Laughter.]

The CHAIRMAN. It was not possible that Mr. Morgan or any of these people who owned the steel corporation ever knew that you had these big advantages, and that you had already got a site for that plant, was it?

Mr. CARNEGIE. I would not say what they knew.

The CHAIRMAN. Was anything ever said about this great steel plant that you were going to build and the tremendous advantages you had?

Mr. CARNEGIE. We bought the land, and that was known.

The CHAIRMAN. And you knew what you were going to do?

Mr. CARNEGIE. Yes; indeed we did. [Laughter.]

The CHAIRMAN. There has been some intimation that, even with your sanguine temperament, and your long experience, that the Carnegie works, like Napoleon at Waterloo, were face to face with a combination so extensive, manned by men so experienced, and sustained by resources so tremendous, with Judge Gary, for instance, in the Federal Steel Co., with Mr. Gates in the Steel & Wire Co., and with Mr. Morgan as godfather and titular head, that with their organization outside of the Carnegie Co. possessed sufficient power to have made it no longer interesting for you to have continued in the steel business; and that perhaps you escaped destructive competition by retiring from the field.

Was it possible for the Carnegie Co. to have met these combined forces?

Mr. CARNEGIE. Nonsense. [Laughter.] Why did Morgan send word to me that he would like to buy me out?

The CHAIRMAN. I understand that he was uneasy about the condition of your health, and gave that as a reason.

Mr. CARNEGIE. I was still able to take sustenance. [Laughter.]

Mr. BARTLETT. And you were able to take notice, too, I think.

Mr. CARNEGIE. There is a different story than that. But do not

let us go into that. That is a good joke. Ask Schwab about that.

Mr. YOUNG. One gentleman expressed it in this way: He said that these gentlemen who organized the Steel Corporation were about to make a very fine plum pudding, and that they ascertained that Mr. Carnegie had all the plums. [Laughter.]

Mr. CARNEGIE. Gentlemen, it is a great pity that they approached me and asked if I would retire from business.

I had formed my career, and laid down the law to myself that I would not spend my old age in accumulating more dollars. I showed that when we got the offer of $320,000,000 for our property, and when Mr. Schwab came and sat down and showed me what he thought I could get, I said: "Schwab, it is just as my partners say. That is entirely satisfactory to me. It is all the money I ever want to make."

I did not realize then so fully that it takes a great deal more anxious thought and labor to distribute money wisely than it ever did to me to make it.

I do not like to be called a philanthropist. That means a man, usually, with more money than brains.

You can do more harm distributing money unwisely, and do more to pauperize people than you can do good, almost, in trying to assist them.

CHAPTER VII

FACTORS' AGREEMENTS

NOTE

THE general aim and purpose of factors' agreements is too well known to require any extended consideration by the editor. They may like pools be established with a variety of purposes in view. Primarily their object is to fix prices. But they may be readily used to suppress competition by requiring that the factor shall not deal in the goods of a competitor. Other objects may come within the scope of the agreement as is shown by the exhibits following.

The Dr. Miles Medical Company decision, excerpts of which have been made a part of this chapter, dealt a severe blow to the factors' agreement. Hereafter it will probably prove a somewhat emasculated device for the furtherance of combination and consolidation, and the limitation of competition.—Ed.

EXHIBIT 1

TABLE AND STAIR OIL CLOTH ASSOCIATION [1]

This agreement made this.....day of.....one thousand eight hundred and eighty-seven, between.....of the city of .....State of....., party of the first part, and the Table and Stair Oil-cloth Association, party of the second part, *witnesseth:*

First. That the party of the first part will, during the continuance of this agreement, on or before the tenth day of each calendar month, and beginning on the 10th day of July, 1887, make and render to the commissioner of the party of the second part an accurate statement of all goods of.....own manufacture, of the character specified in schedules "A and B", hereto annexed, sold and shipped by the party of the first part during the preceding month, which statement shall contain the names of the persons to

[1] Report of the Senate Committee on General Laws on Investigation relative to Trusts, N. Y. Senate Document, No. 50, 1888, pp. 609–617.

whom the sales were made, and the amount of each kind of goods sold to each purchaser; such statement shall be verified by the oath or affirmation.....of the party of the first part, and some employe of.....having knowledge of the facts, and there shall be incorporated in such verification a statement that the party of the first part has not made any sales at lower prices or on better terms than those permitted by this agreement. Such statement and verification shall be made on blank forms to be furnished by the party of the second part, and shall conform to the requirements ot [1] such blanks.

Second. That on or before the fifteenth day of June in each year, the party of the first part will pay to the party of the second part twenty-five cents for each and every piece of goods of..... own manufacture, except goods specified in schedule "C", hereto annexed, sold by.....during the preceding six calendar months, and on the fifteenth day of December in each year twenty-five cents for each and every piece of goods of.....own manufacture, except goods specified in said schedule "C", sold by.....during the preceding six calendar months. But it is expressly understood and agreed between the parties hereto that if any dividend or debt duly audited shall be payable from the party of the second part to the party of the first part, the amount thereof shall be offset against the payment above provided for and that, if after such offset, there shall be a difference in favor of one party as against the other, only such difference shall be paid in cash. For the purposes of this section, forty-eight yards in length of shelf oil-cloth, and thirty-six yards in length of stair oil-cloth, and twelve yards in length of table oil-cloth shall constitute a piece.

Third. The party of the first part further agrees that.....will keep full, true and accurate books of account of all goods of the character specified in said schedules "A", "B", and "C", and of all such goods sold and delivered by.....during the continuance of this agreement, including the prices and terms of such sales, and that.....will at all times permit the commissioner of the party of the second part, to have access to such accounts and to all mercantile books and papers, relating to this business of the party of the first part, for the purpose of comparing such books and papers with the reports or statements made by the party of the first part to said commissioner, or for the purpose of discovering whether the party of the first part has violated or evaded any of the covenants,

[1] Thus in original.—Ed.

terms or conditions hereinbefore or hereinafter contained, and that.....will allow such commissioner to make extracts from such books and papers for the purpose above specified. And the party of the first part further agrees that.....will at any time, when so requested give such commissioner full and accurate information relating to the sale of goods, and that.....will permit and direct.....employes to give said commissioner every assistance and information in any examination instituted by the said commissioner for the foregoing purpose, and that.....and..... ....employes will answer under oath, if said commissioner so requests, any questions put to.....and..... regarding any alleged violation of this agreement or any similar agreement which the party of the second part may have with other parties.

Fourth. The party of the first part further agrees that....will not during the continuance of this agreement sell any goods of the kinds specified in schedules "A", "B" and "C", hereto annexed at lower prices than may from time to time be fixed by the party of the second part.

For the present those prices are fixed in accordance with schedules "A", "B" and "C", but such prices may from time to time be changed by the party of the second part, and the party of the first part agrees that on receiving notice personally or by mail or telegram of such changes will forthwith advance prices to conform to any advance made by such changes.

Fifth. But it is understood that the party of the first part shall be at liberty to promise the following rebates to be paid at the time and in the manner hereinafter provided:

To purchasers buying in any one season from members of the Table and Stair Oil Cloth Association, 250 pieces or over of table oil-cloth, a rebate of fifteen per cent.

To those buying in any one season 500 pieces or over of table oil cloth a rebate of seventeen and one-half per cent.

To those buying in any one season 100 pieces or over of shelf goods of twelve yards each, a rebate of fifteen per cent.

To those buying in any one season 250 pieces or over of shelf goods of twelve yards each, a rebate of seventeen and one-half per cent.

To those buying in any one season twenty-five pieces of stair oil-cloth, a rebate of ten per cent.

To those buying in any one season fifty pieces of stair oil-cloth, a rebate of fifteen per cent.

To those buying in any one season 100 pieces of stair oil-cloth, a rebate of seventeen and one-half per cent.

But it is understaod[1] that pieces of stair oil-cloth shall not average less than sixty yards to the piece.

Sixth. That no allowance to any purchaser for damaged goods or for goods returned or for any other reason shall be made except, by the consent of the commissioner of the party of the second part.

Seventh. But it is expressly agreed by the party of the first part that.... will not promise such rebate to any purchaser who does not expressly agree that.... will not sell any goods of the character specified in Schedule "A", whether manufactured by the members of the party of the second part or others, at lower prices or on better terms than those fixed by said schedules as the same now stands or as they may hereafter be amended; and upon the express condition that such rebate shall only be paid in case the purchaser has maintained such prices and terms, and upon the further condition that the commissioner of the party of the second part shall have the sole power to determine whether such purchaser has violated such agreement.

Eighth. And the party of the first part further agrees that if any purchaser of the goods named in Schedules "A" "B" and "C" shall sell such goods at less prices and on better terms than those from time to time prescribed by the party of the second part, or shall supply goods to any one selling below such prices and terms after receiving notice from the said commissioner requesting him not to supply such persons with goods, the party of the first part will immediately on receiving notice that such purchaser has sold goods at less than the prices and terms fixed by the association, or has supplied goods to others not maintaining the prices, and terms fixed by this association, cease selling goods to such purchaser, and will cancel any unfilled orders given by such purchaser.

Ninth. And the party of the first part further agrees that in case .... shall be notified by the commissioner of the party of the second part that any purchaser has violated such agreement,.... will not, directly or indirectly, pay such purchaser the rebate to which he would otherwise be entitled; and that after the receipt from said commissioner of such notification,.... will not sell such purchaser any goods at lower prices than full list prices, cash on delivery, without discount; and that.... will not thereafter offer, or promise, or pay such purchaser any rebate whatever on goods bought by him,

[1] Thus in original.—Ed.

except by the written consent of the party of the second part. The rebates above provided for shall not be paid until the end of the season.

Tenth. At the end of each season, and within one week thereafter, the party of the first part shall report to the commissioner of the party of the second part the amount of each kind of goods sold during the season to each purchaser. If the said commissioner shall be satisfied that the purchaser has not violated his agreement to maintain the price and terms fixed by the party of the second part, and has purchased sufficient to entitle him to a rebate, the said commissioner shall send to such purchaser a sight draft upon the party of the first part, for the amount of the rebate due from the party of the first part, and the said commissioner shall, at the same time, notify the party of the first part of the fact that he has drawn and sent such draft.

Eleventh. But it is further understood between the parties hereto that goods may be sold to purchasers transacting business outside of the United States, at the prices and terms, and on the conditions prescribed in schedule "B", hereto annexed; but such prices, terms and conditions may from time to time be altered by the party of the second part; and the party of the first part agrees that on receiving notice of such changes from the party of the second part.....will immediately change the prices, terms and conditions of such sales, in conformity with such alterations.

Twelfth. It is further understood that the party of the first part shall be at liberty to sell goods specified in Schedule "A", to any member of the Table and Stair Oil-Cloth Association at a discount of 17-½ per cent from the prices named in Schedule "A" in whatever quantity such goods may be sold.

Thirteenth. The party of the first part hereby further agrees that.....will not except by consent of the party of the second part, coat, finish, or print any goods of the character specified in Schedules "A", "B" and "C" for any party (except members of the Table and Stair Oil-Cloth Association) who contributes either by purchase or any other way any portion of the materials used in such goods.

Fourteenth. The party of the first part further agrees that..... ....will not sell goods specified in Schedule "A" on better terms of credit than sixty days from date of invoice, with an allowance of two per cent for cash within thirty days of date of invoice, and four per cent for cash paid within ten days of date of invoice, and an

additional allowance at the rate of one per cent per month for payments made prior to the day on which invoices may be dated; and the party of the first part further agrees that.....will in no case allow the above discounts except for cash actually paid or remitted on or before the expiration of the periods above named.

Fifteenth. It is further agreed that such cash discounts shall only be allowed on invoices of goods actually shipped, and not on money paid in advance or anticipation of shipments, and that all invoices of goods shipped between August first and December first, and between February first and June first of any year shall date from the day of shipment, and the invoices of goods shipped between June first and August first shall not date later than August first, and all goods shipped between December first and February first shall not date later than February first.

Sixteenth. And the party of the first part further agrees that..... .....will not sell goods of the kinds specified in Schedule "C" hereto annexed on any other terms than those prescribed in said Schedule "C", but such terms and conditions may from time to time be altered by the party of the second part, and the party of the first part agrees that on receiving notice of such alterations from the party of the second part.....will immediately change terms and conditions of such sales in conformity with such alterations.

Seventeenth. That neither the party of the first part nor any agent, agents, employe or employes of.....will pay any freight to any purchaser or to any dealer or to any agent of.....except that the party of the first part may pay freight to New York, Philadelphia, Baltimore and Newark, and expressage or freight on packages delivered in Brooklyn, Williamsburg and Jersey City, but that goods mentioned in schedule "C" may be delivered freight paid in Boston, Mass.

Eighteenth. That the party of the first part will not directly or indirectly offer or give to any purchaser or the employe or agent of any purchaser or to any one whomsoever, any gift, bribe or pecuniary advantage (outside of the intrinsic value of.....goods) for the purpose of obtaining orders for or effecting sales of goods.

Nineteenth. That the party of the first part will not carry any stock of goods in any place or places other than New York, Philadelphi,[1] Newark, Montrose, N. Y., Astoria and Plainfield.

Twentieth. That the party of the first party will take no orders between November 30, and May 31, in any year except upon the

[1] Thus in original.—Ed.

distinct agreement with the purchaser that any unfilled portion of the order shall be cancelled on the thirty-first of May, and that.... will take no orders between May 31, and November 30, in any year, except upon a similar agreement that any unfilled portion of the order shall be cancelled on the thirtieth day of November.

Twenty-first. For the purpose of this agreement a year is divided into two seasons, one extending from May 31 to and including November 30, and the other from November 30, to and including May 31.

Twenty-second. And the party of the first part expressly agrees that....will not in any season make any contract or agreement for the future delivery or sale of goods extending beyond such season, nor will.....quote or name prices for goods to be sold or delivered after the current season except by consent of the party of the second part.

Twenty-third. The party of the first part further agrees that.... will make no guaranty as to any matter whatsoever except the quantity and quality of goods sold by.....

Twenty-fourth. That the party of the first part will not show samples of new styles of goods and will not solicit or take orders or ship new styles of goods for the season between June first and December first, prior to June first in any year, or for the season between December first and June first before December first, and that all original sample books shall be of the uniform size of nine inches by twelve inches, and that all sample books sent to the trade shall be cut of the uniform size of seven inches by nine inches and that the party of the first part will supply sample books of no other size whether paid for or not.

Twenty-fifth. That the party of the first part will require all salesmen and agents in.....employ to sign and swear to a written promise binding them to maintain the prices and terms fixed by the party of the second part; that they will answer under oath any questions that may be put to them by the commissioner of the party of the second part, in any examinations that may be instituted to him for the purpose of ascertaining whether this agreement or any similar agreement has been violated; that they will divide no commission with purchasers, and that they will neither offer or [1] pay any money, gift, bribe, or other valuable inducement in order to obtain an order for or effect a sale of goods, and the party of the first part agrees that on being informed by said commissioner that any

[1] Thus in original.—Ed.

salesman or agent has violated such promise....will immediately discharge him from.....employ, and that.....will not knowingly employ any salesman or agent who has been discharged from the employ of any other manufacturer of, or dealer in table, stair and shelf oil-cloths for such an offence.

Twenty-sixth. And the party of the first part further agrees that .....will employ no person or persons as agent or salesman who is interested in or connected with any concern engaged in the purchase and sale of oil-cloths, and that.....will employ no agent in the place where.....own store or factory is located, and that.... will not pay any agent a higher commission than three per cent on goods sold at the agent's place of business or residence, and not more than five per cent on goods sold elsewhere, such commission to cover all travelling and other expenses.

Twenty-seventh. That on or before the first day of June, 1887, the party of the first part will deposit with the party of the second part the sum of $.....in cash or convertible securities satisfactory to the party of the second part, to be held by the party of the second part as security that the party of the first part will promptly pay to the party of the second part any sum or sums of money which may at any time become due or payable from.....to the party of the second part under any of the provisions of this agreement.

Twenty-eighth. That if any such payment shall become due and remain unpaid for the period of one week, it shall be lawful for the party of the second part to take the amount thereof from any funds in its hands belonging to the party of the first part, or if such funds are insufficient, to sell at public or private sale, without demand of payment and without notice of the time and place of such sale, sufficient of the securities deposited with it by the party of the first part, and out of the proceeds of such sale to take and retain the amount of such payments, and it shall be the privilege of the party of the second part to be the purchaser at any such sale.

Twenty-ninth. That the party of the first part will, at the demand of the party of the second part, make good any deficiency which may arise in the cash or securities so deposited, whether such deficiency be caused by depreciation in market value or by deduction made in accordance with the preceding provisions.

Thirtieth. That if, at any time, the party of the first part,..... shall refuse to give the commissioner of the party of the second part access to.....mercantile books, accounts, or papers, or

shall refuse to permit the examination of.....employes, or shall refuse, when requested, to give accurate and full information touching any matter relating to the sale or delivery of..... goods, in any case where the said commissioner is authorized by this agreement to request such examination and information; or shall wilfully make and render to the party of the second part, or its commissioner, any false statement as to the amounts and kinds of goods sold and delivered by.....; the name of the purchaser to whom sales or deliveries were made or as to the prices, terms and conditions of.....sales, or shall wilfully, directly or indirectly perform any acts tending to nullify or evade this agreement, or any of its terms, the party of the first part will, on conviction thereof, in the manner prescribed by the by-laws of the party of the second part, forfeit and pay to the party of the second part, for each and every offence, the sum of $500, which sum is hereby fixed by the parties hereto as liquidated damages, and in case the party of the first part shall either.....or through..... employes directly or indirectly fail to maintain the prices, charges, terms and conditions required by this agreement, shall pay to the party of the second part $500, as liquidated damages for each and every offense, and in case the party of the first part shall sell to any one purchaser during any one season more than 500 pieces at lower prices, or on better terms than those permitted by this agreement, the party of the first part shall in addition pay to the party of the second part one dollar for each and every piece in excess of 500 so sold, which sums are hereby fixed by the parties hereto as liquidated damages, and the sum of $100 as liquidated damages for any failure to make the statement or reports required by this agreement within the time limited therefor.

Thirty-first. In consideration whereof, the party of the second part agrees to sell the party of the first part, at par,..... certificates of memberships, such certificates, however, to be always held subject to the conditions imposed by the by-laws of the party of the second part, and subject to redemption purchase and forfeiture in the manner prescribed by said by-laws.

Thirty-second. And the party of the second part further agrees that it will use all proper efforts to further the business interests of the party of the first part, and that it will offer suitable rewards to secure the conviction of any manufacturer who, having with the party of the second part an agreement similar to this, shall violate the same or any part thereof.

Thirty-third. It is mutually agreed between the parties hereto that the commissioner of the party of the second part shall decide any questions which may arise as to the meaning, construction, or interpretation of this agreement or any part thereof, and that his decision shall be final and conclusive upon both the parties hereto, both as to the questions of law and fact.

Thirty-fourth. It is further agreed between the parties hereto that if the party of the first part is accused of any violation of this agreement such accusation shall be referred to said commissioner, whose decision, subject only to the conditions imposed by the by-laws of the party of the second part, shall be final and conclusive upon both the parties hereto, both as to law and fact.

Thirty-fifth. Whenever the word "goods" occurs in this agreement, it shall be construed to mean and include only table, stair, shelf, and enameled oil-cloths.

Thirty-sixth. That as to making the reports, statements and payments required by this agreement, this agreement shall continue in force up to and including the fifteenth day of June, 1888, and as to other matters up to and including the thirty-first of May, 1888.

In witness whereof, the party of the first part hath hereunto set....., and the party of the second part hath caused these presents to be signed by its president.

EXHIBIT 2

AMERICAN TOBACCO COMPANY [1]

P. O. Box 2591.
New York, October 1, 1895.

Dear Sir.—We will be glad to consign to you for sale, on commission, our various brands of cigarettes, such cigarettes to be sent by us, and received, sold and accounted for by you, upon terms and conditions as follows, namely:

First. All cigarettes which we may send to you, you are to sell to the retail trade only for retail purposes; you are to sell none to other than retail dealers except by our written permission.

Second. You shall, at all times, sell our cigarettes at such prices only as we may fix in selling lists sent to you. You shall not sell, or dispose of, any cigarettes at lower prices than those so fixed.

[1] Report and Proceedings of the Joint Committee of the Senate and Assembly appointed to investigate Trusts. N. Y. Senate Documents, No. 40, 1897. pp. 878–883.

Third. You are to guarantee all sales made by you. An extra compensation of 2 per cent. will be allowed, and can be deducted by you, on all advances made upon consignments which are remitted to us within ten days after the date of shipment to you.

Fourth. All cigarettes consigned to you are to remain our property until sold by you, subject only to your lien thereon for all advances which you have made under the terms of this agreement.

Fifth. The cost of freight from our factories is to be paid by us, or, if paid by you, to be allowed to you by us on account.

Sixth. You are to guarantee us against loss by fire or otherwise of any cigarettes consigned to you, and you are to either return to us the cigarettes in good condition or the price of the same as fixed on our selling lists as above mentioned. You are also to pay all charges and other expenses of every nature connected with the storing, keeping and selling of cigarettes which we may consign to you, or for your account, after the delivery thereof by us to the common carrier, including all State, county and municipal taxes and license fees.

Seventh. If you do not discriminate against our cigarettes in favor of those of other manufacture, and if you do not sell, or dispose of, any of our cigarettes at less than the list price, and if, in all respects, you comply with the terms of this agreement, we will pay you a commission of two and one-half (2-½) per cent. on the amount realized by you from the sale of the cigarettes which we may consign to you.

Eighth. If, however, you handle cigarettes of our manufacture exclusively, and do not sell or distribute, or in any way aid in the sale, or distribution of, cigarettes of other manufacture, and if you, in all respects, fully comply with the terms and conditions of this agreement, we will pay you an additional commission of seven and one-half (7-½) per cent. on the amount realized by you from the sale of the cigarettes which we may consign to you.

Ninth. Settlements and payments of commissions are to be made as follows:

On April 1, 1896, or as soon thereafter as practicable on all cigarettes consigned by us to you from the date of your signing this contract to January 1, 1896, which have been sold by you and settled for prior to April 1, 1896.

On July 1, 1896, or as soon thereafter as practicable, on all cigarettes consigned by us to you during the three months ending April 1, 1896, which have been sold by you and settled for prior

to July 1, 1896, and so on, from quarter to quarter thereafter, in the same manner, for the subsequent consignments, sales and payments.

Tenth. All obligations upon our part to pay you any commission for the sale of the cigarettes which we may consign to you is, and shall be, dependent upon your strict compliance with the agreement hereinbefore contained that you will not sell any of our cigarettes for a less price than that fixed in our selling lists sent to you. If you should sell, or dispose of any of our cigarettes at less than such price, you shall forfeit all right to the payment of any commissions on cigarettes which you may have previously sold, and on which commissions have not been paid you, and you shall at once, on demand, pay to us the list price for all cigarettes which you have sold, and deliver to us all of our cigarettes then in your possession which may have been previously consigned by us to you.

Eleventh. Upon your acceptance in writing of the terms and conditions of this agreement, you understand and agree that you will handle our cigarettes exclusively, on the terms and conditions herein specified, and in the event that you hereafter determine to sell cigarettes of other manufacture, you are to notify us, in writing, of such determination; and thereafter, if you have fully compiled with all other terms of this agreement, the commissions to be paid to you for sale of our cigarettes shall be at the rate of two and one-half (2-½) per cent.

Twelfth. If you shall sell or distribute, or in any way, directly or indirectly, aid in the sale or distribution of any other cigarettes than those of our manufacture, without having first given us written notice of your intention so to do, as required by paragraph eleventh, you shall not be entitled to claim or receive any commissions not previously paid to you in excess of two and one-half (2-½) per cent. on any past or future sales under this agreement; and the right and option is hereby distinctly reserved to us to determine and declare that you have surrendered all right to be paid any commission over said rate of two and one-half per cent., if we shall be satisfied that you have in any way aided in the sale or distribution of cigarettes other than those manufactured by us.

Thirteenth. We reserve the right of determining, at all times, as to the number of cigarettes and the brands which we will consign to you under this agreement, we to determine the matter before or after receiving requests or reports from you; and you expressly agree that you will promptly make reports, or account of all sales, to us, whenever, and as often as, we may call for the same.

Fourteenth. The right is reserved to us at any time, to decline to sell you any more cigarettes, and to withdraw the cigarettes already consigned to you, upon repaying to you all your legitimate advances thereon, and the right is reserved to you, at any time, to decline to act further for us, after having delivered to us all cigarettes then in your hands, and paying over to us the proceeds of all sales of our cigarettes at list price.

Fifteenth. Requests for consignments, as well as all advances and reports of sales with New York exchange, must be paid to our office in New York. Commissions will also be settled and paid from there.

Sixteenth. No employe of this company has any authority whatever to change or modify this agreement, or any circular, letter, or price list of this company.

Your agreement in writing hereon to receive our cigarettes on consignment and to sell and account for the same, under the above conditions when executed by you, will constitute a binding contract between you and our company.

Very truly yours,

THE AMERICAN TOBACCO COMPANY.

By.....

.....agree to receive cigarettes on consignment from the American Tobacco Company, and to sell the same, and to account to said company therefor, upon the terms and conditions set forth in the foregoing written proposition to us. To the faithful performance of all such terms and conditions we hereby agree and bind ourselves.

Dated.....1895.

(Sign here).....

In the presence of

(Witness sign here).....

City or town.....

State.....

EXHIBIT 3

NATIONAL WALL PAPER COMPANY [1]

Memorandum of agreement between..... of.....(called the purchaser) and the National Wall Paper Company of New York, N. Y. (called the company).

1. The purchaser agrees to select and order from and out of jobbing lines of the machine made goods of the company on or before October 1, 1896, wall paper to the aggregate amount of $.....,

[1] Op. cit. N. Y. Trust Investigation, 1897, pp. 804–806.

which.....hereby request the company to manufacture for ————prior to April 1, 1897, goods to be delivered F. O. B. at New York, or at the respective places of manufacture.

2. The terms of this sale are four (4) months from date of invoice, with a discount at the rate of one per cent. per month for anticipated payments. Goods shipped between October 15th and March 1st to date from March 1st, and orders for goods not shipped before March 1, 1897, may be cancelled by either party to this agreement.

3. The purchaser expressly guarantee and agree that between September 1, 1896, and June 30, 1897, will not purchase or acquire any wall paper or hangings the product of any person or corporation other than the company, and that will give additional and duplicate orders prior to July 1, 1897, to the amount of $....., and in consideration of such guarantee and upon the performance thereof company shall credit the purchaser with the discounts hereinafter named on the attached schedule on all purchases from the jobbing lines of the machine made goods of the company between said dates.[1] Such discounts shall be figured and credited upon the basis of the shipments made hereunder and the discounts shall be calculated upon the gross prices published by the company in its price list for the patterns selected by the purchaser. The purchaser guarantee [1] as a condition of the allowance of such discounts to refrain from making such use thereof among the trade as to interfere with the uniformity of the company's price and terms, and that (the purchaser) will at all times during this contract maintain the company's road prices.

4. The company agrees to extend the same line of discounts referred to above to such goods as are contained in the exclusive lines of the machine made goods of the company, on the express guarantee that such goods will be used only for the retail department of the purchaser in the city of....., and will not be offered at wholesale within his store or on the road.

This contract shall at all times and for every purpose be deemed to have been made and executed at the principal office of the company, in the city of New York, and it shall for every purpose be construed under the laws of the State of New York.

Dated, the city of New York..... 1896.

.....

National Wall Paper Company,
President.

[1] This sentence is thus in original.—Ed.

EXHIBIT 4

AMERICAN SUGAR REFINING COMPANY [1]

New York,————, 189—.

Dear Sir.—We enclose herewith invoice of even date, from which you are entitled to our usual deductions of one per cent. trade discount on one hundred barrel lots, and one per cent. for cash if paid within seven days.

Should you so desire we shall be pleased, upon receipt of within written request, to constitute you one of our agents, in which case sugar will be consigned to you for sale as our factor, upon the following terms, the title to remain in us subject to your advances and return to you of your necessary outlay:

1. You are to advance to us within thirty days the amount of the invoice, which will be made up at our daily quotations, less one per cent. trade discount on one hundred barrel lots, with the right to deduct one per cent. additional if invoice is made cash in seven days; the advance to be without recourse to, or reclamation upon us, and to be due in any event.

2. The sugar when sold is to be billed in your name, although in fact as factor for us, and you shall without reclamation upon us, at your own cost, pay all expenses and assume all risks of the property and of payment or collection. You are not to incur any expense on our account.

3. None of the sugar shall be sold or disposed of by you, either directly or indirectly, for less than our daily quotations, with freight added from refining point to point of sale (as per equality rate book), nor on more liberal terms as to credit or cash discounts.

So long as the foregoing conditions are observed by you we will, upon an affidavit to that effect, pay you a commission of three-sixteenths of a cent per pound, and in addition thereto you shall retain the profit, if any, over the advance made as above provided. In case of any failure to comply with either of the above conditions no commissions will be payable. Settlements will be made for each month's commissions at the expiration of three months thereafter. All commissions payable for the period preceding the three months will then become due. Payments will only be made as above.

[1] Op. cit. N. Y. Trust Investigation, 1897, pp. 128–130.

This agency is terminable at the pleasure of either party, on written notice.

Yours respectfully,

THE AMERICAN SUGAR REFINING COMPANY.

. . . . . .

State of.....ss.
County of.....

.....being duly sworn, says: I, as factor of the American Sugar Refining Company, claim from the company a commission of three-sixteenth[1] of a cent per pound (less one per cent. where trade discount has been allowed), upon..... pounds of sugar consigned by the company to me by invoices, the dates of which cover the period from.....to.....inclusive. In compliance with the conditions upon which the sugar was consigned to me, and to entitle myself to the commission, I do hereby make affidavit that none of the sugar mentioned in the said invoices has been or will be sold or disposed of by me, either directly or indirectly, for less than the daily quotations of the company, with freight added from refining point to point of sale, as per Equality Rate Book, nor on more liberal terms as to credit or cash discounts.

Sworn to before me.....
this day of....., in the year of 189 .

EXHIBIT 5

UNITED STATES RUBBER COMPANY[2]

MEMORANDUM OF AGREEMENT

Between the United States Rubber Company, selling agent, hereinafter called The Company, and.....of..... hereinafter called The Purchaser, whereby rubber boots and shoes (except tennis, which are not included in this agreement) sold by The Company are purchased by the said.....subject to the following terms, discounts and conditions:

Gross Price List Season 1896-1897, Ending March 31, 1897, First Discounts. First Quality Brands: American, Boston-Bell, Candee, Lycoming, Meyer, New Brunswick, United States Rubber Company, Wales-Goodyear and Woonsocket, at 15 and 8 per cent. discount from above stipulated gross price list.

[1] Thus in original.—Ed.

[2] Op. cit. N. Y. Trust Investigation, 1897, pp. 646–652.

Second Quality Brands: Para, Neptune, Federal, Keystone, Essex, Jersey, Connecticut and Rhode Island, 15, 12 and 8 per cent. discount from above stipulated gross price list.

Third Quality Brand: Columbia, 15, 12, 12 and 8 per cent. discount from above stipulated gross price list.

Cash discount of 8 per cent. per annum to be allowed for prepayment. Interest, 6 per cent. per annum, will be charged on overdue accounts. It being understood that the agreement by the company to deliver under this contract is limited to the following brands:

First Quality.....
.....
Second Quality.....
.....
Third Quality.....
.....

Second—Terms.—Deliveries of all goods made hereunder to November 1 will be payable December 15, 1896; deliveries in November payable January 15, 1897; deliveries in December payable February 15, 1897; deliveries in January payable March 15, 1897; deliveries in February payable April 15, 1897; deliveries in March payable May 15, 1897. The company shall have the right to call for and purchaser agrees to give upon such call, cash or notes acceptable to the company for the net value of the goods delivered under this contract before the accounts therefor are due.

Third.—The purchaser agrees to be governed in his selling price and terms by the instructions of the company, and hereby promises not to depart from or evade, by any direct or indirect means, all the conditions set forth in Section Fourth, Selling Price. It is also understood and agreed that these conditions, for sale of these goods by purchaser, apply to all on hand April 1, 1896, as well as to present or future purchases under this contract. The company, on its part, agrees that if any change is made in the selling price immediate notice shall be given. And the said purchaser, in case of his failure at any time to faithfully observe all the terms and conditions of this contract, or any contract made with the company, hereby consents to the cancelling by the company of all its unfilled orders then in the hands of the company, and in case of such default on the part of said purchaser the company also hereby reserves the right to cancel all said purchaser's orders then unfilled, and in case

of such cancellation the accounts of said purchaser with the company shall thereupon become immediately due and payable.

Fourth—Selling Price.—Until further notice the prices and terms fixed by the company for the sale by the said purchaser of the within named goods (except to jobbers as per Article Seventh) are as follows:

Discounts.—First Quality Brands, 15 per cent.; Second Quality Brands, 15 and 12 per cent.; and Third Quality, 15, 12 and 12 per cent. from gross price list of 1896–1897.

Terms.—Bills for delivery between April 1 and October 31, 1896, both inclusive, shall be dated not later than November 1, net thirty days, 1 per cent off for cash in ten days.

If paid prior to November 10, 8 per cent per annum to November 10, and the above mentioned 1 per cent. may be allowed.

If paid between November 10 and December 1, 8 per cent. per annum only may be allowed.

Bills for deliveries between November 1, 1896, and March 31, 1897, both inclusive, shall be payable, net, thirty days from date of shipment, or 1 per cent off for cash in ten days.

Freight.—Actual freight may be allowed by said purchaser from any point to any other point of railroad or steamboat delivery at his own cost and expense.

Fifth—Liability as to Orders.—The company will not be obligated to deliver more goods than contracted for in this agreement, notwithstanding it may have received and acknowledged orders which exceed amount of cases contracted for in this agreement. It is also mutually agreed, in case of labor strikes, fire or other casualty that may curtail or stop the production of goods contracted for, that the company shall not be held responsible for nonfulfillment of orders beyond the capacity to produce, having reference to the whole business, and, on the other hand, should fire or other casualty overtake the business of said purchaser, then the company will cancel his orders, if he so desires. In contracting for certain number of cases the company does not obligate itself to supply all in the particular style of boots and shoes which the orders detailed may call for, but only such quantities of the particular styles embraced in the orders detailed as the company can supply, having reference to the capacity to produce and its obligation to all of its customers. Two weeks' notice of any changes by the purchaser in detailed orders is required to cover goods in process of manufacture.

Sixth—Guarantee.—In consideration of the faithful performance of this contract on the part of the purchaser, the company hereby guarantees that in case it shall, prior to December 1st, next, reduce the selling price to retailers below the price herein named, a corresponding reduction shall be made to said purchaser on all goods shipped or delivered to him prior to that date. But in case any reduction is made in the price to retailers between December 1st, 1896, and March 31st, 1897, both inclusive, then the said purchaser shall be entitled to a corresponding reduction only on goods actually on hand in his own store at the time of such reduction, a statement of which he shall furnish, under oath, if desired. It being understood that this guarantee shall not be affected by the sale of out-of-style, damaged or imperfect goods, and that the company reserves to itself entire freedom as to the classification of dealers to whom it may sell its goods direct as jobbers.

Seventh—Exchange of Goods.—Nothing in this agreement shall prevent customers of the said company from exchanging with each other or purchasing from each other, at prices mutually agreed upon, and with written approval of the said company, its goods may be exchanged with, or sold to other jobbers, provided such goods bought, sold or exchanged, shall not be resold at any better discounts or terms than are stipulated in this agreement.

Eighth.—Damaged or out-of-style goods which cannot be sold at full discounts, may be disposed of at reduced prices, with the consent of the company, upon sending to the company a list of such unsalable goods. To avoid any confusion with discounts on standard styles, all damaged and out-of-style goods must be sold at net prices. The company may sell damaged or out-of-style goods at reduced net prices.

Ninth—Orders.—It is understood and agreed that all the foregoing conditions are to apply to all goods purchased by the said .....of the company, for the season ending March 31st, 1897, excepting that the discounts named in Section 1 apply only to .....cases, the detailed order of which the said purchaser promises to give immediately upon request. In case the said purchaser shall fail to send in detailed orders for the goods herein contracted for, within fifteen days after receipt of such request, in writing, then the company shall be released from the delivery of any and all goods not so ordered in detail.

All orders unfilled March 31st, 1897, will be understood as cancelled at that date. The company cannot undertake to mark or ship goods to the purchaser's customers.

Tenth—N. B.—It is hereby understood and agreed to that this contract is absolutely between the seller and the purchaser, and annuls, cancels and obliterates any and all contracts, agreements, understandings or practices heretofore in vogue, under which the purchaser has heretofore bought goods of the brands herein contracted for, and it is distinctly understood that no other contract, agreement, understanding or previous practice prevails in respect to the subject matter of this contract, except those herein specifically provided.

Dated at.....this first day of April, 1896.

.....
.....
.....

(This contract is not binding until approved by Director of Sales.)
Approved:

.....
Director of Sales.

SUPPLEMENTARY AGREEMENT.

The United States Rubber Company, selling agent, hereinafter called The Company, in consideration of a certain agreement between it and....., hereinafter called The Purchaser, dated at.....April 1st, 1896, hereby covenants and agrees with said purchaser, that if said purchaser shall have well and faithfully kept and performed all the undertakings on his part, to be performed in said agreement contained, and shall not have directly or indirectly violated the same or any provision thereof while it continues in force, The Company will, as soon after the first day of April, 1897, as The Company is satisfied that said agreement has been faithfully kept and performed by said Purchaser, and account settled in full, pay or credit him with 7 per cent. on the net amount of his purchases under said agreement.

This 7 per cent. shall form no part of settlement between The Company and said Purchaser, but it is to be regarded purely in the light of a rebate, and payable only subject to the conditions herein stated.

Provided, however, that if, in the opinion of the Company, which is to be final and conclusive, said agreement shall have been in any material respect violated by said purchaser, he shall not be entitled to said rebate of 7 per cent., but shall pay for all goods purchased by him under said agreement, upon the terms and at the discounts therein mentioned, without further discount or rebate.

It is mutually understood that any freight or cash discount made by said Purchaser, other than as stipulated in said agreement, shall be deemed a violation of its terms as completely and to the same extent as a concession in terms or discount.

And it is also nutually [1] understood that said Purchaser is to be held responsible for any violation of said agreement by his employes.

Dated....., this first day of April, 1896.

.....
.....
.....

(This contract is not binding until approved by Director of Sales.)

Approved:

.....
Director of Sales.

EXHIBIT 6

STANDARD SANITARY MANUFACTURING COMPANY [2]

NOTE.—This contract must be executed by the Purchaser in order to purchase Licensed Sanitary Enameled Iron Ware.

JOBBERS LICENSE AGREEMENT

THIS AGREEMENT, Made this.....day of..... 190.., between the.....a corporation (hereinafter called the Company) and.....
.....
State of.....(hereinafter called the Purchaser).

[1] Thus in original.—Ed.

[2] *United States of America* v. *Standard Sanitary Manufacturing Company and others*. In the Circuit Court of the United States for the District of Maryland. Pet. Exhibit No. 11, Record, Vol. II, pp. 32–39.

WITNESSETH: Whereas the Company is licensed under certain United States Letters Patent relating to Sanitary Enameled Ware and processes and apparatus used in the manufacture thereof, which said Letters Patent are enumerated as follows:

SCHEDULE OF PATENTS

Pat. No.	Date	Inventor	Title
633,941	Sept. 26th, 1899	James Arrott	Dredger for Pulverulent Material.
949,625	Feb. 15th, 1910	E. Ditheridge	Pneumatic Sieve.
939,918	Nov. 9th, 1909	William Lindsay	Enameling Powder Distributor.

AND WHEREAS, the Purchaser desires to purchase from the Company Sanitary Enameled Iron Ware embodying or made in accordance with said inventions, and to obtain licenses to sell such ware to others, and the Company is willing to sell Sanitary Enameled Iron Ware to the Purchaser, and to license it for resale on the following terms and conditions:

NOW, THEREFORE:

1. The Company agrees to sell and the Purchaser agrees to buy for a period of time beginning June 1st, 1910, and ending December 31st, 1910,.....Sanitary Enameled Iron Ware at the following discounts from the prices given in the various Schedules:

(Insert label)

DISCOUNTS AND TERMS

Articles	Discounts from Resale Prices Established by the Licensor. (To be allowed on invoices by the Manufacturer)
Schedule No. 1–5 year Guaranteed Baths, Foot, Pool, Sitz and Child's and Receptors	7-½%
Schedule No. 2–2 year Guaranteed Baths.....	5%
Schedule No. 3–All other Grades of Baths	5%
Schedule No. 4–Small Wares, Drinking Fountains, Lavatories, etc.....	7-½%
Exceptions: Lavatories, similar to Plates (Standard) P-558, 559, 561 and 562	5%

Articles	Discounts from Resale Prices Established by the Licensor. (To be allowed on invoices by the Manufacturer)
Schedule No. 4–½-Roll Rim Sinks and Combinations, Slop Sinks, Sink Backs and Ends, Drain Boards, Factory and Wash Sinks, Sink and Tray Combinations, Laundry Trays, Closet Bowls and Urinals	5%
Schedule No. 5–Flat Rim Sinks and Combinations, Square and Round Corner Kitchen, Half Circle, Corner, Slop Sinks, Slop Hoppers, Wash Bowls, Trap Standards and Grease Traps	5%
Schedule No. 6–Tanks, Closet and Urinal, High and Low Pattern	5%

TERMS: Net 60 days or 2% for cash 10th of month following shipment.

DELIVERIES

2. Goods will be sold to the Purchaser, F. O. B. Cars where factory is located, at the prices given in the Resale Sheets for the various zones (subject to the Discounts and Rebates named) with full freight allowed on shipments of 200 pounds and over (subject to the Freight Tariff Regulations herein provided for) to the list of cities named in the various zones. To other points than those named, delivery can be made only on the basis of the Purchaser being charged and paying freight from the nearest city named, based on the weights shown in the sheets and at the rates shown in the Equalizing Tariff Schedule.

NOTE: Goods may be shipped in mixed car loads to all points, on, or east of the western bank of the Mississippi River, Minneapolis to New Orleans and to the Atlantic Seaboard, inclusive. To points west of the western bank of the Mississippi River, goods may only be shipped in mixed car loads to points so provided for in the Railroad Tariffs and Classifications.

Goods shall be resold by the Purchaser at prices established and prevailing in the various zones into which the goods are shipped regardless of the point of purchase.

Purchaser will be allowed car load prices in any quantity on shipments to the manufacturing and jobbing points specified. On shipments to jobbing points other than manufacturing points, car load or less car load prices will apply according to quantity.

GENERAL CONDITIONS

3. Prices or other regulations are effective the morning of the date appearing on the sheet.

4. The ware covered by the Price Sheets shall be invoiced by the individual items, and it is not permissible to bill collectively several articles in a "Lump Sum."

5. The various conditions respecting "Guarantees" under which the ware is purchased by the jobber, shall not be varied in the resale to the plumber.

6. The restrictions herein contained as to the prices at which Sanitary Enameled Iron Ware is to be purchased and sold, shall not apply to Sanitary Enameled Iron Ware sold and exported to Foreign Countries. Such sales must be proved bona fide to the Licensor.

REBATES

7. If all the conditions of this agreement have been complied with and you have confined your purchases to the Licensed Manufacturers, we will pay you rebates on such purchases as you have made from us as follows:

Schedule No. 1–5 year Guaranteed Baths, Foot, Pool, Sitz and Child's and Receptors 5%
Schedule No. 2–2 year Guaranteed Baths..... 5%
Schedule No. 3–All other Grades of Baths..... 5%
Schedule No. 4–Small Wares, Drinking Fountains, Lavatories, etc..... 5%
Exceptions: Lavatories, similar to Plates (Standard) P–558, 559, 561 and 562 ..... 5%
Schedule No. 4–½–Roll Rim Sinks and Combinations, Slop Sinks, Sink Backs and Ends, Drain Boards, Factory and Wash Sinks, Sink and Tray Combinations, Laundry Trays, Closet Bowls and Urinals..... 5%
Schedule No. 5–Flat Rim Sinks and Combinations, Square and Round Cornered, Kitchen, Half Circle, Corner, Slop Sinks, Slop Hoppers, Wash Bowls, Trap Standards and Grease Traps. 5%
Schedule No. 6–Tanks, Closet and Urinal, High and Low Pattern 5%

8. If your purchases of material, less returned goods, covered by the various Schedules from the following Manufacturers licensed under the patents enumerated hereinbefore:

Barnes Manufacturing Co., The.....Mansfield, O.
Cahill Iron Works, The.....Chattanooga, Tenn.
Colwell Lead Co.....New York.
Day-Ward Co., The.....Warren, O.
Humphreys Mfg. Co., The.....Mansfield, O.
Kerner Manufacturing Co.....Pittsburg, Pa.
Mott Iron Works, The J. L.....New York City
McVay & Walker.....Braddock, Pa.
McCrum-Howell Co., The.....New York City
National Sanitary Mfg. Co., The.....Salem, O.
Standard Sanitary Mfg. Co.....Pittsburgh, Pa.
Union Sanitary Mfg. Co.....Noblesville, Ind.
United States Sanitary Mfg. Co.....Pittsburgh, Pa.
Wolff Mfg. Co., L.....Chicago, Ill.
Weiskittel & Son Co., A.....Baltimore, Md.
Wheeling Enameled Iron Co.....Wheeling, W. Va.

have aggregated sums as follows and if all the conditions of this agreement have been complied with, the Company will pay the Purchaser rebates on such purchases as they have made from the Company during the period ending December 31st, 1910, as follows,

$10,000.....2-½%
$15,000.....3 %
$20,000.....3-½%
$25,000.....4 %
$30,000.....5 %

Rebates are payable only at the expiration of the period ending December 31st, 1910, and after claims have been approved by E. L. Wayman, Licensor, Arrott Building, Pittsburgh, Pa.

Written application for rebate must be made at the close of the rebate period to E. L. Wayman, Licensor, upon standard forms, which may be obtained from him for that purpose. Unless claim for rebate is presented within 30 days after the expiration of this agreement, the right to refuse to allow such rebate is reserved by the Licensor named above.

If at the expiration of this contract, a similar contract is made between the parties hereto and the purchases under each contract

are sufficiently large so that the aggregate of the purchases under both contracts are double the amounts named above, then the Compaany [1] will pay the percentage rebate named above on the entire amount of such purchases under both contracts, but it shall not be permissible to aggregate purchases made under more than two successive contracts to obtain any greater rebate than may be payable under the last of such two successive contracts.

9. The Purchaser understands that the re-sale prices of all ware manufactured under the Letters Patent enumerated herein, as established from time to time by the Company, must be maintained by all Licensed Sanitary Enameled Iron Ware Manufacturers and by all Jobbers and Dealers and that sales by one Jobber to another cannot be made at any better prices than established in the sheets. The Purchaser therefore agrees that he will observe and strictly maintain on all types and classes of ware the selling prices as they are set forth in the schedules, and will observe and strictly adhere to the rules and regulations as embodied in the Price Sheets and furnished as a part of this agreement, or as they may be embodied in the Price Sheets issued hereafter and substituted by or under the authority of the Licensor (E. L. Wayman) in place of those furnished herewith. Articles may be added to or removed from the schedules at any time; but in the event of such removal, the purchases to date of such removal will be considered as part of the amount on which rebate is estimated.

10 The Purchaser also agrees during the life of this company not to purchase, sell, advertise, solicit orders for, or in any way handle or deal in Sanitary Enameled Iron Ware of any manufacturer not licensed under the Letters Patent enumerated herein, except with the express written permission of the Licensor. Breach of any of the provisions of this agreement, or any failure to maintain and observe prices, rules or regulations shall give the Company, or E. L. Wayman, owner of the Patents hereinbefore enumerated, an option immediately to cancel this contract, all unfilled orders and to withhold all rebates; and the Purchaser is hereby expressly put on notice that in case of any such failure, he can not thereafter obtain Sanitary Enameled Iron Ware manufactured under the Letters Patent above enumerated from any of the Licensed Manufacturers.

11. As an added consideration for this agreement whereby the Purchaser is to be sold goods manufactured under the patents

[1] Thus in original.—Ed.

hereinbefore named, the Purchaser hereby agrees that as to all goods, wares and merchandise, which are manufactured under and in accordance with the patents hereinbefore named, the Purchaser will only resell such goods now on hand, or already purchased by him, irrespective of by whom such goods have been manufactured, in accordance with the rules, terms, conditions, prices and regulations of sale which are herein established, or which may hereafter be established in accordance with the terms of this agreement, as specially set forth in paragraph 9 hereof.

12. This agreement does not become binding on the Company until accepted in writing at the foot hereof by the Sales Manager or his duly authorized representative located in the main sales office of the Company.

.....

Accepted this.....

day of.....19....

.....(Purchaser)

.....(Company)

By.....

This statement must be signed by both Manufacturer and Jobber, detached and filed promptly with E. L. Wayman, Arrott Building, Pittsburg, Pa.

Dated.....191..

E. L. WAYMAN, *Licensor*,
Arrott Building,
Pittsburg, Pa.

This is to certify that a "Jobber's License Agreement" Purchase Contract has been executed between

.....(Manufacturer)

and.....(Jobber)

(City and State).....

at the following Discounts (subject to the established rebates) from the Resale Prices established by you or that may be established by you during the period ending December 31st, 1910.

(Here follows schedule of articles)

EXHIBIT 7

EXCERPTS SHOWING THE OPERATION OF THE FACTORS' AGREEMENT OF THE AMERICAN TOBACCO COMPANY [1]

LIST OF CONSIGNEES WHOSE AGREEMENTS WERE REVOKED FOR HANDLING OPPOSITION GOODS, AS SHOWN BY THEIR OWN TESTIMONY AND THAT OF MR. BROWN.

Revoked before March 1, 1893.

Sussman Brothers, New York city, December 21, 1893, cause, pushing Admiral cigarettes,—"A general inimical feeling to the company and abuse of me."—Browne, p. 1370.

John R. Miller & Son, Newark, N. J. February 4, 1893. Understood to have been given the sole agency for the National Cigarette and Tobacco Company's goods in Newark and vicinity. Browne, p. 1351; Dunstatter, pp. 1125–1126; total 2.

FOR HANDLING ADMIRAL CIGARETTES AFTER MARCH 1, 1895.

Monroe Cigar Co., Rochester, N. Y., May 3, 1893. They were pushing the Admirals and seemed to be closely in touch with the National Company. Their account was also in a very unsatisfactory condition. Browne, p. 1352. They had the sole agency for the Admiral Cigarettes in Rochester and thirty miles around. Tuke, 274.

John McLaughlin, Lancaster, Pa., May 23, 1893. Was cut off for "active pushing of the Admiral Cigarette and the accompanying advertisement discriminating against our goods." "Was giving them the preference over ours." Browne, p. 1354.

Alexander Wilson & Co., Pittsburg, Pa., May 26, 1893. They "were the most active distributors of Admirals that they (National) had in Pittsburg." The agreement would have been revoked even if they had not accepted the agency for the Admirals. Browne, p. 1377–8. See also report of Charles E. Brown, p. 1647.

Love, Sunshine Co., Johnstown, Pa., May 26, 1893. They were the agents of the National Company and put their whole force into selling the National Company's goods. Browne, p. 1343.

Martin & Co., Pittsburg, Pa., May 26, 1893. They were "extraordinarily active" in pushing Admirals. They were trying to

[1] Op. cit. N. Y. Trust Investigation, 1897, pp. 913–922.

displace the A. T. Co.'s goods and boasted what they would do with them. Browne, p. 1349. See also report of Charles E. Brown, p. 1643.

M. F. H. Woerner, Manayunk, Pa., May 26th, 1893. Was "trying to push and urge the sale of Admirals." Brown, pp. 1334, 1381.

John Schwartz, Hazleton, Pa., May 26, 1893. Took in Admiral Cigarettes. "All orders for or taken by the National Cigarette and Tobacco Company men and by his own men, with his own wagon, were filled by him." Brown, p. L [1] 638.

John Rauch, Indianapolis, Ind., June 14, 1893. Was cut off "for the interest he took in the Admiral Cigarette, the activity in their distribution and so on." He was also very friendly with the officers of the National Company, who were then making a "great big display" with their "No Trust" advertisements in Indianapolis. Brown, p. 1363.

August Rickebush Tobacco Company, Milwaukee, Wis., July 6, 1893 They were agents for the National Cigarette and Tobacco Co., and are regarded as part of that company themselves. They also cut prices on tobacco and advertised their own goods as "not made by a Trust." Brown, p. 1351.

. . . . . .

FOR HANDLING "ROYAL SWEETS", A BRAND OF CIGARETTES CLAIMED TO BE AN IMITATION OF "SWEET CAPORALS".

C. A. Whelan & Co., Syracuse, N. Y., May 2, 1892. George Whelan, the company of that concern, became an employee of the National Cigarette and Tobacco Company at a salary of four thousand dollars a year, and they immediately began pushing the "Royal Sweet Cigarettes," which we considered an imitation of ours. Brown, p. 1542.

Boston Cigar and Tobacco Co., Boston, Mass., May 4, 1895. "A. R. Mitchell & Co. had the agency for the Royal Sweet Cigarettes, and the Boston Cigar and Tobacco Co. were actively, as the sub-agents of these, pushing them." Brown, p. 1313. See also report of R. R. Lawrence, p. 1540.

Brewster, Crittenden & Co., Rochester, N. Y., May 9, 1895. Were cut off for handling "Royal Sweets Imitation Cigarettes."

S. S. Sleeper & Co., Boston, Mass., July 12, 1895. A member of

[1] Thus in original.—Ed.

this firm became president of the Executive Association of the Wholesale Grocers of New England, who were fighting the A. T. Co., and pushing the Royal Sweet cigarettes. The agency had entered into an agreement with the National Cigarette and Tobacco Company to give its goods the preference, for which it was to receive the sum of about $35,000. S. S. Sleeper & Co. had carried out the agreement of the association and had their windows full of the imitation cigarettes. Brown, pp. 1544, 1546.

. . . . . .

FOR HANDLING OTHER CIGARETTES THAN THOSE MADE BY THE NATIONAL CIGARETTE AND TOBACCO COMPANY.

Boston Cigar and Tobacco Co., Boston, Mass., June 15, 1893.
West, Stone & Co., Springfield, Mass., July 15, 1893.

The Boston Cigar and Tobacco Co. was an offshoot of A. R. Mitchell & Co., who had taken the agency for New England for the sale of the "Beauty Bright" cigarettes, and A. R. Mitchell & Co., and the Boston Cigar and Tobacco Co. were actively pushing and urging the sale of "Beauty Brights" in preference to the A. T. Co.'s goods. Brown, pp. 1321, 1322 and 1376.

West, Stone & Co., A. R. Mitchell & Co. and the Boston Cigar and Tobacco Co. were just the same as one concern with branches. All of them were distributing "Beauty Brights" to the detriment of the A. T. Co.'s brands. Brown, p. 1376.

Charles McArthur, buying agent for West, Stone & Co., 1893, says that "West, Stone & Co. made an agreement with Mr. Richards of A. R. Mitchell & Co., under which they, West, Stone & Co., were to have the sole and exclusive agency of the goods (Beauty Brights) for the city of Springfield, and in consideration they were to push the goods to the exclusion of all others and receive an extra bonus of 5 per cent." He further says that he was one of the salesmen and knows that they did push Beauty Bright goods to the exclusion of all other paper cigarettes for a time. That he did it himself (pp. 1777–1779).

Total, 2.

Total revocations for handling other goods, 36.

LIST OF CONSIGNEES OR DEALERS WHO TESTIFIED THAT THEY WERE NOT ALLOWED TO SELL OPPOSITION GOODS UNDER THE CONSIGNMENT AGREEMENT, BUT WERE NOT CUT OFF.

Hobart J. Park, of Park and Tilford, says that this firm at one time received upon consignment 25,000 cigarettes from the National

Cigarette and Tobacco Company. That after they began to sell the same, Mr. Butler, secretary of the A. T. Co. called his attention to the sixth clause of the consignment agreement, and said that "if we continue to sell the National cigarettes it would allow them to give us the discount or not as they saw fit on the American Tobacco Company cigarettes; it was a violation of the contract, and we looked at the contract and we sent the goods back" (p. 45). He further said that Mr. Butler did not say anything about refusing to sell or consign any other goods if Park & Tilford kept the National Company's goods (p. 46).

Joseph Park says that Mr. Butler gave him to understand that he was violating the contract and that the A. T. Co. could not continue their discount if he handled other than the A. T. Co.'s cigarettes or any in competition with them. That he violated their agreement (p. 196).

. . . . . .

LIST OF THOSE CONSIGNEES WHOSE AGREEMENTS WERE REVOKED FOR CUTTING PRICES, AS SHOWN BY THEIR TESTIMONY AND THAT OF MR. BROWN.

Revoked before March 1, 1893.

Gilderhouse, Wilfing & Co., St. Louis, Mo., June 6, 1892. Brown, p. 1336.

Sussman Brothers, New York city, June 11, 1892. Brown, p. 1369.

A. F. Cunningham & Co., Philadelphia, Pa., November 21, 1892, Brown, p. 1329; p. 882.

Americus Grocery Co., Americus, Ga., December 3, 1892. Brown, p. 297.

Total 4.

Revoked after March 1, 1893.

Henry Berbert, Brooklyn, N. Y., May 26, 1893 and June 19, 1893. Brown, p. 1315; Burbert,[1] pp. 358–359.

S. Benjamin, Brooklyn, N. Y., June 16, 1893. Brown, p. 1316.

A. & W. Diamond, New York city, June 19, 1893 and June 18, 1894. Brown, p. 1334; Arnold Diamond, pp. 435, 436, 438, 439.

M. H. Rieders, New York city, June 19, 1893 and June 18, 1894. Brown, p. 1364; Rieders, pp. 383–385, 387, 388.

[1] Thus in original.—Ed.

B. Berschatsky, Brooklyn, N. Y., June 19, 1893 and June 18, 1894. Brown, p. 1312; Berschatsky, pp. 444, 445, 448.

I. Jackson, New York city, June 20, 1893 and July 20, 1893. Brown, p. 1339.

EXHIBIT 8

DR. MILES MEDICAL COMPANY *v.* JOHN D. PARK & SONS COMPANY [1]

The complainant Dr. Miles Medical Company, an Indiana corporation, is engaged in the manufacture and sale of proprietary medicines, prepared by means of secret methods and formulas and identified by distinctive packages, labels and trade-marks. It has established an extensive trade throughout the United States and in certain foreign countries. It has been its practice to sell its medicines to jobbers and wholesale druggists who in turn sell to retail druggists for sale to the consumer. In the case of each remedy, it has fixed not only the price of its own sales to jobbers and wholesale dealers, but also the wholesale and retail prices. The bill alleged that most of its sales were made through retail druggists and that the demand for its remedies largely depended upon their good will and commendation, and their ability to realize a fair profit; that certain retail establishments, particularly those known as department stores, had inaugurated a "cut-rate" or "cut-price" system which had caused "much confusion, trouble and damage" to the complainant's business and "injuriously affected the reputation" and "depleted the sales" of its remedies; that this injury resulted "from the fact that the majority of retail druggists as a rule cannot, or believe that they cannot realize sufficient profits" by the sale of the medicines "at the cut-prices announced by the cut-rate and department stores", and therefore are "unwilling to, and do not keep" the medicines "in stock" or "if kept in stock", do not urge or favor sales thereof, but endeavor to foist off some similar remedy or substitute, and from the fact that in the public mind an article advertised or announced at 'cut' or 'reduced' price from the established price suffers loss of reputation and becomes of inferior value and demand."

It was further alleged that for the purpose of protecting "its trade sales and business" and of conserving "its good will and repu-

[1] 220 U. S. 373.

tation" the complainant had established a method "of governing, regulating and controlling the sale and marketing "of its remedies, which is thus described in the bill:

"Contracts in writing were required to be executed by all jobbers and wholesale druggists to whom your orator sold its aforesaid remedies, medicines and cures, of the following tenor and effect:

"*Consignment Contract—Wholesale.*
"The Dr. Miles Medical Company.

"This agreement made by and between the Dr. Miles Medical Company, a corporation, of Elkhart, Indiana, hereafter referred to as the Proprietor, and————hereinafter referred to as the Consignee, Witnesseth:

"That the said Proprietor hereby appoints said Consignee one of its Wholesale Distributing Agents, and agrees to consign to such Consignee for sale for the account of said Proprietor such goods of its manufacture as the Proprietor may deem necessary, the title thereto and property therein to be and remain in the Proprietor absolutely until sold under and in accordance with the provisions hereof, and all unsold goods to be immediately returned to said Proprietor on demand and the cancellation of this agreement. Said goods to be invoiced to consignee at the following prices:

"Medicines, of which the retail price is $1.00; $8.00 per dozen.

"Medicines (if any) of which the retail price is 50 cents; $4.00 per dozen.

"Medicines, of which the retail price is 25 cents: $2.00 per dozen.

"Freight on all orders, the invoice price of which amounts to $100.00 or more, to be prepaid by the Proprietor; otherwise, freight to be paid by Consignee.

"Said Consignee agrees to confine the sale of all goods and products of the said Proprietor strictly to and to sell only to the designated Retail Agents of said Proprietor as specified in lists of such Retail Agents furnished by said Proprietor and alterable at the will of said Proprietor, and to faithfully and promptly account and pay to the Proprietor the proceeds of all sales, after deducting as full compensation for all services, charges and disbursements a commission of ten per cent of the invoice value, and a further commission of five per cent on the net amount of each consignment, after deducting the said ten per cent commission, on all advances on account remitted within ten days from date of any consignment, it being agreed between the parties hereto that such advances shall

in no manner affect the title to such goods, which title shall remain in the Proprietor as if no such advances has been made; provided that such advances shall be repaid to said Consignee should the said Proprietor terminate this agreement and the return of any unsold goods on which advances have been made. Said Consignee guarantees the payment for all goods sold under this agreement and agrees to render a full account and remit the net proceeds on the first day of each month of and for the sales of the month preceding. Failure to make such accounting and remittance within ten days from the first of each month shall render the whole account payable and subject to draft, but the proceeds of such draft shall not affect the title of any unsold goods, which shall remain in the Proprietor until actually sold, as herein provided.

"It is further agreed that the Consignee shall furnish the Proprietor from time to time upon demand full statements of the stock of goods of the Proprietor on hand on any date specified and that a failure to furnish such statements within ten days from date of such demand shall be a sufficient cause for the cancellation of this agreement, and a demand for the return of the consigned goods.

"It is further agreed that the Proprietor will cause each retail package of its goods to be identified by a number and said Consignee hereby agrees to furnish the said Proprietor full reports upon proper cards or blanks furnished by said Proprietor of the disposition of each dozen or fraction of such goods by means of the identifying numbers, specifying the names and addresses of the Retail Agents to whom such goods have been delivered and the dates of such delivery, and to send such reports to said Proprietor at least semi-monthly, and at any other time on the request of said Proprietor.

"It is understood and agreed between the parties hereto that the commissions herein specified shall not be considered as earned by said Consignee upon any goods of said Proprietor which shall have been delivered to dealers not authorized agents of said Proprietor, as per list of such agents, or upon any goods whose disposition by said Consignee shall not have been properly reported as herein provided, or sold at prices less than the prices authorized, and that said Consignee shall not credit any such commissions when making remittances on consignment account provided notice has been given by said Proprietor that such commissions are unearned; and that if such unearned commissions have been deducted by said Consignee in making advance payments or monthly remittances on account they shall be charged back to said Consignee and credited

and paid to said Proprietor. It is understood that violation or nonobservance of any provision hereof by the Consignee shall make this agreement terminable and all unsold goods returnable at the option of the Proprietor.

"It is agreed that the goods of said Proprietor shall be sold by said Consignee only to the said Retail or Wholesale Agents of said Proprietor, as per list furnished, at not less than the following prices, to-wit:

"Medicines, of which the retail price is $1.00; $8.00 per dozen

"Medicines (if any) of which the retail price is 50 cents; $4.00 per dozen.

"Medicines, of which the retail price is 25 cents; $2.00 per dozen.

"Provided, that said Consignee may allow a cash discount not exceeding one per cent, if paid within ten days from date of invoice, and that when sales at one time and at one invoice, amount to $15.00 or more, the said Consignee may allow three per cent trade discount, and if said purchase amounts to $50.00 or more, five per cent trade discount, all without cost to the Proprietor, and if such $50.00 quantity shall be shipped direct to the retail purchaser from the laboratory of said Proprietor, on the order from said Wholesale Distributing Agent, freight will be prepaid by the Proprietor, but not otherwise.

"This contract will take effect when the original, duly signed by the Consignee, has been received and accepted by The Dr. Miles Medical Company, at Elkhart, Indiana.

"Done under our hands————————, A. D. 1907.

"Fill in date on above line.

"THE DR. MILES MEDICAL COMPANY.

"————————, Wholesale Dealer.

"Sign your name on above line.

"Original. Return in Enclosed Envelope."

"And written contracts were required with all retailers of your orator's said proprietary remedies, medicines and cures, as follows:

"*Retail Agency Contract.*

"The Dr. Miles Medical Company.

"This agreement between The Dr. Miles Medical Company of Elkhart, Indiana, and————————, of————————

"Retailer's Name on above line. Town. State.

"hereinafter referred to as Retail Agent, witnesseth:

"*Appointed Agent.*

"The said Dr. Miles Medical Company hereby appoints said Retail Dealer as one of the retail distributing agents of its Proprietary Medicines and agrees that said Retail Agent may purchase the Proprietary Medicines manufactured by said Dr. Miles Medical Company (each retail package of which the said Company will cause to be identified by a number) at the following prices, to wit:

"*Wholesale Prices.*

"Medicines, of which the retail price is $1.00; $8.00 per dozen.
"Medicines, of which the retail price is 50 cents; $4.00 per dozen.
"Medicines, of which the retail price is 25 cents; $2.00 per dozen.

"*Quantity Discount.*

"Provided that when purchases at one time and on one invoice amount to $15.00 (or more), Wholesale Distributing Agents are authorized to allow 3 per cent trade discount; if such purchase amounts to $50.00 (or more) 5 per cent trade discount will be allowed, and if such $50.00 quantity be shipped direct to the purchaser from the laboratory of said Dr. Miles Medical Company for the account of such Wholesale Agent, freight will be prepaid, but not otherwise.

"*Full Price.*

"In consideration whereof said Retail Agent agrees in no case to sell or furnish the said Proprietary Medicines to any person, firm or corporation whatsoever, at less than the full retail price as printed on the packages, without reduction for quantity; and said Retail Agent further agrees not to sell the said Proprietary Medicines at any price to Wholesale or Retail dealers not accredited agents of the Dr. Miles Medical Company.

"*Violation.*

"It is further agreed between the parties hereto that the giving of any article of value, or the making of any concession by means of trading stamps, cash register coupons, or otherwise, for the purpose of reducing the price above agreed upon shall be considered a violation of this agreement, and further it is agreed between the parties hereto that Dr. Miles Medical Company will sustain dam-

age in the sum of twenty-five dollars ($25.00) for each violation of any provision of this agreement, it being otherwise impossible to fix the measure of damage.

"This contract will take effect when a duplicate thereof, duly signed by the Retail Agent, has been received and approved by The Dr. Miles Company, at its office at Elkhart, Indiana.

"Done under our hands————————, A. D. 1907.

"Fill in date on above line.

"THE DR. MILES MEDICAL COMPANY,

"————————, Retail Dealer.

"Sign your name on above line in ink.

"To Retail Dealer;

"Paste printed label, giving name and address, that your name may be correctly listed.

"Duplicate. Keep for reference."

As an aid to the maintenance of the prices thus fixed the company devised a system for tracing and identifying, through serial numbers and cards, each wholesale and retail package of its products.

It was alleged that all wholesale and retail druggists, "and all dealers in proprietary medicines," had been given full opportunity, without discrimination, to sign contracts in the form stated, and that such contracts were in force between the complainant "and over four hundred jobbers and wholesalers and twenty-five thousand retail dealers in proprietary medicines in the United States."

The defendant is a Kentucky corporation conducting a wholesale drug business. The bill alleged that the defendant had formerly dealt with the complainant and had full knowledge of all the facts relating to the trade in its medicines; that it had been requested, and refused, to enter into the wholesale contract required by the complainant; that in the city of Cincinnati, Ohio, where the defendant conducted a wholesale drug store, there were a large number of wholesale and retail druggists who had made contracts, of the sort described, with the complainant, and kept its medicines on sale pursuant to the agreed terms and conditions. It was charged that the defendant, "in combination and conspiracy with a number of wholesale and retail dealers in drugs and proprietary medicines, who have not entered into said wholesale and retail contracts" required by the complainant's system and solely for the purpose of selling the remedies to dealers "to be advertised, sold and marketed at cut-rates," and "to thus attract and secure custom and patronage for other merchandise, and not for the purpose of making or re-

ceiving a direct money profit" from the sales of the remedies, had unlawfully and fraudulently procured them from the complainant's "wholesale and retail agents" by means "of false and fraudulent representations and statements, and by surreptitious and dishonest methods, and by persuading and inducing, directly and indirectly," a violation of their contracts.

It is further charged that the defendant, having procured the remedies in this manner, had advertised and sold them at less than the jobbing and retail prices established by the complainant; and that for the purpose of concealing the source of supply the identifying serial numbers, which had been stamped upon the labels and cartons, had been obliterated by the defendant or by those acting in collusion with the defendant, and the labels and cartons had been mutilated thus rendering the list of ailments and directions for use illegible, and that the remedies in this condition were sold both to the wholesale and retail dealers and ultimately to buyers for use at cut rates.

. . . . . .

MR. JUSTICE HUGHES, after making the above statement, delivered the opinion of the court.

The complainant, a manufacturer of proprietary medicines which are prepared in accordance with secret formulas, presents by its bill a system, carefully devised, by which it seeks to maintain certain prices fixed by it for all the sales of its products both at wholesale and retail. Its purpose is to establish minimum prices at which sales shall be made by its vendees and by all subsequent purchasers who traffic in its remedies. Its plan is thus to govern directly the entire trade in the medicines it manufactures, embracing interstate commerce as well as commerce within the States respectively. To accomplish this result it has adopted two forms of restrictive agreements limiting trade in the articles to those who become parties to one or the other. The one sort of contract known as "*Consignment Contract—Wholesale*," has been made with over four hundred jobbers and wholesale dealers, and the other, described as "*Retail Agency Contract*," with twenty-five thousand retail dealers in the United States.

The defendant is a wholesale drug concern which has refused to enter into the required contract, and is charged with procuring medicines for sale at "cut prices" by inducing those who have made the contracts to violate the restrictions. The complainant invokes

the established doctrine that an actionable wrong is committed by one who maliciously interferes with a contract between two parties and induces one of them to break that contract to the injury of the other and that, in the absence of an adequate remedy at law, equitable relief will be granted. *Angle v. Chicago, St. Paul, Minneapolis & Omaha Railway Co.*, 151 U. S. 1; *Bitterman v. Louisville & Nashville Railroad*, 207 U. S. 205.

The principal question is as to the validity of the restrictive agreements.

Preliminarily there are opposing contentions as to the construction of the agreements, or at least of that made with jobbers and wholesale dealers. The complainant insists that the "consignment contract" contemplates a true consignment for sale for account of the complainant, and that those who make sales under it are the complainant's agents and not its vendees. . . .

There are certain allegations in the bill which do not accord with the complainant's argument. Thus it is alleged that it "has been and is the uniform custom" of the complainant "to sell said medicines, remedies and cures to jobbers and wholesale druggists, who in turn sell and dispose of the same to retail druggists for sale and distribution to the ultimate purchaser or consumer." And in setting forth the form of the agreement in question it is alleged that it was "required to be executed by all jobbers and wholesale druggists to whom your orator sold its aforesaid remedies, medicines and cures." . . . .

. . . . . .

The other form of contract, adopted by the complainant, while described as a "retail agency contract," is clearly an agreement looking to sale and not to agency. The so-called "retail agents" are not agents at all, either of the complainant or of its consignees, but are contemplated purchasers who buy to sell again, that is, retail dealers. It is agreed that they may purchase the medicines manufactured by the complainant at stated prices. . . . .

. . . . . .

It will be noticed that the "retail agents" are not forbidden to sell either to wholesale or retail dealers if these are "accredited agents" of the complainant, that is if the dealers have signed either of the two contracts the complainant requires. But the restriction is intended to apply whether the retail dealers have bought the

goods from those who held under consignment or from other dealers, wholesale or retail, who had purchased them. And in which way the "retail agents" who supplied the medicines to the defendant, had bought them is not shown.

The bill asserts complainant's "right to maintain and preserve the aforesaid system and method of contracts and sales adopted and established by it." It is, as we have seen, a system of interlocking restrictions by which the complainant seeks to control not merely the prices at which its agents may sell its products, but the prices for all sales by all dealers at wholesale or retail, whether purchasers or subpurchasers, and thus to fix the amount which the consumer shall pay, eliminating all competition. . . . .

. . . . . .

But it is insisted that the restrictions are not invalid either at common law or under the act of Congress of July 2, 1890, c. 647, 26 Stat. 209, upon the following grounds, which may be taken to embrace the fundamental contentions for the complainant: (1) That the restrictions are valid because they relate to proprietary medicines manufactured under a secret process; and (2) that, apart from this, a manufacturer is entitled to control the prices on all sales of his own products.

First: The first inquiry is whether there is any distinction, with respect to such restrictions as are here presented, between the case of an article manufactured by the owner of a secret process and that of one produced under ordinary conditions. The complainant urges an analogy to rights secured by letters patent. . . . .

But whatever rights the patentee may enjoy are derived from statutory grant under the authority conferred by the Constitution. This grant is based upon public considerations. The purpose of the patent law is to stimulate invention by protecting inventors for a fixed time in the advantages that may be derived from exclusive manufacture, use and sale. . . . .

The complainant has no statutory grant. So far as appears, there are no letters patent relating to the remedies in question. The complainant has not seen fit to make the disclosure required by the statute and thus to secure the privileges it confers. Its case lies outside the policy of the patent law, and the extent of the right which that law secures is not here involved or determined.

. . . . . .

Second. We come, then, to the second question, whether the complainant, irrespective of the secrecy of its process, is entitled to maintain the restrictions by virtue of the fact that they relate to products of its own manufacture.

The basis of the argument appears to be that, as the manufacturer may make and sell, or not, as he chooses, he may affix conditions as to the use of the article or as to the prices at which purchasers may dispose of it. The propriety of the restraint is sought to be derived from the liberty of the producer.

But because a manufacturer is not bound to make or sell, it does not follow that in case of sales actually made he may impose upon purchasers every sort of restriction. . . . .

Nor can the manufacturer by rule and notice, in the absence of contract or statutory right, even though the restriction be known to purchasers, fix prices for future sales. It has been held by this court that no such privilege exists under the copyright statutes, although the owner of the copyright has the sole right to vend copies of the copyrighted production. *Bobbs-Merrill Co. v. Straus*, 210 U. S. 339.

. . Whatever right the manufacturer may have to project his control beyond his own sales must depend, not upon an inherent power incident to production and original ownership, but upon agreement.

. . . . . .

The present case is not analogous to that of a sale of good will, or of an interest in a business, or of the grant of a right to use a process of manufacture. The complainant has not parted with any interest in its business or instrumentalities of production. It has conferred no right by virtue of which purchasers of its products may compete with it. It retains complete control over the business in which it is engaged, manufacturing what it pleases and fixing such prices for its own sales as it may desire. Nor are we dealing with a single transaction, conceivably unrelated to the public interest. The agreements are designed to maintain prices, after the complainant has parted with the title to the articles, and to prevent competition among those who trade in them.

. . . . . .

But agreements or combinations between dealers, having for their sole purpose the destruction of competition and the fixing of prices, are injurious to the public interest and void. They are not

saved by the advantages which the participants expect to derive from the enhanced price to the consumer. . . . .

The complainant's plan falls within the principle which condemns contracts of this class. It, in effect, creates a combination for the prohibited purposes. No distinction can properly be made by reason of the particular character of the commodity in question. It is not entitled to special privilege or immunity. It is an article of commerce and the rules concerning the freedom of trade must be held to apply to it. Nor does the fact that the margin of freedom is reduced by the control of production make the protection of what remains, in such a case, a negligible matter. And where commodities have passed into the channels of trade and are owned by dealers, the validity of agreements to prevent competition and to maintain prices is not to be determined by the circumstance whether they were produced by several manufacturers or by one, or whether they were previously owned by one or by many. The complainant having sold its product at prices satisfactory to itself, the public is entitled to whatever advantage may be derived from competition in the subsequent traffic.

CHAPTER VIII

INTERNATIONAL AGREEMENTS

NOTE

COMPARATIVELY speaking, international agreements have been rare in the combination and trust movement. On this account, if for no other reason, those that have been made are of peculiar interest.

It is a rather remarkable coincidence that the two most famous international agreements should have been brought into being by identical sets of circumstances. In the case of the tobacco combination, the American manufacturers invaded the territory across the water. In the case of the explosives trade, the situation was exactly the reverse, and the foreign companies were the aggressors. In each case, the outcome was the adoption of an international agreement, drafts of which are given below.

In the nineties the American Tobacco Company established a depot in London, England. In 1901, this company with a view to purchase, opened negotiations with Ogden's (Limited), one of the largest tobacco concerns in Great Britain. By the end of September of that year substantially all the outstanding stock of Ogden's had been acquired. This purchase alarmed the British Manufacturers, and thirteen of the largest concerns in England united to form the Imperial Tobacco Company. This organization began an active campaign to check the invasion inaugurated by the American Tobacco Company, and threatened, as a part of their program, to invade the territory on our side of the Atlantic. The upshot of the matter was an agreement, embodied in two documents, which was made on September 27, 1902.

In 1897, certain foreign manufacturers of black powder, detonators and high explosives, began the erection of factories in Jamesburg, N. J. intending to enter into competition with the explosives combination which at that time existed in the United States. Representatives of the latter visited Europe, toward the close of 1897, and began negotiations with the foreign manufacturers who

had begun factories in the United States. A draft of an agreement embodying the result of these negotiations was ratified by the American Companies. This agreement has been variously styled the London Agreement, Jamesburg Agreement, International Agreement, and European Agreement. It was dated October 26, 1907, and is probably the most interesting single document among the many which the industrial combination and trust movement has produced. Another international agreement that has only recently come to light is the A. J. A. G. Agreement in the aluminum trade, excerpts from which form the fourth exhibit of this chapter.—Ed.

EXHIBIT 1

AGREEMENT OF THE AMERICAN TOBACCO COMPANY INTERESTS AND THE IMPERIAL TOBACCO COMPANY, LIMITED, RELATIVE TO THE LIMITATION OF THE SPHERE OF THE OPERATION OF EACH, AND THE TRANSFER OF OGDEN'S LIMITED [1]

An agreement made the twenty-seventh day of September, one thousand nine hundred and two, between Ogden's Limited, being a company duly incorporated under English law (hereinafter referred to as the "Ogden Company"), of the first part; The American Tobacco Company, a corporation organized and existing under and by virtue of the laws of the State of New Jersey, one of the States of the United States, of America (hereinafter referred to as the "American Company"), of the second part; Continental Tobacco Company, a corporation organized and existing under and by virtue of the laws of the said State of New Jersey (hereinafter referred to as the "Continental Company"), of the third part; American Cigar Company, a corporation organized and existing under and by virtue of the laws of the said state of New Jersey (hereinafter referred to as the "Cigar Company"), of the fourth part; Consolidated Tobacco Company, a corporation organized and existing under and by virtue of the said laws of the said State of New Jersey (hereinafter referred to as the "Consolidated Company"), of the fifth part; British Tobacco Company, Limited, being a company incorporated under English law (hereinafter referred to as the "British Company"), of the sixth part; and the Imperial Tobacco Company (of Great Britain and Ireland), Lim-

[1] Report of the Commissioner of Corporations on the Tobacco Industry, Exhibit No. 1, Part I, pp. 431 ff.

ited, a corporation incorporated under English law (hereinafter referred to as the "Imperial Company"), of the seventh part.

. . . . . .

14. Each of the parties hereto of the first six parts for itself and not the one for any others agrees and shall covenant with the Imperial Company that the covenanting party will not at any time after the transfer day, except as hereinafter expressly excepted, either solely or jointly with any other person or persons, company or companies, directly or indirectly carry on or be employed, engaged, or concerned, or interested in the business in the United Kingdom of a tobacco manufacturer, or in any dealing in tobacco or its products therein, or sanction the use of its name in connection with any such business therein, save so far as the covenanting company, shall, as a member of the Imperial Company or as a member of any company manufacturing cigars in the United States or of any other companies formed or to be formed with the concurrence of the Imperial Company, be interested in the business thereof, or through, or in connection with the Imperial Company, as hereinafter provided. The said covenanting parties will procure the following directors or some or one of them, namely, James Buchanan Duke, Benjamin Newton Duke, Thomas Fortune Ryan, John Blackwell Cobb, Williamson Whitehead Fuller, William Rees Harris, Percival Smith Hill, and Caleb Cushing Dula, and will, respectively, use their best endeavors to procure such other directors as shall be required by the Imperial Company to enter into a covenant with the Imperial Company similar to that referred to in the preceding part of this clause.

15. The Imperial Company similarly agrees and shall covenant with the American Company, the Continental Company, the Cigar Company, and the Consolidated Company, that the Imperial Company will not at any time after the transfer day, except as hereinafter expressly excepted, either solely or jointly, with any other person or persons, company or companies, directly or indirectly, carry on or be employed, engaged, concerned, or interested in the business in the United States of a tobacco manufacturer or in any dealing in tobacco or its products therein, or sanction the use of its name in connection with any such business therein save as far as the Imperial Company shall, as a member of any other company formed or to be formed with the concurrence of the American Company, the Continental Company, the Cigar Company, or

the Consolidated Company, be interested in the business thereof, and save and except that the Imperial Company shall be at liberty to buy and treat tobacco leaf and other materials in the United States for the purpose of its business, and save and except such business as shall be carried on through or in connection with the American Company, the Continental Company, the Cigar Company, or the Consolidated Company as hereinafter provided, the Imperial Company will procure the following of its directors, viz., Sir William Henry Wills, Henry Overton Wills, Sir Edward Payson Wills, Sir Frederick Wills, George Alfred Wills, Henry Herbert Wills, Walter Melville Wills, Charles Edward Lambert, John Dane Player, Walter Butler, William Goodacre Player, and William Ruddell Clarke, and will use its best endeavors to procure such other of its directors as shall be required by the American Company, the Continental Company, the Cigar Company, and the Consolidated Company to enter into a covenant similar to that referred to in the preceding part of this clause.

16. Forthwith, or as soon as may be after the transfer day, the Imperial Company shall duly appoint to its board three (3) directors, nominated by the Ogden Company, subject to their acquiring the necessary qualifications, and the directors so appointed shall be reelected at the next ordinary general meeting and shall be classified so that only a due proportion of them shall retire in each year.

17. The export business of the Ogden Company hereinbefore excluded from the operation of this contract is to be the subject of an agreement entered into contemporaneously with this agreement, and providing for the transfer to a separate company of the export business from the United Kingdom (except to the United States) not only of the Ogdens Company, but also of the Imperial Company and of Salmon & Gluckstein, Limited, and the export business from the United States of the American Company, the Continental Company, and the Cigar Company (except to the United Kingdom), which agreement has been already prepared and is executed contemporaneously with this agreement. For the purpose of construing this agreement the export business of the said several companies shall be deemed to be herein defined in the same manner as in the said contemporaneous agreement. The "United Kingdom" and the "United States" are also, respectively, to be deemed to be defined as defined in the same agreement.

18. From and after the date of transfer, subject to agreements already existing between the Imperial Company and its present

agents, neither the Imperial Company nor Salmon & Gluckstein, Limited, shall sell or consign any tobacco products to any person, firm, or company within the United States except the American Company, or persons or companies designated by it, and on the other hand the American Company, the Continental Company, and the Cigar Company, and the Consolidated Company, respectively, shall not sell or consign any tobacco products to any person, firm, or company in the United Kingdom except the Imperial Company, or any persons or companies designated by it, the intention being that the American Company or its nominees shall be the sole customer of the Imperial Company and of Salmon & Gluckstein, Limited, in the United States, and that the Imperial Company or its nominees shall be the sole customer of the American Company, the Continental Company, and the Cigar Company in the United Kingdom. None of the parties shall sell any tobacco products to any person, firm, or company whom they have reason to believe will export the same to the territory in which the seller has agreed not to sell such goods as herein provided.

19. For American goods sold to the Imperial Company or its nominees for sale in the United Kingdom in pursuance of the preceding clause the Imperial Company shall pay the cost of manufacture and packing of such goods (but not including any expenses of advertising and selling) plus ten per cent (10 per cent), and shall also pay freights, customs charges and duties, and for goods of the Imperial Company and of Salmon & Gluckstein, Limited, sold by them to the American Company, the Continental Company, or the Cigar Company, for sale within the United States, the American Company, the Continental Company, or the Cigar Company, as the case may be, shall pay the cost of the manufacture and packing thereof (but not including any expenses of advertising or selling) plus ten per cent (10 per cent), and shall also pay freights, customs charges, and duties. In all cases of sales under this clause the invoices of the respective vendors shall be final and binding as to cost. The Imperial Company shall be empowered by the American Company and the Continental Company to manufacture their brands within the United Kingdom for sale therein, and the American Company, the Continental Company, and the Cigar Company shall be empowered to manufacture the brands of the Imperial Company in the United States for sale therein, and each party shall manufacture the brands of the other party upon recipes and formulæ to be supplied by the other.

20. As early as practicable and subject to existing contracts and obligations of the companies manufacturing and selling the cigars and cigarettes hereinafter referred to, the American Company, the Continental Company, and the Cigar Company will appoint or procure the appointment of the Imperial Company sole agent for the sale within the United Kingdom of Havana and Porto Rico cigars and Havana and Porto Rico cigarettes directly or indirectly controlled by the American Company, the Continental Company, and the Cigar Company, and such agency shall be upon the terms of the Imperial Company receiving a net commission of seven and one-half per cent (7-½ per cent) upon the Havana and Porto Rico prices, respectively, and being allowed three months' credit for payment of the invoice prices less such 7-½ per cent and the Havana and Porto Rico prices charged the Imperial Company shall, from time to time and at all times, be as low as the prices charged by the American Company, the Continental Company, and the Cigar Company, or parties controlled by them, for similar cigars and cigarettes sold to their most-favored customers, subject only to the exception that if at any time the prices of cigars or cigarettes sold to any country not affecting British trade shall be temporarily reduced for the purposes of competition, such local and temporary reduction is not to be taken into account for the purpose of fixing the price of cigars and cigarettes sold to the Imperial Company. If and so far as the control of any other cigar trade not hereinbefore provided for is now possessed or shall be acquired by the American Company, the Continental Company, and the Cigar Company, or any of them, a similar agency is to be given to the Imperial Company in respect thereof. The Imperial Company shall not (except to complete any other contract already made) handle or sell any other Havana or Porto Rico cigars and cigarettes than those of the American Company, the Continental Company, and the Cigar Company, for which the Imperial Company holds the aforesaid agency, and a similar provision shall apply to any other cigars or cigarettes for which the aforesaid agency may be hereafter granted, and the Imperial Company shall use its best efforts and endeavors to promote and enlarge the sales of all such cigars and cigarettes within the United Kingdom, and provided the Imperial Company maintains a sale of the Havana cigars or cigarettes included in the agency hereinbefore provided for equal to not less than seventy-two per cent (72 per cent) of the total annual importations into the United Kingdom, duty paid, of cigars and cigarettes made in

Cuba, the American Company, and the Cigar Company, and the Continental Company shall not be entitled to call in question the efforts and endeavors of the Imperial Company hereinbefore required: *Provided always*, That the percentage to be maintained by the Imperial Company shall be ascertained upon the average of three years. The Imperial Company shall sell the cigars and cigarettes from time to time falling within the said agency at prices not exceeding their cost to the Imperial Company with the addition of freights, railway charges, packages, customs duties, and custom charges, and the said commission of 7-½ per cent. The American Company, the Continental Company, and the Cigar Company will not knowingly supply cigars or cigarettes to be transshipped or indirectly imported into the United Kingdom. The aforesaid proportion of 72 per cent has been based upon the belief and assumption that the parties hereto of the second, third, fourth, and fifth parts or some or one of them control or will shortly control not less than 80 per cent of the aforesaid annual importation, and if it shall hereafter appear that the proportion thereof actually controlled by the said parties is less than 80 per cent, then in such case the said proportion of 72 per cent shall be correspondingly reduced.

21. The Imperial Company shall cause Salmon & Gluckstein, Limited, and A. I. Jones & Company, Limited, and any other companies, firms, or persons from time to time controlled by it (subject to the performance of any prior contracts), to purchase their cigars of any brands comprised in the said agency through the Imperial Company as agent under the last preceding clause.

22. The American Company, the Continental Company, the Cigar Company, and the Consolidated Company, together with their directors, entering into the covenant aforesaid, are to give to the Imperial Company in the United Kingdom the full benefit of their good will and support, and on the other hand the Imperial Company, together with its directors, entering the covenant aforesaid, are to give the American Company, the Continental Company, and the Cigar Company in the United States the full benefit of their good will and support, and with a view to giving further effect to the intention of the parties as in this clause hereinbefore expressed the allottees of the said 1,500,000 ordinary shares of the Imperial Company are not to sell or transfer more than 10 per cent of the said shares within the period of five (5) years from the date of their allotment, if and so long as the present directors of

the Imperial Company, or some of them, shall hold not less than 3,000,000 ordinary shares of the Imperial Company.

23. This agreement is to be construed and take effect as a contract made in England and in accordance with the law of England, but to the intent that any of the parties may sue in its own country. The Imperial Company is always to have an agent for service in the United States, and each of them, the American Company, the Continental Company, the Cigar Company, and the Consolidated Company, is always to have an agent for service in England, and service of any such agent of any notice, summons, order, judgment, or other process or document in respect of this agreement, or any matter arising thereout, shall be deemed to be good service on the party appointing such agent, and as regards each of the said parties whilst and whenever there is no other agent the following shall be considered to be the agents of the respective parties duly appointed under this clause, namely: For the Imperial Company, Samuel Untermeyer, of New York City, American counsel; and for the American Company, the Continental Company, the Cigar Company, and the Consolidated Company, Joseph Hood, 41 Castle street, Liverpool, solicitor. Notice of any appointment under this clause shall be from time to time given by the appointor to the other parties hereto. The mode of service sanctioned by this clause is not in any way to prejudice or preclude any mode of service which would be allowable if this clause were omitted.

24. So far as it is necessary for the purpose of making the issue of ordinary shares hereinbefore mentioned the Imperial Company shall forthwith take the necessary steps for increasing its capital by the creation of an adequate number of ordinary shares (half preferred and half deferred) which shall rank *pari passu* with and shall be of the same respective classes and confer the same rights and privileges as the 5,000,000 preferred ordinary shares, and the 5,000,000 deferred ordinary shares forming part of the original capital of the Imperial Company.

In witness whereof the said parties of the first, second, sixth, and seventh parts have hereunto affixed their common seals, and the said parties of the third, fourth, and fifth parts have executed this agreement under the hand of their respective presidents the day and year first above written.

(Signatures).

EXHIBIT 2

AGREEMENT MADE BETWEEN THE AMERICAN TOBACCO COMPANY INTERESTS AND THE IMPERIAL TOBACCO COMPANY, LIMITED, RELATIVE TO THE CONTROL OF BUSINESS BY THE BRITISH-AMERICAN TOBACCO COMPANY, LIMITED [1]

An agreement made the twenty-seventh day of September, one thousand nine hundred and two, between The Imperial Tobacco Company (of Great Britain and Ireland), Limited, being an English company duly incorporated under English law (hereinafter referred to as the "Imperial Company"), of the first part; Ogden's Limited, also being a company incorporated under English law (hereinafter referred to as the "Ogden Company"), of the second part; The American Tobacco Company, a corporation organized and existing under and by virtue of the laws of the State of New Jersey, one of the States of the United States of America (hereinafter referred to as the "American Company"), of the third part; Continental Tobacco Company, a corporation organized and existing under and by virtue of the laws of the said State of New Jersey (hereinafter referred to as the "Continental Company"), of the fourth part; American Cigar Company, a corporation organized and existing under and by virtue of the laws of the said State of New Jersey (hereinafter referred to as the "Cigar Company"), of the fifth part; Consolidated Tobacco Company, a corporation organized and existing under and by virtue of the laws of the said State of New Jersey (hereinafter referred to as the "Consolidated Company"), of the sixth part; and Williamson Whitehead Fuller and James Inskip, on behalf of a company intended to be formed under the companies' acts, 1862 to 1900, with the name of "British-American Tobacco Company, Limited" (hereinafter referred to as the "British-American Company"), of the seventh part.

Whereas the parties hereto of the first five parts now respectively carry on business as tobacco manufacturers and other ancillary businesses, which comprise as to the parties hereto of the first and second parts, businesses carried on within the United Kingdom of Great Britain and Ireland and export businesses as hereinafter defined, and as to the parties hereto of the third, fourth,

[1] Report of the Commissioner of Corporations on the Tobacco Industry, Exhibit No. 2, Part 1, pp. 440 ff.

and fifth parts, businesses carried on within the United States of America, and export businesses as also hereinafter defined, and proposals have been made for amalgamating the said export businesses by transfer thereof to the British-American Company upon the terms and conditions hereinafter expressed.

Now therefore it is hereby agreed as follows:

1. In this agreement the words "United Kingdom" mean Great Britain and Ireland and the Isle of Man.

The words "United States" mean the United States of America as now constituted—Cuba, Porto Rico, the Hawaiian Islands, and the Philippine Islands.

The words "export business" mean the manufacture of and dealing in tobacco and its products in any country or place outside the United Kingdom and the United States and the manufacture of and dealing in tobacco and its products within the United Kingdom for export to any other country except the United States, and the manufacture of and dealing in tobacco and its products in the United States (except in Cuba, Porto Rico, the Hawaiian Islands, and the Philippine Islands) for the purpose of export to any other country except the United Kingdom, and the manufacture and selling in the United Kingdom and the United States, respectively, of tobacco to be supplied to ships in port for the purpose of ships' stores.

2. The parties hereto of the first five parts shall sell and the British-American Company shall purchase the export businesses as hereinbefore defined of the parties of the first five parts, and the good will appertaining thereto, which shall include formulæ and recipes of preparation, treatment, and manufacture, as well as license to use patent rights, trade-marks, brands, licenses, and other exclusive rights and privileges for the purpose of such export business, and shall also include all stock or shares in companies incorporated in countries foreign to the United Kingdom and the United States owned or held by the parties of the first six parts, including all shares of the American Company in Georg A. Jasmatzi Company (of Dresden), and all shares of the Imperial Company in W. D. & H. O. Wills (Australia), Limited, at the price of two million eight hundred and twenty thousand pounds (£2,820,000), of which two equal third parts, or one million eight hundred and eighty thousand pounds (£1,880,000), shall be payable to the Ogden Company, the American Company, the Continental Company, the Cigar Company, and the Consolidated

Company, or some of them, in such proportions as they shall mutually agree and as shall be indicated in writing under the hands of their respective presidents or chairmen as the case may be, and one-third, or nine hundred and forty thousand pounds (£940,000), shall be payable to the Imperial Company, and the said prices shall be satisfied by the allotment to the parties entitled thereto of fully paid-up ordinary shares in the British-American Company to be treated as of par value. The said sale and purchase shall take effect as to the Ogden Company on the 30th September, 1902 (hereinafter referred to as "the Ogden transfer day"), and as to the parties hereto of the first, third, fourth, fifth, and sixth parts on the 31st October, 1902 (hereinafter referred to as "the Imperial and American transfer day").

3. In addition to the ordinary shares by the preceding paragraph agreed to be allotted in payment of the said purchase money, the Imperial Company shall take and pay cash for three hundred thousand (300,000) additional, one-pound ordinary shares, and the American Company, the Continental Company, the Cigar Company, and the Consolidated Company, or some or one of them, shall take and pay cash for six hundred thousand (600,000) additional one-pound ordinary shares in the British-American Company, Limited, and such shares shall be alloted to such parties at once.

4. The Imperial Company and the Ogden Company will, respectively, sell to the British-American Company their several lands, buildings, and hereditaments used as export factories, and the plant and equipment and stock in trade at the date of transfer forming a part of the said export businesses or undertakings, and the American Company, the Continental Company, and the Cigar Company will sell to the British-American Company factories for export business and the plant and equipment and stock in trade at the date of transfer forming a part of the said export businesses or undertakings. The factories of the said respective parties employed for export purposes shall, in the case of the Imperial Company, include the export factory of the Imperial Company formerly belonging to W. D. & H. O. Wills, Limited, at Ashton Gate, Bristol, and the land and cottages held therewith; the leasehold export factory formerly belonging to Messrs. Lambert & Butler, Limited, in London; and the two export factories formerly belonging to the Richmond Cavendish Company, Limited, at Liverpool; and the cigarette factory of the Imperial Company formerly belonging

to W. D. & H. O. Wills, Limited, at Sydney, in the Commonwealth of Australia. The export factories of the Ogden Company will include the bonded or export factory of the Ogden Company in Cornwallis street, Liverpool, and a factory at Sydney aforesaid. The export factories of the American Company, the Continental Company, and the Cigar Company will include such suitable factories as shall be designated by these companies, or some or one of them, so that the price thereof with their plant and equipment as hereinafter fixed shall not exceed the aggregate price of the factories, land, and cottages with their plant and equipment to be sold by the Imperial Company as before stated. All the said factories and the plant and equipment used in connection with the same are to be taken at the value now standing in the books of the respective vendors thereof, and the stock in trade and materials hereby agreed to be sold are to be taken at cost. The respective values shall be paid by the British-American Company to the respective vendors in cash. As part of the export business and good will to be sold by the Imperial Company to the British-American Company the export business of Salmon & Gluckstein, Limited, shall be included, and the Imperial Company hereby undertakes to procure the transfer of the same to the British-American Company, but this shall not be deemed to include any lands, buildings, or hereditaments. The said export business shall also include all the interest of the Imperial Company in a factory at Shanghai recently purchased by it and or in the American Cigarette Company of Shanghai.

5. The British-American Company shall be entitled to purchase at not exceeding cost thereof to its vendor any export business hereafter acquired by any of the parties hereto of the first six parts, as well as any shares in any companies incorporated in countries foreign to the United Kingdom and the United States acquired by any of said parties, and the export business and the assets employed in such business of any company the control of which shall be hereafter acquired by any of said parties, as well as any shares in companies engaged in export business which may be held by such controlled companies acquired by any of the parties of the first six parts as aforesaid.

6. The British-American Company shall have the right to use in its export business, as hereinbefore defined, any brands and trade-marks now owned or hereafter acquired or adopted by any of the parties hereto of the first six parts.

7. The sale and purchase of the said export business hereinbefore agreed to be made are subject to and with the benefit of all contracts heretofore made by the respective parties hereto of the first six parts, with their agents or other persons interested in the said businesses so far as such contracts are now in force, save and except that if the Imperial Company is under an obligation to buy the shares of G. F. Todman in W. D. & H. O. Wills (Australia), Limited, at any price not approved by the British-American Company, such obligation is not agreed to be undertaken by that company. The Japanese stockholders in Murai Bros. Company, Limited, shall have the right to take from the British-American Company on or before January 1, 1904, by paying par therefor, with interest thereon at the rate of six per cent per annum (less any dividends received) from the date of their purchase by the American Company until payment, all issued stock sold by the American Company to the British-American Company in excess of sixty per cent of the total capital stock of Murai Bros. Company, Limited.

8. The dividends or proportion of dividends upon shares hereby agreed to be sold and the profits of each export business hereby agreed to be sold shall, up to the respective transfer days, belong to the respective vendors of the same.

9. The parties of the first five parts shall, respectively, clear the lands, buildings, and hereditaments hereby agreed to be sold of all mortgages, charges, and other incumbrances, and shall be entitled to the proceeds of all book debts due to the said parties, respectively, on the respective transfer days, but for a period of three calendar months thereafter the British-American Company shall be authorized on behalf of these respective parties to collect and receive such book debts, and the proceeds shall be from time to time paid over to the parties entitled thereto at the end of every month.

10. The British-American Company shall undertake the observance and performance of all covenants and conditions on the part of the lessee or tenant in any lease of or agreement relating to the lands, buildings, and hereditaments hereby agreed to be sold, and thenceforth on the part of the lessee or tenant to be observed and performed, and the British-American Company shall also, as from the same date, undertake the performance of all contracts bona fide entered into by the parties of the first five parts in the ordinary course of carrying on their export business and

particularly applicable thereto, and shall indemnify the parties of the first five parts against all proceedings, claims, and demands in respect thereof.

11. All books of account of the parties of the first and second parts referring solely to the export businesses hereby agreed to be sold, and all books of reference to customers and other books and documents of the said parties relating solely to the said export businesses (except the statutory and minute books, and any other books of a private nature) shall be delivered to the British-American Company upon completion of the purchase, and the British-American Company shall thenceforth be entitled to the custody thereof and to the use thereof for the purpose of carrying on its business, but, nevertheless, the parties of the first and second parts shall have free access at all reasonable times to the said books and documents, or any of them, for any reasonable purpose, and to the temporary use of the same for the purpose of any legal proceedings. The parties of the third, fourth, and fifth parts shall deliver to the British-American Company a list of their respective customers for the export businesses hereby sold and any books used exclusively in connection with such business.

12. The British-American Company shall from the time of any property being at its risk be entitled to the benefit of all current insurances, and the parties of the first five parts shall be entitled to repayment of a proportionate part of the premiums already paid for the unexpired portion of the current year of any policy, and all periodical payments shall be apportioned as from the respective transfer days hereinbefore mentioned.

13. The purchases shall be completed on or before the 1st day of January, 1903, in London, and the consideration for the same shall be paid or satisfied subject to the provisions of this agreement and thereupon and from time to time the parties of the first five parts shall execute and do all such assurances and things for vesting the said premises in the British-American Company and giving to it the full benefit of this agreement as shall be reasonably required.

14. As regards any of the premises subject to mortgages which can not be paid off until after the time of completion, the parties of the first five parts shall, if so desired by the British-American Company, convey the said premises subject to the mortgages affecting the same, respectively, and the British-American Company shall retain out of the consideration aforesaid a sum sufficient to pay off and satisfy the claims under such mortgage.

15. In any and every case where any leaseholds hereby agreed to be sold, are only assignable with the consent of the landlords from whom the same respectively are held, the parties of the first five parts, or such of them as hold such leaseholds, shall use their best endeavors to obtain the requisite consent for the assignment to the British-American Company, and in any case where such consent can not be conveniently obtained the parties of the first five parts or such of them as hold such leaseholds as aforesaid shall execute a declaration of trust in favor of the British-American Company, or otherwise deal with the same as the British-American Company shall direct.

16. The possession of the property hereby agreed to be sold by the Ogden Company shall be delivered to the British-American Company on the Ogden transfer day, and the possession of the properties hereby agreed to be sold by the parties hereto of the first, third, fourth, and fifth parts shall, subject as hereinafter mentioned, be delivered to the British-American Company on the Imperial and American transfer day, but if the said parties of the third, fourth, and fifth parts shall not be able to deliver possession on the last-mentioned transfer day, the said parties shall from such day until delivery of possession carry on and conduct their export business for the benefit of the British-American Company, and shall account to that company for all the profits arising therefrom, but the British-American Company shall pay interest at the rate of five per cent per annum on the purchase money from the transfer day until actual payment.

17. For the purposes of title of the lands, buildings, and hereditaments hereby agreed to be sold by the parties of the first and second parts, they shall, respectively, be deemed and taken to have entered into this contract with the British-American Company subject to the terms and stipulations of the Liverpool public sale conditions so far as the same shall be applicable to a sale by private treaty.

18. Each of the parties hereto of the first six parts hereby agrees and shall covenant with the British-American Company that the said covenanting party will not at any time after its transfer day, either solely or jointly with any other person, company, or firm, directly or indirectly, carry on or be employed, engaged, or concerned or interested in export business as defined in this agreement, except as it may be interested as a member of the British-American Company or of a company formed or to be formed with the concurrence of the British-American Company, and also except

so far as the parties of the third, fourth, fifth, and sixth parts may be interested as members of companies or firms engaged in exporting cigars and cigarettes from Cuba, Porto Rico, the Hawaiian Islands, and or the Philippine Islands, and the British American Company hereby agrees and shall covenant with each of the parties hereto of the first six parts that the British-American Company will not at any time hereafter, either solely or jointly with any other person, firm, or company, directly or indirectly, carry on or be employed, engaged, concerned, or interested in the business of a tobacco manufacturer or in any dealing in tobacco or its products except in the manner and within the limits contemplated and authorized by this agreement.

19. The British-American Company will, if and so long as thereunto required by the Imperial Company, manufacture in the United Kingdom such brands as the Imperial Company shall require for sale in the United Kingdom and for export to the United States, to be manufactured in bond, and the Imperial Company shall pay for tobacco manufactured pursuant to this clause the cost of manfacturing and packing, with an addition of 10 per cent upon such cost, and the Imperial Company shall also pay the duty.

20. This agreement is to be construed and take effect as a contract made in England and in accordance with the law of England; but to the intent that any of the parties may sue in its own country, the Imperial Company is always to have an agent for service in the United States, and each of them, the American Company, the Continental Company, the Cigar Company, and the Consolidated Company, is always to have an agent for service in England, and service on any such agent of any notice, summons, order, judgment, or other process or document in respect of this agreement, or any matter arising thereout, shall be deemed to be good service on the party appointing such agent; and as regards each of the said parties whilst and whenever there is no other agent the following shall be considered to be the agents of the respective parties duly appointed under this clause, namely: For the Imperial Company, Samuel Untermeyer, of New York City, American counsel, and for the American Company, the Continental Company, the Cigar Company, and the Consolidated Company, Joseph Hood, 41 Castle Street, Liverpool, solicitor. Notice of any appointment under this clause shall be from time to time given by the appointer to the other parties hereto. The mode of service sanctioned by this clause is not in any way to prejudice or preclude

any mode of service which would be allowable if this clause were omitted.

21. The validity of this agreement is not to be impeached on the ground that the vendors, as promoters or otherwise, stand in a fiduciary relationship to the British-American Company, and that the directors thereof being interested in the vendors' businesses do not constitute an independent board. Upon the adoption hereof by the British-American Company in such a manner as to render the same binding on that company in favour of the vendors, the said Williamson Whitehead Fuller and James Inskip shall be discharged from all liability hereunder.

22. The cost of and incidental to the formation and registration of the British-American Company shall be borne by that company.

In witness whereof the said parties of the first, second, and third parts have hereunto affixed their common seals, and the said parties of the fourth, fifth and sixth parts have executed this agreement under the hand of their respective presidents, and the parties of the seventh part have hereunto subscribed their names the day and year first before written.

(Signatures.)

EXHIBIT 3

INTERNATIONAL AGREEMENT IN THE EXPLOSIVES TRADE [1]

AGREEMENT made this 26th day of October, 1897, between:

Messrs. E. I. DU PONT DE NEMOURS & CO., of Wilmington, Del.;
LAFLIN AND RAND POWDER COMPANY, of New York City;
EASTERN DYNAMITE COMPANY, of Wilmington, Del.;
THE MIAMI POWDER COMPANY, of Xenia, Ohio;
THE AMERICAN POWDER MILLS, of Boston, Mass.;
THE AETNA POWDER COMPANY, of Chicago, Ill.;
THE AUSTIN POWDER COMPANY, of Cleveland, Ohio;
THE CALIFORNIA POWDER WORKS, of San Francisco, Cal.;
THE GIANT POWDER COMPANY, CONSOLIDATED, of San Francisco, Cal.;
THE JUDSON DYNAMITE AND POWDER COMPANY, of San Francisco, Cal.;

(hereinafter collectively referred to as "the American Factories") of the one part, and

[1] *United States of America* v. *E. I. du Pont de Nemours & Co.* Government's Exhibit No. 119, Pet. Rec. Exhibits, Vol. II, pp. 1123 ff.

THE VEREINIGTE KÖLN-ROTTWEILER PULVERFABRIKEN, of Cologne;

THE NOBEL-DYNAMITE TRUST COMPANY, LIMITED, of London; (hereinafter collectively referred to as "the European Factories") of the other part.

WHEREAS the parties hereto own or control a large number of companies and works engaged in the manufacture and trade of explosives, AND WHEREAS it has been deemed advisable to make arrangements, so as to avoid anything being done which would affect injuriously the common interest.

IT HAS THEREFORE BEEN AGREED AS FOLLOWS:

1. The word "Explosives" in this Agreement is to be understood as including detonators, black powder, smokeless sporting powder, smokeless military powder, and high explosives of all kinds.

2. A list of all the companies and factories controlled by the American Factories directly or indirectly is to be prepared and handed by Messrs E. I. Du Pont de Nemours & Co., in duplicate to the European Factories at the time of the execution of this agreement, and the European Factories are to hand to Messrs. E. I. Du Pont de Nemours & Co. a complete list of the Companies controlled by them directly or indirectly when executing this Agreement. Should the period of control which any of the parties have over any company or factory be fixed by contract for a shorter time than the duration of this present Agreement, that fact shall be stated on such list, and it is understood that in the event of any renewal of such arrangement in such a manner as to extend the control over the period of the present Agreement, the Companies in question shall be bound to adhere to the terms hereof.

The American Factories and the European Factories shall be bound to stipulate adherence to the present Agreement on the part of all and any Companies or Factories over which they now have control or may directly or indirectly obtain control during the continuance of this Agreement.

3. Regarding Detonators it is agreed that the European Factories shall abstain from erecting detonator works in the United States of North America. The works which are building at Jamesburg, New Jersey, are not to be completed, and the whole scheme as worked out by Mr. Müller is to be abandoned. In consideration of this scheme being abandoned and the erection of the works being

stopped, the American Factories undertake to bear all expenses hitherto incurred in connection therewith, and they will, moreover, discharge the obligations which Mr. Muller has undertaken in connection with the above-mentioned scheme, with regard to which obligations a special subsidiary Agreement is to be made. And it is moreover agreed that the American Factories shall order and take from the European Factories, *i. e.*, from The Rhenish Westphalian Sprengstoff A. G. every year 5,000,000 Detonators at the following prices, viz.:—M. 11 for No. 3, M. 12 for No. 3 rim, M. 13 for No. 4, M. 15.50 for No. 5, M. 16.50 for No. 5 rim, M. 20 for No. 6, and M. 21 for No. 6 rim, all these prices to be understood per 1,000 ex ship New York without duty.

4. As regards Black Powder the American Factories bind themselves not to erect factories in Europe, and the European Factories bind themselves not to erect factories in the United States of America. Both parties, however, are to be free to import into the other party's territory.

5. As regards Smokeless Sporting Powder the American Factories undertake not to erect factories in Europe, and the European Factories undertake not to erect factories in the United States of America; both parties, however, are to be free to import into the other party's territory.

6. With regard to Smokeless Military Powder it is hereby agreed that the European Factories undertake not to erect any factory in the United States of America, and that the American Factories undertake not to erect any factories in Europe.

Whenever the American Factories receive an enquiry for any Government other than their own, either directly or indirectly, they are to communicate with the European Factories through the Chairman appointed, as hereinafter set forth, and by that means to ascertain the price at which the European Factories are quoting or have fixed, and they shall be bound not to quote or sell at any lower figure than the price at which the European Factories are quoting or have fixed. Should the European Factories receive an enquiry from the Government of the United States of North America, or decide to quote for delivery for that Government, either directly or indirectly, they shall first in the like manner ascertain the price quoted or fixed by the American Factories and shall be bound not to quote or sell below that figure.

7. With regard to High Explosives (by which all explosives fired by means of Detonators are to be understood), it is agreed that

the United States of North America, with their present or future territories, Possessions, Colonies, or Dependencies, the Republics of Mexico, Guatemala, Honduras, Nicaragua, and Costa Rica, as well as the Republics of the United States of Columbia and Venezuela, are to be deemed the exclusive territory of the American Factories, and are hereafter referred to as "American Territory." All the countries in South America not above mentioned, as well as British Honduras and the Islands in the Caribbean Sea, which are not Spanish possessions, are to be deemed common territory, hereinafter referred to as "Syndicated Territory"; the rest of the world is to be exclusive territory of the European Factories, hereinafter referred to as "European Territory." The Dominion of Canada and the Islands appertaining thereto, as well as the Spanish possessions in the Caribbean Sea, are to be a free market unaffected by this Agreement.

8. The American Factories are to abstain from manufacturing, selling, or quoting, directly or indirectly, in or for consumption in any of the countries of the European Territory, and the European are to abstain in like manner from manufacturing, selling or quoting, directly or indirectly, in or for consumption in any of the countries of the American Territory. With regard to the Syndicated Territory neither party are to erect works there, except by a mutual understanding, and the trade there is to be carried on for joint account in the manner hereinafter defined.

9. The American Factories shall forthwith designate in writing a Chairman and Vice-Chairman, who shall hold office as such until their respective successors shall be appointed by the party of the first part, and such Chairman, or in his absence such Vice-Chairman, shall be the authorized representative of the American Factories, to whom and through whom all communications, acts, and transactions in respect of this Agreement, unless otherwise stipulated, shall be had; and the European Factories shall likewise forthwith designate in writing a Chairman and Vice-Chairman, to whom shall be referred all matters which by terms of this contract are made referrable [1] to the Chairman representing the European Factories. The said Chairman or Vice-Chairman shall jointly establish rules for the carrying out of the Syndicate arrangements hereinafter referred to.

10. The Chairmen shall from time to time mutually agree upon a basis price for each market in the Syndicated Territory, such

[1] Thus in original.—Ed.

basis price to include cost of manufacture, freight, insurance, landing charges, magazine charges, and all other charges until delivery, including agency commission and the contribution towards the Common Fund hereinafter stipulated.

The Chairmen shall likewise fix a selling price for each market, which is to be deemed a convention price, below which no sales are to effected, and the difference between the basis price and the selling price is to be deemed the Syndicate profit, and to be divided in equal shares between the American Factories and the European Factories.

Losses due to bad debts are to be borne by the parties effecting the sale.

11. A common Syndicate Fund is to be constituted by a payment of $1 per case of 75 per cent. dynamite, or per case of gelignite, gelatine dynamite, or blasting gelatine, and a payment of such portion of $1 as the percentage of nitro-glycerine on lower grade dynamites bears to 75 per cent. until such Fund reaches the amount of $50,000, when the contribution is to be reduced to one-half the above-mentioned rates.

12. The Syndicate accounts, according to Clause 10, made up to 31st December in each calendar year are to be handed in by both parties so as to reach the Chairman of the other party by the 15th March next ensuing, and the payments for the balance are to be made by the 30th June following, when the amount to be contributed to the Common Fund shall likewise be paid.

[In regard to Clause 12 of the Agreement, I have no objections at all to the extension of time whereat the accounts are to reach both parties; namely, to April 15th. of each year, instead of March 15th. as per Clause 12.—Letter April 11, 1899.]

The Common Fund shall, as the Chairmen may decide, be invested in Government Securities, and it is from this Fund that any fine or fines hereinafter stipulated, not recovered from the parties, shall be taken. It shall likewise be admissible for the Chairmen to dispose of two-thirds of the Common Fund for the purpose of protecting the common interest against outside competition.

13. Any breach of this agreement shall be adjudicated upon by the Chairmen, and if they cannot agree they shall appoint an umpire. For the guidance of the Chairmen and umpire it is agreed that, should either of the parties erect factories in a country reserved to the other, the liquidated damages shall not be fixed lower than £10,000.

Should either party trade in the territory of the other it shall be admissible for the Chairmen to absolve them of any accidental breach, but if an intentional breach shall be proved, the fine shall be the invoice value of the goods supplied. No restriction is placed on the decision of the Chairmen as to the penalty to be imposed for intentional underselling in one of the markets of the Syndicate territory.

14. It is intended that in the Syndicate markets the arrangement should resemble as far as possible the convention arrangements hitherto had by the Europeans, where the Agents meet from time to time, and come to decisions within the limits of powers given to them, or where they meet in order to make recommendations to their principals.

15. The Chairmen both agreeing have full powers to vary the Syndicate arrangements as they may deem expedient from time to time in order to meet outside competition and to regulate business for the best in the interest of the parties concerned, and they shall likewise have the power under exceptional circumstances of authorising sales in the prohibited territories.

16. With regard to the markets in the European territory in which the American Factories have already done business, and from which, in accordance with the stipulations of this Agreement, they are to retire, as well as the markets of the American territory in which the European Factories have already done business, and from which they are, according to the stipulations of this Agreement, to retire, the following is agreed:

Agents are as far as possible to be retained by the party who is henceforward to do the business in the market in question.

Magazines are in a like manner to be taken over at their present value to be determined by mutual agreement or arbitration.

Stocks, if in good merchantable condition, are to be taken over at full cost, *i. e.*, the amount which the goods at present cost with accumulated charges.

17. Nothing herein contained shall be construed to prevent either of the parties hereto from carrying out any contracts for the sale of their products which have been entered into in good faith prior to the 15th of July, 1897. Contracts made after the said date shall be transferred to the party by whom the business shall be transferred to the party by whom the business shall henceforth be done in the market in question.

18. This Agreement is to be in force for 10 years, beginning from

the 15th of July, 1897, subject to written notice being given six months prior to the 15th July, 1907. In the absence of notice this Agreement is to continue thereafter from year to year until such six months' notice of intended termination is given.

19. Should any difference or dispute arise between the parties hereto, touching this Agreement, or any clause, matter, or thing relating thereto, or as to the rights, duties, or liabilities of any of the parties hereto, the same shall be referred to the Chairmen, who shall arbitrate thereon, and their award shall be final. Should they not agree they shall appoint an Umpire whose award shall be final. In all cases in which the Chairmen disagreeing select an Umpire, the following provisions shall apply:—

If the question or matter to be decided is brought forward by one of the parties of the first part, the Umpire shall be a European. If on the contrary, the question or matter to be decided is brought forward by one of the parties of the second part, the Umpire shall be an American.

20. With regard to Patents which the American Factories or the European Factories may possess in each others' territories, it is understood that unless compelled by agreement with inventors to take legal proceedings with regard to alleged infringements, no legal proceedings are to be taken in respect of any alleged infringement until an attempt has been made to settle the matter amicably. In order to bring about such amicable understanding the question is first to be ventilated by correspondence between the Chairmen, who shall have power to constitute themselves an arbitral tribunal, obtaining evidence from experts on both sides; and should they hold that an infringement has been committed they shall fix the rate of royalty to be paid. Should they not agree, they shall call on parties to sign a deed of submission, authorising them to appoint an umpire, whose award shall be final.

Inasmuch as the parties have undertaken not to manufacture in each others' territories they are not to purchase any Patent for each others' territories, except after having given the party interested in the manufacture in the country in question the right of pre-emption on the same terms as the Patent is offered to them.

TRANSITORY

This Agreement is made subject to ratification by the 31st August, 1897. Mr. Eugene Du Pont, Mr. Bernard Peyton, Mr. Addi-

son Fay, and Mr. Hamilton Barksdale have undertaken to recommend and advocate such ratification by the American Factories, which is to be notified to Mr. E. Kraftmeier, of 55, Charing Cross, London, S. W. (Telegraphic Address— "Kraftmeier, London,") so as to be in his possession by the 31st August, 1897, and Mr. Thomas Reid, Mr. J. N. Heidemann, Mr. Max A. Philipp, and Mr. E. Kraftmeier will recommend and advocate such ratification by the European Factories, which is to be notified to Mr. Eugene Du Pont so as to be in his possession by the 31st August, 1897.

EXHIBIT 4

ALUMINUM COMPANY OF AMERICA [1]

THE A. J. A. G. AGREEMENT OF SEPTEMBER 25, 1908

About September 25, 1908, the defendant Aluminum Company of America, acting through the Northern Aluminum Company, of Canada, which is entirely owned and controlled by defendant, entered into an agreement with the so-called Swiss or Neuhausen Company, of Europe, which is the largest of the European companies engaged in the aluminum industry and designated in this agreement as "A. J. A. G.," parts thereof material to this action being as follows:

2. The N. A. Co. agree not to knowingly sell aluminum, directly or indirectly, in the European market.

The A. J. A. G. agree not to knowingly sell aluminum, directly or indirectly, in the American market (defined as North and South America, with the exception of the United States, but including West Indies, Hawaiian and Philippine Islands).

4. The total deliveries to be made by the two companies shall be divided as follows:

European market, 75% to A. J. A. G., 25% to N. A. Co.
American market, 25% to A. J. A. G., 75% to N. A. Co.
Common market, 50% to A. J. A. G., 50% to N. A. Co.

The Government sales to Switzerland, Germany, and Austria-Hungary are understood to be reserved to the A. J. A. G.

[1] *United States of America* v. *Aluminum Company of America.* Petition in Equity, In the District Court of the United States for the Western District of Pennsylvania, pp. 15–16.

The Sales in the U. S. A. are understood to be reserved to the Aluminum Company of America.

Accordingly the A. J. A. G. will not knowingly sell aluminum, directly or indirectly, to the U. S. A., and the N. A. Co. will not knowingly sell, directly or indirectly, to the Swiss, German, and Austria-Hungarian Governments.

5. The N. A. Co. engages that the Aluminum Company of America will respect the prohibitions hereby laid upon the N. A. Co.

Said agreement became effective October 1, 1908, and provided that it should "last until terminated by a six months' written notice," and petitioner avers that said agreement became effective and has been continuously since said date, and is now, in full force and effect, unless terminated by notice.

CHAPTER IX

POOLS AND ASSOCIATIONS

NOTE

As indicated in the note to Chapter I, the Pool has been one of the most persistent types of combination. In spite of its numerous disadvantages and alleged weaknesses, it has served as a means of combination in far more instances than has the Trust and in this respect may be regarded as a close competitor of that other device; the Holding Company. Pools may be organized for a wide variety of purposes; to divide territory, to raise prices, to pool profits, to restrict output, to divide output and others, or, a pool may embody several of these purposes in its programme. Though the general structure of such organizations is about the same the variations of type are great. For that reason there has been brought together a collection of pooling agreements which cover a wide field. They are fairly typical illustrations of this organization and are selected to give as comprehensive an idea of this form of combination as possible. In the majority of cases the object of the pool is sufficiently stated in the terms of the agreements.—Ed.

EXHIBIT 1

THE STEEL RAIL POOL [1]

Memorandum of agreement, entered into August 2, 1887, by and between the North Chicago Rolling Mill Company, the Cambria Iron Company, the Pennsylvania Steel Company, the Union Steel Company, the Lackawanna Iron and Coal Company, the Joliet Steel Company, the Western Steel Company, the Cleveland Rolling Mill Company, Carnegie Brothers & Co., Limited; Carnegie, Phipps & Co., Limited; the Bethlehem Iron Company, the Scranton Steel Company, the Troy Steel & Iron Company, the Worcester Steel Works and the Springfield Iron Company.

[1] Report of the Commissioner of Corporations on the Steel Industry. Part I, pp. 69–71.

We, the before-named companies and corporations, manufacturers of steel rails, hereby mutually agree one with the other, that we will restrict our sales and the product of steel rails of 50 pounds to the yard and upward, applying to orders taken by us and to be delivered by us or from our respective works during the year 1888, as hereinafter allotted and limited; and we respectively bind ourselves not to sell in excess of our current allotments, without first obtaining the consent of the Board of Control thereto—that is to say:

It is agreed, there shall now be made an allotment of 800,000 tons of rails, which shall be divided and apportioned to and among the several parties hereto to be sold by them during the year 1888, upon the following basis of percentages, to wit; North Chicago Rolling Mill Company, 12-½ per cent; Pennsylvania Steel Company, 9-⅘ per cent; Bethlehem Iron Company 9 per cent; Carnegie Bros. & Co., Limited, and Carnegie, Phipps & Co., Limited (jointly), 13-⅕ per cent; Joliet Steel Company, 8 per cent; Lackawanna Iron and Coal Company, 8 per cent; Cambria Iron Company 8 per cent; Scranton Steel Company, 8 per cent; the Union Steel Company, 8 per cent; Cleveland Rolling Mill Company, 4-⅘ per cent; Troy Steel & Iron Company, 4-⅕ per cent; Western Steel Company, 4-⅕ per cent; Worcester Steel Works, 1-⅘ per cent.

And in addition to the said allotment of 800,000 tons of rails above allotted, an additional allotment of 250,000 tons is hereby made and allotted to the Board of Control, to be reallotted and reapportioned by it, as and to whom it may deem equitable, in the adjustment of any differences that may arise. It being also further agreed that all subsequent allotments of rails hereafter made, to be sold under this agreement during the year 1888, shall also be divided and apportioned to the several parties hereto in the same ratio of percentages as said apportionment of 800,000 tons is herein divided and apportioned.

It is further agreed, that the Board of Control shall, from time to time, make such further allotments as shall be necessary to at all times keep the unsold allotments at least 200,000 tons in excess of the total current sales, as shown by the monthly reports of sales. This is to be in addition to the then unappropriated part of the 250,000 tons herein before alloted to the Board of Control to adjust differences.

It is further agreed, on the first day of April, July and October, the Board of Control are authorized and directed to cancel such part of the unmade allotments of the respective parties hereto as they the said Board of Control shall determine such party unable

to make in due time, and all allotments so canceled the Board of Control shall have the right to reallot to any of the other parties hereto; it being understood that all such cancellations shall apply only to allotments standing to the credit of the respective parties hereto on the dates above named, but no reallotment as aforesaid shall be made by the Board of Control to any of the parties hereto for the purpose of enabling them, or any of them, to make and sell rails from foreign made blooms.

It is further agreed, that all transfers of parts of allotments from one party to another shall be made by the Board of Control.

It is further agreed, that there shall be a Board of Control, consisting of three members, namely Orrin W. Potter, Luther S. Bent and W. W. Thurston, who shall have power to employ a paid secretary and treasurer.

It is further agreed, that the Board of Control, upon the written consent of 75 per cent of the percentages as hereinbefore named, shall increase the allotments for the year 1888, and such increase shall be allotted to the parties hereto as hereinbefore provided.

It is further agreed, that each party whose name is hereunto annexed, shall and will make monthly returns to the Board of Control of all contracts for delivery of rails of 50 pounds to the yard and upward during the year 1888, and also of all shipments of such rails made by them during said year; a copy of such return shall be furnished to each party hereto.

It is further agreed, that all the parties hereto shall and will, on or before January 15, 1888, make a written return to the Board of Control of all the rails of 50 pounds to the yard and upward (designating the weight) which they respectively had on hand January 1, 1888, stating whether the same are sold, and if sold, on what order they apply.

It is further agreed, that the Board of Control shall have the right whenever they deem it expedient to convene a meeting of the parties hereto, and they shall give at least ten days' previous notice of all meetings, and any business transacted at such meetings, and receiving 75 per cent of the votes present thereat, either in person or by proxy, shall be binding on all the parties hereto, excepting as to a change in percentages as aforesaid:

The Board of Control shall be required to call a meeting of the parties hereto when requested so to do in writing, signed by any three of the contracting parties, but such request and such notice shall state the object for which such meeting is called.

It shall be the duty of the Board of Control to have a proper record kept of all the returns made to it, with power from time to time to change the form of return as they may deem expedient.

The Board of Control shall have authority to levy an assessment, pro rata to the allotted tonnage, to defray the actual expenses made necessary to carry out this agreement.

It is further agreed, that we will, respectively, immediately make return to the Board of Control of all rails of 50 pounds to the yard and upward which we are now under contract to deliver during the year 1888, said return to state to whom such rails are sold and when they are to be delivered.

(Signatures)

EXHIBIT 2

CONSTITUTION AND BY-LAWS OF THE MICHIGAN RETAIL LUMBER DEALERS ASSOCIATION [1]

The title of this association shall be the Michigan Retail Lumber Dealers' Association, and its object is hereby set forth in the following declaration of principles.

We seek to establish the equitable principle that the retailer shall not be subjected to competition with the parties from whom he buys; that a fair opportunity shall be offered the man who invests his time and money in the retail business, and assumes the risk which such business inevitably involves, to earn an adequate remuneration for his labor and the use of his capital. We seek also to promote that spirit of harmony in the trade which shall prompt every detail dealer to maintain friendly relations with his competitors at home and his brother retailers everywhere.

ARTICLE I.—*Membership.*

ELIGIBILITY.

SECTION 1. Any person, firm, or corporation within the territory of this association who may be regularly engaged in the lumber trade, carrying at all times an assorted stock of lumber, or lumber, sash, doors, etc., commensurate with the demands of his com-

[1] *United States of America* v. *Edward E. Hartwick, et al.*, Original Petition, In the Circuit Court of the United States for the Eastern District of Michigan, Southern Division, Exhibit A, pp. 42–52. The Michigan Retail Lumber Dealers Association was first organized about 1888 or 1889.—Ed.

munity (the equivalent of 75,000 feet of lumber in small cities and country towns being generally considered a minimum stock for a retail lumberyard), and who is in the business for the purpose of selling lumber at retail, and who keeps an office open during regular business hours, with a competent person in charge to attend to the wants of customers at all times, shall be considered a legitimate lumber dealer and may be eligible to membership in the association.

DOUBT AS TO ELIGIBILITY.

SEC. 2. Any doubt or question arising as to who may be eligible to membership in this association shall be referred to the board of directors to determine, and their decision shall be final.

TERMINATION.

SEC. 3. Whenever any member shall cease to keep a regular assortment of lumber, as set forth in section 1, he shall cease to be a member of this association.

WITHDRAWAL, HOW MADE.

SEC. 4. Any member whose duties[1] are paid in full may withdraw from membership by giving notice to the secretary in writing and surrendering his certificate of membership, but memberships are not transferable except by vote of the board of directors.

PENALTY FOR NONPAYMENT OF ANNUAL DUES.

SEC. 5. If any member shall neglect or refuse to pay the dues provided for in the rules of this association within 60 days after due notice by the secretary, the secretary may strike his name from the rolls; and no member shall be entitled to make complaints for shipments in his territory while in arrears for dues, nor until such arrears are paid in full.

MEMBER'S LIABILITY TO SUSPENSION.

SEC. 6. Any member of this association who shall habitually fail to meet his engagements with the wholesale members or shall so conduct himself as to bring reproach upon the association, and shall be reported by any member to the secretary of this associa-

[1] Thus in the original.—Ed.

tion, shall be cited to appear before the board of directors, and should he fail to satisfy the board of directors he shall no longer be considered a member of this association and a participant in its benefits.

. . . . . .

ARTICLE II.—*Complaints.*

WHO SHALL MAKE.

SECTION 1. Any member of this association who considers that he has just cause for complaint against any wholesaler or manufacturer or their agents, may file said complaint with the secretary, of this association.

HOW MADE.

SEC. 2. All complaints shall be made in writing, giving as full particulars as possible, including dates of shipment and arrival, car number and initials, original point of shipment, names of the consigner and consignee, the purpose for which material was used, and any other particulars which can be learned.

TIME LIMIT.

SEC. 3. All complaints to be handled by this association must be filed with the secretary within 30 days after receipt of shipment at point of destination. No complaint from any member will be considered when made on account of sales or shipments made within 15 days after the date of said member's certificate of membership.

INDEPENDENT ACTION.

SEC. 4. In case any member elects to take up his own complaint direct with the shipper instead of filing the same with the secretary, as provided in foregoing sections he shall not thereafter be privileged to have said complaint taken up by association.

. . . . . .

SECRETARY'S DUTY IN REFERENCE TO COMPLAINTS.

SEC. 6. It shall be the duty of the secretary at once to notify the party or parties against whom complaint has been made, with-

out giving the name of the party making the complaint. If the transaction complained of was made by a commission merchant, agent, or broker, or other person, the principal for whom they act shall also be notified and shall be considered jointly liable.

PRIMARY RULING ON RETAIL DEALERS.

SEC. 7. The primary decision as to who are and who are not regular retail lumber dealers, in the territory of this association, shall rest with the board of directors, but in the event of any difference of opinion arising over the ruling of the board in such cases the same shall be submitted to arbitration, according to rules hereinafter provided for the adjustment of complaints, but no sale made to any individual or firm whose status may not have been finally determined shall be subject to any penalty if it shall appear that due diligence has been employed by the party making the sale to satisfy himself that the purchaser was entitled to recognition as a dealer.

PLAN OF ARBITRATION.

SEC. 8. In the event that any claim is made against a manufacturer or wholesaler who may be a member of any regularly organized association of manufacturers or wholesalers, it shall be the duty of the secretary to refer the matter to the secretary of such manufacturers' or wholesalers' organization and to request the immediate presentation of the case to the party complained of and the adjustment of said claim.

If it be found impossible to adjust the claim through the efforts of the secretary of this association acting on behalf of the retailers, and the secretary of the manufacturers' or wholesalers' organization, acting on behalf of the manufacturers or wholesalers, then the matter shall be referred to a board of arbitration, consisting of one member of this association and one member of any organization of manufacturers or wholesalers with which the party complained of may be identified, and it shall be the duty of the president of this organization as often as, and when necessary, to appoint any member to act as arbitrator on behalf of this association and its members. The two persons so selected shall have power to select a third person to act with and constitute the board of arbitrators, which shall be authorized to fully adjust the claim, the decision of such board of arbitrators to be final and binding on all parties.

ARTICLE III.—*Territory.*

TERRITORY DESCRIBED.

SECTION 1. Members shall be entitled to the protection of this association only at such places where they operate yards as they shall desire to have placed on the membership lists and for which there shall pay annual dues for each place so protected. It shall be understood, however, that sidetracks or small towns where there are no regular retail lumber yards, and which may be, under a reasonable construction, considered within the territory of members, shall be included within such protection without extra charge.

OTHER ASSOCIATIONS.

SEC. 2. It shall be contrary to the spirit of this association for any of its members to make or cause to be made shipments into the legitimate territory of members of other associations of retail lumber dealers, and members who shall so offend shall be made subject to such discipline as may be provided in the rules of this association.

POACHERS.

SEC. 3. Any person or persons, whether carrying a stock of lumber or not, making a practice of quoting prices, selling or shipping (to other than regular dealers) lumber, sash, doors, etc., into territory under the protection of this association, where said person or persons have no yards, shall be designated "poachers." When said poachers are reported in the membership list and notification sheet, they will be considered as consumers at points other than where they may own yards, and any wholesaler or manufacturer, or their agents making sales or shipments to said parties in the territory of any member of this association, after being thus reported, will be considered as having sold or shipped to a consumer.

ARTICLE IV.—*Standard of grades.*

In all cases of dispute as to quality of lumber arising between a member of this association and a member of a wholesalers' or manufacturers' association, the established grading rules of the association to which the wholesaler or manufacturer belongs, shall be taken as a basis of grade on which settlement shall be made,

unless a special agreement in writing for a special grade shall have been made when lumber was purchased.

ARTICLE V.—*Reciprocity.*

Reciprocity is in direct line with the true principles of all retail lumbermen's associations, and this association does hereby pledge its members, as far as it is practical and possible, to buy only of firms whose names appear on our membership lists or those of kindred associations.

ARTICLE VI.—*Additional rules.*

The work of this association shall be further set forth in detail, as to management and guidance of its members, by the adoption of such other measures, to be known as rules or by-laws, as may in accordance with this constitution be established.

ARTICLE VII.—*Amendments.*

Amendments to this constitution may be made at any regular meeting, or special meeting called for that purpose, by a vote of at least two-thirds of the members present and voting.

BY-LAWS.

. . . . . .

SEC. 3. Whenever and as often as any wholesaler or manufacturer, dealer, or his agent shall sell lumber, sash, doors, or blinds for building purposes to any person not a regular dealer, any member doing business at the nearest point to which shipment was made shall notify the secretary of this association, giving him the date of shipment as nearly as possible, value of same, etc., and the secretary shall at once make demand of the wholesale dealer or manufacturer who made such shipment, notify him that his association has a claim not to exceed 10 per cent of the value of said sale at the point of shipment. If the secretary settles the claim, the money so collected shall be turned into the treasury and a draft made on the treasurer for the amount, said draft to be forwarded to the party making the claim. If the secretary does not succeed in making the settlement and same is contested, he shall refer the matter to the arbitration committee, whose duty it shall be to hear

both sides of the case, determine the claim, and report to the secretary. If the manufacturer or wholesale dealer refuses to abide by the decision of the arbitration committee, it shall be the duty of the secretary immediately to notify the members of the association of the name of such wholesale dealer or manufacturer. If any member continues to deal with such wholesale dealer or manufacturer, he shall be expelled from this association: *Provided*, That nothing in this section be so construed as to entitle members to make complaint for any lumber sold to manufacturers as defined in section 5 of Article II of the constitution of this association.

SEC. 4. In the event that any claim is made against a manufacturer who may be a member of any regular organized association of manufacturers, it shall then be the duty of the secretary to refer the matter to the secretary of such manufacturers' organization and request the immediate presentation of the case to the party complained of and the adjustment of the claim. If it is found impossible to adjust the claim through the secretary of this association, acting on behalf of the retailer, and the secretary of the manufacturers' organization, acting in behalf of the wholesaler or manufacturer, then the matter shall be referred to a board of arbitration, consisting of one member of this association and one member of any organization of manufacturers with which the party complained of may be identified (and it shall be the duty of the president of this association, as often as and whenever necessary, to appoint a person to act as arbitrator on behalf of this association and its members), and the two persons so chosen shall have power to select a third person to act with and complete the board of arbitrators, who shall be authorized fully to adjust the claim, their decision to be final and binding on all parties.

SEC. 5. Whenever and as often as any "commission man" shall sell lumber, sash, doors, or blinds to any person not regular dealers, as defined in section 1 of Article I of the constitution of this association, he shall be treated as a manufacturer or wholesaler, and shall be reported to the members of this association in the same manner as a wholesaler, as described in section 4 of these by-laws.

SEC. 6. Any wholesale dealer or manufacturer selling to a "commission man" or shipping on his order to any person or persons not regular dealers shall be held liable, the same as if he had made the sale himself, and be subject to the penalty as described in section 4 of these by-laws.

SEC. 7. No complaint shall be entertained from a member against a wholesale dealer or manufacturer, in accordance with the provisions of section 3 of these by-laws, for a bill of lumber ordered from a wholesale dealer or manufacturer within 15 days from the date of his certificate of membership; and no complaint shall be entertained from any member who is three months in arrears for dues.

SEC. 8. If any person or persons after having been reported to the members of this association in accordance with the provisions of section 3 of these by-laws, violating the rules of this association shall make such settlement as the board of directors shall require, the secretary shall immediately notify the members of such settlement.

SEC. 9. No claim shall be made on wholesale dealers or manufacturers for sales made to consumers or contractors within a distance of 15 miles from the public square of any wholesale market, provided said lumber is consumed within said distance; also provided that said territory shall be so confined by this association or its board of directors.

EXHIBIT 3

"FUNDAMENTAL AGREEMENT" OF THE EXPLOSIVE TRADE [1]

THIS AGREEMENT, made this 19th, day of December, 1889, BETWEEN E. I. DU PONT de NEMOURS & COMPANY, a co-partnership doing business near Wilmington, Delaware; THE HAZARD POWDER COMPANY, a corporation organized under the laws of the State of Connecticut; the LAFLIN & RAND POWDER COMPANY, a corporation organized under the laws of the State of New York; the three individual concerns named in the foregoing being in some of the provisions hereof grouped as one collective party, and called the "Three Companies"; and the ORIENTAL POWDER MILLS, a corporation organized under the laws of the State of Maine; THE AMERICAN POWDER MILLS, a corporation organized under the laws of the State of Massachusetts; the AUSTIN POWDER COMPANY, the MIAMI POWDER COMPANY, THE KING POWDER COMPANY, THE OHIO POWDER COMPANY, said last named four corporations being organized under the laws of the State of Ohio; THE SYCAMORE POWDER COMPANY, a corporation organized under the laws of the State of Tennessee; the LAKE SUPERIOR POWDER COMPANY, a

[1] *United States of America* v. *E. I. du Pont de Nemours and Company.* Government Exhibit No. 6, Pet. Rec. Exhibits, vol. 1, pp. 94 ff.

corporation organized under the laws of the State of Michigan; the MARCELLUS POWDER COMPANY, a corporation organized under the laws of the State of New York.

WHEREAS, the parties hereto make and sell gunpowder for blasting or sporting purposes, or both; and

WHEREAS, the said parties now enjoy trade of a certain amount in one or both of the said two kinds of powder; and

WHEREAS, for the purposes of this agreement "Blasting" powder is defined to be, such powder as is made of either nitrate of potassa or nitrate of soda, mixed with charcoal and sulphur, and designed to be used for mining or blasting operations; and "Sporting" powder is defined to be such powder as is made of Nitrate of potassa, charcoal and sulphur, and designed for use in small arms, (rifles, or smooth bores), cannon, mortars and shells; or in the manufacture of fireworks, safety-fuse and squibs; being of varying qualities and strength and of many brands and trade names, all of which are distinctly different from those of blasting powder; and

WHEREAS, in certain portions of the United States the cost of selling said powder is excessive; and

WHEREAS, for this and other causes the carrying on of business has been unsatisfactory in the greater part of the United States to the above named parties; and

WHEREAS, it is important that reasonable and uniform prices should be maintained, that customers and the public generally should be relieved from the inconveniences and uncertainties due to rapid and uncertain fluctuations, that unjust discrimination between persons and localities should be avoided, and that contractors and other consumers should be enabled to arrange with reasonable certainty such portions of their business as are dependent upon the acts of the parties hereto; and

WHEREAS, it is therefore desired by all parties hereto to enter into the agreement hereinafter set forth,

NOW THEREFORE, IN CONSIDERATION of the premises, and in consideration of the one dollar and other good and valuable considerations to each of the parties by each of the others paid, the receipt of which is hereby acknowledged; for the purpose of regulating in a convenient and desirable manner the business of the parties hereto, in such of their sales of powder as are treated in this agreement; for the purpose of avoiding unnecessary loss in the sale and disposition of such powder by ill regulated or unauthorized competition and under-bidding by the agents of the parties hereto,

and for the purpose of protecting consumers and the public from unjust fluctuations in prices and from unjust discriminations.

IT IS HEREBY AGREED BY THE PARTIES HERETO AS FOLLOWS:—

I:—That during the existence of this agreement the trade in gunpowder in and throughout all of the United States and its Territories, now or hereafter enjoyed by each and all of the parties hereto, shall be subject to the provisions of this agreement, with the following three exceptions, viz:—

(1) Such trade as either of said concerns constituting the parties hereto may now or hereafter have in powder actually exported to foreign countries.

(2) Such trade as either of said concerns constituting the parties hereto may now or hereafter have with the Government of the United States.

(3) Such trade in Blasting powder as either of said concerns constituting the parties hereto have in the Anthracite Regions of the State of Pennsylvania. (This trade having been retained at extraordinary sacrifices by the manufactories located within said district, some of which are owned or controlled by certain of the parties to this agreement, is to belong to the parties who now enjoy it, and no part of the same is to be taken by or shared with either of the nine concerns last named in the first paragraph of this agreement).

The said Anthracite Regions of Pennsylvania are understood and agreed to be bounded and described as follows: All of Northumberland County; all of Montour County; all of Columbia County; all of Luzerne County; all of Lackawanna County; in Susquehanna County the following named townships, Clifford, Herrick and Ararat; all of Wayne County except the townships touching on the Delaware River; all of Carbon County; all of Schuylkill County; that portion of Lebanon County north of the "First Blue Mountain"; and that portion of Dauphin County, north of the Southern boundaries of the townships of Rush and Middle Paxton,—being practically that portion of Dauphin County north of the "First Blue Mountain."

II. That that portion of the United States, within which the regulation of trade is contemplated by this agreement, shall for that purpose be divided into districts within each of which uniform prices shall generally prevail, and said "Districts" are defined as follows:

First District: The territory as follows: The New England States

excepting the county of Rutland in the State of Vermont, which is included with the State of New York, in the Second District; and excepting that the price for Blasting powder, only, at Ports upon Long Island Sound, West from Westerly, R. I., included, shall be twenty-five cents per keg lower than the minimum price for the same in the First District, generally; provided however, that such lower price shall not be made less than the regular list price for New York City.

Second District: The territory as follows: The States of New York (the County of Rutland, Vt., included therewith), New Jersey, Pennsylvania, Delaware, Maryland, West Virginia (excluding Bramwell as provided hereinafter), Ohio, Indiana, Illinois, and those portions of the States of Michigan and Wisconsin south of the 44th. parallel of latitude; and the towns on the banks of the Potomac, the Ohio, and the Mississippi Rivers, adjoining said territory.

Third District: The territory as follows: The States of Minnesota, Iowa, Missouri, Kentucky, Tennessee, Virginia, (Bramwell, W. Va., to be included also in this District), North Carolina, and those portions of the States of South Carolina, Georgia, Alabama and Mississippi north of the 33rd. parallel of latitude, and also those portions of the States of Michigan and Wisconsin north of the 44th. parallel of latitude; and also all that part of the State of Kansas east of the 98th. meridian of longitude; and the towns in Arkansas on the bank of the Mississippi River.

Fourth District: The Territory as follows: The State of Arkansas, excepting the towns on the bank of the Mississippi River, the States of Louisiana and Florida and those portions of the States of Mississippi, Alabama, Georgia and South Carolina, south of the 33rd. parallel of latitude, and also those portions of Dakota and Nebraska east of the 103rd. meridian of longitude, excepting the towns therein which adjoin the eastern boundaries thereof; and also all the State of Kansas, west of the 98th. meridian of longitude.

Fifth District: The territory as follows: The Indian Territory and the State of Texas.

Sixth District: The "Neutral Belt," which consists of the States of Colorado and Montana and the Territories of Wyoming, Utah and New Mexico, all of the same; and also those portions of Dakota and Nebraska, west of the 103rd. meridian of longitude.

Seventh District: All of the States and Territories of the United States west of the western boundaries of the said "Neutral Belt",

which are named as follows: Oregon, Washington, Idaho, California, Nevada and Arizona.

III. That of the whole aggregate trade of all the concerns comprising the parties hereto, which is made subject to this Agreement, division shall be made among said parties in the manner hereinbelow provided:

The yearly allotments of trade to the "Three Companies" shall be to them as one collective party, and shall be in such quantities of Sporting and Blasting powder as shall be equal to the average sales made by them of said kinds, respectively, for the years 1882, 1883 and 1884. [Sptg. 209, 738, Blstg. 662, 420.]

The yearly allotments of trade to the other concerns, parties to this Agreement, shall be as follows:

Oriental Powder Mills,

Sporting powder, Twenty-four thousand two hundred and twenty-three (24,223) kegs.

Blasting powder, Sixty-five thousand one hundred and fourteen (65,114) kegs.

American Powder Mills,

Sporting powder, Thirty-one thousand seven hundred and fifty (31,750) kegs.

Blasting powder, Fifty-seven thousand three hundred and sixty-six (57,366) kegs.

Austin Powder Company,

Sporting powder, Fifteen thousand five hundred and seventy-five (15,575) kegs.

Blasting powder, Sixty-five thousand (65,000) kegs.

Miami Powder Company.

Sporting powder, Eleven thousand four hundred and fifty-two (11,452) kegs.

Blasting powder, Sixty-six thousand five hundred and twenty (66,520) kegs.

The King Powder Company,

Sporting powder, Twenty-five thousand (25,000) kegs; and besides these there shall be a Special Allotment to said Company of Five Thousand (5,000) kegs of Sporting powder.

Blasting powder to the same Company, One hundred thousand (100,000) kegs.

The Ohio Powder Company,

Blasting powder, Sixty thousand (60,000) kegs.

The Sycamore Powder Company,

Sporting powder, Eight thousand (8,000) kegs.
Blasting powder, Thirty thousand (30,000) kegs.

The Lake Superior Powder Company,

Blasting powder, Twenty thousand (20,000) kegs.

The Marcellus Powder Company,

Blasting powder, Twenty thousand (20,000) kegs.

Making the total of the sums which are thus allotted and taken as the bases for the division of said trade to be:

Of Sporting powder,

Of Blasting powder,

(Excluding the said Special Allotment of 5,000 kegs of Sporting powder to The King Powder Company.)

IT IS ALSO UNDERSTOOD AND AGREED That the sales out of the above allotments of all of the parties hereto in the following States and Territories, VIZ: California, Nevada, Oregon, Colorado, Washington, Idaho, Arizona, Montana, Utah and New Mexico, are to be regulated by a certain supplementary agreement to be entered into between all of the concerns composing the parties hereto with the California Powder Works.

IV. That the aggregate sales made by all the parties hereto in any one year of Sporting and of Blasting powder shall, for each kind separately, be considered as a volume of trade of certain value to be divided among all of said parties in direct proportion to the yearly allotments to each and by the method hereinbelow set forth:

The value of said volume of trade shall be reckoned at the rate of thirty-five (35) per cent of the list price per keg for Sporting powder, and twenty-five (25) per cent of the list price for Blasting powder, in the "Second District"; subject to change as said list prices may be changed; said values so reckoned being now for Sporting powder $1.75 per keg and for Blasting powder 50 cents per keg.

The method for determining the "list price" last mentioned, to

used [1] as the basis for said adjustment of sales of either of said kinds of powder, shall be by taking the average of the prices for the months of the period under treatment, (considering as a whole month a fraction greater than one half) as said prices shall have been fixed in accordance with the provisions of this agreement.

V. That the periods for settlement in division of trade shall be as follows:

The first period shall be, and shall comprise the sales of, the six months ending June 30th, 1890, made by all the parties hereto, and subsequently the periods shall be each comprising their sales for twelve months and ending June 30th. of each year. And adjustment of differences in sales for said first period shall be upon the basis of one half of said allotments.

VI. That at the end of each of said periods, and within sixty days thereafter, each of the parties hereto (the "Three Companies" for this purpose being considered as one party) shall make up separate sworn statements showing their sales of Sporting and Blasting powder, respectively, made within said periods, and forward the same to the Board of Trade, hereinafter provided to be established.

The Board of Trade shall consider separately the sales of Sporting and Blasting powder as the same shall appear in said sworn statements, and shall make computation of the differences therein exhibited; (By said differences meaning the sales in excess or in deficiency of the proportions to which each party should be entitled in the division of trade as provided by Section IV. hereof) and, considering and valuing said differences, at said rates per keg, for the respective kinds of powder, shall make adjustment or clearance of such differences, in money values, and shall furnish each party a written accounting in full detail, of such clearing process: and the same proving to be a correct computation, the liabilities of the parties shall be as thus determined and stated; and within thirty days from that time each party so made liable shall pay into the Treasury such sum of money as shall have thus been adjudged to be due from it. And all of said money thus paid into the Treasury shall be distributed among the parties hereto, entitled to the same, in sums to each of them as the same shall have been determined by said accounting of the Board of Trade.

VII. That in addition to the sworn statements to be made at the end of each of said periods as hereinbefore provided for, each of

[1] Thus in original.—Ed.

the parties hereto (the "Three Companies" for this purpose being considered as one party) shall at the end of each quarter of each calendar year, and within thirty days thereafter, make up statements which shall be estimates, as nearly correct as practicable, of their sales of each of said kinds of powder during said quarter and shall immediately forward the same to the said Board of Trade which shall immediately furnish each of the parties hereto with a combined statement of all of said sales during said quarter, showing the sales of each of said parties, of each of said kinds; which said combined statement is to be for the guidance of each of the parties; to the end that their sales may not, for the whole of the then current period, be in excess of their allotments.

VIII. That in all statements of sales provided by this agreement to be made and in all adjustments thereunder, Sporting powder, whether sold in packages of twenty-five pounds each or in packages of other sizes, and whether of one quality or another, shall be considered and taken as if the same were all of one quality, to wit: "Rifle" (now so called in the trade) powder; and shall be stated in units of twenty-five pounds each and fractions thereof, if any, in decimals, and Blasting powder whether made of nitrate of potassa or nitrate of soda, shall be considered and taken as if made of last named material.

IX. That in none of the statements hereinbefore provided to be made by the parties hereto concerning their sales and for the purpose of dividing the whole of their trade which is subject to the provisions of this agreement shall there be counted or included any sales of powder made by any one of them to any other of them. It being intended that if one party shall sell powder to another such powder shall be counted only in the sales of the party who shall market the same.

X. That the statements of sales made by each of the parties hereto for the purpose of dividing the trade of the first period (January 1st.,–June 30th., 1890) shall include all the powder *delivered* in said period though the same may have been sold previously.

XI. That immediately after the adoption of this Agreement, there shall be elected a Board of Trade, so to be called, consisting of five members, and a Secretary and Treasurer of the same.

XII. That at all elections of the memebers [1] of the Board of Trade and of a Secretary and Treasurer of the same, voting shall be by ballot and each of the parties to this Agreement shall have one vote

[1] Thus in the original.—Ed.

(thus providing for one vote by each of the "Three Companies") and a majority of the votes so cast shall elect: parties hereto not present at a meeting may be represented by personal proxy.

. . . . . .

XVII. That the Board of Trade shall have power to fix prices and to vary or change the same at any time and for any place, to meet contingencies and for protection of the common interests. It shall have power to enforce any rules and regulations which may be adopted by the parties to this agreement and to take any measures for that purpose which may in its judgment be necessary. It shall hear and adjudge in all cases of grievances, when the parties involved shall not be able to agree among themselves.

The members of the Board shall be re-imbursed for all expenses incurred by them in performance of their duties.

XVIII. That any action taken at a General Meeting affecting the rights of any individual concern, shall have the unanimous consent of all the parties hereto to be valid and of authority; excepting only in balloting for members of the Board of Trade and for the Secretary and Treasurer as hereinbefore, in Section XII, provided.

XIX. That any General Meeting duly authorized may review or reverse the acts of the Board of Trade and instruct it upon any matter. And at any General Meeting when a question shall be of approval or reversal of any previous acts or decisions, parties hereto not then present may have a vote upon such question by personal proxy giving power thereunto.

XX. That the duties of the Secretary and Treasurer shall be as follows: he shall issue notices for and shall attend all Meetings of the Board of Trade and all General Meetings of the parties hereto and shall keep a faithful record of the proceedings at all such Meetings and shall send a copy of the same to each of the parties hereto. And he shall be the medium of the communication between the members of the Board of Trade as well as between all the parties to this agreement upon matters of general concern.

He shall receive and disburse all moneys for expenditures in the common interest in accordance with the methods prescribed therefor and shall make semi-annual reports to all the parties, of such expenditures and of the disposition of all moneys coming to his hands.

He shall receive a salary of $2500 per annum for his services.

XXI. That all assessments of money for expenditures made or to be made for the common interest shall be upon each party in

direct proportion as its allotment in number of kegs of both kinds of powder is to the total of the allotments to all the parties in number of kegs of both kinds, (excluding said Special Allotment of Sporting powder to The King Powder Co.) with exception only as provided in Section XXII. hereof. And no obligation for the payment of money shall be incurred, other than for such expenditures as are provided for in this agreement, except the same shall be done at a General Meeting held as hereinbefore provided.

XXII. *That any party hereto who shall suffer excessive loss by an overt act of the Board of Trade,—as for instance the reduction of a price at a place, in treatment of a local disturbance of trade,—shall receive compensation for the damage it shall sustain by payment of money as may be agreed upon at a General Meeting, on the recommendation of the Board of Trade.*[1] And requisitions for money to pay such damages shall be made by the Board upon those of the parties who make and sell that specific kind of powder regarding which such award for damages shall have been settled; and contributions shall be required of them in direct proportion to their allotments for that specific kind of powder.

XXIII. That all the concerns constituting the parties hereto shall be and are severally bound to each other for the fulfillment of all the obligations of this agreement, but no concern shall be responsible for any default of any other concern.

XXIV. That an Agreement or Agreements, supplementary and auxiliary to this, shall be executed by all the parties hereto relating to the prices to be maintained for sales of powder, and the general harmonious arrangement of the powder trade.

XXV. That the existing agreements between the twelve concerns, parties hereto, and the California Powder Works, and between the "Three Companies" and the other nine concerns, parties hereto, relating to the trade of the "Pacific Coast District" and the "Neutral Belt", shall continue with the consent of all the parties hereto, now expressed; and the consent thereto of the California Powder Works shall be obtained if practicable. New written Agreements to be the same in effect as those now existing shall be made and executed, if possible, at an early date; the same to be coterminous with this Agreement.

XXVI. That the benefits and liabilities arising from this Agreement shall extend to the successors and assigns of each of the concerns comprising the parties hereto and to the executors and

[1] Italics are the editor's.

administrators of the members of the firm of E. I. Du Pont, de Nemours & Company, but no concern shall be liable for any default not committed by itself except as herein expressly specified.

XXVII. That this Agreement shall begin to be in effect on the 1st. day of January, 1890, and shall remain in force until the 30th. day of June, 1895, and shall continue in force thereafter from year to year, indefinitely, so long as none of the concerns shall give written notice to all the others, through the Secretary of the Board of Trade, of its intention to withdraw at least three months previous to June 30th., 1895; but such notice having been given, in any year succeeding the year 1894, this Agreement shall terminate June 30th. of said year.

XXVIII. That the Schaghticoke Powder Company, a corporation organized under the laws of the State of New York, being owned as to a majority of its stock, and controlled by the Laflin & Rand Powder Company, it is understood and agreed that all of its sales shall be considered as sales of the Laflin & Rand Powder Co., and said Laflin & Rand Powder Co. hereby guarantees that said Schaghticoke Powder Co. will respect and faithfully comply with all the provisions of this Agreement with the same effect as if it had signed this Agreement as a party hereto included under the name of the Laflin & Rand Powder Company.

XXIX. This shall be called the "Fundamental Agreement."

IN WITNESS WHEREOF, the concerns forming the parties hereto, have hereunto set their hands and affixed their corporate seals the day and year first above written.

(Signatures)

EXHIBIT 4

ADDYSTON PIPE POOLS [1]

From the minutes of the association, a copy of which was put in evidence by the petitioner, it appeared that prior to December 28, 1894, the Anniston Company, the Howard-Harrison Company, the Chattanooga Company, and the South Pittsburg Company had been associated as the Southern Associated Pipe Works. Upon that date the Addyston Company and Dennis Long & Co. were admitted to membership, and the following plan was then adopted:

[1] *United States* v. *Addyston Pipe & Steel Company.* 85 Fed. 271. Cf. pp. 273 ff. The first of these pools was to divide territory, the second was an example of the so called auction pool. The case was carried to the Supreme Court of the United States and a decree entered in favor of the Government.—Ed.

"First. The bonuses on the first 90,000 tons of pipe secured in any territory, 16" and smaller, shall be divided equally among six shops. Second. The bonuses on the next 75,000 tons, 30" and smaller sizes, to be divided among five shops, South Pittsburg not participating. Third. The bonuses on the next 40,000 tons, 36" and smaller sizes, to be divided among four shops, Anniston and South Pittsburg not participating. Fourth. The bonuses on the next 15,000 tons, consisting of all sizes of pipe, shall be divided among three shops, Chattanooga, South Pittsburg, and Anniston not participating. The above division is based on the following tonnage of capacity: South Pittsburg, 15,000 tons; Anniston 30,000 tons; Chattanooga, 40,000 tons; Bessemer, 45,000 tons; Louisville, 45,000 tons; Cincinnati, 45,000 tons. When the 220,000 tons have been made and shipped, and the bonuses divided as hereinafter provided, the auditor shall set aside into a reserve fund all bonuses arising from the excess of shipments over 220,000 tons, and shall divide the same at the end of the year among the respective companies according to the percentage of the excess of tonnage they may have shipped (of the sizes made by them) either in pay or free territory. It is also the intention of this proposition that the bonuses on all pipe larger than 36 inches in diameter shall be divided equally between the Addyston Pipe & Steel Company, Dennis Long & Co., and the Howard-Harrison Company."

"It was thereupon resolved: First. That this agreement shall last for two years from the date of the signing of same, until December 31, 1896. Second. On any question coming before the association requiring a vote, it shall take five affirmative votes thereon to carry said question, each member of this association being entitled to but one vote. Third. The Addyston Pipe & Steel Company shall handle the business of the gas and water companies of Cincinnati, Ohio, Covington, and Newport, Ky., and pay the bonus hereafter mentioned, and the balance of the parties to this agreement shall bid on such work such reasonable prices as they shall dictate. Fourth. Dennis Long & Company, of Louisville, Ky., shall handle Louisville, Ky., Jeffersonville, Ind., and New Albany, Ind., furnishing all the pipe for gas and water works in above-named cities. Fifth. The Anniston Pipe & Foundry Company shall handle Anniston, Ala., and Atlanta, Ga., furnishing all pipe for gas and water companies in above-named cities. Sixth. The Chattanooga Foundry & Pipe Works shall handle Chattanooga, Tenn., and New Orleans, La., furnishing all gas and water pipe

in the above-named cities. Seventh. The Howard-Harrison Iron Company shall handle Bessemer and Birmingham, Ala., and St. Louis, Mo., furnishing all pipe for gas and water companies in the above-named cities; extra bonus to be put on East St. Louis, and Madison, Ill., so as to protect the prices named for St. Louis, Mo. Eighth. South Pittsburg Pipe Works shall handle Omaha, Neb., on all sizes required by that city during the year of 1895, conferring with the other companies and co-operating with them. Thereafter they shall handle the gas and water companies of Omaha, Neb., on such sizes as they make.

"Note: It is understood that all the shops who are members of this association shall handle the business of the gas and water companies of the cities set apart for them including all sizes of pipe made by them.

"The following bonuses were adopted for the different states as named below: All railroad or culvert pipe or pipe for any drainage or sewerage purposes on 12" and larger sizes shipped into bonus territory shall pay a bonus of $1.00 per ton. On all sizes below 12" and shipped into 'bonus territory' for the purposes above named, there shall be a bonus of $2.00 per ton.

List of Bonuses

Alabama	$3 00	Wyoming	$4 00	Kansas	$2 00
B'gham, Ala.	2 00	Oregon	1 00	Ky.	2 00
Anniston, Ala.	2 00	Ohio	1 50	La.	3 00
Mobile, Ala.	1 00	N. D.	2 00	Miss.	4 00
Arizona Ter.	3 00	S. D.	2 00	Mo.	2 00
California	1 00	Florida	1 00	Montana	3 00
Colorado	2 00	Georgia	2 00	Nebraska	3 00
Ind. Ter.	3 00	Atlanta, Ga.	2 00	N. Mex.	3 00
North C.	1 00	Ga. Coasts Pts	1 00	S. C.	1 00
Tenn., East of C'land	2 00	Idaho	2 00	Minn.	2 00
Tenn., Middle and West	3 00	Nev.	3 00	Utah	4 00
Illinois, except Madison and East St. Louis, as previously provided	2 00	Oklahoma	3 00	Indiana	2 00
		Wis.	2 00	Iowa	2 00
		Texas, Interior	3 00		
		Texas Coast	1 00		
		Wash'ton Ter.	1 00		
		Michigan	1 50		
		West Va.	1 00		

"All other territory free.

"On motion of Mr. Llewellyn, the bonuses on all city work as specially reserved shall be $2.00 per ton."

The states, for sales in which, bonuses had to be paid into the association were called "pay" territory, as distinguished from "free" territory, in which defendants were at liberty to make sales without restriction and without paying any bonus. The by-laws provided for an auditor of the association, whose duty it was to keep account of the business done by each shop both in pay and free territory. On the 1st and 16th of each month, he was required to send to each shop "a statement of all shipments reported in the previous half month, with a balance sheet showing the total amount of the premiums on shipments, the division of the same, and debit, credit, balance of each company." The system of bonuses, as a means of restricting competition and maintaining prices, was not successful. A change was therefore made by which prices were to be fixed for each contract by the association, and, except in reserved cities, the bidder was determined by competitive bidding of the members, the one agreeing to give the highest bonus for division among the others getting the contract. The plan was embodied in a resolution passed May 27, 1895, in the words following: "Whereas, the system now in operation in this association of having a fixed bonus on the several states has not, in its operation, resulted in the advancement in the prices of pipe, as was anticipated, except in reserved cities, and some further action is imperatively necessary in order to accomplish the ends for which this association was formed: Therefore, be it resolved, that from and after the first day of June, that all competition on the pipe lettings shall take place among the various pipe shops prior to the said letting. To accomplish this purpose it is proposed that the six competitive shops have a representative board located at some central city, to whom all inquiries for pipe shall be referred, and said board shall fix the price at which said pipe shall be sold, and bids taken from the respective shops for the privilege of handling the order, and the party securing the order shall have the protection of all the other shops." In pursuance of the new plan, it was further agreed "that all parties to this association, having quotations out, shall notify their customers that the same will be withdrawn by June 1, 1895, if not previously accepted, and upon all business accepted on and after June 1st bonuses shall be fixed by the committee." At the meeting of December 19, 1895, it was moved and

carried that, upon all inquiries for prices from "reserved cities" for pipe required during the year of 1896, prices and bonuses should be fixed at a regular or called meeting of the principals. At the meeting of December 20, 1895, the plan for division of bonuses originally adopted was modified by making the basis the total amounts shipped into "pay" territory rather than the totals shipped into "pay" and "free" territory.

EXHIBIT 5

EXTRACTS FROM THE CONSTITUTION AND BY-LAWS OF THE COAL DEALERS' ASSOCIATION OF CALIFORNIA [1]

"Article 1. Title and Object. (a) The title of this organization shall be the 'Coal Dealers' Association of California,' with principal place of business in San Francisco. (b) It shall have for its object the furnishing of information to its members as to sales of coal made by wholesale dealers to the retail dealers, and by retail dealers to consumers, and also the names of any dealers who have been guilty of violating any of the rates or rules made from time to time by this organization, and the furnishing of as complete a list as possible of delinquent consumers, and such other matters as may be decided upon.

"Art. 2. What Constitutes a Dealer. (a) Any person who engages in the sale of coal as regular business, buying to sell again, who shall own and operate a yard, keeping an office, and displaying a sign, shall be regarded as a retail dealer. (b) All miners and shippers shall be eligible to membership in this association, provided such miner and shipper shall not make a practice of selling coal, at retail, at less price than the retail dealers."

"Art. 4. Fees—Dues—Assessments. (a) The admittance fee for membership shall be two hundred (200) dollars, and must invariably accompany the application. (b) The amount of dues shall be fifty cents per month, payable quarterly in advance, and to date from the first day of the month following the month in which the member was admitted. (c) Assessments may be levied by a two-thirds vote of the members present at a regular meeting, but only

[1] *United States* v. *Coal Dealers' Association of California.* 85 Fed. 252. Cf. pp. 254 ff. This combination was organized September 11th, 1896, by the retail coal dealers of San Francisco. Another agreement was entered into between this Association and Wholesale dealers of the same City. A temporary injunction against this combination was granted by the court.—Ed.

in such cases when the interests of the association as a business society require it. (d) No assessment shall be levied unless it is expressed in the notice of meeting that 'a resolution to levy an assessment will be introduced.'"

"Art. 6. Failure to Pay Dues, Assessments, or Fines—Charges—Right of Appeal. (a) If any member shall neglect or refuse to pay the monthly dues and assessments as provided in the constitution and the by-laws of this association within three days after the same have become due, he or they shall no longer be considered members of this association, or participant in its benefits, and shall surrender certificate of membership; but a written or printed notice must be sent, at the expiration of said time, to all those members who are delinquent, and may be reinstated within ten days thereafter by paying in full all dues."

BY-LAWS

. . . . . .

"Sec. 4. Standing Committees. (a) A grievance committee consisting of three persons shall be appointed by the president, from the board of directors, on the first Monday of every month, to serve without compensation until the first Monday of the following month, or until their successors are appointed. They shall assemble whenever requested to do so by the secretary, and receive and investigate all charges of violation of card rules or rates preferred against any coal dealer or agent in the city and county of San Francisco, and report their findings to the secretary. They shall have the power to fix the time limit for the payment of any fines imposed by them. . . . ."

"Sec. 9. Advertising, Circulars, etc. (a) Dealers in advertising coal are not permitted to state prices without adding the names of coal to be had for the prices named; both names and prices to correspond exactly with those on rate card. (b) Any circulars, posters, dodgers, cards, or signs conflicting with the card rates or rules displayed, found on the streets or circulated in any manner whatsoever, shall subject the dealer or agent, who caused their distribution, to the penalties, as are provided in section 13 of these by-laws for selling coal in violation of card rates or rules.

. . . . . .

"Sec. 11. New Yards. Any member opening a new yard or yards after June 14th, 1895, in addition to the one that secured his

admission in the association, shall be liable for an additional two hundred (200) dollars admittance fee and monthly dues for each yard so opened, in order for such yard or yards to participate in the benefits of the association.

"Sec. 12. Standard Rules and Weights. (a) No dealer shall give more or less than 100 pounds to 1 sack; 500 pounds to 5 sacks, or ¼ ton (short); 1,000 pounds to 10 sacks, or ½ ton (short); 2,000 pounds to 20 sacks, or 1 ton (short); 2,240 pounds to 1 ton (long). (b) All long tons must be delivered in bulk. Names of coal must appear on bill exactly as they read on rate card. A load of coal delivered in bulk shall be per ton of 2,240 pounds. If handled after arrival at customer's place, an additional charge of fifty cents per ton must be made. A ton of coal delivered in twenty sacks, and put in bin, shall be 2,000 pounds. No premiums or presents are permitted to be offered as inducements for purchasers to buy coal. (c) Dealers shall be permitted to sell and deliver fifty pounds of coal at one half card rates for one hundred pounds, but in no case shall they be allowed to sell coal in quantities ranging between fifty pounds and one hundred pounds.

"Sec. 13. Violations—Penalties. (a) If a dealer or agent, member or non-member, be found guilty of selling coal in violation of the card rates or rules, he shall be subject to a fine of not less than ten (10) dollars nor more than one hundred (100) dollars for the first offense, not less than twenty-five (25) dollars nor more than two hundred (200) dollars for the second offense; if a member of the association, be suspended and compelled to pay retail prices for third offense until restored to membership in good standing by the board of directors. . . .

EXHIBIT 6

STRUCTURAL STEEL ASSOCIATION OF THE UNITED STATES [1]

This agreement, made and entered into this 1st day of January, 1897, by and between the Passaic Rolling Mill Co., Pottsville Iron & Steel Co., A. & P. Roberts Co., Cambria Iron Co., Phoenix Iron Co., New Jersey Steel & Iron Co., Universal Construction Co., the Carnegie Steel Co. (Ltd.), Cleveland Rolling Mill Co., Jones & Laughlin Steel Co. (Ltd.),

[1] *United States of America* v. *United States Steel Corporation*. Petition, In the Circuit Court of the United States for the District of New Jersey, Exhibit B, pp. 76–82.

Witnesseth that the above said parties have mutually agreed to and with each other to form an association to be known as the Structural Steel Association of the United States.

First. Each of the above parties named, being manufacturers and sellers of steel I beams and channels of sizes not less than 3 inches in depth, shall, by reason of such manufacture and sale, be entitled to membership in this association, and each of the parties hereto shall be entitled to such portion of all sales by parties hereto of I beams and channels of sizes not less than 3 inches in depth (except I beams and channels for use in car construction and deck or bulb beams) as is allotted to it under the following table:

	Per cent.
The Carnegie Steel Co. (Ltd.)	49 3/8
Jones & Laughlin (Ltd.)	12 7/8
A. & P. Roberts Co.	11 1/2
Passaic Rolling Mill Co.	6
Phoenix Iron Co	5
Cambria Iron Co.	5
Universal Construction Co.	4 1/4
Pottsville Iron & Steel Co.	3
Cleveland Rolling Mill Co.	3
	100

It being understood that members of this association having bridge works wherein beams and channels, as covered by this agreement, are consumed shall report to this association all shipments to such departments and pay the agreed pool tax as hereinafter provided on shipments so made (except such as are used in the construction of buildings for their own respective works which tonnage shall be reported and credit given therefor).

Second. The officers of this association shall be as follows: A president, a treasurer, a commissioner and an executive committee, consisting of three members (the president being a member of the executive committee, ex officio).

Third. Each member of this association (the New Jersey Steel & Iron Co. excepted), shall, on or before the 10th day of February, 1897, and on and before the 10th day of each and every month thereafter, during the terms of this agreement, or any extension thereof, render to the commissioner of this association, a statement, which statement shall be sworn to or affirmed to by one of the prin-

cipal executive officers of the member so making the report, or in case the member so making the report is a copartnership, then, in that case, the report shall be sworn to or affirmed to by one of the firm holding membership in this association which oath or affirmation shall be to the effect that the report so made, is a true and correct report of all the material described in the first clause of this agreement which was shipped by the member making the report during the month for which the report is made; the form of the report and oath or affirmation as to its correctness, shall be furnished by the commissioner. And upon the commissioner's receiving from the respective members their reports, as aforesaid, he, the commissioner, shall render to each member monthly, as soon as possible after the receipt of all the statements of all the members, copies of statements last rendered by each member, and shall forthwith "state an account," charging each member, who has shipped during the month more than its or their percentage of the total amount shipped by all the members of the association, the sum of five-tenths cents per pound on each and every pound of such excess and crediting each member who has not shipped its or their percentage of the total amount shipped by all the members of the association with the sum of five-tenths cents per pound on each and every pound which it or they fail to ship during the month for which the reports are made, as aforesaid, and as a basis of calculation in making such "statement of account," the commissioner shall use the table of percentages as set forth in the first clause of this agreement.

And upon the statement of such account by the commissioner, he shall immediately mail a copy thereof to each member of this association and within five days after the receipt of any account by the member of this association, which account shall show that the member receiving the same is indebted to the association, the member so receiving its or their account showing its or their indebtedness, shall forward to the treasurer a check or sight draft drawn to the order of T. Mellon & Sons, in payment of such indebtedness, which check or sight draft the treasurer shall deposit in the said T. Mellon & Sons' bank to the credit of this association, and immediately upon the treasurer receiving from the members all their respective remittances, in payment of their indebtedness to the association, for any month, he, the treasurer, shall notify the respective members whom the aforesaid "account stated" shall show to be creditors of the association for any month, to draw on him (the treasurer) for the amount due to them as shown by said "ac-

count stated," and upon receipt of their several drafts so made the treasurer shall accept the same payment at T. Mellon & Sons', and charge the amounts thereof to the fund created by the payments made by the members who shipped in excess of their proportion during the month for which the "account stated" was made, thus closing that account each month.

Fourth. To insure the rendering of the statements and the settlement of the balances due between the members of this association, at the time required by the provisions of this agreement, each member (the New Jersey Steel & Iron Co. excepted) shall, immediately after the signing of this agreement, remit to the treasurer its or their check or sight draft for the sum of $2,500, and shall, on or before the 10th day of each month thereafter, remit its or their check or sight draft for $500, the said checks or sight drafts shall be made in favor of T. Mellon & Sons, who shall become the depository of all the proceeds of such checks or sight drafts, which shall form a guaranty fund and be held by said T. Mellon & Sons during the continuance of this agreement, or any extension thereof, and disposed of finally as hereinafter provided.

It being understood that when the said guaranty fund reaches the sum total of $45,000, that the payments toward said fund shall thereupon cease.

Fifth. Whereas it has been agreed by and between the several other members and the New Jersey Steel & Iron Co. that the works of the said New Jersey Steel & Iron Co. shall remain inoperative in the manufacture of I beams and channels, of sizes coming under the provision of and during the life of this agreement, in consideration of which the New Jersey Iron and Steel Co. shall receive from this association the sum of $5,000 per month. Said sum of $5,000 to be paid by the several other members in proportion to their allotments as shown by the table in the first clause of this agreement. On the tenth day of each month the treasurer shall draw at sight on the respective parties to this agreement for the proportionate amount of the indebtedness, and when all such drafts shall have been paid, he shall immediately notify the New Jersey Steel & Iron Co. to draw upon him at sight for the sum of $5,000, thus closing this account each month. In case any draft which the treasurer shall make, as in this clause provided, shall not be promptly paid, the amount of such draft shall be taken from the deposition the guarantee fund of the party failing to pay such draft, and payment made to the New Jersey Steel & Iron Co., the same as if all such

drafts of the treasurer has been paid, and such party shall immediately remit to the treasurer an amount sufficient to make good the sum so taken from the guarantee fund.[1]

Sixth. Whereas it has been agreed by and between all the members of this association (the New Jersey Steel & Iron Co. excepted) to exempt all members except the Phoenix Iron Co., to the extent of 5 per cent of 300,000 tons, in the proportions expressed in the table of allotments contained in clause 1 of this agreement; the aforesaid Phoenix Iron Co. to be exempted to the amount of 11,000 tons; the pool assessment shall not be charged on any member's shipments until it or they shall have completed its or their quoto [2] of exempted tonnage.

Seventh. It is required that all I beams and channels shipped into the States bordering on the Pacific coast and to be actually used in the territory into which it is shipped and also all I beams and channels actually exported for use outside the limits of the United States be reported to the commissioner together with bills of lading or other evidence of exportation satisfactory to him (said evidence to be confidential and not to be circulated among the members). Such tonnage will be deducted from the member's report and the agreed pool tax charged on the balance.

Eighth. Upon receiving the written request of any one member of the association the commissioner shall call a meeting of the parties to this agreement, to be held within five days from the date of his receiving such written request.

Ninth. If at any time any of the parties hereto shall have reason to suppose that any other party or parties to the agreement have violated any of the provisions of this agreement, the said party so supposing the agreement has been violated shall file with the commissioner of the association a bill of complaint against the party or parties so suspected of such violation, which bill of complaint shall fully set forth the act or acts complained of, together with all the matters or things connected therewith. The said bill of complaint shall be in writing and shall furnish all the evidence that can be submitted in connection with the alleged violation, and upon receipt by the commissioner of any and all bills of complaint as aforesaid, he shall forthwith use his best offices to have the accuser and accused arrive at an amicable settlement, failing in which, he shall submit all the information he may have to the executive com-

[1] This sentence is thus in the original.—Ed.

[2] Thus in the original.—Ed.

mittee for action. If the said executive committee shall determine that the charges have been sustained, they, the executive committee, shall impose a penalty not less than $1,000, nor more than the amount standing to the credit of the member so punished in the guaranty fund at the time the fine is imposed upon the party so adjudged as having violated the agreement, but if the executive committee shall determine that the charges have not been sustained they shall dismiss the complaint from further consideration by them. It being further understood and agreed that no member of the executive committee shall act upon any bill of complaint made by or made against the member of the association which he represents, nor shall any representative of a member of the association vote upon any bill of complaint brought by or brought against the member of the association which he represents. Any penalty imposed by the executive committee will be collected by the treasurer, deducting the amount thereof from the deposit made by the member against whom the penalty is imposed to the guaranty fund, as provided for in clause fourth of this agreement, within two weeks after such penalty is thus imposed, the sum thereof shall be transferred pro rata as per allotments to the accounts of the members of the association, excluding the member against whom the penalty is imposed, by the treasurer of the association, in which case the member so punished shall immediately remit an amount sufficient to make good the sum taken from the guaranty fund.

In case the offending member should appeal to the association and the action of the executive committee should not be sustained by a majority vote of said association, then the fine imposed shall be remitted and any sum that the member may have paid into the association by reason of this shall be returned.

Tenth. No member of this association (the New Jersey Steel & Iron Co. excepted) shall make any lump-sum bid, nor shall they or it erect any building, directly or indirectly. This applies only to members as "Rolling Mills." Any question arising as to the interpretation of this clause shall be referred to the commissioner for his immediate decision.

Eleventh. No consideration in the nature of brokerage or commission is to be allowed, except to the accredited agents of the parties to this agreement, whose names shall be on file with the commissioner; and in no case will it be permissible for such commission to be divided.

No sales or contracts shall be made to or with middlemen except on specific work for immediate specifications.

All sales between parties to this agreement shall be at pool prices, as provided in agreement "B," and all shipments shall be reported by the manufacturer, on which the pool tax will be charged the same as to outside parties, the purchaser also to report shipments of all such material so bought, for which they shall claim and receive credit.

Twelfth. At any meeting of the members of this association, called by the commissioner as herein provided, any party or parties may give notice of withdrawal herefrom, but no such notice shall take effect until January 1, 1898. If the aggregate pool percentages of the parties giving such notice of withdrawal shall amount to less than 4 per cent, this agreement shall continue in force as between the remaining parties, but if such aggregate shall amount to 4 per cent or more this agreement shall terminate at the time so fixed. But statements shall continue to be rendered of all I beams and channels shipped up to date of its termination, the pool assessment.[1]

Thirteenth. The percentages of the parties hereto or of their successors (including as such any concern mainly owned or controlled by any of the said parties or any of their stockholders), shall be maintained in the same relative proportion until otherwise agreed, and if any party shall at any time have more than one successor or allied concern, the aggregate percentages allotted to itself and all its successors and allied concerns shall not exceed the percentage that the original concern would have been entitled to if it had continued alone its relations to the other parties under this agreement, and the parties thereto shall include in their statement the shipments for such successors and allied concerns.

Fourteenth. In case other firms or corporations are admitted as partners to this agreement, the percentage of the pool allotted to each shall be deducted pro rata from the percentages of the members immediately prior to the time of its admission; and in case any of the parties hereto or any of the parties hereafter admitted shall withdraw, the percentage of the pool allotted to such withdrawing party or parties shall be added pro rata to the percentages of the parties remaining. In such case the commissioner shall compute and report the new percentages to the nearest one-hundredth of one per cent, which degree of accuracy shall be deemed sufficient.

[1] This sentence is thus in the original.—Ed.

Fifteenth. The allotment herein made of percentages, the amount of the guaranty fund, and the payment made to the New Jersey Steel & Iron Co., as herein provided, shall not be altered, amended, or changed in any respect, except by the unanimous consent of all the parties to this agreement, but any other matters or things whatsoever which concern this agreement or the association formed thereby or any regulations hereafter adopted, may, at any time, be abrogated or amended or altered at any meeting of the members of this association, provided that two-thirds of the members of the association are present thereat, that they represent at least two-thirds of the percentage allotted to all, and vote in favor thereof.

Sixteenth. To provide for the prompt payment of all salaries, rents, and other expenses (except the payment which is to be made monthly to the New Jersey Steel & Iron Co.), a general expense fund shall be called in as needed by the treasurer in proportion to the percentage allotted each member in the association.

Seventeenth. No matter of account or understanding outside of this agreement shall affect the settlements herein provided for, either as an offset or otherwise, nor shall any written or unwritten agreement of the parties hereto, or any of them, to establish and maintain uniformity in prices, or any controversy arising out of such agreement, or any failure to carry out any of its provisions, or to maintain prices, affect in any way the rendering of the statements and the making of the settlements therein required.

Eighteenth. Whenever this agreement shall have been terminated the balance of the deposit, with accumulated interest, remaining in the hands of the treasurer to the credit of each party, after provision shall have been made for the payment of all expenses, shall be returned to it, provided it shall have rendered all the statements required from it under this agreement and have paid all its debtor balances. In case any party hereto shall not have fulfilled its money obligations under this agreement, the amount it has on deposit in the guarantee fund shall be applied toward the fulfillment of those obligations, and the excess, if any, returned to it. But in case any party shall not have fulfilled its agreement to render the monthly statements under this agreement, the amount it has on deposit in the guarantee fund, or the excess thereof, as above stated, shall be divided among the parties who shall have fulfilled their obligations under this agreement, in the proportion of their respective percentages.

Nineteenth. At the expiration of this agreement, or at any time

the president of the association, together with the majority of the executive committee, determine that it is advisable that all or any part of any funds belonging to the association shall be withdrawn from the depository then holding the same, upon notification by the present and a majority of the executive committee of such determination being given the treasurer, he, the treasurer, shall make and sign a sight draft or check upon the depository so holding such funds for the sum named in such notification, which check or sight draft shall then be countersigned by the president or one member of the executive committee, and when such checks or sight drafts are so made and signed by the treasurer and countersigned by the president or one member of the executive committee and duly presented for payment at the office of the depository holding the funds of the association, all such checks and sight drafts shall be paid by such depository.

Twentieth. For all purposes of this agreement a ton shall be taken and held of 2,000 pounds.

In witness whereof the parties hereto have signed this agreement the day and year first above written.

EXHIBIT 7

THE STEEL PLATE ASSOCIATION [1]

THIS AGREEMENT, made and entered into this ninth day of November, 1900, by and between:

Carnegie Steel Company.
Jones & Laughlins, Limited.
Illinois Steel Company.
Crucible Steel Company.
Otis Steel Company.
Tidewater Steel Company.
Lukens Iron & Steel Company.
Worth Bros. Company.
Central Iron & Steel Company.
The American Steel & Wire Company.
The Glasgow Iron Company.

WITNESSETH: That the above said parties have mutually agreed to and with each other to form an Association for mutual interests, and to enable them to pay liberal wages to their workmen, to be known as THE STEEL PLATE ASSOCIATION OF THE UNITED STATES.

[1] *United States of America* v. *United States Steel Corporation.* Petition, Exibit A, pp. 70–75.

FIRST: Each of the parties above named being manufacturers and sellers of steel plates, shall by reason of such manufacture and sale, be entitled to membership in this Association, and each of the parties hereto shall be entitled to portion of all shipments in the following proportions:

Carnegie Steel Company	46.25
Jones & Laughlins, Limited	4.75
Illinois Steel Company	11.00
Crucible Steel Company of America	4.50
Otis Steel Company	2.50
Tidewater Steel Company	3.00
Lukens Iron & Steel Company	7.50
Worth Bros. Company	7.00
Central Iron & Steel Company	8.00
American Steel & Wire Company	5.50

Glasgow Iron Company to the extent of sales and output up to 40,000 tons, should they be able to accomplish them, prior to December 31st, 1901.

SECOND: The officers of this Association shall be as follows: a President, a Treasurer, a Commissioner and an Executive Committee consisting of six members, including the President. The conclusions of all the Executive Committee meetings shall be at once communicated to all members of this Association.

THIRD: Each member of this Association shall, on or before the tenth day of December, 1900, and on or before the tenth day of every month thereafter during the term of this Agreement, or any extension thereof, render to the Commissioner of this Association, a statement, which statement shall be sworn to, or affirmed to, by one of the principal Executive officers of the member so making the report, or in case the member so making the report is a co-partnership, then, in that case, the report shall be sworn to, or affirmed to, by one of the firm holding membership in this Association, which oath or affirmation shall be to the effect that the report so made, is a true and correct report of all the material described in the First Clause of this Agreement, which was shipped by the member making the report during the month for which the report is made; the form of the report, and oath of affirmation as to its correctness, shall be furnished by the Commissioner, and shall include a statement of the rolling production for each month; and upon the Commissioner's receiving from the respective members their reports, as afore-

said, he the Commissioner, shall render to each member monthly, as soon as possible after the receipt of all the statements of all the members, copies of statements last rendered by each member, and shall forthwith "State an Account," charging each member, who has shipped during the month more than its or their percentage of the total amount shipped by all the members of the Association, the sum of Thirty-five hundredths of a cent (.35c) per pound on each and every pound of such excess, and crediting each member who has not shipped its or their percentage of the total amount shipped by all members of the Association, with the sum of thirty-five hundredths of a cent (.35c) per pound on each and every pound with which it or they fail to ship during the month for which the reports are made, as aforesaid, and as a basis of calculation making such "Statement of Account," the Commissioner shall use the table of percentages as set forth in the First Clause of this Agreement; and upon the Statement of any such account by the Commissioner, he shall immediately mail a copy thereof to each member of this Association, and within five days after the receipt of any account by the member of this Association, which account shall show that the member receiving the same is indebted to the Association, the member so receiving its or their account, showing its or their indebtedness, shall forward to the Treasurer a check or sight draft drawn to the order of T. Mellon & Sons, in payment of such indebtedness which check or sight draft the Treasurer shall deposit in the said Mellon & Sons' Bank, Pittsburg, Pa., to the credit of this Association, and to remain to the credit of the member paying on excess of shipments and being increased or diminished as each month's business shows. It shall be the right and privilege of each member, who shall not have shipped his full percentage, to call, through the Commissioner on members who have made an excess, to transfer to the short member a sufficient amount of tonnage, or otherwise enable him to fill up his order book. It being the intent of this Agreement that each member shall ship his entire percentage, and at the end of each year it shall be the duty of the Commissioner to so arrange between the members as to have the pool balanced; but any member unable, at the end of each year, to produce his allotment, after first deducting his exempted tonnage; which shall be divided among other members of the pool, in proportion to their respective tonnage allotments.

FOURTH: To insure the rendering of the statements and the faithful adherence of each party to the terms of this Agreement, a guar-

antee fund of $100,000 shall be formed by the payment on or before December 3rd, 1900, of $1,000 for each per cent. of allotment, as provided for in the First Clause of this Agreement to the Treasurer, which fund shall be deposited or invested as directed by the Executive Committee in trust for the members, in the same proportion as received. Subject however, to such forfeiture or penalty as may be declared by a vote of the remainder of the members against any member violating the terms of this Agreement, as hereinafter provided.

FIFTH: WHEREAS, it has been agreed by and between all the members of this Association to exempt certain tonnage to cover orders already taken, it is agreed that such exemption shall be as follows:

Carnegie Steel Company	140,000	tons.
Jones & Laughlins, Limited	9,400	"
Illinois Steel Company	15,394	"
Crucible Steel Company of America	2,687	"
Otis Steel Company	1,740	"
Tidewater Steel Company	2,520	"
Lukens Iron & Steel Company	5,778	"
Worth Bros. Company	3,863	"
The American Steel & Wire Company	15,116	"
Glasgow Iron Company	7,965	"

It is understood that those who hold exemptions under this agreement are to proportion the shipments applying to them in monthly allotments, between the date of this Agreement and January 1st, 1902, and such shipments shall not be subject to the pool assessment.

SIXTH: It is required that all plates shipped into the states bordering on the Pacific Coast, and to be actually used in the territory into which it is shipped, and also all plates actually exported for use outside the limits of the United States, be reported to the Commissioner, together with Bills of Lading, or other evidence of exportation, for actual use abroad, satisfactory to him (said evidence to be confidential and not to be circulated among the members.) Such tonnage will be deducted from the member's report, and the agreed pool tax charged on the balance.

SEVENTH: Upon receiving the written request of two members of the Association, stating the object, the Commissioner shall, upon the approval of the Executive Committee, call a meeting of the parties to this agreement, to be held from five days from date of his receiving such written request.

EIGHTH: If at any time any of the parties hereto shall have reason to suppose that any other party or parties to the Agreement have violated any of the provisions of this Agreement, the said party so supposing the Agreement has been violated, shall file with the Commissioner of the Association, a Bill of Complaint against the party or parties so suspected of such violation, which Bill of Complaint shall fully set forth the act or acts complained of, together with all the matters or things connected therewith; the said Bill of Complaint shall be in writing, and shall furnish all the evidence that can be submitted in connection with the alleged violation, and upon receipt by the commissioner of any and all Bills of Complaint, as aforesaid, he shall forthwith use his best offices to have the accuser and accused arrive at an amicable settlement, failing in which, he shall then submit all the information he may have to the Executive Committee for action; if the said Executive Committee shall determine that the charges have been sustained they, the Executive Committee, shall impose a penalty of not less than One Thousand Dollars, nor more than the amount standing to the credit of the member, so punished, in the Guarantee Fund at the time the fine is imposed upon the party so adjudged as having violated the Agreement, but, if the Executive Committee shall determine that the charges have not been sustained, they shall dismiss the complaint from further consideration by them. It is further understood and agreed that no member of the Executive Committee shall act upon any Bill of Complaint made by, or made against the member of the Association which he represents nor shall any representative of a member of the Association vote upon any Bill of Complaint brought by or brought against the member of the Association he represents. Any penalty imposed by the Executive Committee will be collected by the Treasurer, deducting the amount therefrom the deposit made by the member, against whom the penalty is imposed, to the Guarantee Fund, as provided for in Clause Fourth of this Agreement, within two weeks after such penalty is thus imposed, the sum thereof shall be transferred pro rata as per allotments to the accounts of the members of the Association excluding the member against whom the penalty is imposed, by the Treasurer of the Association, in which case the member so punished shall immediately remit an amount sufficient to make good the sum taken from the Guarantee Fund.

In case the offending member shall appeal to the Association and the action of the Executive Committee shall not be sustained by a

majority vote of the members of the said Association, then the fine imposed shall be remitted, and any sum that the member may have paid into the Association, by reason of this shall be returned.

NINTH: No consideration, in the nature of brokerage or commission, shall be paid to any one on sales of plates, on or after January 1st, 1901.

All sales between parties to this Agreement shall be at pool prices, as provided in Agreement "B," and all shipments shall be reported by the manufacturer, on which the pool tax will be charged the same as to outside parties, the purchaser also to report shipments of all such materials so bought, for which they shall claim and receive credit.

TENTH: At any meeting of the members of this Association, called by the Commissioner, as herein provided, any party, or parties may give three months notice of withdrawal herefrom but no such notice shall take effect prior to January 1st, 1902. Statements shall continue to be rendered of all plates shipped up to date of such withdrawal, the pool assessment to be charged thereon.

ELEVENTH: In case other firms or corporations are admitted as partners to this Agreement, the percentage of the pool alloted to each shall be deducted pro rata from the percentages of the members immediately prior to the time of its admission; and in case any of the parties hereto, or any of the parties hereafter admitted shall withdraw, the percentage of the pool alloted to such withdrawing party or parties shall be added pro rata to the percentages of the parties remaining. In such case, the Commissioner shall compute and report the new postages to the nearest one hundredth of one per cent., which degree of accuracy shall be deemed sufficient.

TWELFTH: The Agreement herein made of percentages, the amount of the Guarantee Fund as herein provided, and the Agreement to maintain minimum fixed rates as covered in Agreement "B", shall not be altered, amended or changed in any respect, except by the unanimous consent of all parties to this agreement.

THIRTEENTH: To provide for the prompt payment of all salaries, rents and other expenses, a general expense fund shall be called in as needed, by the Treasurer, in proportion to the percentage alloted[1] each member of the Association.

FOURTEENTH: No matter of account, or understanding outside of this Agreement, shall affect the settlements herein provided for; either as an offset or otherwise, nor shall any written or unwritten

[1] Thus in original.—Ed.

agreement of the parties hereto, or any of them establish and maintain uniformity prices, or controversy arising out of any such agreement or any failure to carry out any of its provisions or to maintain prices, affect in any way the rendering of the statements and the making of the settlements herein required.

FIFTEENTH: Whenever this Agreement shall have been terminated the balance of the deposit, with accumulated interest, remaining in the hands of the Treasurer to the credit of each party, after provision shall have been made for the payment of all expenses, shall be returned to it, provided it shall have rendered all the statements required from it under this Agreement, and have paid all its debtor balances. In case any party hereto shall not have fulfilled its money obligations under this agreement, the amount it has on deposit in the Guarantee Fund shall be applied towards the fulfillment of those obligations, and the excess, if any, returned to it. But in case any party shall not have fulfilled its agreement, the amount it has on deposit on [1] the Guarantee Fund, or the excess thereof, as above stated, shall be divided among the parties who shall have fulfilled their obligations under this agreement in the proportion of their respective percentages.

SIXTEENTH: For all purpose [1] of this contract, a ton shall be taken and held as Two Thousand Pounds, (2,000).

IN WITNESS WHEREOF the above parties have signed this Agreement the day and year first above written.

EXHIBIT 8

BY-LAWS OF THE EASTERN STATES RETAIL LUMBER DEALERS ASSOCIATION [2]

ARTICLE I.

Name and territory.

The name of this organization shall be the Eastern States Retail Lumber Dealers' Association, and the territory embraced by it shall be that covered by the association admitted to membership.

[1] Thus in original.—Ed.

[2] *United States of America* v. *The Eastern States Retail Lumber Dealers Association*. Original Petition, In the Circuit Court of the United States for the Southern District of New York, Exhibit A, pp. 70–73. This Association was organized at New Haven, Conn., in September, 1902.—Ed.

ARTICLE II.

Objects.

The objects of this association shall be to promote and foster a unity of action in all matters pertaining to the legitimate conduct of the retail lumber trade, to encourage friendly relations between the several associations whose members are members of this association, to correct abuses and irregularities from which the trade suffers, *to secure and disseminate any and all proper information for the mutual convenience, benefit, or protection of its membership.*[1]

ARTICLE III.

Restrictions.

No rules, regulations, or by-laws shall be adopted which will in any manner stifle competition, limit production, regulate prices, restrain trade, or provide for the pooling of profits; no coercive measures shall be practiced or adopted toward any retailer or wholesaler; nor shall any discriminatory practices on the part of this association be used or allowed against any retailer or wholesaler for the reason that he may or may not be a member of any association, and no promises or agreements of any kind shall be requisite to membership in this association other than those contained in this constitution, nor shall any penalties be imposed for any cause whatsoever.

ARTICLE IV.

Officers.

SECTION 1. The officers of this association shall consist of a president, vice president, secretary, who shall also act as treasurer, who shall be elected by ballot at each annual meeting, and with two other members, who shall also be elected at each annual meeting, shall constitute the board of directors, and a majority of the votes cast shall be necessary to a choice. All officers shall hold office until their successors are duly elected and qualified. No officer shall have power to make or enter into any contract, obligation, or agreement on behalf of the association until such contract, obligation, or agreement shall have been submitted to, and received the indorsement, approval, or sanction of a majority of the member-

[1] Italics are the editor's.

ship. No officer shall obligate the association for any expenditure of money above the sum of $25 without the approval of a majority vote.

SEC. 2. Until the first annual meeting the vice president, secretary, and treasurer need not be members of the board of directors.

ARTICLE V.

Duties of officers.

Each officer of the association shall perform the duties usually devolving upon the occupant of such office. It shall be the duty of the secretary to perform such labors on behalf of the association as he may be called upon in the interim between meetings and to carry out all matters upon which action has been taken in meeting, unless otherwise ordered.

ARTICLE VI.

Meetings.

The association shall hold two regular meetings each twelve months, the annual meeting on the first Wednesday in October, in the city of New York, and the second meeting at such time and place as may be determined upon. Special meetings may be called by the president when considered necessary, or whenever the representatives of the three associations shall unite in asking that such a meeting be called. Notices of all meetings shall be given to the members of this association at least five days before the date set for such meeting.

ARTICLE VII.

Membership.

SECTION 1. The members of this association shall be composed of three members, one of whom shall be the secretary of each of the following associations: The New York Lumber Trade Association, the New Jersey Lumbermen's Protective Association, the Lumber Dealers' Association of Connecticut, the Lumber Dealers' Association of Rhode Island, the Massachusetts Retail Lumber Dealers' Association, the Retail Lumbermen's Association of Philadelphia, and of three members, one of whom shall be secretary of such other regularly organized bodies representing the retail lumber dealers' interests as shall be elected by a majority vote at any regular meeting of this association.

SEC. 2. All members shall enjoy equal privileges except that upon the final vote on all questions and at elections, and on amendments, shall be decided under the unit rule, the three members of each association being entitled to only one vote for such three members.

ARTICLE VIII.

Committees and delegates.

Whenever action may require the appointment of committees to perform special work, or necessity calls for the appointment of a delegate, or delegates, the president shall be authorized to notify the members of this association, stating in writing the object for such appointment, and upon receiving a majority vote favorable thereto he shall have power to act in the making of such appointment as he may deem proper.

ARTICLE IX.

Settlements of disputes.

Any and all claims referred to this association for settlement shall be submitted in writing unless otherwise decided, with such accompanying documentary evidences as the parties thereto may consider necessary, and all parties interested must agree to accept the decision of this association as final.

ARTICLE X.

Expenses.

To meet the expenses incurred by this association, an annual fee of $10 shall be paid by the members of each association jointly at the annual meeting, and all other expenses shall be pro rata, based on the amount received from annual dues for the previous year by the association of which they are members.

ARTICLE XI.

Amendments.

Amendments to these articles may be made at any meeting by a two-thirds vote of the members present, provided notice of such amendment shall have been included in the call for the meeting.

ARTICLE XII.

Quorum.

A quorum of this organization for the transaction of business shall consist of not less than one of the members of three of said associations.

EXHIBIT 9

NAVAL STORES AGREEMENT [1]

Memorandum of agreement made and executed on this ———— day of March, A. D. 1905, between the PATTERSON-DOWNING COMPANY, a corporation of West Virginia, of the first part, hereinafter called "Patterson"; the S. P. SHOTTER COMPANY, also a corporation of West Virginia, of the second part, hereinafter called "Shotter"; the SOCIETE ANONYME DES PRODUITS RESINEUX, a corporation of the Kingdom of Belgium, of the third part, hereinafter called "Anonyme"; NICKOLL & KNIGHT, a mercantile firm composed of Alexander Knight, of the city of London, England, of the fourth part, hereinafter called "Nickolls"; and the GLOBE NAVAL STORES COMPANY, also a corporation of West Virginia, of the fifth part, hereinafter called "GLOBE."

Whereas Globe is chartered and organized for the purpose of buying and selling and generally dealing in spirits of turpentine, including turpentine chemically extracted by artificial process from pine wood, and which is commonly called wood turpentine; and

Whereas, Patterson, Shotter, Anonyme, and Nickolls as a part of their respective business severally deal in such turpentine product; and

Whereas, further the said Patterson, Shotter, Anonyme, and Nickolls have each severally subscribed to the capital stock of said Globe in the following proportions, viz:

Patterson to 34% thereof, or 340 shares;
Shotter to 21-½% thereof, or 215 shares;
Anonyme to 26-½% thereof, or 265 shares;
Nickolls to 18% thereof, or 180 shares;

[1] *The United States of America* v. *American Naval Stores Company et al.* Petition in Equity, In the District Court of the United States for the Eastern Division of the Southern District of Georgia, Exhibit A, pp. 25–36. In this case the Globe Naval Stores Company appears from the agreement, and so the Government alleges, to be merely a clearing house for the pooling of profits and losses.—Ed.

all of said shares being of the par value of fifty dollars ($50) per share; and

Whereas, Globe desires to acquire from the first, second, third, and fourth parties, respectively, their several turpentine businesses, and said first, second, third, and fourth parties are willing to dispose of the same on the terms and conditions hereinafter set forth; and

Whereas, the said Patterson and Shotter are extensive dealers in American rosin, and one of the considerations moving them to enter into this contract is the regulation of the rosin business as between themselves and the said Anonyme and Nickolls:

Now, then, this agreement witnesseth, That in consideration of the premises and of one dollar by each of said parties to each of the other in hand paid, the receipt whereof is hereby acknowledged, the parties hereto mutually covenant and agree each with the others as follows:

1. The said Patterson, Shotter, Anonyme, and Nickolls severally sell, assign, and set over to Globe their respective turpentine businesses upon the terms and subject to the limitations hereinafter mentioned.

2. The said Globe, in consideration of such sales and assignments, agrees to pay to Patterson, Shotter, Anonyme, and Nickolls, respectively, seventeen thousand dollars ($17,000), ten thousand seven hundred and fifty dollars ($10,750), thirteen thousand two hundred and fifty dollars ($13,250), and nine thousand dollars ($9,000), in full-paid stock at par of the Globe Company.

3. It is understood and agreed that said Patterson, Shotter, Anonyme, and Nickolls shall severally act as the agents and representatives of said Globe in the buying and selling of turpentine products, their several turpentine businesses, however, being conducted as heretofore in their own names, but for account of Globe.

4. It is understood and agreed that James Farie, jr., of Savannah, Georgia, is under contract to Nickolls whereby his entire naval stores business shall be carried on as heretofore, that is to say, the turpentine business of the said Farie shall be conducted by him for account of Globe, and the rosin business for the joint account of Patterson and Shotter, it being expressly understood that the said James Farie, jr., and Andrew Farie, also of Savannah, Georgia, shall have no interest of any kind, either directly or indirectly, and shall not in any manner or form, deal or operate in spirits of turpentine or rosin or other products of pine trees, except as provided in said contract, a copy of which is attached hereto, and in considera-

tion of the premises Nickolls hereby assigns all their rights in and under said contract to Globe, and on the other hand, Globe hereby takes the place of Nickolls in said contract and assumes all the burdens and obligations thereunder and shall be entitled to all benefits thereof, provided, however, that Globe shall not be required by reason of said contract to pay to the said James Farie, jr., a sum greater than twenty-one thousand five hundred dollars ($21,500) per annum, it being further understood that said Nickolls shall contribute the sum of seven thousand five hundred dollars ($7,500) for the office expenses of said James Farie, jr., in Savannah, Georgia.

5. It is understood and agreed that said Patterson, Shotter, Anonyme, and Nickolls, in conducting their several businesses as the agents and for account of Globe as aforesaid, shall confine their operations to regular business transactions, so as to assure as far as possible reasonable and legitimate profits, it being expressly understood that neither of said parties shall be at liberty to do a speculative business without the consent of Globe.

6. It is understood and agreed that neither Patterson, Shotter, Anonyme, or Nickolls shall hold any interest or directly or indirectly deal in American turpentine, except as the agents and for account and benefit of Globe, it being understood that by American turpentine is meant the spirits of turpentine and wood turpentine which is concentrated at all and every of the Atlantic seaports of the United States of America, and which either of said first four parties may handle and sell as being from said Atlantic seaports.

7. It is understood and agreed that this agreement comprehends and includes as part of the turpentine business herein purchased the sale of French and Spanish turpentine exported from France and Spain, but it does not include any French turpentine handled or sold in France itself.

8. It is understood and agreed that this contract does not cover any turpentine business which Patterson and Shotter may control in the Gulf ports of the United States, it being expected that the domestic consumption will absorb all the receipts coming to said Gulf ports. In the event, however, the domestic consumption does not absorb all of such Gulf port receipts, then Patterson and Shotter, respectively, agree to turn over to Globe the surplus receipts, provided, however, that the quantity of such surplus must be specified and declared on the fifteenth (15th) and last days of each month and must be charged to said Globe at the average Savannah

quotations of the previous fifteen days, with the exception, however, of a surplus at New Orleans, not exceeding twenty thousand (20,000) barrels per annum, for which Globe hereby agrees to pay one and a half (1-½) cents per gallon above the average quotations. Should the Savannah quotations during the periods affected be fictitious, the average price to be paid must be on the same basis that has been applied to the receipts at the Atlantic closed ports. Patterson and Shotter severally agree that they will make no charge for interest, storage, and fire insurance on such surplus receipts of the Gulf ports up to the day on which they declare the same. After said date the charges will be assumed and borne by said Globe, provided that the same shall not exceed the charges now in force in Savannah, Georgia.

9. It is understood and agreed that Patterson and Shotter and Nickolls (the latter operating through James Farie, jr., at Savannah, Georgia) shall continue to conduct their respective business [1] in turpentine as hereinbefore defined, but for the account and benefit of Globe. As compensation for their services in the premises said Patterson and Shotter shall be allowed a commission of one per cent (1%) on all sales made by them, respectively, provided, however, that said Patterson and Shotter shall only receive one-half (½) of one per cent (1%) on sales made to the Pratt works in New York, Prince in Boston, and on all sales to Philadelphia. It is further understood that on sales, transfers, and divisions of receipts to and with the Standard Oil Company no commission will be charged except upon such quantities as will reduce the commitments of Patterson and Shotter under their contracts with the Standard Oil Company in the Gulf States, upon which quantities they will be allowed a commission of one per cent (1%).

10. It is understood that Nickolls shall not sell more than fifteen thousand (15,000) barrels per annum.

11. It is understood and agreed that Anonyme will conduct for the company and for its benefit any business offered for export in Spanish and French turpentine, and that said Anonyme shall be allowed a commission of one per cent (1%) on all Spanish turpentine, and a commission of one-half (½) of one per cent (1%) on maximum fifteen thousand (15,000) barrels of French turpentine.

12. It is understood and agreed that the operations of Patterson, Shotter, Anonyme, and Nickolls for account of Globe shall be conducted and entered under a turpentine account, and shall in-

[1] Thus in original.—Ed.

clude all transactions, whether actual deliveries or contracts, where settlement is made in lieu of actual delivery. It is understood that Patterson, Shotter, Anonyme, and Nickolls, respectively, shall each operate in their own names, and with their own organizations, the said Globe being responsible for any losses that may be sustained through the nonfulfillment of contracts or bad debts.

The turpentine account shall be charged at cost with all of the turpentine bought for account of Globe, and such account shall be credited with the result of all sales made for Globe. The said account shall not be charged with any of the ordinary expenses of maintenance of the respective business [1] of said Patterson, Shotter, Anonyme, and Nickolls, but only with the actual expenses of storage, handling, marine and fire insurance, cabling and telegraphing, legitimate commissions to agents and brokers for effecting sales, and interest on advances; or, in other words, only actual outlays of money other than office expenses shall be charged to turpentine account.

It is understood that the first four parties, respectively, shall insure and keep insured against fire and marine risk all turpentine purchased and held by them, respectively, for account of Globe, and in the event of any loss being incurred by reason of either of said first four parties failing to insure and keep insured any turpentine so purchased or held for account of Globe, such loss shall be borne by the party so in default; provided, however, that said first four parties shall not be held responsible for the solvency of the company in which the insurance may be effected, and it is further understood and agreed that inasmuch as said Patterson and Shotter own and to a more or less extent operate in the name of the Standard Naval Stores Company as purchasing and forwarding agent of turpentine purchased for account of Globe, the terms and provisions of this agreement as to insurance shall be applicable to said Standard Naval Stores Company, and the said Patterson and Shotter hereby make themselves responsible to Globe for any loss which it may sustain by the failure of the said Standard Naval Stores Company to insure and keep insured all turpentine held by it, either directly or indirectly, for account of said Globe. It is understood that interest on moneys which may be advanced by either of the first four parties is to be charged at the rate of six per cent (6%) per annum, and in the event differences occur in regard to interest by reason of the different modes of bookkeeping of the

[1] Thus in original.—Ed.

said first four parties, it is understood that the same shall be adjusted by the auditor of Globe at the half-yearly settlement.

It is understood that Patterson, Shotter, Anonyme, and Nickolls, respectively, shall keep special books for turpentine, which books shall at all times be open to inspection of the auditor of Globe.

It is understood that all transactions made by either the said Patterson, Shotter, Anonyme, or Nickolls for account of the company shall be reported daily to the principal office of the company.

It is further understood and agreed that settlements of profit and loss account between Globe and each of said first four parties shall take place every six months, in January and July, in each year, as soon as the accounts for the preceding six months can be audited.

13. As part of the consideration of this contract Anonyme hereby agrees that it will transport by its steamers *Iris* and *Clematis* for account of Globe a minimum of one hundred thousand (100,000) barrels of turpentine and a maximum of one hundred and fifty thousand (150,000) barrels of turpentine per annum (quantity within said limits to be at the option of Globe) to Antwerp, Rotterdam, London, Liverpool, Hull, Avonmouth, and Hamburg. The steamers are to be loaded at the discretion of Globe either at Savannah, Brunswick, Fernandina, or Jacksonville (always providing there is sufficient water at these ports), but are to load at one port only. It is agreed that the rate of freight shall be three shillings nine pence (3/9) direct for forty (40) gallons gross gauge in barrels, and if shipped in bulk the rate shall be the same, but forty (40) gallons net. This rate is without primage. If said steamers shall be called upon to load or discharge in any two of the above named ports, Globe agrees to pay six hundred dollars ($600) additional for such loading, and six hundred dollars ($600) additional for such discharging. It is understood that Anonyme will complete the cargoes of said steamers with rosin or other goods at their convenience and for their own account and at their risk.

It is understood that Anonyme shall not transport to Europe more than one hundred thousand (100,000) barrels of rosin per annum on the *Iris* or *Clematis*. In the event the said *Iris* or the said *Clematis* do not carry this stipulated amount it is understood that the said Anonyme may use outside steamers or sailing vessels, but it is distinctly understood that in such event the quantity of

rosin to be shipped for account of said Anonyme shall not exceed seventy thousand (70,000) barrels, and said Anonyme further agrees that all rosin shipped by them for their own account shall be for the port of Antwerp exclusively.

It is further understood and agreed that all rosin which Anonyme may sell in London or Hamburg shall be for the joint account of Patterson and Shotter, and in consideration thereof said Patterson and Shotter hereby agree to pay said Anonyme a net commission of five cents (5c.) per barrel of two hundred and eighty (280) pounds and freight at the rate of two shillings and three pence (2/3) for three hundred and ten (310) pounds direct Hamburg or London with no primage. It is understood that the quantity which may be sold by said Anonyme in London and Hamburg for account of said Patterson and Shotter shall not be less than fifteen thousand (15,000) nor more than twenty thousand (20,000) barrels, the quantity within said limits to be at the option of said Patterson and Shotter; and the said Patterson and Shotter reserve the right to designate either Hamburg or London. And it is further understood that said Anonyme shall not be entitled to any commission on any rosin which has been furnished by said Patterson and Shotter to complete cargoes for London, Hamburg, or any other port which may be agreed upon.

Said Patterson and Shotter hereby severally agree that they will not sell any rosin for shipment to a Belgian port, and they further agree that at the request of said Anonyme, and as required by them, they will furnish and provide rosin for the purposes and within the limitations therein specified in fair proportions from B to K, inclusive, free of charge for storage and fire insurance, and as compensation to the said Patterson and Shotter for providing such rosin said Anonyme agrees to pay said Patterson and Shotter a commission of seven and one half (7-1/2) cents for every barrel of two hundred and eighty (280) pounds so provided by them.

And said Anonyme further agrees to give to said Patterson and Shotter thirty (30) days' notice in writing (notice to either being considered as notice to both) of their requirements of rosin under the provisions hereinbefore set forth, and it is further understood and agreed that the price of rosin so to be ordered and furnished shall be based upon the average price of the respective grades during the thirty (30) days after the orders for the same have been received; provided, however, that if circumstances arise of such character which will prevent said Anonyme (acting with reasona-

ble discretion) from giving the notice hereinbefore mentioned, then, and in such case, the price of the rosin so ordered, and furnished shall be based upon the average price of the respective grade [1] at Savannah during the thirty (30) days immediately following the date of the receipt of the notice.

It is further understood and agreed that for the purpose of completing the cargoes of vessels carrying turpentine in the manner hereinbefore referred to, said Patterson and Shotter shall, when and as required by said Anonyme and Nickolls, respectively, furnish for said vessels part cargoes of rosin for their own account at current market freight rates, provided that said Patterson and Shotter shall in no case be required to furnish more than thirty per cent (30%) of the carrying capacity of said vessels. As the principal consideration moving said Patterson and Shotter for making the freight arrangements herein set forth, said Anonyme and Nickolls hereby severally agree that they will not buy or sell, either directly or indirectly, American rosin, except in the manner and under the limitations in this agreement set forth.

14. It is further understood and agreed that if for any cause any or all of the first four parties shall discontinue business during the term of this agreement, then and in such event Globe shall have the right to purchase the shares of stock of the party or parties so discontinuing business at par.

15. It is understood and agreed that this agreement shall begin on the first day of April, 1905, and shall continue for the full term of five (5) years.

16. It is further agreed that in the event any difference of opinion shall arise between two or more of said parties as regards the meaning of any part of this agreement, all such differences shall be settled by arbitration in New York, each side selecting an arbitrator, and the arbitrators so selected, before taking knowledge of the dispute, shall select an umpire, and the award of the arbitrators shall be final.

In witness whereof the corporations above named by their proper officers, and the said Nickoll & Knight in proper person, have hereunto set their hands and affixed their seals, the seals of said corporations being duly attested by their respective secretaries, the day and year first above written.

(Signatures)

[1] Thus in original.—Ed.

EXHIBIT 10

BATH TUB COMBINATION[1]

MEMORANDUM OF AGREEMENT

EDWIN L. WAYMAN
1509 Arrott Bldg.
Pittsburgh

We hereby agree to execute with E. L. Wayman of the City of Pittsburg, as Licensor, on or before April 15th, 1910, a License Agreement for the Manufacture of Sanitary Enameled Ware under the following United States Letters Patent.

"Various Patents covering Pneumatic Dredgers."
(to be enumerated in detail).

and such additional Patents as may come into his possession, upon the Terms, Conditions, etc., as hereinafter stated or provided for:—

1. The License Agreement to cover the following Schedules of Enameled Ware

Schedule	1.	5 year Guaranteed Baths.
"	2	2 " " "
"	3	All other Grades of Baths.
"	4	Small Ware, Lavatories, etc. and R. R. sinks.
"	5	Flat Rim Sinks
"	6	Competitive Lavatories 552 to 562 Inclusive 565 and 535.

[1] *United States of America* v. *The Standard Sanitary Manufacturing Company and others.* In the Circuit Court of the United States for the District of Maryland, Gov't Exhibit No. 3, Record, Vol. II, pp. 4–6. It is necessary that some explanation should be given in regard to the bath tub combination. Both of the exhibits should first be read to make the situation clear as also the excerpts from the opinion of Judge Rose against the combination (cf. Chap. XIII). On the face of the matter the combination appears to be a patent monopoly. The contention of the Government however was that the licensing scheme was purely a subterfuge, a device used for the purpose of creating the combination. This view is of course supported by the fact that none of the patents which were assigned to Wayman by three members of the subsequent combination were or are absolutely necessary in the manufacture of sanitary enameled iron ware. For this reason the combination has been assigned a place among the pools rather than among the patent monopolies.—Ed.

2. The amount of Royalty to be as follows:
   $5.00 per day per furnace in operation with a rebate of 90 per cent, beginning with the 1st month of the 2nd Period and monthly thereafter, if the terms of the License have been complied with.
3. For each violation of the Price Regulations of the License Agreement we agree to forfeit a sum equal to the amount of the shipment in question, and such other penalties as may be agreed on.
4. The Selling Prices to the Jobbers to be established through the Licensor by a Price Committee appointed by the various manufacturers.
5. The Resale Prices to the Jobber, taking into consideration the rebate for observance of Buying and Selling Regulations, shall be figured as follows:
   High Grade Goods 25% above Jobbers cost.
   Competition Goods 16⅔% above Jobbers cost.
6. The Rebates to Jobbers shall be as follows:
   10%, payable at end of Period for strict observance of agreements, the details of the manner in which the rebate shall be made, to be determined.
7. The length of the Rebate Periods shall be 3 months beginning April 15th, 1910, with the exception of the first period, which shall end July 1st.
8. The License Agreement and Resale Prices shall become effective April 15h,[1] and the agreement to be executed between the Manufacturers and Jobbers shall contain a clause to the effect that all material purchased or on hand previous to the above date shall be sold at the Resale Prices that may be established.
9. The details of Contract Forms between the Manufacturers and the Licensor shall be drawn up by the Licensor and submitted for approval at the next Special Meeting to be held in New York City.
10. The Licensor will also submit the same covering Agreement between Manufacturers and Jobbers.

[1] Thus in original.—Ed.

11. The following "Preferential Discounts" from the selling Prices established by the Licensor will be allowed the various Manufacturers *on Sales to Jobbers only.*

Schedule 1—5 year Guaranteed Baths
" 2—2 " " "
" 3—All other Grades of Baths
" 4—Small Ware—Lavatories, etc. & R. R. Sinks.
" 5—Sinks, flat rim.
" 6—Competitive lavatories 552–562 Inclusive 565 and 535

SCHEDULES.

Manufacturers	1	2	3	4	5	6
Standard	None	None	None	None	None	None
Wolff	"	"	"	"	"	"
U. S.	"	"	"	"	"	"
Kohler	"	"	"	"	"	"
Barnes	"	"	"	"	"	"
Cahill	"	"	"	"	"	"
Mott	"	"	"	"	"	"
Union	5%	2½%	"	2½%	"	"
Colwell	5%	2½%	"	2½%	"	"
Clymer	5%	2½%	"	2½%	"	"
Blairsville	5%	2½%	"	2½%	"	"
McVay & Walker	5%	2½%	"	2½%	"	"
Weiskittel	5%	2½%	"	2½%	"	"
National	5%	2½%	"	2½%	"	"
Iron City	5%	2½%	"	2½%	"	"
Humphryes	5%	2½%	"	2½%	"	"
Day-Ward	2½%	2½%	"	2½%	"	"
McCrum-Howell	5%	2½%	"	2½%	"	"
Wheeling	5%	2½%	"	2½%	"	"

12. The length of time for which the License Agreement will be entered into and such other details as may be necessary for the perfection of the arrangement to be determined at the next meeting of the various Manufacturers.

Signed

(Here follow eleven signatures.)

EHXIBIT 11

BATH TUB COMBINATION

LICENSE AGREEMENT [1]

THIS AGREEMENT, Made in duplicate this.....day of 191..., between Edwin L. Wayman, a resident of the City of Pittsburgh, State of Pennsylvania (hereinafter called the "Licensor"), party of the first part, and.....
.....
a corporation duly organized and existing under and by virtue of the laws of the State of.....(hereinafter called the "Licensee"), party of the second part.

WITNESSETH:

THAT WHEREAS, the said Wayman owns or controls or has the right to grant licenses under certain Letters Patent pertaining to the manufacture of Sanitary Enameled Iron Ware, enumerated in "Schedule of Patents," hereto annexed, and

WHEREAS, The Licensee is desirous of acquiring a License under said Letters Patent of the character and upon the terms and conditions herein set forth;

NOW, THEREFORE, for and in consideration of the covenants of this agreement, the parties hereto agree as follows:—

1. The Licensor hereby grants to the Licensee, subject to the provisions hereinafter contained, a non-exclusive License to practice in the manufacture of Sanitary Enameled Iron Ware, the processes patented in said several Patents, to make and use in such manufacture the machines and devices patented in said Patents and to use and sell goods so made; the said License being non-assignable and non-transferable except to successors to substantially the entire good-will and business of the Licensee, and this License shall be available for the Licensee and its successors only so long as it or they have not, prior to the date hereof, been engaged in the manufacture of Sanitary Enameled Iron Ware.

CLAIMS. 2. The Licensor hereby agrees to suspend his claims against the Licensee and its customers or patrons for damages or profits which he may be entitled to receive for any claims for any past infringement of said Letters Pat-

[1] Op. cit. *U. S.* v. *S. S. M'f'g Co.* Record, Vol. II, pp. 20–26.

ent by said Licensee, as long as said Licensee continues to perform all of its obligations under this contract.

3. So long as the Licensee operates under this License or any renewal thereof and keeps and performs all of the obligations of said License herein contained, the Licensor agrees not to bring action against said Licensee because of its use of any machines, method or processes now or heretofore used by said Licensee in the manufacture of enameled ware, and to waive any and all claims under any letters patent on any machines, devices, or processes now in use by said Licensee, and to grant to said Licensee full use and enjoyment thereof.

ROYALTIES. 4. For the use of the various patents enumerated in "Schedule of Patents," hereto annexed, the Licensee shall pay on the fifth day of each month a royalty amounting to Five ($5.00) Dollars per day for each furnace in operation during the preceding month.

This payment shall be made to the Licensor at his place of business in Pittsburgh, Pa., by cash or other acceptable remittance, and in determining the amount of this royalty each and every one of the furnaces owned by the Licensee shall be considered as in operation each day, unless the said furnace or furnaces shall be shut down for more than a period of six (6) consecutive working days. In case any of the furnaces are thus shut down for more than six (6) consecutive working days, the Licensee shall be entitled to a diminution of his License payment at the rate of Five ($5.00) Dollars per working day for the number of days shut down.

In order to determine the amount of actual license payment, together with the remittance hereinbefore provided for payment of royalty, the Licensee shall send to the Licensor a sworn statement, which will be duly verified under oath by some representative of the Licensee,

designated by the Licensor showing the number of furnaces owned by the Licensee at the beginning of the month which the report is intended to cover and the number of days which such furnaces have been operating consistent with the provisions of the foregoing Section of this License.

PREFERENTIAL DISCOUNTS. 5. This agreement is entered into with the understanding that the Licensee has the privilege of quoting to jobbers only the following additional discounts from the regular selling prices to the Jobbers as established by the Licensor. These additional discounts when given shall appear on the invoices rendered to the Jobber.

. . . . . .

PRICES. 6. The Licensor agrees that he will employ a commission of six (6) persons, of which he is to be one and to act as Chairman thereof, five of whom shall be designated by a majority of the parties holding Licenses similar to this License, which Commission shall have supervision of all the relations and transactions between the parties hereto under this agreement, but it is understood that where a member of said Commission, or his Company, shall be directly interested in any question of a violation of the License to be decided by the said Commission, said member shall be disqualified and a temporary member shall be appointed in his place by the remaining members of the Commission.

All terms and conditions relative to prices and discounts now established by the Licensor and set forth in the annexed schedules and made a part hereof, shall remain in force and effect until other terms, conditions and preferential discounts are substituted therefor by the Licensor, which substitution can only be made by him with the approval of a majority of

the members of the Commission, hereinbefore prescribed. Notice of such changes and substitutions shall be given from time to time in writing by the Licensor to the Licensees. The Licensee covenants to adhere to and maintain such terms, conditions, regulations and preferential discounts as may be established by the Licensor from time to time, and the Licensee further agrees to sell no "Seconds" or "Bs" covered by Schedules 4, 4-½, 5 and 6.

ROYALTY REBATES.

7. If at the end of the fourth month of the first year (said year beginning June 1st, 1910) it shall appear that the Licensee has during the first month complied with all the terms of this agreement, the Licensor shall return the Licensee the following rebate from the royalties paid for said License for said first month's royalties, to wit: 80% of the amount originally paid by the Licensee.

8. At the termination of each succeeding month of the said License if it shall appear that the Licensee has fully complied with the terms of this agreement during the second preceding month, the Licensor shall make a similar rebate in respect to the royalties paid by the Licensee during the second preceding month.

9. In case of failure on the part of the Licensee to comply in any particular with the terms of this agreement during any month, the Licensor may withhold any and all unpaid rebates and declare the same forfeited as penalty for such violation and shall at once notify the Licensee to that effect.

. . . . . .

LABELS.

13. No goods manufactured under this License shall be sold unless they bear a registered label (except where otherwise specified) owned by the Licensee and in addition thereto a License tag or label approved by the Licensor,

which License tag or label shall be placed in a visible position on all goods made hereunder and sold by the Licensee.

14. This agreement is binding upon the parties hereto, and the successor and assigns of each of them, and shall continue in force for a period of two years from the date hereof, unless previously terminated as herein provided.

15. This agreement, however, may be cancelled by the Licensor by written notice upon repeated breaches by the Licensee of any of the covenants herein contained.

IN WITNESS WHEREOF, the parties hereto have executed these presents the day and year above written.

SCHEDULE OF PATENTS.

Pat. No	Date	Inventor	Title
633,941	Sept. 26, 1899	James Arrott	Dredger for pulverulent material
949,625	Feb. 15, 1910	E. Ditheridge	Pneumatic Sieve
939,918	Nov. 9, 1909	William Lindsay	Enameling Powder Distributor.

EXHIBIT 12

MEMORANDUM OF AGREEMENT (CALLED THE EASTWARD AGREEMENT) REGARDING THE TRADE BETWEEN THE ATLANTIC PORTS OF THE U. S. A. AND EASTERN ASIATIC PORTS [1]

EASTWARD AGREEMENT

United States of America to the Straits, Manila, China, and Japan.

For the better regulation of the trade between the Atlantic Ports of the United States of America and Eastern Asiatic Ports, it is hereby agreed as follows:—

1. That on the basis of forty-one sailings per annum the total shall be divided as follows:

[1] *United States of America* v. *American-Asiatic Steamship Company.* Petition, In equity in the District Court of the United States for the Southern District of New York, Exhibit 1, pp. 27–30.

United States and China-Japan Line.----	13 sailings
Messrs. Barber & Co.'s Line.-------	13 sailings
The American and Oriental Line.-----	8 sailings
The American-Asiatic S. S. Co. -----	7 sailings.
	41 sailings

No other sailings can be admitted without the consent of two-thirds of the signatories based on their respective number of sailings.

The sailings allotted to each of the signatories shall be distributed as nearly as possible at regular intervals throughout the twelve months, and the order of taking the berth shall be mutually arranged by the agents in New York.

2. That the fundamental condition of this agreement is to be close co-operation, and in order to secure this result the rates of freight from America to the East shall be controlled and mutually determined by the agents in New York, who before naming or altering a rate on any commodity shall first confer and agree amongst themselves as to the rate to be named and/or [1] the reduction to be made.

All engagements shall be reported to one another by the Agents in Conference the first business day of each week, and copies of freight lists are to be exchanged not less than three weeks after the departure of the steamer.

3. That all contracts shall be taken for joint account, and where such contracts cannot be divided such shortages shall be made good to the parties in arrear out of the other contracts previously or subsequently secured, it being the purpose to equitably divide all bookings. Each line shall, however, be entitled to book cargo specifically for their next steamer to be despatched, provided ready to load within 30 days. No line to book cargo specifically for a steamer until allowed to do so by a two-thirds majority vote of the New York agents, based on their principals' respective number of allotted sailings.

4. That engagements of Petroleum in cases, Phosphate Rock and Coal are not necessarily joint operations, but competition for such articles is to be avoided and the closest possible co-operation is to be aimed at. Bookings of Petroleum in cases, Phosphate Rock and Coal are to be reported as soon as fixed.

5. That shipments of the Quartermaster's Department, the Navy (excluding Coal), and the Insular Department, and/or any other Government Department, shall be taken for joint account and

[1] Thus in original.—Ed.

pooled on a basis to be agreed between the respective Agents in such a way that all may obtain their proper proportion of the benefits arising from such contracts. Shipments of Specie and Explosives shall be dealt with in like manner.

6. That no return of any description be given to Shippers, Contractors, etc., and where Freight Brokerages are paid the amount shall not exceed one and one-quarter per cent., unless where mutually agreed by all Agents to the contrary.

7. That in order to avoid unnecessary expense and possible delay, the respective parties shall nominate one of the firms of Agents in New York to act for the time being as the mouthpiece of the Associated Agents; and also shall appoint one of their own number to act in a similar capacity on this side. All cabled enquiries regarding matters of policy, important contracts, etc., shall be communicated to the respective parties through this channel, and their replies forwarded in the same way; but it is understood that this arrangement in no way interferes with the right of each signatory to communicate with his own Agents whenever and however he thinks fit.

8. That in all matters of detail not herein decided the settlement shall be left in the hands of the Agents in New York, who shall as far as possible be given a free hand in the conduct of their business.

9. That where it is considered advisable to book cargo for account of the Associated Lines, which through lack of accommodation on the regular steamers might otherwise fall into the hands of competitors, such cargo shall be taken care of by chartering additional tonnage, the result to be divided in proper proportion between the various interests, and the loading commission credited to the Agents *pro rata* to the share in the trade which each of the signatories hold, based on their respective number of sailings.

All questions connected with the bookings of such additional cargo and the chartering of tonnage shall be governed by a two-thirds majority vote of the New York Agents, based on their principals' respective number of allotted sailings. Each service to charter and load such extra tonnage in turn.

10. That the whole purpose of this Agreement is an equitable and fair division of the traffic between the services, to work openly and fairly with one another, and to avoid any and all steps by which even the appearance of undue advantage is given. Should therefore conditions and questions arise which are not herein provided for, the purport and not the strict wording of this Agreement is to be considered.

11. That no steamer of a greater carrying capacity than 8,000 tons all told is to be loaded under this Agreement, except by the unanimous consent of the Agents.

12. That should any disputes arise under this Agreement they are to be left to the decision of the signatories to this Agreement, whose voting power shall be *pro rata* to their share in the business.

Should any decision so arrived at be objected to by any party or parties hereto, the matter shall be referred to the decision of two Arbitrators, who shall be commercial men in London, New York, or Hong Kong, whichever place in the opinion of the majority of the signatories, as above, is best suited for the purpose, one to be appointed by the party or parties claiming or objecting as the case may be, and the other by the party or parties against whom the claim or objection is made; or in the case of a question as to the validity of a settlement by those parties who are content with the settlement as presented; with power to such nominated Arbitrators to appoint an Umpire whose decision shall be final and conclusive between all the parties to this Agreement, and for the purposes of any such reference this Agreement shall be deemed to be a submission to Arbitration within the meaning of the Arbitration Act, 1899, or any statutory modification or re-enactment thereof for the time being in force, the provisions whereof shall apply as far as applicable.

13. That this Agreement is to commence with steamers sailing from their first loading port in the U. S. A., on or after April 1st, 1905, and to remain in force until cancelled by any of the parties thereto giving six months' written notice of their desire to withdraw, such notice not to be given previous to 1st day of July, 1906.

By authority of BARBER & Co. Incd., WALTER CHAMBERS.
WILLIAM ADAMSON & Co., on behalf of SHEWAN TOMES & Co
Per Pro. T. B. ROYDEN, and by written authority of the HAMBURG AMERICA LINE and the UNION S. S. Co. of Hamburg
P. L. ROOPER.
For THE AMERICAN & ORIENTAL LINE, Howard Holder & Partners, Ltd., ALEX. FREELAND, Director, General Managers
Witness to the Signatures of
WM. ADAMSON & Co., P. L. ROOPER, and ALEX. FREELAND, ARCHD. MACLEAN.

ANGLO AMERICAN OIL Co. LTD.,
22, Billiter Street, London, E. C.

CHAPTER X

THE PATENT MONOPOLY

NOTE

FOR several years past the United Shoe Machinery Company has been regarded, and with reason, as the foremost example of a Patent Monopoly. This concern is, moreover, a combination, since prior to 1897 much of the machinery now controlled by the single company was divided among four concerns and was therefore, subject to at least limited competition. In February 1897 the United Shoe Machinery Company was organized under the laws of the State of New Jersey. By means of an issue and exchange of its capital stock it took over the business of four concerns—the Consolidated and McKay Lasting Machine Company, Goodyear Shoe Machinery Company, McKay Shoe Machinery Company and Eppler Welt Machine Company. Since that time the United Shoe Machinery Company has substantially controlled the shoe machinery business of the United States which has been handled strictly upon a lease basis. Powerful as the company has been it has been constantly threatened by the invention of new types of shoe machinery. Frequently it has been compelled to buy out such potential competitors, often at high valuations. The license or lease system of the United Shoe Machinery Company is shown below in the exhibits by a typical lease contract. There has also been included another typical lease or license agreement, that of the Motion Picture Patents Company and one of the Crown Cork and Seal Company.

The last exhibit in this chapter consists of excerpts from the decision handed down in March 1912 in the so-called Dick case. Influential as was the decision in the Dr. Miles Medical Company case, in restricting the tendency toward monopolistic control so far as the conditions and terms of sale have reference to unpatented articles, the Dick case goes the full length in the opposite direction and upholds in the most sweeping language the power of concerns and individuals holding patents to impose whatsoever conditions

they may deem fit upon the use of articles covered by such patents or applications. The dissenting opinion rendered by Mr. Chief Justice White and concurred in by Mr. Justice Hughes and Mr. Justice Lamar condemns in no uncertain terms the doctrine thus laid down, chiefly on grounds of general public policy. This decision was not rendered by a full bench, Mr. Justice Day taking no part in the decision, while the vacancy caused by the death of Mr. Justice Harlan remained still unfilled. Hence as being a four to three decision it was really a minority decision. Petitions for a rehearing have been filed and there is a chance that these may be granted. Unfortunate as the decision appears it may nevertheless have in it the germs of much good. This arises through the fact that one of the most needed things at the present time to check the tendency toward monopoly is a radical reform of the Patent Laws. The first step in this direction was taken by President Taft on May 10, 1912 in sending to Congress a message asking for legislation to authorize him to appoint a commission to investigate the Patent laws and report changes necessary—Ed.

EXHIBIT 1

LEASE AND LICENSE AGREEMENT OF THE UNITED SHOE MACHINERY COMPANY FOR CERTAIN MACHINES [1]

Goodyear Department. [Form M. G. J., 6–806.]

LEASE AND LICENSE AGREEMENT NUMBER——.

SEWING AND STITCHING MACHINES.

This greement made at Boston, in the State of Massachusetts, this —— day of ——, 19—, between the United Shoe Machinery Company, a corporation organized under the laws of the State of Maine, having an office in said Boston, hereinafter referred to as the lessor of the one part, and —, of ——, in the State of ——, hereinafter referred to as the lessee, of the other part:

Witnesseth that the lessor, in consideration of the covenants and agreements on the part of the lessee herein contained, does

[1] *United States of America* v. *United Shoe Machinery Company* and others. Petition, In the Circuit Court of the United States for the District of Massachusetts, Exhibit 5, pp. 113–120.

hereby lease to and license the lessee under any letters patent belonging to the lessor or under which the lessor has the right to grant such license affecting any inventions which are now or hereafter shall be embodied therein or employed in the operation thereof, to use the machine or machines of the "Goodyear Department" of the lessor designated by number or numbers in the following schedule, viz:

SCHEDULE OF MACHINES.

Goodyear Welt and Turn Shoe Machine, No.
Goodyear Universal Inseam Sewing Machine, No.
Goodyear Outsole Rapid Lockstitch Machine, No.
Extension Edge Attachment (A), No.
Extension Edge Attachment (B), No.
Welt Bevelling Attachment, No.

and any duplicate parts, extras, mechanisms, and devices relating thereto, or used in connection therewith, now attached to or delivered with the said designated machine or machines, or which may at any time hereafter be obtained from the lessor or be added thereto, by or with the consent of the lessor (the whole of which machine or machines, duplicate parts, extras, mechanisms, and devices held by the lessee under these presents, whether now or hereafter delivered to or in the possession of the lessee, is hereinafter referred to as the "leased machinery"), subject to the conditions hereinafter contained; and the lessor hereby grants to the lessee a license to use, in connection with welted boots, shoes, or other footwear made by the lessee, the welts of which have been sewed to their uppers wholly by Goodyear Welt and Turn Shoe Machines or by Goodyear Universal Inseam Sewing Machines, hereby leased or now held by the lessee under lease from the lessor heretofore executed, and the outsoles of which have been stitched to their welts wholly by Goodyear Outsole Rapid Lock-Stitch Machines, hereby leased or now held by the lessee under lease from the lessor heretofore executed, the trade name or trade-mark "Goodyear Welt," and to use, in connection with turned boots, shoes, or other footwear made by the lessee the soles of which have been attached to their uppers wholly by the use of Goodyear Welt and Turn Shoe Machines or Goodyear Universal Inseam Sewing Machines, hereby leased or now held by the lessee under lease from the lessor heretofore executed, the trade name or trade-mark "Goodyear Turn."

And that the following are agreed to as conditions of this agreement, all of which the lessee convenants and agrees to keep and perform:

1. The leased machinery shall at all times remain and be the sole and exclusive property of the lessor and the lessee shall have no right of property therein, but only the right to use the same upon the conditions herein contained. The leased machinery shall be used only by the lessee himself or by operatives in his direct employ, and only in the factory now occupied by him at ———, in the State of———, unless the lessor shall, by an instrument in writing signed by its president, vice president, or treasurer, authorize the lessee to remove the leased machinery and to use the same elsewhere. The leased machinery shall not be transferred or delivered or sublet to any other person or corporation, and neither this agreement nor the lease nor the license hereby granted can be assigned by the lessee by his own act or by operation of law. If the lessee becomes insolvent or bankrupt, or has a receiving order made against him, or makes or executes any bill of sale, deed of trust, or assignment for the benefit of his creditors, or if a sale, mortgage, lease, or unauthorized removal of the leased machinery or any part thereof be made or attempted, or if any distress or execution or attachment be levied thereon, then and in each such case any or all leases of or licenses to use machinery then existing between the lessor and the lessee, whether as the result of assignment to the lessor or otherwise, shall, at the option of the lessor, cease and determine, and the possession of and full right to and control of all machinery the leases or licenses of which are so terminated shall thereupon revest in the lessor free from all claims and demands whatsoever. The lessor and its agents and employees shall at all times be given access to the leased machinery for the purpose of inspecting it or watching its use and operation, or of altering, repairing, improving, or adding to it, or determining the nature or extent of its use, and the lessee shall afford all reasonable facilities therefor.

2. The lessee shall at all times and at his own expense keep the leased machinery in good and efficient working order and condition and shall not permit anyone to injure or deface or remove any plate or dates, numbers, or other inscriptions now or hereafter impressed on or affixed to the leased machinery by the lessor. The lessee shall obtain from the lessor exclusively, and shall pay therefor at the regular prices from time to time established by the lessor, all the duplicate parts, extras, mechanisms, and devices of every

kind needed or used in operating, repairing, or renewing the leased machinery, and the same shall form part of the leased machinery, and the lessee shall not otherwise make or allow to be made any addition, subtraction, or alteration to, from, or in the leased machinery nor interfere with the proper operation of the same.

3. The leased machinery shall at all times, until the expiration or termination of the lease thereof and license to use the same hereby granted and the redelivery of the leased machinery into the possession of the lessor as hereinafter provided, be held at the sole risk of the lessee from injury, loss, or destruction, and in case any welting or stitching or sewing machine or machines hereby leased shall be lost or destroyed by fire or otherwise before such expiration or termination and redelivery, the lessee shall pay to the lessor in respect to each such machine so lost or destroyed the sum of two hundred and twenty-five (225) dollars as partial reimbursement to the lessor for such loss or destruction, and the lessee shall forthwith return whatever remains of all the machinery so lost or destroyed to the lessor at Beverly, Massachusetts.

4. The lessee shall pay all taxes and assessments which shall be assessed in respect to the leased machinery or other machinery of the lessor held by the lessee under lease or license upon whomsoever assessed. All taxes or assessments in respect to leases, licenses, or agreements covering machinery, or the rights to payments thereunder, shall be construed, for the purposes of this article, to be assessed in respect to the machinery itself. In case at any time any unapportioned tax or assessment shall be assessed to the lessor in respect in part but not wholly to machinery of the lessor in the possession of the lessee the lessee shall pay to the lessor such proportionate part of the total amount of said unapportioned tax or assessment as the fair valuation, to be determined by the lessor, of said machinery of the lessor in the possession of the lessee bears to the fair valuation, to be determined by the lessor, of all machinery (excepting machinery, if any, in the lessor's own possession) in respect to which the unapportioned tax or assessment has been assessed: *Provided, however,* That if such unapportioned tax or assessment includes any tax or assessment in respect to tangible property in the lessor's own possession the amount thereof, based at the established rate upon the fair valuation, to be determined by the lessor of such property, shall first be deducted and the lessee shall pay his proportionate part as aforesaid of the balance only of

said unapportioned tax or assessment after such deduction has been made.

5. The leased machinery shall be used only in the manufacture of boots, shoes, and other footwear made by the lessee known in the trade as "Goodyear Welts," which have been or are to be welted wholly by Goodyear Welt and Turn Shoe Machines or Goodyear Universal Inseam Sewing Machines held by the lessee under lease from the lessor, and the soles of which have been or are to be attached to their welts wholly by Goodyear Outsole Rapid Lock-Stitch Machines held by the lessee under lease from the lessor, or in the manufacture of boots, shoes, or other footwear made by the lessee known in the trade as "Goodyear Turns," the soles of which have been or are to be attached to their uppers wholly by Goodyear Welt and Turn Shoe Machines or Goodyear Universal Inseam Sewing Machines held by the lessee under lease from the lessor. The lessee shall not represent or sell as "Goodyear Welts" any boots, shoes, or other footwear which are not welted wholly by the use of Goodyear Welt and Turn Shoe Machines or Goodyear Universal Inseam Sewing Machines held under lease from the lessor, or the soles of which are not attached to their welts wholly by the use of Goodyear outsole rapid lock-stitch machines held under lease from the lessor or as "Goodyear Turns" any boots, shoes, or other footwear the soles of which are not attached to their uppers wholly by the use of Goodyear Welt and Turn Shoe Machines or Goodyear Universal Inseam Sewing Machines held under lease from the lessor. The lessee shall use the leased machinery to its full capacity in the manufacture of "Goodyear Welts" and "Goodyear Turns," limited only by the number of welted and turned boots, shoes, and other footwear made by or for him.

6. The lessee shall pay to the lessor throughout the full term of this agreement the respective amounts set forth in the following schedule in respect to each pair of welted boots, shoes, or other footwear, or portions thereof, manufactured or prepared by or for the lessee, which shall have been welted in whole or in part or the soles of which shall have been in whole or in part attached to welts by the use of any welting or stitching or sewing machinery, and in respect to each pair of "turned" boots, shoes, or other footwear, or portions thereof, manufactured or prepared by or for the lessee, the soles of which shall have been sewed or attached to their uppers in whole or in part by the use of any sewing or stitching machinery, viz:

Schedule of payments per pair.

	Sizes.		Welts.	Turns.
	Form No.—	To No.—		
Children's	1	10½, inclusive	3 cents.	1 cent.
Misses'	11	2, "	4 cents.	1½ cents.
Women's	2½	and over	6 cents.	1½ cents.
Youths'	9	13½, inclusive	4 cents.	1½ cents.
Boys'	1	5, "	6 cents.	1½ cents.
Men's	5½	and over	8 cents.	1½ cents.

Such payments shall be made on the last day of each calendar month in respect to all such boots, shoes, and other footwear manufactured or prepared by or for the lessee during the next preceding calendar month: *Provided, however*, That in all cases when the lessee shall pay to the lessor on or before the fifteenth day of the calendar month the amount due pursuant to the schedule in this article hereof contained for the next preceding calendar month, the lessor will, in consideration of such prompt payment, grant a discount of fifty per cent from the amount so due for such preceding calendar month. The lessee, however, guarantees that the payments made in accordance with the foregoing schedule of payments under this agreement in respect to boots, shoes, or other footwear operated upon by the welting, stitching, or sewing machines hereby leased (after deducting all abatements) shall amount in each calendar year to at least fifteen dollars ($15) for each calendar month for each welting or stitching or sewing machine hereby leased, and at the end of each calendar year the lessee shall pay to the lessor the amount, if any, by which the total of such payments for said year is less than such guaranteed amount. All payments and the guarantee in this agreement provided for are independent of and in addition to all payments and guarantees provided for in any other leases or licenses or agreements between the lessor and the lessee: *Provided, however*, That (excepting in so far as is required by the guarantees herein contained or contained in other lease and license agreements between the lessor and the lessee), in case under any

other "Goodyear Department" lease and license agreement between the lessor and the lessee covering one or more Goodyear Welt and Turn Shoe Machines, Goodyear Universal Inseam Sewing-Machines, or Goodyear Outsole Rapid Lock-Stitch Machines, the lessee shall have paid to the lessor the amount set forth in the schedule of payments in such lease and license agreement contained in respect to any pair of boots, shoes, or other footwear, then the lessee shall be relieved from said payment hereunder in respect to that pair of boots, shoes, or other footwear.

7. The lessor may attach to the leased machinery, or any thereof, an indicator or indicators to register the number of revolutions or movements of any part or parts thereof, and the lessee shall not allow any person (other than the lessor or its agents) to disturb or interfere with such indicator or indicators. In case any indicator thus attached shall from any cause cease to correctly indicate or register, or shall be disturbed or out of repair, or if the glass covering any such indicator shall be removed or broken or injured, then, and as often as the same shall happen, the lessee shall immediately, by writing, notify the lessor and at the same time explain the circumstances under which the same has happened. In case any such indicator ceases to indicate or becomes or remains inaccurate, or the glass covering becomes or remains removed, broken, or injured, because of any fault of the lessee or anyone in his employ, or because of the failure of the lessee to give promptly the notice hereinbefore provided for, then, without prejudice to any other rights or remedies of the lessor, the lessee shall pay the lessor, without the right to any discount, eight cents per pair for each pair of boots, shoes, or other footwear or portions thereof in the manufacture of which the leased machinery or any part thereof shall have been used. The lessee shall keep full and accurate accounts, independently of any indicators that may be placed upon the leased machinery, showing the number and kind of boots, shoes, and other footwear or portions thereof manufactured or prepared by or for the lessee which have been welted in whole or in part or the soles of which have been in whole or in part attached to welts by the use of welting or stitching or sewing machinery, and of turned boots, shoes, or other footwear or portions thereof manufactured or prepared by or for the lessee the soles of which have been sewed or attached to their uppers in whole or in part by the use of sewing or stitching machinery, and shall allow the lessor at all times, by its agents or attorneys, to examine and to take copies of such accounts and entries of the lessee

as may serve to determine the total number of such boots, shoes, or other footwear or portions thereof; and the lessee shall produce all such accounts and entries upon request. The lessee shall require each of his operators upon the leased machinery or any part thereof to keep, upon blanks or blank books to be furnished by the lessor, accurate daily records of the number and kind of boots, shoes, and other footwear or portions thereof in the manufacture or preparation of which he has used the leased machinery or any part thereof, and shall require his operators to sign such records, and, if requested so to do by the lessor, shall verify the same under oath. The lessee shall send to the office of the lessor in Boston, on or before the fifth day of each calendar month, the original records for the next preceding calendar month kept by his operators as above provided for, and in case, in any calendar month, any one or more of the machines hereby leased has been entirely idle, the lessee, on or before the fifth day of the next succeeding calendar month, shall send to the office of the lessor in Boston the blank for said month for each such idle machine marked "not in use" and signed by the lessee. The lessee shall also furnish any further information which may be called for in relation to the leased machinery or the use thereof.

And that the following stipulations and provisions are agreed to:

8. If at any time the lessee shall fail or cease to use exclusively welt-sewing and outsole stitching machinery held by him under lease from the lessor in the manufacture of all welted boots, shoes, or other footwear made by or for him, the welts or soles of which are sewed, stitched, or attached by the aid of machinery, or shall fail or cease to use exclusively turn-sewing machinery held by him under lease from the lessor in the manufacture of all turned boots, shoes, or other footwear made by or for him, the soles of which are sewed or attached by the aid of machinery, the lessor, although it may have waived or ignored prior instances of such failure or cessation, may at its option terminate forthwith by notice in writing any or all leases of or licenses to use machinery then existing between the lessor and the lessee, whether as the result of assignment to the lessor or otherwise, and the possession of and full right to and control of all machinery the lease or license of which is so terminated, shall thereupon revest in the lessor free from all claims and demands whatsoever.

9. The term of this agreement shall be seventeen years from the date hereof. The lease of the leased machinery and license to use the same hereby granted shall continue, unless sooner terminated

by the lessor, as in this agreement provided, for the full term of this agreement, but, if any breach or default shall be made in the observance of any one or more of the conditions in this agreement contained or contained in any other lease or license agreement subsisting between the lessor and the lessee, whether as the result of assignment to the lessor or otherwise and expressed to be obligatory upon the lessee, the lessor shall have the right, by notice in writing to the lessee, to terminate forthwith any or all leases of or licenses to use machinery then in force between the lessor and the lessee, whether as the result of assignment to the lessor or otherwise, and this notwithstanding that previous breaches or defaults may have been unnoticed, waived, or condoned by or on behalf of the lessor. If, upon the expiration of the full term of this agreement, the lessor does not request the return of the leased machinery, then the leased machinery shall continue to be held and used under and in accordance with the conditions, stipulations, and provisions in this agreement contained, and this agreement and the lease and license herein contained shall thereupon be extended indefinitely as to term; but thereafter either the lessee or the lessor, upon sixty days' notice in writing to the other, may terminate this agreement and the lease and license herein contained, whereupon the leased machinery shall be delivered forthwith to the lessor, as hereinafter provided. Upon the expiration of this agreement or any extension thereof or the termination of the lease and license herein contained, the lessee shall forthwith deliver the leased machinery to the lessor at Beverly, Massachusetts, in good order, reasonable wear and tear alone excepted, and shall thereupon pay to the lessor without prejudice to any other rights or remedies of the lessor such sum as may be necessary to put the leased machinery in suitable order and condition to lease to another lessee. The lessee for himself, his heirs, executors, and administrators, successors, and assigns, hereby grants to the lessor, its successors and assigns, full right, power, and authority upon such expiration or termination and without prejudice to any other rights or remedies of the lessor to enter upon the premises and into any factory, room, or any place where the leased machinery, or any part thereof, may be, and take possession thereof, and take away the same; and in no case shall the lessee have any claim for the repayment or offset of any sum or sums, or any part thereof, which shall have been paid under this agreement or in respect to the lease or license herein contained, or in anywise in respect to the leased machinery.

10. Upon the expiration of this agreement, or any extension thereof, or the termination of the lease and license hereby granted, the lessee, in addition to all other payments in this agreement provided for and without prejudice to any other rights or remedies of the lessor, shall pay to the lessor in respect to each welting or stitching or sewing machine hereby leased the sum of one hundred and fifty (150) dollars as partial reimbursement to the lessor for deterioration of the leased machinery, expenses in connection with the installation thereof, and instruction of operators.

11. A notice in writing, signed by the president, a vice president, the treasurer or the assistant treasurer of the lessor or by any assignee of the lessor's rights hereunder, and posted by prepaid letter, addressed to the lessee or delivered at his usual or last-known place of abode or business, that the lease and license hereby granted is terminated, or shall be terminated at the expiration of a certain period, shall be a sufficient termination of the lease and license from the time of posting or delivering such notice, or from the expiration of the period therein mentioned, as the case may be. Any termination of the lease and license hereby granted shall be without prejudice to any rights or remedies which the lessor may have for violation of contract, use of machines without right, use of patented inventions without license or otherwise.

12. The lessee admits the validity for the full term expressed in the grant thereof (and every extension and renewal thereof) of each and every of the Letters Patent of the United States of America owned by the lessor or under which it is licensed, any of the inventions of which are or hereafter may be embodied in the leased machinery, and the validity of and title of the lessor to the exclusive ownership of the trade names or trade-marks "Goodyear Welt" and "Goodyear Turn" used in connection with boots, shoes, and other footwear. The lessee also agrees that he will not directly or indirectly infringe or contest the validity for the full term expressed in the grant thereof, or of any extension or renewal thereof, of any of the Letters Patent referred to in the "Schedule of Patents" hereto annexed or the title of the lessor thereto, and that he will not directly or indirectly infringe or contest the validity of or the title of the lessor to the said trade names or trade-marks "Goodyear Welt" or "Goodyear Turn." The expiration of this agreement or any extension thereof or the termination or cesser of the lease and license hereby granted shall not in any way affect the provisions of

this clause or release or discharge the lessee from the admissions and estoppels herein set forth.

13. None of the conditions, stipulations, or provisions of this agreement shall be held to have been waived by any act or knowledge of the lessor, its agents or employees, but only by an instrument in writing, signed by the president, a vice president, or the treasurer of the lessor.

14. The term "lessor" shall include the said United Shoe Machinery Company and its successors and assigns. All the conditions, stipulations, and provisions binding on the lessee shall be binding on and enforceable against his legal representatives. In the construction of this instrument words relating to the number and gender of the parties shall be read according to their real number and gender.

In witness whereof the parties hereto have duly executed this instrument in duplicate the day and year first above written.

_____.

_____.

(If lessee is a corporation, add corporate seal.)

[HERE FOLLOWS SCHEDULE OF PATENTS.]

EXHIBIT 2

EXCHANGE LICENSE AGREEMENT OF THE MOTION PICTURE PATENTS COMPANY [1]

Whereas the Motion Picture Patents Co. of New York City (hereinafter referred to as the "Licensor") is the owner of all the right, title, and interest in and to reissued Letters Patent No. 12192, dated January 12, 1902, granted to Thomas A. Edison, for kinetoscopic film, and also Letters Patent Nos. 578185, 580749, 586953, 588916, 673329, 673992, 707934, 722382, 744251, 770937, 771280, 785205, and 785237, for inventions relating to motion-picture projecting machines; and

Whereas the Licensor has licensed the American Mutoscope & Biograph Co. of New York City, the Edison Manufacturing Co. of Orange, N. J.; the Essanay Co. of Chicago; the Kalem Co. of New York City; George Kleine of Chicago; Lubin Manufacturing Co. of Philadelphia; Pathe Freres of New York City; the Selig

[1] Hearings before the Committee on Interstate Commerce, United States Senate, 62nd Cong., 2nd Sess. 1911–1912, Exhibit A. pp. 1338–41.

Polyscope Co. of Chicago; and the Vitagraph Co. of America, of New York City (hereinafter referred to as "Licensed Manufacturers or Importers"), to manufacture or import motion pictures under the said reissued letters patent and to lease licensed motion pictures (hereinafter referred to as "licensed motion pictures") for use on projecting machines licensed by the Licensor; and

Whereas the undersigned (hereinafter referred to as the "Licensee") desires to obtain a license under said reissued Letters Patent No. 12192, to lease from the Licensed Manufacturers and Importers licensed motion pictures and to sublet the said licensed motion pictures for use on projecting machines licensed by the Licensor;

Now, therefore, the parties hereto, in consideration of the covenants herein, have agreed as follows:

(1) The Licensor hereby grants to the Licensee, for the term and subject to the conditions expressed in the "Conditions of license" hereinafter set forth, the license, under the said reissued Letters Patent No. 12192, to lease licensed motion pictures from the Licensed Manufacturers and Importers and to sublease said licensed motion pictures for use only on projecting machines licensed by the Licensor under letters patent owned by it.

(2) The Licensee covenants and agrees to conform with and strictly adhere to and be bound by all of the "Conditions of license" hereinafter set forth, and to and by any and all future changes in or additions thereto, and further agrees not to do or suffer any of the acts or things thereby prohibited, and that the Licensor may place and publish the Licensee's name in its removal or suspended list in the event of the termination of this agreement by the Licensor, or in case of any violation thereof, and may direct the Licensed Manufacturers and Importers not to lease licensed motion pictures to the Licensee, the Licensee hereby expressly agreeing that such Licensed Manufacturers and Importers shall have the right to cease such leasing when so directed by the Licensor; and the Licensee further agrees that the signing of this agreement constitutes a cancellation of any or all agreements for the sale of licensed motion pictures made prior to this agreement by and between the Licensee and any or all licensed manufacturers or importers, except as to any clause in said agreements relating to the return of motion-picture film to the several licensed manufacturers or importers. It is further understood and agreed by the Licensee that the license hereby granted is a personal one and not trans-

ferrable or assignable, and the Licensee hereby recognizes and acknowledges the validity of the said reissued Letters Patent No. 12192.

CONDITIONS OF LICENSE.

1. From the date of this agreement the Licensee shall not buy, lease, rent, or otherwise obtain any motion pictures other than licensed motion pictures and shall dispose of any motion pictures only by the subleasing thereof under the conditions hereinafter set forth.

2. The ownership of each licensed motion picture leased under this agreement shall remain in the Licensed Manufacturer or Importer from whom it may have been leased, the Licensee, by the payment of the leasing price acquiring only the license to sublet such motion picture subject to the conditions of this agreement. Such license for any motion picture shall terminate upon the breach of this agreement in regard thereto, and the Licensed Manufacturer or Importer from whom it may have been leased shall have the right to immediate possession of such motion picture, without liability for any leasing price or other sum, which the Licensee, or the person in whose possession said motion picture is found, may have paid therefor.

3. The Licensee shall not sell nor exhibit licensed motion pictures obtained from any Licensed Manufacturer or Importer, either in the United States or elsewhere, but shall only sublet such licensed motion pictures [and only for use in the United States and its territories][1] and only to exhibitors who shall exclusively exhibit licensed motion pictures, but in no case shall the exhibitor be permitted to sell or sublet or otherwise dispose of said licensed motion pictures.

4. The leasing price to be paid by the Licensee to the Licensed Manufacturers or Importers, or the terms of payment for or shipment of licensed motion pictures, shall in no case be less or more favorable to the Licensee than that defined in the leasing schedule embodied in this agreement or any other substitute leasing schedule which may be regularly adopted by the Licensor and of which notice shall be given to the Licensee hereafter.

5. To permit the Licensee to take advantage of any standing order leasing price mentioned in such schedule, such standing order

[1] Words in brackets eliminated by Patents Co. by notice dated Sept 13, 1911, effective Oct. 1, 1911.

with any Licensed Manufacturer or Importer shall be for one or more prints of each and every subject regularly produced and offered for lease by such manufacturer or importer as a standing order subject and not advertised as special by such Licensed Manufacturer or Importer, and shall remain in force for not less than 14 consecutive days. Any standing order may be canceled or reduced by the Licensee on 14 days' notice. Extra prints in addition to a standing order shall be furnished to the Licensee at the standing order leasing price.

6. The Licensee shall not sell, rent, or otherwise dispose of, either directly or indirectly, any licensed motion pictures, however the same shall have been obtained, to any persons, firms, or corporations or agents thereof who may be engaged either directly or indirectly in selling or renting motion-picture films.

7. The Licensee shall not make or cause to be made or permit others to make reproductions or so-called "dupes" of any licensed motion pictures, nor sell, rent, loan, or otherwise dispose of or deal in any reproductions or "dupes" of any motion pictures.

8. The Licensee shall not deliberately remove the trade-mark or trade name or title from any licensed motion picture, nor permit others to do so, but in case any title is made by the Licensee, the Manufacturer's name is to be placed thereon, provided that in making any title by the Licensee the Manufacturer's trade-mark shall not be reproduced.

9. The Licensee shall return to each Licensed Manufacturer or Importer (without receiving any payment therefor, except that the said Licensed Manufacturer or Importer shall pay the transportation charges incident to the return of the same) on the 1st day of every month commencing seven months from the 1st day of the month on which this agreement is executed an equivalent amount of positive motion-picture film in running feet (not purchased or leased over 12 months before) and of the make of the said Licensed Manufacturer or Importer equal to the amount of licensed motion pictures that was so leased during the seventh month preceding the day of each such return, with the exception, however, that where any such motion pictures are destroyed or lost in transportation or otherwise and satisfactory proof is furnished, within 14 days after such destruction or loss, to the Licensed Manufacturer or Importer from whom such motion picture was leased the Licensed Manufacturer or Importer shall deduct the amount so destroyed or lost from the amount to be returned.

10. The Licensee shall not sell, rent, sublet, loan, or otherwise dispose of any licensed motion pictures, however the same may have been obtained, to any person, firm, or corporation in the exhibition business who may have violated any of the terms or conditions imposed by the Licensor through any of its licensees and of which violation the present Licensee may have had notice.

11. The Licensee shall not sublease licensed motion pictures to any exhibitor unless a contract with said exhibitor (satisfactory in form to the Licensor) is first exacted, under which the exhibitor agrees to conform to all the conditions and stipulations of the present agreement applicable to the exhibitor; and in the case of an exhibitor who may operate more than a single place of exhibition, a similar contract shall be exacted in connection with each place so operated, and supplied with licensed motion pictures by the Licensee.

12. After February 1, 1909, the Licensee shall not sublease any licensed motion pictures to any exhibitor unless each motion-picture projecting machine on which the licensed motion pictures are to be used by such exhibitor is regularly licensed by the Motion Picture Patents Co., and the license fees therefor have been paid; and the Licensee shall, before supplying such exhibitor with licensed motion pictures, mail to the Motion Picture Patents Co., at its office in New York City, a notice, giving the name of the exhibitor, the name and location of the place of exhibition (and, if requested to do so by the Licensor, its seating capacity, hours of exhibition and price of admission, and the number and make of the licensed projecting machine or machines), together with the date of the commencement of the subleasing, all in a form approved by the Licensor. The Licensee, when properly notified by the Licensor that the license fees of any exhibitor for any projecting machine have not been paid, and that the license for such projecting machine is terminated, shall immediately cease to supply such exhibitor with licensed motion pictures.

13. The Licensee agrees to order during each month while this agreement is in force, for shipment directly to the place of business of the Licensee in the city for which this agreement is signed, licensed motion pictures, the net leasing prices for which shall amount to at least $2,500.

14. The Licensee shall, on each Monday during the continuance of this agreement, make or mail payment to each Licensed Manufacturer and Importer for all invoices for licensed motion pictures

which have been received by the Licensee during the preceding week.

15. This agreement shall extend only to the place of business for the subleasing of motion pictures maintained by the Licensee in the city for which this agreement is signed, and the Licensee agrees not to establish or maintain a place of business for the subleasing of motion pictures, or from which motion pictures are delivered to exhibitors, in any other city, unless an agreement for such other city, similar to the present agreement, is first entered into by and between the Licensee and the Licensor.

16. This Licensor agrees that before licensing any person, firm, or corporation in the United States (not including its insular territorial possessions and Alaska) to lease licensed motion pictures from Licensed Manufacturers and importers and to sublease such motion pictures, it will exact from each such licensee an agreement similar in terms to the present agreement, in order that all licensees who may do business with the Licensed Manufacturers and Importers will be placed in a position of exact equality.

19.[1] It is understood and specifically covenanted by the Licensee that the Licensor may terminate this agreement on 14 days' written notice to the Licensee of its intention so to do, and that if the Licensee shall fail to faithfully keep and perform the foregoing terms and conditions of lease, or any of them, or shall fail to pay the leasing price for any motion pictures supplied by any Licensed Manufacturer or Importer when due and payable according to the terms of this agreement, the Licensor shall have the right to place the Licensee's name on an appropriate suspended list, which the Licensor may publish and distribute to its other licensees and to exhibitors and to the Licensed Manufacturers and Importers and to direct the Licensed Manufacturers and Importers not to lease license motion pictures to the Licensee, and the exercise of either or both of these rights by the Licensor shall not be construed as a termination of this license, and the Licensor shall also have the right in such case, upon appropriate notice to the Licensee, to immediately terminate the present license, if the Licensor shall so elect, without prejudice to the Licensor's right to sue for and recover any damages which may have been suffered by such breach or noncompliance with the terms and conditions hereof by the Licensee, such breach or noncompliance constituting an infringement of said reissued letters patent. It is further agreed by the

[1] Thus in original.—Ed.

Licensee that if this agreement is terminated by the Licensor for any breach of any condition hereof, the right to possession of all licensed motion pictures shall revert, 20 days after notice of such termination, to the respective Licensed Manufacturers and Importers from whom they were obtained and shall be returned to such Licensed Manufacturers or Importers at once after the expiration of that period.

20. It is understood that the terms and conditions of this license may be changed at the option of the Licensor upon 14 days' written notice to the Licensee; but no such change shall be effective and binding unless duly ratified by an officer of the Licensor.

Leasing prices (per running foot) of licensed positive motion pictures.

	Cents.
List	11
Standing order	13
Films leased between 2 and 4 months after release date	9
Films leased between 4 and 6 months after release date	7
Films leased over 6 months after release date	5

A rebate of 10 per cent will be allowed on all leases of licensed motion pictures, except at the 7-cent and 5-cent prices, which are net; said rebates to be due and payable between the 1st and 15th days of each of the months of March, May, July, September, November, and January on all films leased during the two months preceding each said period, provided all the terms and conditions of this license agreement have been faithfully observed.

TERMS.

All shipments are made f. o. b. lessor's office at lessee's risk.

All motion-picture films are to be shipped to lessee's office only.

The lengths at which motion-picture films are listed and leased are only approximate.

MOTION PICTURE PATENTS CO.,
BY D. MACDONALD, *General Manager.*
(Licensee's signature.) ————————,
GREATER NEW YORK FILM RENTAL CO.,
————— ————, *Secretary.*

Place of business for which this license is granted, No. 24 Union Square, New York, N. Y.

JANUARY 20, 1909.

EXHIBIT 3

CROWN CORK AND SEAL COMPANY [1]

Form of license and lease of automatic power Crown soda machine from the Crown Cork & Seal Co., of Baltimore city, lessor, to ——— —.

The Crown Cork & Seal Co., of Baltimore city, hereby licenses and leases to ——— ———, lessee, one automatic power Crown soda machine under United States Letters Patent Nos. 473776, April 26, 1892; 608158, July 26, 1895; 609209, August 16, 1898; 658354, December 5, 1899; and also patent applications filed in the United States Patent Office, to be used only by said lessee at ——— ———.

The lessee agrees to pay therefor $1,200, f. o. b. Baltimore, 30 days after date of shipment of invoice, $6 per month for the whole term of the lease, the first payment to be made on the last day of the month succeeding shipment, and on the last day of each succeeding month thereafter.

The lease and license are granted for the full term for which said patent was originally granted, to wit, for 17 years from date, and shall continue during that term, without reference to any decision as to the validity of any said patents.

The license and lease are granted upon the following conditions: The said machine shall be used only in connection with crown corks purchased by the lessee directly from lessor; crowns not fit for service may be returned at the Crown Cork & Seal Co.'s expense before use and within 30 days from date of invoice. The lessor shall be sole judge of the origin or manufacture of crowns returned; the lessor shall not be liable for any consequential damages or for any abatement in the rent or any loss other than such return of crowns on account of alleged defects in crowns. The machine shall be kept in repair by the lessee at its own expense, but the repair parts shall be purchased from the lessor at its regular catalogue prices.

The Crown Cork & Seal Co. shall at all times have access to the

[1] Hearings before the Committee on the Judiciary on Trust and Patent Legislation, House Reports—Nos. 11380–11381, 15926, 19959. 62nd Congress, 2nd Session, 1911–1912. Trust Legislation Serial No. 2, Patent Legislation Serial No. 1, p. 164.

machine and under such conditions, however, as shall not interfere with its operation.

This lease and license shall not be subject to either voluntary or involuntary assignment, but upon surrender of the license and the payment of all arrears thereunder, the Crown Cork & Seal Co. of Baltimore City will issue to such person as the lessee may designate a new license, reserving only the rentals thereafter maturing and otherwise identical with this license.

If said lessee shall violate or fail to perform any of the terms or conditions of this instrument, then this lease or license shall, at the option of the lessor, be null and void, and said Crown Cork & Seal Co. of Baltimore City shall have the right at any time to take possession of the machine.

This license shall not be valid unless confirmed by countersignature of the Crown Cork & Seal Co. at its home office in Baltimore.

Witness the signatures of said parties this —— day of ———, 190—.

LICENSE TO OPERATE.

Crown cork system and automatic crown machine.

MARCH 14, 1910.

To the CROWN SEAL & CORK CO., *Baltimore:*

We hereby make application for license to operate your crown cork system and automatic crown machine, as covered by patents, No. 638354, dated December 5, 1899, and No. 643973, dated February 20, 1900, to be used in Boston, Mass., and request you to forward to our address one automatic crown machine, at $1,800, f. o. b., Baltimore.

Upon the granting of the license we agree and obligate ourselves that the system and machine shall only be used and operated by us in connection with crown corks, purchased from the Crown Cork & Seal Co., and bottles made, by properly authorized manufacturers, with the company's standard finishing tools.

It is agreed that the price of crown corks (plain) shall not exceed 25 cents per gross, f. o. b., Baltimore. It is agreed that the ——— ——— shall have the benefit of any general reduction in the price of crown corks.

It is further agreed that no claims for consequential damages shall be allowed by the Crown Cork & Seal Co.

——— ———

AGREEMENT OF LICENSE AND LEASE OF ONE CROWN MACHINE.

The Crown Cork & Seal Co., of Baltimore City, called the Crown Co., hereby licenses and leases to ——— ———, doing business at Boston, Mass., called the lessee, one Crown machine of the standard type below mentioned, and does hereby license said lessee to use for the term and within the terms and limitations herein set forth, the Crown Co.'s cork system, i. e., the said machine, and processes. This license is granted under the following United States patents, to wit: No. 473776, April 26, 1892; No. 608158, July 26, 1898; No. 638354, December 5, 1899; No. 643973, February 20, 1900; No. 779991, January 10, 1905; No. 908688, January 5, 1909, and other letters patent heretofore or hereafter granted to the Crown Co.

Type of machine.—The type of machine so leased, and annual rental payable therefor, is the following (i. e., the one not canceled): Machine type, automatic power Crown beer machine ——— (rent), $180.

Term of lease.—The term of this agreement commences on the date hereof and continues until terminated as herein provided. Either the Crown Co. or lessee may at their option, respectively, terminate this agreement.

Rent.—The lessee shall pay to the Crown Co. the annual rent above stated for the type of machine leased; the rent shall be payable in equal quarterly instalments on the 1st days of January, April, July, and October; the first instalment shall commence on the first day of the month succeeding the shipment of the machine, and shall be a due proportion for the time from such date to the first quarterly-payment date.

Termination.—This lease and license may be terminated by either party at their options, respectively, and shall terminate on the date fixed therefor as herein provided. The Crown Co. may terminate the same by written notice addressed to the lessee at his address herein given, mailed at Baltimore, and shall take effect 60 days after the mailing date. The lessee may terminate by similar written notice addressed to the Crown Co. at Baltimore, together with the delivery of the machine, f. o. b. Baltimore, to the Crown Co., and termination by the lessee shall take effect on such delivery, and shall not take effect unless or until such delivery is made. No abatement of rent shall be made while the machine is in the lessee's possession or until such delivery at Baltimore. On

any termination, all liabilities of the lessee to the Crown Co., including arrears of rent, and a due proportion of the accruing quarter's rent to the date it takes effect, shall be at once due and payable.

And the said parties hereby agree as follows: The lessee shall not be obliged to insure the machine or be liable for its value destroyed by fire or lost in transportation. All deliveries of the machine by or to the Crown Co. shall be f. o. b. Baltimore, and the lessee shall pay all transportation charges and all taxes on the machine. The said machine shall be used only by said lessee at his place of business in the city above stated. The lessee shall keep the machine in good working order and condition at his own expense and pay the cost of repair of any machine not in such condition when returned to the Crown Co., whether the lease be terminated by either party. Repair parts must be obtained from the Crown Co. only. The Crown Co. shall in no event be liable for any consequential damages or injury to business claimed to arise from alleged defects in leased machines or for defects in quality of or failure to deliver crowns; nor shall the payment of the rent be affected thereby.

This license and lease shall not be subject to voluntary or involuntary alienation, but upon surrender hereof and the payment of all arrears hereunder and all of the lessee's liability to the Crown Co., the Crown Co. will issue to the lessee's nominee a new lease and license, reserving only the rentals thereafter maturing and otherwise identical with this instrument.

This instrument is not valid unless signed or confirmed by the Crown Co. at its home office, Baltimore, Md.

Dated 1st day of June, 1911.

_____ _____.

_____ _____.

The CROWN CORK & SEAL CO.

_____ _____,

Secretary.

EXHIBIT 4

SIDNEY HENRY *v.* A. B. DICK COMPANY [1]

Mr. Justice LURTON delivered the opinion of the court:

This cause comes to this court upon a certificate under the sixth section of the court of appeals act of March 31, 1891.

[1] Will appear in 223 or 224 U. S. The fact that the excerpts in this exhibit are taken from an advance copy of the decree will account for such slight differences in punctuation and the use of italics as may be observed.—Ed.

The facts and the questions certified, omitting the terms of the injunction awarded by the circuit court, are these:

This action was brought by the complainant, an Illinois corporation, for the infringement of two letters patent, owned by the complainant, covering a stencil-duplicating machine known as the rotary mimeograph. The defendants are doing business as copartners in the city of New York. The complainants sold to one Christina B. Skou, of New York, a rotary mimeograph embodying the invention described and claimed in said patents under license which was attached to said machine, as follows:

"LICENSE RESTRICTION.

"This machine is sold by the A. B. Dick Co. with the license restriction that it may be used only with the stencil paper, ink, and other supplies made by A. B. Dick Co., Chicago, United States of America.

"The defendant, Sidney Henry, sold to Miss Skou a can of ink suitable for use upon said mimeograph with knowledge of the said license agreement and with the expectation that it would be used in connection with said mimeograph. The ink sold to Miss Skou was not covered by the claims of said patent."

QUESTION CERTIFIED.

Upon the facts above set forth, the question concerning which this court desires the instruction of the Supreme Court is:

Did the acts of the defendants constitute contributory infringement of the complainant's patents?

There could have been no contributory infringement by the defendants, unless the use of Miss Skou's machine with ink not made by the complainants would have been a direct infringement. It is not denied that she accepted the machine with notice of the conditions under which the patentee consented to its use. Nor is it denied that thereby she agreed not to use the machine otherwise. What defendants say is that this agreement was collateral, and that its validity depended upon principles of general law, and that if valid the only remedy is such as is afforded by general principles of law. Therefore they say that the suit is not one arising under the patent law, and one not cognizable in a Federal court unless diversity of citizenship exists.

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We are unable to assent to these suggestions. We do not prescribe the jurisdiction of courts, Federal or State, but only give effect to it as fixed by law. If a bill asserts a right under the patent law to sell a patented machine subject to restrictions as to its use, and alleges a use in violation of the restrictions as an infringement

of the patent, it presents a question of the extent of the patentee's privilege, which, if determined one way, brings the prohibited use within the provisions of the patent law, or, if determined the other way, brings into operation only principles of general law. Obviously a suit for infringement, which must turn upon the scope of the monopoly or privilege secured to a patentee, presents a case arising under the patent law. The jurisdiction of the circuit court over such cases has, for more than a century, been exclusive by the express terms of the statute, although for the most part its jurisdiction over other kinds of suits arising under the Constitution and laws of the United States is only concurrent with that of the State courts.

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That the license agreement constitutes a contract not to use the machine in a prohibited manner is plain. That defendants might be sued upon the broken contract, or for its enforcement or for the forfeiture of the license, is likewise plain. But if by the use of the machine in a prohibited way Miss Skou infringed the patent, then she is also liable to an action under the patent law for infringement. Now, that is primarily what the bill alleged, and this suit is one brought to restrain the defendants as aiders and abettors to her proposed infringing use.

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The books abound in cases upholding the right of a patentee owner of a machine to license another to use it subject to any qualification in respect of time, place, manner, or purpose of use which the licensee agrees to accept. Any use in excess of the license would obviously be an infringing use and the license would be no defense. (Robinson on Patents, secs. 915, 916, and notes.) This is so elementary we shall not stop to cite cases.

The contention is not that a patentee may not permit the use of a patented thing with such qualifications as he sees fit to impose, and that a prohibited use will be an infringing one, but that he can only keep the article within the control of the patent by retaining the title. To put the contention in another form—it is that any transfer of the patentee's property right in a patented machine carries with it the right to use the entire invention so long as the identity of the machine is preserved, irrespective of any restrictions placed by the patentee upon the use of the article and accepted by the buyer.

It is said that by such a sale the patentee "disposes of all his rights under his patent, and thereby removes the article from the operation of the patent law." If he attempts to sell the machine for specified uses only and prohibit all others, the restriction is disposed of as constituting a collateral agreement, such as any vendor of personal property might impose, and enforceable, if valid at all, only as a collateral contract.

The issue is a plain one. If it be sound, it concludes the case, and our response should be a negative one, since the violation of a mere collateral contract, which is not also an infringement of the patent, would not be a case arising under the patent law. But is it true that where a patentee sells his patented machine for a specific and limited use, he does not thereby reserve to himself, as a patentee, the exclusive right to all unpermitted uses which may be made of his invention as embodied in the machine sold? Obviously, this is a question arising under the patent law. By a sale of a patented article subject to no conditions the purchaser undeniably acquires the right to use the article for all the purposes of the patent so long as it endures. He may use it where, when, and how he pleases, and may dispose of the same unlimited right to another. This has long been the settled doctrine of this and all patent courts. . . . .

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An absolute and unconditional sale operates to pass the patented thing outside the boundaries of the patent, because such a sale implies that the patentee consents that the purchaser may use the machine so long as its identity is preserved. This implication arises, first, because a sale, without reservation, of a machine whose value consists in its use, for a consideration, carries with it the presumption that the right to use the particular machine is to pass with it. The rule and its reason is thus stated in Robinson on Patents (sec. 824):

> The sale must, furthermore, be unconditional. Not only may the patentee impose conditions limiting the use of the patented article upon his grantees and express licensees, but any person having the right to sell may at the time of sale restrict the use of his vendee within specific boundaries of time or place or method, and these will then become the measure of the implied license arising from the sale.

The argument for the defendants ignores the distinction between the property right in the materials composing a patented machine and the right to use for the purpose and in the manner pointed out

by the patent. The latter may be and often is the greater element of value, and the buyer may desire it only to apply to some or all of the uses included in the invention. But the two things are separable rights. If sold unreservedly, the right to the entire use of the invention passes, because that is the implied intent; but this right to use is nothing more nor less than an unrestricted license presumed from an unconditional sale. A license is not an assignment of any interest in the patent. It is a mere permission granted by the patentee. It may be a license to make, sell, and use, or it may be limited to any one of these separable rights. If it be a license to use, it operates only as a right to use without being liable as a infringer. If a licensee be sued, he can escape liability to the patentee for the use of his invention by showing that the use is within his license. But if his use be one prohibited by the license, the latter is of no avail as a defense. As a license passes no interest in the monopoly, it has been described as a mere waiver of the right to sue by the patentee. (Robinson on Patents, secs. 806, 808.)

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It is plain from the power of the patentee to subdivide his exclusive right of use that when he makes and sells a patented device that the extent of the license to use which is carried by the sale must depend upon whether any restriction was placed upon the use and brought home to the person acquiring the article.

That here the patentee did not intend to sell the machine made by it subject to an unrestricted use is of course undeniable from the words upon the machine, viz:

LICENSE RESTRICTION.

This machine is sold by the A. B. Dick Co., with the license restriction that it may be used only with the stencil, paper, ink, and other supplies made by A. B. Dick Co.

. . . . . .

If, then, we assume that the violation of restrictions upon the use of a machine made and sold by the patentee may be treated as infringement, we come to the question of the kind of limitation which may be lawfully imposed upon a purchaser.

To begin with, the purchaser must have notice that he buys with only a qualified right of use. He has a right to assume, in the absence of knowledge, that the seller passes an unconditional title to the machine, with no limitations upon the use. Where, then, is

the line between a lawful and an unlawful qualification upon the use? This is a question of statutory construction. But with what eye shall we read a meaning into it? It is a statute creating and protecting a monopoly. It is a true monopoly, one having its origin in the ultimate authority, the Constitution. Shall we deal with the statute creating and guaranteeing the exclusive right which is granted to the inventor with the narrow scrutiny proper when a statutory right is asserted to uphold a claim which is lacking in those moral elements which appeal to the normal man? Or shall we approach it as a monopoly granted to subserve a broad public policy, by which large ends are to be attained, and therefore to be construed so as to give effect to a wise and beneficial purpose? That we must neither transcend the statute nor cut down its clear meaning is plain. . . . . .

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If the stipulation in an agreement between patentees and dealers in patented articles, which, among other things, fixed a price below which the patented articles should not be sold, would be a reasonable and valid condition, it must follow that any other reasonable stipulation not inherently violative of some substantive law, imposed by a patentee as part of a sale of a patented machine, would be equally valid and enforceable. It must also follow that if the stipulation be one which qualifies the right of use in a machine sold subject thereto, so that a breach would give rise to a right of action upon the contract, it would be at the same time an act of infringement, giving to the patentee his choice of remedies.

But it has been very earnestly said that a condition restricting the buyer to use it only in connection with ink made by the patentee is one of a character which gives to a patentee the power to extend his monopoly so as to cause it to embrace any subject not within the patent which he chooses to require that the invention shall be used in connection with. Of course the argument does not mean that the effect of such a condition is to cause things to become patented which were not so without the requirement. The stencil, the paper, and the ink made by the patentee will continue to be unpatented. Anyone will be as free to make, sell, and use like articles as they would be without this restriction, save in one particular, namely, they may not be sold to a user of one of the patentee's machines with intent that they shall be used in violation of the license. To that extent competition in the sale of such

articles, for use with the machine, will be affected, for sale to such users for infringing purposes will constitute contributory infringement. But the same consequence results from the sale of any article to one who proposes to associate it with other articles to infringe a patent when such purpose is known to the seller. But could it be said that the doctrine of contributory infringement operates to extend the monopoly of the patent over subjects not within it because one subjects himself to the penalties of the law when he sells unpatented things for an infringing use? If a patentee says, "I may suppress my patent if I will; I may make and have made devices under my patent, but I will neither sell nor permit anyone to use the patented things," he is within his right, and none can complain. But if he says, "I will sell with the right to use only with other things proper for using with the machines, and I will sell at the actual cost of the machines to me, provided you will agree to use only such articles as are made by me in connection therewith," if he chooses to take his profit in this way, instead of taking it by a higher price for the machines, has he exceeded his exclusive right to make, sell, and use his patented machines? The market for the sale of such articles to the users of his machine, which, by such a condition, he takes to himself, was a market which he alone created by the making and selling of a new invention. Had he kept his invention to himself no ink could have been sold by others for use upon machines embodying that invention. By selling it subject to the restriction he took nothing from others and in no wise restricted their legitimate market.

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Neither can we see that the liability of the defendants for aiding and abetting an infringing use by Miss Skou would be different whether she had made her machine in open defiance of the rights of the patentee or had bought it under conditions limiting her right of use. If she had made it, she would have been liable to an action for infringement for making, and if she used it she would become liable for such infringing use. But if the defendants knew of the patent and that she had unlawfully made the patented article, and then sold her ink or other supplies, without which she could not operate the machine, with the intent and purpose that she should use the infringing article by means of the ink supplied by them, they would assist in her infringing use.

"Contributory infringement," says Judge Townsend in Thomas[1]-Houston Co. *v.* Kelsey Co. (72 Fed. Rep., 1016), "has been well defined as the intentional aiding of one person by another in the unlawful making, or selling, or using of the patented invention." To the same effect are Wallace *v.* Holmes (29 Fed. Cases, 79); Risdon *v.* Trent (92 Fed. Rep., 375); Thomson-Houston Co. *v.* Ohio Brass Works (80 Fed. Rep., 721); American Graphophone Co. *v.* Hawthorne (92 Fed. Rep., 516).

In the Risdon case a member of the firm which made the plans for the construction of certain mining machinery to be made in the owner's shop, and then superintended its erection at the mine, was held to be guilty of infringement, though he neither personally made nor used the machines which were found to be an infringement of valid patents. In American Graphophone Co. *v.* Hawthorne one who sold a machine with knowledge that it was to be used to produce an infringing article was held to be liable as an infringer.

For the purpose of testing the consequence of a ruling which will support the lawfulness of a sale of a patented machine for use only in connection with supplies necessary for its operation bought from the patentee, many fanciful suggestions of conditions which might be imposed by a patentee have been pressed upon us. Thus it is said that a patentee of a coffee pot might sell on condition that it be used only with coffee bought from him, or, if the article be a circular saw, that it might be sold on condition that it be used only in sawing logs procured from him. These and other illustrations are used to indicate that this method of marketing a patented article may be carried to such an extent as to inconvenience the public and involve innocent people in unwitting infringements. But these illustrations all fail of their purpose, because the public is always free to take or refuse the patented article on the terms imposed. If they be too onerous or not in keeping with the benefits, the patented article will not find a market. The public, by permitting the invention to go unused, loses nothing which it had before, and when the patent expires will be free to use the invention without compensation or restriction. This was pointed out in the paper-bag case, where the inventor would neither use himself nor allow others to use, and yet was held entitled to restrain infringement, because he had the exclusive right to keep all others from using during the life of the patent. This larger right embraces the

[1] In error; should be "Thomson."—Ed.

lesser of permitting others to use upon such terms as the patentee chooses to prescribe. It must not be forgotten that we are dealing with a constitutional and statutory monopoly. An attack upon the rights under a patent because it secures a monopoly to make, to sell, and to use is an attack upon the whole patent system. *We are not at liberty to say that the Constitution has unwisely provided for granting a monopolistic right to inventors or that Congress has unwisely failed to impose limitations upon the inventor's exclusive right of use. And if it be that the ingenuity of patentees in devising ways in which to reap the benefit of their discoveries requires to be restrained, Congress alone has the power to determine what restraints shall be imposed. As the law now stands it contains none, and the duty which rests upon this and upon every other court is to expound the law as it is written. Arguments based upon suggestions of public policy not recognized in the patent laws are not relevant. The field to which we are invited by such arguments is legislative, not judicial.*[1] The decisions of this court as we have construed them do not so limit the privilege of the patentee, and we could not so restrict a patent grant without overruling the long line of judicial decisions from circuit courts and circuit courts of appeal heretofore cited, thus inflicting disastrous results upon individuals who have made large investments in reliance upon them.

The conclusion we reach is that there is no difference in principle between a sale subject to specific restrictions as to the time, place, or purpose of use and restrictions requiring a use only with other things necessary to the use of the patented article purchased from the patentee. If the violation of the one kind is an infringement, the other is also. . . . .

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We come then to the question as to whether "the acts of the defendants constitute contributory infringement of the complainants' patent."

The facts upon which our answer must be made are somewhat meager. It has been urged that we should make a negative reply to the interrogatory as certified, because the intent to have the ink sold to the licensee used in an infringing way is not sufficiently made out. Undoubtedly a bare supposition that by a sale of an article which, though adapted to an infringing use, is also adapted to other and lawful uses, is not enough to make the seller a contributory

[1] Italics are the editor's.—Ed.

infringer. Such a rule would block the wheels of commerce. There must be an intent and purpose that the article sold will be so used. Such a presumption arises when the article so sold is only adapted to an infringing use. Rupp *v.* Elliott (131 Fed., 730). It may also be inferred where its most conspicuous use is one which will cooperate in an infringement when sale to such user is invoked by advertisement. Kalem Co. *v.* Harper Brothers, decided at this term and not yet reported.

These defendants are, in the facts certified, stated to have made a direct sale to the user of the patented article, with knowledge that under the license from the patentee she could not use the ink, sold by them directly to her, in connection with the licensed machine, without infringement of the monopoly of the patent. It is not open to them to say that it might be used in a noninfringing way, for the certified fact is that they made the sale "with the expectation that it would be used in connection with said mimeograph." The fair interpretation of the facts stated is that the sale was with the purpose and intent that it would be so used.

So understanding the import of the question in connection with the facts certified, we must answer the question certified affirmatively.

Mr. Justice DAY did not hear the argument and took no part in the decision of this case.

Mr. Chief Justice WHITE, with whom concurred Mr. Justice HUGHES and Mr. Justice LAMAR, dissenting:

My reluctance to dissent is overcome in this case: First, because the ruling now made has a much wider scope than the mere interest of the parties to this record, since, in my opinion, the effect of that ruling is to destroy, in a very large measure, the judicial authority of the States by unwarrantedly extending the Federal judicial power. Second, because the result just stated, by the inevitable development of the principle announced, may not be confined to sporadic or isolated cases, but will be as broad as society itself, affecting a multitude of people and capable of operation upon every conceivable subject of human contract, interest, or activity, however intensely local and exclusively within State authority they otherwise might be. Third, because the gravity of the consequences which would ordinarily arise from such a result is greatly aggravated by the ruling now made, since that ruling not only vastly extends the Federal judicial power, as above stated, but as to all the innumerable subjects to which the ruling may be made to

apply, makes it the duty of the courts of the United States to test the rights and obligations of the parties, not by the general law of the land, in accord with the conformity act, but by the provisions of the patent law, even although the subjects considered may not be within the embrace of that law, thus disregarding the State law, overthrowing, it may be, a settled public policy of the State, and injuriously affecting a multitude of persons. Lastly, I am led to express the reasons which constrain me to dissent, because of the hope that if my forebodings as to the evil consequences to result from the application of the construction now given to the patent statute be well founded, the statement of my reasons may serve a twofold purpose: First, to suggest that the application in future cases of the construction now given be confined within the narrowest limits, and, second, to serve to make it clear that if evils arise their continuance will not be caused by the interpretation now given to the statute, *but will result from the inaction of the legislative department in failing to amend the statute so as to avoid such evils.*[1]

. . . . . .

I can not bring my mind to assent to the conclusion referred to, and shall state in the light of reason and authority why I can not do so. As I have said, the ink was not covered by the patent; indeed, it is stated in argument and not denied that a prior patent which covered the ink had expired before the sale in question. It therefore results that a claim for the ink could not have been lawfully embraced in the patent, and if it had been by inadvertence allowed such claim would not have been enforceable. This curious anomaly then results, that that which was not embraced by the patent, which could not have been embraced therein and which if mistakenly allowed and included in an express claim would have been inefficacious, is now, by the effect of a contract held to be embraced by the patent and covered by the patent law. This inevitably causes the contentions now upheld to come to this, that a patentee in selling the machine covered by his patent has power by contract to extend the patent so as to cause it to embrace things which it does not include; in other words, to exercise legislative power of a far-reaching and dangerous character. Looking at it from another point of view and testing the contention by a consideration of the rights protected by the patent law and the rights which an inventor who obtains a patent takes under that law, the proposition reduces

[1] Italics are the editor's.

itself to the same conclusion. The natural right of anyone to make, vend, and use his invention, which but for the patent law might be invaded by others, is by that law made exclusive, and hence the power is conferred to exclude others from making, using, or vending the patented invention. (Paper Bag case, 210 U. S., 424-425, and cases cited.)

The exclusive right of use of the invention embodied in the machine which the patent protected was a right to use it anywhere and everywhere for all and every purpose of which the machine as embraced by the patent was susceptible. The patent was solely upon the mechanism, which, when operated, was capable of producing certain results. A patent for this mechanism was not concerned in any way with the materials to be used in operating the machine, and certainly the right protected by the patent was not a right to use the mechanism with any particular ink or other operative materials. Of course, as the owner of the machine possessed the ordinary right of an owner of property to use such materials as he pleased in operating his patented machine and had the power in selling his machine to impose such conditions, in the nature of covenants not contrary to public policy as he saw fit, I shall assume that he had the power to exact that the purchaser should use only a particular character of materials. But as the right to employ any desired operative materials in using the patented machine was not a right derived from or protected by the patent law, but was a mere right arising from the ownership of property, it can not be said that the restriction concerning the use of the materials was a restriction upon the use of the machine protected by the patent law. When I say it can not be said I mean that it can not be so done in reason, since the inevitable result of so doing would be to declare that the patent protected a use which it did not embrace. And this, after all, serves to demonstrate that it is a misconception to qualify the restriction as one on the use of the machine, when in truth both in form and substance it was but a restriction upon the use of materials capable of being employed in operating the machine. In other words, every use which the patent protected was transferred to Miss Skou, and the very existence of the particular restriction under consideration presupposes such right of complete enjoyment, and because of its possession there was engrafted a contract restriction, not upon the use of the machine, but upon the materials. And these considerations are equally applicable to the exercise of the exclusive right to vend protected by the patent un-

less it can be said that by the act of selling a patented machine and disposing of all the use of which it is capable a patentee is endowed with the power to amplify his patent by causing it to cover in the future things which at the time of the sale it did not embrace.

But the result of this analysis serves at once again to establish, from another point of view, that the ruling now made in effect is that the patentee has the power, by contract, to extend his patent rights so as to bring within the claims of his patent things which are not embraced therein, thus virtually legislating by causing the patent laws to cover subjects to which, without the exercise of the right of contract, they could not reach, the result being not only to multiply monopolies at the will of an interested party, but also to destroy the jurisdiction of the State courts over subjects which from the beginning have been within their authority.

The vast extent to which the results just stated may be carried will be at once apparent by considering the facts of this case and bearing in mind that this is not the suit of a patentee against one with whom he has contracted to enforce as against such person an act done in violation of a contract as an infringement, but it is against a third person who happened to deal in an ordinary commodity of general use with a person with whom the patentee had contracted. And this statement shows that the effect of the ruling is to make the virtual legislative authority of the owner of a patented machine extend to every human being in society, without reference to their privity to any contract existing between the patentee and the one to whom he has sold the patented machine. It is worthy of observation that the vast power which the ruling confers upon the holders of patented inventions does not alone cause controversies which otherwise would be subject to the State jurisdiction to become matters of exclusive Federal cognizance, but subjects the rights of the parties when in the Federal forum to the patent law, to the exclusion of the State law which otherwise would apply, and it may be to the overthrow of the settled public policy of the State wherein the dealings involved take place. All these results are in a measure comprehensively portrayed by the decree of the circuit court. They are, moreover, vividly shown by a reference made by the court to and the putting aside as inapplicable of a previous decision of this court (Miles Medical Co. *v.* Park & Sons Co., 220 U. S., 373) which if here applied would cause the alleged license to be held void as against public policy. As the theory upon which the Miles Medical Co. case is treated as inappli-

cable is that this case is one governed by the patent laws, and therefore not within the rule of public policy which the Miles case applied, it is made indubitably clear that the ruling now announced endows the patentee with a right by contract not only to produce the fundamental change as to jurisdiction of the State and Federal courts to which I have referred, but also to bring about the overthrow of the public policy both of the State and Nation, which I at the outset indicated was a consequence of the ruling now made.

I do not think it necessary to stop to point out the innumerable subjects which will be susceptible of being removed from the operation of State judicial power and the fundamental and radical character of the change which must come as a result of the principle decided. But, nevertheless, let me give a few illustrations:

Take a patentee selling a patented engine. He will now have the right by contract to bring under the patent laws all contracts for coal or electrical energy used to afford power to work the machine or even the lubricants employed in its operation. Take a patented carpenter's plane. The power now exists in the patentee by contract to validly confine a carpenter purchasing one of the planes to the use of lumber sawed from trees grown on the land of a particular person or sawed by a particular mill. Take a patented cooking utensil. The power is now recognized in the patentee to bind by contract one who buys the utensil to use in connection with it no other food supply but that sold or made by the patentee. Take the invention of a patented window frame. It is now the law that the seller of the frame may stipulate that no other material shall be used in a house in which the window frames are placed except such as may be bought from the patentee and seller of the frame. Take an illustration which goes home to everyone—a patented sewing machine. It is now established that by putting on the machine, in addition to the notice of patent required by law, a notice called a license restriction, the right is acquired, as against the whole world, to control the purchase by users of the machine of thread, needles, and oil lubricants or other materials convenient or necessary for operation of the machine.[1] The illustrations might be multiplied indefinitely. That they are not imaginary is now a matter of common knowledge, for, as the result of a case decided some years ago by one of the circuit courts of appeal, which has been followed by cases in other circuit courts of appeal, to which reference will hereafter be made, what prior to the first of those decisions on a sale of a patented article was designated a condition of sale, gov-

[1] Italics are the editor's.

erned by the general principles of law, has come in practice to be denominated a license restriction, thus, by the change of form, under the doctrine announced in the cases referred to, bringing the matters covered by the restriction within the exclusive sway of the patent law. As the transformation has come about in practice since the decisions in question, the conclusion is that it is attributable as an effect caused by the doctrine of those cases. And, as I have previously stated, it is a matter of common knowledge that the change has been frequently resorted to for the purpose of bringing numerous articles of common use within the monopoly of a patent when otherwise they would not have been embraced therein, thereby tending to subject the whole of society to a widespread and irksome monopolistic control.

. . . . . .

I pass by the English decisions relied upon with the remark that it is not perceived how they can have any persuasive influence on the subject in hand in view of the distinction between State and national power which here prevails and the consequent necessity, if our institutions are to be preserved, of forbidding a use of the patent laws which serves to destroy the lawful authority of the States and their public policy. I fail also to see the application of English cases in view of the possible difference between the public policy of Great Britain concerning the right, irrespective of the patent law, to make contracts with the monopolistic restriction which the one here recognized embodies and the public policy of the United States on that subject as established, after great consideration, by this court in Miles Medical Co. *v.* Park & Sons Co. (220 U. S., 373). See especially on this subject the grounds for dissent in that case expressed by Mr. Justice Holmes, referring to the English law, on page 413.

. . . . . .

But even if I were to put aside everything I have said and were to concede for the sake of argument that the power existed in a patentee, by contract, to accomplish the results which it is now held may be effected, I nevertheless would be unable to give my assent to the ruling now made. If it be that so extraordinary a power of contract is vested in a patentee, I can not escape the conclusion that its exercise, like every other power, should be subject

to the law of the land. To conclude otherwise would be but to say that there was a vast zone of contract lying between rights under a patent and the law of the land, where lawlessness prevailed and wherein contracts could be made whose effect and operation would not be confined to the area described, but would be operative and effective beyond that area, so as to dominate and limit rights of every one in society, the law of the land to the contrary notwithstanding.

. . . . . .

What could more cogently serve to point to the reality and conclusiveness of these suggestions than do the facts of this case? It is admitted that the use of the ink to work the patented machine was not embraced in the patent, and yet it is now held that by contract the use of materials not acquired from a designated source has become an infringement of the patent, and exactly the same law is applied as though the patent in express terms covered the use of ink and other operative materials. It is not, as I understand it, denied; and if it were, in the face of the decision in the Miles Medical Co. case, supra, in reason it can not be denied that the particular contract which operates this result if tested by the general law would be void as against public policy. *The contract, therefore, can only be maintained upon the assumption that the patent law and the issue of a patent is the generating source of an authority to contract to procure rights under the patent law not otherwise within that law, and which could not be enjoyed under the general law of the land.*[1] But here, as upon the main features of the case, it seems to me this court has spoken so authoritatively as to leave no room for such a view.

[1] Italics are the editor's.

CHAPTER XI

THE ABSORPTION OF THE TENNESSEE COAL, IRON AND RAILROAD COMPANY

IT is a matter of much regret that space does not permit the introduction of several exhibits on the absorption of the Tennessee Coal, Iron and Railroad Company by the United States Steel Corporation. A large mass of testimony upon that subject is available in the Stanley Investigation. Excerpts from the testimony of Messrs. Schley and Ledyard, Colonel Roosevelt and others would have added much to the book. It is hoped however that the narrative which follows will be sufficient to enable the reader to understand the transaction in its general outlines. It should be added that the other testimony does not corroborate Judge Gary in all points.—Ed.

EXHIBIT 1

NARRATIVE OF JUDGE ELBERT H. GARY [1]

Mr. LITTLETON. I will call your attention to a statement made by Mr. John Moody, and ask you if you dissent from it or agree with it:

The acquisition of this organization—

That is, the Tennessee Coal & Iron Co.—

has added great potential value to the steel organization and has increased the tangible equity of its common-stock issue to a far greater extent than is commonly realized. The Tennessee Coal & Iron properties embrace, besides important manufacturing plants, nearly 450,000 acres of mineral lands in the Birmingham section of Alabama. As shown in the report of the Tennessee Co. in 1904, when an appraisal was made by outside parties, these lands contain approximately 400,000,000 tons of first-class low-grade ore and more than 1,200,000,000 tons of coal, of which about one-half is coking coal. This estimate indicates that the deposits embraced are even in excess of those of the great Lake Superior properties controlled by the corporation, including the Great Northern ore bodies. This entire property was acquired, as is well known, on very favorable terms.

That I do not ask you to assent to, but I wish to ask you about that. The description given there in that article is substantially correct?

[1] Hearings before the Committee on Investigation of United States Steel Corporation, 62nd Cong., 2nd Sess., 1911–1912, pp. 124–143.

Mr. GARY. I do not agree with that at all; no.

Mr. LITTLETON. How much ore did it add to the possessions of the United States Steel Corporation?

Mr. GARY. There was an estimate, at the time we purchased, of 700,000,000 tons of ore, about 400,000 tons, as I remember, of which was usable, on top of the other—usable by their method. However, as you know, probably, it was an inferior grade of ore and not of very great value, in my opinion, for reasons which I will give if you desire. You could hardly consider that in connection with the Lake Superior ores, so called, or as adding to the Lake Superior ores.

Mr. LITTLETON. I asked you the question so as to make it clear.

Mr. GARY. Yes.

Mr. LITTLETON. What do you consider was the amount of ore you obtained by reason of procuring control of the Tennessee Coal & Iron Co.?

Mr. GARY. I believe we obtained five or six hundred million tons of ore, a portion of which, at least, was at present usable in that locality, provided there was a market for it—that is, a market for the iron or the steel which could be manufactured at that point.

Mr. LITTLETON. How much coal did you acquire by the acquisition of the Tennessee Coal & Iron Co.?

Mr. GARY. We suppose a large body; perhaps more than 1,000,000,000 tons, and perhaps 1,000,200,000, as stated there.

Mr. LITTLETON. Did you consider that a valuable acquisition?

Mr. GARY. Why, it had value, of course; but there was plenty of coal like it which could be bought at a very low price, and there is a good deal yet. And there is plenty of ore property like that which could be bought, and can be at the present time, I think, by the acre, at, say $50 to $100 an acre. Some of you will know what that means.

Mr. LITTLETON. Was the Tennessee Coal & Iron ore a good grade for the making of ordinary pig iron?

Mr. GARY. That could be utilized in the manufacture of fairly good pig iron, at a certain cost.

Mr. LITTLETON. What did the property consist of in the way of improvements for the purpose of mining and making steel; or, to be more specific, what was the output of the furnaces, per ton, per annum?

Mr. GARY. A full statement of the properties of that company, at that time, is found on pages 26 and 27 of the annual report of 1907.

Mr. LITTLETON. I am not going to follow the details of that so closely as to require consultation. All that I am going to do is to ask you the topical questions and then go to another point. It has been stated that the capacity of the blast furnaces of the company in 1907 was about 160,000 tons per annum—that is, I speak of the Tennessee Coal & Iron Co.?

Mr. GARY. That is probably right.

Mr. LITTLETON. And that of the developed coal and ore mines about 20,000 tons per day?

Mr. GARY. That may be right. I do not know. That is probably right. In the year 1907 there was produced about 1,500,000 tons of ore—that amount was mined; there were produced about 244,000 tons of limestone and dolomite; and coal, exclusive of coking coal, about 1,700,000 tons; and of coke, about 1,100,000 tons. There were 602,000 tons of pig iron, about; open-hearth steel, ingots, and castings, about 243,000 tons; rails, about 149,000 tons; billets, plates, and bars, about 38,000 tons.

Mr. LITTLETON. This article which I called your attention to, which I have consulted, continues with this statement:

> If we compare this capacity with that of the actual production of all the other properties owned by the Steel Corporation, outside of the Tennessee Coal & Iron Co., for the year 1907, we will get the following results: Blast-furnace products, 10,819,968 tons; ore and coal mined and limestone quarried, 39,576,161 tons. In other words, the capacity of the new properties acquired, according to the figures above, is about 15 per cent of the total production of mining products of the entire corporation for last year and about 8 per cent of the blast-furnace products.

Mr. GARY. I have given you the production, and I am prepared to give you the results in figures of operations before we secured the property, and since, after an expenditure of $15,000,000 or more by us, including the payment of $6,500,000 which the company owed when we took it over. These values hinted at are fictitious.

Mr. LITTLETON. What was the capitalization of the Tennessee Coal & Iron Co. at the time you took it over?

Mr. GARY. I gave that.

Mr. LITTLETON. $32,000,000, was it not?

Mr. GARY. There was $29,950,000 of common stock and $124,000 and over of preferred stock. The bonded indebtedness was $14,419,000, and purchase-money notes, $826,000. It owed current liabilities, floating debt, $4,168,102, considerable of which was past due.

Mr. LITTLETON. Did you or your company solicit the purchase of the Tennessee Coal & Iron Co., or was it offered to you by those who had the authority to sell it?

Mr. GARY. It was offered, one way or another; offered many times, at about the time we acquired it. It was offered by Lewis Cass Ledyard, who was the attorney for Col. Oliver Payne, and who had been interviewed by Mr. Schley, of Moore & Schley; and I would like to suggest, if I may, that I think Mr. Lewis Cass Ledyard ought to be subpœnaed to state the exact facts which led up to his coming to J. P. Morgan to beg him to suggest to the United States Steel Corporation the propriety and the necessity for the purchase of those properties.

Mr. LITTLETON. You understand it to be a fact that he will be subpœnaed, Judge Gary, if he can shed any light on this question.

Mr. GARY. I am very sure his testimony will settle the question whether we desired to purchase the property, or whether the owners desired to sell the property.

Mr. LITTLETON. Your understanding is that Mr. Ledyard came to Mr. Morgan as the initial step in the transaction?

Mr. GARY. No doubt about it; and I would be very glad to give you the history of it, so far as I know it, if you desire.

Mr. LITTLETON. I wish you would.

Mr. GARY. Very well. In one way or another the stock of the Tennessee Coal & Iron Co. had been offered to the United States Steel Corporation, I will not say authoritatively or by the owners exactly, but by people who assumed to be acting between, or acting for the Tennessee people. Our people had been opposed to the purchase of the property at any price or on any basis, and had distinctly said so. Finally, I think sometime in the early part of 1907—not intending to be accurate as to dates—Mr. Morgan sent for me and said that Mr. George Kessler who, as you know, was a wine merchant, but who had purchased some of this stock outside of the Schley syndicate, as I will call it, had approached him, Mr. Morgan, with the statement that the stock of the Tennessee Coal & Iron Co. could be purchased at about 130, and asked me my opinion. I told Mr. Morgan I did not think that it was worth half of that; I did not think we could afford to take it at any such price; that I would like to bring Mr. Frick over to the bank and get his opinion. He came over to the bank, and Mr. Frick expressed about the same opinion. The matter was then dropped. I believe Mr. Morgan told me that afterwards he found out that Mr. Kessler represented

only himself, and did not represent the other people, as Mr. Morgan had supposed.

Along about the 23d day of October, 1907, Mr. Morgan requested me to come over to the bank, and said Mr. Schley was very much in need of money, or securities which he could use at the bank. I think I saw Mr. Schley at the bank at that time; if not, I did later; but the business finally resulted in my accommodating Mr. Schley by loaning him $1,200,000 par value of our second bonds, and taking from him an agreement to return those bonds; and I received from him, as security for the fulfillment of his agreement, $2,000,000, par value, of the stock of the Tennessee Coal & Iron Co.

The agreement provided, as I remember, that if the $1,200,000 par value of bonds were not returned by April 23, 1908, the ownership of the $2,000,000 par value of the stock of the Tennessee Coal & Iron Co. should be and remain in the United States Steel Corporation. That was done as an accommodation to Mr. Schley at his very urgent request and because he stated it was absolutely necessary to protect him from financial trouble. That, you see, would be taking the Tennessee Coal & Iron Co. stock as security on the basis of 60.

Mr. LITTLETON. Pardon me, do you know how much Mr. Schley had of the Tennessee Coal & Iron Co. stock at that time?

Mr. GARY. No; I do not. I did not know anything about it at that time, except so far as appeared by this transaction. I have here the written agreement between the United States Steel Corporation, signed by myself as chairman, and Moore & Schley and the members of the firm of Moore & Schley, and under the circumstances and in view of the fact that he has heretofore appeared before a committee and exposed the facts in regard to this I feel justified in giving all the facts, and I will furnish the committee a copy of this agreement.

Mr. LITTLETON. Yes.

Mr. GARY. I will exhibit it now to the committee, and I would like to retain this, of course, but will be glad to furnish you with a copy.

Mr. LITTLETON. We will be very glad to have a copy.

Mr. GARY. The next thing that occurred in relation to this purchase was about the 2d day of November, 1907. We were then in the midst of what I have termed a financial cyclone. There were runs on many banks throughout the city of New York, including

the Trust Co. of America, the Lincoln Trust Co., and very many other banks. The panic had extended all over the country, more or less. Banks in Chicago had drawn their money from the New York banks so far as they could, and banks in other cities had collected their moneys. It was impossible for depositors to get out of the banks throughout the country the money they had in the banks. It was impossible for business men to borrow money. Loans were being called in New York, Chicago, St. Louis, and various other cities. As an illustration, a president, or vice president, of one of the trust companies in New York called me on the phone to say that unless the bank could secure $1,000,000 in credits that day it would have to close its doors, and asked me to help if I could. I applied to J. P. Morgan & Co., who had received pledges from various bankers there to furnish certain amounts of moneys or credits, for assistance, and they stated that they had so many applications and had so much business of this kind on hand that they could not devote any time or attention to it, and asked me to find out if this Trust Co. was entitled to any relief, and I asked my own people, comptroller and assistant treasurer, to go to that bank and make an examination of it. I think they spent the whole night doing so. The next morning I received their report and in turn reported to J. P. Morgan & Co. that the bank had securities enough to entitle it to relief, and $1,000,000 was furnished, and afterwards, I think, a good deal more. The bankers of our city were in session almost night and day. I was at Mr. Morgan's library several nights nearly all night. Many of the leading bankers of our city were there nearly all night. There is no doubt that there was every indication that we were in the throes of a panic which might lead to the most disastrous results, including the suspension of a large number of banks, and the failure of a great many different people. To one who could see this, who could talk with the people and talk not only with the bankers themselves but the depositors and people generally, there could be no possible doubt that the country was in very grave danger of one of the worst financial panics that has ever been witnessed in this country. I have not undertaken to describe it, or do any more than refer to it. But at this time, I say, Mr. Morgan telephoned a request to me to come to his library, and I went. I found Mr. Lewis Cass Ledyard, and, I think, Mr. Schley was with him; he was on several occasions, although I did not talk with Mr. Schley at the first interview. Mr. Ledyard was the counsel of Mr. Payne.

Mr. LINDABURY. Oliver?

Mr. GARY. Oliver Payne. He was one of the gentlemen named in what has been called the "syndicate," which had purchased a controlling interest in the Tennessee Coal & Iron Co. That syndicate was made up of a number of very rich people.

Mr. LITTLETON. Right on that head, and before proceeding further, is it or is it not a fact that Moore & Schley held the stock of the Tennessee Coal & Iron Co. for and on behalf of a syndicate of gentlemen?

Mr. GARY. A majority of the stock.

Mr. LITTLETON. A majority of it; on behalf of a syndicate of gentlemen comprising O. H. Payne, who had 10,300 shares; L. C. Hanna, who had 10,300 shares; J. P. Duke, who had 10,300 shares; E. J. Berwind, who had 10,300 shares; J. W. Gates, who had 10,300 shares; A. N. Brady, who had the same amount; G. A. Kessler, who had the same amount; Oakleigh Thorne, who had the same amount; E. W. Oglebay, who had 5,150 shares; H. S. Black, who had 5,150 shares; F. D. Stout, who had 5,150 shares; J. W. Simpson, who had 5,150 shares; G. W. French, who had 2,500 shares; S. G. Cooper, who had 1,500 shares; and J. A. Topping, who had 1,000 shares?

Mr. GARY. I think that is correct, except I do not think Kessler was in the original syndicate. I think he bought outside, and Schley finally took his stock with the rest and made some advances on it.

Mr. LITTLETON. With that qualification, then, the situation at that juncture was that Moore & Schley held, for and on behalf of these gentlemen who comprised the syndicate, 118,300 shares of the Tennessee Coal & Iron Co; that is your understanding?

Mr. GARY. Yes.

Mr. LITTLETON. Now you may go ahead.

Mr. GARY. Mr. Ledyard stated that Moore & Schley were in very great financial distress. I think he stated it perhaps more strongly than Mr. Schley stated it when he was before the Judiciary Committee of the Senate, although I read that statement to-day, and I noticed that Mr. Schley testified that he was in great financial distress at that time, and did not know what would become of him unless he secured help by the sale of this stock. I think Mr. Ledyard stated that Moore & Schley were largely indebted to Mr. Payne, and had a great many of his securities; that Moore & Schley had deposited with their securities on an indebtedness aggregating more than $30,000,000 a large amount of the Tennessee Coal

& Iron stock as collateral security in a very great many banks in New York; that these banks had called these loans, or insisted upon Moore & Schley taking up the Tennessee Coal & Iron stock, for the reason that it was not salable. It had been a stock that over a period of years had been put up from a very low figure to a very high figure, being in the control of a syndicate which, I will not say manipulated it—I had nothing to do with it—but it influenced the greatest fluctuations in it. That is very easily ascertainable.

Mr. BARTLETT. They had this stock up in various banks, you say, but it was rather a fact, was it not, that it was up in the trust company of which Mr. Oakleigh Thorne was president?

Mr. GARY. He had about four hundred-odd thousand of them up at that bank, as I understand. I understood from Mr. Ledyard that Moore & Schley had loaned to their customers who had bought this stock and put it in, sums of money, and then they, Moore & Schley, in turn had pledged this stock with these banks as collateral security, in a great many different banks, aggregating, in all, about $6,000,000. That was the statement as I understood it, as I remember it.

Mr. Ledyard said that, in his opinion, there was no possible way of preventing the failure of Moore & Schley unless we purchased this stock, and he believed if Moore & Schley failed it meant the failure of a great many banks. Mr. Morgan said to me, "I do not know whether the United States Steel Corporation can afford to buy this stock or not; I will express no opinion on that subject. But I will say that, in my opinion, if it does not buy the stock, or unless it or some one else furnishes relief at this particular time, there is not any man on earth can say what the result will be in the financial circles of this country. In my opinion, the circumstances make the conditions very critical, and if you can see your way clear to buy this stock, there is no doubt it will help the situation. Now, I turn Mr. Ledyard over to you and you can take up and consider this question and see what, if anything, you can do." I said to Mr Morgan, "In the first place, I would not think of considering the purchase of this stock without going to Washington first and taking the matter up with the President or the Department of Justice, or both." He said, "Why? Have they any right to say whether you buy or not?" I said, "No; they have not. But here is a financial crisis, and from your standpoint the object of buying this stock would be to allay this storm, to assist in overcoming this panic, and if the Department of Justice

or the President should find out we had purchased, or were about to purchase it, and should enjoin us from purchasing on the ground that it would add to our holdings and thereby raise the question of creating or adding to a monopoly, you can see at once that what we had done would be to make the financial conditions very much worse than they are now; and therefore, it seems to me, we ought to know how the President and the Department of Justice would feel about the question." He said, "Well, I think that is very forcible, and I see no objection to your going over there if you feel like it." I said, "I certainly would not be in favor of considering this without going over there."

I then telephoned Mr. Frick, a member of our finance committee. I think Mr. Ream and some others were out of the city that day, although I am very sure Mr. Ream and most, if not all, of the members of the committee attended subsequent days when we held various meetings to consider these questions. I telephoned Mr. Frick and asked him to come to the library, which he did immediately. It seems to me it was early in the morning, and, as I remember, the report from his house was that he was out riding. But I left word for him to come to the library as soon as he returned, and he did so within a comparatively short time. He came to the library, and I stated to him briefly the situation and asked him if we should consider this question, if he would go with me to Washington, and he said the first question to consider was whether we would consider the purchase of this property. He had spoken against this a good many times, and he was opposed to it. He did not think he wanted to purchase it. He made the statement that he did not think it was worth more than what I said I thought it was worth. I had said to Mr. Ledyard that, in my opinion, the stock was not worth over 65; and I believe Mr. Ledyard will corroborate that. Mr. Frick expressed about the same opinion. He was very much opposed to it, and not until after I had gone over the subject with him carefully, and he had approached Mr. Morgan and Mr. Morgan had told him—he and I had gone to Mr. Morgan's room—how he felt about the panic, did he give any encouragement whatever in regard to his opinion and his influence. Finally, however, he said he would like to think it over. In the meantime, I think, I had telephoned the secretary of the company to come to the library, and I asked him to telephone the members of the finance committee and secure a meeting at the library of the finance committee as soon as possible, and they came there very soon. This

whole subject matter was gone over very carefully by me, and I think Mr. Frick offered the resolution—I would like to tell you what resolution was passed at that first meeting. Remember, it had been represented that Mr. Schley had on deposit as collateral security toward the payment of his loans only about six millions of the stock of the Tennessee Coal & Iron Co. I think he said then five or six millions. I thought the resolution on its face stated what we decided upon, but it does not; it provides that on November 3 the whole subject matter be reported to the chairman, with power.

But it was understood that we would offer to loan Mr. Schley either five or six million dollars in cash, taking the Tennessee Coal & Iron Co. stock as collateral security for the repayment of that loan; and if that failed to satisfy his wants, that, then, we would buy the stock on the basis of paying 90 for it in bonds of the United States Steel Corporation. I went back to Mr. Ledyard and made a proposition to make this loan to Schley. He talked with Schley, and made answer that that would not do at all; they could not get along with that; that Mr. Payne himself had offered to loan Mr. Schley, I think, a million dollars; someone else had offered to loan a million dollars; and someone else, or others, a million dollars. So that, as I remember, there were about $3,000,000 additional, which would provide in cash to Moore & Schley about eight or nine million dollars. But that Schley said that would not do at all, and he could not possibly get through. Mr. Frick himself, then, as I remember, had a conversation with Schley and tried to urge him to accept this loan, saying we did not want the stock and did not believe in its represented value; did not believe it was worth over 60 or 65 at the outside. Mr. Schley told Mr. Frick, as I remember, that he could not get along with that loan; that he must sell this stock; that there were various reasons why that was the only way he could possibly keep the firm from bankruptcy. Mr. Schley was represented by an attorney, Mr. Thatcher, of Simpson, Barnum & Thatcher, who was his counsel, Mr. Ledyard representing Mr. Payne, but trying to help Mr. Schley because Mr. Schley was indebted to Mr. Payne; and, if I am not mistaken—I would not like to do anybody an injustice—if Mr. Thatcher should be subpœnaed and would have the right, from a professional standpoint, to state it—I am not sure about that—I believe he would say that an assignment had been prepared for either Moore & Schley or Mr. Schley.

Mr. LINDABURY. An assignment for the benefit of creditors?

Mr. GARY. For the benefit of creditors.

Mr. LITTLETON. That is, Mr. John Thatcher?

Mr. GARY. Mr. Tom Thatcher.

Mr. LITTLETON. Do you think Mr. Schley would permit Mr. Thatcher to tell that?

Mr. GARY. That I do not know.

Mr. LITTLETON. Of course the privilege lies with Mr. Schley.

Mr. GARY. I understand Mr. Schley has said since—I do not know, but he testified—that he could have got through this panic all right. Anybody who say[1] him at that time and heard him talk would not think he believed he could get through at that time.

Mr. LINDABURY. I want to say that Mr. Schley is a neighbor of mine in the country, and he is a pretty sick man just now. I do not believe he ought to be approached from what I hear.

Mr. LITTLETON. We have his testimony on the subject in another hearing.

Mr. GARY. Thereupon I began to talk to Mr. Ledyard about the purchase of this stock on the basis of 90, and, as I remember, he and I finally agreed, subject to the objection which might possibly be made in Washington, in the way and for the reasons I have heretofore suggested. As I remember, Mr. Ledyard or Mr. Schley, represented by Mr. Thatcher, but communicating through Mr. Ledyard, agreed to take 90 for the stock and take his pay in bonds.

Mr. LITTLETON. *At that point did you or Mr. Ledyard or Mr. Thatcher or any of you believe that the President or Attorney General had any right to indorse this transaction?*

Mr. GARY. *I was clearly of the opinion that he did not*,[2] and later I will be very glad to tell you how that question came up and what took place, because I feel certain now that every one connected in any way will agree that the exact facts and all the facts should be made known, and I do not know that there has ever been any other opinion held by anyone.

I have stated that we offered, under the conditions and subject to the conditions mentioned, to pay for this stock in the bonds of the United States Steel Corporation. They were then quoted at about 84, which, by comparison with other stocks in the market, was pretty high, notwithstanding it was a very low price for those bonds, which had sold, and should have sold, and did soon after sell, for better than par. But they were considered the best kind of security,

[1] Thus in original—Ed.

[2] Italics are the editor's.

and they were more salable, in my opinion, in large amounts than anything else on the market, any other kind of bonds or stocks, strange as it may seem. There was a great market for those bonds, and after this trade was made millions and millions of them sold, commencing at about 84 and not going down below about 78 or 79, as I remember. The United States Steel Corporation interests had, in different banks scattered throughout the country, about $75,000,000, and we would have been pleased to pay for this stock in cash rather than pay for it in our bonds at 84, except for the fact that we could not do that without disturbing the financial conditions of the country, disturbing the financial conditions of these banks, respectively, where our money was deposited. I was receiving requests from Pittsburg banks to withdraw our money in other localities and put more money in the banks of Pittsburg; also the same request from Chicago, the same request from other cities, and requests from New York banks to bring more money in from other cities to New York, as that was the seat of the greatest trouble, the seat of the whole trouble, I was afraid to disturb these banking conditions and relations by the withdrawal of money.

Mr. LITTLETON. How much would it have withdrawn, about?

Mr. GARY. It would have withdrawn twenty-five or more million dollars. We could not have withdrawn from any bank anywhere at that time $5,000,000 without creating a very great disturbance, the final result of which no man at that time could measure or possibly form any adequate notion of. If I had been disposed to take advantage of the financial conditions to make money, with this large deposit in the different banks, with these great resources, I could have bought securities—that is, bonds of all sorts and descriptions in the market, which had gone down to a comparatively low price. There was every opportunity for anyone who had cash resources to make money. But certainly there was no such disposition on the part of the United States Steel Corporation, or anyone connected with it, and therefore we proposed to pay for the Tennessee Coal & Iron stock in the bonds of the United States Steel Corporation, which were in our treasury, and which were as good as cash—which could be sold in the market and which would be received by any of the banks as collateral security in the place of the Tennessee Coal & Iron stock or any other stock.

I say that Mr. Ledyard and I agreed upon the price of 90. He came back to me, it seems to me, the next day—some time subsequently—and said he was told by Mr. Schley and his counsel that

the price of 90 would not possibly let Messrs. Moore & Schley, or Mr. Schley out; they could not get along with that. I notice, in reading the testimony of Mr. Gates, that he says he got home and he made them raise the purchase price of securities. But the whole transaction was closed before Mr. Gates's return from Europe—before he arrived in New York, and if he made that statement he must have made it by Marconi, and certainly it was not communicated to us. The reason given to us, and the only reason, for proposing to increase the purchase price was that the stock at 90 was not sufficient to allow the firm of Moore & Schley to pull through.

I went back to our finance committee and represented those facts, and we had another meeting on November 4 and another resolution was passed, again referring the whole subject matter to the chairman with power; and I returned to Mr. Ledyard and agreed to raise the price from 90 to 100 in order to allow Moore & Schley to pull through. My bargaining was all with Mr. Ledyard; the negotiations were entirely between Mr. Ledyard and me, as I remember. Mr. Morgan certainly did not participate in any respect nor attempt to influence anybody to buy or sell. I do not hold any brief for Mr. Morgan, but I mention that in connection with some of the published and sensational statements which have undoubtedly been based on misinformation.

Mr. GARDNER. I would just like to understand. Your first agreement was to buy the stock at 90 per cent of its face value—the securities?

Mr. GARY. Yes; and pay for it in bonds at 84.

Mr. GARDNER. And pay for it in bonds at 84; that is to say, you paid $72 on the hundred?

Mr. GARY. I have not made the figures; but afterwards I agreed to pay par for the Tennessee stock in bonds at 84. That, in other words, would be paying about 119 for the Tennessee stock, on the assumption that the bonds were worth par.

Mr. GARDNER. In other words, you paid out $840 for $900 worth of their securities, or did you pay $100?

Mr. GARY, $840 for a thousand, par value, of their securities was the final trade.

Mr. GARDNER. That is what I want to get at.

Mr. GARY. No; it is the other way. I was mistaken.

Mr. GARDNER. What I want to get at is this: Were you going to pay them $100 for $100 worth of their securities, only you happened

to settle, for convenience, in bonds at 84, or were you going to pay $84 for $100 worth of securities?

Mr. GARY. Your first statement is right.

Mr. GARDNER. Then let me ask you, just to clear my own mind on the subject—because I have only gone on the committee to-day—you said that Col. Payne offered to lend a million dollars originally?

Mr. GARY. I was so informed. You get all those facts from Commodore Ledyard.

Mr. GARDNER. I want to follow you; that did not show, apparently, as a drop in the bucket; that that was followed by a proposition from you to lend $6,000,000, or thereabouts?

Mr. GARY. They all came in together. Commodore Ledyard said Mr. Payne would provide a million dollars, and other parties, I remember, about two millions more, and then we offered to add to that a loan of five or six million dollars.

Mr. GARDNER. In addition to the three?

Mr. GARY. Yes, sir.

Mr. GARDNER. That brings it up to nine millions?

Mr. GARY. Eight or nine millions.

Mr. GARDNER. But that would not let Messrs. Moore & Schley out of their difficulty. Then, the next proposition, as I understand, was 90 per cent of the face value of their securities; that was $25,000,000, or thereabouts?

Mr. GARY. I think so.

Mr. GARDNER. And that would not let Moore & Schley out of their difficulties?

Mr. GARY. That is right.

Mr. GARDNER. Finally you paid over $30,000,000, and that did not let them out. Now, what I want to get at is, What were Moore & Schley's obligations that required such an enormous difference as between the original proposition of Col. Payne and what finally was furnished?

Mr. GARY. These obligations which were paid for by the United States Steel Corporation were not all the obligations of Moore & Schley. They did have obligations in the bank, as I understood, of between thirty and forty million dollars.

Mr. GARDNER. Thirty or forty millions of dollars was about the selling price of the securities?

Mr. GARY. They had borrowed thirty or forty.

Mr. GARDNER. But they had against that the Tennessee Coal & Iron stock, which was worth something?

Mr. GARY. And various other stocks. I do not know the details of those loans. But here is a thing I would like to have you get in your mind; it is important: Most of the gentlemen who were participants in this syndicate, so-called, who were wealthy men—many of them, at least—were not obligated at all on the Moore & Schley loans; but, as I understood it, and as I believed from their acts at the time, they were very glad to turn in their stock, which they owned at these prices which were agreed upon. But just how much of the bonds which we turned over were needed by Moore & Schley to take care of themselves we were never informed.

Mr. GARDNER. Here is what I want to get at. You said you and Mr. Frick decided that the stock was worth from 60 to 65, in your opinion.

Mr. GARY. Not more than that.

Mr. GARDNER. That is all you cared to pay for it, ordinarily?

Mr. GARY. Yes.

Mr. GARDNER. But on account of Mr. Morgan's representation to you that if Moore & Schley failed it would be followed by a financial panic whose size could not be measured, you finally gave them 100 for that which you thought, only as a business venture taken by itself, to be worth only $65; in other words, that you came to the rescue of Moore & Schley to the extent of over $30,000,000?

Mr. GARY. Not over 30,000,000.

Mr. GARDNER. Why not?

Mr. GARY. You mean the total?

Mr. GARDNER. You gave them in bonds, which were convertible into cash, somewhere from 79 to 84 of its face value; you gave them $30,000,000. That is, what they could use as cash. That is what I want to get into my mind, whether that great amount of money was necessary to avert this calamity which was impending, in view of the fact that a large number of holders in the pool of Moore & Schley were men whose interest it was obviously to share with you that cost of averting a panic?

Mr. GARY. I do not know the figures with respect to the indebtedness of Moore & Schley, which was secured by this stock; nor do I know how many other members of the syndicate owed and had put up that stock. Mr. Schley, in his testimony, refers to the fact that a good deal of it was up. I do not know how much, and we never had those figures. What we did know, or what we were informed, was that eight or nine million dollars was not sufficient, and we

were also told that there was no way of preventing this failure except by the purchase of the whole of the stock.

Mr. GARDNER. At 100 per cent?

Mr. GARY. At 100 per cent. Now, I suspect that members of that syndicate who were not in debt said to Schley: "We have put this stock in your hands with an agreement that it shall not be sold by you unless sold at a profit, and it has cost us about 110"—I think Schley said it stood him in at that—"and we will not allow you to sell your interest in that syndicate unless at the same time you put ours in at the same price and give us a chance." That is what I suspect; I do not know that. But I do know those were rich men, some of them.

Mr. GARDNER. You found a situation in which Mr. Morgan said: "I do not know whether you can buy this or whether you can buy that, but here is the fact, unless Moore & Schley have the money they say they must have"—which ultimately turns out to be $30,000,000, or its equivalent—"they are going to the wall, which means general ruin." Ordinarily a man would say to himself: "Of course, it will ruin the United States Steel Corporation as well as it will other people if there is a panic, and are there not some people around who can share this loss we are going to stand in, because we are paying 100 for that which we think is worth only 65?" You would naturally have looked around to see if there was not somebody who had to pay his share to pull Moore & Schley out of the hole. Was there somebody else, or did the whole burden come on the United States Steel Corporation?

Mr. GARY. It did finally, and would under any circumstances, except to the extent of about $3,000,000, as I understand.

Mr. GARDNER. Some of those names there that were read off as holding 10,300 shares seem to me like persons with whom Mr. Morgan should have influence.

Mr. GARY. Which one, for instance?

Mr. GARDNER. Oakleigh Thorne.

Mr. GARY. I do not think he would have very much influence. What other one? There may be some one on there, but I do not think there was anyone there that Mr. Morgan would have a particular influence over.

The CHAIRMAN. Mr. John W. Gates? [Laughter.] In that connection, Judge, while they are waiting, are you willing to-day to dispose of that property for what you paid for it?

Mr. GARY. That is a very pertinent question, and I would like to

answer that in just a minute. I just want to add, in answer to Mr. Gardner's question, this suggestion. He has spoken of Mr. Morgan making these representations. There were several other leading bankers, whose names I do not now remember, all of whom were very much excited, and who made the same representations; that is, the representations which Mr. Morgan made, as I understood, were that if Moore & Schley failed, and these loans, therefore, in these various banks were put in a position where the clearing house could not approve them, then he could not answer for the results. That was the statement, and Mr. Morgan said, "Now, Mr. Ledyard tells me that unless this stock is purchased Moore & Schley must fail. That is his opinion, and he has no doubt about it. Those are the facts."

Mr. GARDNER. What I was trying to get at was, why you did not have any partners in misery.

Mr. GARY. I presume you have been in trouble before, when you have seen a large portion of the people surrounding the trouble run in all directions. Mr. Morgan is the one man who, on such occasions, will rise to the occasion and put his own money into the other banks or on the stock exchange or anywhere to prevent the panic or prevent trouble, and give the use of his name and his credit to help people who are in financial distress. He has done it over and over again, and on this occasion no doubt he risked many, many million dollars of his own money in order to try to avert the panic. But that is not true of all others. It is true, though, that on this occasion many of the leading bankers of New York gathered around Mr. Morgan, and with him became responsible for large sums of money. They were all obligated in many directions and in large sums, and these bankers believed from the representations which had been made to them that the United States Steel Corporation—or, at least, they hoped—could afford to buy this stock and help out the situation and finally recoup itself against loss. So that it may not be true, and I have not said that as a final result the United States Steel Corporation made a heavy loss. I would be glad to give you my opinion.

Mr. GARDNER. We do not expect you to make a loss, because the panic was terminated. But naturally you took your risk of a loss. What I want to get through my mind is, why you had alone to make a present to Moore & Schley—and that is what you did in paying 100 for that of which the market value was only 70 per cent—why you alone had to stand in the way of that thunderstorm.

Mr. GARY. Because there was no other customer for that stock; because if that stock had been put on the market the price, before it had been sold, would have gone down very much below 65, in my opinion. I believe that company would have been in bankruptcy in a very short time if it had not had help.

Mr. GARDNER. Suppose you had adhered to your original offer of 90?

Mr. GARY. Then, perhaps, we would not have gotten the stock. Perhaps Moore & Schley would have made an assignment and precipitated all this trouble. If it was true, as represented, that the 90 would not let him out——

Mr. GARDNER. How would he be better off by making an assignment?

Mr. GARY. He would not be any better off; but the financial conditions would be very much worse off.

Mr. GARDNER. But I was thinking, what could his possible motive be in refusing that offer?

Mr. GARY. He could not get through.

Mr. GARDNER. If he would have to take less in the long run?

Mr. GARY. If he would have had to. If he was going to fail, he might as well fail for an old sheep as a lamb.

Mr. GARDNER. He might as well pull other people down with him?

Mr. GARY. I suppose there are still some Sampsons in the world. I do not know whether he might be of that disposition.

Mr. LINDABURY. He probably could not get his stock out of "hock."

Mr. GARDNER. That is very likely. I want to get clearly in my mind why it was that the United States Steel Corporation paid 100 finally for that which you had determined was worth only 65, and that you alone were the people doing it. I can perfectly understand that if you were the only people who would do it, it might pay you very well to do it.

Mr. GARY. That is the answer.

Mr. GARDNER. That you had exhausted all other possibilities?

Mr. GARY. That is the answer.

Mr. LITTLETON. Will you take up the thread of your story where you had it a moment ago?

Mr. GARY. Very well.

Mr. LITTLETON. You agreed to pay 100.

Mr. GARY. I think that was Sunday night. We had a meeting

of the finance committee as late as 11 o'clock, and maybe 12 o'clock, Sunday night.

Mr. YOUNG. Had you seen the President previous to that?

Mr. GARY. No. I think it was about 10 o'clock when I called up the private secretary of the President and asked him to make an apointment for Mr. Frick and me to meet the President at the earliest practicable hour the next morning. He got in communication with the President and said the President would see us at 10 o'clock Monday morning, as I remember it. We held a meeting of the finance committee very late that night, and immediately afterward Mr. Frick and I secured a special—an engine and a car—and went to Washington. We might have started later, considerably later, but we arrived in Washington, I think, about 8 o'clock, or if we arrived earlier we did not get up before about 8 o'clock. I suggested to Mr. Frick that, notwithstanding our appointment at 10 o'clock, we had better go to the office of the President and endeavor to see the President before 10 o'clock. Mr. Morgan had said the conditions in New York were so critical he would like to know the opinion of Mr. Frick and myself at the very earliest moment. We went to the office of the President and saw his secretary there, I think, at about 9 o'clock. I will not undertake to be strictly accurate as to the hour, but I think it was about 9 o'clock that we arrived at the office of the secretary. I briefly stated our business, and the secretary said the President was at breakfast; it was not his custom to come to his office before 10 o'clock—I understood that was his rule—and he was not accustomed to seeing anyone until after he had had a chance to look at his mail. I asked him if he would go to the President where he was breakfasting and say to him that Mr. Frick and I were here; that we considered it very important to see him immediately, and ask him if he would make an exception. He returned with the President, and the President said at once, after hearing the story, that he would like to consult the Department of Justice. I think Mr. Bonaparte was out of the city. The President then directed that Secretary Root be requested to come to the office of the President immediately. I am not sure whether this interview was in the office or one of the rooms in the White House. That is not important, of course; I may be mistaken about that; I rather think it was in the White House. But, wherever we were, the President requested Mr. Root to come to where the President was immediately. Mr. Root appeared very soon after. The President then asked me to again state the case in

Mr. Root's presence, which I did. The result of that interview I immediately telephoned to New York. The secretary to the President had kept the telephone open.

Mr. LITTLETON. Did the President ask Mr. Root his opinion on this question?

Mr. GARY. He did.

Mr. LITTLETON. As to the validity and legality of this?

Mr. GARY. He did. There was no disagreement between us. Now, gentlemen of the committee, I have a record of the substance of what took place on that occasion, and I see no reason for not giving it to this committee.

Mr. LITTLETON. We would like very much to have it.

Mr. GARY. I have never been requested not to give it to the committee nor requested to treat it as confidential.

Mr. YOUNG. When was this record made up, Mr. Gary?

Mr. GARY. I will give you the dates. On November 7, 1907, two days after Mr. Frick and I visited the White House, I wrote to Secretary Root as follows:

NOVEMBER 7, 1907.

MY DEAR MR. SECRETARY: At the recent interview at the White House between the President, yourself, Mr. Frick, and myself, I stated, in substance, that our corporation had the opportunity of acquiring more than one-half of the capital stock of the Tennessee Coal, Iron & Railroad Co. at a price somewhat in excess of what we believed to be its real value, and that it had been represented that if the purchase should be made it would be of great benefit to financial conditions, and would probably save from failure an important business concern; that under the circumstances Mr. Frick and I had decided to favor the proposed purchase of stock unless the President objected to the same. I further stated that the total productive capacity of our companies would not be materially increased by the ownership of the properties of the Tennessee Co., and, after the purchase, would probably not amount to more than 60 per cent of the total steel production in this country, which was about the percentage of our companies at the time of the organization of the United States Steel Corporation; that our policy was opposed to securing a monopoly in our lines or even a material increase of our relative capacity. I understood the President to say that while he would not and could not legally make any binding promise or agreement he did not hesitate to say from all the circumstances as presented he certainly would not advise against the proposed purchase.

If consistent will you kindly write me if the above statement is in accordance with your understanding and recollection?

Sincerely, yours, E. H. GARY.

Mr. Root responded as follows:

NOVEMBER 11, 1907.

MY DEAR MR. GARY: I have your letter of November 7. It fully agrees with my recollection of the interview to which you refer, in which you stated to the

President the circumstances under which the United States Steel Corporation had been asked to relieve the financial situation by purchasing a majority of the stock of the Tennessee Coal, Iron & Railroad Co. I have sent a copy of your letter, with this answer, to the President, with a recommendation that it be transmitted to the Department of Justice for filing there.

Very sincerely, yours, ELIHU ROOT.

I received another letter from Mr. Root, as follows:

NOVEMBER 20, 1907.

DEAR MR. GARY: I inclose a copy of a letter which I have sent to the President inclosing a copy of your letter of November 7, and a copy of the President's answer. You have a complete copy of what you will be able to find upon the files of the Department of Justice if any occasion arises.

Very sincerely, yours, ELIHU ROOT.

Inclosed were the following copies. First, from Mr. Root to the President, dated November 11, 1907:

DEAR MR. PRESIDENT: I transmit herewith a copy of a letter from Mr. E. H. Gary, president of the United States Steel Corporation, dated November 7, 1907, received by me on the following day. You will perceive that it relates to the interview which Mr. Gary had with you last week regarding the purchase by his company of the capital stock of the Tennessee Coal, Iron & Railroad Co. I send also a copy of my answer to Mr. Gary, and recommend that these papers be sent to the Department of Justice and placed upon the files of that department.

Very truly, yours, ELIHU ROOT.

A letter from the President to the Secretary of State:

NOVEMBER 19, 1907.

MY DEAR MR. SECRETARY: I am in receipt of your letter of the 11th instant and inclosures, and have forwarded them to the Attorney General to be placed on the files of the Department of Justice, together with a copy of this letter. Mr. Gary states the facts as I remember them.

Very truly, yours, THEODORE ROOSEVELT.

Mr. LITTLETON. Is there any additional fact, outside of that contemporaneous record, which you remember, Judge Gary, of the events of that visit?

Mr. GARY. I remember some of the conversation. I remember the Secretary of State saying to the President that of course he had no right to say that we could buy this property. The President said he understood that. He thought all we wished to know was what would be the disposition of the President and the Department of Justice in case we did buy, for the reason that if there was an objection by the Government we would not accomplish the desired result.

I remember the President saying he was glad to know that the percentage in production of the steel of this country of the United

States Steel Corporation was not greater and was even less than it was at the time of the organization of the company; that he felt, as I knew, that the question of monopolies in this country was a very serious one, but he said:

> In view of the fact that your percentage has not increased, but has decreased, and the further fact that all of us have an appreciation of the financial conditions in New York, I do not believe that anyone could justly criticize me for saying that I would not feel like objecting to the purchase under the circumstances.

Now, I know it is believed by the chairman of this committee, from statements which he has made, that Mr. Frick and I misrepresented the facts to the President. Of course I regret that very much, and I am going to try to show to the committee, if I am permitted——

The CHAIRMAN (interposing). That you possibly misled him unintentionally?

Mr. GARY. Of course I would not intentionally misrepresent your statement.

The CHAIRMAN. The chairman did not mean to make that statement quite that bald.

Mr. GARY. I want to satisfy the chairman and the committee, if I can, by the facts and figures, that we did not make any misrepresentation. I believe everyone connected with the United States Steel Corporation cares more for his conduct and his reputation and his character than he does in regard to the question of making or losing a few dollars. I want to satisfy you of that, if I can, by the facts and figures, which are undisputed.

The CHAIRMAN. Since the gentleman has been free to mention the attitude of the chairman in the matter, I would like to say that the chairman is now sitting in a judicial capacity, notwithstanding the fact that he was the proponent of the resolution. The chairman will say to the gentleman that after a careful investigation of such information as was obtainable, such information being the sworn testimony and statement before the Committee on the Judiciary in the Senate of the United States, his opinions in that matter were predicated upon that sworn testimony as to the facts. His opinions as to the law were predicated upon such poor authority, if the gentleman so deems it, as the opinions of Senator Culberson, Senator Foraker, Senator Bacon, and the other jurists, who until this time I considered quite able men, who expressed themselves in terms equally as explicit as the chairman of this committee. The chair-

man regarded the absorption of the company, at that time a competing company, by the tacit approval of the President, with genuine grief and profound astonishment.

Mr. GARY. I have always regretted that the full facts in regard to the acquisition of the stock of the Tennessee Coal & Iron Co. were not developed before the Judiciary Committee of the Senate, to which you have referred.

Mr. LITTLETON. The only witnesses who testified on that occasion were Schley, Thorne, Perkins, and Herbert Knox Smith, so far as the record shows. Did you see the correspondence from the President to the Attorney General that followed your visit?

Mr. GARY. I have seen that many times; yes, sir; I saw it published.

Mr. LITTLETON. I think it should go into the record at this time—the complete correspondence.

(The letter from the President to the Attorney General, referred to by Mr. Littleton, follows:)

THE WHITE HOUSE,
Washington, November 4, 1907.

MY DEAR Mr. ATTORNEY GENERAL: Judge E. H. Gary and Mr. H. H. Frick, on behalf of the steel corporation, have just called on me. They state that there is a certain business firm (the name of which I have not been told, but which is of real importance in New York business circles) which will undoubtedly fail this week if help is not given. Among its assets are a majority of the securities of the Tennessee Coal Co. Application has been urgently made to the steel corporation to purchase this stock as the only means of avoiding a failure. Judge Gary and Mr. Frick inform me that as a mere business transaction they do not care to purchase the stock, and under ordinary circumstances they would not consider purchasing the stock because but little benefit will come to the steel corporation from the purchase; that they are aware that the purchase will be used as a handle for attack upon them on the ground that they are striving to secure a monopoly of the business and prevent competition—not that this would represent what could be honestly said, but what might be recklessly and untruthfully said. They further inform me that as a matter of fact the policy of the company has been to decline to acquire more than 60 per cent of the steel properties, and that this purpose has been persevered in for several years past, with the object of preventing these accusations, and, as a matter of fact, their proportion of steel properties has slightly decreased, so that it is below this 60 per cent, and the acquisition of the property in question will not raise it above 60 per cent. But they feel that it is immensely to their interest, as to the interest of every responsible business man, to try to prevent a panic and general industrial smash up at this time, and that they are willing to go into this transaction, which they would not otherwise go into, because it seems the opinion of those best fitted to express judgment in New York that it will be an important factor in preventing a break that might be ruinous; and that this has been urged upon them by the combination of the most responsible bankers in New York who are now thus en-

gaged in endeavoring to save the situation. But they asserted they did not wish to do this if I stated it ought not to be done. I answered that while of course I could not advise them to take the action proposed, I felt it no public duty of mine to interpose any objection.

Sincerely, yours, THEODORE ROOSEVELT.

Hon. CHARLES J. BONAPARTE,
Attorney General.

Mr. LITTLETON. Did you or Mr. Frick tell the President what company was to be saved from failure?

Mr. GARY. I believe not; I think not.

Mr. LITTLETON. On the question of the salvation of the company from failure let me ask this question: Moore & Schley could not have failed for a large amount of money unless the loans which they had in the banks were called, could they? It is not likely?

Mr. GARY. I would not say that it was likely; of course, I do not know.

Mr. LITTLETON. Did anybody ascertain the number and amounts of the loans which they had in the banks at that time?

Mr. GARY. We endeavored to verify the statement of Moore & Schley. I sent two representatives to their books who made an examination. I have attempted since I was subpœnaed to come before this committee to get the result of that examination. One of the gentlemen, and the one who was best informed in regard to the result, I could not find. I have forgotten his name, but it is not material. He has, I think, left the city. I could not find him. Mr. Joyce, the other one, has only a general recollection. He says that he remembers he reported to me that their loans were very large, and that the securities were distributed throughout the different banks.

Of course you know how the business of a broker is done. He buys stock for his client, and his client may deposit a margin in cash, and he takes the stock and goes to a bank and borrows money on the stock and puts that up as collateral.

Mr. LITTLETON. Only a pledge?

Mr. GARY. Only a pledge.

Mr. LITTLETON. In order to make this transaction justifiable in the afterview, whatever might have been the foreview of it at that time, *it was easy for you to have been deceived, unless you actually knew the amount of money which Moore & Schley owed, as to the dire necessity of purchasing this property?*

Mr. GARY. *I would think so. I think we were deceived, whether intentionally or otherwise, in this respect. I believed at that time,*

although I presume it was not so represented, that Moore & Schley had a very much larger amount of the Tennessee Coal & Iron stock as collateral than I now believe, after seeing this syndicate arrangement, they had actually deposited, unless the stocks of many of these rich men were deposited on account of indebtedness by the members of this syndicate to Moore & Schley.

Mr. LITTLETON. *Do you think the syndicate was enlarged when the prospect of the sale of the stock brightened?*

Mr. GARY. *I do not know that it was at that time. I have an opinion, not justified by evidence, that when that syndicate was formed and that stock purchased there was a hope on the part of some that the stock could be sold to the United States Steel Corporation. I would not like to do anyone an injustice. That may not be true.*[1]

Mr. LITTLETON. When you went to the President and met him and the Secretary of State, knowing, as you have stated, that if it were a violation of the law no absolution could be given by them, it amounted, did it not, to your obtaining the opinion of the President and Secretary of State as to whether it was a violation of law?

Mr. GARY. I do not know that I would quite assent to that opinion. I did reach the conclusion that if we acquired those securities and there should afterwards be any proceeding of any sort on behalf of the Government against us to set aside or prevent the consummation of that purchase or do anything else it would be a great outrage.

Mr. LITTLETON. And if any subsequent proceedings were taken against the company after this purchase were made under these circumstances the company would have rather a strong defense, would it not, in stating its position to the Government?

Mr. GARY. I would think so, if Mr. Martin Littleton was defending the case with his ability to express himself.

Mr. LITTLETON. That is very complimentary, Judge, and I appreciate it.

I notice in the letter of Mr. Bonaparte the following:

On November 4, 1907, the President addressed to me a letter of which I inclose a copy. At the time of the visit to him by Messrs. Frick and Gary, to which reference is made in this letter, I was absent from Washington, but after the letter had been written and before it reached me I had a brief conversation with the President in which I was informed, in substance, of the facts stated more in detail in the letter itself. In this conversation I advised the President that, so far as the Department of Justice was informed, no reason existed to believe that the United States Steel Corporation or its officers,

[1] All the preceding italics are the editor's.

directors, or stockholders were subject to prosecution or civil action under the Sherman antitrust law, and that, supposing such to be the fact, the information conveyed to him by Messrs. Frick and Gary did not materially alter the existing situation.

Were you familiar with that letter?

Mr. GARY. No; I was not. That is from the Attorney General to the President?

Mr. LITTLETON. I am wrong about that. It is a quotation by the Attorney General from another letter of his which was written to the President, and this is contained in a letter to the chairman of the Judiciary Committee of the United States Senate.

Mr. GARY. I never had any knowledge or information.

Mr. LITTLETON. He says:

I added the statement in substance that, in my opinion, based upon certain decisions of the Supreme Court, and especially the Knight case (156 U. S., 1), the transaction said by Messrs. Gary and Frick to be in contemplation would not in itself constitute an offense against the said law or furnish grounds for action by the Government to enjoin its consummation; but if this transaction had been preceded or should be followed by a series of others of like nature a materially different situation would be presented and the case would become, in some measure, analogous to those of the Standard Oil Co. and the Tobacco Trust and other combinations of the like nature. In the same conversation the President asked my opinion as to the legal correctness of the attitude he (the President) had assumed in his conversation with the gentlemen in question, that attitude being, in substance, that while he had no right to advise them to take the course they proposed or make any suggestion to them in the premises, he was not called upon to interpose any objection, and I replied that, in my opinion, such course by the President was strictly appropriate under the law.

Judge Gary, if you have had time enough to consider it, do you understand him to mean if it had been preceded by a similar transaction or followed by a similar transaction?

Mr. LINDABURY. Once again, apologizing for making an objection, might I suggest that Judge Gary's interpretation of Mr. Bonaparte's letter to the President would hardly be proper?

Mr. LITTLETON. We have such abundant power to overrule the objection that I will withdraw the question.

Mr. GARY. I do not think I quite finished the statement in regard to the examination of the purchase of these securities, although I have nearly done so.

I returned to New York, and we entered an agreement for the purchase of the stock, or the properties through the stock, in the meantime having made as careful and full an examination as we

could in regard to the properties, such examination having commenced almost from the very beginning of the negotiations or the request to purchase.

I remember that Mr. Gates says in his testimony that he insisted that the board of directors pass a resolution that the minority stockholders should have the right to turn in their stock at the same price. He may have insisted upon that. I have no recollection of his having done so. If he did, it would seem to me as rather forcing us to buy stock instead of forcing them to sell stock, but, be that as it may, the original memorandum of agreement provided that we would take the minority stock at the same price. That agreement was consummated before Mr. Gates returned from abroad—before he landed in this country—and so I am inclined to think that he is mistaken about that, so far as I am concerned.

I would like at the proper time, and as you may desire, to state to you some of the values of these properties and the conditions of this company.

CHAPTER XII

TRUST METHODS

NOTE

A DISPROPORTIONALLY large share of space in this volume has been devoted to readings on the above subject. The editor has felt that this is a most vital question. It bears directly on the issue between Competition and Combination. It is the theory of the editor that the advantages of combination are to be found chiefly in certain methods and not in the frequently alleged economies of saving of cross freights, saving in advertising and in salesmen, superior managerial ability, etc. etc. It is a very serious question whether, should certain practices be prevented, the alleged natural tendency to combination would not vanish into thin air.

The exhibits given need no comment. They are made up of excerpts drawn from Government investigations and from the briefs, petitions, indictments and other documents in the various suits brought by the Government under the Sherman Act. For the purpose of affording greater convenience of study they have been subdivided into a series of groups each under a particular heading.—Ed.

GROUP 1

EXHIBIT 1

—— —— —— COMPANY [1]

The Government alleges that:

In September, 1910, defendants, in pursuance of their general purpose, through —— —— —— Company, of New Jersey, acquired the business of —— G. ——, who was engaged in the manufacture of machines designated and adapted for use in performing all the principal operations in the manufacture of —— and —— which can be performed by the aid and use of machinery.

[1] *United States of America* v. —— —— —— *Co.* Petition, In the —— Court of the United States for the District of ——, pp. 66–70.

For at least two years immediately preceding September, 1910, said —— had invented, and had taken out letters patent of the United States and of foreign countries covering the same, machines designed and adapted for performing all the principal operations in the manufacture of —— and ——. Among such machines, which are too numerous to be referred to specifically in this petition, were —— machines, —— —— machines, and —— —— machines, —— machines, —— —— machines, and many others. On or about May 1, 1910, the said —— installed in the —— factory of —— G. —— Company, a corporation of New Jersey, issued capital $3,750,000, with its factory and principal offices at Boston, Mass., with a daily capacity of 17,000 —— of ——, a complete set of the machines so owned and controlled by him, the said —— being the owner or in control of a majority of the capital stock of the —— Company. For several years prior to the installation and use in the factory of the —— Company of the machines owned and controlled by —— G. ——, defendants, through —— —— —— Company, of New Jersey, or some one or more of the corporations owned and controlled by them, had furnished and supplied all of the principal machines used in the factory of the —— Company in the manufacture of —— and ——. Upon the installation in said factory of the machines owned and controlled by —— the officials of the Company caused the machines owned and controlled by defendants to be dismantled and removed and discontinued the payment of royalties on the same.

Thereupon defendants instituted proceedings against —— G. —— Company in the Supreme Judicial Court of Massachusetts, in which —— —— —— Company, of New Jersey, was the party plaintiff, to enjoin the —— Company from using the machines which had been supplied to it by —— G. ——; to enjoin said —— from supplying or furnishing to the —— Company other machines to be used in the place of machines owned and controlled by defendants, and to recover rents and royalties on defendants' machines during the period that ——'s machines had been used in the factory of the —— Company. This proceeding was never prosecuted to a final determination for the reasons hereinafter stated.

—— G. —— had advertised extensively, through the public press and otherwise, for several months prior to September, 1910, the machines which he had invented for use in the manufacture of —— and ——, and had solicited among —— manufacturers in various parts of the United States orders for the sale and lease of

such machines. ——, however, experienced difficulty in obtaining orders for his machines on account of the arbitrary, oppressive, unreasonable, and unlawful lease and license agreements, containing exclusive-use and —— provisions, hereinbefore mentioned and described, which defendants had theretofore required —— and —— manufacturers to sign, in order to obtain machines from defendants, and under which such manufacturers then held all of the essential machines necessary in the manufacture of —— and ——. However, a concerted effort was made by a number of prominent —— and —— manufacturers engaged in business in various States of the United States to acquire the inventions and machines owned and controlled by ——, or an interest therein. Among such —— and —— manufacturers who were so interested were——, ——& —— —— Company, St. Louis, Mo.; —— —— —— Company, St. Louis, Mo.; —— —— Company, St. Louis, Mo.; —— —— Company, St. Louis, Mo.; —— —— Company, Chicago, Ill.; ——, —— & Company, Chicago, Ill.; and —— —— & —— Company, Boston, Mass.

Representatives of the above companies on September 22, 1910, were in Boston, Mass., in conference with —— G. —— with a view to either purchasing an interest in his inventions and machines or to make some arrangement which would enable them to obtain machines for use in their factories, and thereby be relieved from the domination and control of defendants. Defendants, being advised of the purpose and intent of said —— and —— manufacturers, and well knowing that if any arrangement were made between them and —— G. —— whereby they could obtain for use in their factories machines not owned and controlled by defendants, such action would result in defendants' machines being dismantled and removed, as had been done in the factory of the —— Company, and that competition would be created in the sale, lease, and use of such machines, defendants, for the purpose of preventing such competition and to monopolize trade and commerce in —— machinery, on or about September 23, 1910, entered into agreements with said —— whereby they acquired all the inventions, letters patent of the United States and of all foreign countries relating thereto, together with all machinery, mechanisms, tools, and devices owned and controlled by said ——, designed and adapted for use in the manufacture of —— and ——; and defendants acquired also the holdings of the capital stock, which constituted a majority thereof, which the said —— owned and controlled in

said —— G. —— Company. The issued capital stock of said —— G. —— Company is $3,750,000, of which defendants acquired $2,250,000. For the inventions, improvements, letters patent of the United States and foreign countries, machines, machinery, mechanisms, and devices designed and used in the manufacture of —— and ——, including the $2,250,000 of capital stock of said —— G. —— Company, defendants paid —— G. —— $6,000,000, part in cash and part in stock of defendant corporations.

For the purpose of maintaining their monopoly, defendants required and took from said —— covenants, in substance, that he should assign, transfer, set over, and deliver to defendants all inventions, improvements, letters patent of the United States and of foreign countries, applications for letters patent, and interest and rights therein, which he might make, own, or acquire, within 15 years thereafter, relating to the manufacture of —— and ——, or to machinery, mechanisms, tools, or devices, processes, methods, or things intended or adapted for use in the manufacture of ——, or in the working or manipulation of leather, or relating to —— or —— —— of any description whatsoever, or to the manufacture thereof, together with any and all rights which the said —— might, within said period, by agreement or otherwise, acquire or take over, covering any such inventions, improvements, letters patent of the United States and of other countries, applications for letters patent. and interest and rights therein.

EXHIBIT 2

—— —— —— COMPANY [1]

The Government alleges that:

In December, 1902, —— I. —— and certain other persons were engaged in the promotion of a corporation which they intended should erect a —— —— factory at Menominee, Michigan, and manufacture —— ——, and were engaged in making contracts with farmers for —— —— to be delivered to said company; and they intended that said company should engage independently in interstate trade and commerce in —— ——. The —— —— —— Company, to prevent this proposed competition, entered into

[1] *United States of America* v. —— —— —— *Company and others.* Original Petition, In the —— Court of the United States for the —— District of —— ——, pp. 111–112.

negotiations with said —— which resulted in its subscribing for 30,000 shares of the capital stock of said proposed company, and in December, 1902, The —— —— —— Company, —— I. ——, and —— B. —— caused defendant —— —— —— Company to be incorporated, and thereupon The —— —— —— Company purchased 30,000 shares of its capital stock, which it has held and voted ever since, and through such stock has, in conjunction with said ——, dominated and controlled said company.

EXHIBIT 3

GENERAL ELECTRIC COMPANY[1]

The Government alleges that:

On February 10, 1906, and thereafter, from time to time, contracts were entered into between the Siemens & Halske Aktiengesellschaft, of Berlin, Germany, as vendor, and defendants, General Electric Company and National Electric Lamp Company, as the lamp companies, whereby said defendant lamp companies acquired the exclusive right to manufacture, use, and sell throughout the United States, its territories, possessions, and dependencies, "tantalum filament" incandescent electric lamps (excluding the manufacture of filaments therefor) under the patents, applications, and inventions of the said vendor, said defendant lamp companies in consideration therefor making a cash payment of $250,000 (60 per cent of which said sum was paid by defendant, General Electric Company, and 40 per cent by defendant, National Electric Lamp Company) and giving a certain share of the profits on "tantalum filament" lamps sold by said defendants in the United States, and buying from said Siemens Company all "tantalum filaments" required by said defendants in the manufacture of all said lamps so sold.

On August 17, 1906, defendant, General Electric Company made an agreement with the Deutsche Gasgluhlicht Aktiengesellschaft (Auer Gesellschaft) of Berlin, Germany, whereby it, said General Electric Company, secured an option from the said Auer Company covering the exclusive rights for the United States to the "tungsten filament" lamp, hereinbefore described, that might follow the

[1] *United States of America* v. *General Electric Company and others.* In the Circuit Court of the United States for the Northern District of Ohio, In Equity, pp. 27–30.

applications and inventions, controlled by the said Auer Company, for a consideration of $100,000 in cash and certain per lamp payments on account of such lamps as should thereafter be manufactured and sold by it in the United States. The defendant, General Electric Company, thereupon sold to defendant, National Electric Lamp Company, a 40 per cent undivided interest in said option on said applications and inventions so controlled by the said Auer Company.

On April 19, 1909, defendant, General Electric Company, secured an option on the United States patents, applications, and inventions, owned and controlled on and before April 18, 1909, and thereafter to be owned and controlled at any time from said date to July 1, 1919, by Bergmann Elektricitats-Werke A. G. of Berlin, Germany, and Mr. Sigmund Bergmann, of Berlin, Germany, in or relating to, or to the manufacture of, incandescent electric lamps and filaments of whatever character, also the processes and machinery therefor, and other products, of the said Bergmann Company's or Mr. Sigmund Bergmann's incandescent Lamp factories. This option was exercised on May 10, 1909, and payments in consideration therefor aggregating $175,000 were made by defendant, General Electric Company; and the Bergmann Company and Mr. Sigmund Bergmann agreed to and did cease selling and delivering incandescent electric lamps to the United States and its possessions from and after May 10, 1909, and guaranteed that the number of such lamps sold and delivered in the United States and possessions prior to May 10, 1909, and subsequent to April 19, 1909, should not exceed 200,000 lamps. At a later date, the exact date being to your petitioners unknown, defendant, National Electric Lamp Company, purchased a four-tenths undivided interest in the rights under this contract. This contract covered "tungsten filament" lamps and incandescent electric lamps of every character.

The defendants, General Electric Company and National Electric Lamp Company, having acquired the rights under the applications and inventions of the said Auer Company and said Bergmann Company, thereupon proceeded to buy the applications and inventions of Internationale Wolfram Lampen Actiengesellschaft (Just & Hanaman), Budapest, Hungaria, and Dr. Hanz Kuzel, of Baden, Vienna, Austria, and did on August 15, 1909, by contracts with the said Just & Hanaman and Kuzel, buy their said applications and inventions covering the "tungsten filament" lamp and secure control thereof for a consideration of $250,000 for

the Just & Hanaman applications and inventions and $240,000 for the Kuzel applications and inventions. The aforesaid applications and inventions and patents covering the "tungsten filament" lamp, which were acquired, as aforesaid, by defendants, General Electric Company and National Electric Lamp Company, comprised all the valuable applications and inventions covering said "tungsten filament" lamp known by said defendants.

EXHIBIT 4

—— —— —— COMPANY [1]

The Government alleges that:

The defendant, —— — ——, and the other directors, officers, and agents of the said successive corporations, from time to time, during the above-named period, pursued the policy of acquiring new —— —— inventions for the purpose of eliminating such competition in its infancy and preventing prospective manufacturers from engaging in the manufacture and sale of ——— ——; and said officers and directors and their agents, by intimidation, threats, and other means of duress, sought to prevent and did prevent other inventors from putting their inventions on the market, and by such wrongful and illegal acts prevented the organization and formation of competing concerns and hindered and prevented other persons, firms, and corporations from engaging in the —— —— business, and did thereby deprive the public of the benefit of such competition.

GROUP 2

EXHIBIT 1

—— —— —— COMPANY [2]

The Government alleges that:

The defendant, —— — ——, and the other directors, managers, officers, and agents of the said successive corporations have, from time to time, during said above-named period caused to be purchased and have purchased competing —— —— com-

[1] *United States of America* v. *The* ——— ——— *Company*. Petition, In Equity, No. 6802, In the —— Court of the United States for the —— Judicial District of ——, Western Division, p. 22.

[2] Op. cit. *U. S.* v. —— —— —— *Company*. Petition, pp. 20–21.

panies, but concealed the fact of such purchase and caused the same to be continued in business after such acquisition in pretended competition with the defendant company as independent companies, for the purpose of interfering with other manufacturers, dealers, and agents. Said directors, managers, and officers have employed special agents who were instructed and directed to falsely and fraudulently represent themselves to be engaged in the business of dealing in —— —— independent of and in competition with said successive corporations, for the purpose of deceiving such competitors, and of wrongfully acquiring information concerning their business. Said agents thereupon carried out such instructions and directions, and by means of such false representations the said successive corporations did obtain valuable information relative to the business and financial affairs of such competitors. Through the activity of such special men and by means of such false representations the said successive corporations did obtain valuable information concerning such competitors which enabled such corporations to greatly injure them in their business, as a result of which such special men were enabled to and did negotiate with various manufacturers, dealers, and agents for the purchase of their property and business, and did by means of such unlawful methods succeed in purchasing the property and business thereof, and thereby did eliminate, suppress, and destroy such competition.

EXHIBIT 2

—— —— COMPANY [1]

—— E. ——, PEDDLER, ONEONTA, N. Y., AND TROY, N. Y.
ONEONTA, N. Y.

The Government alleges that:

D—— F. G——, who testified as a witness for the Government, decribed in detail the remarkable operations which he carried out under the instruction of T—— officials. (Vol. 5, pp. 2433–50.) His testimony is corroborated by correspondence and is in no way contradicted or explained by any witness for the defendants.

G——, who had previously been a —— —— driver for the

[1] —— —— *Company of* —— —— v. *United States of America.* Brief for the United States, In —— Court of the United States, Vol. 2., pp. 523–525, 529–530, 533–534, 538–539, 542–545, 553–554, 580–582.

T—— —— Company, was approached at his home at night about March, 1899, by U—— I C——, the T——'s agent at Troy, N. Y., who informed him that N——, the T——'s manager at Albany, had some important work for him to do which must be kept entirely secret, even from G——'s own family. At his instance G—— met H—— and also O——, manager for the T—— at Binghamton, N. Y. They told him that the T—— had competition at Oneonta, N. Y., from the U—— —— Company, which had got the bulk of the trade, and that they wanted to get it back; that for that purpose they wanted to get the storekeepers to fighting with one another. He was directed to go to the U—— —— Company at Binghamton, N. Y., and buy 25 barrels of oil and have it shipped to Worcester, from which place he was to reship it to Oneonta. The reason for this procedure was that if the U—— —— Company knew that he wanted to sell oil at Oneonta, where it was already doing business, it would not supply him. They directed him to sell this oil at Oneonta to consumers, putting the sign "U—— oil" on his wagon, and to sell it at 8 cents a gallon, which was the same price he had to pay the U—— for it at Binghamton.

H—— and O—— told G—— that he must not tell anyone for whom he was working, but must say that he was working for himself, and they suggested a false excuse which he might give the manager of the U—— —— Company when purchasing this oil. He was also directed how he should conduct correspondence with O——.

G—— followed out these instructions; put a wagon on the streets at Oneonta with a sign, "U——" upon it, and sold the oil to consumers at 8 cents a gallon, which was the same as the wholesale price to retail dealers. The retail storekeepers had been selling at 10 cents a gallon. The result of the cut which he made was that the merchants got to cutting prices against him and then against one another, and finally sold oil at 2 cents a gallon, and one put out a sign, "Free oil; come and get your cans filled."

G—— bought one other lot of oil, 15 barrels, from the U——, but later, being unable to get any more U—— oil under instructions he got his oil directly from the T—— —— Company, though it was shipped in blank-head barrels, which were dark in color, while the T——'s barrels were green. After this he did not display the sign "U—— oil."

He was instructed by O—— not to try to sell too much oil, as, of course, a loss was involved on every gallon sold. The object, as

shown by the correspondence put in evidence, was to get and keep the storekeepers in conflict with one another on price cutting.

F—— —— COMPANY.

C. H. N——, who was employed in the office of the T—— at Baltimore as stenographer and later as assistant to the manager, testified that in 1897 and 1898 C—— operated the F—— —— Company at Norfolk, Va., and elsewhere, as a bogus independent concern; that this company obtained its oil from the T——, but held itself out to be independent, and its effort was to turn the business of real independents into T—— channels. The oil was shipped to C—— in blank-head barrels, that is, barrels with no name upon them, while the practice of the T—— was to place its name plainly upon all barrels to its regular trade. N—— says that C—— cut prices against the independent concerns and secured a large proportion of their business. (N——, vol. —, pp. 2360–62.)

D. H. G——, who was the agent of the T—— —— Company at Norfolk at this time, testified regarding the circumstances under which the F—— —— Company started in business at Norfolk. (Vol. —, pp. 2211–12.) He said that there was at Norfolk at this time a peddler named K—— selling oil to consumers, that the business had become of considerable importance, and that K—— bought his supplies partly from the T——. F. E. Q——, who was in charge of the refined oil department of the Baltimore division, told G—— that it was important not to let even their own customers get too large, and at his instance G—— tried to buy out K——, but could not do so. G—— says that Q—— thereupon sent C—— to Norfolk to operate in the name of the F—— —— Company; that he was instructed to visit only K——'s trade and not to visit the T——'s customers, and that he carried out these instructions. He said that C—— failed to destroy K——'s trade in this way and then made an offer for his business and bought him out, and continued to operate for some time as the F—— —— Company.

B—— —— COMPANY.

About 1897 the T—— —— Company bought out the B—— —— Company, which had a refinery at Marietta, Ohio. (Vol. —, p. 3337.) The refinery was closed; but it was doubtless because of its reputation as an independent establishment that the T—— soon after selected, the name "B—— Refining Company" under

which to do a bogus independent business at Richmond, Va. There appears to be no practical connection between the two concerns. (Vol. —, pp. 2537–41.)

C—— testified (vol. —, 2445–47) that in the latter part of 1898, under the direction of Q——, of the Baltimore office, he went to Richmond to investigate the conditions there. He found that the special agent of the T——, Mr. X——, had caused dissatisfaction in the trade by employing colored drivers and by refusing to sell in less than 20-gallon lots (note that this is just what he says G—— did at Norfolk), and as a result of his prejudice the V—— —— Company, an independent concern, was doing "a right smart business." Q—— directed him to go to Richmond and operate under the name of the B—— Refining Company, for the purpose, C—— claimed, of waking up X—— and teaching him how to get the business. He admitted that after he had been operating the B—— Refining Company for some time the V—— did not have very much trade, and that the B—— had worked up a good business. In August, 1899, C——, in the name of the B——, bought out the V—— —— Company, with money furnished by the T——. (Vol. —, pp. 2549–52.)

W—— —— WORKS.

Early in 1901 C—— was transferred to Baltimore, and operated there under the name of the W—— —— Works, continuing to do so until 1905. This concern was held out to be independent of the T——. C—— himself admitted that his prices were below the T—— —— Company's regular market prices in Baltimore. (Vol. —, p. 2465.) There is no denial that the W—— —— Company was throughout controlled by the T——.

H——, of the Red "—" —— Company, testified (vol. —, pp. 2320–1) that when the W—— started into business C—— attempted to hire away the —— wagon drivers of the Red "—"; that the W—— presented to customers as an argument to show that it was independent the fact that it cut the T——'s prices, and on the other hand, claimed that the fact that the real independents did not cut the price was proof that they were controlled by the T——. C—— also circulated in the trade the false report that the plants of the T—— and Red "—" companies were connected by underground pipes.

N——, who was then in the office of the T——, stated (vol. —, pp. 2374–75) that the T—— employed men to follow the wagons

of the independent concerns in Baltimore, especially those of the D—— M—— Company, and get lists of their customers, which were turned over to C——.

Mr. Y——, Baltimore manager of the D—— M—— Company, an independent concern, testified (vol. —, pp. 71-2) that during 1904 the W—— attacked the D—— M—— Company's trade, cutting the price one-half cent a gallon; that the D—— M—— Company had to meet this price, whereupon the W—— went down a half cent farther, and so on, until finally the W—— —— Company was selling at 6 cents; that the D—— M—— Company did not meet this price, but sold at 7 cents, and that the T—— —— Company's open price at the same time was 8 cents. Y—— said that he then went to the customers of the D—— M—— Company and told them that he could could [1] not go down any farther, but promised them that later, when the price would advance after the fight was over, he would make them a reduction on the then current price equal to that which C—— offered during the fight.

—— S. —— testified that he was employed by C—— to work for the W—— —— Company in 1904 and 1905, driving a tank wagon; that C—— told him to go after the D—— M—— Company's customers and offer a rebate of about one-half to three-fourths of a cent below the T——'s market price; that he was instructed not to sell to the T——'s trade except at the regular market price. He said C—— told him that the W—— —— Company was not controlled by the T——, but that he showed him a list of D—— M—— Company's customers and told him that he should not go to any trade in particular except that of D—— M—— Company. (Vol. —, pp. 193-4.)

E—— —— WORKS.

The E—— —— Company was organized as a corporation by the S. P. I—— Company of Savannah, Ga., about 1897 or 1898. The I—— Company had previously been engaged exclusively in the naval stores business, and had entered the petroleum business because the T—— was competing with it in naval stores. The E—— —— Company did business at Savannah, New Orleans, Mobile, Birmingham, and elsewhere. The T——, according to the testimony of E. N. T——, who was then employed by the T——, cut prices heavily against the E—— and finally, about 1899, bought

[1] Thus in the original.—Ed.

it out. Its name was changed to the E—— —— Works, and it was thereafter run by the T—— as a bogus independent concern, doing business in numerous places. (——, vol. —, pp. 2107–8; ——, vol. —, pp. 2279–80.)

. . . . . .

In the territory of the Baltimore marketing division of the T——, which covers the South Atlantic States, the E—— —— Works was operated under the supervision of C. W. C——. C. H. N—— who was in the Baltimore office of the T—— up to about 1903, testified that the accounts of the E—— were kept in the books of the T—— in the name of C. W. C——, agent; that C—— reported to the T—— —— Company; that about 1901 he began to extend the business to towns in the Carolinas, Virginia, and Maryland; that the E—— made a special effort at all competitive points to get business away from independent concerns; that it gave special commissions to distributing agents who had formerly handled independent goods, to get them to become its agents, and that it cut prices.

N—— also said that while special efforts were made by the E—— to get trade from the independent companies, now and then, for effect only, it would take a customer from the T——. (Vol. —, pp. 2363–4.)

W. H. H——, manager of the Red "—" Company, gave similar testimony. He said that the E—— took away from the Red "—" its agent at Columbia, S. C., Marion, N. C., Newton, N. C., Charlottesville, Va., and Silver Spring, Md.; that it cut prices to take away the business from the Red "—," and after it had secured the business it so managed matters as ultimately to turn it over to the T—— —— Company; and that it at all times held itself out to be independent. (Vol. —, pp. 2317–19.)

. . . . . .

The evidence shows clearly that the E—— was used particularly to get trade from the independent concerns. H. L. S——, manager of the P—— —— Company, of Norfolk, Va., an independent concern, testified that his company was attacked by the T——, first through the O—— —— —— Delivery (hereafter referred to), which sold to consumers, and soon after also by the E—— —— Works, which solicited the trade of retail dealers; that the E—— avoided the customers of the T—— and solicited only the dealers who bought from the P——; that it cut the prices, and in some

cases would offer 5 gallons of — free on a purchase of 25 gallons; that the E—— tried to hire the drivers of the P—— —— Company regardless of salary, telling them that a position with the E—— would be more permanent as the P—— would soon be off the streets; and that the E—— cut the price of —— —— against the P—— as much as 33-⅓ per cent. . . .

R——'s —— COMPANY, ATLANTA, GA.

E. N. J—— testified that for some time prior to 1898 the L—— —— Company and the R——'s —— Company were independent concerns doing business at Atlanta; that the T—— so reduced the prices of —— that there was no profit; and that the L—— and the R——'s companies were forced to sell out to the T——, which thereafter operated the business under the name of the R——'s —— Company as a bogus independent concern. (Vol. —, pp. 2094–99.)

After the R——'s —— company[1] became a bogus independent concern under the control of the T——, J—— was put in charge of it. He testified (vol. —, pp. 2099–2103) that he reported to E. C. M——, cashier in the main office of the T—— of ——, at Cincinnati, Ohio; that these letters were sent to a post-office box which was not the regular box of the T—— —— Company; and that under instructions he held the R——'s out to the trade as an independent company.

BOGUS PEDDLING CONCERNS AT CLEVELAND.

C. J. D—— testified (vol. —, pp. 3054–56) that about 1902, at which time he was in the independent business at Cleveland, the T—— operated some peddling wagons in Cleveland known as Z—— Line wagons, which were managed by a man named A——, holding himself out as independent, and which sought the trade of peddlers who were purchasing independent oil.

. . . . . .

The reason why the peddling outfits were started by the T—— at Cleveland is evidently the fact, testified to by Castle (vol. —, pp. 3054, 3056), that there had been a very large number of peddlers operating in Cleveland, and the fact that there was a large volume of independent business there. Castle stated that as a result of the competition of the J—— —— Delivery and the Z—— Line

[1] Thus in the original.—Ed.

wagons which preceded it, the number of peddlers was reduced from about 250 to about 50. K—— seeks to explain the decline in the number of peddlers by the increasing consumption of natural gas at Cleveland (vol. —, pp. 1531–32) and gives some statistics of the number of natural gas meters in use; but he fails to give the only statistics which would really be significant, namely, the quantity of —— sold, of which he must have a very accurate record both for the T——'s sales and for those of independent concerns.

EXHIBIT 3

E. I. DU PONT DE NEMOURS POWDER COMPANY [1]

"Q. Do you know of the employment of a yellow dog company?

A. I have been told that the Climax Co., and the New York Powder Co.—

Q. What do you know about the yellow dog companies, if anything?

A. May I ask a question?

Q. Yes.

A. If the president of the company told me, am I permitted to answer?

Q. Yes. That is my judgment, unless the gentlemen differ with me.

A. During the conversation with Mr. T. C. du Pont, the president, in which he was endeavoring to explain to me the objects of the trust, he told me that no one man could sell all the powder, or any other article, in any particular territory, and it was necessary for him, therefore, just like a little boy, to have a dog, to which he could whistle and call.

Q. What kind of a dog?

A. He termed it "a yellow dog," and he explained to me that after I had exhausted all my resources, and those of the traveling men under my office, that if I was not able to regain the trade, that I was to whistle by writing a letter, and they would then send on a little yellow dog, which, at that time, in the high explosives business, was known as the Climax Powder Manufacturing Co., of Em-

[1] Testimony of F. J. Waddell. *United States of America* v. *E. I. du Pont de Nemours and Company*, In Circuit Court of the United States for the District of Delaware. Pet. Rec. Testimony, Vol. II, pp. 685–687.

porium, and the New York Powder Co., of New York. But the trouble was to keep the little yellow dog away from the trade that was not molested.

Q. Had you occasion to whistle for the little yellow dog?

A. Yes, sir.

Q. Did you do so?

A. Yes, sir.

Q. What occurred.[1] State what you did?

A. If we met the prices, that meant the lowering of our prices on our brands; but the little yellow dog would come in, and we would say that we didn't recognize them at all, that their goods were of no account, and were of low grade, and all that kind of thing; so we didn't have to lower our prices to the adjoining trade; but the yellow dog got the business.

Q. Would you sell for the yellow dog?

A. No, sir.

Q. To whom did they belong to, if you know, that is, the Climax Powder Co., and the New York Co.?

A. To the trust.

Q. To the trust?

A. Yes, sir.

Q. Was that the E. I. du Pont de Nemours Powder Co.?

A. Yes, sir."

EXHIBIT 4

AMERICAN TOBACCO COMPANY [2]

The most important motive, however, for the continuance of separate corporate existence in the case of many concerns has been the desire of the Combination to keep its control secret. There is a strong feeling among many dealers and consumers against "trusts" in general and the "Tobacco Trust" in particular. Independent manufacturers have extensively taken advantage of this feeling and have advertised their goods as "Independent," "Not made by a trust," and so forth. The attitude of the American Tobacco Company and its openly affiliated concerns in refusing to deal with labor organizations has also caused hostility among union laboring men, many of whom insist on buying "union-label"

[1] Thus in the original.—Ed.

[2] Report of the Commissioner of Corporations on the Tobacco Industry, Part I, pp. 20–21.

goods. Many independent manufacturers have availed themselves of the union-label sentiment to build up a trade.

In order to overcome the effects of the antitrust sentiment and the union-label sentiment, and even to take advantage of them, the Tobacco Combination, particularly during 1903 and 1904, secretly acquired a controlling interest in numerous concerns which had been catering to customers who held those sentiments. Such concerns continued to operate under their former management and kept up a pretense of independence and of hostility to the Combination. Those which employed union labor continued to do so and advertised the union label. These secretly controlled concerns were, until the facts were disclosed by the Government, a powerful engine of warfare against the genuine independents and were looked upon by the latter as their worst enemy.

Among the concerns of which control was thus secretly acquired and for a greater or less period secretly maintained by the American and Continental tobacco companies are the following:

R. A. Patterson Tobacco Company, Richmond, Va.
H. N. Martin & Co., Louisville, Ky.
Queen City Tobacco Company, Cincinnati, Ohio.
Pinkerton Tobacco Company, Zanesville, Ohio.
F. F. Adams Tobacco Company, Milwaukee, Wis.
Nall & Williams Tobacco Company, Louisville, Ky.
Nashville Tobacco Works, Nashville, Tenn.
F. R. Penn Tobacco Company, Reidsville, N. C.
Wells-Whitehead Tobacco Company, Wilson, N. C.
H. Bolander (Incorporated), Chicago, Ill.
D. H. Spencer & Sons (Incorporated), Martinsville, Va.
Manufacturers Tobacco Company, Louisville, Ky.
Michigan Tobacco Company, Detroit, Mich.
B. Leidersdorf & Co., Milwaukee, Wis.
R. P. Richardson, jr., & Co., (Incorporated), Reidsville, N. C.
Standard Snuff Company, Nashville, Tenn.
Liipfert-Scales Company, Winston-Salem, N. C.
Craft Tobacco Company, New Orleans, La.
Mellor & Rittenhouse Philadelphia, Pa. (licorice).
Johnston Tin Foil and Metal Company, St. Louis, Mo. (tin-foil)
J. S. Young Company, Baltimore, Md. (licorice).

EXHIBIT 5

INTERNATIONAL HARVESTER COMPANY [1]

The Government alleges that:

In January, 1903, in pursuance of the general purpose of defendants, defendant, International Harvester Company, acquired, through purchase of all the capital stock of and subsequent conveyance from D. M. Osborne & Co., a New York corporation, with a plant at Auburn, N. Y., engaged in interstate trade and commerce in harvesting machinery, twine, and tillage implements, and in manufacturing, selling, and distributing harvesting machinery, twine, and tillage implements throughout the United States in competition with it, all grantor's business of manufacturing and selling, dealing in and distributing harvesting machinery and twine as a going concern, all assets, property, and good will and the exclusive right to use the corporate name, paying therefor cash and five-year notes. The principal owners of the grantor company, long successfully engaged in manufacturing and selling harvesting machinery, agreed with grantee to enter its service for a certain period in managing the business and property acquired and not otherwise or thereafter to engage in or carry on or become interested in the business of manufacturing or dealing in harvesting machinery.

After the five concerns had gone into the International Harvester Company, the Osborne Company remained by far the largest single manufacturer outside the combination.

For two years defendant, International Harvester Company, concealed and denied its association with D. M. Osborne & Co., and operated the latter as an independent company.

GROUP 3

EXHIBIT 1

—— —— —— COMPANY [2]

The Government alleges that:

From the year 1890, up to the present time, the said defendant, —— — ——, and the other directors, managers, officers, and

[1] *United States of America* v. *International Harvester Company and Others.* Petition in Equity, In the District Court of the United States for the District of Minnesota, pp. 25–27. This charge is admitted in Defendant's Answer to Petition, pp. 30–31.

[2] Op. cit. *U. S.* v. —— —— —— *Company.* Petition, pp. 14–16.

agents of the said several successive corporations, conspiring and confederating together, have maintained a department of each and every of said successive corporations for the purpose of stifling and suppressing competition with them respectively. This department was sometimes called the "Competition department," at other times the "Ways and means department," and at other times by various other names. It was composed of an active head, with other officers and departmental managers of the said several corporations. It employed a force of special men who were particularly instructed and directed to suppress and destroy the business of competitors engaged in interstate and foreign trade and commerce, and to harass and discourage and force out of business such competitors who were either manufacturers, dealers, or agents.

These special men were generally known as "knockout" men, and were employed for the special purpose of interfering with the negotiations of the contracts of sales of such competitors. The said department also employed secret agents who were instructed and directed to spy upon the business of such competitors, to fraudulently obtain information as to their sales and shipments, and to report such information to said department, where it was used for the purpose of discouraging prospective purchasers of other ——s.

Other secret spies and agents were from time to time employed by said department, with instructions to report the names of customers of such competitors, and to report other information, which was thereupon used by said department in blocking, and in securing the rescinding, of contracts of sales by such competitors, and wrongfully interfering with their business.

The said department, from time to time, wrongfully and secretly engaged the services of the employees of such competitors and instructed and directed them to furnish to said department confidential information concerning the business of such competitors; and such information, when so reported, was used by said department in unlawfully and fraudulently obstructing and suppressing such trade and commerce of such competitors.

Such department, from time to time, sent out instructions to the agents of the said several successive corporations, advising and directing them how to manipulate competing —— ——, for the purpose of showing defects and for the purpose of discouraging users of such ——, and for the further purpose of having such users rescind their contracts of purchase.

The said department also, from time to time, instructed and directed its agents to purchase information from agents and employees of competing manufacturers and dealers relative to the business, plans, and customers of such competitors, and to procure information from the employees of railroads, express companies, hotel companies, and others as to the plans and purposes of competitors and the shipments of their ——, and to report such information to said department, where it was used in obstructing and suppressing such trade and commerce.

All of such instructions and directions as above set forth were acted upon by such agents so receiving them, and the policy and plan of the defendants operating said successive corporations through said department was by such agents carried out.

EXHIBIT 2

—— —— COMPANY [1]

The Government alleges that:

It appears from the evidence that the T—— —— Company has a general statistical department with headquarters at — ——, one of the chief functions of which is to keep accurate records of the volume of business done by competitors, and that the information regarding shipments and business of competitors, secured from railway sources, is all reported ultimately to this central office. The Government had much difficulty in securing from the officers of the T—— —— Company an admission even of the existence of this statistical department and of the fact that such records of the business of competitors were kept. Two or three witnesses who had charge at New York of the sales of the various —— marketing companies in different parts of the country admitted after much questioning that, from the central offices of those companies in other places, reports of competitive shipments were sent to them at New York; but they at first denied knowledge as to what became of such reports after they had once examined them. (——, vol. —, pp. 670 et seq.; — — ——, vol. —, p. 681.) Thus — — ——, who had charge of the sales in the —— —— territory until 1900, and later had charge of the sales in the territory of the —— —— Company and the T—— of Iowa, admitted receiving such reports from all these territories, but claimed that they were destroyed from time to time, and that he had none except for a very recent period. He

[1] Op. cit. *U. S.* v. —— —— *Company.* —— for U. S. Vol. —, pp. 589–91.

said nothing about their being turned over to the statistical department, as subsequently appeared to be the case. (——, vol. —, pp. 679–87.)

Finally it was learned from the testimony of — — ——, the selling agent at New York for the —— —— Company of Kentucky, that the reports of this character which he received from the —— of Kentucky were turned over to — — ——, who had charge of the statistical department at — —— (vol. —, pp. 709–10.) The Government finally found that —— ——, under ——, was then in charge of this statistical department. He was called as a witness, and admitted that such reports of competitive shipments were turned over to his office, and that from them he compiled general statistics showing the volume of competitive sales in each general marketing territory of the T—— —— Company, and also in its smaller subdivisions, and in the principal towns throughout the United States. (——, vol. —, pp. 829–32.)

The Government secured from ——'s office, and introduced in evidence, copies and extracts from these records showing the volume of competitive business. (Petitioner's Exhibits 387–90, vol.—.) It also procured from the various sales agents having their headquarters at — —— —namely, ——, representing the —— of Iowa and the —— —— Company; ——, representing the —— of Kentucky; ——, representing the —— of Indiana; ——, representing the —— —— Company; and ——, representing the —— of New Jersey—the current reports received by them from their several companies showing individual shipments of competitors, and also summaries thereof showing the total competitive business for certain recent periods of time. Copies and extracts of some of these records were put into evidence, and constitute Petitioner's Exhibits 313, 319, 329, 341, 342, 343, 344, 353, 354, and 355 (vol. —). To illustrate the form of these reports of competitive shipments, we call attention to Petitioner's Exhibit 313 (vol. —, p. 700), which is a list of shipments of — by competitors in the territory of the —— —— Company (Rocky Mountain States) during certain months of 1907. The first column (see ——, vol. —, pp. 687, 739) shows the date of the shipment; the second, the consignor; the third, the point of origin; the fourth, the consignee; the fifth, the point of destination; and the other columns the character and amount of —— —— in the shipment.

Petitioner's Exhibits 387–390, which are the summarized records produced by ——, show how complete is the system of keeping

track of competitive business. They cover every marketing territory of the T—— —— Company in the United States, showing the volume of business done in such territory by the T—— —— Company the volume done by independent concerns, and the corresponding percentages. They also give similar figures for the smaller marketing districts in which the larger territories are divided, and likewise in many cases give separately figures for the main stations and for the substations under such main stations. We have already, in discussing the relation of the extent of competition to the prices charged by the T—— —— Company, presented these percentages of competitive business.

—— and other sales agents who produced these papers testified that they did not know how this information regarding competitive shipments, which came to them from the head offices of the several companies, was originally procured by those offices. ——, vol. —, p. 671; ——, vol. —, p. 687; ——, vol. —, p. 709; ——, vol. —, pp. 758, 759; ——, vol. —, pp. 818–825.) None of them directly testified that they knew that the reports did not come originally from railroad employees, though —— said he had been assured they did not. (Vol. —, p. 687.) In the Missouri case in 1906, however, C. P. ——, general manager of the —— —— —— Company, practically admitted that that company got such information from railroad employees, and paid for it (vol. —, pp. 1109–11.)

GROUP 4

EXHIBIT 1

EXPLOSIVES TRADE [1]

Q. I will ask you whether or not, if you know, there was any contest inaugurated against the King's Great Western Powder Co. by the associated companies, in which you took part and assisted?

A. I was sent to Cincinnati by The Hazard Powder Co. by direction of R. L. Wheeler, the president, when a branch office was established, and he told me the chief part of my work would be the conducting of a fight against the King's Great Western Powder Co. Mr. Wheeler was then vice president, and not president, as I have just stated.

[1] Op. cit. *U. S.* v. *E. I. du Pont de Nemours and Company.* Testimony of R. S. Waddell. Pet. Rec. Testimony, Vol. I, pp. 99 ff. The instance given here is taken from the period when the explosives trade was operating under a pooling agreement and before the consolidation into the present combination.—Ed.

Q. What did you do?

A. I opened an office at Cincinnati. The price of rifle powder was then held at $6.25 per keg, less a rebate, or discount, to city trade, of 5 per cent, say $5.94 net. I opened the fight by reducing the price, on Mr. Wheeler's instructions, to $5.80. I made as much trade as I could at that figure.

Q. State whether, if you know, The Hazard Powder Co. had any trade in that locality at that time at all?

A. It had a very small trade throughout that section of the country.

Q. Who made the first cut in price, if you know?

A. The Hazard Powder Co. That was on rifle powder. There had been a fight in progress on blasting powder before that time; but the King Co. had only recently commenced the manufacture of rifle powder.

Q. Who took the trade, if you know, on that price?

A. The Hazard Co. took the most of the trade of the city; the merchants.

Q. How was that cut met, if you know, by the King people, if at all?

A. It was met, within a day or two, by Mr. John King himself, who came to the city and made a lower price. The price was seesawed between us at about 10 cents per keg, every few days, until the price had gotten down to about $3.75 or $4, when I was called to New York.

Q. By whom?

A. By the Hazard Powder Co., or the officers of The Hazard Powder Co. for a conference.

Q. With what person there did you have a conference?

A. R. L. Wheeler, who was the acting head of the company, directing the business.

Q. State what that conference was?

A. We discussed the situation at Cincinnati. He expressed a desire to hold the trade, even though the price might go very much lower than we were then making, and asked my opinion as to the best means of doing this; and I recommended a plan that I thought would be effective.

Q. What, if anything, were you instructed to do?

A. I had general instructions to make a price lower than any that had been quoted in the city, to the city trade in Cincinnati.

Mr. GRAHAM: Will you state what the instructions were, instead of saying "I had general instructions?"

Q. State the specific instructions received. By whom were they given?

A. R. L. Wheeler.

By Mr GRAHAM:

Q. What did he say?

A. He instructed me to cut the price still, either 10 or 15 cents a keg, with a guarantee to each customer to whom I gave the cut price that this should be 10 cents per keg lower than any price the King Powder Co. would make to them; and when the King Co. quoted a price to a customer—

By Mr. SCARLET:

Q. What, if anything, was done under that instruction?

A. I carried them out exactly as they were given to me.

Q. How low did the price go?

A. The price, to the greater part of the trade, went as low as $2.25 per keg on rifle, although I made some sales at $2.15 and $2.10.

Q. What was the price of powder outside of the territory in which this contest was going on, if you know?

A. In the New England States, the Eastern Seaboard, the extreme Western States, the full list, $6.25, was maintained on rifle powder.

EXHIBIT 2

STANDARD OIL COMPANY [1]

Price of water-white illuminating oil and margins, on October 15, 1904, by specified towns throughout the United States.[2]

(CENTS PER GALLON.)

NORTH ATLANTIC STATES.

	Price.	*Margin.*	*Per cent of competition.*
Maine:			
Portland	11.50	2.34	0
New Hampshire:			
Nashua	11.00	2.14	4.7

[1] Op. cit. *Standard Oil Company* v. *U. S.* Brief for U. S. vol. 2, pp. 432–436.

[2] Prices that indicate loss are merely printed in red ink in original. In following tables minus signs are used.—Ed.

(CENTS PER GALLON.)

NORTH ATLANTIC STATES.—*Continued.*

	Price.	*Margin.*	*Per cent of competition.*
Vermont:			
Burlington	10.00	1.54	1.0
Massachusetts:			
Boston	11.00	2.82	11.3
Fall River	10.50	2.15	0
Springfield	8.00	—.88	21.7
Worcester	8.00	.08	5.0
Connecticut:			
Hartford	9.00	.18	21.7
New London	10.00	1.61	28.9
Rhode Island:			
Providence	10.00	1.21	0
New York:			
Binghamton	9.50	1.00	39.1
Buffalo	10.00	2.01	10.4
New York	10.98	2.31	8.6
Pennsylvania:			
Harrisburg	10.50	2.47	10.3
Philadelphia	8.00	.28	[a]17.6
Pittsburg	8.50	.87	32.8
Delaware:			
Wilmington	8.50	.27	[a]6.5
New Jersey:			
Newark	11.00	2.60	18.6
Trenton	9.50	.83	[a]12.4
Jersey City	10.94	2.59	[a]7.5

[a] Includes city and its substations.

(CENTS PER GALLON.)

SOUTH ATLANTIC STATES.

	Price.	*Margin.*	*Per cent of competition.*
Maryland and District of Columbia:			
Baltimore	8.50	.09	16.5
Frederick	10.00	1.70	....
Washington, D. C.	8.50	.18	....
Virginia:			
Norfolk	9.50	.68	29.6
Richmond	8.00	[a]—.27	12.0

[a] Petitioner's Exhibit 631 is in error in showing this as a profit. The exhibit from the records of the Standard Oil Company, petitioner's Exhibit 391, from which Exhibit 631 was compiled, shows it as a loss.

(CENTS PER GALLON.)

SOUTH ATLANTIC STATES.—*Continued.*

	Price.	*Margin.*	*Per cent of competition.*
Virginia:			
Roanoke	11.50	2.29	....
West Virginia:			
Charleston	10.00	2.56	0
Wheeling	9.50	1.66	12.2
North Carolina:			
Wilmington	11.00	1.99	1.1
Raleigh	12.00	1.56	....
South Carolina:			
Columbia	13.00	2.27	0
Georgia:			
Atlanta	13.00	1.98	0
Savannah	12.50	2.48	1.7
Florida:			
Jacksonville	13.00	3.10	3.9
Tampa	14.50	3.93	..

(CENTS PER GALLON.)

NORTH CENTRAL STATES.

	Price.	*Margin.*	*Per cent of competition.*
Ohio:			
Cincinnati	7.00	—1.09	45.3
Cleveland	7.00	.16	11.7
Columbus	9.50	1.72	2.3
Indiana:			
Evansville	9.00	.05	29.0
Indianapolis	8.50	.12	22.0
South Bend	10.00	1.90	0
Illinois:			
Chicago	8.50	.56	12.7
Decatur	9.50	.08	12.9
Joliet	9.00	.73	18.5
Michigan:			
Detroit	8.50	.24	17.6
Calumet	12.25	2.40	...
Grand Rapids	9.50	1.14	0
Wisconsin:			
La Crosse	9.00	.17	38.6
Milwaukee	8.50	.65	38.6
Eau Claire	10.75	1.36	....
Minnesota:			
Duluth	8.50	—.88	9.9

(CENTS PER GALLON.)

NORTH CENTRAL STATES.—*Continued.*

	Price.	*Margin.*	*Per cent of competition.*
Minnesota:			
Minneapolis	9.50	.24	41.8
Mankato	11.50	2.24	0
Iowa:			
Clinton	10.00	.17	....
Cedar Falls	12.25	2.10	....
Des Moines	10.75	.53	41.8
Missouri (not including Waters-Pierce Territory):			
Kansas City	10.00	.27	24.2
St. Joseph	11.00	1.52	0
Kansas:			
Leavenworth	10.50	.48	....
Fort Scott	12.00	1.98	....
Wichita	10.00	.48	32.1
Nebraska:			
Omaha	10.00	.41	21.7
Hastings	13.00	1.49	....
Fremont	12.00	1.45	....
North Dakota:			
Fargo	13.50	2.10	0
South Dakota:			
Huron	14.50	2.27	....
Sioux Falls	12.00	.35	....

(CENTS PER GALLON.)

SOUTH CENTRAL STATES.

(Exclusive of Waters-Pierce territory.)

	Price.	*Margin.*	*Per cent of competition.*
Kentucky:			
Louisville	8.50	—0.38	16.1
Lexington	11.00	1.54	....
Paducah	11.50	1.85	....
Tennessee:			
Chattanooga	13.00	1.73	....
Nashville	12.00	2.11	0
Memphis	10.50	.18	27.6
Alabama:			
Birmingham	13.00	2.46	11.6
Selma	14.00	2.06	....
Huntsville	13.50	3.23	....

(CENTS PER GALLON.)

SOUTH CENTRAL STATES.—*Continued.*

	Price.	*Margin.*	*Per cent of competition.*
Mississippi:			
Jackson	13.50	2.11	....
Louisiana:			
New Orleans	9.50	—1.35	51.2
Baton Rouge	11.00	.21	....

(CENTS PER GALLON.)

WESTERN STATES.

	Price.	*Margin.*	*Per cent of competition.*
Montana:			
Butte	23.00	5.76	[a]0.8
Wyoming:			
Cheyenne	18.00	4.32	[a]0.6
Colorado:			
Denver	16.00	3.39	0
Leadville	20.00	5.47	0
New Mexico:			
Albuquerque	23.00	6.48	[a]7.0
Utah:			
Salt Lake City	20.00	4.09	[a]0.8
Washington:			
Seattle	15.50	4.17	0
Spokane	21.50	6.10	0
Oregon:			
Portland	15.00	4.12	0
California:			
Los Angeles	7.50	—3.16	[a]33.4
Oakland	12.50	2.46	[a] 0.3
Sacramento	13.00	2.45	0
San Francisco	12.00	1.73	[a] 7.1

[a] Includes city and its substations.

EXHIBIT 3

—— —— COMPANY[1]

The Government alleges that:

Mr. G—— A. G—— testified that immediately before the G——s were ready to go into the —— business, in the latter part of 1899 or

[1] Op. cit. —— —— *Company* v. *U. S.* —— for U. S. Vol. —, pp. 443-445.

early in 1900, the bottom dropped out of the prices at Albany and they practically did no business for about two years. (Vol. —, p. 1947.) His recollection is that the price went down from 12 cents to 6-½ cents ultimately. Mr. T. L. G—— says that the T—— reduced the price to 6 cents or 6-½ cents. When the G——s actually got started at Albany they sold oil as low as 7-½ cents, but did not meet the low prices made by the T——. (Vol. —, p. 1816.)

The marked difference between the prices at Albany, where there was active competition, and the prices in other cities in New York is vividly shown in Petitioner's Exhibit 635, which compares the T——'s prices of —— —— delivered at Albany with the prices of the same grade of —— delivered by —— wagons at New York City, month by month, from 1902 to 1906, and which also shows the margins of profit or loss. The price at New York ought normally to be lower than at Albany, as New York is at the very seat of the largest refineries of the T——. The exhibit shows that from 1902 to 1904 the price at Albany was most of the time 1 cent per gallon lower than at New York; that in 1905 it was from 1 to 3 cents lower than at New York; and that in 1906 it was for eight months 2.5 cents lower, and during the rest of that year 3 cents lower than at New York. The difference in the profit per gallon shown is about the same as the difference in the selling price. In 1902, during four months, the T—— was selling at Albany, at a loss of 0.31 cent per gallon, while there was a profit in New York of from 0.54 to 0.79 cent. During most of 1905 the profit at Albany was 0.20 cent per gallon or less, and in two months there was a loss; while in the same months at New York there was a profit ranging from 2.09 cents to 2.84 cents. In the last four months of 1906 there was a loss of 0.12 cent per gallon at Albany, and a profit of 2.74 cents per gallon at New York.

. . . . . .

X—— X——, a storekeeper of Albany, testified that, after he had been buying oil from the G——s, K——, a salesman for the T——, offered him a price one-half cent below the G——s' price. This offer was made in a conversation in which K—— indicated the price for which he would sell —— by raising up five fingers on one hand and then one finger and half on the other, indicating 6-½ cents. This price was to be made by means of a rebate and X—— says that K—— told him that tickets would be made out at the regular price and the amount of the cut returned to him subsequently. (——, vol. —, pp. 1932–37.)

K——, called by the defendants (vol. —, pp. 737–43), admitted that he used his fingers as X—— had said, but claimed that in doing so he was simply trying to find out the price that X—— was paying the G——s. When the question was first put to him whether he had offered oil to X—— at a cut price he did not answer positively but said he could not remember. After being badgered by defendants' counsel he finally said he had made no such offer. An examination of this witness's testimony in detail will satisfy the court that X——'s version of the matter is correct, and not K——'s.

K—— B——, a grocer at Albany, testified that after he had been buying from the G—— Brothers, the T——'s tank-wagon driver, one Y——, made him a proposition to sell him —— for six months at 2 cents a gallon less than the prevailing price, the 2 cents to be paid as a rebate; that the T—— afterwards refused to keep this agreement, and B—— deducted the amount of rebate to which he was entitled from a bill for candles which he owed the T——, and the T—— never attempted to enforce collection of the amount so deducted. (Vol. —, pp. 1970–72.)

Y——, called by the defendants, said in substance that he had played a trick upon B——, that he told him that he was going to give him —— for 2 cents below the market price, when, as a matter of fact, Y—— knew that the market price was to be reduced on the following day. (Vol. —, pp. 838–42.)

GROUP 5 [1]

EXHIBIT 1

—— CREDIT AGENCIES [2]

The Government alleges that:

Throughout the period from about 1904 to the present time, the financial credit and business standing and classification of ——

[1] In the various wholesale and retail dealers' associations the restraint of trade involved is somewhat different than that in other types of combinations. It resolves itself into three main objects; first, to prevent shipments from manufacturers and wholesalers direct to consumers; second, to confine shipments from manufacturers and wholesalers to those who are regarded as legitimate retail dealers; third, to confine the trade of the retailer to his legitimate territory. The manner and methods of accomplishing these three objects is through a more or less arbitrary system of classification. Failure to conform to ethical standards of business has led to attempts to force the recalcitrant into line by various methods. Cf. Chap. XII, Groups 6 and 7.—Ed.

[2] *United States of America* v. —— —— —— *and others.* Petition, In Equity, In the —— Court of the United States for the District of ——, pp. 34–36.

dealers is reported in certain —— credit books recognized by all dealers, including the defendants herein, as establishing the credit rating, business standing, and classification of said dealers for all the purposes of the —— trade. These said —— credit agencies are known to the trade as the "Blue Book" and the "Red Book."

The "Blue Book" is owned and published at Missouri, by the —— —— Credit Manufacturers' Corporation, a corporation of the State of Virginia, the stock of which is owned or fully controlled by the —— —— Manufacturers' Association, which association is composed of fifteen or more of the largest manufacturers' associations throughout the United States.

The "Red Book" is published at ——, Illinois, by the ——'s Credit Association, a corporation of the State of Illinois, and is similar in its form to the said "Blue Book," and is used for the same purpose.

The ratings contained in said "Blue Book" and said "Red Book" are fixed by properly designated officers of the said Credit Manufacturers' Corporation and said Credit Association, respectively, who have been for many years last past and now are in direct communication by correspondence with the defendants herein, —— ——, —— — ——, and —— — ——, relative to the listing and standing of retail dealers in various parts of the territory covered as aforesaid by the —— ——'s Association. During said period said officials of said —— credit agencies have sent advance printed proof sheets of new issues and corrections of said credit books to the defendant, —— — ——, as well as to officials of other retail —— dealers' associations, and in pursuance to said conspiracy said —— — —— has ordered, directed and made various changes in said credit books by way of eliminating the names of dealers whose business did not conform to the standards of classification arbitrarily adopted by the members of the said —— ——'s Association as hereinbefore described; and in the said credit books or by special reports various dealers have, at the solicitation and instigation of said —— — —— and others been designated as contractors, cooperative ——, mail-order houses to distinguish these from what is accepted by the members of said —— ——'s Association as legitimate —— dealers entitled to purchase —— at wholesale prices. In the key to numbers shown in the said "Red Book" there appears as a part of the plan of arbitrary classification as aforesaid the following:

63. Regarded as consumers by retail —— association.

In further pursuance to said conspiracy and combination during the period aforesaid, as was agreed between the publishers of said "Red Book" and the secretary members of said —— ——, Bureau of Information that in consideration of being indemnified on account of any possible damage suits, said publishers should list —— dealers, operators, contractors, and consumers, as aforesaid, in accordance with the classification fixed by said organized retail —— dealers' associations.

The purpose and effect, well known and intended by defendants herein, in thus employing the said credit agencies to fix this arbitrary classification of the —— trade, as aforesaid, has been to deprive the contractors and builders and the cooperative ——s and the mail-order houses and other consumers, as aforesaid, of the right to buy freely from manufacturers and wholesalers, as hereinbefore more particularly alleged.

EXHIBIT 2

REPORT, COMMITTEE ON TRADE RELATIONS, —— —— —— DEALER'S ASSOCIATION [1]

——, *March 1, 1899.*

In making this report of the result of the first year's work of the committee on trade relations, we wish first to refer to the events which led up to the creation of this committee. In February, 1898, certain wholesale dealers in North ——, realizing the great loss they were suffering, both in volume of trade and percentage of profits, caused by the competition of a class commonly known as scalpers, called for a general meeting of the —— ——'s Association to discuss the question. The result was the passage of a resolution condemning the business of the scalper and an agreement of all members present at the meeting not to sell to any scalper who was reported to be selling to a class of trade not legitimate.

At the last annual meeting of this association at ——, a letter was received from the —— —— —— Trade Association, presented by Mr. J. — ——. This letter, after referring to the losses occasioned both to the wholesale and retail dealers by scalpers, says: "The remedy for this evil, in our opinion, lies in concerted action by the retailer and wholesaler against the offenders, and to this end

[1] *United States of America* v. —— —— —— —— *Dealers' Association.* Original Petition, In the —— Court of the United States for the —— District of ——, Exhibit E, pp. 76–80.

we ask you to appoint a committee, with power to confer with this committee, to see that united action can be taken in the matter."

The result was that by practically a unanimous vote the —— —— —— Dealers' Association established the committee on trade relations.

Unavoidable delays prevented our holding our first meeting until the following July, at which time there developed the idea that the committee on trade relations was to act as a classification committee. Such a construction would positively have prevented this committee from doing anything toward the intended end, for it was readily seen that their work could only be successful by commencing after classification was decided.

One of the greatest causes of friction between the wholesale and retail associations in the past has been the question of classification of the trade, each side taking the stand that to them belonged the right to classify. Evidently, then, no mutual work could be done until this difference was overcome by some agreement between the —— —— —— Dealers' Association and the various retail organizations, which would provide for absolute final classifications wherever necessary.

Our first meeting for this purpose was with the committee on wholesale selling consumers of the —— —— —— Trade Association, held in New York October 11. The result of this conference was the adoption by the —— —— —— Trade Association and the —— —— —— Dealers' Association of the following resolution:

"Whenever a dispute as to the classification of any consumer is concerned the chairman of the committee on wholesale selling consumers of the —— —— —— Trade Association shall arrange for a joint arbitration between said association and the —— —— —— Dealers' Association by a committee consisting of one member of the —— —— —— Trade Association, to be appointed by the chairman of the committee on wholesale selling consumers, and one member of the —— —— —— Dealers' Association, to be appointed by that association; and in the case of disagreement by this committee, a third member of said committee shall be decided upon by the two members already serving, and the decision of this committee shall be final concerning such classification, it being understood that concerns decided to be —— and —— shall never be held a legitimate customer for the wholesaler to sell."

Up to the present time the —— —— —— Trade Association is the only retail organization that has positively agreed with our

association for joint final classification, but our committee has negotiated with the —— —— ——'s Protective Association and the —— Dealers Association of ——, and are very much pleased to report that after a conference with the committee on trade relations of the —— —— Retail Association, in which plan of work as hereafter outlined was discussed, we received the following letter from them:

——, — —, *February 3, 1899.*

CHAIRMAN COMMITTEE ON TRADE RELATIONS,
—— —— —— *Dealers' Association.*

Dear Sir: It is a pleasant duty to inform you that our committee on trade relations agreed with you as to the urgent necessity of a movement by the combined —— trade, as discussed at our informal conference on the first instant. The —— —— association can assure you of their earnest cooperation to bring about the ends aimed for on the broad lines outlined by ourselves at the conference.

I am with respect, very truly,

—— — ——, *Secretary.*

Our work so far, therefore, has been to provide a plan for joint final classification.

We have at all times realized that this was but the first step to be taken, and in all our conferences with representatives of the retail organizations we have discussed the next work necessary. Joint final classification is a good measure, as when adopted it removes the cause of friction in the past between the retail association and the —— Wholesale Association. But without further obligations on the wholesaler and retailers it cannot accomplish what we are seeking to attain. So the committee recommends that the —— —— —— Dealers' Association provide in its by-laws for the expulsion from membership of all members who sell the trade that is jointly classified as not legitimate trade for the wholesaler, and that in return for this action by the —— —— —— Dealers' Association *all retail dealers' associations provide some measure to induce the members to buy their stock only from such wholesale dealers as are members in good standing of the —— Wholesale Association.*[1]

A careful consideration of this plan we think will convince everyone that the possibilities for good results are large and only limited by the action of all in interest. The —— Wholesale Association can not accomplish the desired result alone, nor can the retail association, nor is it probable that both together can entirely

[1] Italics are the editor's.

eliminate the competition of illegitimate operators. But if the wholesale interests not now members of the —— —— Association will join through the association in saying to the retail dealers, We will not sell to anyone who seeks to injure your proper business; and, if in return, the retail dealers will to as great an extent as practicable buy of the members of the —— Wholesale Association, it seems apparent that good results must follow.

We have been met in this proposition many times by the statement, You can not get men, first, to promise to do what you ask, and next, after promising, to carry out their promises. In answer to this we have only to say, if that is so, then abolish your committee on trade relations, abolish your wholesale and retail associations, and let everyone go in and plunder each other to their full ability. But we do not believe that the large majority of —— dealers are so blind to their own interests or so weak in their determination as to come to such a conclusion, and so we have recommended to you a plan which we trust will open a discussion that will eventually result in a victory for proper business principles.

If successful in the work so far outlined, there are other questions for the —— Wholesale Association to take up. *The wholesalers to-day suffer a loss by the action of some manufacturers (who do not operate wholesale —— ——) in selling direct to retailers a portion of their product, by the action of some retailers in buying from such manufacturers a portion of their supply, by the action of some commission men, brokers, and inspectors, in endeavoring to do a business which is a positive injury to the legitimate wholesalers.* The wholesaler is just as much a necessity in the trade as the manufacturer, retail dealer, or consumer, *and his business must be protected from improper competition*, just as much as any other division, *to the end that a proper profit may accrue to all*, consistent with the amount of capital, energy, and ability employed.[1]

EXHIBIT 3

—— AGREEMENT OF THE —— ASSOCIATION[2]

The Government alleges that:

At a joint meeting held in —— March 1 and 2, 1899, of delegates from the —— —— —— Trade Association, the —— —— ——'s

[1] Italics in this paragraph are the editor's.

[2] Op. cit. *United States* v. —— —— —— —— *Dealers' Association.* Original Petition, Exhibit F, pp. 80–81.

Protective Association, the —— Retail Dealers' Association, the —— —— —— Retail Dealers' Association, the —— Retail Dealers' Association, the —— Retail Dealers' Association, the —— and —— Association, the —— ——'s Association, and the —— Association of —— Dealers, with the members of the —— —— —— Dealers' Association, it was unanimously voted to adopt the following:

First. That the —— —— —— Dealers' Association take up and formulate rules to classify the trade into sections, as follows:

1. Manufacturers.
2. Wholesale dealers or agents.
3. Retail dealers and other legitimate customers of the wholesale trade.

The retail trade to be classified according to the rules governing such trade in the various States at the present time, provided that in cases that may arise where the wholesaler and retailer do not agree before a sale shall be effected, the matter shall be submitted to a conference committee composed of one member from the retail association interested, one member from the —— —— —— Dealers' Association, and, in event of these two not being able to agree, they shall decide upon a third member of the committee, and the decision of such committee shall be final.

Second. That the —— —— —— Dealers' Association take up and consider the pronounced and recognized evils from which both branches are suffering, viz:

1. Sales by manufacturers and wholesalers to consumers.
2. Sales by brokers, agents, and commission men to consumers.
3. Sales and quotations by the so-called retail dealers to consumers, through agents, and by methods used by the wholesaler in soliciting trade from the retailers.
4. That the —— —— —— Dealers' Association consider and devise a plan which will enable them, with the cooperation of the retail trade, to control all such concerns.
5. That the —— —— —— Dealers' Association provide a plan whereby all wholesale dealers, manufacturers, commission men, agents, and brokers reported by a State association for selling to the consumers shall be reported to the wholesale trade and manufacturers and required to conform to legitimate rules of business.

The following resolution was also adopted:

"That it is the sense of this meeting that, in the event of the

—— —— —— Dealers' Association complying with the requests adopted here to-day, the retail dealers will pledge themselves so far as possible, to buy only of members in regular standing of the —— —— —— Dealers' Association."

EXHIBIT 4

REPORT OF TRADE RELATION COMMITTEE [1]

* * * So the first year's work of this committee, ably assisted by the committee on wholesale selling consumers of the —— —— —— Trade Association and their secretary, Mr. ——, has resulted in creating between the —— —— —— Dealers' Association and the various retail dealers' associations mentioned the great essentials to all trade-relations work, namely, confidence and joint action; and the outcome of this was the —— agreement. The first work which the —— agreement called for was the classification of the various branches of the trade. The committee thought best to temporarily pass subdivisions Nos. 1 and 2 of section 1 and to devote themselves to determining what was legitimate trade for the wholesalers to sell to. The agreement provided that this branch should be classified according to the rules governing such trade in the various States at the present time, with a proviso for settlement by joint conference of all cases where the —— Wholesale Association classification did not agree with that of the local retail association. So the secretaries of all retail associations parties to the —— agreement were requested to notify the secretary of the —— Wholesale Association whenever in their judgment any wholesaler was selling a trade which the retail association did not consider legitimate. Upon receipt of such request the secretary of the —— Wholesale Association provided a classification committee for each individual case.

If the decision of such committee agreed with the decision of the retail association nothing further was necessary except to record the decision. If the two classification committees disagreed, each went to a conference committee.

* * * * * * * * * * * *

We feel that the progress made and herein reported is secure and on a firm foundation, but we particularly call your attention to the further requirements of the —— agreement, so the subject

[1] Op. cit. *United States of America* v. —— —— —— —— *Dealers' Association*, Exhibit G. pp. 82–83.

may have your best thought and judgment and that this association will be growing in its ability to grasp and intelligently decide all questions of trade relations. These requirements are:

First. That we extend our classifications so that we will cover all the provisions of the —— agreement, and not only jointly determine who is proper and legitimate trade for the wholesalers to sell to, but who it is legitimate for the retailers to buy from; who it is legitimate for the manufacturer to sell to, and to establish a plan for recording all persons engaged in any form of scalping.

Second. We will again refer to that portion of the —— agreement which says: It is the sense of this meeting that in the event of the —— —— —— Dealers' Association complying with the request adopted here to-day, the retail dealers will pledge themselves, so far as possible, to buy only of members in regular standing of the —— —— —— Dealers' Association.

Third. The recent reports of the annual meetings of various retail associations show that the retailers are looking to the —— —— —— Dealers' Association for support in all questions pertaining to trade relations. This is a pleasure to know, for your committee thinks it is proper that all persons between the wholesalers and retailers should be referred to and adjusted by the —— Wholesale Association for the wholesalers and the State retail associations for the retailers.

Fourth. We refer to section 3 of the second provision in the —— agreement, which says: Sales and quotations by the so-called retail dealers to consumers through agents and by methods used by wholesalers in soliciting trade from the retailers.

Fifth. The work of this committee has entailed on the association unusual expenses, and as the work progresses these expenses will increase. The committee should not be limited in its future work by lack of money. We ask your consideration of this question, so that at the proper time this necessary support will be furnished.

GROUP 6

EXHIBIT 1

CUSTOMER'S LISTS OF THE —— ——'S ASSOCIATION [1]

The Government alleges that:

During the period of several years last past the officers of said —— ——'s Association adopted, in further pursuance to the afore-

[1] Op. cit. *U. S.* v. —— —— —— *and Others.* Petition, pp. 36–39.

said conspiracy and combination, a scheme involving the use of so-called "customer's lists"; that is to say, the defendant, —— — ——, as secretary of said last-named association, and with the knowledge, approval, and assistance of the officers and directors thereof, defendants herein, secured from the members of said association the names and addresses of the manufacturers and wholesale dealers with whom the said retail members carried on the business of buying and receiving —— in the regular course of the interstate trade and commerce heretofore described. These lists were then rearranged by said —— so that at all times he was informed of the names of the retail customers in his territory doing business with a large number of manufacturers and wholesalers located in many States. The method of using said lists in pursuance to said conspiracy and combination was and is as follows:

Upon learning of a shipment of —— from a manufacturer or wholesaler to a consumer as aforesaid, said —— — ——, acting as secretary of said association, notified a number of the retail —— customers of said manufacturer and wholesaler making the so-called unethical shipment, which customers, in accordance with a prearranged plan, wrote to said manufacturer and wholesaler, protesting against such shipment and threatening withdrawal of trade if the same practice continued. At other times the said —— — ——, acting in his capacity as secretary of said ——'s Association, wrote to such offending manufacturer and wholesaler concerning such so-called nonethical shipment, representing that the regular retail dealers resented sales to consumers by manufacturers or wholesalers, and so using the power of the united strength of such retailers to compel said manufacturer and wholesaler to cease dealing with such consumer.

Another use to which said "customer's lists" were put by said —— — —— acting as secretary of said association as aforesaid, in further pursuance to said conspiracy and combination during many years last past has been to exchange said lists with other secretaries of other —— trade associations operating in other States than those covered by said ——'s Association as aforesaid, and when so exchanged the same method was pursued by said other secretaries in using such exchanged lists, that is to say the said other secretaries would write letters of complaint or cause the members of their respective associations to write letters of complaint to the said manufacturer or wholesaler on account of such "nonethical" sales.

In further pursuance to said conspiracy and combination said —— — —— as secretary of said —— ——'s Association, and the approval and cooperation of the officers and directors of said association, some of whom are defendants herein, conducted extensive correspondence with other secretaries of other —— trade associations conveying information as to the alleged nonethical dealers in —— who had sold and shipped —— to consumers in violation of said "code of ethics," doing business as aforesaid in various States of the United States, the purpose and effect of such correspondence being to restrict the trade of the manufacturer and wholesaler to the regularly recognized retail —— dealer as aforesaid.

EXHIBIT 2

CIRCULATION OF INFORMATION [1]

The Government alleges that:

In further pursuance to said conspiracy and combination, during the period aforesaid, the said —— — ——, acting as secretary of said —— ——'s Association and as a member of said —— ——s' Bureau of Information, with the aid, assistance, and cooperation of said —— — ——, and with the aid and assistance of other members, officers, and directors of said —— ——'s Association and other dealers and members of other trade associations not named herein as defendants, collected the information of sales and shipments of —— from the manufacturers and wholesale dealers to consumers hereinbefore mentioned, and with the knowledge, consent, and approval of all other parties heretobefore in this paragraph mentioned, and did thereupon, about March, 1909, furnish such information to the members of the said —— ——s' Bureau, which information, with the names of the offending manufacturers and wholesalers, was distributed to the various retail dealer members by the secretaries of the various trade associations affiliating with the said —— ——s' Bureau of Information; and the said information, with correspondence and records of proceedings, was published in the trade paper called the —— in the year 1909, such publication being accomplished by said —— — —— and other secretary members of said —— ——s' Bureau, with the intent and purpose of depriving the said offending manufacturers and wholesale dealers of the trade of all retail —— members of all the trade associations affiliated with said —— ——s' Bureau of Information as aforesaid.

[1] Op. cit. *U. S.* v. ——. Petition, pp. 51–52.

EXHIBIT 3

"YES" AND "NO" LISTS OF THE —— —— —— DEALERS' ASSOCIATION [1]

—— ——, *November 18, 1899.*

To the members of the association:

Upon submission to the classification committee of an inquiry as to whether —— & ——, New York City; —— Bros., ——, N. J.; — — —— & Co., Boston, Mass.; — — —— & Co., ——, N. J.; — — ——, ——, N. Y.; —— Manufacturing Co., Providence, R. I.; are legitimate customers of the wholesale trade, under the principles recognized by this association, said committee has carefully investigated and expressed the opinion that the above are within the class of dealers whose requirements entitle them to buy of the wholesaler.

This decision is communicated to you by order of the board of trustees.

Yours, very truly,

COMMITTEE ON TRADE RELATIONS.
— — ——, *Secretary*

YES.

—— ——, *August 1, 1900.*

To the members of the association:

Upon submission of the question to our classification committees as to whether the parties named herewith should be considered legitimate customers of the wholesale trade, under the principles recognized by this association, said committees have carefully investigated and expressed the opinion that they are not within the class whose requirements necessitate their buying of the wholesaler.

This decision is communicated to you by order of the board of trustees.

Yours, very truly,

COMMITTEE ON TRADE RELATIONS.
— — ——, *Secretary.*

NO.

(Here follows a list of 78 names of individuals and firms, manufacturing concerns, etc. in the States of New York, New Jersey, Pennsylvania, and Connecticut.—Ed.)

[1] Op. cit. *U. S.* v. —— —— —— —— *Dealers' Association.* Petition, Exhibits O and P, pp. 92–93.

EXHIBIT 4

CIRCULAR ISSUED BY —— —— —— DEALERS' ASSOCIATION TO THE TRADE [1]

The following have been reported by the various eastern associations as jobbing or selling directly or indirectly to consumers. The members of the —— —— —— Dealers' Association are requested to cooperate with the eastern associations by refusing to sell them ——.

(Here follow the names of more than fifty individuals, partnerships, and corporations engaged in the —— trade.—Ed.)

EXHIBIT 5

OFFICIAL REPORT OF THE —— —— —— —— DEALERS' ASSOCIATION, — ——, NEW YORK, N. Y.[2]

Statement to members, April 1909.—You are reminded that it is because you are members of our association and have an interest in common with your fellow members in the information contained in this statement, that they communicate it to you, and that they communicate it to you in strictest confidence and with the understanding that you are to receive it and treat it in the same way.

The following are reported as having solicited, quoted, or as having sold direct to the consumers:

(Here follow the names of more than fifty individuals, partnerships and corporations engaged in the —— trade.—Ed.)

REMOVED SINCE LAST REPORT.

(Here follow the names of fifteen individuals, partnerships, and corporations engaged in the —— trade.—Ed.)

Members upon learning of any instance of *persons soliciting, quoting, or selling direct to consumers should at once report same, and in so doing should, if possible, supply the following information. The number and initials of car, the name of consumer to whom car is consigned, the initials or name of shipper, the date of arrival of car, the place of delivery, the point of origin.*[3]

[1] Op. cit. *U. S.* v. —— —— —— —— *Dealers' Association*, Petition, Exhibit T, pp. 97–98.

[2] Op. cit. *U. S.* v. —— —— —— —— *Dealers' Association.* Petition, Exhibit U, pp. 98–100.

[3] Italics are the editor's.

As we are associated for mutual protection, we should not go into territory where our associates have —— and sell or offer to sell —— at a price lower than we sell it in our home territory.

EXHIBIT 6

—— —— —— —— ASSOCIATION [1]

The Government alleges that:

First. During the period aforesaid defendants have conspired and confederated together to prevent manufacturers of ——supplies located throughout the United States from selling and shipping —— supplies to any persons, firms, or corporations located in the States of California, Washington, and Oregon who have not belonged to the —— —— —— —— Association and whose names have not been listed in a book called the "Blue Book," to be hereinafter described. . . . In order to force the manufacturers of ——supplies to refuse to sell and ship to persons other than the defendants, defendants by agreement with each other have continuously during said period refused to order or buy —— supplies from such manufacturers of —— supplies as have sold and shipped said supplies to persons in the States of California, Washington, and Oregon who are not members of the —— —— —— —— Association and are not listed in the Blue Book.

Acting under agreement with each other, defendants have withdrawn their business from manufacturers who have sold and shipped to persons who have refused to join said —— —— —— —— Association, or to persons whom defendants have not recognized as legitimate jobbers, and have not admitted to membership therein, and defendants have boycotted such manufacturers until they compelled them to confine their sales to defendants.

Second. The defendant —— ——of the —— —— Associations, acting in agreement with the other defendants, has since January 1, 1907, printed from time to time and issued a list of jobbers of —— supplies in the United States, commonly called in the trade the "Blue Book," and has distributed said list to manufacturers engaged in the manufacture and sale of —— supplies, and to the jobbers named in the Blue Book. In the Blue Book are printed arbitrary definitions of a manufacturer and jobber of —— supplies. These definitions express the opinion of the defendants as to the

[1] *United States of America* v. —— —— —— —— *Association.* Petition in Equity, In the —— Court of the United States for the —— District of ——, pp., 12–14.

qualifications necessary in order to entitle one to be called a manufacturer or jobber and to be treated as such. It is the intention of the —— —— and of the defendants that the Blue Book shall be considered by the manufacturers as containing the names of all persons, firms, and corporations in the United States who are legitimate jobbers of —— supplies. All the defendant corporations and partnerships (except the —— —— of the —— —— Associations are listed in the Blue Book; furthermore, these defendants are the only persons, firms, or corporations located and doing a —— business in the States of California, Washington, and Oregon who are named in the Blue Book.

During said period no person, firm, or corporation desiring to engage in business as a jobber of —— supplies in the States of California, Washington, or Oregon could be listed as a jobber in the Blue Book except at the arbitrary discretion of a majority of the jobbers belonging to the —— —— —— —— Association, and doing business in the locality where said person, firm, or corporation desired to do business as a jobber, and no person can now be so listed except by the consent of such jobbers. In order to prevent an increase in the number of jobbers of —— supplies in said three States, defendants, agreeing together, have repeatedly and arbitrarily refused to give their consent to the listing in the Blue Book of persons, firms, and corporations desirous of engaging in business as jobbers in said States.

GROUP 7

EXHIBIT 1

—— TRADE [1]

The Government alleges that:

From about the year 1904 to the present time —— — ——, defendant herein, has conducted a detective agency under the name and style of the —— Information Bureau. The said —— is a regularly paid employee of the voluntary association heretofore described as the ——'s Association. During the several years last past, and until the present time, said ——, with the assistance of a corps of detectives, and in the performance of work done in pursuance to and in assistance of said conspiracy and combination, has collected information respecting sales and shipments of —— from manufacturers and wholesalers to consumers, and has fur-

[1] Op. cit. *United States* v. ——. Petition, pp. 54–55.

nished said information to said —— — —— and other secretary members of the said —— ——s' Bureau of Information for the uses and purposes hereinbefore described, and to the said —— — —— for the purpose of having the same published in the said —— —— ——, and so distributed throughout the —— trade in various states reached by said publication, all with the intent and purpose on the part of said ——, ——, and —— of preventing sales and shipments of —— in the trade aforesaid between the manufacturer and wholesaler on one hand and the aforesaid consumer on the other. Said —— also conducted investigations and made reports to the officers and members of said —— ——'s Association of the character of the business done by various retail —— dealers in various States, which dealers had not complied with the aforesaid rules and regulation entitling them to membership in said last-named association, and in pursuance to said general conspiracy and combination said ——, with knowledge, approval, and assistance of the officers and members of said —— ——'s Association, adopted and carried out various schemes and devices for the injury and destruction of the business of said retail —— dealers who desired to do business in a manner different from the code of ethics and rules adopted by said association. The money used in promoting the work of said —— and the said —— Information Bureau was raised by subscriptions paid by members of said —— ——'s Association and others, and solicited by said —— and —— — —— and other secretary members of said —— ——s' Bureau of Information.

EXHIBIT 2

EXPLOSIVES TRADE [1]

A. I endeavored to locate the trade that the Chattanooga Powder Co. was supplying and then take it away from them by naming lower prices.

Q. Did you locate the trade?

A. I was advised by the railroad agent at Ooltewah, Tenn., who was in the employ for the purpose of furnishing us with the information regarding all of the shipments of the Chattanooga Powder Co.

Q. Who employed him?

A. I did, sir.

[1] Testimony of F. J. Waddell, op. cit. *U. S.* v. *E. I. du Pont de Nemours and Company.* Pet. Rec. Testimony, Vol. I, pp. 257–264.

Q. When?
A. I think it was in the year 1893.
Q. What did you pay him?
A. I first paid him $15 a month, and later $18.
Q. What was he to do for that?
A. He was to furnish a weekly statement showing all shipments of powder made from Ooltewah, Tenn., by the Chattanooga Powder Co., giving name of consignee, the number of kegs, and the destination.
Q. What did you do with the reports that were made to you?
A. I mailed a copy of it to Wilmington, Del. every week.

EXHIBIT 3

—— —— COMPANY [1]

REPORTS OF COMPETITIVE SHIPMENTS OBTAINED FROM RAILROAD EMPLOYEES IN OTHER PARTS OF THE COUNTRY.

BIRMINGHAM, ALA.

The Government alleges that:

G. T. X——, who was assistant to the manager in the office of the T—— —— Company at Birmingham up to some time in 1902, testified that at that time the T—— had a system of obtaining from railroad clerks, information concerning shipments of —— in that territory by independent concerns, including both shipments into Birmingham and shipments from Birmingham to all points. This information was sent by the railroad clerks to a post-office box, without any name, this box being rented by the T—— —— Company for that purpose alone. The information so obtained was furnished to traveling salesmen and other agents of the T—— with instructions to get the business in any way they could; the T—— was usually able to get its representative to the customer before the shipment got there. (Vol. —, pp. 2152–5.)

. . . . . .

TERRITORY OF —— —— COMPANY OF ——.

D. J. D—— was employed by the T—— from about 1885 to about 1900 as special man in the sales department with headquarters at ——. The territory of the T—— —— Company of ——, with which he was then connected, originally included

[1] Op. cit. —— —— *Company* v. *the United States.* —— for United States, Vol. —, pp. 597–601, 607–609, 615–618, 620–622.

Michigan, part of Indiana, and nearly all of Ohio. D—— testified that during all that time the T—— —— Company received reports of competitive shipments throughout its territory, which were generally understood in the office to come from railroad employees. (Vol. —, pp. 3030–32.)

. . . . . .

D—— also testified to individual cases in which he knew of agents of railroads furnishing information regarding competitive shipments. He stated (vol. —, pp. 3032–33) that at Alliance, Ohio, the agent of the —— Railroad furnished such reports and received —— free as compensation, and that at Massillon, Ohio, the agent of the —— & —— —— did the same, and also received —— as compensation. The defendants called the agent of the —— Railroad at Alliance and the agent of the —— & —— —— at Massillon, who denied that they had furnished such information or received —— therefor; but on cross-examination it appeared, that there were numerous employees of the —— Railroad at Alliance and several employees of the —— & —— —— at Massillon. (——, vol. —, p. 1478; ——, vol. —, p. 1480.) It is quite evident that D—— used the term "agents" in a general way, referring to some person connected with the railroad office, and that the mere statement of these two head agents is no contradiction of his testimony. In this connection it may be noted that C—— was the T——'s agent at Massillon at the time testified to by D——, and that on June 11, 1900, K. W. I——, who was manager of the Cleveland station for the T——, wrote the letter (Petitioner's Exhibit 828) to C—— at Massillon, asking him about certain shipments of the H—— —— Company, and saying:

> It seems to me that you could learn this of local freight agent. If you can, let us know.

D—— also testified (vol. —, pp. 3032–3) that he knew about an arrangement at Lansing, Mich., where the clerk at the —— —— depot was furnishing information regarding competitive shipments, and was furnished blanks by the T—— —— Company upon which to report.

. . . . . .

POINTS IN ILLINOIS.

G. L. K——, who had been a —— salesman for the T—— in Peoria (Ill.) territory, testified that he was instructed by M——,

special agent of the T—— at Peoria, to go to Monmouth, Ill. where an independent concern, the X—— —— Company, was doing business, and make arrangements with employees of the railroads to furnish reports of that company's shipments; that he employed a freight handler in the office of the —— —— Railroad for $2 a month, who furnished this information, and that M—— paid him the amount by cash or check. (Vol. —, pp. 1336, 7.)

M——, testifying for the defendants, admitted (vol. —, p. 1017) that K—— got this information, and that he did not know but that he got it from railroads, but asserted that he did not pay him the $2 a month. It may readily be, however, that the item was included in K——'s expense accounts and paid in a general total, and not by way of separate, specific payment.

. . . . . .

COUNCIL BLUFFS, IOWA, AND LINCOLN, NEBR.

A—— B——, who at the time referred to in his testimony, 1895 and 1896, was employed by the T—— at Council Bluffs, Iowa, testified that he obtained reports of competitive shipments from employees of the ——, ——, —— ——, and —— railroads, covering all independent —— passing through Council Bluffs; that these reports showed the name of the consignor, the name and address of the consignee, and the number of barrels in the shipment; and that under the instructions of the T——'s agent at Council Bluffs, K—— W. T——, he gave these employees —— for such service (Vol. —, pp. 3142-3.)

He also stated (p. 3143) that he tried to make arrangements with railroad taggers and men whose business it was to get car numbers, etc., to make reports of the shipments from Lincoln, Nebr., of the N—— —— Company, an independent concern, and did not succeed, but that the T——'s own employees obtained the information by watching the goods at the depots. Later, when Mr. B—— was a traveling salesman for the ——, he received from the T——'s office lists of competitive shipments into his territory.

. . . . . .

—— —— TERRITORY.

J. J. D——, who was a salesman and division auditor for the —— —— Company from 1900 to 1903, testified that during this time there was a system in vogue by which the —— —— furnished

reports to its salesmen showing the competitive —— shipped into their respective territories; that frequently, on the basis of these reports, such salesmen would tell customers of independent —— companies about shipments of —— before the goods arrived; that the salesmen were instructed to find out the circumstances, the prices, and why the —— —— could not sell the customers. D—— also testified that he was instructed by Y——, the general manager of the —— ——, to falsely tell such customers that the —— they had bought had been originally purchased from the —— —— —— Company and that the —— —— could supply the same —— directly at a lower price. (Vol. —, pp. 906–13.)

Y—— was called as a witness for the defendants in the Missouri case in 1906, and on cross-examination was compelled substantially to admit that the —— —— —— Company regularly got reports from railroad employees regarding competitive shipments, and that these reports were paid for; and that the information thus obtained was sent to the —— —— agents, with instruction to cut prices if necessary to get the business. (Vol. —, pp. 1110–12.)

OTHER UNFAIR METHODS OF OBTAINING INFORMATION REGARDING CONPETITORS' BUSINESS.

. . . . . .

ALBANY, NEW YORK.

As already stated, G—— Brothers have for some years been actively competing with the T—— —— Company in the sale of the —— at Albany. It appears that in the spring of 1904, Mr. W—— E——, the T——'s manager at Albany, employed the F—— Detective Agency to secure information regarding the business of G——s. The transaction is described in the testimony of I. J. D——, who was a part owner of the F—— Detective Agency (vol. —, pp. 1952–62), and also in the testimony of M. R. O——, a driver of the G——s, to whom a bribe was offered to furnish information (vol. —, pp. 1923–28). There is no contradiction of this testimony by the defendants.

It appears that W—— E—— asked the managers of the detective agency to have someone bribe a driver in the employ of the G—— Brothers to furnish reports of their business. The detective agency engaged a man for this purpose, who met O—— and represented himself as in the insurance business. Later he met O—— again and told him what his real business was, and entered into an ar-

rangement by which O—— was to furnish at stated periods reports showing the business of G—— Brothers. He agreed to pay O—— $5 for each report, and actually gave him $5 in advance. O—— immediately informed G—— Brothers of what had taken place, turned over the identical $5 to them, which was marked for identification and produced at the time of taking the testimony in this case. He was instructed by his employers to proceed to carry out the arrangement.

The man who had interviewed O—— told him that he would receive a letter of instructions from New York. He did receive such a letter (Petitioner's Exhibit 645) signed "G—— N——," instructing him to send a report on the 10th of each month to G—— N——, 156 West 105th street, New York City, and to sign with an "X". Petitioner's Exhibit 647 is a letter subsequently received by O—— from G—— N——, dated May 13, 1904, which says in part:

> Report received and is satisfactory for a beginner.
> Try to be more accurate in the information in future, and have report include in full—
> (1) Dates when cars arrive.
> (2) Whether box or tank cars.
> (3) All letters and numbers on cars.
> (4) Contents of cars.

The man who went under the name of G—— N—— was really named V——. He forwarded the reports sent him by O—— to the F—— Detective Agency at Albany, and they in turn delivered them to the T——. W—— E—— furnished the F—— Detective Agency the money which was paid to O——.

D—— also testified that W—— E—— employed the F—— Detective Agency to furnish men to follow up and watch the wagons of the G——s in Albany and also the wagons of the independent U—— —— Company at Troy; that sometimes they would have one man following the wagons and sometimes as many as three; that these men kept a record of the places where the wagons made stops; that each of them was paid $4 a day by the detective agency, and that the T—— paid the detective agency for the services thus rendered.

Q——, one of the men who was employed by the detective agency to follow G—— Brothers' wagons, confirms this testimony. (Vol. —, pp. 1929–31.)

BIRMINGHAM, ALA.

G. T. X—— testified that when the G. T. X—— —— Company started in business in Birmingham, in 1905, the T—— had a man follow their —— wagons on a bicycle constantly to count the number of buckets delivered at each store. Later the T—— tried to get reports from the drivers of the X—— Company's wagons. X—— instructed one of his new drivers that the T—— —— Company would probably approach him in a day or two with a proposition to pay him for information, and that he should accept, and instructed him to agree to give a copy of the bills each night for 50 cents a day. Soon a representative of the T—— —— Company actually did make this proposition, and the driver furnished him misleading reports, which were made out by the manager of the X—— —— Company. (Vol. —, pp. 2157–8.)

S——, the special agent of the T—— at Birmingham during this time, testified that he never authorized an employee of the T—— to procure information from a driver of the X—— —— Company, and that it was never done with his knowledge or by his approval, and he does not think it was done at all. (Vol. —, p. 849.)

X——'s specific statement remains uncontradicted. S——'s subordinates might have done things of which he did not know. His duties covered the entire Birmingham division, including all or nearly all of Alabama.

PEORIA, ILL.

U. S. P—— testified that G—— C——, assistant manager of the T—— at Peoria, offered him $20 a month if he would get information regarding the shipments of the S—— —— Company from Peoria; and that he got the information by bribing N——, a teamster of the S—— —— Company, for $2.50 a week to furnish a report of all shipments, P —— in turn giving these reports to C——. This arrangement continued for about six weeks when it was discovered and the employee discharged. (Vol. —, pp. 1347–8.) This statement is corroborated in every respect by the testimony of Mr. Y. D. F——, manager of the S—— —— Company at Peoria, who discovered the bribery of his employee by Merritt. (Vol. —, pp. 1374–5.)

. . . . . .

INFORMATION OBTAINED BY THE T—— FROM —— INSPECTORS' OFFICE REGARDING COMPETITIVE BUSINESS.

D. J. D—— testified, that, while he was in the employ of the T—— from 1886 to 1900 in the territory of the T—— —— Company of ——, the state —— inspectors furnished the T—— monthly reports of their inspections of ——, and that he frequently saw the deputy inspectors at the —— Office of the T——. (Vol. —, p. 3034.) Petitioner's Exhibit 827 is a letter written by D. J. S——, manager of the —— —— and —— sales department at Cleveland, to J. W. K——, dated June 15, 1900. It states:

> It is important that as far as possible we secure the monthly competitive inspection through our local agents. There is no reason why our agents should not be able to secure this information promptly at points where deputy inspectors are located. Of course it is an "open book," and their excuse for asking for the figures is simply in order that they may have the information a little earlier than if obliged to get it through the regular channel. I assume that most of our local people are in close enough touch with the deputies to secure the desired information. Kindly impress upon them the importance of securing same promptly on the first of each month, forwarding to you, and you in turn to me, so that I will get the information not later than the 5th of the month.

G. B. ——, vice-president of the T—— —— Company of ——, called by the defendants, stated (vol. —, p. 1516–17) that the —— inspectors maintained public records that were open to anyone, and that the T—— had a right to examine these records for the purpose of ascertaining shipments or sales of competitors, and competitors could do the same. These records are public records for one purpose only, which is to show whether the —— bears the proper test. Moreover, the information which the T—— received was advance information, the above letter showing plainly that it was secured before the results of the inspections became a public record; and the T—— could have no legitimate need for advance information or for any information whatever except for the purpose of endeavoring to take trade away from the independents.

K. W. G——, who was manager of the T——'s Indianapolis territory for some time, testified that reports came to him mysteriously every day, delivered by a boy and written on plain paper in

lead pencil, showing the shipments of independent concerns, that he believed these came from the office of the state —— inspector, and that the practice continued until it was exposed by independent —— companies. (Vol. 3, pp. 1325–6.)

S. T. D——, who about 1900 became assistant to H——, the latter having succeeded G—— as manager at Indianapolis, testified (vol. —, p. 2507) that for about a year information of competitive shipments came to the office from a source which was rather a mystery to him at the time, but he afterwards learned from H—— that it was delivered by a young man who was in some way connected with the —— inspector's office at ——; that this young man went around examining barrels in the freight depots under the pretence of ascertaining whether or not they were correctly branded by the inspector's office; that he usually came every day with these reports and was very quiet about it; and that these reports showed the shipments of all companies doing business in Indianapolis except the T——, giving the names of the consignor and consignee, the quantity and kind of ——.

B——, testifying for the defendants, said (vol. —, pp. 892–93) that he had never heard of such a thing and did not believe there was a word of truth in it, but this is no contradiction of D——'s specific testimony. B—— was at Cincinnati and could not be expected to know all the details of the conduct of the business throughout the great territory of the T—— —— Company of ——.

Petitioner's Exhibit 840 is a circular letter addressed to salesmen, signed by L—— B. S——, manager, on the letter head of the T—— —— Company, dated September 16, 1904. It was received by E—— D—— (vol. —, p. 3144), while he was a salesman of the T—— in Nebraska. The letter is as follows:

> You understand we get a report from the state —— inspector every month, showing the number of barrels our competitors receive each of —— and ——, and from this report I find that the —— Oil Company is shipping out from 40 to 50 barrels a day; and yet the reports of competitive shipments sent in by our salesmen on Form 114 do not show anything like this amount; and our home office can not understand why there should be such a discrepancy. If you will give this matter your strict personal attention, it does appear to me that you ought to be able to find out how much of this —— and —— goes into your territory. I feel that salesmen with

ordinary judgment can get this information without making the merchant feel that they are too inquisitive, or that they are trying to pry into his private business. What it requires is a little diplomacy. We are not endeavoring to get this information for the purpose of criticism; what we want to know is who is receiving the outside —— and ——, and if we knew it would put us in a position to help you get the business. I want you to make a special effort in this matter, and send in Form 114 every day, and give us all the information you possibly can. Kindly bear this in mind, and oblige,

Yours, truly,

L—— B. S——, *Manager.*

At this point we may also call attention to certain testimony with regard to the abuse of the —— inspection system in the interest of the T——. N—— N——, who for many years was special agent of the T—— in the Decatur (Ill.) district, having a considerable territory under his jurisdiction, testified (vol. —, pp. 1298–1300) that the inspection of —— —— in his territory was simply a farce; that many of the inspectors did not have instruments for inspecting ——, and did not know how to inspect it, and had no desire to do so; that they would let the T—— itself have the stencils (for branding the statement of inspection on barrels, etc.) and use them, without any actual inspection. He said, further, that —— inspectors at the instance of the T——, sometimes being influenced by a cigar or a drink, would often condemn the —— of competitors although it was up to the legal test, and thus prevent its sale. He mentioned an instance at Vandalia in 1900 when the inspector condemned a carload of —— shipped in by the U—— —— Company, although as a matter of fact the —— would have stood the legal test.

GROUP 8

EXHIBIT 1

—— —— —— COMPANY [1]

The Government alleges that:

The defendant, —— — ——, and the other officers and directors of the said successive corporations, from time to time during the above period, caused to be maintained and did maintain at the factory, at ——, ——, a display room known as the "Grave-

[1] Op. cit. *U. S.* v. —— —— —— *Company.* Petition, pp. 21–22 and 25.

yard" or "Midway". In this room were shown ——s of competing companies which had been forced out of business by the methods above set out. Prominent display cards reporting the names of these companies, the date when they went out of business and the amount of money lost by them, appeared prominently in the exhibit. Manufacturers purposing to go into the business were shown this display, and it was pointed out to them by the said officers and their agents as the fate that would befall any company seeking to compete with them.

This process of intimidating manufacturers was known as the "glooming" process, and the room was sometimes known as the "glooming" room. Thousands of merchants and other visitors to the factory were shown this exhibit and told that it would be useless to buy other ——s, because competing concerns would soon go out of business and fail to maintain the guaranties given with their ——s. Said officers and directors, and their agents, pointed to such exhibit as a warning to competing manufacturers, dealers, and agents, and to other persons and corporations who contemplated engaging in the business of manufacturing and selling ——s, that all competition eventually would be suppressed, and that the "graveyard" would be the destination of competitors.

Said exhibit was maintained for the purpose of harassing and discouraging competitors, and for the purpose of injuring and suppressing their trade and commerce.

. . . . . .

. . The said defendant, —— — —— and the other directors, managers, officers, and agents of said successive corporations, including the defendant company, for the purpose and with the intent of intimidating and deterring others from engaging in such trade and commerce, and of injuring and suppressing others engaged therein, have from time to time published and caused to be distributed various lists purporting to contain the names of various —— companies which have ceased engaging in such trade and commerce. One of said lists so distributed in January, 1910, reads in part as follows:

"DEAD —— COMPANIES.

Within the past 15 years 158 —— companies have been organized to compete with the —— —— —— Co. Of these,

153 have failed in business. Their combined capital was $5,735,000. Their combined loss was $1,970,000. According to sworn affidavits of its officers, the Boston —— —— Co. alone lost $192,750.08. Of every 20 ——s sold, 19 are ——.

EXHIBIT 2

—— —— —— CO.

LETTER TO THE TRADE.[1]

JANUARY 15, 1910.

We enclose herewith new price list which we are mailing to the retail trade to-day. These prices are subject to the actual catalogue discount and the cash discount only.

We also enclose memoranda of the prices at which ——, ——, ——, ——, *and* —— cases, and —— —— will be billed in future to our jobbers. These prices are net, subject to the cash discount only.

These prices are confidential.

For the best interests of our business we have determined to sell our goods exclusively to jobbers, whom we find voluntarily conforming to our wishes as to the disposition by them of such goods.[2]

We shall make all specific sales, except of —— ——, without any restrictions whatever.

Whether or not our wishes as hereinafter stated be complied with we shall from time to time exercise our right to select the jobbers to whom we shall sell our goods, and we shall, irrespective of any past dealings, refuse to sell to those jobbers who, in our opinion, handle our goods in a manner detrimental to our interest or whose dealings with us are in any other respects unsatisfactory.[2]

Our present wishes are as follows:

First. Our goods bearing the following trademarks, to wit: ——, ——, ——, ——, ——, and ——, will be sold by us to our jobbers at fixed prices, subject to a cash discount, and we desire that sales of these goods by jobbers, whether to retailers or to jobbers, shall be without deviation at the prices fixed by us for sales to retailers subject only to the cash discount.

[1] *United States of America* v. —— —— —— *Co. and others.* Petition in Equity, In the —— Court of the United States for the —— District of ——, pp. 14–15.

[2] Italics are the Editor's.

Second. —— —— are sold only under the terms of the license covering their sales.

Third. On all other goods we place no restrictions as to the prices at which they are to be sold by jobbers.

Fourth. And further, we desire that the jobbers to whom we sell our goods bearing the following trade-marks, to wit, ——, ——, ——, ——, ——, ——, and —— *shall not deal in any* —— *other than those manufactured by us.*[1]

Fifth. All advertisements of our goods will be subject to our Approval.

Very truly, yours,

THE —— —— —— COMPANY.

GROUP 9

EXHIBIT 1

—— —— —— COMPANY [2]

The Government alleges that:

The defendant, —— — ——, and the other directors, managers, and officers of the said successive corporations, from time to time, during the above-named period, caused to be built, and did build, ——s to resemble in a general way the appearance of other competing ——s and to produce the same results and perform the same functions. These ——s were not built or offered for sale in good faith, but for the sole purpose of knocking out competing ——s and driving competitors from the field. Such ——s were sold without regard to the cost of their manufacture and at such prices as would ruin and destroy competitors; and their manufacture and sale was discontinued after the competitor had been driven out of business.

These machines were generally known as "knockers," and were put into the field whenever a new —— made by a competitor appeared on the market, and were used solely for the purpose of destroying the business of such competitor and of interfering with contracts made by such competitors with purchasers of their ——s.

. . . . . .

[1] Italics, beinning with "shall" are the Editors.

[2] Op. cit. *U. S.* v. —— —— —— *Co.* Petition, pp. 16–19, 23–24.

The defendant, —— — ——, and the other directors, managers, officers and agents of the said successive corporations, from time to time, during the above-named period, pursued the policy of advertising for sale ——s manufactured by competitors, at prices below the cost of manufacture, and below the prices paid for such registers. . . . . These competing ——s were acquired by the defendant company and its predecessors from merchants who had purchased them of competitors, and from dealers and agents of competing ——s whom they had either forced out of business by threats or intimidations, or whose business they had purchased for large sums of money. Such ——s, when so acquired, were then advertised and offered for sale at such greatly reduced prices for the sole purpose of injuring and discouraging such competitors and of discouraging and forcing them out of business; and said directors, managers, and officers also pursued the policy of establishing —— agencies in the immediate neighborhood of competing dealers and of so advertising and so selling ——s dealt in by such dealers, and, after forcing such competing dealers out of business, by the methods above set forth, the agencies which were so established were discontinued.

Such directors, managers, and officers also instructed and directed their agents to pursue the practice of threatening to establish agencies in the immediate neighborhood of competing dealers, and causing competitors to fear financial losses which would ensue, have thereby forced such competitors out of business.

. . . . . .

The defendant, —— — —— and the other directors, managers, and officers of the said successive corporations have, from time to time, caused to be held and have held various conventions, meetings, and conferences which were attended by agents and other employees, and at which the schemes and plans for preventing and destroying competition and of creating a monopoly were discussed, and at which said agents and employees were instructed and directed to hinder and prevent the sale of ——s by competing companies, agents, and dealers, and at which such agents and employees were instructed and directed to pursue the various wrongful and unlawful methods herein set forth.

The said directors, managers, and officers also caused to be sent out, and did send out, various letters of instruction to their agents

and employees directing them as to further methods of obstructing and suppressing the trade of competitors.

The said directors, managers, and officers, from time to time, during the said period, caused to be published and did publish a paper known as "The — — —," which was sent out to agents as confidential matter, and which was intended to be and was regarded as a printed letter of instruction. The directions given by the managers and officers of said successive corporations, and various speeches and statements of such managers and officers, were published therein, and their views given circulation among the agents through the medium of this journal. This publication frequently announced the intent and policy of such directors, managers, and officers to monopolize the —— industry, and by means of said journal agents were imbued with the spirit and plan to obtain such monopoly and to exclude other competitors from the —— business by wrongful and unlawful methods. Said agents, in other ways, were directed, advised, and instructed by such directors, managers, and officers to pursue a war of extermination against all competitors, and were threatened with dismissal, and were dismissed, for permitting competition to exist in their territory. Said agents, so advised and instructed in such meetings and through such letters and publications and by other means, thereupon carried out and assisted in carrying out such plans and purposes of such directors, managers, and officers.

. . . . . .

The defendant, —— — ——, and the other directors, officers, and agents of the said successive corporations have, from time to time, during the above-named period, threatened to institute, and have instituted and caused to be instituted, various suits against competitors, dealers, and manufacturers, for the sole purpose of discouraging, preventing, and suppressing the manufacture and sale of other ——s.

Such directors, managers, and officers instituted such unwarranted and unjustifiable suits for the purpose and with the intent, by reason of the heavy expense which would be incurred in such litigation, of the sooner being able to crush competitors, and as a result thereof, of purchasing the business of such competitors and making the dismissal of such suits a part of the consideration for the agreement of such competitors not to again engage in such business.

And such directors, managers, and officers, from time to time,

during the above-named period, conspired and agreed with various of the persons so sued by them and whose business they had secretly purchased, that such persons should not hereafter make any defense to such suits, or make only such defense as would enable the successive corporations to obtain judgments in their favor.

Said directors, managers, and officers would cause the result of such collusive judgments to be advertised and did widely advertise the securing of such judgments, for the purpose of further threatening and harassing competing manufacturers, their dealers, and agents, and the users of competing ——s.

. . . . . .

The defendant, —— — ——, and the other directors, managers, officers, and agents of the said successive corporations have, after a long series of assaults upon competing manufacturers, dealers, and agents, by the methods and means above set out, and by other methods, coerced, persuaded, and prevailed upon them to cease manufacturing and selling —— or handling the same; and said directors, managers, and officers have caused to be paid and have paid out of the treasuries of said successive corporations large sums of money to various manufacturers and dealers in consideration of the purchase of their business and agreement to abandon the same and thereafter not to engage in such business.

Said directors, managers, officers, and agents, in the manner above set out, also coerced, persuaded, and prevailed upon various agents of competing companies to violate their contracts of employment with competitors and to abandon their employment, and have paid such agents large sums of money for so doing; and have, in consideration of their abandonment of such contracts and such employment, promised and given to such agents employment.

EXHIBIT 2

—— —— —— COMPANY [1]

The Government alleges that:

Some time during the year 1905 a large number of producers of —— of —— and —— caused to be organized under the laws of

[1] *United States of America* v. —— —— —— *Company et al.* Petition in Equity, In the —— Court of the United States, for the —— Division of the —— District of ——, pp. 11–13.

the State of Florida a distributing company, known as the —— —— Export Company, with a large capital stock, the avowed purpose of this organization on the part of the producers being to create a normal competition and to free the trade in —— of —— and —— from the grasp of the aforesaid combination and monopoly, and to steady the market prices in —— of —— and ——, and to render the business of the producer less precarious and less hazardous.

Thereupon, as soon as the said —— —— Export Company entered into active business, the aforesaid S.— —— Company, —— —— Company, —— A—— —— —— and —— & ——, S. S—— ——, —— S. ——, J. — —— ——, C. — ——, —— M. ——, and —— —— entered into the fiercest trade warfare against said company, and arbitrarily ran the prices of —— of —— and —— in the producing section up far beyond any actual value, and by a system of spying upon said —— —— Export Company ascertained who its customers were, and offered —— of —— and —— to said customers far below the actual cost of the same; and said —— —— Export Company, being thus unable to dispose of its stock of —— of —— and ——, accumulated a large quantity thereof, a great part of which was hypothecated to the banks. Thereupon the S. — —— Company and others, by unfair manipulation, caused the Savannah market to decline abnormally, actually causing the quotations in —— of —— to be reduced 30 per cent in two weeks, which decline in the market caused the banks to call upon the —— —— Export Company for additional margins, which it was unable to put up, and the —— —— Export Company was thus compelled to sell out all of its accumulated stock in —— of —— and —— to the aforesaid combination at such a loss that its capital stock was almost entirely wiped out. Said combination then and there exacted from the —— —— Export Company a written contract not to further engage in the business of buying, shipping, and selling —— of —— and —— for a period of five years, which left the aforesaid combination in almost complete control of the distributing part of the interstate and foreign commerce in —— of —— and ——.

The combination then attacked all the few remaining competitors it had with a system of spying and by other unfair methods of competition, such as overbidding weak competitors in the purchase of —— of —— and ——, and offering to undersell weak competitors to their customers, and arbitrarily bidding the Savannah market

up or down as suited its purpose; and was thus enabled to acquire control and did control approximately 90 per cent of the American product in —— of —— and ——.

EXHIBIT 3

CONSOLIDATION COAL COMPANY [1]

The Baltimore and Ohio Railroad Company owns something over 52 per cent of the capital stock of the Consolidation Coal Company, which was acquired about 1873, and thus it controls the coal company and the Cumberland and Pennsylvania Railroad Company (p. 973). The Consolidation Coal Company is a large miner of coal (pp. 879–880, 2177). In 1904 it mined 1,833,371 tons.

In 1904 the Consolidation Coal Company acquired a majority of the stock of the Metropolitan Coal Company of Boston (p. 879), which latter company is engaged in the retail trade, buying coal f. o. b. Baltimore or Philadelphia, as the case may be, and carrying the same to Boston and there distributing it, by retail, to the trade at that point and interior towns (pp. 885–886). The Consolidation Coal Company has barges which are occasionally used in carrying the coal for the Metropolitan Coal Company, but usually it is carried in vessels chartered by the latter company (p. 886). In 1903 the Consolidation Coal Company acquired a majority of the stock of the Somerset Coal Company, paying therefor the sum of $22.50 per share (p. 975). (Minute book of the Consolidation Coal Company.)

THE FAIRMONT COAL COMPANY.

On the 20th day of June, 1901, the Fairmont Coal Company was organized, and as of July 1, 1901 (p. 939), purchased a large amount of coal property upon which were located some 35 mines, more or less, from Mr. C. W. Watson and others (p. 941, etc.) The coal produced by these mines amounted to a very large tonnage, to wit:

	Tons.
1902	3,934,217
1903	3,691,783
1904	3,750,176

[1] Report on Discriminations and Monopolies in Coal and Oil. Interstate Commerce Commission, Report of January 25, 1907, pp. 8–11.

The property was transferred to the Fairmont Coal Company free of debt, except $475,000, secure by mortgage on the property. (Minutes of the Fairmont Coal Company.)

In the year 1903 the Fairmont Coal Company also purchased the control of the Clarksburg Fuel Company (p. 878), which latter company was incorporated under the laws of the State of West Virginia on the 16th day of September, 1901, to engage in mining and selling coal and manufacturing coke. It owns a number of coal properties which produce about 800,000 tons of coal per year. (Cramp, Mitchell & Serrill's Manual of Statistics, 1905, pp. 444–445.)

The Fairmont Coal Company owns about 33,000 acres of bituminous coal lands and controls by lease about 24,986 acres, and also has interests leased to it by the Monongahela Railroad Company and by the Monongah Company. (See Cramp, Mitchell & Serrill's Manual of Statistics, 1905, p. 501.)

THE NORTHWESTERN FUEL COMPANY.

The Fairmont Coal Company also owns (pp. 365, 879) the Northwestern Fuel Company, which is a corporation formed under the laws of the State of Wisconsin, on the 28th day of October, 1901, and which is the successor of a Minnesota corporation of the same name. The business of the company is the forwarding, storage, selling, and retail distribution of coal and the manufacture and sale of coke for Chicago and the Lakes (pp. 882, 885). This company has docks on Lake Michigan and Lake Superior, at Duluth, West Superior, Milwaukee, possibly Ashland, and other points, and has a hard-coal breaker at Chicago (pp. 882–884, etc.) and handles not only the coal of the Fairmont Coal Company, but that of other companies, and during 1905, handled about 2,500,000 tons, of which, the Fairmont Coal Company and its associate companies furnished about 800,000 tons. About 100,000 tons were purchased from independent operators along the lines of the Baltimore and Ohio Railroad (p. 885.)

The wharves and docks of the Northwestern Fuel Company are used by the Fairmont Coal Company and its associate companies for storing large amounts of coal, which are shipped in the summer time for distribution when the winter approaches. (See Cramp, Mitchell & Serrill's Manual of Statistics, 1905, p. 632.)

THE PITTSBURG AND FAIRMONT FUEL COMPANY.

In June or July, 1904, the Pittsburg and Fairmont Fuel Company was shipping coal at the rate of something over 300,000 tons per year. Previous to that time it had been selling its coal through the Fairmont Coal Company and had been getting the use of certain individual cars owned by the Fairmont Coal Company, which latter company determined to put an end to this relationship, and immediately thereafter a majority of the capital stock of the Pittsburg and Fairmont Fuel Company was sold to the Fairmont Coal Company for $1 (pp. 904, 911). Mr. C. W. Watson the president of the Fairmont Coal Company, states that there were other considerations, in that they aided the Pittsburg and Fairmont Fuel Company in its finances.

It would seem that after the notice of the Fairmont Coal Company to the Pittsburg and Fairmont Fuel Company, that the first-named company would cease acting as its sales agent and would not allow it the use of the equipment controlled by the Fairmont Coal Company, the stockholders of the Pittsburg and Fairmont Fuel Company practically gave to the Fairmont Coal Company a majority of the stock of the Fuel Company, and the natural inference is that the stockholders were afraid that their tonnage might be decreased unless the alliance with the Fairmont Coal Company was strengthened and continued.

SOUTHERN COAL AND TRANSPORTATION COMPANY.

The Consolidation Coal Company owns 2,501 shares out of 5,000 shares of the capital stock of the Southern Coal and Transportation Company (pp. 1002, 1006), which latter company owns about 4,800 acres of coal lands in Barbour County, W. Va., with its mines near Berryburg. The coal is of the Pittsburg vein (p. 2806), and in the latter part of 1905 the managers of the Southern Coal and Transportation Company, finding that they were not getting along prosperously on account of the fact that they could not get sufficient car service on the Baltimore and Ohio Railroad (p. 280), determined to sell out their properties, and thereafter a contract was made by Mr. B. F. Berry, the president of the company, to sell the entire capital stock, together with all of the bonds of the company, to Messrs. J. H. Wheelwright and C. W. Watson (p. 2811) for the sum of $375,000 (pp. 2810, 1009–1010).

Mr. C. W. Watson was the president of the Consolidation Coal Company and Mr. J. H. Wheelwright was the vice-president thereof, and immediately after the purchase of the stock and bonds of the Southern Coal & Transportation Company, Messrs. Watson and Wheelwright sold 2,501 shares of the stock out of the 5,000 shares and all the bonds of the company to the Consolidation Coal Company for the sum of $400,000.

It would appear from the evidence of Mr. C. W. Watson (p. 1007, etc.) that it was agreed that the $25,000 cash payment, apparently realized by him and Mr. Wheelwright, was to be put in the treasury of the Southern Coal and Transportation Company, and it is not clear whether the mortgage indebtedness of the Southern Coal and Transportation Company, amounting to $500,000, was canceled or not (p. 1010), but there was an understanding that there might be a new issue of bonds, in lieu of the $500,000 of mortgage bonds, for the purpose of paying back to the Consolidation Coal Company the money that it had invested (p. 1013), and out of the transaction it would appear that Messrs. Watson and Wheelwright made a profit of 2,499 shares of the capital stock of the company.

It also appears that the original owners of the Southern Coal and Transportation Company had about $500,000 invested (p. 2806), and that they had been engaged in mining at that point for three or four years (p. 2807), and that their whole difficulty was an insufficient car service from the Baltimore and Ohio Railroad (pp. 2807–2809), and in selling out the property the original stockholders sacrificed their interest and lost money on the transaction (pp. 2810, 2811), and that the property would have been worth much more on any railroad that furnished equipment to take care of the output (pp. 2811–2812.)

From the foregoing it will appear that the Fairmont Coal Company owns or controls the Clarksburg Fuel Company, the Northwestern Fuel Company, and the Pittsburg and Fairmont Fuel Company, and that the Consolidation Coal Company owns, or controls, the Somerset Coal Company, the Metropolitan Coal Company, the Cumberland and Pennsylvania Railroad Company, and the Southern Coal and Transportation Company, and, in addition, mines of its own in the Cumberland district.

About the 1st of January, 1903, the Consolidation Coal Company bought a majority of the stock of the Fairmont Coal Company at $47.50 per share (p. 975). The capital stock of the Fairmont Coal Company was $12,000,000, and the Consolidation Coal Com-

pany acquired $6,000,100. In the year 1902 the output of the Fairmont Coal Company from the 37 mines controlled by it amounted to 3,800,000 tons, and it was estimated that the annual capacity was 5,000,000 tons. The purchase was made by the Consolidation Coal Company from Messrs. A. B. Fleming, S. L. Watson, J. E. Watson, C. W. Watson, and J. H. Wheelwright (Minutes of the Consolidation Coal Company), and by this latter purchase the Consolidation Coal Company acquired control of all the properties of the Fairmont Coal Company.

By its ownership of 52 per cent of the capital stock of the Consolidation Coal Company (p. 973) the Baltimore and Ohio Railroad Company controls all of the property and mines of that company, including the railroad of the Cumberland and Pennsylvania Railroad Company, and in addition it controls all of the properties and mines of the Fairmont Coal Company and its subsidiary companies, and also the Metropolitan Coal Company, a retailer of coal at Boston, and the Northwestern Fuel Company, a distributor of coal on the Great Lakes.

EXHIBIT 4

AMERICAN SUGAR REFINING COMPANY[1]

Mr. GARRETT. Will you give us the story of that in your own way—the transaction through Mr. Kissel in regard thereto and the entire story.

Mr. SEGAL. The Pennsylvania Sugar Refinery consisted of $3,000,000 of bonds and $5,000,000 of stock. Five hundred thousand dollars of those bonds should remain in the treasury, $2,500,000 of the bonds should be sold. But those bonds were not expected to sell at par, and those bonds had been sold at a figure and the stock as a bonus.

Mr. SEGAL. No; as a bonus with the bonds. None of the stock has been sold. We started to build that refinery, and I had a hard time to sell the bonds, because whenever I went or my people went to sell some of the bonds something happened that we were stopped.

Mr. GARRETT. What would happen?

Mr. SEGAL. Everything was satisfactory, and within the next 24 hours they did not want them.

[1] Hearings held before the Special Committee on the Investigation of the American Sugar Refining Company and others. 62nd Cong., 1st Sess. 1910-1911, Vol. 2, pp. 1276-1285.

Mr. GARRETT. What reasons did they give? Were any reasons given to you at any time?

Mr. SEGAL. No.

Mr. GARRETT. How many attempts did you make to negotiate these bonds when you were checked in that way?

Mr. SEGAL. Oh, many times, many times.

Mr. GARRETT. Have you any opinion or information as to why everything would be all right now and in 24 hours they would say they did not want the bonds?

Mr. SEGAL. Naturally I thought somebody did it.

Mr. GARRETT. Did you have any opinion? Give us your opinion as to who you thought it was and as to why you so thought.

Mr. SEGAL. I thought it came from Mr. Havemeyer.

Mr. GARRETT. And because you thought he wanted to check that competition?

Mr. SEGAL. Oh, naturally.

Mr. GARRETT. Did you have any other reason than a mere surmise? Did you see any evidence of his handiwork or the handiwork of his agents anywhere in blocking your sales of these bonds that you can now recall?

Mr. SEGAL. I thought so.

Mr. GARRETT. Could you give the committee any incident that occurred?

Mr. SEGAL. No; I could not.

Mr. GARRETT. Where did you endeavor to market these bonds?

Mr. SEGAL. Oh, in different places.

Mr. GARRETT. In New York?

Mr. SEGAL. I had people who did the banking business for me in different places.

Mr. GARRETT. New York, I presume?

Mr. SEGAL. Yes.

Mr. GARRETT. And Philadelphia?

Mr. SEGAL. Yes.

Mr. GARRETT. Boston?

Mr. SEGAL. I do not remember.

Mr. GARRETT. Do you know whether any offer was made at Boston?

Mr. SEGAL. I do not think so.

Mr. GARRETT. Now, go ahead; you had reached the point where you said you were blocked in the selling of bonds.

Mr. SEGAL. In the meantime, I went on with my work, and I

nearly finished that refinery; but I needed money, and I had a transaction with a Mr. Kissel, in New York, that had nothing to do with the sugar business.

Mr. GARRETT. What character of transaction was that?

Mr. SEGAL. He loaned me $250,000 for 60 days. That had nothing to do with the sugar business.

Mr. GARRETT. When was that transaction with Mr. Kissel, if you please, Mr. Segal?

Mr. EDMUNDS. I suppose you want to know with reference to the Pennsylvania Sugar Refining Co.?

Mr. GARRETT. No; I want to know with reference to this $250,000 transaction.

About when was that Mr. Segal?

Mr. EDMUNDS. I think, if you will pardon a suggestion, if you will ask Mr. Segal how long before the $250,000 transaction occurred he went into the sugar refining company, he may be able to answer your question.

Mr. GARRETT. Can you tell me how long before the Pennsylvania Sugar Refining Co. deal it was that this $250,000 loan was made to you by Mr. Kissel?

Mr. SEGAL. Sixty days.

Mr. GARRETT. Sixty days before?

Mr. SEGAL. Sixty days before. I borrowed that $250,000 for 60 days. In the meantime, I went over to New York and spoke to Mr. Kissel about buying some of these sugar bonds, and he said he was not interested. But five or six days before the $250,000 was due, his private secretary called me on the phone and he said, "Mr. Segal, there is $250,000 of yours due in a few days." I said, "I know it; I will pay it." He said, "When will you be coming over to New York?" I said, "I have nothing to do at present in New York." He said, "You come over; Mr. Kissel wants to see you." I came over there in a few days, and went over to his house, and he told me, "That $250,000 is due." I said, "I know it." I said, "Your secretary spoke to me about it, and I will pay it." He said, "What are you doing now?" I said, "I am busy." He wanted to know how much work I had at that time, and I told him I had $6,000,000 or $7,000,000. He wanted to know how many men I employed, and I said, "I don't know; probably 2,000." That is not all sugar business, you understand. He said, "How much money do you need?" I said, "I could use $500,000 or $600,000." He said, "Couldn't you use more?" I said, "Probably

$750,000." "No," he said, "for the whole work you are doing, you need more money; $750,000 is not enough." I said, "I probably could use $1,000,000." He said, "I "I[1] don't see how you can get on with your work with $1,000,000." I said—well, anyhow, we put it down at $1,250,000. He said, "What have you got to put up?" He said, "Who has got the control?" I says, "Right here." Strange, I just had the control in my pocket.

Mr. GARRETT. The control of what?

Mr. SEGAL. Of the sugar refinery. I had it in an envelope.

Mr. GARRETT. You had the bonds?

Mr. SEGAL. No; I had the stock. The stock belonged to me.

Mr. GARRETT. The entire stock?

Mr. SEGAL. The control. He said, "Who has got control in that refinery?" I says, "I have." He said, "Will you be willing to put up the control?" I said, "Yes." He said, "What else have you got? Have you got some of the bonds?" I said, "I have got $500,000 of the bonds." He says, "What have you got in the line of the hotel?" I was building a big hotel then. I said, "I have got the bonds." He said, "Will you be willing to put up those?" I said, "Yes." He says, "For how long do you want that loan?" I said, "About six months." He says, "Oh, I wouldn't loan it to you for six months. I would loan it to you for two years." He said, "I am going away to Europe, and you will be ready to pay it and there will be nobody to receive it, and I want to reinvest that money. I want to make it for two years." I said I would not take it. He said, "Let us make it for one year." I said, "We will agree for one year." He said, "Send for your lawyer." I said, "I don't want to send for my lawyer." I said, "I can fix that thing myself." He said, "I would not do it." So I telegraphed for my attorney, and he came over the following day to New York, and I told Mr. Kissel I would stay over the night in New York. The following morning Mr. Kissel came over, and he said, "I thought of one thing here. That refinery is a new refinery. It is in excellent condition. As long as that refinery stands in that condition the security is good, but if you should start that refinery and run it, and the Sugar Trust should fight you, you will lose money on those bonds and the stock will not be the same value as it is to-day. I want you to sign that during the period of that loan you should not run that refinery." I said, "I will do it." Mr. Kissel had his office in the Mutual Life

[1] Thus in original.—Ed.

Building in New York, and he had his safe down there. He said to my lawyer, "No; let us go over to my lawyer"—to Mr. Kissel's lawyer—and they will fix it up.

Mr. GARRETT. Who was your lawyer?

Mr. SEGAL. I want to say to you I will be very glad to give the name, but please do not send for the man. The man is dying now.

Mr. GARRETT. Who was Mr. Kissel's lawyer?

Mr. SEGAL. My lawyer was Mr. Thomas B. Harned.

Mr. GARRETT. He was your lawyer?

Mr. SEGAL. Yes.

Mr. GARRETT. Who was Mr. Kissel's lawyer?

Mr. SEGAL. Kissell's lawyer? Mr. Kissel had no lawyer. He went to——

Mr. GARRETT (interposing). Was it Mr. John E. Parsons?

Mr. SEGAL. That is the gentleman he went to. Mr. Kissel says, "No; let us go to my lawyer," and I took my coat and started to go with him, and Mr. Kissel said to me, "You stay right here and we will go over." They went away and they came back in about 15 minutes, and Mr. Harned said, "Mr. Segal, Mr. Kissel took me to Mr. Parsons, and Mr. Parsons is doing a great deal of work for the Sugar Trust, and I want you to know it." I said, "What does that mean?" He says, "Mr. Parsons represents dozens of corporations. I want to say to you the securities I will get from you will be in my safe and in my building until you take them out." I said, "All right."

Mr. GARRETT. That was Kissel talking?

Mr. SEGAL. That was Mr. Kissel. We made a contract.

Mr. GARRETT. Will you state what that contract was?

Mr. EDMUNDS. Have you the contract, Mr. Garrett. You might submit that to him and ask whether or not that is the contract.

Mr. GARRETT. Will you examine this contract, Mr. Segal, Exhibit L to the bill filed by the Government in the southern district of New York against the American Sugar Refining Co. and others, and state whether that is the contract which you entered into with Mr. Kissel?

Mr. SEGAL (after examining the document). That is the contract.

Mr. GARRETT. Mr. Chairman, I wish to have the stenographer incorporate this contract, Exhibit L, in the record at this point.

The CHAIRMAN. Mr. Stenographer, you will copy that contract in the record at this point.

The Committee will take a recess at this time until half past

2 o'clock this afternoon, at which time, Mr. Segal, we will resume your examination.

. . . . . .

TESTIMONY OF ADOLPH SEGAL—Continued

Mr. GARRETT. Mr. Segal, just previous to the adjournment for luncheon you had identified Exhibit L to a petition filed by the United States of America against the American Sugar Refining Co. and others in the Circuit Court of the United States for the Southern District of New York as an agreement or contract between Mr. Kissel and yourself, touching the matter of a loan about which you had previously testified. I want to ask you when you first learned that the money loaned you under that agreement came from the American Sugar Refining Company.

Mr. SEGAL. Probably six weeks or two months afterwards. I dined with Mr. Kissel, and he joked, and he mentioned many times Mr. Havemeyer. I says, "Mr. Kissel, I think that money comes from the Sugar Trust." He says, "What is the difference? Suppose it does come from them?" It was probably six weeks or two months after the loan was made.

Mr. GARRETT. Six weeks or two months after the transaction?

Mr. SEGAL. Yes.

Mr. GARRETT. Well, I understood you to say that when you learned, while these negotiations were pending there in New York ——

Mr. EDMUNDS. No; excuse me; negotiations were not pending. They had been consummated. They were in New York for the purpose of signing the papers.

Mr. GARRETT. Just about the time you signed the papers you learned that Mr. John E. Parsons was connected with the matter?

Mr. SEGAL. Oh, no.

Mr. GARRETT. When did you first learn that?

Mr. SEGAL. I understood that Mr. Parsons was Mr. Kissel's lawyer.

Mr. GARRETT. When did you first learn that?

Mr. SEGAL. When we talked of the deal.

Mr. GARRETT. About the time you began the negotiations?

Mr. SEGAL. Yes; and it suddenly came over me.

Mr. GARRETT. And you made some inquiry?

Mr. SEGAL. No; I said to Mr. Kissel, "Is not Mr. Parsons the Sugar Trust's lawyer?" Mr. Kissel said, "Why, he represents

dozens of other parties; and the best proof of it is that the securities will be with me."

Mr. GARRETT. I assume that when Mr. Parson's[1] name was mentioned, and you learned that he was Mr. Kissel's lawyer, it immediately aroused your suspicion that it might be this money came from the Sugar Trust?

Mr. SEGAL. Yes.

Mr. GARRETT. And did the statement of Mr. Kissel, which you have mentioned, disarm your suspicions in that regard?

Mr. SEGAL. Yes.

Mr. GARRETT. And you made no further inquiry in that respect?

Mr. SEGAL. Yes; I had a transaction with Mr. Kissel before of $250,000.

Mr. GARRETT. Did you suppose that he was loaning his own money, or that he was agent for some one else?

Mr. SEGAL. I thought he was able. His wife is a Vanderbilt, and I thought they were able to do it.

Mr. GARRETT. You got the money, then?

Mr. SEGAL. Yes; I got the money in installments.

Mr. EDMUNDS. You will notice from the agreement that $200,000 of the $1,250,000 was to be retained for the purpose of completing the Majestic Apartment House, which Mr. Segal was then in the course of building and which was nearing completion.

Mr. GARRETT. It was to be paid out of that. I understand Mr. Segal says so. You got the money in accordance with this agreement?

Mr. SEGAL. Yes.

Mr. GARRETT. What commission did you pay Mr. Kissel?

Mr. SEGAL. $100,000.

Mr. GARRETT. $100,000 commission?

Mr. SEGAL. Yes.

Mr. GARRETT. Do you know whether he got any other commissions than that?

Mr. SEGAL. I do not know.

Mr. GARRETT. You do not know how that was?

Mr. SEGAL. No, sir.

Mr. GARRETT. That was all you paid him?

Mr. SEGAL. Yes.

Mr. GARRETT. Now, take up the thread of the story from that point on, will you, and in your own way relate it to the committee?

[1] Thus in original.—ED.

Mr. SEGAL. After that I had some other transactions with Mr. Kissel.

Mr. GARRETT. Touching the same matter?

Mr. SEGAL. No.

Mr. EDMUNDS. I suppose you want the witness to confine his statement to matters that relate to the sugar refinery, do you not?

Mr. GARRETT. Yes; directly or indirectly. Perhaps those transactions with Mr. Kissel may become important. We will see.

Mr. SEGAL. Then I paid the interest, after 90 days. I paid the interest quarterly, every three months.

Mr. GARRETT. You paid the interest quarterly?

Mr. SEGAL. Yes.

Mr. GARRETT. Let me get that. Did you, at the time you closed the contract, pay interest for three months?

Mr. SEGAL. When I wanted to sell some bonds, I could not; I could not sell any more, for the reason that the matter came up and then they asked when I was going to start the refinery, and then I had to tell them about that contract, and nobody would want to buy bonds when the plant was in such condition that it could not be started up.

Mr. GARRETT. When was it that you undertook to sell the bonds?

Mr. SEGAL. Right away after that. I had some other bonds—$1,500,000 of bonds of that institution.

Mr. GARRETT. Was it shortly after you borrowed this money that you undertook to sell the bonds?

Mr. SEGAL. The balance of the bonds?

Mr. GARRETT. The balance of the bonds.

Mr. SEGAL. Yes.

Mr. GARRETT. How long after? Do you remember about how long it was?

Mr. SEGAL. Probably a few months.

Mr. GARRETT. A few months. Now, going back for a moment; at the time you borrowed the money you paid interest in advance for three months, did you?

Mr. SEGAL. I do not think so; no.

Mr. EDMUNDS. The agreement did not call for it.

Mr. GARRETT. At the end of the first quarter you did pay interest?

Mr. SEGAL. Yes.

Mr. GARRETT. Was that for the past quarter?

Mr. SEGAL. Yes; for the past quarter.

Mr. GARRETT. You paid the interest quarterly?

Mr. SEGAL. Yes, sir.

Mr. GARRETT. When did you pay the commission?

Mr. SEGAL. The commission was taken out.

Mr. GARRETT. Was taken out of the loan?

Mr. SEGAL. It was taken right out at once from the money.

Mr. GARRETT. All right. Now, go ahead.

Mr. SEGAL. Then I tried to repay that loan, and I went to Mr. Kissel, and I wanted to know if Mr. Kissel would not divide that loan.

Mr. GARRETT. Was that at the time you wanted to sell the bonds?

Mr. SEGAL. Yes.

Mr. GARRETT. Well, go on.

Mr. SEGAL. I wanted that he should divide the sugar securities from the other securities, and he could not do it. He said that it could not be done. I made him different propositions, and it was too much for me to plank over $1,250,000 at one clip, and I thought if he would divide that in half it would be easier for me to pay it; but the reply was that that could not be done.

Mr. GARRETT. That that would not be done?

Mr. SEGAL. Could not be done.

Mr. GARRETT. Could not be done?

Mr. SEGAL. Yes.

Mr. GARRETT. Why could it not be done? Did he say?

Mr. SEGAL. No.

Mr. GARRETT. Was this subsequent to the time that you had learned that this money came from the American Sugar Refining Co.?

Mr. SEGAL. That was afterwards; yes.

Mr. GARRETT. It was after you had learned that the money came from the American Sugar Refining Co.?

Mr. SEGAL. Yes.

Mr. GARRETT. What did you do next?

Mr. SEGAL. Well, I tried different ways to get those securities out and I could not.

Mr. GARRETT. After he told you that he could not divide the securities, were there any further negotiations with him—any other offers made to him?

Mr. SEGAL. Oh, I made him different propositions.

Mr. GARRETT. Well, what were those propositions?

Mr. SEGAL. I offered to pay him $100,000 as a premium if he would let me run the refinery.

Mr. GARRETT. If he would let you run it?

Mr. SEGAL. Yes.

Mr. GARRETT. About what time was that with reference to the loan—about how many months after you had borrowed the money?

Mr. SEGAL. Oh, probably four or five months.

Mr. GARRETT. And he refused that offer?

Mr. SEGAL. He refused that offer.

Mr. GARRETT. Well, go ahead.

Mr. SEGAL. Well, that is the way it went on until the end of the year. I paid, three times, interest; three times I made the payment of interest; and the fourth one, I offered the money providing he would give me the coupons back from the bonds, and he did not want to do that.

Mr. GARRETT. Did he refuse to do it?

Mr. SEGAL. He refused to give me the coupons, to detach the coupons from those bonds.

Mr. GARRETT. Why? Did he say?

Mr. SEGAL. He said, "Because, when we settle, you will have the coupons with them; but at present I will not give them up."

Mr. GARRETT. Go ahead.

Mr. EDMUNDS. I suppose you understand that he refers to the coupons attached to the Pennsylvania Sugar Refining Co.'s bonds, and not to the others?

Mr. GARRETT. Yes; I so understand. Go ahead, Mr. Segal.

Mr. SEGAL. Well, I think that is the end of the story.

Mr. GARRETT. What occurred then with your business matters, after he had refused to do that? What sort of situation did you find yourself in, as a result?

Mr. SEGAL. I found myself in difficulties. I had different works going on, and I could not raise money; and then Mr. Hipple committed suicide, and that was the end of the whole thing.

EXHIBIT 5

GARY DINNERS [1]

Mr. GARY. Mr. Chairman, the question, as it seems to me, opens up a consideration of what has been referred to as proceedings at

[1] Testimony of Judge Elbert H. Gary. Hearings before the Committee on Investigation of United States Steel Corporation, 62nd Cong., 2nd sess. 1911–1912, pp. 75–77, 262–274, 279–281.

some of the dinners, as well as a proposed international iron and steel institute; and with the permission of the committee I will endeavor to state, as briefly as I can, exactly what is involved in the whole subject matter, intending to show what we have done and what our intentions have been and are.

. . . . . .

Now, I need not suggest to lawyers, at least on the committee, and perhaps you are all lawyers, I do not know about that, that the interpretation of the Sherman Act has been more or less involved in doubt. Evidently the act was intended to prevent the existence and exercise of monopolies and also the restraint of trade. A company like the United States Steel Corporation, with 50 per cent of the domestic steel business of this country, was confronted with two propositions. It had no right to endeavor to prevent reductions in prices, or, in other words, to maintain the equilibrium of business and maintain prices substantially level or at least free from sudden and violent fluctuations by means of any sort of an agreement express or implied. We had no lawful right, as I understand, to make any agreement, express or implied, directly or indirectly, with our competitors in business to maintain prices, notwithstanding we were receiving letters daily from the jobbers all over the country begging us, if possible, to prevent demoralization and to prevent decrease in prices which should mark down their inventories and in many cases subject them to the risk of bankruptcy. On the other hand, considering this same question of sustaining, so far as practicable, the equilibrium of trade, we believed we had no moral or legal right to become involved in a bitter and destructive competition, such as used to follow any kind of depression in business among the iron and steel manufacturers, for the reason that if we should go into a competition of that kind it meant a war of the survival of the fittest; it meant that a large percentage, as in old times, of the people engaged in the manufacture of steel would be forced into bankruptcy for many reasons—their facilities for manufacture were not so good, their cost of production was high, their equipment, their organization, their decreased ownership of some of the raw products and other things of that kind which enter into the cost of production, would place them at a disadvantage, and therefore it was believed, by me at least, that it was not for the best interests of the manufacturers generally or for their customers who desired stability as opposed to demoralization and wide fluctuations or for the employees

of the various corporations throughout the country who desired, so far as possible, steady work—continuous work at the best prices, and a wide, sudden, extreme lowering of prices necessarily meant reduction in the wages. Reductions were advocated almost at the start of the panic of 1907, and many of you know that our company took a leading part in opposing that and we went through that panic without making any reduction in wages, although many, if not all, of our competitors before the year was terminated did materially reduce their wages.

Now, the question was how to get between the two extremes of securing a monopoly by driving out competition, however good-naturedly, in a bitter, destructive competition or without making any agreement, express or implied, tacit or otherwise, which should result in the maintenance of prices, and so, gentlemen, I invited a large percentage of the steel interests of the country to meet me at dinner and then presented these views to them and, so far as I could, the results of our becoming demoralized and extreme decreases in prices like those which obtained under the old régime. Then, I said that it seemed to me the only way we could lawfully prevent such demoralization and maintain a reasonable steadiness in business, whether we lowered the prices from time to time or not, whether depending upon circumstances we were willing to make concessions or reductions after the jobbers had relieved themselves of the large lots, so as to prevent demoralization, was for the steel people to come together occasionally and to tell one to the others exactly what his business was. In other words, a disclosure by each one to all others of all the circumstances surrounding his particular business. In other words, to state it simply, if three men, gentlemen on this committee, were practicing law in a certain town and each one knew that the customary fee for services in court was $50 a day and a gentleman from another part of the country should locate in that town and make a totally different price, very much lower, he would immediately get up some sort of competition amongst these professional men. If those three men, however, on this committee, were in daily conference and each one knew that the others did not propose to change the fees, probably this outsider would not make very much headway in creating a demoralization.

. . . . . .

Mr. BEALL. Judge, I am interested in the statement that you made about these dinners. Were they called "the Gary dinners?"

Mr. GARY. I have seen some of the papers designate them in that way.

Mr. BEALL. About what date did you begin to have these dinners?

Mr. GARY. During the panic of 1907, or just following. I think during it—before the panic was over. May I inquire whether you were present when I described that the other day—the first dinner given—when the steel people——

. . . . . .

Mr. BEALL. Since 1907 have these dinners been held at any stated ntervals,[1] or have they been at such times as suited your convenience?

Mr. GARY. They have been given at such times as suited my convenience and disposition, and public announcement has been made in each instance and what took place at the dinners. If there was any question of business referred to, it has been given to the public press. Latterly, for some time—in fact, the major part—there have not been so very many dinners as you might think; but at most of the dinners what I said was taken down and written up and printed, and I have promised the committee, at their request, to furnish these printed speeches. At two of the dinners everything that was said was taken down. It happened so; and, as it was taken down, I had it written up and printed and distributed to those who were present—so that every thing that was said there was taken down. At one of those dinners the question of prices, or the question of markets, or what ought to be done was stated fully and freely by all of them, and all of us must abide by the record which we made. There is no concealment about it. There never has been. We will furnish those to the committee.

. . . . . .

Mr. GARY. There is just one question involved in those dinners, it seems to me: That is whether or not it is lawful, and is good law and good morals, to endeavor by intercourse such as you see described in those proceedings to maintain to a reasonable extent the equilibrium of business, to prevent utter demoralization of business and destructive competition.

Mr. BEALL. That was the purpose of each one of those dinners?

Mr. GARY. That and nothing else.

. . . . . .

[1] Thus in the original.—Ed.

The CHAIRMAN. I know; but I mean to advise the gentlemen that this committee will not look into anything more than his official acts.

Mr. GARY. Prices were not attempted to be fixed, were not fixed, could not be fixed, and there was no possible way of fixing them or maintaining them, unless you have some way of having them fixed under Government control, or you are allowed to do it by positive agreements. It never has been possible. It never could be possible. We have never succeeded in doing so. But we have, by this friendly intercourse, prevented demoralization—sudden, wild, extreme fluctuations—destructive competition that would drive large numbers of them entirely out of business, and that would be ruinous to the customers of the steel people who had large stocks of goods on hand from time to time, and which would spread to other lines of industry. We have made no secret about it, and the public has known exactly what we have done; and if the Department of Justice, for instance, or the President, or Congress, should say, "This is not the wise thing to do or the right thing to do," you may be certain it would not be continued for one moment.

Mr. BEALL. As I understand it, you wanted to avoid destructive competition on the one side, and you wanted to avoid the perils and the dangers of the Sherman antitrust law on the other side?

Mr. GARY. Of monopoly on the other side?

Mr. BEALL. Of monopoly, unlawful restraint of trade; and you have resorted to this means of bringing together those interested in the business for an exchange and interchange of views at these dinners?

Mr. GARY. Not so much an interchange of views as a statement of the conditions surrounding each one.

Mr. BEALL. I will ask you about this particular dinner of January 11, 1911.

Mr. GARY. Of course the proceedings speak for themselves.

Mr. BEALL. Yes. Was not the purpose of that dinner to arrive, directly or indirectly—probably the latter—at an understanding that prices would not be reduced or lowered?

Mr. GARY. Emphatically, no; it was not.

Mr. BEALL. Let me call your attention to some of the things that were said.

Mr. GARY. By me?

Mr. BEALL. By you and by others who participated in the dinner.

Mr. GARY. Very well.

Mr. BEALL. And I would like to have your interpretation of what it means.

Mr. GARY. What is the date?

Mr. BEALL. January 11, 1911.

Mr. GARY. Very well.

Mr. BEALL. Look first at page 6, about the middle of the page. I read as follows:

> At this particular time there is not in this country a demand for more than 50 per cent of the total producing capacity in our lines. It is obvious from this statement of fact that there is not enough business to go around and that there is no possible way of protecting one another and thereby protecting oneself except to submit ourselves to the conditions as they exist and to take and be satisfied with our fair proportion of the business which is offered. [Applause.]

What did that mean, Judge Gary?

Mr. GARY. It meant to say that any fair-minded man, knowing there was only 50 per cent business as compared with the capacity, would believe it to be for his own interest to be satisfied with his mills running at one-half their total capacity, as otherwise he would be necessarily involved in a competition that meant the survival of the fittest, every one struggling to get more than 50 per cent of capacity, and bringing about demoralization and ruin.

Mr. BEALL. At that time were the mills that these different gentlemen represented who were at the banquet, running only 50 per cent of their capacity?

Mr. GARY. No; on the contrary some were running, as usual, about 40 per cent, and some were running about 60 per cent; and it has been that way all the time, more or less. There is no possible way of controlling. Of course, that is my advice. I wish everyone would recognize the fact that that is what he ought to do, but he is not willing to do that. He is under no obligation to do that. And you will see, as I go on, that I state clearly under no circumstances would I bind myself to do or not to do anything; that everyone must be left free to do as he pleases. That I understand to have been the position of the Attorney General in his argument before the Supreme Court of the United States, that the law does not compel people to compete. If everyone leaves himself free to compete, then he is living up to the requirements of the law. At the same time, I would not hesitate to advise my associates to be satisfied with their fair share of business. That advice has been followed to some extent. But, as no one was bound in any way, never had to do it, they did not live up to the principle. That is the trouble.

Mr. BEALL. All through the proceedings of that dinner, Judge, does not the thought run that all those who are present are in honor bound to accept and to abide by that price?

Mr. GARY. I do not think you can connect the two statements.

Mr. BEALL. On May 4, 1911, at the Waldorf, in New York, you had a banquet?

Mr. LINDABURY. Is that in this same book?

Mr. BEALL. No; it is in a different book. I refer to page 27.

Mr. LINDABURY. That is the last meeting?

Mr. BEALL. It is May 4.

Mr. LINDABURY. Of what year?

Mr. BEALL. 1911.

Mr. GARY. And what page do you read from?

Mr. BEALL. Page 27. I read as follows:

> You know I do not say that for the purpose of deceiving you at all nor for any purpose except to let you know exactly what I am doing. And, therefore, as I have said before, gentlemen, we come together upon a platform that involves the honor of a man, which is far better and far higher and far more binding upon us than any contract which we could make.

Mr. GARY. Yes. Now, I would think, if I should meet you, a competitor of mine, on the street, and ask you what prices you are charging and to what extent you are running your mills, and I should tell you what I was doing, both of us being perfectly frank and neighborly, and then I should leave you and go to one of your customers and offer to sell him goods at a less price than you told me you were selling at, that would be most dishonorable conduct on my part, and that I would have a reason to expect, as honorable men, you and I having told one another what we were doing, that we would not go and do something to the contrary of that to the prejudice of either one, without telling him so frankly. That is what I meant and that is what I have explained from time to time.

Mr. BEALL. Then I quote further from this speech of January 11, 1911, on page 7:

> I say in this presence to men who know by long experience—men who know to a demonstration that what I speak is true and logical—that we have something better to guide and control us in our business methods than a contract which depends upon written or verbal promises with a penalty attached.

Now, if you made that sort of a contract, you would violate the Sherman antitrust law, would you not?

Mr. GARY. Yes, we would; but we have something better.

Mr. BEALL. You have something that is better even than a promise in writing, with a penalty attached?

Mr. GARY. I do not say that it is more binding than a contract. That is quite a different thing.

Mr. BEALL. Something better to guide you. You say—

We have something better to guide and control us in our business methods than a contract—

Mr. LINDABURY. Now, will you let Judge Gary tell what that is?

Mr. BEALL (continuing):

Than a contract which depends upon written or verbal promises with a penalty attached. We as men, as gentlemen, as friends, as neighbors, having been in close communication and contact during the last few years, have reached a point where we entertain for one another respect and affectionate regard. We have reached a position so high in our lines of activity that we are bound to protect one another.

Judge, in all these dinners, in all these speeches made at this banquet on January 11, 1911, does not the thought run through there that without entering into any written obligation or contract, or making any agreement that would put the hand of the Sherman law on you, you were in honor bound to observe——

Mr. GARY. To do what?

Mr. BEALL. To cooperate?

Mr. GARY. Well.

Mr. BEALL. In such a way as to protect each other against any reduction in prices?

Mr. GARY. Not at all. It does not mean that at all; not at all; because we had no fixed prices. We have never said that our prices would be a certain thing, and they have not. Our prices have fluctuated all the time. There has never been the time that our prices remained the same, or have been all alike; never, not for a single day, so far as I know. We have attempted in this way—I have attempted, I will say, and others have attempted by this influence—to prevent this utter demoralization which results from a disposition on the part of everyone to go and get all the business he can, and at any price he can, regardless of whether it is fair and reasonable, whether it is below cost or not, whether it would destroy his neighbor and drive him out of business; a disposition to let one another know what we are doing with a view of trying to persuade everyone to keep the price up to what he thought ought to be reasonable and fair. Is it against any law for me to go to you, a com-

petitor in business, and say to you, "Your prices, I think, ought to be higher than they are," or "ought to be lower than they are"? If you leave yourself free to make them as you please, or if I do, we do not violate the law. I have a right to tell you. We have never said, never intimated, that the prices should be so and so, and each one of us should keep these prices; never directly or indirectly.

Mr. BEALL. Have you not impressed on them time after time that it would be the grossest breach of honor for them to cut their prices below a competitor?

Mr. GARY. No, I have not; never a word. You will never find such a suggestion as that.

Mr. BEALL. I read from page 7, again:

> We have reached a position so high in our lines of activity that we are bound to protect one another; and when a man reaches a position where his honor is at stake, where even more than life itself is concerned, where he can not act or fail to act except with a distinct and clear understanding that his honor is involved, then he has reached a position that is more binding on him than any written or verbal contract. [Applause.]

Why were you seeking so strenuously to impress upon them that their honor was involved in some kind of way?

Mr. GARY. So that we, coming together, disclosing our business, telling one another about to what extent we are running our mills, about how our business was going generally, what our customers were, what our difficulties were, having made those full disclosures, so that everyone would reach the decision, if possible, that he ought not to do a mean thing in the trade, in competition; in other words, so that competition should be honorable, decent, and reasonable, as opposed to bitter, hostile, destructive competition such as used to exist.

Mr. BEALL. Did you not think that the meanest thing that any of them could do would be to reduce prices?

Mr. GARY. I should think, Mr. Beall, if you had a client and I had a client, consulting you and me both professionally, going to you and asking you what you would charge him, and you told him $100, and then you should come to me and say, "That gentleman, my old client, has been in my office and asked me how much I would charge him, and I told him $100"—I having gotten that information from you, I should think if I should say to him when he came to my office, he believing I was as competent as you, that I would do it for $90, that would be dishonorable; that is what I think about it, most certainly, unless I went to you and said: "Now,

you told me you said you would do this for $100, and I want to do it for less than that, and I will charge him only $90."

Mr. LINDABURY. I want to call attention to the fact that this was simply a strenuous endeavor to establish the golden rule, and that it ought to be encouraged.

Mr. BEALL. The steel rule.

Mr. LINDABURY. No, the golden rule.

Mr. BEALL. A resort to moral suasion. I quote again from page 9:

Why do I mention these things? From the abundance of the heart the mouth speaketh. These thoughts in my mind, in my heart, force expression. I deal in frankness. Why is it? Why are these thoughts in my mind? Why do they crowd into words? Because at this particular time I am anxious that no man around this table, no one connected with this business shall, for a single moment, forget the high moral obligation he is under toward his neighbor.

Mr. LINDABURY. That is right.

Mr. BEALL (continuing reading):

Because if it was the last word I would have the privilege of saying to you, I would say, with all my might and with all the emphasis that I could find words to express, I consider it of the highest importance at this particular time that every one of us should have a keen and abiding sense of the personal obligation which he has toward all others and to make no mistake of running the risk of trespassing within the domain of the rights of his neighbor, who has given his confidence and trust, and who is willing at all times to put within the knowledge and therefore more or less under the charge and control of others the very direction of his affairs.

. . . . . .

Mr. BEALL. Mr. Farrell is, I believe, president of the United States Steel Corporation now?

Mr. GARY. Yes, he is.

Mr. BEALL. He made a speech that night?

Mr. GARY. I believe he did.

Mr. BEALL. Let me quote from that. I read from page 14:

I understand the policy of the corporation to be to cooperate with its competitors in the effort to maintain fair prices——

Mr. GARY. Well, that means——

Mr. BEALL (continuing):

and the stability of business conditions, by every means permissible under the laws of the country and not antagonistic to the public conscience.

That gives you the full quotation.

Mr. GARY. Yes. That means in the way I have stated, and no

other way. The answer to your inquiry is found in the fact that prices have not been maintained. You will find in some of those speeches a statement by me, perhaps repeatedly, that I have never stood for unchanged or unchangeable prices; that that is not my position. And there have not been unchanged prices. They have been more or less changed all the time. That is not the point. The point is to try and prevent the kind of bitter, destructive, unfair, and unreasonable competition that demoralizes business, and drives to destruction many of the operators, of the manufacturers and their customers.

. . . . . .

Mr. BEALL. Mr. Willis L. King spoke also at this last banquet?

Mr. GARY. Yes.

Mr. BEALL. Let me quote something from him. Who is Mr. King?

Mr. GARY. Mr. King is the vice president and general manager of the Jones & Laughlin Co. of Pittsburg.

Mr. BEALL. A steel manufacturer?

Mr. GARY. Yes.

Mr. BEALL. Quoting from page 21, he said:

I think, therefore, to talk of reducing the prices ought not to be considered for a moment. As Judge Gary has very properly said, it would not result in good to anyone. It would not result in more business to us, it would not do the public any good; therefore I hope it will be the consensus of opinion here to-night that we will maintain the present prices, which are fair and reasonable, and await with patience the inevitable result, which will of course be better business, and I think in the very near future.

Mr. GARY. No doubt that was his hope and his wish and his advice, but it was not binding, and therefore was not fully accepted nor adopted.

Mr. BEALL. Was it not the consensus of opinion there that night, Judge, among all those who spoke?

Mr. GARY. You have there everything that was said by all who spoke, and speeches speak for themselves.

Mr. BEALL. Probably the entire speeches will not be in the record, but you were there.

Mr. GARY. They are, Mr. Beall; every word that was said.

Mr. BARTLETT. You mean in that book?

Mr. GARY. Yes, I mean in this pamphlet of January 11. Everything that was said at the dinner, without exception, by every

speaker is there; not a word is left out, and these gentlemen had no opportunity to revise their speeches; not a particle changed; nothing added; nothing left out.

Mr. BEALL. Was not the dominant thought running through all these speeches of these gentlemen who were there that it should be the consensus of opinion among them that there should be no lowering of prices?

Mr. GARY. The speeches speak for themselves.

Mr. BEALL. You have read them. What is your opinion?

Mr. GARY. I do not think that is a fair, just opinion of the speeches.

Mr. BEALL. That is the very reason I wanted you to express your opinion, because I did not want to express mine, because it might not be fair.

. . . . . .

Mr. GARY. I do not think so, although I feel certain that it was the wish and the hope of everyone that prices would not be reduced. Now, it would be very strange if in the speeches made by these gentlemen, with no opportunity to prepare, and with that hope and wish in their minds, they would use expressions which you would think meant that it was intended to maintain prices. But you will not find in any of the meetings any agreement of the kind. I have not attempted here to disguise the fact, Mr. Beall, that the object of these meetings was to get between the extremes of the restraint-of-trade clause and the monopoly clause and in this way to prevent, so far as we could legitimately, a demoralization of business and destructive competition; but there is nothing in any of these speeches to indicate that there was any agreement, express or implied, to do or not to do a thing, any suggestion that each one was bound to maintain certain prices, or to fix certain prices, or anything of the sort. The contrary of that was the intention.

As to whether or not this is a good thing to do, as to whether or not this is good morals, as to whether or not you gentlemen believe that it is better to enter into a destructive competition of the old kind than to try and maintain the equilibrium of business by this kind of cooperation, is for you to say. I am very sure if you want to take the responsibility as legislators and as lawyers and judges, if you want to take the responsibility or if the Government or anybody else in authority wishes to take the responsibility of saying it is better to enter into a destructive competition, and for the steel

people to have nothing whatever to do with one another, not even give one another information of any sort or description, letting the business take care of itself and allowing the strongest to survive and the weakest to go down and the general demoralization which would naturally result in business, generally, to follow, then we have nothing to say; we would not oppose it for one moment; not a moment. We have done what we have considered best to be done for the interests of all concerned, and within the lines of the law as we understand it.

Mr. BEALL. As I understand it, Judge, you are frank enough to say that through the medium of these dinners you have sought to accomplish the same result that would be accomplished by making agreements among yourselves that would be unlwaful,[1] to a greater or less degree?

Mr. GARY. I have not said that, but I have said that we have, so far as we could, attempted to prevent demoralization and destructive competition. We have not been successful, but we have been successful to a large extent.

Mr. BEALL. Quoting now from Mr. Felton, on page 22, he says:

Now, I think we have all had our eyes opened since the first meetings that were held here, and I hope we are going to keep our eyes open, and are not going to shut them up to the situation. If there is anybody who thinks the present business situation will be improved, stimulated, by cutting prices, he ought to consider just one branch of our business; he should look at the facts and argue from those facts.

Then he takes up the pig iron situation.

Mr. GARY. Yes.

Mr. BEALL. Who is Mr. Topping, whose speech appears on page 23?

Mr. GARY. He is chairman of the Republic Iron & Steel Co.

. . . . . .

Mr. BEALL. I read from what Mr. Topping said, on page 23:

I am more convinced than ever that any efforts at this time to reduce prices with a view to stimulating consumption will be met in about the manner that Mr. Felton has illustrated.

Mr. GARY. Who says that?

Mr. BEALL. Mr. Topping. He continues:

The price line will go down much faster than the production line will go up.

[1] Thus in original.—Ed.

Mr. GARY. He has evidently changed his mind recently.

Mr. BEALL. He has made a reduction in the prices of the products of the Republic Iron & Steel Co.?

Mr. GARY. Yes; and for the announced reason that some of the people manufacturing some of his products began to cut their prices, and, of course, he assumed he had nothing left to do but cut his. Three [1] is quite a difference in one man going to another and saying to him, "My prices are so and so;" and then going out and selling at a lower price, and on another occasion going to his neighbor and saying, "My prices are so and so, and I think they are too high, and I can not maintain them on account of the competition I have and I am going to cut them to suit myself." Then it is not dishonorable for him to do what he pleases. But I do not think it is fair or honorable for business competitors to represent to one another that they are doing certain things which are entirely contrary to the facts; and there is nothing like publicity among decent men—that is, the disclosure from one to another of exactly what they are doing—to secure a reasonable maintenance of prices. Of course, circumstances arising day by day may change circumstances; but in the main the prices are pretty well maintained.

Mr. BEALL. After that luncheon you held a few days ago, you gave out a statement?

Mr. GARY. I made a public announcement of what we were going to do.

Mr. BEALL. Substantially, that it was the opinion of the gentlemen who were at that luncheon that the prices of their various products should be reduced to meet this cut made by the Republic Steel & Iron Co.?

Mr. GARY. I think not. If you have got it, read it, and I think it will speak for itself.

Mr. BARTLETT. I do not say that it bears that out, but I have what purports to be a press dispatch, published in a paper in Macon, Ga., and I will read you what is said.

Mr. YOUNG. Will you not speak a little louder, Judge?

Mr. BARTLETT. I say that I have what Judge Gary is purported to have said at that luncheon, in the form of a press dispatch dated June 4; is that right?

Mr. GARY. I presume that is right.

Mr. BARTLETT. I cut this from a paper published in Macon, Ga., and it purports to be, and is, a press dispatch.

[1] Thus in original.—Ed.

Mr. GARY. I think I can tell you, if you will read it.

Mr. BARTLETT. I will read this part of it:

Referring to the bombshell which the Republic Co. threw into the steel market by reducing prices, Judge Gary said: "We are confronted with a very serious and disagreeable problem. It is not for me to criticize men nor to pass judgment on the motives of men. Whether people who have changed their minds suddenly are actuated by motives of cupidity or motives of necessity is not for me to say. One thing we know, that one of the leading iron and steel companies hitherto joining in our councils, learning from us our intentions, our business, our methods, our clients, our customers, everything of benefit and interest for one to know concerning his neighbor, has suddenly, for reasons considered good by those in charge, given notice that for the present at least it is not desirable to cooperate with us."

Mr. GARY. I have no doubt I said that, in substance.

Mr. BARTLETT. It is fair to quote from something else which you are purported to have said. It refers to price cutting:

I have urged you to remember, and I again call attention to the fact, that when you make substantial reductions in your prices, if you reduce to a price that is unfair and unreasonable and you make so small a profit that it does not yield you a fair return on your investment and your risk, you at least place for consideration before everyone the possible necessity of reducing the cost of production, including prominently, if not principally, the wages which you are paying, or may be allowed to pay, to the man or the men in your employ. Do not forget that the laboring men—the employees of the corporations—have more at risk, when these questions are considered of reducing prices below what is reasonable and fair, than the employer. You have no right to run the risk of being compelled to put their wages below what they ought to be unless you are driven to it, and I hope, under the present circumstances, gentlemen, that whatever may be done, or whatever may happen as a result of present conditions, you will not reduce the wages of your employees until you feel it is an absolute necessity to do so.

Mr. GARY. I said that. I believe it. I think you will find at one of these dinners which has been referred to the principal topic for discussion—the substance of most of the speeches, at least—related to the welfare of employees. I am very sure it did. I do not think the question of prices was hardly referred to.

Mr. BEALL. In this statement, Judge, you said:

It was the unanimous opinion that cooperation, as heretofore fully explained, should be continued.

I quote that from the New York World.

Mr. GARY. I think that is true.

Mr. BEALL. This article in the World says, further:

Opinions were expressed that recent developments seem to require some change in prices. Subsidiary companies of the United States Steel Corporation

have decided to make adjustments to become effective June 1, and it is believed these will be generally followed.

Do you know whether the action of the United States Steel Corporation has been generally followed or not by competing concerns?

Mr. GARY. I think it has, and perhaps a little more than followed by some. I do not see how any of the others could keep their prices up after we reduced ours. As I said before, it is pretty easy to reduce prices. That is, if even a small manufacturer, if he is a substantial competitor, reduces his prices, of course the others reduce theirs.

Mr. BEALL. On page 24 there is a little statement from you.

Mr. GARY. Of what meeting?

Mr. BEALL. This is all of the meeting of January 11, 1911. I read as follows:

I only want to call attention to the exact facts here so as to make it certain that none of us will unintentionally misrepresent the facts. In respect to some commodities, I am sure at the present time they are too low. One other thought. I agree with all that has been said by Mr. Topping and Mr. Felton and others concerning Mr. Farrell. You know about how proud I am of the fact that he is not only loyal, but that he is enthusiastic with reference to this policy of maintenance of higher prices, particularly such cooperation as advances the interests of all concerned.

Mr. LINDABURY. That is in the middle of the sentence, where you have stopped.

Mr. BEALL. I will read on:

And yet we may unintentionally, by inference, some of us, in referring to him do an injustice to Mr. Corey, and as he is not present, I think I am justified in saying that none of you I am sure will say nor do you think that in a single instance did Mr. Corey ever give you his word concerning what he intended to do without keeping that word to the letter.

Mr. GARY. I believe there is one word there that was not in the speech, but I do not know that it is at all important.

Mr. BEALL. What word is that?

Mr. GARY. That is the word "higher." It reads: "The maintenance of higher prices."

Mr. BEALL. It says: "With reference to this policy of maintenance of higher prices."

Mr. GARY. Yes. I do not know what that would mean or could mean, and I do not believe I ever said it. I believe it is either a typographical error or a stenographic error, because you will find the contrary of that expression in many of my statements.

. . . . . .

Mr. BEALL. Who is Mr. I. A. Kelly?

Mr. GARY. He is the president of some company, I have forgotten the name, the Ashland Steel Co., of Ashland, Ky.

Mr. BEALL. At the top of page 46 he says:

> I heartily cooperate in everything that has been said here to-night, and so far as our company is concerned we are ready and willing to still cooperate to do what we can to maintain prices. [Applause.]

Do you not think that running through all these speeches that were made at the banquet the idea was to bring about such a condition, without going into any iron-clad agreement, to bring about a condition where no man who attended would feel in honor that he could take any action tending to the lowering of prices in steel products? Do you not think that is just as effective as an agreement signed and sealed by all those who attended the dinner?

Mr. GARY. It is not, or anything like that. It is not effective; it is influential. These meetings were calculated to influence people to maintain their prices. There is no doubt of that, but as I understand the vice of the law is in obligating people to maintain prices, in preventing absolute freedom on the part of each one to do as he pleases. I think the vice in conduct which is unlawful is found in the release of one's freedom to do exactly as he pleases. It was intended to influence people so far as we legitimately could to maintain fair prices, each one for himself using his best judgment, after full knowledge of the business of all.

You will see where I have said at different times exactly what I had in mind what we would do and what we would not do. That was the cardinal doctrine.

Mr. LITTLETON. Did I understand you to say that you considered that the Sherman antitrust law did not mean a contract or agreement unless it was one that was enforcible by either party?

Mr. GARY. No; I would not say that. No; I think an agreement to maintain prices even though you could not enforce it would be contrary to the Sherman antitrust law; but I think that if two or three of us should come together and say: "We will tell you what we are doing all the time, we will not agree, but we will not change it, and if we change we will notify you. We will not put ourselves in a position where our freedom to do as we please is in any respect abridged, but we would like to have fair prices maintained. We think it is for the best interests of all concerned, ourselves and our employees and customers, to maintain fair prices and to prevent

resort to tricks in the trade calculated to unfairly and indecently get business away, which always results in destructive competition." I think that is all perfectly legitimate in view of the Sherman antitrust law. That has been my idea. I will be very glad to have the opinion of Mr. Littleton or Judge Bartlett or anyone else on that subject. Certainly, if I thought it was wrong or that we were doing anything wrong, I would not continue it for one moment.

Mr. LITTLETON. Suppose, Judge Gary, that we agree that the Sherman antitrust law would forbid an agreement to maintain prices, if you had entered into one at one of these dinners. I think that could not be disputed?

Mr. GARY. No, sir.

Mr. LITTLETON. Now, suppose, Judge Gary, you came together and by foreclosure of the situation each to the other by this mutual and well-intentioned cooperation of which you speak the same result is accomplished, to wit, the maintenance of prices, the object which the Sherman antitrust law sought to prohibit has been accomplished, has it not?

Mr. GARY. No, sir; I do not think it has.

Mr. LITTLETON. You think that the Sherman antitrust law was directed at the agreement rather than the result of the agreement?

Mr. GARY. I think so; I do, really.

Take the case of two blacksmiths, for instance, and they come down the sidewalk together in a village town every day; one lives on one side of the street and the other on the other side, and one says to the other: "What are you charging for shoeing horses? I am charging a certain price." The other says: "Well, I am charging that same price," and that is all that takes place, and the result it [1] that they maintain those prices. I do not believe that that would be a violation of the Sherman antitrust law. It does not seem to me that it is intended to prevent that. The result is just the same as though they had agreed.

Mr. LITTLETON. But would not that be because there was no agreement either express or implied between them?

Mr. GARY. Perhaps it would.

Mr. LITTLETON. If, by foreclosure of the situation of each to the other, and if by this mutual and, I will say, well-intentioned cooperation and meeting together, and if, by the experience of conference, each understanding the other, it might not come to a common point with a common purpose, each—obliged by his natural sense of

[1] Thus in original.—Ed.

honor—should feel obliged to maintain prices, does not that bring about the same result as if there were an agreement?

Mr. GARY. No; it does not bring about the same result.

Mr. LITTLETON. So far as the effect on the trade is concerned?

Mr. GARY. No; it does not by a good deal.

Mr. LITTLETON. Perhaps I did not add one condition; suppose they did, then it does accomplish the same purpose?

Mr. GARY. Of course if you and I, knowing exactly what the other is doing from time to time, continue to do that same thing, then the result is the same as if you and I agree to do that.

Mr. LITTLETON. You will recall—I do not recall it exactly—one of Mr. Lincoln's favorite illustrations that if four men in four counties each whittled on a piece of wood for four or five days and met at the county seat and put their pieces of wood on a table and they all fitted with each other that he would ask nobody to furnish him with any evidence of the fact that they had had an agreement in advance that they would all whittle in a certain direction and that they would meet there, and he thought that was the highest authority.

Mr. GARY. I am not familiar with that. I am certain in our case the sticks do not fit. They never have fitted; they have never been like anything else.

. . . . . .

The CHAIRMAN. I will call your attention to a statement purporting to come——

Mr. GARY (interposing). The intention has been and the effect has been to maintain reasonable pricse [1] more or less all the time on the part of those connected with it. I have hoped that it would be very extensive and at some times I have thought it was, but the results have not been like they would have been if there had been an agreement with a penalty such as used to be made before I came into the business at all.

EXHIBIT 6

—— —— OF AMERICA [2]

The Government alleges that:

. . Among other methods of harassing such independents defendant used the following: It would delay forwarding bills of lading, and

[1] Thus in original.—Ed.

[2] *United States of America* v. —— —— *of America.* Petition in Equity, In the —— Court of the United States for the —— District of ——, pp. 23–26.

would refuse to supply independents further with metal, sometimes abruptly ceasing entirely to ship metal without warning or statement of excuse of any kind, or causing its controlled companies to do so, so that the concern affected was unable to fill its orders.

It discriminated against independents as to price for the crude —— needed, so that they were unable successfully to bid against or compete with the favored industries and obtain a living margin of profit.

It frequently refused to sell —— metal to those desiring to enter the business of manufacturing —— goods, thereby preventing an expansion of the industry and restraining trade therein.

It refused to sell to others desiring to enter said field any —— metal unless they would agree not to engage in any line in any manner competing with the lines of the defendant and its allied companies.

It refused to guarantee quality, and at times delivered to competing plants metal which was known to be worthless and which had been rejected by plants allied to defendant.

It demanded to know the prices at which independent competitors had bid on or taken contracts for work to be done before it would furnish them the metal required to fill the contract or even quote prices of same, and it would impart the knowledge thus obtained to an allied company competing with such purchaser.

It represented and intimated to independent concerns and customers that, unless they dealt with defendant or its allied companies as to crude ——, their supply thereof would be cut off, or they would be unable to get their entire supply at reasonable prices.

It represented and intimated to dealers in and consumers of —— wares that, unless they dealt with defendant or its allied companies, their supply of the manufactured product would be cut off.

It represented and intimated to consumers that, if they did not buy of the defendant or of its allied companies, they would be buying of manufacturers who would be without the metal to complete their contracts, and intimated to consumers that a new —— agreement, such as had been in effect, would be put into effect again, thereby leaving defendant the only source of supply within the United States at any price; and it was especially by this conduct that big consumers were driven away from competing manufacturers.

One competitor who was preparing to enlarge his plant was

threatened by defendant that if he did so he would be put out of business (the defendant being at said time the sole available source of supply for the raw material needed).

It, either directly or through its controlled companies, bid on supplies for the best customers of the independent competing companies at such prices that it was impossible for such companies, who were compelled to purchase their raw material from defendant, to successfully compete therewith.

Defendant claimed to have gone into the —— utensils business for the purpose of increasing the market for its —— sheets faster than it was being developed. Yet, when it entered upon this branch of the industry it purposely was subjecting the then makers of such utensils to delays on shipments; and petitioner alleges that having seen that such manufacture was growing into a profitable business, it entered therein for the purpose of monopolizing it, along with the other branches of the —— industry.

Certain large customers of defendant for a time made only novelties of ——, in which business neither defendant nor an allied company was engaged. During said period they had no trouble about getting from defendant a sufficient supply of —— of any desired kind and specifications. Later some of these firms entered into the business of making —— utensils of ——. Thereupon delays and harassments in obtaining metal from defendants were begun and continued. At or about the time some of such manufacturers entered into said competitive business, defendant threatened that if they engaged therein they might expect loss. Such threats were consummated by the refusal to furnish metal in such a manner and in such quantities and of such quality as to enable such firms to take or properly complete orders, and thus some were compelled to abandon said business.

It required some customers to make contracts not to engage in competitive lines of manufacture, and also at times required an agreement to maintain certain fixed prices, or prices above a designated minimum, on manufactured articles in sale and resale, as a condition precedent to receiving metal.

CHAPTER XIII

RECENT TRUST DECISIONS

NOTE

THE prominence given to the Standard Oil and Tobacco decisions tended to render insignificant some of the decisions handed down against other combinations, and to obscure the fact that many of these decisions are really of considerable importance. It is even possible, that, whatever may be the effect of the two former notable decisions, the decrees in some of the minor cases may have the effect of restoring in the case of such combinations, conditions substantially the same as the *status quo* before their formation. Therefore, in the scope of this chapter there have been included excerpts from other decrees besides those against the Standard Oil and the American Tobacco Companies.—Ed.

EXHIBIT 1

DECREE AGAINST THE STANDARD OIL COMPANY [1]

MR. CHIEF JUSTICE WHITE delivered the opinion of the Court.

. . . . . .

The debates show that doubt as to whether there was a common law of the United States which governed the subject in the absence of legislation was among the influences leading to the passage of the act. They conclusively show, however, that the main cause which led to the legislation was the thought that it was required by the economic condition of the times, that is, the vast accumulation of wealth in the hands of corporations and individuals, the enormous development of corporate organization, the facility for combination which such organizations afforded, the fact that the facility was being used, and that combinations known as trusts were being multiplied, and the wide-spread impression that their power had been and would be exerted to oppress individuals and injure the public generally. Although debates may not be used as a means for interpreting a statute (*United States* v. *Trans-Missouri Freight*

[1] 221 U. S. 1.

Association, 166 U. S. 318, and cases cited) that rule in the nature of things is not violated by resorting to debates as a means of ascertaining the environment at the time of the enactment of a particular law, that is, the history of the period when it was adopted.

. . . . . .

In view of the common law and the law in this country as to restraint of trade, which we have reviewed, and the illuminating effect which that history must have under the rule to which we have referred, we think it results:

a. That the context manifests that the statute was drawn in the light of the existing practical conception of the law of restraint of trade, because it groups as within that class, not only contracts which were in restraint of trade in the subjective sense, but all contracts or acts which theoretically were attempts to monopolize, yet which in practise had come to be considered as in restraint of trade in a broad sense.

b. That in view of the many new forms of contracts and combinations which were being evolved from existing enocomic conditions, it was deemed essential by an all-embracing enumeration to make sure that no form of contract or combination by which an undue restraint of interstate or foreign commerce was brought about could save such restraint from condemnation. The statute under this view evidenced the intent not to restrain the right to make and enforce contracts, whether resulting from combination or otherwise, which did not unduly restrain interstate or foreign commerce, but to protect that commerce from being restrained by methods, whether old or new, which would constitute an interference that is an undue restraint.

c. And as the contracts or acts embraced in the provision were not expressly defined, since the enumeration addressed itself simply to classes of acts, those classes being broad enough to embrace every conceivable contract or combination which could be made concerning trade or commerce or the subjects of such commerce, and thus caused any act done by any of the enumerated methods anywhere in the whole field of human activity to be illegal if in restraint of trade, it inevitably follows that the provision necessarily called for the exercise of judgment which required that some standard should be resorted to for the purpose of determining whether the prohibitions contained in the statute had or had not in any given case been violated. Thus not specifying but indubitably contem-

plating and requiring a standard, it follows that it was intended that the standard of reason which had been applied at the common law and in this country in dealing with subjects of the character embraced by the statute, was intended to be the measure used for the purpose of determining whether in a given case a particular act had or had not brought about the wrong against which the statute provided.

. . . . . .

Second. The contentions of the parties as to the meaning of the statute and the decisions of this court relied upon concerning those contentions.

In substance, the propositions urged by the Government are reducible to this: That the language of the statute embraces every contract, combination, etc., in restraint of trade, and hence its text leaves no room for the exercise of judgment, but simply imposes the plain duty of applying its prohibitions to every case within its literal language. The error involved lies in assuming the matter to be decided. This is true because as the acts which may come under the classes stated in the first section and the restraint of trade to which that section applies are not specifically enumerated or defined, it is obvious that judgment must in every case be called into play in order to determine whether a particular act is embraced within the statutory classes, and whether if the act is within such classes its nature or effect causes it to be a restraint of trade within the intendment of the act. To hold to the contrary would require the conclusion either that every contract, act or combination of any kind or nature, whether it operated a restraint on trade or not, was within the statute, and thus the statute would be destructive of all right to contract or agree or combine in any respect whatever as to subjects embraced in interstate trade or commerce, or if this conclusion were not reached, then the contention would require it to be held that as the statute did not define the things to which it related and excluded resort to the only means by which the acts to which it relates could be ascertained—the light of reason—the enforcement of the statute was impossible because of its uncertainty. The merely generic enumeration which the statute makes of the acts to which it refers and the absence of any definition of restraint of trade as used in the statute leaves room for but one conclusion, which is, that it was expressly designed not to unduly limit the application of the act by precise definition, but while

clearly fixing a standard, that is, by defining the ulterior boundaries which could not be transgressed with impunity, to leave it to be determined by the light of reason, guided by the principles of law and the duty to apply and enforce the public policy embodied in the statute, in every given case whether any particular act or contract was within the contemplation of the statute.

But, it is said, persuasive as these views may be, they may not be here applied, because the previous decisions of this court have given to the statute a meaning which expressly excludes the construction which must result from the reasoning stated. The cases are *United States* v. *Freight Association*, 166 U. S. 290, and *United States* v. *Joint Traffic Association*, 171 U. S. 505. Both the cases involved the legality of combinations or associations of railroads engaged in interstate commerce for the purpose of controlling the conduct of the parties to the association or combination in many particulars. The association or combination was assailed in each case as being in violation of the statute. It was held that they were. It is undoubted that in the opinion in each case general language was made use of, which, when separated from its context, would justify the conclusion that it was decided that reason could not be resorted to for the purpose of determining whether the acts complained of were within the statute. It is, however, also true that the nature and character of the contract or agreement in each case was fully referred to and suggestions as to their unreasonableness pointed out in order to indicate that they were within the prohibitions of the statute. As the cases cannot by any possible conception be treated as authoritative without the certitude that reason was resorted to for the purpose of deciding them, it follows as a matter of course that it must have been held by the light of reason, since the conclusion could not have been otherwise reached, that the assailed contracts or agreements were within the general enumeration of the statute, and that their operation and effect brought about the restraint of trade which the statute prohibited. This being inevitable, the deduction can in reason only be this: That in the cases relied upon it having been found that the acts complained of were within the statute and operated to produce the injuries which the statute forbade, that resort to reason was not permissible in order to allow that to be done which the statute prohibited. This being true, the rulings in the cases relied upon when rightly appreciated were therefore this and nothing more: That as considering the contracts or agreements, their necessary effect and the char-

acter of the parties by whom they were made, they were clearly restraints of trade within the purview of the statute, they could not be taken out of that category by indulging in general reasoning as to the expediency or non-expediency of having made the contracts or the wisdom or want of wisdom of the statute which prohibited their being made. That is to say, the cases but decided that the nature and character of the contracts, creating as they did a conclusive presumption which brought them within the statute, such result was not to be disregarded by the substitution of a judicial appreciation of what the law ought to be for the plain judicial duty of enforcing the law as it was made.

But aside from reasoning it is true to say that the cases relied upon do not when rightly construed sustain the doctrine contended for is established by all of the numerous decisions of this court which have applied and enforced the Anti-trust Act, since they all in the very nature of things rest upon the premise that reason was the guide by which the provisions of the act were in every case interpreted. Indeed intermediate the decision of the two cases, that is, after the decision in the *Freight Association Case* and before the decision in the *Joint Traffic Case*, the case of *Hopkins* v. *United States*, 171 U. S. 578, was decided, the opinion being delivered by Mr. Justice Peckham, who wrote both the opinions in the *Freight Association* and the *Joint Traffic cases*. And, referring in the *Hopkins Case* to the broad claim made as to the rule of interpretation announced in the *Freight Association Case*, it was said (p. 592): "To treat as condemned by the act all agreements under which, as a result, the cost of conducting an interstate commercial business may be increased would enlarge the application of the act far beyond the fair meaning of the language used. There must be some direct and immediate effect upon interstate commerce in order to come within the act." And in the *Joint Traffic Case* this statement was expressly reiterated and approved and illustrated by example; like limitation on the general language used in *Freight Association* and *Joint Traffic Cases* is also the clear result of *Bement* v. *National Harrow Co.*, 186 U. S. 70, 92, and especially of *Cincinnati Packet Co.* v. *Bay*, 200 U. S. 179.

If the criterion by which it is to be determined in all cases whether every contract, combination, etc., is a restraint of trade within the intendment of the law, is the direct or indirect effect of the acts involved, then of course the rule of reason becomes the guide, and the construction which we have given the statute, instead of being

refuted by the cases relied upon, is by those cases demonstrated to be correct. This is true, because as the construction which we have deduced from the history of the act and the analysis of its text is simply that in every case where it is claimed that an act or acts are in violation of the statute the rule of reason, in the light of the principles of law and the public policy which the act embodies, must be applied. From this it follows, since that rule and the result of the test as to direct or indirect, in their ultimate aspect, come to one and the same thing, that the difference between the two is therefore only that which obtains between things which do not differ at all.

If it be true that there is this identity of result between the rule intended to be applied in the *Freight Association Case*, that is, the rule of direct and indirect, and the rule of reason which under the statute as we construe it should be here applied, it may be asked how was it that in the opinion in the *Freight Association Case* much consideration was given to the subject of whether the agreement or combination which was involved in that case could be taken out of the prohibitions of the statute upon the theory of its reasonableness. The question is pertinent and must be fully and frankly met, for if it be now deemed that the *Freight Association Case* was mistakenly decided or too broadly stated, the doctrine which it announced should be either expressly overruled or limited.

The confusion which gives rise to the question results from failing to distinguish between the want of power to take a case which by its terms or the circumstances which surrounded it, considering among such circumstances the character of the parties, is plainly within the statute, out of the operation of the statute by resort to reason in effect to establish that the contract ought not to be treated as within the statute, and the duty in every case where it becomes necessary from the nature and character of the parties to decide whether it was within the statute to pass upon that question by the light of reason. This distinction, we think, serves to point out what in its ultimate conception was the thought underlying the reference to the rule of reason made in the *Freight Association Case*, especially when such reference is interpreted by the context of the opinion and in the light of the subsequent opinion in the *Hopkins Case* and in *Cincinnati Packet Company* v. *Bay*, 200 U. S. 179.

And in order, not in the slightest degree to be wanting in frankness, we say that in so far, however, as by separating the general language used in the opinions in the *Freight Association* and *Joint Traffic cases* from the context and the subject and parties with

which the cases were concerned, it may be conceived that the language referred to conflicts with the construction which we give the statute, they are necessarily now limited and qualified. We see no possible escape from this conclusion if we are to adhere to the many cases decided in this court in which the Anti-trust Law has been applied and enforced and if the duty to apply and enforce that law in the future is to continue to exist. The first is true, because the construction which we now give the statute does not in the slightest degree conflict with a single previous case decided concerning the Anti-trust Law aside from the contention as to the *Freight Association* and *Joint Traffic cases*, and because every one of those cases applied the rule of reason for the purpose of determining whether the subject before the court was within the statute. The second is also true, since, as we have already pointed out, unaided by the light of reason it is impossible to understand how the statute may in the future be enforced and the public policy which it establishes be made efficacious.

. . . . . .

Giving to the facts just stated, the weight which it was deemed they were entitled to, in the light afforded by the proof of other cognate facts and circumstances, the court below held that the acts and dealings established by the proof operated to destroy the "potentiality of competition" which otherwise would have existed to such an extent as to cause the transfers of stock which were made to the New Jersey corporation and the control which resulted over the many and various subsidiary corporations to be a combination or conspiracy in restraint of trade in violation of the first section of the act, but also to be an attempt to monopolize and a monopolization bringing about a perennial violation of the second section.

We see no cause to doubt the correctness of these conclusions, considering the subject from every aspect, that is, both in view of the facts established by the record and the necessary operation and effect of the law as we have construed it upon the inferences deducible from the facts, for the following reasons:

a. Because the unification of power and control over petroleum and its products which was the inevitable result of the combining in the New Jersey corporation by the increase of its stock and the transfer to it of the stocks of so many other corporations, aggregating so vast a capital, gives rise, in and of itself, in the absence of

countervailing circumstances, to say the least, to the *prima facie* presumption of intent and purpose to maintain the dominancy over the oil industry, not as a result of normal methods of industrial development, but by new means of combination which were resorted to in order that greater power might be added than would otherwise have arisen had normal methods been followed, the whole with the purpose of excluding others from the trade and thus centralizing in the combination a perpetual control of the movements of petroleum and its products in the channels of interstate commerce.

b. Because the *prima facie* presumption of intent to restrain trade, to monopolize and to bring about monopolization resulting from the act of expanding the stock of the New Jersey corporation and vesting it with such vast control of the oil industry, is made conclusive by considering, *1*, the conduct of the persons or corporations who were mainly instrumental in bringing about the extension of power in the New Jersey corporation before the consummation of that result and prior to the formation of the trust agreements of 1879 and 1882; *2*, by considering the proof as to what was done under those agreements and the acts which immediately preceded the vesting of power in the New Jersey corporation as well as by weighing the modes in which the power vested in that corporation has been exerted and the results which have arisen from it.

Recurring to the acts done by the individuals or corporations who were mainly instrumental in bringing about the expansion of the New Jersey corporation during the period prior to the formation of the trust agreements of 1879 and 1882, including those agreements, not for the purpose of weighing the substantial merit of the numerous charges of wrongdoing made during such period, but solely as an aid for discovering intent and purpose, we think no disinterested mind can survey the period in question without being irresistibly driven to the conclusion that the very genius for commercial development and organization which it would seem was manifested from the beginning soon begot an intent and purpose to exclude others which was frequently manifested by acts and dealings wholly inconsistent with the theory that they were made with the single conception of advancing the development of business power by usual methods, but which on the contrary necessarily involved the intent to drive others from the field and to exclude them from their right to trade and thus accomplish the mastery which was the end in view. And, considering the period

from the date of the trust agreements of 1879 and 1882, up to the time of the expansion of the New Jersey corporation, the gradual extension of the power over the commerce in oil which ensued, the decision of the Supreme Court of Ohio, the tardiness or reluctance in conforming to the commands of that decision, the method first adopted and that which finally culminated in the plan of the New Jersey corporation, all additionally serve to make manifest the continued existence of the intent which we have previously indicated and which among other things impelled the expansion of the New Jersey corporation. The exercise of the power which resulted from that organization fortifies the foregoing conclusions, since the development which came, the acquisition here and there which ensued of every efficient means by which competition could have been asserted, the slow but resistless methods which followed by which means of transportation were absorbed and brought under control, the system of marketing which was adopted by which the country was divided into districts and the trade in each district in oil was turned over to a designated corporation within the combination and all others were excluded, all lead the mind up to a conviction of a purpose and intent which we think is so certain as practically to cause the subject not to be within the domain of reasonable contention.

The inference that no attempt to monopolize could have been intended, and that no monopolization resulted from the acts complained of, since it is established that a very small percentage of the crude oil produced was controlled by the combination, is unwarranted. As substantial power over the crude product was the inevitable result of the absolute control which existed over the refined product, the monopolization of the one carried with it the power to control the other, and if the inferences which this situation suggests were developed, which we deem it unnecessary to do, they might well serve to add additional cogency to the presumption of intent to monopolize which we have found arises from the unquestioned proof on other subjects.

We are thus brought to the last subject which we are called upon to consider, viz:

Fourth. The remedy to be administered.

It may be conceded that ordinarily where it was found that acts had been done in violation of the statute, adequate measure of relief would result from restraining the doing of such acts in the future. *Swift* v. *United States*, 196 U. S. 375. But in a case

like this, where the condition which has been brought about in violation of the statute, in and of itself, is not only a continued attempt to monopolize, but also a monopolization, the duty to enforce the statute requires the application of broader and more controlling remedies. As penalties which are not authorized by law may not be inflicted by judicial authority, it follows that to meet the situation with which we are confronted the application of remedies two-fold in character becomes essential: 1st. To forbid the doing in the future of acts like those which we have found to have been done in the past which would be violative of the statute. 2d. The exertion of such measure of relief as will effectually dissolve the combination found to exist in violation of the statute, and thus neutralize the extension and continually operating force which the possession of the power unlawfully obtained has brought and will continue to bring about.

In applying remedies for this purpose, however, the fact must not be overlooked that injury to the public by the prevention of an undue restraint on, or the monopolization of trade or commerce is the foundation upon which the prohibitions of the statute rest, and moreover that one of the fundamental purposes of the statute is to protect, not to destroy, rights of property.

EXHIBIT 2.

DECREE AGAINST THE AMERICAN TOBACCO COMPANY.[1]

MR. CHIEF JUSTICE WHITE delivered the opinion of the Court.

. . . . . .

. . While it is argued on the one hand that the forms by which various properties were acquired in view of the letter of the act exclude many of the assailed transactions from condemnation, it is yet urged that giving to the act the broad construction which it should rightfully receive, whatever may be the form, no condemnation should follow, because looking at the case as a whole, every act assailed is shown to have been but a legitimate and lawful result of the exertion of honest business methods brought into play for the purpose of advancing trade instead of with the object of obstructing and restraining the same. But the difficulties which arise, from the complexity of the particular dealings which are here involved and the situation which they produce, we think grows out of a

[1] 221 U. S. 106.

plain misconception of both the letter and spirit of the Anti-trust Act. We say of the letter, because while seeking by a narrow rule of the letter to include things which it is deemed would otherwise be excluded, the contention really destroys the great purpose of the act, since it renders it impossible to apply the law to a multitude of wrongful acts, which would come within the scope of its remedial purposes by resort to a reasonable construction, although they would not be within its reach by a too narrow and unreasonable adherence to the strict letter. This must be the case unless it be possible in reason to say that for the purpose of including one class of acts which would not otherwise be embraced a literal construction although in conflict with reason must be applied and for the purpose of including other acts which would not otherwise be embraced a reasonable construction must be resorted to. That is to say two conflicting rules of construction must at one and the same time be applied and adhered to.

The obscurity and resulting uncertainty however, is now but an abstraction because it has been removed by the consideration which we have given quite recently to the construction of the Anti-trust Act in the *Standard Oil Case*. In that case it was held, without departing from any previous decision of the court that as the statute had not defined the words restraint of trade, it became necessary to construe those words, a duty which could only be discharged by a resort to reason. We say the doctrine thus stated was in accord with all the previous decisions of this court, despite the fact that the contrary view was sometimes erroneously attributed to some of the expressions used in two prior decisions (the *Trans-Missouri Freight Association* and *Joint Traffic cases*, 166 U. S. 290 and 171 U. S. 505.) That such view was a mistaken one was fully pointed out in the *Standard Oil Case* and is additionally shown by a passage in the opinion in the *Joint Traffic Case* as follows (171 U. S. 568): "The act of Congress must have a reasonable construction, or else there would scarcely be an agreement or contract among business men that could not be said to have, indirectly or remotely, some bearing on interstate commerce, and possibly to restrain it." Applying the rule of reason to the construction of the statute, it was held in the *Standard Oil Case* that as the words "restraint of trade" at common law and in the law of this country at the time of the adoption of the Anti-trust Act only embraced acts or contracts or agreements or combinations which operated to the prejudice of the public interests by unduly restricting compe-

tition or unduly obstructing the due course of trade or which, either because of their inherent nature or effect or because of the evident purpose of the acts, etc., injuriously restrained trade, that the words as used in the statute were designed to have and did have but a like significance. It was therefore pointed out that the statute did not forbid or restrain the power to make normal and usual contracts to further trade by resorting to all normal methods, whether by agreement or otherwise, to accomplish such purpose. In other words, it was held, not that acts which the statute prohibited could be removed from the control of its prohibitions by a finding that they were reasonable, but that the duty to interpret which inevitably arose from the general character of the term restraint of trade required that the words restraint of trade should be given a meaning which would not destroy the individual right to contract and render difficult if not impossible any movement of trade in the channels of interstate commerce—the free movement of which it was the purpose of the statute to protect. The soundness of the rule that the statute should receive a reasonable construction, after further mature deliberation, we see no reason to doubt. Indeed, the necessity for not departing in this case from the standard of the rule of reason which is universal in its application is so plainly required in order to give effect to the remedial purposes which the act under consideration contemplates, and to prevent that act from destroying all liberty of contract and all substantial right to trade, and thus causing the act to be at war with itself by annihilating the fundamental right of freedom to trade which, on the very face of the act, it was enacted to preserve, is illustrated by the record before us. In truth, the plain demonstration which this record gives of the injury which would arise from and the promotion of the wrongs which the statute was intended to guard against which would result from giving to the statute a narrow, unreasoning and unheard of construction, as illustrated by the record before us, if possible serves to strengthen our conviction as to the correctness of the rule of construction, the rule of reason, which was applied in the *Standard Oil Case*, the application of which rule to the statute we now, in the most unequivocal terms, reëxpress and re-affirm.

Coming then to apply to the case before us the act as interpreted in the Standard Oil and previous cases, all the difficulties suggested by the mere form in which the assailed transactions are clothed become of no moment. This follows because although it was held

in the *Standard Oil Case* that, giving to the statute a reasonable construction, the words "restraint of trade" did not embrace all those normal and usual contracts essential to individual freedom and the right to make which were necessary in order that the course of trade might be free, yet, as a result of the reasonable construction which was affixed to the statute, it was pointed out that the generic designation of the first and second sections of the law, when taken together, embraced every conceivable act which could possibly come within the spirit or purpose of the prohibitions of the law, without regard to the garb in which such acts were clothed. That is to say, it was held that in view of the general language of the statute and the public policy which it manifested, there was no possibility of frustrating that policy by resorting to any disguise or subterfuge of form, since resort to reason rendered it impossible to escape by any indirection the prohibitions of the statute.

Considering then the undisputed facts which we have previously stated, it remains only to determine whether they establish that the acts, contracts, agreements, combinations, etc., which were assailed were of such an unusual and wrongful character as to bring them within the prohibitions of the law. That they were, in our opinion, so overwhelmingly results from the undisputed facts that it seems only necessary to refer to the facts as we have stated them to demonstrate the correctness of this conclusion. Indeed, the history of the combination is so replete with the doing of acts which it was the obvious purpose of the statute to forbid, so demonstrative of the existence from the beginning of a purpose to acquire dominion and control of the tobacco trade, not by the mere exertion of the ordinary right to contract and to trade, but by methods devised in order to monopolize the trade by driving competitors out of business, which were ruthlessly carried out upon the assumption that to work upon the fears or play upon the cupidity of competitors would make success possible. We say these conclusions are inevitable, not because of the vast amount of property aggregated by the combination, not because alone of the many corporations which the proof shows were united by resort to one device or another. Again, not alone because of the dominion and control over the tobacco trade which actually exists, but because we think the conclusion of wrongful purpose and illegal combination is overwhelmingly established by the following considerations: *a.* By the fact that the very first organization or combination was impelled by a previously existing fierce trade war, evidently in-

spired by one or more of the minds which brought about and became parties to that combination. *b.* Because, immediately after that combination and the increase of capital which followed, the acts which ensued justify the inference that the intention existed to use the power of the combination as a vantage ground to further monopolize the trade in tobacco by means of trade conflicts designed to injure others, either by driving competitors out of the business or compelling them to become parties to a combination—a purpose whose execution was illustrated by the plug war which ensued and its results, by the snuff war which followed and its results, and by the conflict which immediately followed the entry of the combination in England and the division of the world's business by the two foreign contracts which ensued. *c.* By the ever-present manifestation which is exhibited of a conscious wrongdoing by the form in which the various transactions were embodied from the beginning, ever changing but ever in substance the same. Now the organization of a new company, now the control exerted by the taking of stock in one or another or in several, so as to obscure the result actually attained, nevertheless uniform, in their manifestations of the purpose to restrain others and to monopolize and retain power in the hands of the few who, it would seem, from the beginning contemplated the mastery of the trade which practically followed. *d.* By the gradual absorption of control over all the elements essential to the successful manufacture of tobacco products, and placing such control in the hands of seemingly independent corporations serving as perpetual barriers to the entry of others into the tobacco trade. *e.* By persistent expenditure of millions upon millions of dollars in buying out plants, not for the purpose of utilizing them, but in order to close them up and render them useless for the purposes of trade. *f.* By the constantly recurring stipulations, whose legality, isolatedly viewed, we are not considering, by which numbers of persons, whether manufacturers, stockholders or employées, were required to bind themselves, generally for long periods, not to compete in the future. Indeed, when the results of the undisputed proof which we have stated are fully apprehended, and the wrongful acts which they exhibit are considered, there comes inevitably to the mind the conviction that it was the danger which it was deemed would arise to individual liberty and the public well-being from acts like those which this record exhibits, which led the legislative mind to conceive and to enact the Anti-trust Act, considerations which also

serve to clearly demonstrate that the combination here assailed is within the law as to leave no doubt that it is our plain duty to apply its prohibitions.

In stating summarily, as we have done, the conclusions which, in our opinion, are plainly deducible from the undisputed facts, we have not paused to give the reasons why we consider, after great consideration, that the elaborate arguments advanced to give a different complexion to the case are wholly devoid of merit. We do not, for the sake of brevity, moreover, stop to examine and discuss the various propositions urged in the argument at bar for the purpose of demonstrating that the subject-matter of the combination which we find to exist and the combination itself are not within the scope of the Anti-trust Act because when rightly considered they are merely matters of intrastate commerce and therefore subject alone to state control. We have done this because the want of merit in all the arguments advanced on such subjects is so completely established by the prior decisions of this court, as pointed out in the *Standard Oil Case*, as not to require restatement.

Leading as this does to the conclusion that the assailed combination in all its aspects—that is to say, whether it be looked at from the point of view of stock ownership or from the standpoint of the principal corporation and the accessory or subsidiary corporations viewed independently, including the foreign corporations in so far as by the contracts made by them they became coöperators in the combination—comes within the prohibitions of the first and second sections of the Anti-trust Act, it remains only finally to consider the remedy which it is our duty to apply to the situation thus found to exist.

The remedy.

Our conclusion being that the combination as a whole, involving all its coöperating or associated parts, in whatever form clothed, constitutes a restraint of trade within the first section, and an attempt to monopolize or a monopolization within the second section of the Anti-trust Act, it follows that the relief which we are to afford must be wider than that awarded by the lower court, since that court merely decided that certain of the corporate defendants constituted combinations in violation of the first section of the act, because of the fact that they were formed by the union of previously competing concerns and that the other defendants not dismissed from the action were parties to such combinations or promoted their purposes. We hence, in determining the relief proper to be

given, may not model our action upon that granted by the court below, but in order to enable us to award relief coterminous with the ultimate redress of the wrongs which we find to exist, we must approach the subject of relief from an original point of view. Such subject necessarily takes a two-fold aspect—the character of the permanent relief required and the nature of the temporary relief essential to be applied pending the working out of permanent relief in the event that it be found that it is impossible under the situation as it now exists to at once rectify such existing wrongful condition. In considering the subject from both these aspects three dominant influences must guide our action: 1. The duty of giving complete and efficacious effect to the prohibitions of the statute; 2, the accomplishing of this result with as little injury as possible to the interest of the general public; and, 3, a proper regard for the vast interests of private property which may have become vested in many persons as a result of the acquisition either by way of stock ownership or otherwise of interests in the stock or securities of the combination without any guilty knowledge or intent in any way to become actors or participants in the wrongs which we find to have inspired and dominated the combination from the beginning. Mindful of these considerations and to clear the way for their application we say at the outset without stopping to amplify the reasons which lead us to that conclusion, we think that the court below clearly erred in dismissing the individual defendants, the United Cigar Stores Company, and the foreign corporations and their subsidiary corporations.

Looking at the situation as we have hitherto pointed it out, it involves difficulties in the application of remedies greater than have been presented by any case involving the Anti-trust Act which has been hitherto considered by this court: First. Because in this case it is obvious that a mere decree forbidding stock ownership by one part of the combination in another part or entity thereof, would afford no adequate measure of relief, since different ingredients of the combination would remain unaffected, and by the very nature and character of their organization would be able to continue the wrongful situation which it is our duty to destroy. Second. Because the methods of apparent ownership by which the wrongful intent was, in part, carried out and the subtle devices which, as we have seen, were resorted to for the purpose of accomplishing the wrong contemplated, by way of ownership or otherwise, are of such a character that it is difficult if not impossible to formulate

a remedy which could restore in their entirety the prior lawful conditions. Third. Because the methods devised by which the various essential elements to the successful operation of the tobacco business from any particular aspect have been so separated under various subordinate combinations, yet so unified by way of the control worked out by the scheme here condemned, are so involved that any specific form of relief which we might now order in substance and effect might operate really to injure the public and, it may be, to perpetuate the wrong. Doubtless it was the presence of these difficulties which caused the United States, in its prayer for relief to tentatively suggest rather than to specifically demand definite and precise remedies. We might at once resort to one or the other of two general remedies—*a*, the allowance of a permanent injunction restraining the combination as a universality and all the individuals and corporations which form a part of or coöperate in it in any manner or form from continuing to engage in interstate commerce until the illegal situation be cured, a measure of relief which would accord in substantial effect with that awarded below to the extent that the court found illegal combinations to exist; or, *b*, to direct the appointment of a receiver to take charge of the assets and property in this country of the combination in all its ramifications for the purpose of preventing a continued violation of the law, and thus working out by a sale of the property of the combination or otherwise, a condition of things which would not be repugnant to the prohibitions of the act. But, having regard to the principles which we have said must control our action, we do not think we can now direct the immediate application of either of these remedies. We so consider as to the first because in view of the extent of the combination, the vast field which it covers, the all-embracing character of its activities concerning tobacco and its products, to at once stay the movement in interstate commerce of the products which the combination or its coöperating forces produce or control might inflict infinite injury upon the public by leading to a stoppage of supply and a great enhancement of prices. The second because the extensive power which would result from at once resorting to a receivership might not only do grievous injury to the public, but also cause widespread and perhaps irreparable loss to many innocent people. Under these circumstances, taking into mind the complexity of the situation in all of its aspects and giving weight to the many-sided considerations which must control our judgment, we think, so far as the permanent relief to be awarded is

concerned, we should decree as follows: 1st. That the combination in and of itself, as well as each and all of the elements composing it, whether corporate or individual, whether considered collectively or separately, be decreed to be in restraint of trade and an attempt to monopolize and a monopolization within the first and second sections of the Anti-trust Act. 2d. That the court below, in order to give effective force to our decree in this regard, be directed to hear the parties, by evidence or otherwise, as it may be deemed proper, for the purpose of ascertaining and determining upon some plan or method of dissolving the combination and of recreating, out of the elements now composing it, a new condition which shall be honestly in harmony with and not repugnant to the law. 3d. That for the accomplishment of these purposes, taking into view the difficulty of the situation, a period of six months is allowed from the receipt of our mandate, with leave, however, in the event, in the judgment of the court below, the necessities of the situation require, to extend such period to a further time not to exceed sixty days. 4th. That in the event, before the expiration of the period thus fixed, a condition of disintegration in harmony with the law is not brought about, either as the consequence of the action of the court in determining an issue on the subject or in accepting a plan agreed upon, it shall be the duty of the court, either by way of an injunction restraining the movement of the products of the combination in the channels of interstate or foreign commerce or by the appointment of a receiver, to give effect to the requirements of the statute.

EXHIBIT 3

DECREE AGAINST THE POWDER COMBINATION [1]

Second.—*Is the combination which we have found to exist one that is obnoxious to the provisions of the anti-trust act?*

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The recent decisions of the Supreme Court in Standard Oil Co. *v.* United States, and American Tobacco Co. *v.* United States, make it quite clear that the language of the anti-trust act is not to receive that literal construction which will impair rather than enhance

[1] *United States of America* v. *E. I. du Pont de Nemours & Company et al.* Opinion of the Court and Interlocutory Decree, In the Circuit Court of the United States for the District of Delaware, pp. 35–45. Handed down June 21, 1911.

freedom of interstate commerce. As we read those decisions, restraint of interstate trade and restraint of competition in interstate trade are not interchangeable expressions. There may be, under the anti-trust act, restraint of competition that does not amount to restraint of interstate trade, just as before the passage of the act there might have been restraint of competition that did not amount to a common-law restraint of trade. This fact was plainly recognized in United States *v.* Joint Traffic Association, 171 U. S. 505, 567, where Mr. Justice Peckham said:

"We might say that the formation of corporations for business or manufacturing purposes has never, to our knowledge, been regarded in the nature of a contract in restraint of trade or commerce. The same may be said of the contract of partnership. It might also be difficult to show that the appointment by two or more producers of the same person to sell their goods on commission was a matter in any degree in restraint of trade. We are not aware that it has ever been claimed that a lease or purchase by a farmer, a manufacturer or merchant of an additional farm, manufactory or shop, or the withdrawal from business of any farmer, merchant or manufacturer, restrained commerce or trade within the legal definition of that term."

While all this is true, the recent decisions of the Supreme Court make it equally clear that a combination cannot escape the condemnation of the anti-trust act merely by the form it assumes or by the dress it wears. It matters not whether the combination be "in the form of a trust or otherwise," whether it be in the form of a trade association or a corporation, if it arbitrarily uses its power to force weaker competitors out of business or to coerce them into a sale to or union with the combination, it puts a restraint upon interstate commerce and monopolizes or attempts to monopolize a part of that commerce in a sense that violates the anti-trust act. The record of the case now before us shows that from 1872 to 1902, a period of thirty years, the purpose of the trade associations had been to dominate the powder and explosives trade in the United States, by fixing prices, not according to any law of supply and demand, for they arbitrarily limited the output of each member, but according to the will of their managers. It appears, further, that although these associations were not always strong enough to control absolutely the prices of explosives, their purpose to do so was never abandoned. Under the last of the trade association agreements—the one dated July 1, 1896, and which was in force until June 30,

1904—the control of the combination was firmer than it had before been. Succeeding the death of Eugene du Pont in January, 1902, and the advent of Thomas Coleman du Pont and Pierre S. du Pont, the attempt was made to continue the restraint upon interstate commerce and the monopoly then existing by vesting, in a few corporations, the title to the assets of all the corporations affiliated with the trade association, then dissolving the corporations whose assets had been so acquired, and binding the few corporations owning the operating plants in one holding company, which should be able to prescribe policies and control the business of all the subsidiaries without the uncertainties attendant upon a combination in the nature of a trade association. That attempt resulted in complete success. Much the larger part of the trade in black and smokeless powder and dynamite in the United States is now under the control of the combination supported by the 28 defendants above named. That combination is the successor of the combination in existence from 1896 to June 30, 1904. It is a significant fact that the trade association, organized under the agreement of July 1, 1896, was not dissolved until June 30, 1904. It had been utilized until that date by Thomas Coleman du Pont, Pierre S. du Pont and Alfred I. du Pont in suppressing competition and thereby building up a monopoly. Between February, 1902, and June, 1904, the combination had been so completely transmuted into a corporate form that the trade association was no longer necessary. Consequently, the trade association was dissolved and the process of dissolving the corporations whose capital stocks had been acquired, and concentrating their physical assets in one great corporation, was begun. Before the plan had been fully carried out this suit was commenced. The proofs satisfy us that the present form of the combination is no less obnoxious to the law than was the combination under the trade association agreement, which was dissolved on June 30, 1904. The 28 defendants are associated in a combination which, whether the individual defendants were aware of the fact or not, has violated and still plans to violate both section 1 and section 2 of the anti-trust act. We conclude that it is our plain duty to grant such a decree as will prevent and restrain further violations of the act.

Third.—*The third and last question therefore is, what shall be the nature of the decree?*

It must be one of dismissal of the petition as to all of the defendants except the 28 who are found to be interested in and supporters of the unlawful combination.

It is contended by counsel for the defendants that there can be no decree against the 28 defendants for the reason that the title to the property held by the defendant corporations cannot be impaired by any decree of this Court. "The most that the Government in any event can claim," say the counsel, "is that prior to the organization of the present defendant companies there did exist contracts and combinations in restraint of trade, and possibly a monopoly of the explosive industry in the United States, and that such combinations and monopoly were participated in by some of the corporations which were later purchased by the present defendants, and possibly that some of the properties that were owned by the corporations that were purchased by the present defendants had been acquired by such corporations as a result of such combinations and monopoly. . . Even so, the corporations had title to such properties, and if such combinations and monopolies no longer exist the title to such property must be good in subsequent purchasers thereof." To support this argument Brooks *v.* Martin, 2 Wall. 71, and other cases, are referred to. But we have found that the corporations organized after the advent into the explosives business of Thomas Coleman du Pont and Pierre S. du Pont are a part of an existing combination in restraint of interstate trade. The du Pont Company of 1902 co-operated with the advisory and special committees of the trade association from April 2, 1902, to June 30, 1904, in fixing prices, apportioning trade amongst the members of the association, allowing rebates, and forcing competitors to submit to their rule. The du Pont Company of 1903 was created to aid the combination in concentrating its power and fastening its hold on the monopoly which it had sedulously built up, and which brought to its members in the short period of six years, the enormous profit of $11,000,000 in dividends and $12,000,000 or $13,000,000 in its surplus account. We do not propose by our decree to deal with titles to property. Our power is defined in the fourth section of the anti-trust act. That section invests us "with jurisdiction to prevent and restrain violations" of the act. The same section provides that the petition may contain a prayer that the violation of law therein alleged "shall be enjoined or otherwise prohibited." It is our purpose, as it is our duty, to exert the power thus conferred on us to the extent necessary to "prevent and restrain" further violations of the act. In other words, the relief we can give in this proceeding is preventive and injunctive only. If our decree, limited to that purpose, shall necessitate a discontinuance of present business methods,

it is only because those methods are illegal. The incidental results of a sweeping injunction may be serious to the parties immediately concerned, but, in carrying out the command of the statute, which is as obligatory upon this court as it is upon the parties to this suit, such results should not stay our hand; they should only challenge our care that our decree be no more drastic than the facts of the case and the law demand.

The dissolution of more than sixty corporations since the advent of the new management in 1902, and the consequent impossibility of restoring original conditions in the explosives trade, narrows the field of operation of any decree we may make. It should not make the decree any the less effective, however. In the Standard Oil case Mr. Chief Justice White said:

"It may be conceded that ordinarily where it was found that acts had been done in violation of the statute, adequate measure of relief would result from restraining the doing of such acts in the future. Swift *v.* United States, 196 U. S. 375. But in a case like this, where the condition which has been brought about in violation of the statute, in and of itself, is not only a continued attempt to monopolize but also a monopolization, the duty to enforce the statute requires the application of broader and more controlling remedies. As penalties which are not authorized by law may not be inflicted by judicial authority, it follows that to meet the situation with which we are confronted the application of remedies two-fold in character becomes essential; 1st, to forbid the doing in the future of acts like those which we have found to have been done in the past which would be violative of the statute; 2nd, the exertion of such measure of relief as will effectually dissolve the combination found to exist in violation of the statute, and thus neutralize the extension and continually operating force which the possession of the power unlawfully obtained has brought and will continue to bring about."

Both of these remedies are as clearly demanded in the present case as they were in the Standard Oil case. The existing combination in the explosives trade is one in restraint of interstate commerce. Its sales board fixes prices and exercises powers which Mr. Haskell, its chairman, admits are even more extended in their scope than were the powers of the advisory and special committees which the sales board superseded on June 30, 1904, after co-operating with them from July, 1903. It has also attempted to monopolize and is attempting to monopolize, and has monopolized and is now in the possession of a monopoly of, a large part of the explosives trade in

the United States. Our decree must therefore be one which will forbid future acts violative of the law and compel a dissolution of the combination existing in violation of the law. To stop the business of the combination immediately, however, might be attended with very disastrous consequences. The defendants, or some of them, for example, furnish military and ordinance powders to the United States Government. We understand, also, that they furnish explosives used in the construction of the Panama Canal. Their ability to continue so to do should not be destroyed before the expiration of a reasonable time for adjusting their business to the changed conditions. In the Standard Oil and American Tobacco cases six months were allowed for making the changes necessitated by the decrees entered therein. What time should be allowed in the case now in hand, and what other details should be embodied in the final decree, we cannot now determine. The present decree will therefore be interlocutory. It will adjudge that the 28 defendants are maintaining a combination in restraint of interstate commerce in powder and other explosives in violation of section 1 of the anti-trust act, that they have attempted to monopolize and have monopolized a part of such commerce in violation of section 2 of that act, that they shall be enjoined from continuing said combination, and that the combination shall be dissolved. . . . . .

EXHIBIT 4

DECREE AGAINST THE STANDARD SANITARY MANUFACTURING COMPANY [1]

The ware is absolutely unpatented. Anyone may sell it as freely as he may a loaf of bread. No one can tell by looking at a bathtub whether enameled powder has been sprinkled upon it by a patent dredger any more than anyone who eats a loaf of bread can tell whether it has been baked in an oven with a patented grate, or who lights a kerosene lamp can tell whether, in the process of refining, a patented tool has been used, or by taking a pinch of snuff can be sure that there was or not a patented mill used in grinding the tobacco.

[1] *United States of America* v. *The Standard Sanitary Manufacturing Company*. Opinion of the Court on Final Hearing, In the Circuit Court of the United States for the District of Maryland, pp. 33–47. Handed down, Oct. 13th, 1911. For a brief history of the Bathtub combination see Stevens, W. S., Quarterly Journal of Economics, August, 1912, Vol. XXVI, pp. 593ff.

If agreements in this case are not violations of the Sherman Act, similar agreements among all the bakers of bread, the refiners of petroleum, the grinders of snuff will be legal, provided that somewhere in the process of making the bread, refining the petroleum, or grinding the snuff a patented tool has been used.

The issue is important. It cuts deep. The record squarely presents it. It must be passed upon.

The defendants say they have broken no law even if all that has thus far been said herein be true.

They rely upon what they understand to have been decided by the Circuit Court of Appeals of the Seventh Circuit in the case of the *Rubber Tire Wheel Co.* v. *Milwaukee R. W. Co.* (154 Fed. 358).

There the court said that no one can use a patented article without the consent of the patentee. He may fix his own conditions. It adds, "Whatever the terms the courts will enforce them, provided only that the licensee is not thereby required to violate some law outside of the patent laws, like the doing of murder or arson."

. . . . . .

. . . At common law and by statute monopolies are unlawful. At common law and by statute a man who invented a new and useful thing might be given a right which would enable him for a limited time effectually to monopolize it. The courts have said that this right to monopolize what he invented can not be taken from a patentee by State laws. They say it has not been taken away by Congress. All men know that Congress never intended, when it passed the Sherman Act, to change the patent law. It did not do so. The patentee may, in spite of that law, monopolize for the term of his patent the thing which he or his assignor invented. Neither at common law nor in this country by statute has he ever had a right to monopolize anything else. As to everything not validly claimed in his patent he is as other men. If by the common law or the statutes of the State or by the enactments of Congress men are forbidden to restrain trade or to monopolize it, a patentee may not restrain trade or attempt to monopolize it in anything except that which is covered by his patent.

A patent is a grant of a right to exclude all others from making, using, or selling the invention covered by it. It does not give a right to the patentee to sell indulgences to violate the law of the land, be it the Sherman Act or another.

The right to exclude others is the property of the patentee. It is

his very own. He may do with it as he will. A very rich man may have $100,000,000 of cash. It is his property. It is his very own. He may do with it as he will. Neither one of them can use his property to bring about a violation of law. A patentee who monopolizes his invention breaks no law. He who uses his property right to exclude others from the making, selling, or using his invention for the purpose and with the effect of making a combination to restrain trade in something from which his patent gives him no right to exclude others, does break the law. He breaks it precisely as the individual defendants in the Standard Oil and American Tobacco Cos. broke it. They had the same right to use their brains, their capital, and their credit as they thought best, as he had to use his right to exclude all others from making, using, or selling automatic dredgers. He was subject to the same limitations as they were. They could not lawfully use their brains, their money, and their credit to restrain trade in petroleum and tobacco. He can not use his patent rights to restrain trade in unpatented bathtubs.

The defendants have pressed upon our attention many cases in the Circuit Courts and in the Circuit Courts of Appeal. Many of them have upheld the right of a patentee to fix the price below which a purchaser from him of patented articles may not sell those articles. In some of these cases it has been held that one who sells at a lower price thereby becomes an infringer and that the Federal Courts have jurisdiction of a suit brought against him on account of such sale, irrespective of the amount in controversy or the citizenship of the parties.

. . . . . .

The Supreme Court has in several recent cases expressly said that it was not be to understood as expressing any opinion as to whether such restrictions when applied to patented articles were or were not valid

. . . . . .

Wayman did not sell patented dredgers on condition that the purchasers should not resell them below a fixed price. The question of whether such restrictions upon the sale of patented articles are valid is not before us. We neither decide it nor intimate any opinion upon it.

. . . . . .

What has been said is sufficient for the determination of this case. The ware is not patented. The agreements or licenses attempt to fix the price of unpatented ware and to monopolize the trade in it. The fact that Wayman had a patent on something else, even though it was a tool used in one step of the making of the ware, gives neither him nor his licensees the right to restrain interstate trade in the ware. The ownership of a patent for a tool by which old, well-known, and unpatented articles of general use can be more cheaply made gives no right to combine the makers and dealers in the unpatented articles in an agreement to make the public pay more for it.

. . . . . .

In what has been said it has been assumed that Wayman was the real and substantial owner of the patents; that the scheme was his; that his purpose was merely to make money for himself by selling to the corporate defendants indulgences to sin against the Sherman Act.

The Government contends that this was not the real situation. In its view there is nothing before the court except an ordinary combination to raise and maintain wholesale and retail prices and to force all the makers and dealers in the country into it. Wayman, it says, was nothing more than the ordinary promoter. The patents served the purpose of the certificate of incorporation from New Jersey or Delaware used when the combination became a consolidation. We have not discussed this branch of the case. We will not. We refrain from doing so not because it would not be pertinent. It would. Ordinarily it would receive full consideration. Unusual circumstances shown by the record make it inexpedient and even improper to do so if the case can be disposed of without commenting upon that aspect of it.

. . . . . .

. . . Against the other defendants, corporate and individual, the Government is entitled to injunctive relief substantially as prayed for. In view of the pendency of the criminal case all characterization of what the defendants have done not necessary to the effectiveness of the decree should be omitted from it. The Government may submit a draft of a decree to the counsel for the defendants. If an agreement can not be speedily had we will upon application fix an early day for its settlement.

EXHIBIT 5

DECREE OF INJUNCTION AGAINST THE SOUTHERN WHOLESALE GROCERS ASSOCIATION [1]

1. That the said defendants, The Southern Wholesale Grocers' Association and all the members of said association, The Southern Wholesale Grocers' Association, a corporation, The McLester-Van Hoose Company, James A. Van Hoose, Robert McLester, The Alabama Grocery Company, S. W. Lee, Joseph H. McLaurin, L. M. Hooper, F. E. Hashagen, C. W. Bartleson, Robert Moore, Thomas C. Davis, B. B. Earnshaw, C. C. Guest, T. H. Scovell, W. T. Reeves, R. A. Morrow, J. H. C. Wulburn, J. D. Faucette, W. A. Scott, and James W. Lee, and each and all of them, their directors, officers, agents, servants, and employees, and all persons acting under, through, by, or in behalf of them or either of them, or claiming so to act be, and they are hereby, perpetually enjoined, restrained, and prohibited from combining, conspiring, confederating, or agreeing together or with others expressly or impliedly, directly or indirectly, to prevent manufacturers or producers engaged in selling or shipping commodities among the several States and in the District of Columbia from selling such commodities to any person who is not a member of the said The Southern Wholesale Grocers' Association, or who is not listed on the so-called Green Book, published by said association, its officers, and agents, and entitled "Official List of Wholesale Grocers in the States of Alabama, Arkansas, District of Columbia, Florida, Georgia, Indian Territory, Louisiana, Maryland, Mississippi, North Carolina, Oklahoma, South Carolina, Tennessee, Texas, and Virginia," or any book, pamphlet or list of like character; and they and each of them be, and are likewise enjoined, restrained, and prohibited from publishing, causing to be published, aiding, assisting, or encouraging the publication, distribution, or circulation of any book, pamphlet, or list wherein is contained only the names of wholesale grocers located in the territory embraced by said organization who have announced their intention or agreed, directly or indirectly, expressly or impliedly, to work in harmony with said association.

They are also enjoined, restrained, and prohibited from publish-

[1] *United States of America* v. *The Southern Wholesale Grocers Association et al.* Decree of Injunction, In the Circuit Court of the United States for the Northern District of Alabama, pp. 4–9. Handed down October 17th, 1911.

ing or distributing, or causing to be published or distributed, or aiding or assisting or encouraging in the publication or distribution of any list or lists of manufacturers or producers who have, expressly or impliedly, directly or indirectly, agreed to sell only to members of said association, or to persons, firms, or corporations listed in said Green Book, or book, pamphlet, or list of like character.

2. That the said defendants and each and all of them, their directors, officers, agents, servants, and employees, and all persons acting under, through, by, or in behalf of them, or either of them, or claiming to so act, be, and they are hereby, enjoined, restrained, and prohibited from combining, conspiring, confederating, and agreeing together or with others to fix a price at which any commodity shall be sold, or to coerce manufacturers and producers engaged in selling and shipping commodities among the several States, and in the District of Columbia, to fix a limited selling price at which such commodities are to be sold, and to have such price printed on cards and distributed; and they are hereby enjoined, restrained, and prohibited from printing, causing to be printed, or encouraging or aiding in the printing of such cards, or their distribution; and they and each of them are likewise enjoined, restrained, and prohibited from conspiring, confederating, or agreeing together or with others, expressly or impliedly, directly or indirectly, to prevent such manufacturers and producers from selling and shipping commodities to any wholesale grocer who does not maintain the price so fixed and listed; and they and each of them are likewise enjoined, restrained, and prohibited from demanding and receiving from any such manufacturer or producer any rebate, bonus, or emolument of any kind to be paid to any wholesale dealer or jobber for and on account of the fact that he has maintained the limited selling price; and are likewise enjoined, restrained, and prohibited from paying or delivering any such rebate, bonus, or emolument of any kind, directly or indirectly, to any such wholesale grocer or jobber who has maintained such limited selling price, or demanding or receiving any fine or penalty, directly or indirectly, from any wholesale grocer or jobber engaged in commerce among the several States and in the District of Columbia for and on account of such wholesale grocer or jobber not having maintained said limited selling price.

3. That said defendants and each and all of them, their directors, officers, agents, servants, and employees, and all persons acting

under, through, by, or in behalf of them, or either of them, or claiming so to act, be, and they are hereby, perpetually enjoined, restrained, and prohibited from conspiring, confederating, or agreeing together or with others, expressly or impliedly, directly or indirectly, to boycott any manufacturer or producer, wholesaler, or jobber engaged in commerce among the several States and in the District of Columbia for and on account of any such manufacturer, producer, wholesaler or jobber having sold or transported in interstate commerce any commodity to any person, firm, or corporation who is not a member of said association or who does not maintain the said limited selling price or who is not listed in the said Green Book or book, pamphlet, or list of like character; and also from combining, conspiring, confederating, and agreeing together, or with others, expressly or impliedly, directly or indirectly, to prevent any person, firm, or corporation who refuses to join said association or who refuses to maintain said limited selling price or who sells commodities direct to the consumer from purchasing such commodities from manufacturers, jobbers, producers, or wholesalers engaged in commerce among the several States and in the District of Columbia; and also from conspiring, confederating, and agreeing together or with others, expressly or impliedly, directly or indirectly, to increase jobbers' profits by increasing prices at which wholesalers and jobbers shall sell any commodity in interstate commerce.

4. That said defendants and each and all of them, their directors, officers, agents, servants, and employees, and all persons acting under, through, by, or in behalf of them, or either of them, or claiming so to act, be, and they are hereby, perpetually enjoined, restrained, and prohibited from conspiring or agreeing together or with others, expressly or impliedly, to do or to refrain from doing anything the purpose or effect of which is to fix or maintain the price at which any commodity employed or intended to be employed in commerce among the several States and in the District of Columbia shall or should be sold by any manufacturer, jobber, wholesaler, or retailer, or the purpose or effect of which is to hinder or prevent, by intimidation or coercion, any person, firm, or corporation from buying or selling any such commodity wherever, whenever, from and to whomsoever and at whatsoever price may be then and there agreed upon by the seller and purchaser.

5. The Southern Wholesale Grocers' Association, its officers and members, and all who shall hereafter become officers and members of said association, are hereby perpetually enjoined and inhibited

from doing, or combining or conspiring to do, either or any of said acts. The said association and its officers and members are not restrained from maintaining said organization for social or other purposes than those herein prohibited.

. . . . . .

EXHIBIT 6.

DECREE AGAINST THE GENERAL ELECTRIC COMPANY.[1]

Second: That the General Electric Company is the owner of the entire capital stock of the National Electric Lamp Company, and, at the time of the filing of the petition herein, was the owner of the majority of said stock; that the said National Electric Lamp Company is in turn the owner of the entire capital stock of the subsidiary companies hereinafter named; that such stock ownership has been concealed from the general public and the trade; that notwithstanding such stock ownership the General Electric Company, the National Electric Lamp Company, and the latter's subsidiary companies hereinafter named, are pretending to be separate, distinct, independent and competing companies, in the business of manufacturing, dealing in and selling incandescent electric lamps, whereas no such independence or competition exists or has existed, and that the General Electric Company has heretofore been largely engaged in carrying on the incandescent lamp business indirectly through said companies.

It is, therefore, adjudged, ordered and decreed, that the defendants, National Electric Lamp Company and all its subsidiary companies , ... , be each and all of them dissolved, and the General Electric Company is enjoined from hereafter conducting, except in its own name, the business heretofore or hereafter carried on by it in incandescent lamps of any and every description; and

It is further adjudged, ordered and decreed that all factories, plants, and manufacturing and selling departments operated or owned by said General Electric Company, for the manufacture and sale of incandescent lamps, shall be made known to the general public and trade as the property and business of the said General Electric Company; . . . . . .

[1] *United States of America* v. *General Electric Company et al.* Final Decree, In the Circuit Court of the United States for the Northern District of Ohio, Eastern Division, pp. 3–10. Handed down Oct. 12, 1911. For a brief history of the Electric Lamp combination see Stevens, W. S., Quarterly Journal of Economics, August 1912, Vol. XXVI, pp. 593ff.

Third: That the General Electric Company and each and all of the Lamp Manufacturing Defendants as defined in clause fourth, their officers, agents and servants be and they hereby are restrained, enjoined and forbidden from making or carrying out directly or indirectly, any contracts with any manufacturer or manufacturers of lamp-making machinery, or with any manufacturer or manufacturers of bulbs and tubing for incandescent lamps, whereby such manufacturers or any of them shall be bound not to sell the goods, manufactured by them, respectively, to others than the said defendants or any of them, or hindered from so doing or obligated to sell to the said defendants or any of them at other and different prices and terms of payment than those to which they severally may sell to other purchasers.

Fourth: That the General Electric Company and each and all of the said defendants mentioned in clause second hereof, together with the Westinghouse Electric and Manufacturing Company, Westinghouse Lamp Company, Aetna Electric Company, The Capital Electric Company, The Franklin Electric Manufacturing Company, Liberty Electrical Manufacturing Company, and Howard Gilmore and William Gilmore, doing business as the Gilmore Electric Company, all said defendants being collectively herein designated "The Lamp Manufacturing Defendants," are enjoined from fixing by combination, agreement, understanding or any other acts between any two, more or all of them, or between them or any of them and others, the price or prices at which any incandescent electric lamp or lamps of any pattern, character, type or description, whether made or sold under letters patent, license or otherwise, shall be sold or dealt in, either at wholesale or retail; provided that any of the defendants lawfully owning patents may grant to another defendant or to others, or may receive appropriate manufacturing licenses under such patents, or under any patents lawfully owned by any of the defendants or others, upon terms and conditions fixed only by the licensors; provided further, that any such licensor is hereby enjoined and prohibited from requiring or imposing upon the licensee the fixing of a resale price to be observed by the licensee's vendees; and the purchasers of such lamps from either the licensor or from the licensee or from the vendees of either the licensor or licensee, whether at wholesale or retail, shall not be in any manner restricted as to the price at which such lamps shall be sold to the public or to any dealer or consumer.

Fifth: That the General Electric Company and the other above-

mentioned Lamp Manufacturing Defendants are enjoined from maintaining, by agreement, differentials between lamps which do not in fact differ in quality or efficiency, and said defendants are enjoined from allowing discounts based on aggregate purchases from different manufacturers.

Sixth: That the General Electric Company and the other above-named Lamp Manufacturing Defendants, and each of them, their officers, agents and servants, are perpetually enjoined and restrained from making or enforcing any contracts, arrangements, agreements or requirements with dealers, jobbers and consumers, who buy from the said defendants either tantalum filament, tungsten filament, metalized carbon filament or ordinary carbon filament lamps, or any of them, by which such dealers, jobbers and consumers are compelled to purchase all their ordinary carbon filament lamps from said defendants as a condition to obtaining such other types of lamps, or any of them, or by which dealers, jobbers and consumers are compelled to purchase any one or more of the above-mentioned types of lamps from the said defendants as a condition to the purchase or supply of any other or all of said types of lamps; and the said General Electric Company and the Lamp Manufacturing Defendants aforesaid are perpetually enjoined and restrained from discriminating against any dealer, jobber or consumer desiring to purchase tantalum, tungsten or metalized carbon filament lamps because of the fact that such dealer, jobber or consumer purchases ordinary carbon filament lamps from others, and are perpetually enjoined and restrained from discriminating against any dealer, jobber or consumer desiring to purchase any one or more of the above-mentioned types of lamps because of the fact that such dealer, jobber or consumer purchases any other of said lamps from other manufacturers or dealers.

Seventh: That the General Electric Company and the others of the said Lamp Manufacturing Defendants are perpetually enjoined and restrained when making discounts based on the quantity of lamps purchased by any dealer, jobber or consumer from making such discounts on the basis of the total quantity of tungsten, tantalum, metalized carbon and ordinary carbon filament lamps sold, or the total quantity of ordinary carbon filament lamps and any one or more of such other types of lamps sold; and the General Electric Company and the others of the said Lamp Manufacturing Defendants are further perpetually enjoined and restrained from making any discounts based on the total quantity of any two or more types of lamps sold, when the result is to combine or aggregate the discount

on both an unpatented lamp and a lamp patented or claimed to be patented; and that said defendants and each and all of them are perpetually enjoined from utilizing any patents which they may have or claim to have or which they may hereafter acquire or claim to have acquired, as a means of controlling the manufacture or sale of any type or types of lamps not protected by lawful patents.

Eighth: That the General Electric Company and the other defendants are each enjoined and restrained from offering or making more favorable prices or terms of sale for incandescent electric lamps to the customers of any rival manufacturer or manufacturers than it at the same time offers or makes to its established trade, where the purpose is to drive out of business such rival manufacturer or manufacturers, or otherwise unlawfully to restrain the trade and commerce of the United States in incandescent electric lamps; provided that no defendant is enjoined or restrained from making any prices for incandescent electric lamps to meet, or to compete with, prices previously made by any other defendant, or by any rival manufacturer; and provided further than nothing in this decree shall be taken in any respect to enjoin or restrain fair, free and open competition.

Ninth: That the General Electric Company, as licensor, on the one hand, and Westinghouse Electric and Manufacturing Company, The Capital Electric Company, The Aetna Electric Company, The Franklin Electric Manufacturing Company, The Liberty Electrical Manufacturing Company, and Howard Gilmore and William Gilmore, trading as the Gilmore Electric Company, as licensees, and each and every one of them, and their officers, agents and servants, are hereby perpetually enjoined and restrained from operating under any license contracts or agreements so far as such contracts or agreements provide that prices and terms of sale of incandescent electric lamps shall be fixed otherwise than by the licensor, or containing provisions fixing the prices at which any purchaser or any vendee from a manufacturer shall sell incandescent electric lamps.

CHAPTER XIV

METHODS OF DISSOLUTION

NOTE

THIS chapter scarcely requires a headnote. The dissolutions of both the Standard Oil and Tobacco combinations are recent history. It is, therefore, almost needless to state that these dissolutions grew out of the decrees handed down by the Supreme Court in the spring of 1911. The third exhibit in the chapter is the dissolution plan of the Powder Trust. This decree followed the Interlocutory Decree reprinted as Exhibit 3 in the preceding chapter.—Ed.

EXHIBIT 1

THE DISSOLUTION OF THE AMERICAN TOBACCO COMPANY.[1]

And it is further ordered, adjudged, and decreed, that said plan as modified by the consent of the parties, or through the action of this court as aforesaid, is as follows, to wit:

A.

DISSOLUTION OF AMSTERDAM SUPPLY CO.

Amsterdam Supply Co. is a company engaged in the business of purchasing for a commission or brokerage, supplies, other than leaf tobacco, its principal customers being defendant corporations herein. It has $235,000 at par of stock, all held in varying amounts by certain corporation defendants, one or the other of your petitioners, and a surplus of $127,058.74.

It is proposed that Amsterdam Supply Co. be dissolved, converting its assets into cash and distributing them to its stockholders.

B.

ABROGATION OF FOREIGN RESTRICTIVE COVENANTS.

Under the contracts of September 27, 1902, the Imperial Tobacco Co. (of Great Britain and Ireland, Ltd.) and certain of its directors

[1] *United States of America* v. *American Tobacco Company.* In the Circuit Court of the United States for the Southern District of New York, Opinions of the Court, and Decree pp. 36–69. The draft here given is from a copy of the decree in Hearings before the Committee on Interstate Commerce, United States Senate, 62nd Cong. 2nd Sess. 1911–1912 pp. 290 ff. This accounts for slight differences in punctuation, the use of italics and abbreviations.—Ed.

agreed not to engage in the business of manufacturing or selling tobacco in the United States, the American Tobacco Co. and American Cigar Co. and certain of their directors agreed not to engage in the business of manufacturing or selling tobacco in Great Britain and Ireland; and the American Tobacco Co., American Cigar Co., and the Imperial Tobacco Co. agreed not to engage in the business of manufacturing or selling tobacco in countries other than Great Britain and Ireland and the United States. Under the provisions of these contracts British-American Tobacco Co. (Ltd.) was organized and took over the export businesses of the American Tobacco Co., and the Imperial Tobacco Co., with factories, materials, and supplies.

It is proposed that the covenants herein just described as well as all covenants restricting the right of any company or individual in the combination to buy, manufacture, or sell tobacco or its products, be rescinded by the affirmative action of the respective parties thereto who are parties to this suit, except such of said covenants, whether or not contained in the contracts of September 27, 1902, as (*a*) relate wholly to business in foreign countries and are covenants the benefit whereof has been assigned or transferred to other parties; or (*b*) are covenants exclusively between foreign corporations and relating wholly to business in or between foreign countries; and that the said contracts of September 27, 1902, be altogether terminated so far as they impose any obligations upon any of the parties thereto to furnish or to refrain from furnishing manufactured tobaccos to any party, each company to treat as its own, but only to the extent provided for in said contracts, all brands and trademarks which by said contracts it was given the right to manufacture and sell, the said rights having been perpetual and constituting in effect a conveyance of the brands and trademarks used for the countries in which they were so used by each of said companies as aforesaid.

C.

ABROGATION OF DOMESTIC RESTRICTIVE COVENANTS.

It is proposed that covenants given by vendor corporations, partnerships, or individuals, or by stockholders of vendor corporations, to vendee corporations defendants herein, not to engage in the tobacco business or any other business in any way embraced in the combination, be terminated so that all such covenanters

shall be at liberty to engage in the business of buying, manufacturing, and dealing in tobacco and its products just as if such covenants had not been made.

D.

DISINTEGRATION OF ACCESSORY COMPANIES.

(1) *The Conley Foil Co.*—The Conley Foil Co. has a capital stock of $825,000 at par, all of one class, of which the American Tobacco Co. owns $495,000 at par, the balance being held by persons not defendants nor connected with defendants. It is engaged in the business of manufacturing tin foil, a product used largely by tobacco manufacturers, but having other uses as well. The Conley Foil Co. has a plant in New York City, and it owns all the stock and bonds of the Johnston Tin Foil & Metal Co., which has a plant in St. Louis. The value of the output for the year 1910 of the Conley Foil Co. was $1,780,526.85, with a net profit of $273,299.82, and the Johnston Tin Foil & Metal Co. had an output for the year 1910 of the value of $676,520.05 and net profits of $66,255.16. On December 31, 1910, the Conley Foil Co. had tangible assets (excluding its securities of the Johnston Tin Foil & Metal Co.) of $1,215,321, and the Johnston Tin Foil & Metal Co. had assets of the value of $379,802.11. The Conley Foil Co. has a surplus exceeding the value of the securities of the Johnston Tin Foil & Metal Co.

It is proposed that the Conley Foil Co. cancel the bonds of the Johnston Tin Foil & Metal Co. held by it, to wit, $100,000 par value, and distribute to its stockholders its holdings of stock of the Johnston Tin Foil & Metal Co., to wit, 3,000 shares, all of one class.

The American Tobacco Co., being a stockholder of the Conley Foil Co., will participate in this distribution, and will in turn distribute its dividend, as well as its stock in the Conley Foil Co., to its common-stock holders as hereinafter set forth.

(2) *MacAndrews & Forbes Co.*—MacAndrews & Forbes Co. is a company having a common capital stock of $3,000,000 at par, of which the American Tobacco Co. owns $2,112,900 at par, the balance being held by persons not defendants nor connected with defendants (except less than $3\frac{1}{8}$ per cent of the common stock held by R. J. Reynolds Tobacco Co.), and $3,758,300 at par of 6 per cent nonvoting preferred stock, of which the American Tobacco Co. holds $750,000 at par, the balance being held by persons not defendants nor connected with defendants. It is

engaged in the production of licorice paste, with two plants—one at Camden, N. J., and the other at Baltimore, Md. It had tangible assets, December 31, 1910, of the value of $5,683,824.89 (including $2,118,448.36 licorice root, with plants for its collection in foreign countries), and its sales for the year 1910 were of the value of $4,427,023.44. MacAndrews & Forbes Co. succeeded to the business of MacAndrews & Forbes, a partnership, who were pioneers in this country in the production of licorice paste, and who had, for many years before any acquisitions of other business and before they had any connection with the other defendants herein, more than 50 per cent of all the licorice-paste business of the United States.

It is proposed that a new corporation be organized, called the J. S. Young Co., and that it shall acquire the Baltimore plant of MacAndrews & Forbes Co., with the assets used therein and in connection therewith, of a total value of $1,000,000, and the brands of licorice paste manufactured in said Baltimore plant; that it issue in payment therefor, with the good will connected therewith, $1,000,000 at par of 7 per cent preferred nonvoting stock and $1,000,000 at par of common stock; that MacAndrews & Forbes Co. distribute the common stock of the J. S. Young Co. as a dividend to its common-stock holders, charging the amount thereof to its surplus account; that MacAndrews & Forbes Co. offer to its preferred-stock holders proportionately to exchange the 7 per cent preferred stock of the J. S. Young Co. at par for their preferred stock of MacAndrews & Forbes Co.; that so far as the preferred stock of MacAndrews & Forbes Co. is thus exchanged, it be retired; that so far as this preferred stock of the J. S. Young Co. is not forthwith thus exchanged, MacAndrews & Forbes Co. be enjoined from using it to exercise, or otherwise exercising or attempting to exercise, influence or control over the J. S. Young Co.; and with the further provision that on or before January 1, 1915, the whole of this preferred stock of the J. S. Young Co., not theretofore taken out of the treasury of MacAndrews & Forbes Co. by exchange as aforesaid, be disposed of by MacAndrews & Forbes Co.

This would give to MacAndrews & Forbes Co. a licorice business, including Spanish licorice and powdered goods, of the net selling value, based upon the year 1910, of $2,514,184.64, of which $2,214,127.51 arise from sales of one brand, to wit, the old "Ship" brand. The J. S. Young Co., upon the basis of the business for the year 1910, would have an output of the net selling value of $1,201,109.86.

The American Tobacco Co., being a holder of the common stock of MacAndrews & Forbes Co., will participate in the distribution above provided and will in turn distribute its dividend, as well as its stock in MacAndrews & Forbes Co., to its common-stock holders as hereinafter set forth.

(3) *American Snuff Co.*—American Snuff Co. is a manufacturer of snuff. It holds all of the stock of De Voe Snuff Co., to wit, $50,000 at par; and one-half, to wit, $26,000 at par, of the stock of National Snuff Co. It owns no other interest in any company manufacturing or selling snuff.

It is proposed that there be organized two new snuff companies, one to be called the George W. Helme Co. and the other Weyman-Bruton Co., and that American Snuff Co. convey to these two companies, respectively, factories, with the brands manufactured in them, as follows: To the George W. Helme Co. the factories at Helmetta, N. J., and Yorklyn, Del., except factory No. 5; to Weyman-Burton Co. the factories at Chicago and Nashville, also all the stock of De Voe Snuff Co., and the one-half of the stock of National Snuff Co. held by American Snuff Co. Based upon the business for the year 1910 and the assets at the end of the year, with proper provision for leaf, materials, cash and book accounts for the two vendee companies, this would leave the three companies equipped as follows:

Manufacturing tangible assets.

American Snuff Co. [1]	$5,075,969.72
George W. Helme Co.	4,909,000.40
Weyman-Bruton Co.	3,691,588.20

Sales value during 1910.

American Snuff Co.	$5,520,422.15
George W. Helme Co.	4,494,556.66
Weyman-Bruton Co.	4,297,486.71

Net income.

American Snuff Co. [1]	$1,591,280.49
George W. Helme Co.	1,259,280.98
Weyman-Bruton Co.	1,293,759.39

[1] American Snuff Co. holds securities not connected with the snuff business, to wit: Stock and bonds of the American Tobacco Co., preferred stock of American Cigar Co., aggregating in book value $2,530,216.69, upon which American Snuff Co. received in interest and dividends during the year 1910, $176,680.

Each of these vendee corporations will pay for the property and business conveyed to it by the issue of $4,000,000 at par of 7 per cent voting preferred stock and $4,000,000 at par of common stock. American Snuff Co. will thus receive the $16,000,000 at par of these stocks into its treasury, and will distribute to its common-stock holders, as a dividend, the common stock aggregating $8,000,000, to be charged to its surplus account. American Snuff Co. will offer to its preferred-stock holders proportionately to exchange these 7 per cent preferred stocks of the George W. Helme Co. and the Weyman-Bruton Co. for their preferred stock of American Snuff Co. at par. So much of the preferred stock of American Snuff Co. as is thus exchanged will be retired. As to so much of the preferred stocks of the George W. Helme Co. and the Weyman-Bruton Co. as is not forthwith thus exchanged, American Snuff Co. to be enjoined from voting it, or using it to exercise, or otherwise exercising or attempting to exercise, influence, or control over the George W. Helme Co. or the Weyman-Bruton Co.; and on or before January 1, 1915, all of these preferred stocks of the George W. Helme Co. and the Weyman-Bruton Co. not theretofore taken out of the treasury of American Snuff Co. by exchange as aforesaid to be disposed of by American Snuff Co.

The American Tobacco Co., being a holder of the common stock of American Snuff Co., will participate in the distribution above provided, and will, in turn, distribute its dividends as well as its stock in American Snuff Co., including that to be acquired from P. Lorillard Co., to its common-stock holders as hereinafter set forth.

(4) *American Stogie Co.*—American Stogie Co. is a corporation whose only asset is all of the issued stock of Union-American Cigar Co., which latter company has cigar factories located at Pittsburgh, Allegheny, Lancaster, and Newark. Its total production, based upon business for the year 1910, is only 1.58 per cent of the entire production of cigars in the United States in volume, and, as these petitioners believe, about the same percentage in value. American Stogie Co. has $976,000 at par of 7 per cent cumulative preferred stock, of which American Cigar Co. owns $40,000 at par, and none

It is proposed that American Snuff Co. sell or otherwise dispose of these securities within three years, and that in the meantime they be held under an injunction as is provided in this paragraph with respect to securities of the George W. Helme Co. and Weyman-Bruton Co. to be temporarily held by it. It also owns all, to wit, $100,000 at par of the stock of Garrett Real Estate Co., which will be dissolved and liquidated.

of the other defendants own any; it has $10,879,000 at par of common stock, of which American Cigar Co. owns $7,303,775 at par, and none of the other defendants own any. There are accumulated and unpaid dividends on the preferred stock to the amount of $399,000 as of December 31, 1910.

It is proposed that American Stogie Co. dissolve, with leave granted to the trustees in dissolution to either convert the assets into cash, and distribute them among the stockholders according to their rights, or to effect such reorganization as they may be able to effect, provided that in either event there shall be a separation into at least two different ownerships of the factories and businesses now owned and operated by Union-American Cigar Co. If the dissolution is followed by a conversion of the assets of American Stogie Co. into cash, American Cigar Co. will take such cash as it may receive into its treasury; if it receives upon such dissolution securities of cigar-manufacturing concerns, it will distribute such as a dividend to its common-stock holders, to be charged to its surplus as hereinafter set forth.

(5) *American Cigar Co.*—American Cigar Co. is a manufacturer of cigars. It has various factories of its own, and it owns all or a part of the stock of several companies engaged in the manufacture of cigars, all of which companies have been organized by it and which have received from it conveyances of part of its business, operating in this way as separate corporations for trade purposes. Among these companies is Federal Cigar Co.

American Cigar Co. also owns a part of the stock of Havana Tobacco Co., which controls factories manufacturing cigars in Havana; and a part of the stock of Porto Rican-American Tobacco Co., engaged in the manufacture of cigars and cigarettes in Porto Rico; and half of the stock of Porto Rican Leaf Tobacco Co., engaged in growing tobacco in Porto Rico. American Cigar Co. itself uses large quantities of Porto-Rican grown leaf. Neither American Cigar Co. nor any of the companies in which it is interested, except Havana Tobacco Co. and Porto Rican-American Tobacco Co., is engaged in the manufacture of cigars outside of the United States.

American Cigar Co., including with its production the production of companies of which it owns in whole or in part the stock, has, in volume, based on the business for the year 1910, 13.36 per cent of the cigar business of the United States, and in value, as your petitioners believe, substantially the same percentage. Havana To-

bacco Co. has, directly or indirectly, control of 24.06 per cent of the total production of cigars in Cuba, 46 per cent of the total exportation of cigars from Cuba to all countries of the world, including the United States, and 38.15 per cent of the total exportation of cigars from Cuba to the United States.

It is proposed that American Cigar Co. dispose of properties belonging to it, and thus disintegrate its business, as follows:

(*a*) That it sell to the American Tobacco Co. for cash its stock, being all thereof, of Federal Cigar Co., at a fair price, to wit., $3,965,616.05.

(*b*) That it sell to the American Tobacco Co. for cash the stock it owns of Porto Rican-American Tobacco Co., to wit., $657,600 at par, at a fair price, to wit., $350 per share, or $2,301,600.

(*c*) That American Cigar Co. dispose of any interest in American Stogie Co. by receiving cash proceeds of its stock in dissolution thereof, if American Stogie Co. upon dissolution converts its assets into cash; or by distributing as a dividend to its common-stock holders out of its surplus the securities which it receives upon the dissolution of American Stogie Co., if it receives such.

All stocks thus to be acquired by the American Tobacco Co. from American Cigar Co. are to be disposed of by the American Tobacco Co. as hereinafter set out.

E.

DISTRIBUTION BY THE AMERICAN TOBACCO CO. OF STOCKS OWNED OR TO BE ACQUIRED BY IT.

(1) *Immediate distribution of stocks.*—The American Tobacco Co. will buy from P. Lorillard Co., for cash at par, the 11,247 shares of the preferred stock of American Snuff Co. held by P. Lorillard Co., and will receive, as the sole common-stock holder of P. Lorillard Co. and by way of dividends, 34,594 shares of the common stock of American Snuff Co. held by P. Lorillard Co.

The American Tobacco Co. will distribute among its common-stock holders by way of dividends, and to be charged to its surplus, all of its securities of the following-described classes, whether now owned by it or bought by it from American Cigar Co., as hereinbefore set forth, or bought by it from P. Lorillard Co., as just hereinbefore set forth, or received by it by way of dividends from any of the accessory companies defendant, as hereinbefore set forth, to wit: American Snuff Co. common stock; American Snuff Co. preferred stock; George W. Helme Co. common stock; Weyman-Bruton Co.

common stock; MacAndrews & Forbes Co. common stock; J. S. Young Co. common stock; the Conley Foil Co. stock; the Johnston Tin Foil & Metal Co. stock; R. J. Reynolds Tobacco Co. stock; Corporation of United Cigar Stores stock; British-American Tobacco Co. (Ltd.), ordinary shares; Porto Rican-American Tobacco Co. stock; American Stogie Co. stock (or what is received by way of dividends from American Cigar Co. upon dissolution of American Stogie Co.).

Including the amount to be paid to American Cigar Co. and P. Lorillard Co. for such of these securities as are to be acquired by the American Tobacco Co. from them, respectively, and excluding those to be acquired by way of dividends, and which therefore do not affect the surplus of the American Tobacco Co., never having been set up on its books, these securities had a book value as of December 31, 1910, of $35,011,865.03. The earning capacity of all the above securities thus to be distributed, based upon the results of the year 1910, is $9,860,410.76, though not all thereof was distributed as dividends.

(2) *Deferred disposition of stocks.*—The American Tobacco Co. will sell or otherwise dispose of, or distribute by way of dividends to its common-stock holders out of its surplus at the time existing, before January 1, 1915, all of its holdings of the following securities: British-American Tobacco Co. (Ltd.) nonvoting preference shares; the Imperial Tobacco Co. (of Great Britain and Ireland (Ltd.) ordinary shares; Corporation of United Cigar Stores bonds; MacAndrews & Forbes Co. nonvoting preferred stock.

During the time these securities are left in the treasury of the American Tobacco Co. the American Tobacco Co. to be enjoined from voting any thereof that under the terms thereof might be voted, or using any thereof to exercise, or otherwise exercising or attempting to exercise, influence or control over the said companies which issued the said securities, respectively, and from gaining possession of any of the said companies by buying in at a foreclosure had under any of the securities for any default with respect thereto or otherwise.

F.

SALE BY THE AMERICAN TOBACCO CO. OF MANUFACTURING ASSETS AND BUSINESS TO COMPANIES TO BE FORMED.

(1) There will be organized a new corporation called Liggett & Myers Tobacco Co. and a new corporation called P. Lorillard Co.,

and the American Tobacco Co. will sell, assign, and convey to these two companies factories, plants, brands, and businesses and capital stocks of tobacco-manufacturing corporations, as follows:

TO LIGGETT & MYERS TOBACCO CO.

Liggett & Myers branch of the American Tobacco Co., engaged in the manufacture of plug tobacco at St. Louis, with the brands connected therewith.

Spaulding & Merrick, a company of which the American Tobacco Co. owns and has always owned all the stock, engaged in Chicago in the manufacture of fine-cut tobacco and smoking tobacco.

Allen & Ginter branch of the American Tobacco Co., engaged in the manufacture of cigarettes, at Richmond, Va., and the brands connected therewith (this does not include the brand "Sweet Caporal," made partly there and partly at New York).

Chicago branch of the American Tobacco Co., a factory at Chicago engaged in the manufacture of smoking tobacco, with the brands connected therewith.

Catlin branch of the American Tobacco Co., a factory at St. Louis engaged in the manufacture of smoking tobacco, with the brands connected therewith.

Nall & Williams Tobacco Co., a company of which the American Tobacco Co. owns all the stock, engaged in the manufacture of plug and smoking tobacco at Louisville, Ky.

The John Bollman Co., a company engaged in the manufacture of cigarettes at San Francisco; of this corporation the American Tobacco Co. owns 90 per cent of the stock, which it is proposed to turn over to the Liggett & Myers Tobacco Co.

Pinkerton Tobacco Co., a corporation engaged in the manufacture of scrap tobacco (a kind of smoking tobacco) at Toledo, Ohio; of this corporation the American Tobacco Co. owns 77½ per cent of the stock, which it is proposed to turn over to the Liggett & Myers Tobacco Co.

W. R. Irby branch of the American Tobacco Co., at New Orleans, engaged in the manufacture of cigarettes and smoking tobacco, the principal brands being "Home Run" and "King Bee."

The Duke-Durham branch of the American Tobacco Co., engaged in the manufacture of cigarettes and smoking tobacco at Durham, N. C.; principal cigarette brands, "Piedmont" and "American Beauty"; principal smoking tobacco brand, "Duke's Mixture."

Two little cigar factories located, the one at Philadelphia and the other at Baltimore, branches of the American Tobacco Co.; principal brand, "Recruits."

TO P. LORILLARD CO.

All the rights of the American Tobacco Co. in the present P. Lorillard Co., to wit: All the common stock and $1,596,100 at par out of a total issue of $2,000,000 of 8 per cent preferred stock; it is contemplated that as a part of these reorganizations the Lorillard Co., as at present constituted, be wound up and the new company be organized, taking over assets of the P. Lorillard Co.

S. Anargyros, a company enagged [1] in the manufacture of cigarettes, in which the American Tobacco Co. owns all the stock, and of which it has always owned all the stock.

Luhrman & Wilbern Tobacco Co., a company engaged in the manufacture of scrap tobacco (a kind of smoking tobacco), of which the American Tobacco Co. owns and has for many years owned, all the stock.

Philadelphia branch B, at Philadelphia, Wilmington branch B, at Wilmington, Penn Street branch at Brooklyn, Danville branch B, at Danville, and Ellis branch B, at Baltimore, branches of the American Tobacco Co., manufacturing little cigars, the principal brand being "Between the Acts."

Federal Cigar Co., a company all of whose stock is, and has always been, owned by American Cigar Co., but which, as hereinbefore provided, is to be purchased for cash by the American Tobacco Co.

Each of these conveyances to include proper and adequate storage houses, leaf tobacco, and other materials and supplies, provision for book accounts, including in each case a ratable proportion of the cash held by the American Tobacco Co. on December 31, 1910, so that each of the new corporations will be fully equipped for the conduct of the business of manufacturing and dealing in tobacco.

(2) *Resources and capitalization of companies and provisions for exchanging and retiring securities of American Tobacco Co.*—The American Tobacco Co. has securities issued and outstanding as follows:

6 per cent bonds - - - - - - - - - - - - - - -	$52,882,650
4 per cent bonds (including outstanding 4 per cent bonds of Consolodated [1] Tobacco Co.) - - - - -	51,354,100

[1] Thus in original.—Ed.

6 per cent preferred stock - - - - - - - - - -	78,689,100
Common stock - - - - - - - - - - - - - - - -	40,242,400

The American Tobacco Co. in October, 1904, immediately after the merger, had an outstanding issue of its own 4 per cent bonds and the Consolidated Tobacco Co. 4 per cent bonds which it assumed, amounting to $78,689,100, but it has purchased on the market and retired $27,335,000 at par of these 4 per cent bonds, charging the amount thus expended to surplus. The 6 per cent bonds and 4 per cent bonds aforesaid are what are ordinarily known as debenture bonds, and are issued under a trust indenture which imposes a general charge on the property, income, and earnings of the company in favor, first, of the 6 per cent bonds, and, second, of the 4 per cent bonds. The American Tobacco Co., after the reduction of the surplus through the acquisition by it of 4 per cent bonds as aforesaid, had on December 31, 1910, a surplus of $61,119,991.63, which will be increased by the surplus earnings of the current year. The distribution of securities herein provided for to be forthwith made, would diminish the said surplus by $35,011,865.03, the book value of securities to be so distributed. This book value is less than actual value, but in view of the fact that none of the assets of the American Tobacco Co. are overvalued, the advance of the book value of the securities to be distributed as hereinbefore set forth to their actual value, would operate at the same time to increase the surplus of the company, and so its surplus, after such distribution, would remain just the same as though the advance to actual value had not been made on the books of the company.

The properties to be conveyed to the Liggett & Myers Tobacco Co. and P. Lorillard Co., based upon conditions as of December 31, 1910, the last completed year, including in such conveyances the proper and proportionate storage houses, leaf tobacco, supplies and materials, and cash, but without anything for value of brands, trademarks, formulæ, recipes, and good will, but including stocks of companies, are of the value of $30,607,261.96 to Liggett & Myers Tobacco Co. and $28,091,748.86 to P. Lorillard Co. So far as these conditions shall be changed before the day of the conveyance, any deficiency is to be made good in cash, so that these two companies will have said amounts in tangible assets as aforesaid, useful, and such as have been used, in the manufacture of the brands to be conveyed to them, respectively, and cash. The American Tobacco Co. will be left with tangible assets, including stocks of companies em-

ployed in manufacturing tobacco and its products, cash and bills and accounts receivable of the value of $53,408,498.94 as of December 31, 1910. The profits earned during the year 1910 on the brands and businesses to be conveyed by the American Tobacco Co. to Liggett & Myers Tobacco Co. amounted to $7,468,172.02, and the profits on the brands and businesses to be conveyed by the American Tobacco Co. to P. Lorillard Co. amounted to $5,264,729.38.

It is proposed that the value of the brands, trade-marks, recipes, formulæ, and good will to be sold to each of these companies be determined by their earning capacity, based upon the results for the year 1910, so that each shall have an earning capacity of 11.02 per cent per annum upon its total property, including both tangible property and brand value and good will. Upon this basis the consideration to be paid by the Liggett & Myers Tobacco Co. will be $30,607,261.96, value of tangible assets as above stated, and $36,840,237.04, value of brands, trade-marks, recipes, formulæ, and good will, making a total of $67,447,499; and the consideration to be paid by the P. Lorillard Co. will be $28,091,748.86, value of tangible assets as above stated, and $19,460,752.14, value of brands, trade-marks, recipes, formulæ, and good will, making a total of $47,552,501. The brands, trade-marks, recipes, formulæ, and good will of the American Tobacco Co. on December 31, 1910, were of the book value of $101,324,964.07. The payments for brand value, etc., to the American Tobacco Co. to be made by Liggett & Myers Tobacco Co. and P. Lorillard Co., as aforesaid, makes an aggregate of $56,300,989.18, and would thus leave the book value of brands, trade-marks, recipes, formulæ, and good will retained by the American Tobacco Co. at $45,023,974.89, which added to the $53,408,498.94 of tangible manufacturing assets to be retained by the American Tobacco Co., will make the total book value of manufacturing property to be retained by that company $98,432,473.83, upon which its earnings, based upon the results for the year 1910, would be $11,369,809.82, or 11.55 per cent.

The Liggett & Myers Tobacco Co. and the P. Lorillard Co. would pay for these conveyances, therefore, the aggregate as aforesaid, to wit:

Liggett & Myers Tobacco Co. - - - - - - - - -	$67,447,499
P. Lorillard Co. - - - - - - - - - - - - - -	47,552,501
Aggregating - - - - - - - - - - - - - -	115,000,000

or each with its earnings on the business for the year 1910 so capitalized that said earnings represent 11.02 per cent upon the capital.

Liggett & Myers Tobacco Co. and P. Lorillard Co. will issue securities to cover such capitalization in the aggregate as follows: To an amount equal to one-half of the outstanding 6 per cent bonds of the American Tobacco Co., that is, $26,441,325 at par in 7 per cent bonds; to an amount equal to one-half of the outstanding 4 per cent bonds of the American Tobacco Co., that is, $25,677,050 at par in 5 per cent bonds; to an amount equal to one-third of the outstanding preferred stock of the American Tobacco Co., that is, $26,229,700 at par in 7 per cent cumulative voting preferred stock, which, upon liquidation of the company, shall be paid at par with accrued unpaid dividends before any amount shall be paid to common stock, with balance of assets distributable ratably to the common stock, and the balance of said $115,000,000, that is, $36,651,925 in common stock. The 7 per cent bonds and the 5 per cent bonds to mature at the time fixed, respectively, for the maturity of the 6 per cent bonds and the 4 per cent bonds of the American Tobacco Co. now outstanding and to be issued under an indenture of substantially like tenor and terms with the present indenture of the American Tobacco Co. under which its 6 per cent bonds and 4 per cent bonds were issued. The 7 per cent bonds to have priority in charge over the 5 per cent bonds in the same way that the 6 per cent bonds of the American Tobacco Co. have priority of charge over the 4 per cent bonds Thus the capitalization of the Ligget & Myers Tobacco Co. and P. Lorillard Co. will be as follows

	Liggett & Myers.	Lorillard.	Total.
7 per cent bonds	$15,507,837	$10,933,488	$26,441,325
5 per cent bonds	15,059,589	10,617,461	25,677,050
7 per cent preferred stock	15,383,719	10,845,981	26,229,700
Common stock	21,496,354	15,155,571	36,651,925
Total	67,447,499	47,552,501	115,000,000

All of these securities of the Liggett & Myers Tobacco Co. and the P. Lorillard Co. to be turned over to the American Tobacco Co. in payment of the purchase price for the factories, plants, brands, and businesses and capital stocks of tobacco manufacturing corporations so to be conveyed to Liggett & Myers Tobacco Co. and P. Lorillard Co., respectively, as hereinbefore set out.

These securities will be disposed of by the American Tobacco Co. as follows:

The common stock will be offered for cash at par to the holders of the common stock of the American Tobacco Co. in proportion to their holdings, and any not purchased by the person thus entitled thereto shall be sold to persons other than the individual defendants, to the end that such offer of common stock of the two new companies to the common-stock holders of the American Tobacco Co. shall not be used by the individual defendants to increase their ownership therein beyond the proportion of their holdings of the common stock of the American Tobacco Co.

To each holder of the 6 per cent bonds of the American Tobacco Co. an offer shall be made to acquire his bonds for cancellation and to give in exchange therefor, as to one-half thereof, new 7 per cent bonds of Liggett & Myers Tobacco Co. and P. Lorillard Co. at par, and in payment for the other half thereof cash at the rate of $120 and accrued interest for each $100 face value of the bonds.

To each holder of the 4 per cent bonds of the American Tobacco Co. an offer shall be made to acquire his bonds for cancellation, and to give in exchange therefor, as to one-half thereof, new 5 per cent bonds of Liggett & Myers Tobacco Co. and P. Lorillard Co. at par, and in payment for the other half thereof cash at the rate of $96 and accrued interest for each $100 face value of the bonds.

To each holder of the preferred stock of the American Tobacco Co. an offer shall be made to acquire one-third of his stock for cancellation in exchange for an equal amount at par of Liggett & Myers Tobacco Co. and P. Lorillard Co.

On account of the larger capitalization of the Liggett & Myers Tobacco Co., as compared with the P. Lorillard Co., each class of the new securities will issue in the proportion of 58.65 per cent thereof of Liggett & Myers Tobacco Co. securities and 41.35 per cent thereof of P. Lorillard Co. securities. The stocks will be issued in shares of $100, and coupon bonds in denominations of $1,000, and registered bonds in larger denominations, and in denominations of $100 and $50, and in actual issue fractions will be eliminated.

The common stocks of the two companies aforesaid are to be sold as above set out prior to March 1, 1912, with three years to be allowed for the retirement of the bonds and preferred stock of the American Tobacco Co., as above set out. Pending such, the said 7 per cent bonds, 5 per cent bonds, and 7 per cent preferred stocks of the Liggett & Myers Tobacco Co. and the P. Lorillard Co., together

with an amount in cash, or in securities owned by the American Tobacco Co., at their book value, or partly in cash and partly in such securities, equal to the amounts required if all such sales and exchanges are made, will be deposited with the Guaranty Trust Co. of New York, the trustee in the indenture under which the 6 per cent bonds and the 4 per cent bonds of the American Tobacco Co. are issued, as the agency to effect the purchase and exchange. Such deposit will be made, not to secure nor create a trust fund for the bonds, but for the purpose of sequestrating and taking from the control of the American Tobacco Co. the securities and cash so deposited. During the time of such deposit the securities shall be in the name of, as well as in the custody of, said trust company, with any voting rights attaching thereto, but the American Tobacco Co. shall receive from the trust company all dividends and interest collected by it on account of such securities; and the American Tobacco Co. shall have the right at any time and from time to time to sell, at such price as it may determine, and direct the delivery of any of such securities (except the securities of Liggett & Myers Tobacco Co. and P. Lorillard Co.), the consideration therefor to go into the hands of said trust company; or to withdraw any of such securities (except the securities of Liggett & Myers Tobacco Co. and P. Lorillard Co.) for the purpose of distribution among its common-stock holders, if its surplus at the time permits; or to substitute other securities of like book value for the securities so deposited (except as to the securities of Liggett & Myers Tobacco Co. and P. Lorillard Co.); or to alter the relative proportion of cash and securities, it being the intent of this provision that there shall be sequestrated from the control of the American Tobacco Co. all the securities of the Liggett & Myers Tobacco Co. and P. Lorillard Co., and an additional amount of cash or other securities equal, upon the purchase basis aforesaid, to the value of the 4 per cent bonds and the 6 per cent bonds of the American Tobacco Co. at the time outstanding. At the end of the three years, if there are any of such securities of the Liggett & Myers Tobacco Co. or P. Lorillard Co. in the hands of such trust company undisposed of by such exchange as aforesaid, then the American Tobacco Co. shall apply to this court for an order as to the disposition thereof. Nothing contained in this provision, and nothing done under this provision, shall be construed as providing for the creation of, or as creating, any lien or security on anything deposited with the trust company in favor of the 6 per cent bonds or the 4 per cent bonds of the American Tobacco Co., outstanding or otherwise.

G.

VOTING RIGHTS TO PREFERRED STOCK.

By proper amendment of the certificate of incorporation of the American Tobacco Co. the preferred stock will be given full voting rights.

H.

CERTAIN INCIDENTAL PROVISIONS.

(1) P. Lorillard Co. is a New Jersey company with $3,000,000 of common stock, all of which is owned by the American Tobacco Co., and $2,000,000 of 8 per cent preferred stock. Of this preferred stock the American Tobacco Co. holds $1,596,100 at par and there is held by others $403,900 at par. Under the laws of New Jersey the present P. Lorillard Co. may be dissolved by the holders of two-thirds of the outstanding stock, and upon such dissolution the preferred stock is entitled to be paid at par, the balance of the assets going to the common stock. In view of the fact, however, that the preferred stock of the present P. Lorillard Co. is an 8 per cent preferred stock with abundant assets and earnings to make the principal and income secure, it is deemed fair to the holders of this outstanding $403,900 of preferred stock that they be given an opportunity to take, at their option, either cash at par, which they are legally entitled to, or the 7 per cent preferred stock of the proposed new P. Lorillard Co. As the preferred stock of the new P. Lorillard Co. is to be a 7 per cent preferred stock, the holders of said $403,900 of said present preferred stock will be offered stock of the new company at the rate of $114.25 for each share. It is therefore proposed that the new P. Lorillard Co. provide for an additional amount of preferred stock sufficient to take care of $403,900 preferred stock on that basis, to wit, $114.25 in new 7 per cent preferred stock for each $100 of said stock, amounting to $461,600 at par of preferred stock in addition to that set out hereinbefore. In view of the fact that in the statements hereinbefore made as to earnings of the P. Lorillard Co. there is included only such part of the earnings of the present P. Lorillard Co. as accrued to the proportion of its stock held by the American Tobacco Co., this increase of preferred stock would increase proportionately the profits of the P. Lorillard Co., and does not derange any of the figures hereinbefore given or given in any of the exhibits hereto and hereinafter referred to.

(2) American Snuff Co. manufactures and sells a brand of snuff called "Garrett," which has a large sale in the southern and southwestern sections of the country. Originally this brand was manufactured at Yorklyn, Del., and in part packed in Philadelphia. Several years ago American Snuff Co. determined, on account of freight-rate conditions, to manufacture this brand at Clarksville, Tenn., and to pack it at Memphis, Tenn., and that the factories at Yorklyn, Del., should be given up to the manufacture of other brands. It has yet, though, been unable to produce in Clarksville, Tenn., goods similar to the goods heretofore and now made by it at Yorklyn, Del., although the experiment is still in progress, and with hope of success. Under the plan hereinbefore outlined the brand "Garrett" snuff is allotted to American Snuff Co., and the factories other than one factory at Yorklyn, Del., are allotted to George W. Helme Co.; your petitioners pray that in the approval and adoption by this court of this plan, American Snuff Co. and George W. Helme Co. be permitted to manufacture brands the one for the other for a period not exceeding one year from March 1, 1912, each company paying to the other as consideration for such manufacture the cost thereof plus 5 per cent; the necessity of paying 5 per cent above cost is sufficient inducement to each company to manufacture its own goods as soon as American Snuff Co. is able to manufacture "Garrett" snuff of the requisite character and kind in its Clarksville factory, thus leaving the Yorklyn factories, other than No. 5, for the manufacture by the George W. Helme Co. of its own brands.

This court having heard the parties as directed by the Supreme Court of the United States, it is further ascertained and determined, and ordered, adjudged, and decreed that said plan hereinbefore set forth is a plan or method which, taken with the injunctive provisions hereinafter set forth, will dissolve the combination heretofore adjudged to be illegal in this cause, and will re-create out of the elements now composing it a new condition which will be honestly in harmony with, and not repugnant to, the law, and without unnecessary injury to the public or the rights of private property.

It is further ordered, adjudged, and decreed that the said plan as hereinabove set forth be, and it is hereby, approved by this court, and the defendants herein are, respectively, directed to proceed forthwith to carry the same into effect.

The necessities of the situation, in the judgment of this court, requiring the extension of the period for carrying into execution

said plan to a further time not to exceed 60 days from December 30, 1911.

It is further ordered, adjudged, and decreed that the defendants be allowed until February 28, 1912, to carry said plan into execution.

It is further ordered, adjudged, and decreed that the defendants, their officers, directors, servants, agents, and employees be, and they are hereby, severally enjoined and restrained as follows:

From continuing or carrying into further effect the combination adjudged illegal in this cause, and from entering into or forming any like combination or conspiracy, the effect of which is or will be to restrain commerce in tobacco or its products or in articles used in connection with the manufacture and trade in tobacco and its products among the States or in the Territories or with foreign nations, or to prolong the unlawful monopoly of such commerce obtained and possessed by the defendants as adjudged herein in violation of the act of Congress approved July 2, 1890, either:

1. By causing the conveyance of the factories, plants, brands, or business of any of the 14 corporations among which the properties and businesses now in the combination are to be distributed, to wit, The American Tobacco Co., Liggett & Myers Tobacco Co., P. Lorillard Co., American Snuff Co., George W. Helme Co., Weyman-Bruton Co., R. J. Reynolds Tobacco Co., British-American Tobacco Co. (Ltd.), Porto Rican-American Tobacco Co., MacAndrews & Forbes Co., J. S. Young Co., The Conley Foil Co., The Johnston Tin Foil & Metal Co., and United Cigar Stores Co., to any other of said corporations, by placing the stocks of any one or more of said corporations in the hands of voting trustees or controlling the voting power of such stocks by any similar device; or

2. By making any express or implied agreement or arrangement together or one with another like those adjudged illegal in this cause relative to the control or management of any of said 14 corporations, or the price or terms of purchase or of sale of tobacco or any of its products or the supplies or other products dealt with in connection with the tobacco business, or relative to the purchase, sale, transportation, or manufacture of tobacco or its products or supplies or other products dealt with as aforesaid by any of the parties hereto which will have a like effect in restraint of commerce among the States, in the Territories, and with foreign nations to that of the combination, the operation of which is enjoined in this cause, or by making any agreement or arrangement of any kind

with any other of such corporations under which trade or business is apportioned between such corporations in respect either to customers or localities.

3. By any of said 14 corporations retaining or employing the same clerical organization, or keeping the same office or offices, as any other of said corporations.

4. By any of said 14 corporations retaining or holding capital stock in any other corporation any part of whose stock is also retained and held by any other of said corporations: *Provided, however,* That this prohibition shall not apply to the holding by the Porto Rican-American Tobacco Co. and American Cigar Co. of stock in Porto Rican Leaf Tobacco Co., nor shall it apply to the holding of stock of the National Snuff Co. (Ltd.), by Weyman-Bruton Co. and British-American Tobacco Co. (Ltd.).

5. By any of said 14 corporations doing business directly or indirectly under any other than its own corporate name or the name of a subsidiary corporation controlled by it: *Provided, however,* That in case of a subsidiary corporation the controlling corporation shall cause the products of such subsidiary corporation which are sold in the United States and bear the name of the manufacturer, to bear also a statement indicating the fact of such control.

6. By any of said 14 corporations refusing to sell to any jobber any brand of any tobacco product manufactured by it except upon condition that such jobber shall purchase from the vendor some other brand or product also manufactured and sold by it: *Provided, however,* That this prohibition shall not be construed to apply to what are known as "combination orders" under which some brand or product may be offered to a jobber or dealer at a reduced price on condition that he purchase a given quantity of some other brand or product.

It is further ordered, adjudged, and decreed that during a period of five years from the date hereof, each of said 14 corporations hereinbefore named, its officers, directors, agents, servants, and employees, are hereby enjoined and restrained, as follows:

1. None of the said 14 corporations shall have any officer or director who is also an officer or director in any other of said corporations.

2. None of said 14 corporations shall retain or employ the same agent or agents for the purchase in the United States of tobacco leaf or other raw material, or for the sale in the United States of tobacco or other products, as that of any other of said corporations.

3. None of said 14 corporations shall directly or indirectly acquire any stock in any other of said corporations, or purchase or acquire any of the factories, plants, brands, or business of any other of said corporations, or make loans or otherwise extend financial aid to any other of said corporations.

The provisions of this decree shall apply only to trade and commerce in or between the several States and Territories and the District of Columbia, and trade and commerce between the United States and foreign nations.

It is further ordered, adjudged, and decreed that British-American Tobacco Co. (Ltd.) and the Imperial Tobacco Co. (of Great Britain and Ireland, Ltd.) shall not act as agent for each other, nor employ a common agent, for the purchase of leaf tobacco in the United States, and neither of said two companies shall unite with any of the said 14 corporations among which the properties and businesses now in the combination are to be distributed, in the employment of a common agent for the purchase of tobacco leaf in the United States.

It is further ordered, adjudged, and decreed that each of the 29 individual defendants in this suit be enjoined and restrained from at any time within three years from the date of this decree, acquiring, owning, or holding, directly or indirectly, any stock, or any legal or equitable interest in any stock in any one of said 14 corporations, except British-American Tobacco Co. (Ltd.), in excess of the amount to which he will be entitled under the provisions of the plan when the same shall have been carried out as proposed as the present owner of the amount of stocks in said several companies shown by the affidavits of said several defendants filed herein on the 16th day of November, 1911: *Provided, however,* That any of said defendants may, notwithstanding this prohibition, acquire from any other or others of said defendants, or in case of death from their estates, any of the stock held by such other defendant or defendants in any of said corporations.

It is further ordered, adjudged, and decreed that the new companies whose organization is provided for in the plan hereinabove set forth, to wit: Liggett & Myers Tobacco Co., P. Lorillard Co., George W. Helme Co., Weyman-Bruton Co., and J. S. Young Co., shall, after their formation and by appropriate proceeding, be made parties defendant to this cause and subject to the provisions of this decree and bound by the injunctions herein granted.

It is further ordered, adjudged, and decreed that any party hereto

may make application to the court for such orders and directions as may be necessary or proper in relation to the carrying out of said plan, and the provisions of this decree.

It is further ordered, adjudged, and decreed that the costs of this action shall be paid by the defendants other than R. P. Richardson, jr., & Co. (Inc.), as to whom the suit has heretofore been dismissed, and the payment by the defendant, the American Tobacco Co., of the reasonable costs and counsel fees of the committees organized for the protection of the 6 per cent bonds, 4 per cent bonds and preferred stock of the American Tobacco Co. is hereby approved.

It is further ordered, adjudged, and decreed that the defendants, the American Tobacco Co., MacAndrews & Forbes Co., American Snuff Co., and each of them and their and each of their officers, directors, servants, agents, and employees, be severally enjoined and restrained, as in said plan set forth, from voting stocks, exercising influence or control over other companies or gaining possession of other companies through the use of securities temporarily held by them, respectively, under said plan in each and every case in which it is provided in and by the said plan that any of said three last-named defendants shall be so enjoined.

It is further ordered, adjudged, and decreed that such books and papers of the defendants, the American Tobacco Co. and S. Anargyros, or either of them, as relate to the suit of the Ludington Cigarette Machine Co. *v.* S. Anargyros and the American Tobacco Co., or the subject matter thereof or any part thereof, be preserved by the said defendants, respectively, until after the accounting, if any shall take place in said suit, and said suit be finally determined and ended.

It is further ordered, adjudged, and decreed that jurisdiction of this cause is retained by this court for the purpose of making such other and further orders and decrees, if any, as may become necessary for carrying out the mandate of the Supreme Court.

November 16, 1911.

E. HENRY LACOMBE,
Circuit Judge.
ALFRED C. COXE,
Circuit Judge.
H. G. WARD,
Circuit Judge.
WALTER C. NOYES,
Circuit Judge.

EXHIBIT 2

THE DISSOLUTION OF THE STANDARD OIL COMPANY [1]

STANDARD OIL COMPANY (OF NEW JERSEY).

26 BROADWAY,

New York, July 28, 1911.

To the Stockholders of the
Standard Oil Company (of New Jersey):

Obedience to the final Decree in the case of the United States against the Standard Oil Company (of New Jersey), and others, *requires this Company to distribute, or cause to be distributed, ratably, to its stockholders the shares of stock of the following corporations, which it owns directly or through its ownership of stock of the National Transit Company*,[2] to wit: Anglo-American Oil Company, Limited; The Atlantic Refining Company; Borne-Scrymser Company; The Buckeye Pipe Line Company; Chesebrough Manufacturing Company, Consolidated; Colonial Oil Company; Continental Oil Company; The Crescent Pipe Line Company; Cumberland Pipe Line Company, Incorporated; The Eureka Pipe Line Company; Galena-Signal Oil Company; Indiana Pipe Line Company; National Transit Company; New York Transit Company; Northern Pipe Line Company; The Ohio Oil Company; The Prairie Oil and Gas Company; The Solar Refining Company; Southern Pipe Line Company; South Penn Oil Company; South West Pennsylvania Pipe Lines; Standard Oil Company (California); Standard Oil Company (Indiana); The Standard Oil Company (Kansas); Standard Oil Company (Kentucky); Standard Oil Company (Nebraska); Standard Oil Company of New York; The Standard Oil Company (Ohio); Swan & Finch Company; Union Tank Line Company; Vacuum Oil Company; Washington Oil Company; Waters-Pierce Oil Company.

Such distribution will be made to the stockholders of the Standard Oil Company (of New Jersey) of record on the 1st day of September, 1911; and, for that purpose, the transfer books of the Company will be closed on the 31st day of August, 1911, at 3 o'clock P. M., and

[1] Letter of the Standard Oil Company to its stockholders. The Standard Oil Company had no dissolution plan such as was prepared by the Tobacco Company. It merely followed the decree of the Supreme Court.—Ed.

[2] Italics are the editor's.

kept closed until the date when said stocks are ready for distribution, which it is expected will be about December 1, 1911.

Notice of the date when said stocks are to be distributed and of the re-opening of the books will be duly given.

Yours very truly,

H. C. FOLGER, Jr.,
Secretary.

EXHIBIT 3

THE DISSOLUTION OF THE POWDER TRUST [1]

It is thereupon, on this 13th day of June, A. D. 1912, ordered, adjudged and decreed as follows, to wit:

. . . . . .

2. That the remaining twenty-seven defendants, namely: Hazard Powder Company, Laflin & Rand Powder Company, Eastern Dynamite Company, Fairmont Powder Company, Judson Dynamite & Powder Company, Delaware Securities Company, Delaware Investment Company, California Investment Company, E. I. duPont de Nemours & Company of Pennsylvania, duPont International Powder Company, E. I. duPont de Nemours Powder Company, E. I. duPont de Nemours & Company, Thomas Coleman duPont, Pierre S. duPont, Alexis I. duPont, Alfred I. duPont, Eugene duPont, Eugene E. duPont, Henry F. duPont, Irenee duPont, Francis I. duPont, Victor duPont, Jr., Jonathan A. Haskell, Arthur J. Moxham, Hamilton M. Barksdale, Edmund G. Buckner and Frank L. Connable, are maintaining a combination in restraint of interstate commerce in powder and other explosives in violation of section 1, of an Act entitled "An Act to Protect Trade and Commerce against Unlawful Restraints and Monopolies," approved July 2, 1890, and have attempted to monopolize and have monopolized a part of such commerce in violation of section 2 of said Act.

Wherefore, It is further ordered, adjudged and decreed that the twenty-seven (27) defendants above mentioned, and each of them be enjoined from continuing said combination and monopoly, and that said combination and monopoly be dissolved.

3. That the petitioner having availed itself of the permission granted in said interlocutory decree and having presented a certain plan for the dissolution of said combination and the dissolution of

[1] *The United States of America* v. *E. I. duPont de Nemours & Company and Others*. In the District Court of the United States, for the District of Delaware in Equity No. 280, Opinion of Court and Final Decree, pp. 2–13.

said monopoly, so far as the present situation of the parties and the properties involved will permit, to which plan the said twenty-seven (27) defendants do not object, which said plan is as follows:

First: Dissolve the defendant corporation E. I. duPont de Nemours & Company (1902, Delaware corporation) and distribute its property among its stockholders.

Second: Dissolve the defendant corporation Hazard Powder Company and distribute its property among its stockholders.

Third: Dissolve the defendant corporation Delaware Securities Company and distribute its property among its stockholders.

Fourth: Dissolve the defendant corporation Delaware Investment Company and distribute its property among its stockholders.

Fifth: Dissolve the defendant corporation Eastern Dynamite Company and distribute its property among its stockholders.

Sixth: Dissolve the defendant corporations California Investment Company and Judson Dynamite and Powder Company and distribute their property among their stockholders.

Seventh: Organize two corporations in addition to E. I. duPont de Nemours Powder Company (1903, New Jersey Corporation) which shall be capitalized as hereinafter provided, or reorganize the Laflin and Rand Powder Company and the Eastern Dynamite Company, or either of them, to be used instead of one or both of said two corporations, and in case the said Eastern Dynamite Company is so selected, then it need not be dissolved as hereinbefore provided. In case the Laflin and Rand Powder Company is not used under this paragraph dissolve said company and distribute its property among its stockholders.

To the first of said corporations transfer the following plants:

For the Manufacture of Dynamite:

Plant at Kenville, New Jersey,
Plant at Marquette, Michigan,
Plant at Pinole, California.

For the Manufacture of Black Blasting Powder:

Plant at Rosendale, New York,
Two (2) plants at Ringtown, Pennsylvania,
Plant at Youngstown, Ohio,
Plant at Pleasant Prairie, Wisconsin,
Plant at Turck, Kansas,
Plant at Santa Cruz, California.

For the Manufacture of Black Sporting Powder:

Plant at Hazardville, Connecticut,
Plant at Schaghticoke, New York.

To the second of said corporations transfer the following plants:

For the Manufacture of Dynamite:

Plant at Hopatcong, New Jersey,
Plant at Senter, Michigan,
Plant at Atlas, Missouri,
Plant at Vigorit, California.

For the Manufacture of Black Blasting Powder:

Plant at Riker, Pennsylvania,
Plant at Shenandoah, Pennsylvania,
Plant at Ooltewah, Tennessee,
Plant at Belleville, Illinois,
Plant at Pittsburg, Kansas.

And permit the said defendant E. I. duPont de Nemours Powder. Company to retain the following plants:

For the Manufacture of Dynamite:

Plant at Ashburn, Missouri,
Plant at Barksdale, Wisconsin,
Plant at duPont, Washington,
Plant at Emporium, Pennsylvania,
Plant at Hartford City, Indiana,
Plant at Louviers, Colorado,
Plant at Gibbstown, New Jersey,
Plant at Lewisburg, Alabama.

For the Manufacture of Black Blasting Powder:

Plant at Augusta, Colorado,
Plant at Connable, Alabama,
Plant at Oliphant Furnace, Pennsylvania,
Plant at Mooar, Iowa,
Plant at Nemours, West Virginia,
Plant at Patterson, Oklahoma,
Plant at Wilpen, Minnesota.

For the Manufacture of Black Sporting Powder:
Plant at Brandywine, Delaware,
Plant at Wayne, New Jersey.

For the Manufacture of Smokeless Sporting Powder:
Plant at Carney's Point, New Jersey,
Plant at Haskell, New Jersey.

For the Manufacture of Government Smokeless Powder:
Plant at Carney's Point, New Jersey,
Plant at Haskell, New Jersey.

Eighth: Transfer to or furnish the first of said two corporations with a plant for the manufacture of smokeless sporting powder and the brands now or heretofore owned by the Laflin and Rand Powder Company. Such plant to be located at Kenville, New Jersey, or some other suitable Eastern point, and to be of a capacity sufficient to manufacture 950,000 pounds per annum of smokeless sporting powder of the brands to be assigned to the first of said corporations.

Ninth: Furnish said two corporations respectively with sufficient working capital and the necessary cash and facilities to enable them to efficiently carry on the business which will attend the properties so to be transferred to them.

Tenth: Transfer said properties to said two corporations respectively upon a valuation thereof based on the last inventory of said properties, to include a fair valuation for brands and good will, and issue to said E. I. duPont de Nemours Powder Company in payment therefore [1] securities of said two corporations respectively at par value as follows: Fifty per cent. (50%) of said purchase price in bonds not secured by mortgage which shall bear interest at the rate of six per cent. (6%) per annum, payable if earned by the company during said year, or to the extent thereof earned but not otherwise; nor cumulative; payable not less than ten years from date; the form of said bonds to be approved by the Attorney-General or the Court, which bonds shall be subject to call at one hundred and two (102); and the other fifty per cent. (50%) of said purchase price in the stock of said two corporations respectively, which for the time being shall be their entire stock issues. Upon the receipt of said stock and bonds by E. I. duPont de Nemours Powder Company, distribute the said stock and one-half of said bonds or the proceeds

[1] Thus in original.—Ed.

of the sale of said bonds among the stockholders of E. I. duPont de Nemours Powder Company. In the organization or reorganization of said two corporations to which said properties are to be transferred, provide two issues of stock in said two corporations respectively, one of which shall have voting power and the other of which shall have no voting power. So distribute said stocks among the stockholders of E. I. duPont de Nemours Powder Company that any amounts thereof which upon said distribution shall go to any one of the twenty-seven defendants hereinbefore mentioned shall consist of one-half of said stock with voting power and one-half of said stock without voting power, and provide that upon the transfer through death or by will from any one of said twenty-seven defendants of any stock which has no voting power, to some person or persons other than one of said twenty-seven defendants herein, or upon the sale by any one of said twenty-seven defendants of any stock which has no voting power, to some person or persons other than one of said twenty-seven defendants herein, or their respective wives or children, said stock so sold or transferred may be exchanged for stock with voting power.

Eleventh: Transfer to said two corporations, respectively, so far as practicable, a fair proportion of the business in explosives now controlled by E. I. duPont de Nemours Powder Company under time contract.

Twelfth: During a period of at least five years furnish each of said two corporations respectively, under such arrangements as may be reasonable, such information from the records of the Trade Bureau maintained by E. I. duPont de Nemours Powder Company as may be desired.

Thirteenth: During a period of at least five years furnish to each of said two corporations such facilities, information and use of organization, as E. I. duPont de Nemours Powder Company may operate or possess in reference to purchase of materials, experimentation, development of the art and scientific research, as said two corporations may desire from time to time, in the interests of their business, and upon some reasonable terms as to the cost thereof to said two corporations.

And said plan having been duly considered by the Court, it is ordered, adjudged and decreed that the said defendants are respectively directed to proceed forthwith to carry said plan into effect, and it is further

Ordered, adjudged and decreed, that if said defendants shall not

have carried said plan into operation and effected the same on or before the fifteenth day of December, 1912, then and in that event an injunction shall issue out of this Court restraining the said defendants in paragraph two of this decree mentioned and each of them, and their agents and servants from thereafter in any manner whatsoever placing the products of any of the factories owned by said defendants or said combination into the channels of interstate commerce, or such other relief shall be granted by the appointment of a receiver or otherwise as this Court may determine.

4. That should the defendants find it impossible to perfect the details of said plan on or before the said fifteenth day of December, 1912, they may have leave to apply to the Court for further time to carry out said plan.

5. That until said plan is carried into operation and effect, the said twenty-seven defendants hereinbefore named in paragraph two of this decree, are, and each of them is, and the agents and servants of them are jointly and severally hereby enjoined from doing any acts or act which shall in any wise further extend or enlarge the field of operations, or the power of the aforesaid combination.

It is further ordered, adjudged and decreed that the said twenty-seven (27) defendants, their stockholders, officers, directors, servants, agents and employees be and they are hereby severally enjoined and restrained as follows:

From continuing or carrying into further effect after said fifteenth day of December, 1912, the combination adjudged illegal in this suit, and from entering into or forming among themselves or with others any like combination or conspiracy, by any method or device whatsoever, the effect of which is or will be to restrain interstate commerce in explosives or to renew the unlawful monopoly of such commerce obtained and possessed by the defendants as adjudged herein, in violation of "Act to Protect Trade and Commerce Against Unlawful Restraints and Monopolies," approved July 2, 1890, and especially:

1. By causing the conveyance of the factories, plants, brands or business of either of said two new corporations to the other corporation to E. I. duPont de Nemours Powder Company or vice versa after the segregation of the properties among said corporations shall have taken place as herein provided; by placing the stocks of either of said corporations in the hands of voting trustees or controlling the voting power of such stocks by any device;

2. By making any express or implied agreement or arrangement

with one another or with others relative to the control or management of either of said corporations, or the price or terms of purchase, or of sale of explosives or relative to the purchase, sale, manufacture, or transportation of explosives which will have the effect of restraining interstate commerce; or by making any agreement or arrangement of any kind between said corporations under which trade or business is apportioned between said corporations in respect either to customers or localities.

3. By offering or causing to be offered or making or causing to be made more favorable prices or terms of sale for the products manufactured by them or either of them to the customers of any rival manufacturer or manufacturers than they at the same time offer to make their established trade, where the purpose is to unfairly cripple or drive out of business such rival manufacturer or manufacturers or otherwise unlawfully to restrain the trade and commerce of the United States in any of said products; provided that no defendant is enjoined or restrained from making any price or prices in the sale of said products, or any thereof, to meet or to compete with prices made by any other defendant, or by any rival manufacturer; and provided, further, that nothing in this decree shall be taken in any respect to enjoin or restrain fair, free and open competition.

4. By either of said corporations retaining or employing the same clerical force or organization, or keeping the same office or offices as any other of said corporations.

5. By either of said corporations doing business directly or indirectly under any other than its own corporate name or the name of a subsidiary corporation controlled by it; provided, however, that, in case of a subsidiary corporation, the controlling corporation shall cause the products of such subsidiary corporation which are sold in the United States and bear the name of the manufacturer to bear also a statement indicating the fact of such control.

It is further ordered, adjudged and decreed that said defendants cancel and annul:

a. Agreement of October 2, 1902, between William Barclay Parsons, of the City of New York, and the Delaware Securities Company. Petitioner's Record, Exhibits, Volume 4, page 1984.

b. Agreement of October 6, 1902, between H. deB. Parsons of the City of New York, and the Delaware Securities Company. Petitioner's Record, Exhibits Volume 4, page 1986.

c. Agreement of the second day of October, 1902, between Schuyler L. Parsons, of the City of New York, and the Delaware

Securities Company. Petitioner's Record, Exhibits, Volume 4, page 1988.

d. A like and identical agreement made about the same date between J. A. Haskell and the Delaware Securities Company, described in Petitioner's Testimony, Volume 2, page 1012.

It is further ordered, adjudged and decreed that during a period of five years from the date hereof each of said corporations, the E. I. duPont de Nemours Powder Company and said other two corporations, their stockholders, officers, directors, agents, servants and employees, be hereby enjoined and restrained as follows:

1. None of said corporations shall have any officer or director who is also an officer or director in any other of said corporations.

2. None of said corporations shall employ the same agent or agents for the sale in interstate commerce of explosives which might be sold in competition with each other; provided that any one of said corporations may sell its products on commission through a merchant or dealer who is similarly employed by either or both of said corporations.

3. None of said corporations shall directly or indirectly acquire any stock in another of said corporations or purchase or acquire any of the factories, plants, brands or business of such other corporation.

It is further ordered, adjudged and decreed that each and all of the individual defendants by this decree adjudged to be engaged in said combination, while holding stock in said two corporations and E. I. duPont de Nemours Powder Company or any two thereof be enjoined and restrained from at any time within three years from the date hereof acquiring, owning or holding, directly or indirectly, any stock or an legal or equitable interest in any stock in either of said two corporations to which said properties shall be transferred, in excess of the amount to which he may be entitled under the provisions of the plan herein mentioned when the same shall have been carried out as proposed; provided, however, that any of said individual defendants may notwithstanding this prohibition acquire from any other or others of said defendants, or in case of death, from their estates, any of the stock held by such other defendant or defendants in said corporations and may acquire their proportions of any increase of stock.

It is further ordered, adjudged and decreed that any new company or companies organized for the purpose of taking property under the provisions of this decree or otherwise, necessary to the carrying out of this plan, shall, after their formation and by appropriate proceed-

ings, be made parties to this cause, and subject to the provisions of this decree and bound by the injunctions herein granted.

It is further ordered, adjudged and decreed that any party hereto may make application to this Court for such orders and directions as may be necessary or proper in relation to the carrying out of such plan and the provisions of this decree.

It is further ordered, adjudged and decreed that the twenty-seven (27) defendants hereinabove mentioned, do pay to the United States Government its cost in this cause.

It is further ordered, adjudged and decreed that jurisdiction of this cause is retained by this Court, for the purpose of making such other and further orders and decrees as may become necessary for carrying out the plan herein set forth.

It is further ordered, adjudged and decreed that after the plan hereinabove mentioned shall have been carried into effect a report shall be made to this Court for its approval, setting out the manner in which said plan shall have been carried out.

CHAPTER XV

EFFICACY OF DISSOLUTION

NOTE

THE pronounced opposition that developed upon the part of the independents to the method of dissolution proposed by the American Tobacco Company led to an interesting controversy as to the efficacy of the method employed. Effort has been made to set forth both sides of the controversy and also to have the exhibits show how the independents would have worked out the dissolution process.

At the moment this book goes to the publishers, a controversy has developed over the efficacy of the dissolution of the Standard Oil Company. As the last exhibit in the chapter shows, it is alleged that this dissolution has been merely a farce.—Ed.

EXHIBIT 1

RESULTS OF THE TOBACCO DISSOLUTION PLAN AS CLAIMED BY THE PETITIONERS [1]

Your Petitioners show unto the Court that upon the adoption and execution of this plan the combination heretofore adjudged to exist will have been effectually dissolved, and out of the elements heretofore composing the same, a new condition which will be honestly in harmony with and not repugnant to the law, will have been brought about as follows:

The tin foil business now done and controlled by The Conley Foil Company will be divided into two companies having no interest whatsoever the one in the other, and neither in a dominant position with respect to the tin foil business.

The licorice business now done and controlled by MacAndrews & Forbes Company will be divided into two companies with no interest in nor connection with each other, and neither in a dominant position in the licorice business.

[1] *United States of America* v. *The American Tobacco Company and others.* Petition of the American Tobacco Co., In the Circuit Court of the United States for the Southern District of New York, pp. 29–31.

American Stogie Company will be dissolved, and its business disintegrated.

The business of American Cigar Company will be disintegrated and it will have no dominant position in any branch of the cigar business.

The snuff business now done and controlled by American Snuff Company will be divided into three companies, American Snuff Company itself and two other companies to be organized, and none of the three will have any interest in nor connection with either of the others.

The American Tobacco Company, through distribution out of its surplus, will have denuded itself of any interest in, or control over, the tin foil business, the licorice business and the snuff business.

It will have stripped itself of any interest in or control over R. J. Reynolds Tobacco Company, a company manufacturing and selling tobacco in the Southern States.

It will have completely severed all relations with the Porto Rican-American Tobacco Company, manufacturing and selling cigarettes and cigars in Porto Rico, and selling in the United States cigars manufactured in Porto Rico.

It will have divested itself of all interest in or association with British-American Tobacco Company, Limited, The Imperial Tobacco Company (of Great Britain and Ireland), Limited.

It will have parted with all its interest in United Cigar Stores Company, a company engaged in the retail distribution of cigars and tobacco.

The American Tobacco Company itself, as an operating company, will be broken into three companies, each completely equipped for the conduct of a large tobacco business, neither of which will own any interest in any other, and neither of which will be dominant in the tobacco trade, whether reference be had to proportion of sales in any branch of the business, or regard be had to dominating ownership of popular and valuable brands, or regard be had to purchase of any type of leaf tobacco, or regard be had to any other measure of importance in the tobacco trade.

All covenants that prevent The American Tobacco Company from extending its business abroad, or British-American Tobacco Company, Limited, or The Imperial Tobacco Company (of Great Britain and Ireland), Limited, from extending their business in the United States, will be terminated, and each will be free to engage in business throughout the world.

All covenants not to engage in the tobacco business made by

vendors or others will be terminated, leaving all free to engage in any branch of the tobacco business.

Thus the business in tobacco and related products heretofore controlled by The Amercian Tobacco Company, or by companies in which it owns a controlling or large interest, will not only be completely divorced from such control, but will be distributed among fourteen separate and independent companies, none of which will have any control over or interest in any other, and none of which will have any preponderating influence in any branch of the business, either as a manufacturing company, a selling company, or as a purchaser of any type of leaf tobacco.

Finally, no small group of men, nor even the twenty-nine individual defendants in the aggregate, will own the control of any of the principal, accessory or subsidiary companies defendant, and the control of The American Tobacco Company itself and of the new companies to be formed will be vested in a body of more than six thousand stockholders.

EXHIBIT 2

CLAIM OF THE AMERICAN TOBACCO COMPANY WITH RESPECT TO THE DIVISION OF THE TOBACCO BUSINESS OF THE UNITED STATES BY VOLUME AND VALUE [1]

	Percentage in Volume (Lbs. or Thousands)	*Percentage in Value*
CIGARETTES		
American Tob. Co.	37.11	33.15
Liggett & Meyers	27.82	21.03
Lorillard Co.	15.27	26.02
Others never in any way connected with the combination	19.80	19.80
SMOKING TOBACCO		
American Tob. Co.	33.08	40.53
Liggett & Myers	20.05	16.47
Lorillard Co.	22.82	18.88
Reynolds Tob. Co.	2.66	2.73

[1] Op. Cit. Petition of the American Tobacco Company. Exhibit "B", pp. 38–39.

	Percentage in Volume (Lbs. or Thousands	*Percentage in Value*
SMOKING TOBACCO—*Continued.*		
Others never in any way connected with the combination	21.39	21.39
PLUG TOBACCO		
American Tob. Co.	25.32	22.98
Liggett & Myers	33.83	37.84
Lorillard Co.	3.73	4.64
Reynolds Tob. Co.	18.07	15.49
Others never in any way connected with the combination	19.05	19.05
FINE CUT TOBACCO		
American Tob. Co.	9.94	13.52
Liggett & Myers	41.61	36.26
Lorillard Co.	27.80	29.57
Others never in any way connected with the combination	20.65	20.65
CIGARS		
American Cigar Co.	6.06	8.90
Lorillard Co.	5.72	2.88
American Stogie Co.	1.58	1.58
Others never in any way connected with the combination.	86.64	86.64
SNUFF		
American Snuff Co.	32.05	35.55
Helme Company	30.88	28.95
Weyman & Bruton [1]	29.25	27.68
Others never in any way connected with the combination	7.82	7.82
LITTLE CIGARS		
American Tob. Co.	15.43	13.41
Liggett & Myers	43.78	38.69
Lorillard Co.	33.84	40.95
Others never in any way connected with the combination.	6.95	6.95

[1] Thus in original. Elsewhere Weyman-Bruton.—Ed.

EXHIBIT 3

DISTRIBUTION OF FACTORIES AND PRINCIPAL BRANDS AS CLAIMED BY THE AMERCIAN TOBACCO COMPANY [1]

THE AMERICAN TOBACCO COMPANY:	
Durham, N. C.	(Blackwell's Durham Tobacco Co.)
New York,	(Butler-Butler, Inc.)
Milwaukee, Wis.	(F. F. Adams Tobacco Co.)
Danville, Va.,	Danville Branch—little cigars.
Baltimore,	Ellis-A—little cigars.
New York,	Duke Branch.
Baltimore,	Felgner Branch.
Louisville,	Finzer Branch.
New York,	Kinney Branch.
Baltimore,	Marburg Branch.
Richmond,	Mayo Branch.
Nashville,	(Nashville Tobacco Works)
Richmond,	(R. A. Patterson Tobacco Co.)
Brooklyn,	Penn Street Branch—cigarettes.
Reidsville, N. C.	(F. R. Penn Tobacco Co.)
Middletown, Ohio,	Sorg Branch.
Louisville,	National Branch.
LIGGETT & MYERS TOBACCO COMPANY:	
St. Louis,	Liggett & Myers.
Chicago,	(Spaulding & Merrick.)
Richmond,	Allen & Ginter Branch.
San Francisco,	(John Bollman Co.)
Chicago,	Chicago Branch.
St. Louis,	Catlin Branch.
Toledo,	(Pinkerton Tobacco Co.)
Louisville,	Nall & Williams Tobacco Co.) [2]
New Orleans,	W. R. Irby Branch.
Durham,	W. Duke Sons & Co. Branch.
Wilmington, Del.	Wilmington-A—little cigars.
Philadelphia,	Philadelphia-A—little cigars.
P. LORILLARD COMPANY:	
Jersey City,	Lorillard factory.
New York,	(S. Anargyros.)

[1] Op. cit. Petition of the American Tobacco Company. Exhibit "D," pp. 42-45.

[2] Thus in the original.—Ed.

P. LORILLARD CO:—*Continued.*

Middletown, Ohio,	(Luhrman & Wilbern Tobacco Co.)
Philadelphia,	Philadelphia-B—little cigars.
Wilmington, Del.,	Wilmington-B—little cigars.
Danville, Va.	Danville-B—little cigars.
Brooklyn,	Penn St.—little cigars.
Baltimore,	Ellis Branch-B—little cigars
Jersey City, Richmond,	(Federal Cigar Co.)

THE AMERICAN TOBACCO COMPANY will have:

Smoking Tobacco Brands:

Lucky Strike,	Bull Durham,
Tuxedo,	Five Brothers,
Peerless,	Old English.

Plug Tobacco Brands:

American Navy,	Ivy,
Square Deal,	Corker,
Spear Head,	Town Talk,
Piper Heidsieck,	Newsboy,
Standard Navy.	

Cigarette Brands:

Sweet Caporal,	Hassan,
Pall Mall,	Mecca.

Little Cigar Brand:

Sweet Caporal.

Fine Cut Brand:

Virgin Leaf.

LIGGETT & MYERS TOBACCO COMPANY will have:

Smoking Tobacco Brands:

U. S. Marine,	King Bee,
Sweet Tip Top,	Red Man,
Duke's Mixture,	Velvet.
Home Run,	

Plug Tobacco Brands:

Star,	Horse Shoe.
Drummond's Natural Leaf,	

LIGGETT & MYERS TOBACCO COMPANY will have:—*Continued.*

Cigarette Brands:

American Beauty, Imperiales,
Fatima, Home Run,
Piedmont, King Bee.

Little Cigar Brand:

Recruit.

Fine Cut Brands:

Sweet Cuba, Sterling.

P. LORILLARD COMPANY will have:

Smoking Tobacco Brands:

Union Leader, Honest,
Sensation, Polar Bear.
Just Suits,

Plug Tobacco Brands:

Climax, Planet.

Cigarette Brands:

Helmar, Turkish Trophies,
Murad, Egyptian Deities.
Mogul,

Little Cigar Brand:

Between the Acts.

Fine Cut Brands:

Tiger, Century.

EXHIBIT 4

DISTRIBUTION OF PURCHASES OF DIFFERENT TYPES OF TOBACCO WITH ESTIMATE OF AVERAGE AGGREGATE AS CLAIMED BY THE AMERICAN TOBACCO COMPANY [1]

	Pounds
THE AMERICAN TOBACCO COMPANY:	
Burley	41,969,957
Virginia and North Carolina	51,295,870
Seed Leaf	6,112,099
Turkish	2,988,898
Dark Western	19,433,365

[1] Op. Cit. Petition of the American Tobacco Company, Exhibit "E," pp. 46–47.

LIGGETT & MYERS TOBACCO COMPANY:	
Burley	69,163,946
Virginia and North Carolina	27,755,411
Seed Leaf	5,676,180
Turkish	558,611
Dark Western	3,196,866
P. LORILLARD COMPANY:	
Burley	24,074,643
Virginia and North Carolina	2,556,007
Seed Leaf	19,993,726
Turkish	3,974,386
Dark Western	1,446,213
R. J. REYNOLDS TOBACCO COMPANY:	
Burley	5,000,000
Virginia and North Carolina	25,000,000
Seed Leaf	
Turkish	
Dark Western	
BRITISH-AMERICAN TOBACCO COMPANY, LIMITED:	
Virginia and North Carolina	40,000,000
Other types	10,000,000
ESTIMATE OF TOTAL AVERAGE CROP:	
Burley	200,000,000
Virginia and North Carolina	240,000,000
Dark Western	200,000,000
Seed	180,000,000
Turkish	90,000,000

EXHIBIT 5

CLAIM OF THE ATTORNEY GENERAL [1]

Coming now to the general features of the plan as proposed; as was said here yesterday, it is a purely practical commercial problem.

[1] Oral Argument of George W. Wickersham on Hearing of Application for Approval of Plan of Disintegration in the case of the *United States* v. *The American Tobacco Company*. In the Circuit Court of the United States for the Southern District of New York, pp. 9–15.

I thought, when the plan was before the conference, the last time that we had a conference between counsel and the court, that if certain modifications were made and certain features were changed it was getting along pretty nearly to a point where your honors would view it with favor, and I thought particularly that the distribution of brands, upon which so much stress and insistence was laid during the trial, and the distribution of the volume of purchases of raw material by these various companies, was very fairly worked out. After that conference, there came to me representatives of various interests that have appeared before your Honors to-day and yesterday, and they brought to my attention the same considerations that they have brought here, and I confess I was very much troubled by them. So I turned to the only authoritative source at my disposal for the facts of the subject, namely, the Bureau of Corporations of the Department of Commerce and Labor, and the Commissioner placed at my disposal one of their experts—indeed the principal expert in this tobacco business, who had himself prepared very largely, if not entirely, the report on the tobacco industry which was recently published by that bureau; and I had a verbal report from him a few days ago, and to-day only have I got his written report. It is not formal enough yet to be the report of the Bureau, but it is the report of a gentleman of very large knowledge and experience in this field, a gentleman very familiar with the business, representing entirely the Government's side in the matter, and who, on behalf of the Government, conducted the investigation which resulted in his report. I am going to file that report with the Court, because it strongly confirms the impression that I had as to the fairness of distribution of industries in the plan, and it effectually answers the suggestions made by the so-called independents and dealers. I would like to read part of that report now, because we have had so much on the subject. Take the distribution of brands. For the purpose of showing exactly the nature of the distribution of the brands this gentleman has prepared, and is to submit separately and supplemental to this report, a statement showing the output of each brand assigned for the different companies, the class of the product to which it belongs, and the territorial distribution; but he does annex to his present report a summary of the territorial distribution of the products:

"The general result," he says, "of my examination of the brands and their territorial distribution was that there seems to be no ab-

solute separation of types and classes of brands for the different companies. The method of distribution by plant which has been followed has resulted in the grouping of similar classes of brands, so that the high-grade cigarette, ordinary domestic cigarette, granulated tobaccos, long-cut and plug-cut tobacco, fine cut, plug and twist brands assigned to each company will not be exactly evenly divided. The predominance of one company over another, however, is not such as to entirely exclude one company from encroaching on the territory of another. To some extent the predominance of one company over another, in a particular line of product, is necessary on account of the very large output of such individual brands. The company, for instance, to which Bull Durham tobacco is assigned on account of the very large preponderance of this brand in its class will obtain a preponderant position in the higher-priced granulated business. The advantages are, however, offset by new brands distributed to each of the other concerns, such as 'Velvet,' 'Prince Albert,' and 'Our Advertiser.' Each of these newer brands has in it the elements of strong competition, and each seems fair to develop strength enough in its own particular line to make a formidable competitor. In the low-grade granulated tobaccos the Liggett & Myers concern have a predominating position on account of the great importance of the Duke's Mixture brand, which makes up nearly 80 per cent of the low-grade granulated tobaccos produced by the combination. Such a distribution, therefore, which should give each of the companies approximately the same proportion of a particular class of goods, is practically impossible as long as particular brands make up a large proportion of a single line of product. "In plug-cut tobaccos, principally distributed by P. Lorillard and the American Tobacco Company, the latter will hold a predominating position, but not to the extent that I had supposed. A number of the plug-cut brands of the Lorillard Company are directly competitive with those of the American Tobacco Company, which, as well as those of the former concern, have a large sale in New England, Pennsylvania, and the Central States.

"Long-cut brands have been assigned to all three concerns. It can not be said that any one company has local control over this class of product. Although the Liggett & Myers output concerns itself principally with Chicago and its immediate environment, it has brands which are strong competitors of the American, and which will compete in almost all the States directly with the American and Lorillard Companies for this class of product."

I will not go through that, but he has reviewed the great distribution of brands and finds that in each instance, while there is predominance given to one company which has a particularly profitable brand of very large sale, there is in every instance a certain competitive interest assigned to one of the other companies, preventing what is called a monopoly in one field being given to any one of these companies, even the one which secures the very large selling brand.

Take the purchasers of leaf tobacco. He has prepared a table which is annexed to this report—that is, the companies have prepared it under his direction—showing the full distribution after disintegration.

"It is apparent from this tabulation that no one of the companies will have an exclusive or monopolistic field in the purchases of any one type or any one grade of a type of leaf. In fact, the American Tobacco Company, the Liggett & Myers concern, the Lorillard Company, and the R. J. Reynolds' Tobacco Company will each of them be large and important purchasers of Burley tobacco. A consideration of the amount of purchases of different grades of Burley tobacco showed, moreover, that these companies would each purchase a very considerable amount of the different grades, so that no one company can be said to have the field in the purchase of any leaf grade exclusively to itself. There will be not only an increase in the number of leaf buyers in the Burley market, but also active competition for the same, or similar grades. The Southern Leaf situation is very much the same as the Burley situation. The American Tobacco Company, the Liggett & Myers concern, and the British-American Tobacco Company will be each large and important purchasers of Southern Leaf of practically the same types and grades, and no one company will purchase a preponderating proportion of any particular group of grades of this type.

"The same type and grade of Southern Leaf may be used in the manufacture of such types of cigarettes, in the manufacture of granulated smoking, and in the manufacture of plug tobaccos. It is a fact, therefore, that though some of the concerns may not purchase leaf for the same products in supplying their needs for the entire field of their operations, they must come into active competition against each other.

"The American Tobacco Company will purchase by far the larger proportion of the dark western tobaccos. Neither the

Liggett & Myers nor the Lorillard Company, or the R. J. Reynolds Company will purchase an appreciable amount of this type of leaf. The total purchases of the American Tobacco Company in this field will amount to about 19,000,000 pounds, while that of the other companies will be only a few million pounds annually. The combination, however, is only a small factor in the western dark leaf market. By far the greater proportion of this class of product is purchased for foreign governments. The fact that the American Tobacco Company will have no material competition in this field from Liggett & Myers or P. Lorillard, therefore, does not deprive the market of a fair amount of competition.

"While the American Tobacco Company is the only concern in the above group that will purchase dark western types, it should be borne in mind that there will be competition to a certain extent with the American Snuff Company and Bruton & Wayman [1] Company and George W. Helme Company, which require this same type of leaf for their products."

I lay great stress on that report because it is the report of an expert who is unusually familiar with the subject, and who possesses great knowledge on the subject, and it comes as the result of an investigation undertaken for the purpose of determining and advising me of the attitude which I should take with respect to the practical commercial features of this plan; and I know of no better way of securing within a short time for the consideration of the Court the commercial and economic facts by which you must be guided.

. . . . . .

Now, there is one feature of this combination which, in my personal experience, has been the subject of more complaints than all of the rest put together. That is the United Cigar Stores Company. The connection of that organization with this combination had given the combination the greatest opportunity to—I do not know that I can say to injure, but certainly to harass, the domestic trade and to incense a larger number of people than anything else they have done, because they have gone in and reached the poor corner dealer, bought the house over his head, and when his lease came to an end, instead of his being able to renew it as formerly, he finds that he can not get a renewal of the lease, that it has been taken by the United Cigar Stores Company. It was the

[1] Thus in original. Should be Weyman-Bruton.—Ed.

hand of the big trust; it reached out and touched the little man who has nobody to protect him. I have on my files in Washington letters—my files are full of letters and complaints running down to within the last few days, and I do think if that concern can be cut loose, if as a condition of this plan your honors require them to get rid, require these defendants to get rid of their stock in that concern, it would do more to make the rest of the plan acceptable to the people of this country than anything else that could be done. Of course Mr. Stroock naturally, speaking for the United Cigar Stores Company, objects to that, because it cuts him away from that convenient, intimate, and friendly relationship with the sources of supply which in the past has been the means of enabling the company to so prosper. But they have gone along; they are a great big organization to-day. They have something like a thousand stores, or seven hundred or eight hundred, at least, scattered throughout the country, and they have ample capital, and, with the impetus that they have got, they are the most potent competitor of the small dealer in the United States. I know they have not been adjudged to be, in specific language, an illegal combination, but each and every part of this combination has been adjudged by this decree to be illegal. The decree is comprehensive enough to include them, if your honors shall be so advised—comprehensive enough to empower your honors to include them, just as much as any one of the corporations or combinations before you. Therefore, I say, it is entirely within your honors' power, whether you choose to exercise it or not, to say, as a condition of this plan: You have got to get rid of them and turn them loose so that that concern will no more have any connection with the American Tobacco Company or with any of the distributive companies or with any of these individuals who have built up this combination through so many years.

EXHIBIT 6

OBJECTIONS OF NATIONAL CIGAR LEAF TOBACCO ASSOCIATION, THE CIGAR MANUFACTURERS' ASSOCIATION, AND THE INDEPENDENT TOBACCO SALEMEN'S ASSOCIATION TO THE PLAN OF DISINTEGRATION, FILED BY THE AMERICAN TOBACCO CO. AND OTHERS OCTOBER 16, 1911 [1]

Louis D. Brandeis, Felix H. Levy, counsel for remonstrants.

United States of America *against* American Tobacco Co. and others.

To the honorable circuit judges sitting in the southern district of New York:

The above-named associations, in pursuance of leave granted October 18, 1911, respectfully submit herewith certain objections to said plan.

We submit that the plan is not in accordance with the opinion of the Supreme Court of the United States in this cause. The plan if approved, would result in legalizing monopoly instead of restoring competition. Its effect upon the tobacco planters, independent tobacco manufacturers, the jobbers, the retailers, and upon labor engaged in the manufacture of tobacco products would be more injurious than the continuance of the present illegal monopoly.

I.

FUNDAMENTAL DEFECTS.

There are five fundamental defects in the plan, each so serious that it forms alone a sufficient ground for the rejection of the plan.

COMMON OWNERSHIP.

First. The plan proposes to divide the main properties of the trust among several corporations legally distinct, but to distribute the stock in these several corporations pro rata among common-stock holders of the American Tobacco Co. *No plan can be effective to restore competition which does not include as an essential condition a provision that the separate corporations or segments which are to carry forward the business of the trust shall at the outset and for a*

[1] Hearings before the Committee on Interstate Commerce on the Control of Corporations, Persons, and Firms engaged in Interstate Commerce. United States Senate, 62nd Cong., 2nd Sess. 1911–1912, pp. 315–322.

limited period thereafter, be owned by absolutely distinct groups of individuals.[1]

(*a*) Under the proposed distribution of the securities of the several corporations formed to carry forward the business of the trust as alleged competitors, competition between these concerns would of course be legally possible, but common ownership of the stock would make it certain that in fact there would be (at least in the immediate future) no real competition. This would be so, no matter how great the number of corporations into which the business of the trust were divided. It is contended that the 29 individual defendants control to-day only 56 per cent of the voting power of the American Tobacco Co., and that under the plan they will control a smaller per cent of the stock and voting power of the several segments into which the trust is to be divided. But it is obvious that a legal majority of the stock of a corporation is not essential to actual control. A small minority may control; and as the same individuals would at the outset select the directors and the officers of each of these colorable competitors, it is certain that the officers and the directors of the several companies would be friendly, if not in fact identical.

(*b*) In view of the past affiliations of these stockholders, no reasonable assurance of competition between the several segments of the trust can be had, unless each segment is owned by an entirely distinct group of individuals. Such ownership of separate corporations by distinct groups of individuals was the condition which existed prior to the illegal combination which restrained competition. Real competition is not a commercial possibility unless that essential condition of competition be restored.

(*c*) The framing of a plan for dividing among distinct groups of individuals the stock of the several companies which take over the properties of the trust would present no serious difficulties. The division would be effected by valuation and allotment in a manner similar to that pursued when partition is made among heirs or other tenants in common of several parcels of land, whereby each person is allotted in severalty a particular parcel of real estate formerly held in common.

(*d*) It is essential that the ownership of the stock in the different corporations which are to carry forward the business of the trust as competitors of one another should not merely be held at the outset by distinct groups of individuals, but that it should be so

[1] Italics are the editor's.

held for a limited period thereafter, say, for five years. Provision should therefore be made prohibiting by injunction those who at the time of distribution acquire stock in any one of the segment corporations from acquiring stock during such period in any other of the segments. This injunction should not be confined in its operation to the 29 individual stockholders who are now named as defendants. It should extend to every stockholder who participates in the distribution under the plan. No legal or practical difficulty would present itself in the adoption of such a course. The stockholders would be made parties to the proceeding and bound by the decree in the same manner that a decree becomes operative upon a purchaser at a foreclosure sale.

DOMINATING CONCERNS.

Second. The plan provides for a division (generally) among only three huge corporations of nearly all of the properties now held by the trust. No plan can be effective to restore competition which does not include as an essential condition that no department of the tobacco business now conducted by the trust shall be divided into segments so large as to prevent the independents engaged in that branch of the business from competing with them under fair conditions.

Under the plan each one of the three or four corporations designed to carry forward the main businesses of the trust would hold alone so large a percentage of the whole business of the country in the respective departments of the tobacco trade as to dominate the independents engaged in that department of the tobacco business, whether as planters, manufacturers, or dealers, and thus unreasonably restrain trade. The three or four concerns formed to carry forward the main business of the Tobacco Trust would together be in a position to crush the independents even more effectually than has been done in the past.

In determining how large the several segments into which the trust's business is to be divided, may properly be, existing trade conditions must be considered. The question is one that should be decided not by generalizations, but by reference to the specific commercial facts prevailing in the several departments of the tobacco trade. That each of the three or four corporations would under the proposed plan in fact dominate and could crush the existing independents becomes clear when their relative positions in the trade is considered.

CIGARETTES.

A. The cigarette business of the trust is divided by the plan among three concerns. It should be divided among at least seven separate concerns.

The American Tobacco Co. would have 33.15 per cent in value of the whole cigarette business of the country; the Lorillard Co., 26.02 per cent; and the Liggett & Myers Co., 21.03 per cent. All of the independents together control only 19.80 per cent. Each of the three companies among which the trust's cigarette business is to be divided would thus start with a cigarette business greater than the aggregate business of all the independents.

(*a*) While it is undesirable to place a limit upon the size to which a business may grow, or to determine the proportion of the whole business of the country in any article which may properly be acquired by one concern through such growth, it is absolutely necessary to take relative size into consideration when it is sought to restore competition which has been suppressed through illegal combination.

(*b*) Furthermore, under the plan the distribution of the brands of cigarettes is such that each of the three colorable competitors who are to carry forward the business of the trust will, as against the other two, dominate a particular branch or market of the cigarette trade.

(*c*) In considering the propriety of dividing the present cigarette business of the trust into more than 3 units, it should be noted that this business represents the absorption into the trust of 18 separate business concerns, that the cigarettes now manufactured by the trust are of several distinct classes, and that, according to latest information available, the trust even now manufactures its cigarettes in 7 separate factories.

SMOKING TOBACCO.

B. The smoking-tobacco business of the trust is divided by the plan among 4 concerns. It should be divided among at least 12 separate concerns.

(*a*) The American Tobacco Co. would, under the plan, have 40.53 per cent in value of the whole smoking-tobacco business of the country; the Lorillard Co., 18.88 per cent; and the Liggett & Myers Co., 16.47 per cent; while all the independents together would have only 21.39 per cent. In other words, the American Tobacco Co. would alone have a smoking-tobacco business nearly twice that of all the

independents together. The Liggett & Myers Co. and the Lorillard Co. would each start with a smoking-tobacco business nearly as large as the aggregate business of all the independents.

(*b*) Furthermore, under the plan, the distribution of the brands is such that three of the four colorable competitors would, as against the others, dominate a particular branch or market of the smoking-tobacco trade.

(*c*) In considering the propriety of insisting upon dividing the smoking-tobacco business of the trust among a larger number of corporations, it should be remembered that the smoking-tobacco business now controlled by the trust is the result of combining over 57 separate businesses; that the smoking tobacco manufactured is of several distinct classes; and that at the present time, and according to the latest information available, the trust manufactures its smoking tobacco in 12 different factories.

PLUG TOBACCO.

C. The plug-tobacco business of the trust is to be divided, by the plan, among 4 companies. It should be divided among at least 12 separate concerns.

(*a*) Liggett & Myers Co. would have, under the plan, 37.84 per cent in value of the plug-tobacco business of the country, the American Tobacco Co. 22.98 per cent, and the Reynolds Tobacco Co. 15.49 per cent, as against only 19.05 per cent now held by all the independents together. Liggett & Myers Co. would have a plug-tobacco business nearly twice as large as the aggregate business of all the independents. The American Tobacco Co.'s plug-tobacco business would be larger than the aggregate of all the independents, and the Reynolds Tobacco Co.'s plug-tobacco business would be more than three-quarters the aggregate business of all the independents.

(*b*) Furthermore, under the plan, the distribution of the brands is such that at least two of the four companies would, as against the others, dominate particular branches or markets of the plug-tobacco trade.

(*c*) In considering the propriety of dividing the plug-tobacco business of the trust among a larger number of corporations, it should be noted that the present plug-tobacco business of the trust is the result of combining at least 43 separate concerns; that plug tobacco manufactured by the trust is of several distinct classes; and that,

according to the latest information available, the trust manufactures its plug tobacco in 12 different factories.

LITTLE CIGARS.

D. The little-cigar business of the trust is divided, by the plan, among three concerns. It should be divided among at least seven separate concerns.

(*a*) The Lorillard Co. would, under the plan, have 40.95 per cent in value of the little-cigar business of the whole country, the Liggett & Myers Co. would have 38.69 per cent, and the American Tobacco Co. 13.41 per cent, as against only 6.95 per cent held by the aggregate of all the independents. That is, the Lorillard Co. would control nearly seven times as much little-cigar business as the aggregate of all the independents, the Liggett & Myers Co. over six times as much, and the American Tobacco Co. nearly twice as much.

(*b*) In considering the propriety of dividing the little-cigar business of the trust among a greater number of corporations, it should be remembered that this business, though largely developed by the trust, rests upon a combination of distinct business concerns; that the little cigars are of several distinct qualities, and that, according to the latest information available, the trust now does its little-cigar manufacturing in seven separate factories.

SNUFF.

E. The snuff-tobacco business of the trust is divided by the plan into three parts. It should be divided among six separate concerns.

(*a*) The American Snuff Co. would, under the plan, have 35.55 per cent in value of the whole snuff business of the country, the George W. Helme Co. 28.95 per cent, and the Weyman & Bruton Co. 27.68 per cent, as against 7.82 per cent now controlled by all the independents together. That is, the American Snuff Co. would have a snuff business more than four times as large as the aggregate snuff business of all the independents, and the George W. Helm [1] Co. and the Weyman & Bruton [2] Co. a snuff business each more than three times as large as the aggregate business of all the independents.

(*b*) In considering the propriety of the division of the snuff business of the trust among a larger number of concerns, it should be borne in mind that the present snuff business of the trust is the result of combining 29 separate concerns, and that, according to the latest information available, it now manufactures snuff in more than three factories.

[1] Thus in original. Should be Helme.—Ed.

[2] Thus in original. Should be Weyman-Bruton.—Ed.

LICORICE PASTE.

F. The licorice-paste business of the trust is divided, under the plan, into two parts. It should be divided among at least four separate concerns.

The trust, through the MacAndrews & Forbes Co., now controls 90 per cent of the licorice-paste business of the country. There is but one independent manufacturer, and until the commencement of this suit that manufacturer conducted the business under an agreement in combination with the trust.

(*a*) Under the plan the trust's licorice-paste business is to be divided among two concerns, so that the MacAndrews & Forbes Co. will retain about 60 per cent of the whole licorice paste business of the country, and the J. S. Young Co. have about 30 per cent. Thus the MacAndrews & Forbes Co. will have a licorice-paste business six times as large as that of the independent manufacturer, and the J. S. Young Co. a business nearly three times as large.

(*b*) In considering the propriety of dividing the licorice-paste business among a larger number of concerns, it should be borne in mind that the present licorice-paste business of the trust is the result of combining six separate concerns.

(*c*) The control by the trust of the licorice-paste business gave it control of the chewing-tobacco business, as chewing plug can not be made without licorice; and its control of the licorice-paste business of the whole country is fortified by its control of the raw material, licorice root. The plan makes no provision for breaking the trust's monopoly of licorice root.

(*d*) The plan also omits to provide for a cancellation of those covenants by which those whose licorice-paste business was absorbed by the trust are precluded from reentering the business.

TIN FOIL

G. The tin-foil business of the trust is divided by the plan into two parts. It should be divided among at least five separate concerns.

(*a*) The exact percentage of the tin-foil business of the country controlled by the trust is not stated in the petition. It is, however, so large a percentage of the whole tin-foil business of the country that the division of the trust's tin-foil business between the Conley Tin Foil Co. and the Johnson Tin Foil & Metal Co., as proposed, would still leave the Conley Tin Foil Co. in a dominant position.

(*b*) The plan also omits to provide for a cancellation of those covenants by which those whose tin-foil business was absorbed by the trust are precluded from reentering the business.

"COMPLETELY EQUIPPED" CONCERNS

Third. The plan provides that the three companies among which all the manufacturing properties of the trust are divided shall be "each completely equipped for the conduct of a large tobacco business." No independent concern is now "completely equipped for the conduct of a large tobacco business," or indeed completely equipped to do any tobacco business covering all the main branches of the tobacco trade. No plan to restore competition can be effective which does not include as an essential condition that the several concerns which are to carry forward the business of the trust shall be, at the outset, of a character similar to that of the remaining independent concerns. It follows that any corporation taking over a part of the plug-tobacco business or smoking-tobacco business of the trust shall not take over any of the cigarette or cigar business; that a corporation taking over a part of its cigarette business shall not take over any of its smoking-tobacco business, plug-tobacco business, or cigar business; and that a corporation taking over any part of the cigar business shall not take over any of its smoking-tobacco business, plug-tobacco business, or cigarette business.

(*a*) Under the proposed plan the American Tobacco Co. would have a cigarette department with 33.15 per cent in value of the whole cigarette business of the country, a smoking-tobacco department with 40.53 per cent of the whole smoking-tobacco business of the country, a plug-tobacco department with 22.98 per cent of the whole plug-tobacco business of the country, a fine-cut-tobacco department with 13.52 per cent of the whole fine-cut-tobacco business of the country, a cigar department with 8.90 per cent of the whole cigar business of the country, and a little-cigar department with 13.41 per cent of the whole little-cigar business of the country. In the Liggett & Meyers Co. the percentages would be 21.02 per cent in the cigarette department, 16.47 per cent in the smoking-tobacco department, 37.84 per cent in the plug-tobacco department, 36.26 per cent in the fine-cut-tobacco department, and 38.69 per cent in the little-cigar department. The Lorillard Co. would have a cigarette department with 26.02 per cent, a smoking-tobacco department with 18.88 per cent, a plug-tobacco department with 4.64 per cent, a fine-cut-tobacco department with 29.57 per cent,

a cigar department with 2.88 per cent, and a little-cigar department with 40.95 per cent.

(*b*) The impossibility of fair competition between the independents and these four companies, into which it is proposed to divide the manufacturing business of the trust, is due to the cumulative effect of three distinct advantages which the trust has secured through its illegal combination:

1. The large percentage of the whole business in any department which each would have as compared with the independents.

2. The fact that its business extends over all departments of the tobacco trade.

3. The fact that the trust holds and is proposing to distribute among the three companies certain brands which are practically indispensable to the successful conduct of business by any jobber or retailer of tobacco.

Each company would therefore be enabled, by means of these "indispensable brands," to largely compel dealers to give preference to its other products over those of the existing independents. It would also, by use of the huge profits derived from those indispensable brands, be enabled to crush these independents as competitors of other departments of its business.

(*c*) In considering the propriety of limiting the number of departments of the tobacco business of the trust which should be allotted under the plan to any single company, it should be noted that prior to the trust's illegal operations no one concern was so "completely equipped" and that the present business of the trust is the result of combining and absorbing illegally at least 250 separate concerns; that furthermore, even to-day, the trust manufactures its products in at least 100 different factories; that in none of these does it now manufacture all of the several tobacco products which it is proposed to handle through each of these "completely equipped companies"; and that also in the selling of its product it employs separate salesmen for different classes of tobacco products.

RESTRAINTS ON UNFAIR COMPETITION.

Fourth. The plan contains no provision under which the several corporations which are to carry forward the manufacturing business of the trust will be enjoined from practicing those methods of unfair competition by means of which the trust has in the past

overcome its competitors. It is clear that for a limited period the independents should have more protection than would ordinarily be necessary in trade where one concern has not succeeded in illegally dominating the trade. For this reason it is not sufficient that the corporations carrying forward the business of the trust be merely enjoined from a continuation of the illegal practices pursued by the trust; they should also be prohibited for a limited period—say, five years, and such further time, if any, as the court may hereafter order—against other practices not necessarily illegal, but which if resorted to at the outset would tend to stifle competition. The plan should therefore include, among other acts to be prohibited for such limited period, the following:

(A) Each corporation which is to carry forward any part of the manufacturing business of the trust should be restrained—

(1) From acquiring or holding stock or other interest in, or undertaking to exercise any control over, or making loans or otherwise extending credit to, any other corporation carrying forward any part of the business of the trust, except as hereinafter provided.

(2) From having any person act as one of its officers or directors who is also an officer or director in any of the other corporations carrying forward any other part of the business of the trust, except as hereinafter provided.

(3) From combining in any way with any other corporation carrying forward any part of the business of the trust, either in purchasing raw material or supplies or in selling manufactured products or otherwise, or having any joint or common agents or enterprises in connection with the purchase of raw materials or supplies or the sale of manufactured products, or otherwise.

(4) From making any agreement or arrangement of any kind with any corporation carrying forward any part of the business of the trust under which trade is apportioned in respect either to customers or localities.

(5) From doing business directly or indirectly under any name other than its own corporate name.

(6) From holding stock in or being otherwise interested in any other corporation, except as hereinafter provided.

(7) From espionage on the business of any competitor either through bribery of any agent or employee of such competitor, or obtaining information from any United States revenue official.

(8) From giving away, selling at or below the cost of manufacture and distribution, any of its products, or adopting any other

method of cutthroat competition for the purpose of destroying or of acquiring the business or trade of a competitor.

(9) From refusing to sell to any jobber any brand of snuff or cigarettes or smoking or chewing tobacco manufactured by it which is indispensable in the particular market. It should also be restrained from giving any rebates, allowances, or other special inducements to those who use its goods exclusively or give preference to them over the goods of competitors.

(10) No corporation carrying forward any part of the manufacturing business of the trust should be allowed to hold any part of the stock of or any other interest in any concern engaged in jobbing tobacco products; but it should be permitted, except as above stated, to own the stock of another corporation organized to carry on any part of its permissible business, provided such other corporation shall have a corporate name, and the business is done under a name, substantially identical with its own.

(B) Each of the 29 individual defendants, and also the other stockholders among whom distribution of the property of the trust is made, should be restrained from doing, or aiding in the doing, of any acts which the corporations are to be prohibited from doing as above set forth.

(C) Every independent or other person interested should in the event of any alleged violation of the injunction have liberty to apply to the court for protection and such action as may appear to be appropriate.

UNITED CIGAR STORES.

Fifth. The plan provides for leaving intact the United Cigar Stores Co. and merely distributing among the common-stock holders of the American Tobacco Co. its stock holdings in the United Cigar Stores Co. No plan can be effective to restore competition which does not provide for dividing the businesses and property of the United Cigar Stores Co. among many separate concerns owned by absolutely distinct groups of individuals. These businesses should be divided, preferably among at least 10 separate corporations, and no one corporation should be given a predominant power in any locality.

(*a*) The power acquired by the United Cigars[1] Stores Co. through the illegal operations of the trust is so great that its continued existence would render effective competition improbable, even if,

[1] Thus in original.—Ed.

as contended above, the manufacturing properties were divided into separate segments owned each by distinct groups of individuals. The distribution of the United Cigar Stores Co.'s stock among the stockholders of the American Tobacco Co. would in itself create a bond of union among the several segments sought to be kept separate and distinct each from the other. In considering the disposition to be made of the United Cigar Stores Co., the court should be guided by the actual commercial situation, to be ascertained by an inquiry into the actual facts. The United Cigar Stores Co., developed through the illegal practices of the trust, possesses to-day a capital and a peculiar position which makes it so potent in the tobacco business as to be a menace alike to independent manufacturers and to independent retailers. Its division is a commercial necessity.

(*b*) When divided each segment of the United Cigar Stores Co. should be owned by a different group of individuals; and like provision should be made as in the case of the segments of the manufacturing properties of the trust—that for a limited period, say, five years, none of the original stockholders should be allowed to acquire an interest in any of the other segments into which the United Cigar Stores Co. is divided.

(*c*) Specific provision should also be made to prevent, as in the case of the manufacturing companies, any combination between the different corporations formed to carry forward the United Cigar Stores Co. business. They should among other things be expressly prevented from combining in any way in purchasing or in selling tobacco products or in purchasing or leasing real estate, and specifically from issuing interchangeable coupons.

II.

OTHER IMPORTANT DEFECTS.

In addition to the five fundamental objections to the plan set forth above, there exist other important objections, among which are the following:

THE BRITISH AMERICAN CO.

First. Under the plan the covenant restricting the British American Tobacco Co. from competing within the United States is to be abrogated; but no provision is made for terminating the practical monopoly acquired by the British American Co. in the purchase

and manufacture within the United States for export of certain kinds of tobacco leaf and the manufacture of cigarettes within the United States for export.

The leaf-tobacco business of the British American Co. should be divided among four concerns, taking over, respectively, the businesses heretofore done by the David Dunlop Co., T. C. Williams Co., Cameron & Cameron, and William Cameron & Bros.

The export cigarette business should be taken by two companies, assuming, respectively, the business done at the Richmond and the Durham plants. The separate concerns so created should be subject to prohibitions similar to those suggested above for the other segments of the trust, and the provisions should be made specifically to encourage competition between the cigarette plants now controlled by the British American Co. and those controlled by the American Tobacco Co.

COMPETITION IN BUYING TOBACCO.

Second. The plan fails to provide adequately for preventing a restraint of competition in the purchase of leaf tobacco through some combination between the Imperial Co., the British American Co., and the segments into which the American Tobacco Co. may be divided. There should be a specific prohibition against the British companies joining with each other or with any of the segments of the American Tobacco Co. in the purchase of leaf tobacco or in employing any common agent for that purpose.

THE CIGAR BUSINESS.

Third. Under the plan the American Tobacco Co. is to retain in its treasury the stock of the American Cigar Co. now held by it. The American Cigar Co. should be separated absolutely from every other corporation which carries forward any part of the manufacturing business of the trust in other tobacco products. All the American Cigar Co. stock held by the trust should be transferred to some group of individuals entirely distinct from those who hold the stock in the corporations which take over the smoking-tobacco, plug-tobacco, snuff, and cigarette business of the trust.

Furthermore the manufacturing business of the American Cigar Co. should be divided among at least four separate corporations, each owned by a distinct group of stockholders; and each of these corporations should be subject to prohibitions substantially sim-

ilar to those above set forth in respect to the other corporations carrying forward parts of the business of the trust.

Leave is respectfully reserved to submit additional objections to the plan, as well as argument in support of all objections in accordance with said order entered October 18, 1911.

LOUIS D. BRANDEIS,
FELIX H. LEVY,
Counsel for Remonstrants.

NEW YORK, *October 25, 1911.*

EXHIBIT 7

ARGUMENT OF FELIX H. LEVY IN SUPPORT OF THE OBJECTIONS FILED HEREIN BY THE NATIONAL CIGAR LEAF TOBACCO ASSOCIATION, THE CIGAR MANUFACTURERS' ASSOCIATION OF AMERICA, AND THE INDEPENDENT TOBACCO SALESMEN'S ASSOCIATION TO THE PLAN OF DISINTEGRATION FILED HEREIN BY THE AMERICAN TOBACCO CO. AND OTHERS, DEFENDANTS [1]

I. The plan submitted by the tobacco combination does not, in any substantial sense, comply with the requirements of the opinion of the United States Supreme Court or of the decree rendered herein.

(*a*) At the outset it will be useful for a clear understanding of the requirements of the opinion of the Supreme Court to point out a few of the salient features of that opinion as indicating the character of dissolution contemplated by that court.

It is a significant fact that the court deemed it unnecessary to take into consideration any of the numerous facts in the record which were disputed by the defendants. The court said (p. 155):

"* * * in our opinion the case can be disposed of by considering only those facts which are indisputable and by applying to the inferences properly deducible from such facts the meaning and effect of the law as expounded in accordance with the previous decisions of this court,"

and again (p. 157),

"* * * we propose only to deal with facts which are not in controversy."

Despite the fact that the court limited itself to the consideration of

[1] Hearing before the Committee on Interstate Commerce, United States Senate, 62nd Congress, 2nd Sess., 1911–1912, pp. 340–50.

the undisputed facts only the court gave judgment of dissolution and disintegration of a most drastic character.

(*b*) The court recognized the fact that a substantial control of the combination was exercised by a very small number of its stockholders. At page 174 the court said:

"Through the method of distribution of the stock of the new company, in exchange for shares in the old American and in the Continental Co., it resulted that the same six men in control of the combination through the Consolidated Tobacco Co. continued that control by ownership of stock in the merged or new American Tobacco Co. * * * The record indisputably discloses that after this merger the same methods which were used from the beginning continued to be employed."

And it also recognized the necessity of a complete divesting of stock ownership by one part of the combination in other parts of the combination, as is thus shown (p. 176):

"Thus, even if the ownership of stock by the American Tobacco Co. in the accessory and subsidiary companies and the ownership of stock in any of those companies among themselves were held, as was decided in United States against Standard Oil Co., to be a violation of the act, and all relations resulting from such stock ownership were therefore set aside, the question would yet remain whether the principal defendant, the American Tobacco Co., and the five accessory defendants, even when divested of their stock ownership in other corporations, by virtue of the power which they would continue to possess, even although thus stripped, would amount to a violation of both the first and second sections of the act. * * * Still further, the question would yet remain whether particular corporations which, when bereft of the power which they possessed, as resulting from stock ownership, although they were not inherently possessed of a sufficient residuum of power to cause them to be in and of themselves either a restraint of trade or a monopolization or an attempt to monopolize, should nevertheless be restrained because of their intimate connection and association with other corporations found to be within the prohibitions of the act."

. . . . . .

(*e*) The court clearly recognized the necessity of a separation of stock control, as is thus shown (p. 185):

"Looking at the situation as we have hitherto pointed it out, it in-

volves difficulties in the application of remedies greater than have been presented by any case involving the antitrust act which has been hitherto considered by this court: First, because in this case it is obvious that a mere decree forbidding stock ownership by one part of the combination in another part or entity thereof would afford no adequate measure of relief, since different ingredients of the combination would remain unaffected, and by the very nature and character of their organization would be able to continue the wrongful situation, which it is our duty to destroy. * * * Third, because the methods devised by which the various essential elements to the successful operation of the tobacco business from any particular aspect have been so separated under various subordinate combinations, yet so unified by way of the control worked out by the scheme here condemned, are so involved that any specific form or relief which we might now order in substance and effect might operate really to injure the public and, it may be, to perpetuate the wrong."

It is thus made obvious that one of the principal features comprised in the objections filed by the remonstrants—that which objects to stock ownership by the stockholders of any one of the segments into which the combination shall be divided in any of the other segments—was contemplated by the court, and, apparently, the only objection thereto was that such prohibition would not go far enough. To emphasize this, we repeat the language of the court:

"* * * In this case it is obvious that a mere decree forbidding stock ownership by one part of the combination in another part, or entity thereof, would afford no adequate measure of relief."

There is here no suggestion of the illegality of such a prohibition. The court says only that it will not go far enough.

The danger of a renewal of an unified control through such stock ownership is clearly apprehended by the court as shown by the words used above, which we here again quote (p. 186):

"* * * Because the methods devised by which the various essential elements to the successful operation of the tobacco business from any particular aspect have been so separated under various subordinate combinations, yet so unified by way of the control worked out by the scheme here condemned," etc.

(*f*) It seems obvious that the court had in mind the probability that a receivership or an injunction against the movement in interstate commerce of the products of the combination would be necessary on account of the complexity of the situation created by the

conspirators who controlled the combination. The court makes clear the possible necessity of such a procedure, and its unwillingness to resort thereto forthwith, without first giving the controllers of the combination an opportunity to formulate and present to this court a plan of dissolution and disintegration which would honestly conform with the requirements of the statute. The court said (p. 187):

"But, having regard to the principles which we have said must control our action, we do not think we can now direct the immediate application of either of these remedies. We so consider as to the first because, in view of the extent of the combination, the vast field which it covers, the all-embracing character of its activities concerning tobacco and its products, to at once stay the movement in interstate commerce of the products which the combination or its co-operating forces produce or control might inflict infinite injury upon the public," etc. * * * "The second because the extensive power which would result from at once resorting to a receivership might not only do grievous injury to the public," etc.

It thus appears that instead of resorting forthwith to either of these drastic remedies, the court gave to the defendants the opportunity of working out some plan of dissolution and disintegration which would conform to the requirements of the decree and adequately meet the situation; and failing so to do, resort to one or the other or both of these remedies would become necessary. The insistence upon a diversity of stock ownership is based not upon any claim of the right of this court to enforce such condition upon the stockholders against their will, but is based upon the contention that unless the stockholders of their own free will and accord present to the court, as a part of their plan of dissolution and disintegration, a provision preventing mutuality of stock ownership, the defendants will not have met the requirements of the opportunity thus given to them by the Supreme Court. In other words, the Supreme Court has, if we may be permitted to paraphrase its language, said in effect to these defendants:

"We hesitate to appoint forthwith a receiver and to issue an injunction against interstate traffic in your products because of the injury that will thereby be occasioned to the public. We therefore give you an opportunity of working out and presenting to the circuit court a plan of dissolution and disintegration which will honestly re-create conditions of free and unrestricted competition. If you are unable or unwilling to do this, there will be no alternative open except the appointment of a receiver or the issuance of such an injunction.

It will therefore be necessary for you to devise a plan to which your security holders will of their own accord consent whereby the true intent and purpose of our decree will be carried out. If such a plan shall necessitate your security holders placing themselves under a prohibition against mutual or joint-stock ownership of the various segments into which your combination shall be divided, then that must be done. While it may be that a court can not compel you to do this, nevertheless unless you consent, no effective restoration of real competitive conditions can be brought about and accordingly it would become necessary for the court to appoint a receiver or to issue an injunction."

II. The court has power to enjoin the purchase, directly or indirectly, by the 29 individual defendants and their confederates, of the stock of the constituent companies.

We protest against any method of distribution by which the stock of the constituent companies will be placed in the hands of the common-stock holders of the American Tobacco Co. The American Tobacco Co. must, it is true, dispose of its holdings in the shares of the constituent companies, but it should not be allowed to distribute those shares among its own common-stock holders. On the contrary, an injunction should issue restraining the common-stock holders of the American Tobacco Co. from acquiring those shares. Such an injunction involves no violation of any legal principle. It merely enjoins the perpetuation of a criminal conspiracy under another form.

An analysis of the situation must, we think, sustain the correctness of this view. These 29 individual defendants combined with the American Tobacco Co., or combined with each other, by and through the corporate form of the American Tobacco Co., to monopolize trade and suppress competition by centralizing under one control the business of previous diverse units. To effectuate that end they adopted the plan of putting the stock of the units into the ownership of the dominant corporation. They might have adopted other methods, and if the end which they had in view had been the same, the illegality would have been in no way cured. In other words, if these 29 defendants conspired to monopolize trade, and adopted the expedient of putting the ownership of the stock of the constituent units in their own names, they would still have been parties to a criminal conspiracy. Acting individually, but not in concert, each

one of them, it may be, might have acquired whatever shares he pleased. When, however, by concerted action, they set about to monopolize a great industry, they would not have escaped the penalties of the law if they had put the title to the shares in their individual names. The purpose and intent of using the ownership acquired through this joint action in order to crush competition and to establish monopoly, would have vitiated their acts.

The Supreme Court of the United States said in Swift & Co. *v.* U: S. (196 U. S., 375):

"Even if the separate elements of such a scheme are lawful, when they are bound together by a common intent as parts of an unlawful scheme to monopolize interstate commerce, the plan may make the parts unlawful."

The plan now proposed attempts, therefore, to perpetuate a criminal conspiracy. It seeks to cure a great evil and a great wrong by substituting another. The 29 individual defendants, convicted of conspiracy, are making reparation, not by yielding up their collective control, but by taking in their own names the title which for convenience they had vested in the company. They would have violated the law if, with concert of action, they had taken the title in their own names when the combination was first formed. They surely do not bring themselves within the law by doing something to-day which, if they had done at the outset, would have been denounced as a crime.

It is said, however, in defense of the plan, that the control will be diluted because voting rights are now to be given to the preferred-stock holders. We have no list of the present preferred-stock holders. We have no doubt that if the list is scrutinized, and if the individual defendants are compelled to submit to an examination under oath with reference thereto, it will be found that the preferred stock is held in large part by the conspirators and by their agents and relatives. We urge that before the court shall accept the word of an adjudged wrongdoer that it has reformed itself altogether, there be a rigid investigation, under the sanction of an oath, of these professions of reformed innocence.

No plan should be approved unless the common-stock holders are prohibited from obtaining or retaining control. Control, moreover, may be exercised by something less than a majority. The cohesive power of large stockholders representing 30 or 40 per cent may outmatch the scattered forces of unorganized individuals. The percentages of the voting stock held by the individual defendants in the

14 corporations into which they propose to divide the existing combination are as follows:

	Per cent.
American Tobacco Co.	35.16
Liggett & Myers Co.	40.76
P. Lorillard Co.	40.76
American Snuff Co.	38.65
Geo. W. Helme Co.	28.49
Weyman & Burton Co.	28.49
Conley Foil Co.	33.88
Johnston Tin Foil Co.	33.73
MacAndrews & Forbes Co.	39.77
J. S. Young Co.	43.87
R. J. Reynolds Tobacco Co.	37.53
United Cigar Stores Co.	37.65
British-American Tobacco Co.	34.46
Porto Rican-American Tobacco Co.	45.31

It is apparent from these figures that the individual defendants will, in the absence of united action by the majority of the stockholders of any of the companies, control each and all of the said companies. Especially will this be so when it is borne in mind that the individual defendants will start out in actual control of each and every one of such corporations, by reason of the fact that they will, upon the organization of these corporations, undoubtedly control the nomination and election of the directors and officers and through them of each and every employee of the said corporations.

Thus to restrain the individual defendants and those who, while not joined as defendants are so related to them that they must have been animated, and will be animated, by a common purpose is not an arbitrary judicial fiat. It is not to cast aside settled legal principles and single out special individuals to bear some special burden; the underlying principle is this: These men have combined and conspired in violation of law, and the injunction restraining them from acquiring the shares merely restrains them from giving effect to and perpetuating the same combination and conspiracy under another form. They might have been restrained from these acts when the monopoly was first planned. A long career of oppression and the exercise of monopolistic power has given them no broader license.

. . . . . .

VII. The proposed plan is significant in respect of the concerns which are not to be parts of the three great corporations, namely, the American Tobacco Co. (new), Liggett & Myers Co., and the P. Lorillard Co.

(*a*) The American Tobacco Co. is to divest itself of its interest in the two tin-foil companies, but that interest (which is 60 per cent) is to be distributed to its common-stock holders as a dividend.

(*b*) The American Tobacco Co. is to divest itself of its interest in the R. J. Reynolds Tobacco Co. (more than two-thirds interest), but that interest is to be distributed to its common-stock holders as a dividend. This company is a very large combination in itself, controlling several branches and subcompanies, and has a practical monopoly of the flat-plug business of the South.

(*c*) It will also divest itself of its interest in the American Snuff Co. (about 43 per cent), but that interest is to be distributed to its common-stock holders as a dividend.

(*d*) It will also divest itself of its interest (about 75 per cent) in the MacAndrews & Forbes Co., but this interest is to be distributed to its common-stock holders as a dividend.

(*e*) It will also divest itself of its interest (about two-thirds) in the British-American Tobacco Co., but that interest will be distributed to its common-stock holders as a dividend.

(*f*) It will also divest itself of its interest in the United Cigar Stores Co. (about two-thirds), but that interest will be distributed to its common-stock holders as a dividend.

It will therefore result that each of these six constituent parts of the present combination will continue to be controlled by the same "small number of individuals who own a majority of the common stock" of the American Tobacco Co. (See opinion of the United States Supreme Court, p. 175.)

The viciousness of such an arrangement is made manifest more strikingly in the case of the United Cigar Stores Co. than in the case of the other five companies thus sought to be separated. The United Cigar Stores Co. has been the most powerful agency of the combination in obtaining the control of the tobacco industry. Through the hundreds of stores which that company operates, and by virtue of the special trade advantages given to it by its owner, the American Tobacco Co., and by the exercise of the most ruthless and cruel practices in driving out retail opposition and obstructing the avenues of distribution on the part of independent

manufacturers, this company has proven the most effectual of all the barriers to the entry of others into the tobacco trade. If the mild expedient of merely separating this company from the combination but of leaving its control in the hands of the same men who have heretofore controlled the combination, if the rose-water remedy of gently setting aside this vast agency of destruction from its former control by the combination and placing it in the hands of the same men who control that combination, is to be adopted, it is no exaggeration to say that, in this respect at least, the decree of the Supreme Court of the United States might as well have been a blank piece of paper.

VIII. It is obvious that the real purpose of the defendants in the preparation of their plan is to retain to themselves the "monopoly" value which the combination has acquired.

We repeat the statement quoted above from the opinion of the Supreme Court (p. 182):

"By the ever-present manifestation which is exhibited of a conscious wrongdoing by the form in which the various transactions were embodied from the beginning, ever changing but ever in substance the same. Now the organization of a new company, now the control exerted by the taking of stock in one or another or in several, so as to obscure the result actually attained, nevertheless uniform in their manifestations of the purpose to restrain others and to monopolize and retain power in the hands of the few who, it would seem, from the beginning contemplated the mastery of the trade which practically followed."

The plan now proposed comes squarely within this description. It leaves unimpaired the opportunity for the exercise of all the manifold devices to which the managers of this combination have heretofore resorted for the purpose of retaining "power in the hands of the few who, it would seem, from the beginning, contemplated the mastery of the trade which practically followed."

We submit that there is every probability that if these individual defendants be allowed to retain control of the constituent companies (as well as those named above as of the three or four great corporations into which they propose to divide the rest of the business of the combination), they will again resort to the same devices and practices as they have in the past for the purpose of using such control to retain and extend their mastery and dominion over the entire tobacco industry.

The enormous value which has been acquired by the combination through its monopolistic practices and the great inducement thereby held out to these defendants in their effort to retain the same is shown in Exhibit C (p. 41) of their proposed plan. This exhibit shows that as to the proposed Liggett & Myers Co. the value of the tangible assets is stated as about $30,000,000 and the value of the "trade-marks and brands" as about $36,000,000. The corresponding figures as to the proposed P. Lorillard Co. are, as to the tangible assets, about $28,000,000 and as to "trade-marks and brands" about $19,000,000. Although we have been denied access to the data upon which these figures are based, we feel justified in the assumption that a very large part of the great value assigned to "trade-marks and brands" is represented by "good-will value," which must in turn have as a large element the "monopoly" or "merger" value. This fact is further shown by a scrutiny of the said exhibit, from which it will appear that as to each of the two new companies the earnings over and above the amounts necessary to pay interest on all the bonds and the dividends on the preferred stock, and which will be available as dividends on the common stock, will be over 20 per cent of the amount of the common stock. The inducement plainly exists for these defendants to retain the control of all these companies. If this control is exercised in the same way as they exercised their control of the combination in the past, it can only result in a retention and extension of this "monopoly" value.

EXHIBIT 8

CLAIM OF THE INDEPENDENTS IN REGARD TO THE DISTRIBUTION OF TOBACCO AND BRANDS AMONG THE TOBACCO COMPANIES AFTER DISSOLUTION [1]

That the division of the American Tobacco Co. properties as between the American Tobacco Co., Liggett & Myers Tobacco Co., the P. Lorillard Co., and R. J. Reynolds Tobacco Co., is a continuation of the illegal combination, is discussed in Part II above. That the percentages of the whole business of the country in the several branches of the tobacco trade alloted to each of these

[1] Hearings before the Committee on Interstate Commerce on the Control of Corporations, Persons and Individuals engaged in Interstate Commerce, United States Senate, 62nd Congress, 2nd Sess., 1911–1912, pp. 325–329. Cf. Exhibits 3 and 4 above.

four companies is such as to preclude the possibility of fair competition as between them and the existing independents is set forth in our objections filed October 25 (pp. 4–10). A detailed examination of the trade conditions will disclose, in addition, that the brands and business are so distributed under the plan as to prevent, in large measure, competition among the four companies.

The facts necessary to bring this matter fully before the court do not appear in the present record. They can not be adequately presented without the examination of witnesses familiar with trade conditions, and also without an opportunity of submitting to the court certain data in regard to the defendants' business included among the papers to which these remonstrants sought access by their petition filed October 18, 1911; and access to which was denied by the court. But the following facts not disclosed by the defendants in their petition filed October 16, 1911, will, we believe, suffice to show the court that the proposed division of the trust's properties would leave each of the four companies so dominant in important departments and markets that, through them, the existing monopoly would be practically continued.

FIRST.—*The leaf-tobacco trade.*

Defendants' plan, Exhibit E, sets out the average production of five leading types of tobacco, together with the estimated purchases of each type by the American Tobacco Co., Liggett & Myers Co., P. Lorillard Co., R. J. Reynolds Tobacco Co., and the British-American Tobacco Co. From the face of those figures it would appear as if the plan had provided for reasonable competition as between these companies for the various types of tobacco. Facts not disclosed by the plan will show a very different result.

1. *Burley tobacco.*—Defendants' plan, Exhibit E, sets forth that of the total average crop of burley (200,000,000 pounds) the American Tobacco Co. would purchase 41,969,955; Liggett & Myers Tobacco Co., 69,163,946; P. Lorillard Co., 24,074,643; and R. J. Reynolds Tobacco Co., 5,000,000 pounds, as if these four companies would be competitors for this aggregate of 130,000,000 pounds. As a matter of fact, the burley type of tobacco comprises 40 different grades, of which the most important are the following: Medium red burley leaf, of which the average crop is about 60,000,000 pounds; common red burley, leaf and tips, of which the average crop is about 40,000,000 pounds; trashes (of various qualities), of which the production is about 50,000,000 pounds; fine bright leaf and fine white

burley, of which the production is from 10,000,000 to 15,000,000 pounds. These various grades vary in quality and quantity in almost every crop, according to the season. The values of the said classes in a single year are widely different. The average price per pound of the medium red burley would be, perhaps, 12 to 15 cents; of common red, 7 to 10 cents; of trashes, 7 to 12½ cents; of bright leaf and fine white burley, 16 to 20 cents.

The distribution of the brands of plug and of smoking tobacco under the defendants' plan is such that the American Tobacco Co., the Liggett & Myers Tobacco Co., the P. Lorillard Co., and the R. J. Reynolds Tobacco Co. would not, to any large extent, be competitors for burley tobacco, but would each be practically a dominating purchaser of different grades of burley; for instance:

(*a*) Medium red leaf burley: The Liggett & Myers Tobacco Co. would control the medium red leaf burley market as maker of the "Star" and "Horsehoe" brands of chewing tobacco, by far the leading chewing tobacco brands in the country, for they would be the principal purchasers of medium red leaf burley. Neither the American Tobacco Co. nor the P. Lorillard Co. nor the R. J. Reynolds Tobacco Co. requires any appreciable quantity of this grade of burley.

(*b*) Common red burley: The American Tobacco Co. would control the common red burley market as maker of the following brands of plug chewing tobacco: "American Navy," "Square Deal," "Standard Navy," "Corker," and "Town Talk." Neither the Liggett & Myers Tobacco Co. nor the P. Lorillard Co. or [1] the R. J. Reynolds Tobacco Co. requires any appreciable quantity of this common red burley for the brands assigned to them in the plan. Therefore the American Tobacco Co. would control the common red burley market.

(*c*) Burley trashes: The P. Lorillard Co. would dominate the market for burley trashes as the maker of the "Union Leader," "Sensation," and "Just Suits" brands of smoking tobacco. Neither the American Tobacco Co., Liggett & Myers Tobacco Co., or [1] the R. J. Reynolds Tobacco Co. requires any appreciable quantity of that grade of burley.

(*d*) Fine white burley: The American Tobacco Co., as maker of the "Lucky Strike," "Tuxedo," and "Old English" brands of smoking tobacco, would require the greater part of the fine white burley. Liggett & Myers Tobacco Co. would require a small

[1] Thus in original.—Ed.

quantity of this grade for their "Velvet" brand of smoking tobacco, and the R. J. Reynolds Tobacco Co. a small quantity for their "Prince Albert" brand of smoking tobacco.

2. *Virginia and North Carolina bright tobacco.*—Defendant's plan, Exhibit E, states the total average crop of Virginia and North Carolina bright tobacco to be 240,000,000 pounds, of which the American Tobacco Co. would require 51,295,870; the Liggett & Myers Tobacco Co., 27,755,411; the P. Lorillard Co., 2,556,007; the R. J. Reynolds Tobacco Co., 25,000,000; and the British-American Tobacco Co., 40,000,000 pounds.

On the face of the exhibit it would appear that four important competitors for this type of tobacco were provided by the trust's plan. The plan fails, however, to disclose that there are numerous grades of the type of tobacco known as Virginia and North Carolina bright, of which, perhaps, 12 important grades are required for different classes of tobacco products. Consequently there might be a number of large and active buyers for Virginia and North Carolina tobacco in the same market and yet no one compete with any of the others.

(*a*) High-grade smoker: Thus, under the plan, the American Tobacco Co., for its brand of "Bull Durham," the largest selling brand of smoking tobacco in the country, would require great quantities of the grade known as high-grade smoker. Neither the Liggett & Myers Tobacco Co. nor the P. Lorillard Co. nor the British-American Co. appears to have allotted to it any brand of smoking tobacco which requires this grade of Virginia and North Carolina tobacco; and the requirements of the R. J. Reynolds Tobacco Co. for this grade would be insignificant.

(*b*) Low-grade smoker: The Liggett & Myers Tobacco Co. requires for its brand of "Duke's Mixture," the grade known as Virginia and North Carolina low-grade smoker. Neither the American Tobacco Co. nor P. Lorillard Co. appears to have had allotted to it any brand of smoking tobacco which requires this low-grade smoker, and the amount, if any, required by the R. J. Reynolds Tobacco Co. or the British-American Co. would be insignificant.

(*c*) Leaf: The R. J. Reynolds Tobacco Co., for their brands of "Schnapps" and "Brown's Mule" and minor brands, purchase the greater part of the grade known as leaf Virginia and North Carolina. Neither the American Tobacco Co. nor the Liggett & Myers Tobacco Co. requires any of this grade.

(*d*) Export leaf: The British-American Tobacco Co. purchases

for its export business entirely different grades of Virginia and North Carolina from those referred to above, the grades purchased by them being known as export leaf Virginia and North Carolina. Neither the American Tobacco Co., the Liggett & Myers Tobacco Co., the P. Lorillard Co., nor the R. J. Reynolds Tobacco Co. requires any appreciable quantity of the distinct export grades of tobacco.

3. *Dark western tobacco.*—Defendants' plan, Exhibit E, shows that the average crop of dark western tobacco is 200,000,000 pounds, of which, however, a large part is exported. Of the American consumption, the American Tobacco Co. takes 19,433,365; Liggett & Myers Tobacco Co., only 3,196,866; P. Lorillard Co., only 1,446,213; and the R. J. Reynolds Tobacco Co. none. It will be seen, therefore, that the greater part of all the purchases of dark western is made by the American Tobacco Co. and is used by it for its smoking brands of "Five Brothers" and "Peerless," the two largest selling brands of long-cut in America.

4. *Seed Leaf.*—Defendants' plan, Exhibit E, shows that of the seed-leaf tobacco, which is used mainly for cigars and so-called scrap smoking and chewing tobacco, the average production of the country is 180,000,000 pounds. Of this the quantity purchased by the American Tobacco Co. is estimated at 6,112,099; by the Liggett & Myers Tobacco Co., 5,676,180; by the P. Lorillard Co., 19,993,726; and by the R. J. Reynolds Tobacco Co. none. The trust's use of this tobacco, aside from cigars and cheroots, is mainly for its scrap-tobacco business and little cigars, of which the largest selling brands are "Honest" and "Polar Bear." Both of the brands are assigned to the P. Lorillard Co., thus making that company among the constituent elements of the trust, by far the leading purchaser of seed leaf. The trust's purchases of low-grade seed leaf—that is, the filler types, hail-cut types, and other types of leaf damaged in growing—are so great in Wisconsin, Connecticut, and New York that it practically dominates the American markets for low grades of seed-leaf tobacco, with the exception perhaps of Pennsylvania and Ohio—and in some years the markets of these States also.

SECOND.—*The cigarette trade.*

Defendants' plan, Exhibit D, indicates on its face such a distribution of the cigarette business of the trust as to create reasonable competition between the American Tobacco Co., Liggett & Myers Tobacco Co., and P. Lorillard Co. The American Tobacco

Co. is given four brands, Liggett & Myers six brands, and the Lorillard Co. five brands. As a matter of fact, the creation of competition in cigarettes among these three companies is apparent only; because the brands are so distributed as to give each of the three companies substantially a dominating position in a specific branch of the cigarette trade or of a specific cigarette market.

The cigarette trade falls substantially into six classes: Turkish high-grade cigarettes, Turkish lower-grade cigarettes, domestic or Virginia cigarettes, Turkish and domestic mixed, lowest grade of mixed Turkish and domestic, and domestic cigarettes with Turkish mouthpieces.

1. *Turkish high grade.*—Under the plan, the dominating position in the Turkish high grade is given to the American Tobacco Co. through the "Pall Mall" brand. No brand of high-grade Turkish cigarette is allotted to the Liggett & Myers Tobacco Co. The brand given the P. Lorillard Co., "Egyptian Deities," has become relatively unimportant as compared with "Pall Mall."

2. *Turkish lower grade.*—The dominant position in the lower-grade Turkish cigarettes is given to the P. Lorillard Co. by allotting to it the "Helmar," "Murad," "Mogul," and "Turkish Trophies." Neither the American nor the Liggett & Myers Tobacco Co. is allotted any strictly competing brand.

3. *Domestic or Virginia.*—The Liggett & Myers Tobacco Co. is given the dominant position through the "Piedmont," "Home Run," "King Bee," and "American Beauty" brands. The P. Lorillard Co. is not allotted any competing brand. The American Tobacco Co. receives the "Sweet Caporal"; but the sales of that brand have become insignificant.

4. *Turkish and domestic mixed.*—The Liggett & Myers Tobacco Co. is allotted the "Fatima" brand, which is believed to be the most important brand of cigarette upon the market. Neither the American Tobacco Co. nor the P. Lorillard Co. is allotted any brand which competes with this.

5. *Lowest grade Turkish or perhaps Turkish and Virginia mixed.*—The American Tobacco Co. is allotted both the "Hassan" and the "Mecca" brands. Neither the Liggett & Myers Tobacco Co. nor the P. Lorillard Co. is allotted any competing brands.

6. *Domestic with Turkish mouthpiece.*—The Liggett & Myers Tobacco Co. is allotted the "Imperiales," which has a monopoly not merely in this kind of cigarette but also substantially of the market (mainly the Pacific coast) where it is sold.

Not only is each of the three companies thus given a dominating position in the respective classes of the cigarette trade, but the domination through those classes extends to a certain extent also to particular territories. For instance, the P. Lorillard Co. has been allotted the brands which sell most largely in the East, and the Liggett & Myers Tobacco Co. the brands which sell best in the Middle West and South.

THIRD.—*The smoking-tobacco trade.*

Defendants' plan, Exhibit D, presents the apparent creation of competition in smoking tobacco by giving to the American Tobacco Co. six brands, to the Liggett & Myers Tobacco Co. seven brands, and to the P. Lorillard Co. five brands. In fact, no substantial competition between these three companies is provided for.

The smoking tobacco of the country is divided into seven different classes, namely, high-grade granulated, low-grade granulated, high-grade burley granulated put up in 10-cent tin toxes, sliced plugs, long cuts, cut plugs, and scrap.

1. *High-grade granulated.*—The American Tobacco Co. is allotted "Bull Durham," the leading brand of smoking tobacco in the country. No brand of high-grade Virginia granulated smoking tobacco is allotted either to the Liggett & Myers Tobacco Co., the P. Lorillard Co., or the R. J. Reynolds Tobacco Co.

2. *Low-grade granulated.*—The Liggett & Myers Tobacco Co. is allotted "Duke's Mixture," the leading brand of low-grade granulated tobacco in the country, as well as "King Bee." No competing brand of low-grade Virginia granulated smoking tobacco is allotted either to the American Tobacco Co. or to the P. Lorillard Co.

3. *High-grade burley granulated.*—In this department there is a reasonable distribution of brands between the three companies, the American Tobacco Co. having "Tuxedo," the Liggett & Myers Tobacco Co. "Velvet," and the R. J. Reynolds Tobacco Co. the "Prince Albert" brands.

4. *Sliced plugs.*—The leading brands are "Lucky Strike" and "Old English," both assigned to the American Tobacco Co. Neither the Liggett & Myers Tobacco Co., the P. Lorillard Co., nor the R. J. Reynolds Tobacco Co. is allotted any sliced plug brand.

5. *Long cuts.*—The leading brands are "Five Brothers" and "Peerless," both allotted to the American Tobacco Co. These are the best selling brands in the country manufactured from dark tobacco. Neither the Leggett & Myers Tobacco Co., the P. Lorillard

Co., nor the R. J. Reynolds Tobacco Co. is allotted any brand competing with these. On the other hand, Liggett & Myers Tobacco Co. is allotted "Sweet Tip Top," a kind of long-cut made from burley tobacco, and neither the American Tobacco Co. nor the P. Lorillard Tobacco Co., nor the R. J. Reynolds Tobacco Co. is allotted any brand which competes with it.

6. *Cut plugs.*—The three leading brands of cut plugs are allotted to the P. Lorillard Co., namely, "Union Leader," "Sensation," and "Just Suits." Neither the American Tobacco Co. nor the Liggett & Myers Tobacco Co. is allotted any brand whch competes with these. The R. J. Reynolds Tobacco Co. has a new brand, "Geo. Washington," not yet well established, which may be deemed a competitor.

7. *Scrap.*—The two principal brands are assigned to the P. Lorillard Co., namely, "Honest" and "Polar Bear." Neither the American Tobacco Co., the Liggett & Myers Tobacco Co., nor the R. J. Reynolds Tobacco Co. appears to have any brand of scrap tobacco.

FOURTH.—*The plug tobacco trade.*

Defendants' plan, Exhibit D, presents an apparent competition in plug tobacco by giving to the American Tobacco Co. nine brands, Liggett & Myers three brands, and P. Lorillard two brands. As a matter of fact, there are several distinct classes of plug tobacco. Plug may be divided broadly into sweet navy plugs and flat plugs. The sweet navy should be divided again into three grades—high, medium, and low. The flat plugs are divided into two classes, sun-cured and flue-cured.

1. *Navy high.*—The leading navy high-grade, "Piper Heidsieck," is allotted to the American Tobacco Co. Neither the Liggett & Myers Tobacco Co., the P. Lorillard Co., nor the R. J. Reynolds Tobacco Co. is given any competing brand. There is another high-grade chewing tobacco—Drummond's Natural Leaf—allotted to the Liggett & Myers Tobacco Co., but it is not of the same class as the Piper Heidsieck.

2. *Navy medium.*—The leading brands of medium navy plug are "Star" and "Horseshoe." Both of these are allotted to the Liggett & Myers Tobacco Co. These are the controlling brands in America. The American Tobacco Co. is allotted "Spearhead," a competing brand, but its sales are relatively unimportant. The P. Lorillard Co. is allotted, likewise, a competing brand, "Climax," but the sales of it are also relatively unimportant. The sales for 1907 of "Star"

were 27,322,478 pounds, of "Horseshoe" 19,211,575, whereas those of "Spearhead" were 6,850,025, and of "Climax" 2,657,306.

The P. Lorillard Co. also is allotted the "Planet" brand, but that is of a somewhat different character. It stands in a class by itself and controls the New England market.

3. *Navy low grade.*—The leading brand of low-grade navy is "American Navy." This, as well as "Square Deal," "Corker," and "Town Talk," all navy low grade, are alloted to the American Co. Neither the Liggett & Myers Tobacco Co., the P. Lorillard Co., nor the R. J. Reynolds Tobacco Co. is allotted any brand of this class.

4. *Sun-cured plug.*—The R. J. Reynolds Tobacco Co. controls many brands of the sun-cured plug, the principal of which is "R. J. R. Sun-cured." Exhibit D does not disclose that either the American Tobacco Co., the Liggett & Myers Tobacco Co., or the P. Lorillard Tobacco Co. will have any competing brand.

5. *Flue-cured plug.*—The R. J. Reynolds Tobacco Co., through its several brands, of which the two leading ones are "Schnapps" and "Brown's Mule," controls the flue-cured flat plug. Neither the American Tobacco Co. nor P. Lorillard Co. would have, so far as the plan discloses, any competing brand.

The domination by particular companies of particular departments of the plug-tobacco trade is not, however, confined merely to the domination of classes of plug, as indicated above. It extends to a certain extent also to the domination of markets. Thus the Liggett & Myers Tobacco Co., with "Star" and "Horseshoe," will dominate the Middle West; R. J. Reynolds Tobacco Co., with "Brown's Mule" and "Schnapps," will dominate the South; and the P. Lorillard Co., with "Planet," will dominate the chewing-plug business of New England.

FIFTH.—*Little cigars trade.*

Defendants' plan, Exhibit D, purports to show competition in little cigars, awarding to the American Tobacco Co., Liggett & Myers Tobacco Co., and the P. Lorillard Co. each one brand. As a matter of fact, there are two or three distinct kinds of little cigars—the high grade, selling 10 for 10 cents; the low grade, selling 10 for 5 cents; some with Burley and some with seed wrapper.

The Lorillard Co., with "Between the Acts," will dominate the high-grade little-cigar business; the Liggett & Myers Tobacco Co. with "Recruit," will dominate the low-grade little-cigar business;

and the American Tobacco Co. will have "Sweet Caporal," a little-cigar brand of a distinct type.

EXHIBIT 9

RESPONDENTS AMENDED RETURN TO THE ALTERNATIVE WRIT OF MANDAMUS [1]

Respondents for a further return to the said alternative writ of mandamus, say that neither of relators has any direct personal interest in said Waters-Pierce Oil Company, and neither of them in his own right, or in his own interest, or in the pursuit of his own business, owns any of the stock of the Waters-Pierce Oil Company; but respondents say that said relators are acting herein solely as the representatives of John D. Rockefeller, William Rockefeller, Henry M. Flagler, John D. Archbold, Oliver H. Payne, Charles M. Pratt, and divers other persons whose names are to respondents unknown, who are the same parties who have heretofore owned and controlled the Standard Oil Company of New Jersey, which has been heretofore dissolved by the courts of the United States as an unlawful combination in restraint of trade, as will be hereinafter more particularly set forth, and that said individuals so represented by relators have combined and confederated to continue said unlawful combination and conspiracy thus dissolved. Respondents further say that said unlawful combination and conspiracy now existing consists in the control of the majority of stock in subsidiary corporations located in different States, and that such stock control is the essential and effective means of furthering the purposes of said unlawful combination, the purpose and effect of which is to create a monopoly in the production and sale of petroleum and its products throughout the United States.

[1] *State of Missouri ex rel. Stewart* v. *J. D. Johnson.* Pleadings, Rulings by the Court etc., In the Circuit Court of the City of St. Louis, April Term, 1912, pp. 40 ff. This controversy arose by reason of the refusal of the Inspectors of Election of the Waters-Pierce Oil Company, that had been designated by Mr. Pierce as President, to count the majority votes of the Company that had been cast at the instance of the Standard Oil interests. This refusal was based on the ground that the shares were being illegally voted in furtherance of a conspiracy to violate and evade the decree of the Federal Court.

Although Mr. Pierce owns only approximately one-third of the shares he has been in control of the Waters-Pierce Company and under the Missouri Law the President names the Inspectors of Election. Upon the refusal to count these votes the proxies named by the Standard Oil brought a proceeding in mandamus in the State of Missouri against the Inspectors of Election.—Ed.

Respondents further say that the relators herein are acting solely as the representatives of said unlawful combination and conspiracy in attempting to secure the control of the Waters-Pierce Oil Company, and that the means by which the objects of said conspiracy are sought to be carried out are the election of a majority of the directorate of the Waters-Pierce Oil Company and other subsidiary corporations in different States, which should thus be composed either of the parties to said conspiracy or the nominees of those engaged therein; and by this means the complete domination of the industry will be effected and a monopoly secured therein.

Respondents say that the relators herein are parties to said conspiracy, and are under its control, and are its nominees for the said purpose, and that the attempt to elect them to the directorate of the Waters-Pierce Oil Company is for the purpose of securing the control of said company in the furtherance of said unlawful conspiracy and as one of the overt acts in effectuating this common design in the establishment of said monopoly. Respondents say that this proceeding in mandamus is a furtherance of said unlawful purpose.

Respondents further say that the unlawful combination and conspiracy, violative of the laws of the United States, and of the State of Missouri, which is thus sought to be effected by these relators, in securing the control of the Waters-Pierce Oil Company, is a continuance and renewal of the same unlawful combination and conspiracy in restraint of trade which has been adjudged and condemned by the Supreme Court of Missouri, affirmed by the Supreme Court of the United States and by the Circuit Court of the United States, the Eighth Judicial Circuit, affirmed by the Supreme Court of the United States, as hereinafter specifically set forth.

Wherefore, respondents say that relators are merely acting in behalf of said unlawful combination and conspiracy, and for furthering the purposes thereof, and that the jurisdiction and process of this court should not be used to accomplish any such unlawful end or purpose.

X

And respondents further say: That the relator, George W. Mayer, until two days before the annual election for directors of the Waters-Pierce Oil Company, was manager at Kansas City, Missouri, for the Standard Oil Company of Indiana, and had been for more than ten years prior to that time; that he resigned his said position of

manager for the Standard Oil Company of Indiana at Kansas City to accept election to the Board of Directors of the Waters-Pierce Oil Company; that his resignation as aforesaid was in obedience to the dictation of the vice-president, or president, of the Standard Oil Company of Indiana, and was a mere pretense to enable the Standard Oil Company of Indiana through him by his election to the board of the Waters-Pierce Oil Company to gain control of the management of the Waters-Pierce Oil Company.

That the relator, Robert W. Stewart, has been attorney and counsel for the Standard Oil Company of Indiana and other interests affiliated and associated with the said Standard Oil Company of Indiana and the Standard Oil Company of New Jersey, and the managers and stockholders of said two companies; and that said Stewart at the instance and request of the officers and majority shareholders of each of said two companies acquired a share of stock in the Waters-Pierce Oil Company in order to enable him through the vote and influence of the Standard Oil Company of New Jersey, Standard Oil Company of Indiana, and their respective officers, agents, employes and controlling shareholders to become a director of the Waters-Pierce Oil Company at the annual election for directors, to be held on the 15th day of February, 1912, and thereby enable the said Standard Oil Company of Indiana, its officers, agents and the holders of the majority of its stock through the election of said Stewart and said Mayer and Adams to dominate and control in the interest of said Standard Oil Company of Indiana and its majority shareholders, officers and agents the affairs of the Waters-Pierce Oil Company.

. . . . . .

The respondents aver that to permit the election of the relators as directors of the Waters-Pierce Oil Company would be to place the affairs of the Waters-Pierce Oil Company under the complete domination and control of the Standard Oil Company of Indiana, and the majority owners of the stock of the Standard Oil Company of Indiana.

Respondents further say that since the 13th day of February, 1909, as directed by a decree of the Supreme Court of Missouri, in a proceeding wherein the State of Missouri upon the information of the Attorney-General against the Waters-Pierce Oil Company, the Standard Oil Company of Indiana and the Republic Oil Company, the affairs of the Waters-Pierce Oil Company have been conducted

by Henry Clay Pierce and Clay Arthur Pierce in complete independence of the Standard Oil Company of Indiana and of all other combinations whatsoever as required by the order of the Court in that case to be done.

That the Standard Oil Company of Indiana and the Waters-Pierce Oil Company are competitors in the business of selling the products of petroleum, as was held in the case above mentioned, and that if the Standard Oil Company of Indiana, through the relators and the holders of the majority of stock of the said Standard Oil Company of Indiana, should gain control of the affairs of the Waters-Pierce Oil Company, as is proposed by the relators in this proceeding, the corporate charter of the Waters-Pierce Oil Company will be thereby forfeited, and the said Henry Clay Pierce and the minority shareholders of the Waters-Pierce Oil Company associated with him will sustain great and serious loss through the forfeiture of the charter of the said Waters-Pierce Oil Company, as well as in the management of the affairs of that company, for that those whom the relators represent as aforesaid herein have a greater interest in promulgating the success of the Standard Oil Company of Indiana than that of the Waters-Pierce Oil Company.

Relators further say that on the 29th day of March, 1905, the State of Missouri, upon the information of the Attorney-General, instituted in the Supreme Court of the State a proceeding in *quo warranto* against the Standard Oil Company of Indiana, the Waters-Pierce Oil Company and the Republic Oil Company from doing business in the State of Missouri and to forfeit the charter of the Waters-Pierce Oil Company because they were then and had theretofore been engaged in a combination in restraint of trade in the State of Missouri.

That such proceeding was had in said case as that on the 9th day of March, 1909, a judgment of ouster was entered in said cause against the Standard Oil Company of Indiana and the Republic Oil Company, a non-resident corporation, and a judgment conditionally forfeiting the charter of the Waters-Pierce Oil Company, a domestic corporation, as alleged in the alternative writ herein.

That from said judgment and decree the Standard Oil Company of Indiana and said Republic Oil Company appealed to the Supreme Court of the United States of America, and pending said appeal a supersedeas was granted said appellant, but that no appeal was taken therefrom by the Waters-Pierce Oil Company, which, as aforesaid, submitted to said decree and obeyed the same, and pending

the said appeal a supersedeas was granted said appellants; but thereafter, at the October Term, 1911, on April 1, 1912 said cause having been duly submitted, the judgment of the Supreme Court of the State of Missouri was in all things affirmed by the Supreme Court of the United States, so that said decree is now in full force and effect as to said Standard Oil Company of Indiana and said Republic Oil Company, as well as to said Waters-Pierce Oil Company.

That amongst other things, it was decreed in said case as follows:

> "But it is further considered, ordered and adjudged by this Court, that if the said Waters-Pierce Oil Company shall pay said fine to the clerk of this court on or before the first day of March, 1909, and shall immediately *cease all connection with the said respondents herein* in continuing or maintaining said pool, trust and conspiracy to fix, control and regulate the prices of naphtha, benzine, gasoline, kerosene, lubricating oil and all other products of petroleum, and shall refrain from all pools, trusts and combinations, to control the prices of said products of petroleum, and all combines and conspiracies to prevent competition in the trade of buying and selling said products and shall furnish this Court with satisfactory evidence of its compliance with this judgment *and of its intention in good faith to cease all connection with its said co-respondents herein* and all other parties or companies whatsoever and in the future maintain and carry on the business as an independent corporation in obedience to the laws of this State and its charter, then the judgment of the ouster herein shall be and is hereby suspended and the writ of ouster herein will not issue until expressly directed by the order of this Court."

Respondents further pray preference to the said proceeding as reported in Volume 218 of the Official Reports of the Supreme Court of the State of Missouri.

Respondents further say that on the 15th day of February, 1909, the Waters-Pierce Oil Company filed in said court the following acceptance of said decree, accompanied by a duly exemplified copy of the resolution of its Board of Directors in that behalf, to-wit:

> "Comes now the Waters-Pierce Oil Company in the above-entitled cause, pursuant to the order and judgment rendered herein, and files herewith a duly certified copy of a resolution of its Board of Directors, passed February 13, 1909, wherein

and whereby it agrees to accept, and does accept the conditions of the aforesaid decree and agrees to abide by the same, and does hereby respectfully submit itself to the further orders, judgments and decrees of this Honorable Court in and concerning the premises."

These respondents say that in said cause it appeared that the Standard Oil Company of New Jersey owned practically all of the stock which relators herein now claim is being offered to your respondents as electors for them in the Waters-Pierce Oil Company, namely, practically 66 per cent thereof; that said stock was then registered on the stock books of the Waters-Pierce Oil Company in the name of M. M. Van Beuren, who appeared as owner and a joint attorney in fact of the electors whom the relators claim would have cast, if permitted, their votes for them. It also appeared in said cause that the Standard Oil Company of New Jersey owned all of the shares of the Standard Oil Company of Indiana, co-respondent of the Waters-Pierce Oil Company in said cause.

. . . . . .

Respondents say in further return to said alternative writ of mandamus that on the 15th day of November, 1906, the United States of America instituted a proceeding under an Act of Congress, approved July 2, 1890, entitled an "Act to Protect Trade and Commerce against Unlawful Restraint and Monopolies," commonly known as the Sherman Anti-Trust law, against John D. Rockefeller, William Rockefeller, Henry H. Rogers, Henry M. Flagler, John D. Archbold, Oliver H. Payne and Charles M. Pratt, and other persons and corporations hereinafter named in the decree herein referred to, save and except the Standard Oil Company of Louisiana and the Magnolia Oil Company and the Waters-Pierce Oil Company and other defendants, to restrain them in substance from continuing a combination and conspiracy in restraint of trade and commerce, among the several States, in the Territories and with foreign nations; that such proceedings were had therein that on the 20th day of November, 1909 a decree was entered therein, . . .

. . . . . .

The respondents further say that an appeal was prosecuted from said decree to the Supreme Court of the United States, which latter Court, after due hearing, affirmed all of the said quoted parts of said decree, and in its opinion, which respondents beg leave to be con-

sidered a part of this return as fully as if set forth herein, commenting upon the objections of section 6 of said decree, said:

> "So far as the owners of the stock of the subsidiary corporations and the corporations themselves were concerned after the stock had been transferred, section 6 of the decree enjoined them from in any way conspiring or combining to violate the act or to monopolize or attempt to monopolize in virtue of their ownership of the stock transferred to them, and prohibited all agreements between the subsidiary corporations or other stockholders in the future, tending to produce or bring about further violations of the act. * * * We so think, since we construe the sixth paragraph of the decree not as depriving the stockholders or the corporations after the dissolution of the combination, of the power to make normal and lawful contracts or agreements, but as restraining them from, by any device whatever, recreating, directly or indirectly, the illegal combination which the decree dissolved. In other words, we construe the sixth paragraph of the decree not as depriving the stockholders or corporations of the right to live under the law of the land, but as compelling obedience to that law. As therefore, the sixth paragraph as thus construed is not amenable of the criticism directed against it and cannot produce the harmful results which the arguments suggest, it was obviously right."

These respondents say the said decree has not been complied with in any substantial respect; that the individual defendants in that case, and the corporations which they control through their ownership and control of the majority of the shares of stock of the Standard Oil Company of New Jersey, at the time said decree was entered, is now owned and controlled by a combination between said individual defendants mentioned in said decree, their associates, confederates and allies, through the concerted action in their ownership of the stock of the Standard Oil Company of Indiana, and all of the defendant companies named in said decree.[1] That said combination continues as it did as found in the first paragraph or section of the decree, since the year 1890, when the said defendants had entered into and were carrying out a combination or conspiracy in pursuance whereof they caused the capital stock of the Standard Oil Company to be increased to one hundred million

[1] Italics are the Editor's.

dollars, and assumed control of all subsidiary companies through the ownership of stock by the Standard Oil Company of New Jersey; *that instead of controlling all the subsidiary companies mentioned in said decree by and through the Standard Oil Company of New Jersey, the stockholders of the Standard Oil Company of New Jersey have resumed the ownership of the stock of said subsidiary companies, through a pretended distribution thereof from the Standard Oil Company of New Jersey, and are continuing to control all of the subsidiary companies through their ownership of the majority shares of the said subsidiary companies, including the Waters-Pierce Oil Company, just as they had prior to the organization of the Standard Oil Company of New Jersey, as described in section 1 of said decree, hereinbefore set forth.*[1]

And that the present action of relators, supported by the shares of stock formerly owned by the Standard Oil Company of New Jersey, is an effort upon the part of the defendants in the aforesaid cause to assume control of the Waters-Pierce Oil Company and draw it into a continuation of the conspiracy enjoined by that decree and compel it, through and by an understanding and agreement and concerted action, by and between the holders of the majority of the shares of stock of said subsidiary companies, to continue to violate the Federal law and the said decree of the Federal Court.

That the shares of stock set forth in the alternative writ herein are the same shares of stock formerly held by the Standard Oil Company of New Jersey, and are now being attempted to be voted to aid the furtherance of the conspiracy enjoined by the decree aforesaid; that the said individual defendants named in said decree in association with other confederates and allies have combined and confederated in manner and form as aforesaid, viz, through the majority ownership of stock in all the subsidiary companies mentioned in said decree, to control in defiance of said decree, said subsidiary corporations, in combination and restraint of trade and for the purpose of attaining the monopoly enjoined in said decree; *that said pretended dissolution is a farce, a disguise and a pretext, and has made no change whatsoever in the relation of said companies or their direction, management and control.*[1]

Wherefore, respondent says that the jurisdiction and process of this Court should not be given to aid the relators and their confederates in a disguised attempt to evade the laws of the United States and the decrees hereinbefore referred to.

[1] Italics are the Editor's.

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These respondents further making return to the said alternative writ of mandamus say that this Court has no jurisdiction to entertain this proceeding or grant the peremptory writ herein, for that the relators have another summary remedy, provided by the statutes of this State, to contest their election as directors of the Waters-Pierce Oil Company.

And respondents in further return deny each and every allegation in the alternative writ not hereinbefore admitted or denied.

Wherefore, respondents say that the votes and proxies offered to be voted by the said Taylor and Van Beuren and the votes offered to be voted by relators were not lawful votes at said election, and were properly rejected by these respondents; and respondents, having made full return to said alternative writ of mandamus, pray to be hence discharged and to recover their costs herein most wrongfully expended.

Boyle & Priest,
Judson, Green and Henry,
Fordyce, Holliday & White,
Attorneys for Respondents.

John D. Johnson,
Of Counsel.

CHAPTER XVI

PROPOSED METHODS OF DEALING WITH THE TRUST PROBLEM

IN this concluding chapter, there have been brought together the views of certain gentlemen as to the methods of dealing with the Trusts in the United States. Competition has its advocates as well as combination. The exhibits have been selected with the idea of showing that there are two distinct lines of thought in regard to the Trusts; one looking to Government supervision, the other to competition as an ultimate solution of the problem. It has of course been possible to include the ideas of only a comparatively few men, but the editor believes that the views here expressed are fairly representative.—Ed.

EXHIBIT 1

PRESIDENT WILLIAM HOWARD TAFT [1]

NEW REMEDIES SUGGESTED.

Much is said of the repeal of this statute and of constructive legislation intended to accomplish the purpose and blaze a clear path for honest merchants and business men to follow. It may be that such a plan will be evolved, but I submit that the discussions which have been brought out in recent days by the fear of the continued execution of the antitrust law have produced nothing but glittering generalities and have offered no line of distinction or rule of action as definite and as clear as that which the Supreme Court itself lays down in enforcing the statute.

SUPPLEMENTAL LEGISLATION NEEDED—NOT REPEAL OR AMENDMENT.

I see no objection—and indeed I can see decided advantages—in the enactment of a law which shall describe and denounce methods of competition which are unfair and are badges of the unlawful purpose denounced in the antitrust law. The attempt and purpose to suppress a competitor by underselling him at a price so

[1] Message to Congress of December 5, 1911. Congressional Record, 62d Cong. 2d Sess. Vol. 48, pp. 25–26.

unprofitable as to drive him out of business, or the making of exclusive contracts with customers under which they are required to give up association with other manufacturers, and numerous kindred methods for stifling competition and effecting monopoly, should be described with sufficient accuracy in a criminal statute on the one hand to enable the Government to shorten its task by prosecuting single misdemeanors instead of an entire conspiracy, and, on the other hand, to serve the purpose of pointing out more in detail to the business community what must be avoided.

FEDERAL INCORPORATION RECOMMENDED.

In a special message to Congress on January 7, 1910, I ventured to point out the disturbance to business that would probably attend the dissolution of these offending trusts. I said:

But such an investigation and possible prosecution of corporations whose prosperity or destruction affects the comfort not only of stockholders but of millions of wage earners, employees, and associated tradesmen must necessarily tend to disturb the confidence of the business community, to dry up the now flowing sources of capital from its places of hoarding, and produce a halt in our present prosperity that will cause suffering and strained circumstances among the innocent many for the faults of the guilty few. The question which I wish in this message to bring clearly to the consideration and discussion of Congress is whether, in order to avoid such a possible business danger, something cannot be done by which these business combinations may be offered a means, without great financial disturbance, of changing the character, organization, and extent of their business into one within the lines of the law, under Federal control and supervision, securing compliance with the antitrust statute.

Generally, in the industrial combinations called "trusts" the principal business is the sale of goods in many States and in foreign markets; in other words, the interstate and foreign business far exceeds the business done in any one State. This fact will justify the Federal Government in granting a Federal charter to such a combination to make and sell in interstate and foreign commerce the products of useful manufacture under such limitations as will secure a compliance with the antitrust law. It is possible so to frame a statute that while it offers protection to a Federal company against harmful, vexatious, and unnecessary invasion by the States, it shall subject it to reasonable taxation and control by the States with respect to its purely local business. * * *

Corporations organized under this act should be prohibited from acquiring and holding stock in other corporations (except for special reasons, upon approval by the proper Federal authority), thus avoiding the creation under national auspices of the holding company with subordinate corporations in different States, which has been such an effective agency in the creation of the great trusts and monopolies.

If the prohibition of the antitrust act against combinations in restraint of trade is to be effectively enforced, it is essential that the National Government shall provide for the creation of national corporations to carry on a legitimate business throughout the United States. The conflicting laws of the different

States of the Union with respect to foreign corporations make it difficult, if not impossible, for one corporation to comply with their requirements so as to carry on business in a number of different states.

I renew the recommendation of the enactment of a general law providing for the voluntary formation of corporations to engage in trade and commerce among the States and with foreign nations. Every argument which was then advanced for such a law, and every explanation which was at that time offered to possible objections, have been confirmed by our experience since the enforcement of the antitrust statute has resulted in the actual dissolution of active commercial organizations.

It is even more manifest now than it was then that the denunciation of conspiracies in restraint of trade should not and does not mean the denial of organizations large enough to be intrusted with our interstate and foreign trade. It has been made more clear now than it was then that a purely negative statute like the antitrust law may well be supplemented by specific provisions for the building up and regulation of legitimate national and foreign commerce.

GOVERNMENT ADMINISTRATIVE EXPERTS NEEDED TO AID COURTS IN TRUST DISSOLUTIONS.

The drafting of the decrees in the dissolution of the present trusts, with a view to their reorganization into legitimate corporations, has made it especially apparent that the courts are not provided with the administrative machinery to make the necessary inquiries preparatory to reorganization, or to pursue such inquiries, and they should be empowered to invoke the aid of the Bureau of Corporations in determining the suitable reorganization of the disintegrated parts. The circuit court and the Attorney General were greatly aided in framing the decree in the Tobacco Trust dissolution by an expert from the Bureau of Corporations.

FEDERAL CORPORATION COMMISSION PROPOSED.

I do not set forth in detail the terms and sections of a statute which might supply the constructive legislation permitting and aiding the formation of combinations of capital into Federal corporations. They should be subject to rigid rules as to their organization and procedure, including effective publicity, and to the closest supervision as to the issue of stock and bonds by an executive bureau or commission in the Department of Commerce and Labor, to which in times of doubt

they might well submit their proposed plans for future business. It must be distinctly understood that incorporation under a Federal law could not exempt the company thus formed and its incorporators and managers from prosecution under the antitrust law for subsequent illegal conduct, but the publicity of its procedure and the opportunity for frequent consultation with the bureau or commission in charge of the incorporation as to the legitimate purpose of its transactions would offer it as great security against successful prosecutions for violations of the law as would be practical or wise.

Such a bureau or commission might well be invested also with the duty already referred to, of aiding courts in the dissolution and recreation of trusts within the law. It should be an executive tribunal of the dignity and power of the Comptroller of the Currency or the Interstate Commerce Commission, which now exercise supervisory power over important classes of corporations under Federal regulation.

The drafting of such a Federal incorporation law would offer ample opportunity to prevent many manifest evils in corporate management to-day, including irresponsibility of control in the hands of the few who are not the real owners.

INCORPORATION VOLUNTARY.

I recommend that the Federal charters thus to be granted shall be voluntary, at least until experience justifies mandatory provisions. The benefit to be derived from the operation of great businesses under the protection of such a charter would attract all who are anxious to keep within the lines of the law. Other large combinations that fail to take advantage of the Federal incorporation will not have a right to complain if their failure is ascribed to unwillingness to submit their transactions to the careful official scrutiny, competent supervision, and publicity attendant upon the enjoyment of such a charter.

ONLY SUPPLEMENTAL LEGISLATION NEEDED.

The opportunity thus suggested for Federal incorporation, it seems to me, is suitable constructive legislation needed to facilitate the squaring of great industrial enterprises to the rule of action laid down by the antitrust law. This statute as construed by the Supreme Court must continue to be the line of distinction for legitimate business. *It must be enforced, unless we are to banish individualism from all business and reduce it to one common system of regulation or*

control of prices like that which now prevails with respect to public utilities, and which when applied to all business would be a long step toward State socialism.[1]

IMPORTANCE OF THE ANTITRUST ACT.

The antitrust act is the expression of the effort of a freedom-loving people to preserve equality of opportunity. It is the result of the confident determination of such a people to maintain their future growth by preserving uncontrolled and unrestricted the enterprise of the individual, his industry, his ingenuity, his intelligence, and his independent courage.

For 20 years or more this statute has been upon the statute book. All knew its general purpose and approved. Many of its violators were cynical over its assumed impotence. It seemed impossible of enforcement. Slowly the mills of the courts ground, and only gradually did the majesty of the law assert itself. Many of its statesmen authors died before it became a living force, and they and others saw the evil grow which they had hoped to destroy. Now its efficacy is seen; now its power is heavy; now its object is near achievement. Now we hear the call for its repeal on the plea that it interferes with business prosperity, and we are advised in most general terms how by some other statute and in some other way the evil we are just stamping out can be cured if we only abandon this work of 20 years and try another experiment for another term of years.

It is said that the act has not done good. Can this be said in the face of the effect of the Northern Securities decree? That decree was in no way so drastic or inhibitive in detail as either the Standard Oil decree or the Tobacco decree; but did it not stop for all time the then powerful movement toward the control of all the railroads of the country in a single hand? Such a one-man power could not have been a healthful influence in the Republic, even though exercised under the general supervision of an interstate commission.

Do we desire to make such ruthless combinations and monopolies lawful? When all energies are directed, not toward the reduction of the cost of production for the public benefit by a healthful competition, but toward new ways and means for making permanent in a few hands the absolute control of the conditions and prices prevailing in the whole field of industry, then individual enterprise and effort will be paralyzed and the spirit of commercial freedom will be dead.

THE WHITE HOUSE, *December 5, 1911* Wm. H. Taft

[1] Italics are the Editor's.

EXHIBIT 2

SENATOR ROBERT W. LA FOLLETTE [2]

A BILL To further protect trade and commerce against unlawful restraints and monopolies.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the act approved July second, eighteen hundred and ninety, entitled "An act to protect trade and commerce against unlawful restraints and monopolies," is hereby amended by adding thereto the following:

"SEC. 9. Whenever in any suit or proceeding, civil or criminal, brought under or involving the provisions of this act, it shall appear that any contract, combination in the form of trust or otherwise, or conspiracy was entered into, existed, or exists, which was or is in any respect or to any extent in restraint of trade or commerce among the several States or with foreign nations, the burden of proof to establish the reasonableness of such restraint shall be upon the party who contends that said restraint of trade is reasonable.

"SEC. 10. Whenever in any suit or proceeding, civil or criminal, brought under or involving the provisions of this act it shall appear that any contract, combination in the form of trust or otherwise, or conspiracy was entered into, existed, or exists, which was or is in any respect or to any extent in restraint of trade or commerce among the several States or with foreign nations, such restraint shall be conclusively deemed to have been or to be unreasonable and in violation of the provisions of this act as to any party thereto—

"A. Who, in carrying on any business to which such contract, combination, or conspiracy relates or in connection therewith—

"(a) As the vendor, lessor, licensor, or bailor, of any article attempts to restrain or prevent in any manner, either directly or indirectly, any vendee, lessee, licensee, or bailee from purchasing, leasing, licensing, or obtaining such article, or any other article from some other person, or using such article or any other article obtained from some other person, whether such attempt (first) be made by an agreement or provision, express or implied, against such purchase, lease, license, or use, or (second) be made by a condition in the sale, lease, license, or bailment against such purchase, lease, license, or use, or

[2] Bill introduced by Senator La Follette. Senate 3276, 62nd Cong. 1st Sess. Cf. op. cit. Senate Committee on Interstate Commerce pp. 1778–82. The italics are as reprinted in those hearings.—Ed.

(third) be made by imposing any restriction upon the use of the article so sold, leased, licensed, or bailed, or (fourth) be made by making in the price, rental, or license any discrimination based upon whether the vendee, lessee, licensee, or bailee purchases, hires, or becomes a licensee of, or uses any article made, sold, licensed, leased, or furnished by some other person, or (fifth) be made in any other manner except the ordinary solicitation of trade;

"(b) As the vendor, lessor, licensor, or bailor of any article attempts to prevent or restrain competition by making in the price, rental, or royalty, or other terms of any such sale, lease, license, or bailment any discrimination based upon whether the vendee, lessee, licensee, or bailee purchases, leases, licenses, or takes on bailment from him articles of a particular quantity or aggregate price;

"(c) As the vendor, lessor, licensor, or bailor of any article attempts to prevent or restrain competition either by refusing to supply to any other person requesting the same any article sold, leased, licensed, bailed, or otherwise dealt in or furnished by him, or by consenting to supply the same only upon terms or conditions in some respect less favorable than are accorded to any other person;

"(d) As the vendor, lessor, licensor, or bailor of any article attempts to prevent or restrain competition by supplying or offering to supply to any person or persons doing business in any particular territory articles sold, leased, licensed, bailed, or otherwise dealt in or furnished by him, upon terms or conditions in any respect more favorable than are accorded by him to his other customers;

"(e) As the vendor, lessor, licensor, or bailor of any article attempts to restrain or prevent competition by making any contract or arrangement under which he shall not sell, lease, or license any article in which he deals to certain persons or class of persons, or to those doing business within certain districts or territory;

"*(f) If a natural person does business directly or indirectly under any name other than his own or that of a partnership of which he is a member; or if a corporation does business under any name other than its own corporate name; or if there be any concealment or misrepresentation as to the ownership or control of such business; or if there be any misrepresentation as to the identity of the manufacturer, producer, vendor, or licensor of any article sold or leased.*

"*(g) As the vendor, lessor, licensor, or bailor of any article attempts to prevent or destroy competition by supplying or offering to supply such article without charge or at prices at or below the cost of production and distribution.*

"*(h) As the vendor, lessor, licensor, or bailor of any article spies upon the business of any competitor or secures information concerning his business, either through bribery of an agent or employee of such competitor or of any State or Federal official, or by any illegal means whatsoever secures information concerning the competitive business.*

"[f] (*i*) As the vendor, lessor, licensor, or bailor of any article attempts to prevent or restrain competition by the use of any unfair or oppressive methods of competition; or

"B. Who has been sentenced, or who controls or is controlled by or is a member of or forms a part of any corporation or association which has been sentenced under the act to regulate commerce, approved February fourth, eighteen hundred and eighty-seven, or any amendment thereof, for any act or thing relating to any trade or business affected by such restraint done or occurring after this act goes into effect.

"The foregoing enumeration of acts, conduct, methods, and devices which it is herein declared shall each conclusively be deemed unreasonable does not include, and shall not be construed to exclude or as intended to exclude, any other acts, conduct, methods, or devices which are or may be unreasonable.

"The provisions of clause (*a*) of this section shall not apply to any case where the vendor, lessor, licensor, or bailor of any machine, tool, implement, or appliance protected by lawful patent rights vested in such vendor, lessor, licensor, or bailor requires the purchaser, lessee, licensee, or bailee to purchase or hire from his component or constituent parts of such machine,[1] tool, implement, or appliance which such vendee, lessee, licensee, or bailee may thereafter acquire during the continuance of such patent right, nor shall any of the provisions of this section apply to the mere appointment of sole agents to sell, lease, license, bail, or furnish any article.

"SEC. 11. Whenever in any suit or proceeding, civil or criminal, brought under or involving the provisions of this act, it shall appear that any contract, combination in the form of trust or otherwise, or conspiracy was entered into, existed, or exists which was or is in any respect or to any extent in restraint of trade or commerce among the several States or with foreign nations, there shall at once arise a rebuttable presumption that such restraint was or is unreasonable—

"(a) If in the business in connection with which said restraint of trade existed or exists, the person or persons engaged in such contract, combination, or conspiracy controlled or controls, or is a part of

[1] This construction is thus in the original.—Ed.

any corporation or association which controlled or controls at the time such restraint is alleged to have existed or to exist, more than forty per centum in value of the total quantity sold in the United States, or more than forty per centum in value of the total quantity sold in the part or district of the United States to which the business of such person, corporation, or association extends, of any article dealt in by such person, the trade in which is affected by such restraint.

"(b) If the vendor, lessor, licensor, or bailor of any article with a view to preventing competition fixes an unreasonably high price upon any article which enters into the manufacture of an article which is used in producing any other article sold, leased, licensed, bailed, or otherwise furnished by him, the trade in which is affected by such restraint.

"SEC. 12. Whenever in any suit or proceeding, civil or criminal, brought by or on behalf of the Government under the provisions of this act a final judgment or decree shall have been rendered to the effect that a defendant in violation of the provisions of this act has entered into a contract, combination in form of trust or otherwise, or conspiracy in restraint of trade or commerce among the several States or with foreign nations, or has monopolized or attempted to monopolize or combined with any person or persons to monopolize any part of the trade or commerce among the several States or with foreign nations, the existence of such illegal contract, combination, or conspiracy in restraint of trade or of such attempt or conspiracy to monopolize, shall to the full extent to which the facts and issues of fact or law were litigated and to the full extent to which such fact, judgment, or decree would constitute in any other proceeding an estoppel as between the Government and such person, constitute as against such defendant conclusive evidence of the same facts and be conclusive as to the same issues of law in favor of any other party in any other proceeding brought under or involving the provisions of this act.

"SEC. 13. In any civil proceeding begun under this act by the United States or the Attorney General or any district attorney thereof in which a judgment or decree interlocutory or final has been entered that the defendants, or any of them, have been guilty of conduct prohibited by section one, section two, or section three of this act, if it shall appear to the court by intervening petition of any other person or persons that such person or persons claims to have been injured by such conduct, such person or persons shall be

admitted as a party to the suit to establish such injury, if any, and the damages resulting therefrom, and such person or persons may have judgment and execution therefor or any other relief to the same extent as if an independent suit had been brought under section seven of this act. In the course of such proceeding the court may grant orders of attachment or may appoint a receiver or may take such other proceeding conformable to the usual practices in equity as to insure the satisfaction of any claim so presented and the protection of the petitioner's rights. Nothing done under this section shall be permitted to delay the final disposition of said principal proceeding in all other respects, and nothing contained in this section shall be taken to abridge the right of any person or persons to bring a separate and independent suit as provided in section seven of this act; but if any person proceeds both by intervening petition and by independent suit the court may order an election.

"SEC. 14. Such intervening petition or an original suit for the same cause under section seven of this Act shall not be barred by lapse of time, if begun within three years after final decree or judgment entered either in a civil or in a criminal proceeding brought by the United States or the Attorney General or any district attorney thereof establishing such violation by the defendant or defendants of section one, section two, or section three: *Provided*, That the claim on which such intervening petition or original suit is founded was not already so barred at the time of the passage of this act.

"*Sec. 15. That whenever after the institution of proceedings in equity under section four of this act it shall appear to the court in any preliminary hearing that there is reason to believe, or upon final hearing the the court shall find, that any contract, combination in the form of trust or otherwise, or conspiracy was entered into, existed, or exists, which was, or is in any respect or to any extent, in restraint of trade or commerce among the several States or with foreign nations, and that as a result thereof the defendants, or any of them, have the control of supplying the market with any machine, tool, or other article, whether raw material or manufactured, reasonably required in the manufacture or production of any other article or for general consumption and use, and that no adequate opportunity exists to immediately substitute another article therefor of equal utility, the court shall have power to make such order, by injunction or otherwise as it may deem necessary, as will secure to purchasers or users of such article full opportunity to continue to acquire or use the same upon payment of a reasonable compensation, to be fixed by the court in such order, until some other adequate substitute can be*

provided: Provided, however, That in so far as at the time of the application for such order, such machine, tool, or article is being supplied to any person under any contract, the amount of compensation therefor to be paid him under said order shall be that actually payable in accordance with the terms of such contract, unless or until such contract is found or declared to be void or expires.

"Sec. 16. That whenever in any proceedings under section four of this act any contract, combination, or conspiracy has been adjudged illegal under section one or section two of this act the court before which such proceedings are pending shall have jurisdiction—

"(a) To partition any property owned under any contract or by any combination or pursuant to any conspiracy (and being the subject thereof) mentioned in section one and section two of this act in severalty among the owners thereof, or groups of the owners thereof, and if the owners include one or more corporations, among the several stockholders thereof, or among groups of the several stockholders thereof, all in proportion to their respective interests.

"(b) If sales of such property are necessary or proper, either to pay encumbrances thereon or to recreate conditions in harmony with the law, to sell such property as a whole or in parcels; and the court may forbid the said owners, and if the said owners include one or more corporations, the stockholders thereof, from purchasing at such sales, and may prescribe the conditions on which any purchase may be made by any persons or corporations whatsoever.

"(c) To make such restraining orders or prohibitions as may be necessary or proper to recreate conditions in harmony with the law, including prohibitions of any acts, conduct, methods, or devices which are enumerated herein as indicating unreasonable restraint.

"(d) To declare void as against the defendants, or any of them, any contract entered into as a part of the contract, combination, or conspiracy found to be in restraint of trade.

"The relief granted in this section shall be in addition to, and not exclusive of other relief permitted by law or by this act.

"Sec. 17. That whenever a proceeding in equity has been instituted under section four of this act, any person who shall be injured or is threatened with injury in his business or property by any other person or corporation by reason of anything forbidden or declared to be unlawful by this act, and any State of the United States, may at any time intervene in said suit to protect his interests, or if the intervenor be a State, the interests of the citizens of such State, and may, after final decree in said case, petition said court for protection or redress in case

of any violation of said decree, and the court shall have power to take such action as may be appropriate in the premises.

"Sec. 18. Whenever in a proceeding under section four of this act it shall be alleged that the defendants, or any of them, have entered into a contract, combination in the form of trust or otherwise, or conspiracy, or that a conspiracy between them, or any of them, existed or exists which was or is, in any respect or to any extent, in restraint of trade or commerce among the several States or with foreign nations, no department or official of the United States shall, unless and until such allegation shall be found on final decree to be unfounded, enter into any contract with any such defendant for the purchase or supply of any article, nor purchase from any such defendant or any other person any article manufactured by any such defendant or any subsidiary or controlled company, association, or firm except so far as required so to do by some existing contract, unless—

"First. The article so manufactured is reasonably necessary for the purposes of the Government, and no adequate opportunity exists to substitute another article of equal utility at a reasonable price; and

"Second. The officer authorized to make contracts or purchases of that nature shall, after full investigation, and before such contract or purchase is made, have certified in writing to the facts set forth in the preceding paragraph and have filed with or mailed to the Department of Justice and the Commissioner of Corporations copies of such certificate.

"Sec. 19. Any patent used in violation of this act to restrain trade or commerce among the several States or with foreign nations, or used in violation of this act in connection with any contract, conspiracy, or combination in restraint of such trade or commerce, shall be forfeited to the United States and annulled, and may be condemned by like proceedings as is provided by law for the forfeiture, seizure, and condemnation of property imported into the United States contrary to law.

"Whenever, in any proceeding brought under section four of this act, it shall appear that any patent granted by the United States has been so used to restrain trade or commerce among the several States or with foreign nations, or so used in connection with any contract, conspiracy, or combination in restraint of such trade or commerce, the court shall have jurisdiction to declare such patent forfeited to the United States and annulled upon petition therefor duly filed in said cause, and the Attorney General shall forthwith file such petition praying for such forfeiture, and when the defendants affected by such petition shall have been duly notified of the filing of the same proceedings thereon shall

be given precedence over others and in every way expedited and be assigned for hearing at the earliest practicable day."

EXHIBIT 3

SENATOR JOHN SHARP WILLIAMS [1]

A BILL

To prescribe the conditions under which corporations may engage in interstate commerce and to provide penalties for otherwise engaging in the same.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That no corporation shall engage in commerce between the States or Territories or in the District of Columbia by the purchase, sale, or consignment of any article of commerce, or otherwise, directly or indirectly—

First. Unless it is organized under laws with a charter that—

(a) State the business in which it is authorized to engage and the properties it is authorized to acquire;

(b) Provide that it shall have only such powers as are incidental to such business, and shall not have any power to hold the stock of any other corporation or association, to do any act or thing in restraint of trade, or to do anything outside of the State of its incorporation which it is not permitted to do therein;

(c) Provide that all its stockholders shall have an equal right to vote according to the number of shares held by them, respectively, at all meetings and for all directors, subject to any general limitation on the number of votes that may be cast by a single stockholder;

(d) Provide that no other corporation, association, or partnership shall have any vote or voice, directly or indirectly, in its affairs, and that no person representing, directly or indirectly, any competing business as owner, stockholder, officer, employee, or agent thereof or otherwise shall have any such vote or voice, directly or indirectly in its affairs or be eligible as a director or officer thereof;

(e) Provide that its capital stock shall be fully paid or payable, and permit it to be paid in property or services only when the value of such property or services has been determined according to the

[1] Bill introduced by Senator John Sharp Williams Jan. 23, 1912. Senate 4747, 62nd Cong. 2nd Sess. 1911–1912.

fact upon competent and specific proof under oath filed in a designated public office;

(f) Limit its surplus at any time to fifty per centum of its outstanding capital stock and its indebtedness at any time to not more than its outstanding capital stock and surplus;

(g) Provide that such corporation shall by an amendment of its charter be subject to and comply with, and, if necessary, shall accept any requirement that may be made by the State of its incorporation and with any requirement that may be imposed by Congress as a condition of its right to engage in interstate commerce.

Second. Unless it is conducted and managed in conformity with the said provisions and limitations, and is organized under the laws of a State, Territory, or District in which its executive officers are located and its directors' meetings regularly held.

Third. If it, directly or indirectly, of itself or in connection with others destroys or seeks unfairly to stifle fair competition in any part of the United States in the manufacture, production, mining, purchase, sale, or transportation of any articles of commerce not the subject of any patent, copyright, or trademark held by it either by making or effecting exclusive contracts, rights, or privileges relating thereto, by restricting its customers or other persons with regard to price, territory, or otherwise, in freely buying, selling, or transporting any such article, by securing the monopoly or control of raw material or sources of supply or of any business connected therewith, by temporarily or locally reducing prices with intent to stifle competition, by accepting rebates, or by any other act, device, or course of business that is unfair and tends to secure an unfair advantage and unreasonably and unfairly to destroy competition.

SEC. 2. That every contract made in violation of this Act shall be void, and no corporation or association shall bring or maintain any suit or proceeding in any court of the United States unless it is organized, conducted, and managed as required by section one, nor shall this provision prevent the removal of any such suit or proceeding to such courts where such defense may be available to the defendant.

SEC. 3. That the prohibitions of section one and section two shall apply to any association membership in which is represented by shares, and the word "association" used in this Act shall include any joint-stock company, business, trust, estate, or any form of

association used for business purposes; but said prohibitions shall not apply to any corporation or association not engaged in business for profit or engaged exclusively in any one or more of the following businesses: Education; a railroad or other common or public carrier of property or persons or messages; banking; insurance; the supply of water, light, heat, or power; or engaged exclusively and independently in any business or businesses the substantial bulk of which is carried on in foreign countries or exclusively in any one State or Territory or District, and which does not involve the transmission of goods from one State or Territory or District to another, nor the purchase, sale, or consignment of articles commonly the subject of commerce between the States and Territories, and actually intended for or becoming the subject of such commerce.

SEC. 4. That no person or persons shall form, operate, or act as or for a corporation or association for the purpose or with the effect of violating this Act, or conspire thereto and of themselves or by coconspirator do any act or thing to effect such conspiracy.

SEC. 5. That every corporation, association, trust, or person violating this Act shall be subject, upon conviction thereof, in case of a corporation or association, to a fine not exceeding ten per centum of its capital stock, or to a perpetual injunction against engaging in interstate commerce, or both, and in the case of a person, to a fine not exceeding ten thousand dollars for each such violation, and, if the violation is willful with intent to defraud or to create a monopoly or unfairly to stifle competition, to such fine and imprisonment for not exceeding five years.

SEC. 6. That the Act of February eleventh, nineteen hundred and three, relative to the expedition of certain suits in equity, and sections four and five of the Act of July second, eighteen hundred and ninety, known as the Sherman Anti-trust Act, shall apply to all proceedings and suits in equity under this Act.

SEC. 7. That the purchase, sale, or consignment of any article intended to become and actually becoming an article of commerce between the States or Territories shall be deemed to be an Act of engaging in such commerce under this Act.

SEC. 8. That the foregoing provisions of this Act shall take effect January first, nineteen hundred and thirteen, but shall not apply to corporations or associations having a capital stock and surplus under ten million dollars until January first, nineteen hundred and fourteen.

SEC. 9. That any corporation or association organized, conducted, and managed as required by section one shall, after the passage of this Act, be entitled to engage in commerce between the States and Territories, and to carry on its authorized business relative to such commerce in any part of the United States, subject to the provisions of this Act and to all present laws of the United States and to future Acts of Congress, and to the general laws and taxing power of any State, Territory, or District in which it may do business.

EXHIBIT 4

SENATOR ALBERT B. CUMMINS [1]

A BILL

To further regulate commerce among the States and with foreign nations, to create a Trade Commission, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That nothing contained in this Act shall be construed to make lawful any contract, combination, conspiracy, any act of monopolizing, any monopoly, any attempt to monopolize, or any practice, custom, or thing made unlawful by either section one or section two of an Act entitled "An Act to protect trade and commerce against unlawful restraints and monopolies," approved July second, eighteen hundred and ninety. The intent of this Act is to create and maintain competitive conditions in commerce among the States and with foreign nations, and it shall be construed liberally to accomplish the said intent.

SEC. 2. That the words enumerated in this section shall have the following meaning when found in this Act, to wit:

"Commerce" means commerce among the States or with foreign nations; that is to say, such commerce as, under the Constitution, Congress has the power to regulate.

"Corporation" means a body incorporated under law, including joint-stock associations and all other associations having shares of capital or capital stock.

"Person" means any individual or company of individuals, however associated together, except those falling within the definition of corporation.

[1] Bill introduced by Senator Cummins. Senate 5451, 62nd Congress 2nd. Session. 1911–1912.

"Commission" means the Trade Commission herein created.

"Capital" means not only the capital owned by a corporation or person but also capital borrowed in any form whatsoever or credit used for business purposes.

The Act shall not apply to corporations having less than five millions of dollars of capital nor to persons or corporations engaged in the business of common carriers.

SEC. 3. That no corporation organized after the first day of March, nineteen hundred and twelve, or whose articles of incorporation or association are amended after that date, nor any person, shall engage in commerce employing such extent of capital as would, by reason of such extent, destroy or prevent substantially competitive conditions in the general field of industry in which such corporation is engaged; nor shall any corporation organized prior to the first day of March, nineteen hundred and twelve, engage in commerce after the first day of January, nineteen hundred and fourteen, employing such extent of capital as would, by reason of such extent, destroy or prevent substantially competitive conditions in the general field of industry in which such corporation is engaged.

SEC. 4. That no corporation created or whose articles of incorporation or association are amended after March first, nineteen hundred and twelve, shall engage in commerce upon whose board of directors or other managing board, or among whose officers there is any person who is a member of the board of directors or other managing board, or among the officers of any other corporation carrying on a business of the same general character, and which therefore ought to be competitive, or who is himself, or with associates, carrying on any such competitive business. This section shall apply to corporations organized prior to March first, nineteen hundred and twelve, from and after July first, nineteen hundred and thirteen. If dummy or nominal directors or offices are placed upon the board or among the officers who in fact represent and are controlled by a person or persons who are themselves within this section, it shall be held that the persons so representing or controlling are on the board or among the officers.

SEC. 5. That no corporation organized, or whose articles of incorporation or association are amended after March first, nineteen hundred and twelve, shall engage in commerce which holds, owns, or controls, directly or indirectly, any share or shares of capital stock or any other means of control of any other corporation; and no corporation theretofore organized shall engage in commerce

after the first day of January, nineteen hundred and fourteen, which then or thereafter holds, owns, or controls, directly or indirectly, any share or shares of capital stock or other means of control of any other corporation: *Provided*, That any such corporation may for a period of three months own or hold shares of stock in another corporation if they have been taken in satisfaction or partial satisfaction or security for bona fide indebtedness.

SEC. 6. That no corporation shall, after January first, nineteen hundred and thirteen, engage in commerce upon whose board of directors or other managing board, or among whose officers, is any person who is a member of the board of directors, or other managing board, or among the officers of any institution carrying on the business of banking, whether such institution is incorporated or unincorporated: *Provided, however*, That this section shall apply only to corporations employing a capital of ten millions of dollars or more. The use of dummy or nominal directors or officers shall have the consequences prescribed in section four.

SEC. 7. That no corporation shall, after January first, nineteen hundred and thirteen, engage in commerce, more than ten per centum of whose capital stock or other means of control is owned or held by any person or corporation which, not being engaged in commerce, also owns or holds ten per centum or more of the capital stock or other means of control of any other corporation engaged in commerce and doing a competitive business: *Provided, however*, That if the person or corporation not engaged in commerce acquires, owns, or holds such stock or other means of control without the assent, connivance, or participation of the officers or directors of the corporation engaged in commerce, then the prohibition of this section shall not apply; but, in that event, the shares of capital stock so acquired, owned, or held, shall have no voting power in control or management.

SEC. 8. That no person or corporation shall, after the first day of January, nineteen hundred and fourteen, engage in commerce which owns or controls, either directly or indirectly, or which operates a line of transportation, or which carries on the business of a common carrier, and which at the same time carries on any producing or manufacturing business: *Provided*, That the aforesaid regulation shall not be held to include the ordinary or necessary switching facilities properly appurtenant to a producing or manufacturing business. Nor shall any person or corporation, after the date last aforesaid, engage in commerce which receives, directly

or indirectly, from any common carrier any part of the freight rate or charge made and collected for the transportation of freight.

SEC. 9. That no person or corporation shall engage in commerce which for a period of more than two months regularly and generally sells the product or products in which it deals, or which it manufactures, below actual cost for the purpose of inflicting injury upon a competitor, or for the purpose of compelling such competitor to cease carrying on business; and no person or corporation shall engage in commerce whose business it is to manufacture or sell commodities, unless he or it, as the case may be, shall sell or offer to sell a given commodity to all purchasers for substantially like deliveries at the same price: *Provided, however*, That if the price includes the cost of transportation from the place of sale the selling price may vary according to the cost of transportation: *And provided further*, That this section shall not be held to require the same price for carload lots and less than carload lots.

SEC. 10. That no corporation organized after March first, nineteen hundred and twelve, shall engage in commerce if the par of its capital stock or shares, and secured indebtedness or indebtedness other than current indebtedness, amount in the aggregate to a sum more than ten per centum in excess of the fair and reasonable value of the property owned and held by such corporation; and no corporation organized prior to the first day of March, nineteen hundred and twelve, shall engage in commerce if hereafter it issues capital stock or shares or any form of capitalization the nominal or par value of which exceeds by more than ten per centum the fair and reasonable value of the property received by the corporation therefor: *Provided, however*, That this section shall not apply to those instances in which, through losses sustained in business, the value of the property of a corporation may fall below the aggregate amount of such capital stock or shares and indebtedness.

SEC. 11. That no corporation organized after March first, nineteen hundred and twelve, shall engage in commerce which has paid either in money or in the issuance and delivery of stocks or bonds, or otherwise, for services in promoting or financing, or for any other purpose connected with the organization and capitalization of the corporation, more than the following, to wit:

For a capitalization of fifty millions of dollars or more, the sum of one per centum upon the capitalization; but in no event to exceed one per centum upon one hundred millions of dollars;

For a capitalization of twenty millions of dollars or more, but less

than fifty millions of dollars, the sum of two per centum upon the capitalization; but in no event to exceed one per centum upon fifty millions of dollars;

For a capitalization of less than twenty millions of dollars, the sum of three per centum upon the capitalization; but in no event to exceed two per centum upon twenty millions of dollars.

SEC. 12. That there is hereby created a body which shall be known as "The Trade Commission." It shall be composed of three members. It shall be appointed by the President, by and with the advice and consent of the Senate. The terms of their offices shall be nine years, and until their successors are appointed and qualified: *Provided*, That of the first three appointees the President shall designate one who shall hold his office for three years and one for six years, and at the expiration of each of such shorter terms the appointment shall be made for nine years. Vacancies, however, occurring shall be filled by like appointment and confirmation for the unexpired term. Each of said commissioners shall receive an annual salary of ten thousand dollars. The office of the commission is hereby established at Washington, District of Columbia, but the commission may hold meetings when convenient or necessary elsewhere. The duties and powers of said commission are hereinafter prescribed.

SEC. 13. That the Bureau of Corporations is hereby transferred to and merged in the commission, and all officers and employees of the Bureau of Corporations shall hereafter be the officers and employees of the commission, and with the transfer there shall pass to the possession of the commission all the records and papers of said bureau, and the commission shall hereafter exercise all the powers and perform all the duties heretofore conferred or imposed upon the said bureau: *Provided, however*, That all reports now provided by law to be made by the bureau to the President shall hereafter be made to Congress or as directed by either House thereof.

All appropriations heretofore made for the support and maintenance of the bureau shall stand as appropriations to be expended by the commission in the exercise of the powers and performance of the duties which the law, prior to the passage of this Act, conferred or imposed upon said bureau.

SEC. 14. That in addition to the officers and employees now provided for the Bureau of Corporations the said commission shall have the power to employ such secretaries, clerks, inspectors, examiners, experts, messengers, and other assistants as from time to

time may be necessary, and as may be appropriated for by Congress. With the exception of one secretary, all the foregoing employees shall be a part of the classified civil service, and shall enter the service under such rules and regulations as may be prescribed by the commission hereby created and by the Civil Service Commission. The commission shall also have the power to rent suitable rooms for the conduct of its work, paying therefor such rental as may be provided for by appropriation.

SEC. 15. That it shall be the duty of the commission to carefully

against unlawful restraints and monopolies," in so far only as concerns the mere extent of capital employed; but the power conferred in this section shall not extend to the manner, usages, customs, or practices in the operation or conduct of a business.

The commission may prescribe rules for the inquiry or examination authorized in this section, which shall include notice and hearing. In making such inquiry and in reaching a conclusion thereunder the commission shall be guided and controlled by the rules established herein. When any such inquiry is completed the commission shall determine whether there has been or is a violation of section three of this Act, or whether there has been or is a violation of sections one or two of the said Act entitled "An Act to protect trade and commerce against unlawful restraints and monopolies," in the respect, and in the respect only, hereinbefore set forth, and it shall enter its determination in a record kept for that purpose. If the determination is that there has been or is a violation, as aforesaid, then unless the violation ceases within a period to be fixed by the commission, the commission may either submit all its information with its determination thereon to the Department of Justice for such action as that department may lawfully take, or it may institute in the name of the United States such suit or suits in equity as are now authorized by the United States in the said Act of eighteen hundred and ninety, or which are authorized by this Act to be brought in the name of the United States; and in any suit or suits so instituted by the commission in the name of the United States the jurisdiction of the courts and the rights and remedies shall be the same as though the suit or suits had been instituted in the name of the United States by or under the direction of the Department of Justice; and in any such suit, whether brought by direction of the Department of Justice or by direction of the commission, the determination of the commission shall have the same effect as though made by Congress itself.

If, however, the determination of the commission is that there has been and is no violation of section three of this Act and no violation of sections one or two of the said Act of eighteen hundred and ninety in the respect aforesaid, then no suit or action of either civil or criminal nature shall be brought or maintained by the United States alleging a violation of section three of this Act or of sections one or two of the said Act of eighteen hundred and ninety in the respect aforesaid, against which the determination of the commission is entered.

SEC. 17. That the commission shall have the power and it shall be its duty to determine whether any corporation engaged in commerce is in violation of sections nine and ten of this Act, and may prescribe rules for the inquiry, which rules shall include notice and hearing, and in making the inquiry the commission shall be guided and controlled by the rule prescribed by Congress in said sections, and when completed it shall enter its determination in a record kept for that purpose. If the determination is that the corporation under examination is in violation of the said sections or either of them, and unless the violation ceases within a period to be fixed by the commission, then the commission may either submit its information and determination to the Department of Justice for such action as that department may take, or it may bring, in the name of the United States, such suit in equity as this Act authorizes to be brought in the name of the United States by or under the direction of the Department of Justice; and the jurisdiction of the courts, the rights, procedure, and remedies shall be the same as though the suit were instituted in the name of the United States by or under the direction of the Department of Justice; and in any such suit, whether brought by direction of the Department of Justice or by direction of the commission, the determination of the commission shall have the same effect as though made by Congress itself.

If the determination of the commission shall be against the violation of either of said sections nine and ten, then no action, either civil or criminal, shall be brought or maintained by the United States alleging the violation against which the determination of the commission is entered.

SEC. 18. That every person or corporation violating any of the provisions of this Act, and every person who causes or who assists in causing any corporation to violate any of the provisions of this Act, shall be deemed guilty of a misdemeanor, and on conviction thereof shall be punished by a fine not exceeding five thousand dollars or by imprisonment not exceeding one year or both.

SEC. 19. That all the provisions of section four of the Act entitled "An Act to protect trade and commerce against unlawful restraints and monopolies," approved July second, eighteen hundred and ninety, and all provisions of law relating to suits brought thereunder shall apply to this Act and to the violations thereof.

EXHIBIT 5

JUDGE ELBERT H. GARY [1]

FEDERAL LICENSE ACT.

SECTION 1. No corporation created under the laws of any State or Territory of the United States or the District of Columbia, or any foreign sovereignty, and having capital stock or assets of ten million dollars or more, shall engage in trade or commerce between the United States and foreign nations, or among the several States, or between a State or States and places subject to the jurisdiction of the United States, or between any Territories of the United States, or in and between such Territory or Territories and any State or States and the District of Columbia or places under the jurisdiction of the United States, or between the District of Columbia and any State or States and foreign nations or places under the jurisdiction of the United States, until such corporation shall comply with the requirements of this act, and shall obtain the certificate of license hereinafter mentioned: *Provided, however*, That the provisions of this act shall not apply to any common carrier mentioned in section one of the act entitled "An act to regulate commerce," approved February fourth, eighteen hundred and eighty-seven, as amended: *And provided further*, That corporations heretofore organized and engaged in such business shall have one year from the date of the passage of this act to comply therewith and to obtain a license. Any corporation which has a capital stock or assets of less than ten million dollars, which is engaged or intends to engage in interstate or foreign trade or commerce as aforesaid, may voluntarily comply with the provisions of this act by making application for a license. So long as it retains such license any such corporation shall be subject to all the provisions of this act.

SEC. 2. In order to comply with the requirements of this act and to obtain the certificate of license hereinafter mentioned, the corporation applying therefor shall make an application for such certificate of license, which application shall specifically set forth (first) the name of the corporation, which name shall be subject to the

[1] This bill was drafted by Judge Gary and submitted to the Senate Committee on Interstate Commerce at the request of that body. Cf. Hearings before the Senate Committee on Interstate Commerce on the Control of Corporations, Persons and Firms engaged in Interstate Commerce. 62nd Cong. 2nd Sess. 1911–1912, pp. 2407–2412.

approval of the Corporation Commission; (second) the State, Territory, or other sovereignty under the laws of which the corporation was created, with the date of its creation and the place in which the principal business office of the corporation is situated, designating the State, Territory, or district, and county and city, town, or village; (third) the objects for which the corporation was established, stating the general nature of the interstate or foreign trade or commerce which it intends to carry on; (fourth) the amount of the authorized capital stock of the corporation, the amount of capital stock issued and outstanding, and whether or not any part of the capital stock was contributed in property other than money, and, if so, the amount of such part; (fifth) the number of shares into which the capital stock is divided and the par value of such shares; whether or not such shares are divided into classes, and, if so, the amount of each class and a statement of the preferential and other special rights of each class; (sixth) the number of directors and, if they are divided into two or more classes, the number of directors constituting each class and the terms of office of each class, respectively, and the names and post-office addresses of the directors and executive officers of the corporation at the time of the making of such application; (seventh) the period limited for the duration of the corporation; (eighth) any provision defining, limiting, and regulating the powers of the corporation, its officers, directors, or stockholders, or of any class or classes of stockholders; (ninth) the fact that the application is made to enable such corporation to avail itself of the advantages of this act; (tenth) a copy of the certificate of incorporation or charter of the corporation. Said application shall also contain such other information as may be required by the Corporation Commission.

The application shall be signed in the name of said corporation by its president under authority of its board of directors, and the corporate seal shall be affixed thereto and attested by its secretary, and the statements made therein shall be sworn to by the president and treasurer; and the application so executed and sworn to shall be transmitted to the Corporation Commission.

SEC. 3. It shall be the duty of the Corporation Commission to examine such application and to determine whether it conforms to the requirements of this act and contains any provision that is contrary to any other act of Congress, and whether the name proposed to be adopted by such corporation is the same as or so nearly resembles the name of any other corporation already licensed under this act as to be calculated to deceive; and if the organization and

business of the said corporation do not involve any unlawful restraint of trade and commerce among the several States and Territories and foreign nations, and do not constitute a monopoly or an attempt to monopolize said trade and commerce, the said application shall be filed and recorded in a book to be kept for that purpose; and upon payment of the license fees hereinafter specified, said commission shall issue a copy of said application so filed, together with a certificate of the commission duly authenticated that the corporation has complied with all the provisions of law required to be complied with, and has become and is authorized to engage in interstate and foreign commerce as specified in its application. And from the date of such certificate the said corporation as such and in the name designated shall have the right to engage in interstate and foreign commerce, as aforesaid, unless said license is revoked as hereinafter provided for cause shown.

SEC. 4. Should the Corporation Commission refuse to grant a license to any corporation under the terms of this act, said corporation may, upon such refusal, bring a suit against the said Corporation Commission before the Court of Commerce or any district court of the United States, which said courts are hereby given jurisdiction to review the action of said Corporation Commission, and if it shall appear to the court that said corporation has complied with all the terms and conditions of this act, and that the name of said corporation is not the same as the name of any other corporation engaged in the same or similar business and already licensed under this act, or so nearly resembling the same as to be calculated to deceive, and if in the judgment of such court the organization and business of said corporation do not involve any unlawful restraint of trade and commerce among the several States, Territories, and foreign nations, and do not constitute a monopoly, or an attempt to monopolize said trade and commerce, and are not in violation of any other act of Congress, the court shall make an order directing the said Corporation Commission to issue the said license pursuant to law. The said proceedings shall constitute an action in equity and be tried in the same manner as other actions in equity, and an appeal shall lie from the judgment of said court to the Supreme Court of the United States, provided such appeal be taken within thirty days from the entry of the judgment. Upon any refusal to grant a license, if the corporation applying therefor shall thereafter and within thirty days institute a suit as aforesaid, the court shall have authority pending the litigation to enter an order permitting the said corporation to engage and

continue in such commerce pending the final decision on such application.

SEC. 5. If any corporation which has obtained and maintained a license under this act shall subsequently, pursuant to the laws of the place of its incorporation, change its name or amend its certificate of incorporation, it shall immediately file with the Corporation Commission a certified copy of the amended certificate or other document evidencing such change. Thereupon the commission shall issue an amended license to conform to the change of name or amendment of the certificate of incorporation: *Provided*, That the new name adopted by said corporation shall not be the same as the name of any other corporation engaged in the same or similar business and already licensed under this act, or so nearly resembling the same as in the opinion of the Corporation Commission to be calculated to deceive, and the amendment to the certificate of incorporation shall not contravene any of the provisions of this act.

SEC. 6. No corporation licensed pursuant to this act shall carry on the business of discounting bills, notes, or other evidences of debt, or receiving deposits or buying and selling bills of exchange, nor shall it issue bills, notes, or other evidences of debt for circulation as money.

SEC. 7. As a condition of the issuance of any license under this act, the Corporation Commission shall require every corporation hereafter organized applying for license hereunder to establish to the satisfaction of the commission the fact that no stock of the said corporation was issued except for cash or for property equal in value to the par value of the stock thus issued, and in determining the value of any property in payment for which stock has been issued, the Corporation Commission shall not be bound by the decision of the board of directors of the said corporation. To enable the Corporation Commission to ascertain the reasonable value of the said property it shall cause the said corporation to file with the commission a statement in writing, signed and sworn to by a majority of the members of the board of directors, setting forth: (a) A full description of the property in payment for which the stock was issued; (b) the number of shares issued in payment for said property and whether or not such shares have a par value, and if so, the aggregate par value of the stock so issued, or if not, then the number of shares so issued; (c) the names and addresses of the vendors of the property purchased or acquired by the corporation with the stock so issued and whether or not they, or any of them, were officers or directors of the corporation, and whether or not they, or any of them, were, to the knowledge of

the signers of the statement, owners in their own name or otherwise of any shares of stock in the corporation, and if so, of how many of such shares; (d) the terms of any agreements, verbal or written, for the transfer of such property to the corporation, and the parties to all such agreements, and particularly the amount paid as purchase money in cash or shares for such property, specifying any amount payable for good will and any and all amounts paid to each vendor; and in case any written contract has been made with said vendors, or any of them, a sworn copy thereof shall be filed with such statement; (e) in case the vendors of such property, or any of it, are directors of the corporation or owners of any of its stock in their own names or otherwise, a statement of the prices paid by them for the property so sold or transferred to the corporation and copies of all contracts by which the said vendors acquired the ownership or the control thereof. In case the stock issued in payment for said property has a par value, there shall be filed with such statement with the Corporation Commission an appraisement of the value of said property made by two disinterested appraisers, approved in writing by the Corporation Commission; and the commission may in its discretion appoint one or more other appraisers to make valuations on such property and shall fix the compensation of such appraisers, which shall be paid by the corporation before the issuance of any license; and no license shall be issued to any corporation whose stock having a par value shall have been issued in payment of property purchased or acquired by the corporation to an amount at such par value in excess of the value of the said property as approved by the Corporation Commission after such appraisement: *Provided, however*, That the requirements of this section shall not apply to any corporation organized prior to the passage of this act.

SEC. 8. No corporation licensed hereunder and whose business constitutes, according to the estimate of the commission, more than fifty per centum of the total business of the same character in the United States shall purchase the property and business of any other corporation or person engaged in a similar competitive business in the United States, unless the said purchasing corporation shall first apply to the Corporation Commission, stating the nature of the business so to be purchased, the price to be paid therefor, and such other facts as may be required by the commission. It shall thereupon be the duty of the Corporation Commission to inquire whether the said facts are true, and whether the purchase of said property would tend to create a monopoly in the purchasing corporation or to unduly

restrain trade and commerce among the States and with foreign nations in violation of any law of Congress; and if, in the opinion of the commission, such purchase would tend to create a monopoly in the purchasing corporation or to unduly restrain trade and commerce as aforesaid, then the commission shall refuse permission to purchase said property and business, and any purchase notwithstanding said refusal shall subject the said corporation to a forfeiture of its license as hereinafter provided.

SEC. 9. Every corporation licensed pursuant to this act shall file in the Bureau of Corporations within sixty days after the first day of January, or the first day of July in each year, or at such other times as the Corporation Commission may prescribe, a report on the condition of said corporation at the close of business on the preceding thirty-first day of December, or the thirtieth day of June, as the case may be, in such form and setting forth such details as the Corporation Commission shall from time to time prescribe, which report shall be verified by oath or affirmation of the president or treasurer of such corporation and attested by the signatures of at least three of the directors. The Corporation Commission shall also have power to call for special reports from any particular corporation whenever, in its judgment, the same shall be necessary in order to secure a full and complete knowledge of the condition of said corporation. In addition to such reports, every corporation organized under the act shall report to the Corporation Commission within ten days after declaring any dividend the amount of such dividend and the class or classes of stock on which it is payable, and a copy of the statement of the financial condition of the corporation showing the amount of the net earnings of such corporation on hand at the time of declaring such dividends; which report shall be attested by the president, vice president, or treasurer of such corporation.

Every corporation which shall fail to make and transmit any report required by this section shall be subject to a penalty of one hundred dollars for each day after the period therein mentioned that it continues in default in the filing of such report, said penalty to be collected by the Corporation Commission; but the Corporation Commission may for good cause shown extend the time for filing such reports without penalty for a period not exceeding sixty days. All sums of money collected for penalties under this section shall be paid into the Treasury of the United States.

SEC. 10. Any corporation licensed hereunder which seeks to increase the amount of its capital stock shall first obtain the consent

of the Corporation Commission to any such increase, and, as a condition of obtaining such consent, shall file with the Corporation Commission a statement in such form as may be prescribed by the commission, setting forth the circumstances of such intended increase, and if such increase is intended for the purpose of acquiring additional property, the said statement shall set forth the facts specified in the statements required by section nine hereof. Any increase of capital stock of a corporation licensed hereunder without the filing of the statements and the obtaining of the consent required under this section shall subject the said corporation to a forfeiture of its license, as hereinafter provided.

SEC. 11. In case any corporation licensed under this act shall enter into any contract or combination or engage in any conspiracy in restraint of trade and commerce among the several States or with foreign nations, or shall monopolize or attempt to monopolize any part thereof, or shall engage in any oppressive methods of competition for the purpose of obtaining a monopoly of said interstate commerce contrary to the provisions of the act of July second, eighteen hundred and ninety, entitled "An act to protect trade and commerce against unlawful restraints and monopolies," its license may be forfeited, or the said corporation may be enjoined from the continuance of such acts, as hereafter more particularly provided.

SEC. 12. For the purpose of carrying out the provisions of this act and for the proper supervision of such corporations as shall be licensed hereunder there is hereby created a commission, to be known as the Corporation Commission, which shall be composed of three commissioners. The said commissioners shall be appointed by the President, by and with the advice and consent of the Senate. Not more than two of said commissioners shall be appointed from the same political party. The first commissioners appointed shall hold office, one for two years, one for four years, and one for six years, and each commissioner thereafter appointed shall hold office for six years. No person in the employ of or holding any official relation to any corporation subject to the provisions of this act, or owning stock or bonds thereof, or who is in any manner pecuniarily interested therein, shall be eligible to hold such office. Such commissioners shall not engage in any other business, vocation, or employment. No vacancy in the commission shall impair the right of the remaining commissioners to exercise all the powers of the commission.

The said commissioners shall each receive a salary of ten thousand dollars per annum.

The said commission shall have the power and authority to inquire into the organization, conduct, and management of the business of all corporations licensed under this act; and said commission shall have the right to obtain from such corporations full and complete information necessary, in its judgment, to enable the commission to perform the duties and carry out the object for which it is created, and it is hereby authorized to execute and enforce the provisions of this act.

SEC. 12. [1] The said commission shall have the same power of inquiry over commerce conferred upon the Bureau of Corporations under the act creating the Department of Commerce and Labor, approved February fourteenth, nineteen hundred and three, including the power to issue subpœnaes [1] to compel the attendance of witnesses and the production of documentary evidence, and to administer oaths, and may avail itself of all the information obtained by said bureau and direct investigation to be made by said bureau when necessary to assist said commission. All the requirements, obligations, liabilities, and immunities imposed by the act to regulate commerce and by the act in relation to testimony before the Interstate Commerce Commission, and by the act to create the Department of Commerce and Labor, shall apply to all persons who may be subpœnaed to testify as witnesses, or to produce documentary evidence in pursuance of the authority conferred by this act.

SEC. 13. Any person, firm, corporation, company, or association, or any mercantile, agricultural, or manufacturing society or other organization, or any body politic or municipal organization, complaining of anything done, or omitted to be done, by any corporation subject to the provisions of this act, or complaining that any such corporation has entered into any contract of combination, or engaged in any conspiracy in restraint of trade or commerce among the several States or with foreign nations, or has monopolized or attempted to monopolize any part thereof, or is engaged in oppressive or unfair methods of competition for the purpose of monopolizing such commerce or part thereof contrary to the provisions of this act, or of the act of July second, eighteen hundred and ninety, entitled, "An act to protect trade and commerce against any unlawful restraints and monopolies," may apply to said commission by petition, which shall briefly state the facts, whereupon it shall

[1] Thus in original.—Ed.

be the duty of the said commission, at such time and place as the commission shall determine, after notice to such corporation, to inquire into the subject matter of said complaint, and the commission is hereby authorized in like manner, upon its own motion, to institute and prosecute any investigation of the acts of such corporation. And said commission shall have the same powers and authority to proceed with any inquiry on its own motion as though it had been appealed to on complaint or petition under any provisions of this act. Whenever any investigation shall be made by this commission under the terms of this act, it shall be its duty to make and file an order embodying the conclusions of the commission, together with its decision or requirement in the premises.

The said commission shall have authority by its order to require any corporation licensed hereunder to desist from any violation of this act or of the act of July second, eighteen hundred and ninety, entitled "An act to protect trade and commerce against unlawful restraints and monopolies," and may institute proceedings in any district court of the United States or in the Court of Commerce for the forfeiture of the license of said corporation, or to enjoin the corporation from such violation, and said courts are hereby given jurisdiction upon the institution of any such proceedings, either to grant an injunction, to decree to [1] forfeiture of a license, or to make such other decree as justice and equity may require.

SEC. 14. Under the provisions of this act there shall be paid to the Corporation Commission for the use of the United States the following fees: First, upon the filing and approval of any application for license hereunder an amount equal to one-tenth of one per cent of the total authorized capital of said corporation up to ten million dollars; one-twentieth of one per cent of all capital in excess of ten million dollars; and up to twenty million dollars; two hundred and fifty dollars on every million dollars or fraction thereof of capital in excess of twenty million dollars; and the like fees upon the filing of any certificate of increase of the capital stock upon the total amount of such increase. Second, in case any corporation is licensed hereunder with the whole or a part of its capital stock having no par value, then there shall be paid upon the filing and approval of the application for license or of any certificate of increase of capital a fee equal to two and one-half cents for each aliquot part of the capital of the corporation represented by each

[1] Thus in original.—Ed.

of the shares not having a par value, but in no instance shall such fee be less than two hundred and fifty dollars.

SEC. 15. Any corporation licensed hereunder may apply to the commission at any time for a determination as to whether or not any proposed action of such licensee would unduly restrain trade or commerce or create a monopoly, and the commission shall thereupon investigate and make an order allowing or prohibiting such proposed action, and any action taken by any corporation pursuant to such order shall be lawful; but such order, as to its future operation, shall be subject to revocation upon notice. In connection with any order allowing such proposed action and as a condition of granting the same, the commission may fix the maximum prices of any products with reference to which the order is made if in the judgment of the commission the fixing of such price shall be necessary to prevent a monopoly or an undue restraint of trade or commerce, and the prices so fixed shall govern the said licensee so long as the order is in force.

EXHIBIT 6

ANDREW CARNEGIE [1]

In other words, there should promptly be created an industrial court, molded after the Interstate Commerce Commission and Court of Commerce, charged with all questions connected with manufacture and natural products, since the Interstate Commerce Commission is already fully occupied with its own field, but as the Commerce Court is not kept busy with appeals it might be the court of appeal for the industrial court as well as for the Interstate Commerce Commission. To prove the pressing necessity for the two judicial organizations already formed, in contrast to the Supreme Court, which waited several years before an important issue came before it, the Interstate Commerce Commission has already sat in judgment upon the greatest of all organizations, the Pennsylvania Railroad Co. It asked to be permitted to advance its rate in one department. After investigation the reply in the negative was promptly accepted by the suitor, no appeal taken, who thus set all companies an excellent example.

To-day the Commerce Court is hearing counsel on the transcontinental railroads who asked an injunction restraining an order of

[1] Hearings before the Committee on Investigation of United States Steel Corporation. 62nd Cong. 2nd Sess. 1911–1912, pp. 2347–2348.

the Interstate Commerce Commission construing the long and short haul clause. Thus the work goes bravely on. The reign of law is steadily being evolved as precedents are established. The industrial court need not fix all prices. Its province should be to examine all details, ascertain cost of production, adding to such amount as in its judgment will yield a fair or even liberal return upon capital when skillfully invested and properly managed; the maximum selling price to consumers to be fixed by the court, based upon the average cost price of product in up-to-date, well-managed works. There may be found poorly constructed or conducted works in all branches, which the court should not consider in fixing proper maximum price. Such should be compelled to reach standard performance or suffer the consequences of mismanagement. The court should not become an eleemosynary institution to avert failure of those who fail through inattention or mismanagement. It may be urged that this would prevent equal returns to owners, which is true. Any works which can not equal average cost and still have part left of the profit allowed by the court no nursing is likely to improve; the sooner it passes into competent hands, the danger of monopoly being avoided, the better for the country and, as a rule, the better for its owners. Failures now and then in business there always have been and always will be as long as men's powers and habits radically differ.

While of opinion that little or no action is needed at present beyond the organization and development of an industrial court, I am far from believing that from time to time, as we gain experience, new rules and some changes will not be found advisable and even necessary from time to time to keep in harmony with inevitable and probably surprising developments of the future. Our country has not ceased developing. We should unhesitatingly pursue the course here indicated for the present, and await further developments and be guided accordingly. It is certain that our legislators, sustained by the people, who only need to be kept fully informed of all steps taken, can and will in due time bring harmony out of present discord, reconstructing through the reign of law the old and present industrial systems by continual improvements therein, all tending to draw labor and capital, producer and consumer, into closer and more satisfactory relations than have ever before existed between them.

Meanwhile, let us prove to the country, and especially to the masses of the people, that we are on the path of careful but steady progress to the advantage of all the members of the indispensable

quartet—labor, capital, consumer, producer—the interests of which are more closely allied and more interdependent than either one of the four realizes.

It is far from being of the first importance to punish men in this age who in the past formed pools and divided orders according to the capacity of their works or capital invested, or violated recent laws without knowing it. Men of the highest standing in the past thought they did no wrong and sought no concealment. The producer then did not imagine he was a wrongdoer. He followed recognized custom, and even railway officials, fighting in their day for their respective companies, urged that they only met the prices of competitors, were somewhat in the same position.

Since the Sherman law has been so far interpreted by the Supreme Court, all this is changed. No honest man can now do some things which he did innocently before, but just what he can and can not do is yet to be clearly defined. It is, however, not punishment for the past, but obedience in the future to clearly defined law, which alone can bring to the realms of commerce and industry the peace which our railway system now enjoys. To this consummation so devoutly to be wished we earnestly hope your commission is to prove one of the chief contributors.

EXHIBIT 7

JAMES A. FARRELL, PRESIDENT OF THE U. S. STEEL CORPORATION [1]

Mr. BEALL. But is your idea that competition is destructive, that it will result in bankruptcy; that it is a bad thing, anyway?

Mr. FARRELL. There is no question about it. If you apply it——

Mr. BEALL (interposing). And this old idea that has been prevailing in business for so many centuries, that competition is the life of trade, has been all a delusion?

Are you also one of the apostles of this new cult that is being developed in the country, that the Government ought to step in and regulate and fix the maximum price for the products of these corporations? Do you agree with Mr. Gary, Mr. Carnegie, and the other apostles of that idea, and Mr. Perkins?

Mr. FARRELL. Is that a personal question?

Mr. REED. He wants your personal opinion.

[1] Testimony of James A. Farrell. Hearings before the Committee on Investigation of United States Steel Corporation, 62nd Cong. 2nd Sess. 1911–1912, pp. 2696–2699.

Mr. BEALL. I would like to have your personal opinion about it.

Mr. FARRELL. I have written it out. I thought possibly I might be asked the question.

I do not suppose that my opinion on the subject is of any particular value. If your prefer to confine this inquiry to the industry, I shall endeavor to answer all the questions you wish to put to me, but if you want my ideas on this subject, I shall be glad to give them, although I do not consider them of value.

Mr. BEALL. It is an interesting question, Mr. Farrell, and rather a new one.

Mr. FARRELL. I am not a publicist.

The CHAIRMAN. We are more anxious for your opinion on that account. [Laughter.]

SUPERVISION OF CORPORATIONS.

Mr. FARRELL. I believe that it is important for the Government to assume the power of such supervision of corporations engaged in interstate traffic as will result in full and clear publicity of their general operations, their receipts and expenditures and profits and losses, in order to protect investors and the people generally. Such supervisory board could not only be authorized to compel such necessary publicity, but empowered in the case of any corporation not presenting information as to the details required by the law which may be enacted, to investigate into the conduct of its business, with a view to full exposition of its methods. Such publicity as I have in mind is along the lines of the information that has been freely and fully given out by the United States Steel Corporation in its annual reports and frequent statements.

The fixing of prices by Government authority: Speaking entirely as an individual and giving my personal views without any knowledge of what might be the views of other officials and directors of the United States Steel Corporation, it would appear to be absolutely impracticable for the Government to attempt to fix prices of all commodities, even those manufactured only by the steel industry, in view of the hundreds of thousands of variations of shapes, sizes, sections, gauges, kinds, qualities, etc. When it is considered that it requires a large corps of experts in each of the manufacturing companies of the United States Steel Corporation alone to determine the costs of hundreds of thousands of articles or variations of such products as those companies make, it can be readily understood that it would require hundreds of experts merely to determine suitable

prices for the steel industry alone, without considering the thousands of other industries in the United States, each of which would be equally entitled to have prices fixed on their multitude of products.

If the questions be considered from the standpoint of fixing maximum prices, it would seem to be equally impracticable, for the reasons just cited, as well as the difficulty of satisfying the many manufacturers engaged in the same lines of trade, each of whom have different costs of manufacture to produce the same or similar articles. It would seem unnecessary to point out the many other objections, including the necessity of frequently altering the fixed prices to accord with the laws of supply and demand, the changeable costs of manufacture contingent on the volume of production and other exigencies of manufacture. As a natural corollary to the fixing of either changeable or maximum prices would be the inevitable necessity of fixing maximum and minimum wages to labor, as it is necessary, according to theorists and economists, that the wages of labor must be commensurate with the article which it manufactures or which it directly or indirectly consumes.

Suggested method of insuring fair prices: If it should be asked, however, granting the necessity of Government supervision of corporations under Federal incorporation, whether mandatory or voluntary, as in the wisdom of Congress might be determined, and conceding the impracticability of fixing prices, how a fair price to consumers and manufacturers alike may be insured with the object of avoiding (*a*) the exacting of excessive prices from consumers; (*b*) any possible oppression of their competitors by manufacturers with larger capital or better facilities for economic production; (*c*) avoiding destructive competition whereby weaker producers would be driven out of business; (*d*) the impoverishment of people dependent on such industries, loss of employment, or reduction of wages—it is suggested as being worthy of consideration, a law similar to that which obtains in Canada—you are no doubt familiar with that law in Canada—and which in effect is the practice in Germany.

When it might appear to the Government board of supervision, either on their own initiative, or from the complaint of any considerable body of consumers, that prices in any line of industry are unreasonably high, they should be empowered to make inquiry into the facts, to call upon manufacturers to disclose their profits, and to determine and indicate to manufacturers their opinion as to the reasonableness of their price, subject, if necessary, to review by the courts as to any contention that prices were confiscatory.

Likewise, when, in the opinion of any body of manufacturers, it should appear necessary, in order to prevent destructive competition, the lowering of wages, the impairment of plants, throwing workmen out of employment, and other similar evils through reduction of prices to levels which would not permit efficient plants to operate at a fair profit, it should be permissible for manufacturers or the owners of plants to enter into agreement as to such reasonable prices as might be necessary to prevent such results. To avoid the possibility of such manufacturers agreeing on excessive prices there would be the remedy of the opportunity of appeal by consumers to the Government board of supervision, and the consequent publicity, which would act as a restraint upon manufacturers from fixing excessive prices; penalties, such as forfeiture of Federal incorporation or other suitable means of redress could be enforced, if necessary, to dissuade manufacturers from maintaining prices adjudged to be either excessive or ruinously low.

The foregoing suggestion is not by any means a novel or original one. It is in effect that which is permitted in Canada, Germany, and other foreign countries, the object of whose Governments is apparently to foster industries rather than to tear them down. Such Governments not only allow reasonable prices to be fixed by agreement, but require them to be fixed for the protection of manufacturers, consumers, and labor alike.

Mr. BEALL. As I understand, your position is that it is not possible for the Government to step in and go to the extent of fixing even a maximum price, for the reason that you have so clearly stated?

Mr. FARRELL. Would you accept that brief as an answer to your question, Mr. Beall?

Mr. BEALL. Yes.

Then the alternative would be the breaking down of the laws as they exist to-day that forbid the kind of agreements such as you have mentioned. You would have to repeal all the laws forbidding monopoly and restraint of trade—the Sherman Act and everything like that?

Mr. FARRELL. Not necessarily. I do not believe in the repeal of the Sherman Act, but I believe the Sherman Act should be amended so as to enable manufacturers to know what they can do. We do not know now what we can do.

Mr. BEALL. If this theory that was suggested here first by Judge Gary should be put in operation, and some governmental agency should be required to fix a maximum price as a basis for its action,

it would be necessary for that agency to be fully advised as to the cost of any article, would it not?

Mr. FARRELL. Are you asking my opinion with respect to the testimony that has been given?

Mr. BEALL. No, sir; I am asking your opinion if a certain policy should be pursued by the Government that has been suggested here, whether or not it would be necessary for that commission, or whatever you might term it, to have accurate, full, and complete information as to the cost of any and every article the price of which they would attempt to regulate; and that condition would bring about the very condition against which you protest to-day; it would advise all the world of the cost of any article made by American manufacturers?

Mr. FARRELL. As I understand the Sherman law, it is designed to prohibit monopoly?

Mr. BEALL. Yes.

Mr. FARRELL. As the Sherman law is designed to prohibit monopoly, which would inevitably result from destructive competition, driving the weaker competitors out of business, it should be equally clear that it should permit such agreements among manufacturers as to prices as would enable them to avoid the destructive competition which is impliedly prohibited.

EXHIBIT 8

GEORGE W. PERKINS [1]

It seems to me that the developments of this last year have made this pretty plain to our people, and my observation is that the time is ripe to make a careful beginning at least of some sort of regulation of interstate and international business, and having watched this phase of the development as carefully as I have been able to, and all that has been said by a great many people who are qualified to speak on it, I have reduced to a short memorandum what occurs to me might possibly be a step that could be taken very promptly for relief. I will read it. I have divided this into two parts, as follows:

[1] Testimony of George W. Perkins. Hearings before the Committee on Interstate Commerce on the Control of Corporations, Persons and Firms engaged in Interstate Commerce. 62nd Cong. 2nd Sess. 1911–1912, pp. 1091–1093, 1122–1129.

IMMEDIATE RELIEF.

First. Create at once in the Department of Commerce and Labor a business court or controlling commission, composed largely of experienced business men.

Second. Give this body power to license corporations doing an interstate or international business.

Third. Make such license depend on the ability of a corporation to comply with conditions laid down by Congress when creating such commission and with such regulations as may be prescribed by the commission itself.

Fourth. Make publicity, both before and after license is issued, the essential feature of these rules and regulations. Require each company to secure the approval of said commission of all its affairs, from its capitalization to its business practices. In the beginning lay down only broad principles, with a view to elaborating and perfecting them as conditions require.

Fifth. Make the violation of such rules and regulations punishable by the imprisonment of individuals rather than by the revocation of the license of the company, adopting in this respect the method of procedure against national banks in case of wrongdoing.

PROSPECTIVE RELIEF.

First. The House and Senate to join at once in appointing a commission to make a careful study of the Sherman law and the various suggestions that have been made regarding its repeal, amendment, and amplification.

Second. Said commission to study and report on the wisdom and practicability of a national incorporation act.

SUMMARY.

Anyone familiar with present business conditions in this country, both as to domestic and foreign trade, realizes that the brakes are on. We are not expanding our domestic trade to the extent we should be. New enterprises are not being undertaken as freely as they should be. Capital in this country is contracting rather than expanding its operations, while Germany, Canada, and other countries are forging ahead with their industrial plans. The reason for this attitude on our part arises largely from the fear engendered by the prosecutions under the Sherman Act. At the present time the business man's complaint is that he does not know when he is right or when he is

wrong; that this apparently can not be known until he is prosecuted and his case reaches the court, and that as matters now stand he does not and can not know, as he proceeds with his business, whether he is a good citizen or a criminal.

Serious as this phase of the situation is, it is all important that we do not commit ourselves to a permanent national policy until such commitment can be made in a calm, dispassionate frame of mind, the people having had ample opportunity to weigh the pros and cons of the case. While this is true, immediate relief is clearly desirable, if such relief can be provided along conservative lines.

We are now collecting taxes from corporations, which in itself is the first step in establishing the principle of publicity between corporations and government. It ought not to be unwise or difficult, therefore, to immediately expand the powers of the Department of Commerce and Labor, with regard to publicity and control, sufficiently to create a board of control with power to license such interstate companies as, in the judgment of such board, are clearly working for and not against public interest. In other words, in such cases substitute a board of this sort for long-drawn-out lawsuits. This would have the immediate effect of placing any company able to secure such a license in position where it would know that it was proceeding along lines not in violation of national laws or Federal authority. Such concerns as could not or did not wish to meet this test would then have no right to complain if they were proceeded against under the Sherman law.

In the above-described manner immediate relief could be provided. At the same time the questions surrounding the Sherman law and national incorporation for interstate industrial companies would be under an investigation that would be proceeding in a calm and orderly manner, with a view to reaching ultimately a permanent solution of the whole question. Meanwhile, uncertainty would be dispelled; yet we would only be building up our present Department of Commerce and Labor and Bureau of Corporations into a live, vital bureau—much in the same way that we gradually built up the Interstate Commerce Commission by extending and enlarging its powers from time to time.

. . . . . .

Senator WATSON. You spoke of the best efficiency being the test of success. Do you think that under the present laws the best efficiency can be reached?

Mr. PERKINS. No, sir.

Senator WATSON. Then, as I understand your commission idea, you would have this commission allow the corporations to do practically anything that did not interfere with the public interests that the corporations wanted to do?

Mr. PERKINS. Broadly speaking, that is about it. I believe that for a time complete publicity of the corporation's affairs, through a commission, would be a sufficient guarantee of such protection, and that from that, as conditions in our country and in the world developed, we could add further specific regulations to meet changing conditions.

Senator WATSON. Some of the witnesses have advocated uniform prices practically. What is your opinion of that?

Mr. PERKINS. I believe that is one of the things that could be taken up by such a commission and probably arrived at rather speedily, and I believe it would be a very proper thing to work out as fast as it could be done without seriously disturbing our domestic or foreign trade in any given corporation.

Senator WATSON. Would you have that worked out by the commission or by statute?

Mr. PERKINS. You might be able, in that particular case, to word a statute that would substantially cover it, but I do not think that we can for a moment lose sight of the fact that business is very different from transportation, and that each business has to be conducted somewhat differently from its brother business, and of course, as a whole, it is a very delicate network.

Senator WATSON. The theory worked out by the Interstate Commerce Commission on freight rates is an average rate confined to zones, as you understand?

Mr. PERKINS. Yes, sir.

Senator WATSON. They do not charge the same rate for the same service always?

Mr. PERKINS. No.

Senator WATSON. They charge what we would call an average rate, for instance. They may have the same commodity for a certain city—three rates?

Mr. PERKINS. Yes.

Senator WATSON. As to some commodities I can understand why a uniform price would work very satisfactorily, but as to others I think it would mean a complete change in freight rate.

Mr. PERKINS. That is exactly my point.

Senator WATSON. So you might work that out on certain commodities, and as to others you would not want the same rule?

Mr. PERKINS. That is exactly it, and that is one reason why I believe it is going to be extremely important to have a commission like that, composed largely of business men of experience.

If I may take your time for a moment—I have thought about this for a good many years—I believe that a commission composed of such men would accomplish a good many things. We have in this country no goal for the business man in the way of preferment, or honorable mention, so to speak, unless he eventually goes out of business into public life. Now, Europe does very differently. In Germany, for instance, a captain of industry is knighted and here he is indicted. I believe that if we establish a business court of that sort that it would gradually come to be the goal of the young man who is going into business. They would say, "Some day or another I may be called to serve on this commission or court." I think it would be a steadying influence on that man's whole business career, and he would look forward to it like the lawyer does to the Supreme Court as possible preferment, and that man would give up almost any business calling finally to be a member of such a commission. There is not a lawyer, I suppose, in the country who would not give up any lucrative practice for an appointment on the Supreme Bench, because that has come to be the goal—the highest degree of honor—and if it is said that it would be turning business over, or turning the Government over to business, I do not think that holds, because we have not found it in any respect, certainly not in regulation of our railroads. Take another instance. Our Presidents select officials from corporation life, like Mr. Knox and Mr. Wickersham, and they gave up lucrative businesses and went into these offices, and have stood an immense amount of abuse from their old friends and colleagues and associates. Yet they have discharged their oath of office as they saw it in the interest of the people. I believe the business men would adopt the same course. Mr. John Claflin, of New York, for instance, a man who had reached the point of life where he had had broad experience, called on such a commission as that would go on it and give to the public the same sort of service that he had been giving to his own business.

You could have a commission of that sort of seven or nine men who had had that kind of experience and knew the trade conditions of the world, and would work that way for the public interest. I

think you can easily imagine of what enormous value that would be to our people in their own affairs, and more especially to us in developing our foreign trade.

. . . . . .

Senator BRANDEGEE. I have only a question or two. The commission that you would like to see established, I believe you called it a business court?

Mr. PERKINS. "A rose by any other name" would suit me just as well.

Senator BRANDEGEE. To use your own phraseology. You spoke of having a business court established in the Department of Commerce and Labor before whom you could make application for Government license, if I recall your proposition?

Mr. PERKINS. Yes, sir.

. . . . . .

Senator BRANDEGEE. Would you allow an appeal from the ruling of the commission if it declined to issue a license?

Mr. PERKINS. I think so. I think the appeal should go either to the Interstate Commerce Commission or some court——

Senator BRANDEGEE. You mean the Court of Commerce?

Mr. PERKINS. The Court of Commerce, I mean.

Senator BRANDEGEE. Now, I do not know that I thoroughly comprehended what you meant to give this business court in the way of power. You would give it the power to license applicants engaged in commerce among the States if they found what?

Mr. PERKINS. At the beginning I would give them power to license such a company as in the judgment of this court was properly capitalized—conservatively capitalized—and conducting its business along such lines as to commend its practices to the judgment of this court, and cause the court to feel that it was working in the public interest rather than against the public interest, not restraining trade unduly or acquiring monopolistic control, and with the understanding that this company would submit its affairs in the most complete manner possible to this court, not to be filed in the archives of this court and regarded as purely personal to the President or the Attorney General, but to be in turn made public to not only the stockholders of this company but to the public, so that competitors could know the general methods of the company and the public could know the methods of the company; and that is about as far as I would go at the start.

As different question [1] came up in connection with that regulation and control, much as we have developed the regulations and control of railroads, we could expand from year to year; but I believe so thoroughly that publicity of the right sort would be a very strong deterrent on the management of any company from doing anything that was not right, and would be so convincing to the public that what was done was being done right, that we would find ourselves relieved from the necessity of resorting to a long schedule of fixed rules, which were to the effect, "Thou shalt not," "thou shalt not," and "thou shalt not."

Senator BRANDEGEE. You would put in those things that you have indicated in the statute creating the business court as a rule to guide the business court in determining the question of whom it should license and whom it should not?

Mr. PERKINS. Yes, sir.

Senator BRANDEGEE. Of course, that would have to be carefully drawn to see that it would not be in unreasonable restraint of trade.

Mr. PERKINS. Yes, sir.

Senator BRANDEGEE. And on those questions you would allow the right of appeal to some court from the judgment of the commission?

Mr. PERKINS. Yes, sir. As it is now, however, whatever may be said about the interpretation of the Sherman Act by the court, the plain cold-blooded fact remains that as we stand to-day, unless through the steel suit, in two or three years, or some other suit we find some other interpretation, we have got to apparently pass through a long series of lawsuits, and each man has got to come up and have his corporation passed on by a lawsuit.

Now, if we could save those two or three years by immediately creating a court that could say after a corporation has come before it, "Now, we will take the responsibility of saying you can go ahead so long as you keep us informed about what your practices are," it would help very, very much.

Senator BRANDEGEE. Would you have this business court issue these licenses for a limited period of time?

Mr. PERKINS. No, sir; I do not think that is feasible. If the business was legitimate and properly started, and an interstate and international business, with stockholders in large numbers everywhere, I think it should be given all the elements of permanency possible.

[1] Thus in original.—Ed.

Senator BRANDEGEE. I inferred from your last statement that the license you contemplated would be a revocable license whenever in the judgement of the business court the corporation was not acting to suit it?

Mr. PERKINS. I certainly would give the court the right to revoke the license with the right of appeal, but I would make that almost the last resort; that is, I would in that respect control the corporations as we do our banks. I would punish the individual and exhaust all those channels before I actually injured the existence of the company itself, because we must remember that the company can not do anything wrong. It is not a live thing; it is a creation of man, and there is no use injuring an innocent third party and disturbing our business because some man does something that is not right.

Senator BRANDEGEE. You would not have the license revocable then, but you would rely upon punishing the individuals who indulge in any unfair practices?

Mr. PERKINS. Yes, sir; I think the Government should always keep the right, as a last resort, to revoke the license, but I think that should be the last thing it should do, and should be done perhaps in practice not at all, but I think you might easily have cases where people would be imprisoned for having violated the laws under which they were operating or the laws as laid down by this commission. That is just what we do with our banks.

Senator BRANDEGEE. Do I understand you to say that on the question of whether the license should be revoked or not you would allow an appeal to some court on that question?

Mr. PERKINS. I would. These companies, you see, have come not only to be merchants, but they have come to be trustees for investments. I think it is extremely important that the country understood that and realized that.

Senator BRANDEGEE. If an applicant for a license secured the license, you then say until it was revoked you would have the applicants immune from prosecution under the Sherman antitrust law?

Mr. PERKINS. Yes, sir. Now, you see, Senator, if he said, "Well, I do not want this license," or "I can not get a license," then it seems to me that is equivalent to the Government having notice that there is something about that concern that ought to be looked into under the Sherman law, and he would not have a right to complain if the Government did proceed against him because he would have

had a way to demonstrate to the court that he was entitled to the license.

Senator BRANDEGEE. Any corporation indulging in commerce among the States which had applied for a license and been denied the license by this business court, would be subject to prosecution or a bill being brought against them under the Sherman law?

Mr. PERKINS. Exactly.

Senator BRANDEGEE. And all those who had been licensed would be immune?

Mr. PERKINS. Yes, sir.

Senator BRANDEGEE. So that, if the business court thought that a man was a proper subject for its license and should grant it, even if the Attorney General thought it was directly operating in violation of the Sherman law, he and the department of the Government would be powerless to have the question tested in the circuit or the Supreme Court of the United States because they held a license from this business court, which operated as an immunity?

Mr. PERKINS. I think that if they wanted to interpose any objection they ought to do it before the company had its license. I think a company, once having had a license, should be immune so long as it lived up to the condition under which it obtained its license—that is, while the license was being issued—if the Attorney General wanted to interpose an objection he ought to have the right to be heard.

Senator BRANDEGEE. I was just going to ask you, would you not provide that it should be the duty of some Government official—the Attorney General or somebody else—to appear in behalf of the Government at the time the corporation was applying for its license?

Mr. PERKINS. I look upon this court as in behalf of the Government.

Senator BRANDEGEE. So do I; but you would leave it a matter to be determined by the court and the applicant without any other department of the Government.

Mr. PERKINS. I see no objection. For instance, if your course was adopted of having an independent court, of allowing the Bureau of Corporations to interfere or interpose by the Attorney General.

Senator BRANDEGEE. As I understand it, it would not be your view at present to make it mandatory on the Attorney General or the Department of Justice to appear, but you would give them the right to appear if they so desired?

Mr. PERKINS. I think I would. I had not thought of that. It is a new suggestion, but I think that might not be an improper thing.

Senator BRANDEGEE. You spoke in answering some questions that were asked you about whether a concern controlling 75 per cent of the business would be, in your opinion, in restraint of trade or not—if I recall the question, or whether it would be contrary to any provision of the Sherman law or the antitrust act. Would it not, do you not think, lie in the minds of the people who are contemplating the acquisition of 75 per cent of the business that the Government might set up the claim that the mere fact of the control of such a proportion of the business was that it tended to show an intent to monopolize some part of the commerce among the States, and therefore be in violation of the second section of the law?

Mr. PERKINS. Yes; I think that is one of the disturbing conditions to-day, and I think in that connection that sufficient weight has not been given to this phase of it at all. Those of us who have had practical business experience in more than one line of business especially, know that a certain group of men of the right type and ability could come nearer restraining trade and monopolizing trade with 40 per cent, we will say, of a given business than another group of men might with 75 per cent of the business. So that it is not the percentage that does it, but it is the men.

Senator BRANDEGEE. You have your own idea of what you mean by the words "restraint of trade?"

Mr. PERKINS. Yes, sir.

Senator BRANDEGEE. As I understand you, it is not necessarily what the courts have decided or said about restraint of trade?

Mr. PERKINS. I do not know what they have decided.

Senator BRANDEGEE. I understand you to say that you think there may be cases, and probably are, where a great deal of a certain kind of competition may have been eliminated without trade having been restrained at all, but on the contrary, trade having been promoted?

Mr. PERKINS. Exactly.

Senator BRANDEGEE. That is all.

Senator NEWLANDS. I think the ground has been covered already by some of the questions that have been asked recently, but I simply wish to ask you, Mr. Perkins, regarding agreements limiting production and agreements between competitors as to price. What do you think of those?

Mr. PERKINS. I think they are very largely a question of individual settlement. Different lines of business vary so largely according to locality and environment, and all that sort of thing, that I think that has got to be worked out with the greatest possible care.

Senator NEWLANDS. Would you give such a business court the power to approve the agreements between competitors as to limitations of production with a view to preventing overproduction?

Mr. PERKINS. Do you mean a broad principle covering everything?

Senator NEWLANDS. Yes.

Mr. PERKINS. No, sir; not at the beginning, I would not.

Senator NEWLANDS. How about prices; would you give them the power to approve agreements as to uniform prices?

Mr. PERKINS. No, sir; not at the beginning. I would let that work itself out after we had licensed 50 or 500 companies who would agree absolutely to make their affairs public; if a man is not willing to do that then he ought not to have a license, in my judgment, and [1] if he does, and will play that way, I believe it will allay a great deal of the difficulty. You see these questions to a great extent are revolving around what might be known as the wholesale business. Now we gentlemen all remember that in our boyhood days there were very few retail stores where you could not go in and horse trade for what you wanted. The prices were not marked on the goods, and there were all sorts of prices. Now we have moved along in the retail business to a point where we can go down any street to a dozen stores, and the prices are all open. There is not very much trading. You know what it is, and a man down the street, next door, knows what the other man's price is. If that had been suggested to our fathers they would have thrown up their hands and said: "Everybody knows all about our prices; we can not make anything." But we have worked that out in the retail business. It is an open book as to what prices are, yet there is competition and they live. But in these larger affairs which, for want of a better name, you call wholesale business, there is still all that secretive way of doing, and if there is anything that tends to break the commandment of "Thou shalt not bear false witness against thy neighbor," it is the method by which large contracting and bidding for contracts is done in this country, because the whole system is one of deception from beginning to end. It is all built up around the idea

[1] In the original this line and the line above were transposed.—Ed.

that you must lead another man on to make a lower bid, and then lead somebody else on, and that is supposed to be competition.

Now, we have got in some way or another, with the enormous development of our methods of intercommunication, living as close as we do together in the world, to get the wholesaler, the corporation, on something like a basis that will be analogous to the retail business which is done much more in the open and in a frank manner. You have the competition there just the same.

EXHIBIT 9

LOUIS D. BRANDEIS [1]

Mr. Perkins's argument in favor of the efficiency of monopoly proceeds upon the assumption, in the first place, and mainly upon the assumption, that with increase of size comes increase of efficiency. If any general proposition could be laid down on that subject, it would, in my opinion, be the opposite. It is, of course, true that a business unit may be too small to be efficient, but it is equally true that a unit may be too large to be efficient. And the circumstances attending business to-day are such that the temptation is toward the creation of too large units of efficiency rather than too small. The tendency to create large units is great, not because larger units tend to greater efficiency, but because the owner of a business may make a great deal more money if he increases the volume of his business tenfold, even if the unit profit is in the process reduced one-half. It may, therefore, be for the interest of an owner of a business who has capital, or who can obtain capital at a reasonable cost, to forfeit efficiency to a certain degree, because the result to him, in profits, may be greater by reason of the volume of the business. Now, not only may that be so, but in very many cases it is so.

And the reason why the increasing the size of a business may tend to inefficiency is perfectly obvious when one stops to consider. Anyone who critically analyzes a business learns this: That success or failure of an enterprise depends usually upon one man; upon the quality of one man's judgment, and, above all things, his capacity to see what is needed and his capacity to direct others.

[1] Hearings before the Committee on Interstate Commerce on the Control of Corporations, Persons and Firms engaged in Interstate Commerce. 62nd Cong. 2nd Sess. 1911–1912, pp. 1147–1152, 1157–1158, 1161, 1167, 1170–1171, 1174–1176, 1178–1179, 1236, 1256–1257, 1267–1271, 1274–1276.

Now, while organization has made it possible for the individual man to accomplish infinitely more than he could before, aided as he is by new methods of communication, by the stenographer, the telephone, and system, still there is a limit to what one man can no [1] well; for judgment must be exercised, and in order that judgment may be exercised wisely, it must be exercised on facts and on a comprehension of the significance of the relevant facts. In other words, judgment can be sound only if the facts on which it is based are both known and carefully weighed. There must be opportunities for judgment to mature. When, therefore, you increase your business to a very great extent, and the multitude of problems increase with its growth, you will find, in the first place, that the man at the head has a diminishing knowledge of the facts and, in the second place, a diminishing opportunity of exercising a careful judgment upon them. Furthermore—and this is one of the most important grounds of the inefficiency of large institutions—there develops a centrifugal force greater than the centripetal force. Demoralization sets in; a condition of lessened efficiency presents itself. These manifestations are found in most huge businesses—in the huge railroad systems as well as in the huge industrial concerns. These are disadvantages that attend bigness.

Now, that mere size does not bring efficiency, does not produce success, appears very clearly when you examine the records of the trusts.

In the first place, most of the trusts which did not secure a domination of the industry—that is, the trusts that had the quality of size, but lacked the position of control of the industry, lacked the ability to control prices—have either failed or have shown no marked success. The record of the unsuccessful trusts is doubtless in all your minds. One of the earliest of the trusts which did not secure control was the Whisky Trust. It was not successful. The plight of the Cordage Trust and of the Malting Trust was worse. Consider other trusts now existing, the Print Papers Trust (the International Paper Co.); the Writing-Paper Trust (the American Writing Paper Co.); the Upper Leather Trust (the American Hide & Leather Co.); the Union Bag Trust; the Sole Leather Trust; those trusts and a great number of others which did not attain a monopoly and were therefore unable to fix prices have had but slight success as compared with their competitors. You will find daily evidence of their lack of success in market quotations of the common stock, where they are

[1] Thus in original.—Ed.

quoted at all, and the common stock of some has even fallen below the horizon of a quotation.

Now take, in the second place, the trusts that have been markedly successful, like the Standard Oil Trust, the Shoe Machinery Trust, the Tobacco Trust. They have succeeded through their monopolistic position. They dominated the trade and were able to fix the prices at which articles should be sold. To this monopolistic power, in the main, and not to efficiency in management, are their great profits to be ascribed.

Leaving the realm of industry for that of transportation, compare the failure of Mr. J. P. Morgan's creation—the International Mercantile Marine—and the astonishing success of the Pullman Car Co. The transatlantic steamship trade was open to competition, and could not, in spite of its price agreements, fix rates at an elevation sufficient to be remunerative. The Pullman Co., possessing an absolute monopoly, has made profits so large as to be deemed unconscionable.

In the third place, take the class of cases where the trust has not controlled the market alone, but exerted control only through virtue of price agreements or understandings, as did the Sugar Trust and the Steel Trust. Those trusts paid large dividends, because they were able to fix remunerative prices for their product. But neither the Sugar Trust nor the Steel Trust has been able to hold its own against its competitors.

Take it in the Sugar Trust. At the time of the Knight case, a little less than 20 years ago, the Sugar Trust had practically the whole business of the country—I think the Supreme Court report shows something like 95 per cent. The company's reports to the stockholders of 1910, as I recall it, show that the company now controls only 42 per cent of the production of the country.

The price agreements or understandings between the trust and its competitors had maintained the price, but they could not maintain for the trust its proportion of the business. The Sugar Trust's profits were maintained, as you so well know, not only through the price agreements, but through methods that were vulgarly criminal—through false weighing; through stealing of city water; through extensive railroad rebating.

Then take the Steel Trust—that is a younger trust, only half the length of life of the Sugar Trust. But in the Steel Trust you have a similar manifestation of ebbing prestige. In spite of all this extraordinary power in the Steel Trust, the control of raw material, the

control of transportation, the control of certain trade through its railroad associations, the control of other trade through its money power—and the addition of the Tennessee Coal & Iron Co.—in spite of all this the Steel Trust has been a steady loser in percentage of the iron and steel business of this country. And not only has it been a steady loser in the percentage of business in this country, but despite its ability to largely maintain prices, notably of steel rails, throughout that period, the later years show a diminishing return upon the capital invested as compared with the earlier years of the trust.

What does that indicate? Does it not indicate a lessened efficiency, either actually or relatively, to other businesses?

Supplement those facts by a consideration of other evidence of the state of efficiency reached. Efficiency is ordinarily manifested in two ways: One is in respect to quality—whether there has been an advance in the art as to the quality of the products—and the other is whether there has been an advance in the art lessening the cost of the article.

Now, what is the situation in regard to the Steel Trust? There are two steel products in common use in the United States in which the American people are particularly interested. One is steel rails; the other is fence wire. The Steel Trust has failed in respect of both of those important articles of production to keep up with the demand of the community—not in quantity, but in quality.

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Another test of efficiency to which the United States Steel Corporation has been subjected and which it has failed to meet is this: It has shown itself unable to maintain its prestige in the world's competition.

Now, every one of you gentlemen can remember the situation in respect to the exportation of steel 10 or 11 years ago. England was in a panic; Germany and Belgium were in terror at the extraordinary reductions in cost which we had made in America in the production of steel.

It looked almost as if all the blast furnaces in England would have to be closed and that the conditions in Belgium and Germany would be similar, except so far as they might be protected in their home markets by a tariff. The world market was apparently within our grasp.

What is the situation in 1911?

The world's market has grown immensely during the intervening period. Outside the home markets of Germany and England there is a demand for more than 10,000,000 tons a year, which is anybody's trade—that is, it is open to either England, Germany, or America, whoever can get it. What has been our course of events? In the last four years the capacity of the United States Steel Corporation has been utilized, in the main, to an extent varying from 55 to 75 per cent of its capacity. During a large part of these four years the United States Steel Corporation has had 33⅓ per cent of unused capacity. In spite of that fact Germany and England have acquired most of the increasing world's trade. The German trade in this very period in which the steel corporation has been in existence has increased 500 per cent.

Mr. Perkins has spoken of the American ability which, if it is given fair opportunity, will attain commercial results far beyond anything that may be expected of Germany, and yet there you find Germany and England running away with the world's trade, while the steel corporation had idle one-third of its plants, representing millions annually in interest and depreciation charges.

In the 10 years during the steel corporation's life our foreign steel and iron tonnage increased from 1,154,000 to 1,533,000 tons, Germany's tonnage increased from 838,000 to 4,868,000, and the United Kingdom's tonnage increased from 3,213,000 to 4,594,000.

Now, what is the explanation? This I submit: Owing to this Steel Trust consolidation and accompanying condition our cost of manufacturing steel has risen to such a point that we can not compete successfully with those countries or can compete only to a limited extent. We have been losing our relative position in the great markets of the world. That is a very significant fact, in view of the contention always made that we need big business in order to maintain and improve our position in the world market. The figures show that during the last 10 years, coincident with the existence of the Steel Trust, we have been losing our prestige in the world's steel market, and at the same time the Steel Trust's position in the home market has been lessened by the inroads of its independent competitors.

The facts point to the conclusion that the Steel Trust, in spite of the personal ability of its managers, is disclosing relative inefficiency.

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Mr. Perkins suggests that systems of profit sharing will be introduced only by the great publicly owned trusts. Now, in Massachusetts, in Senator Crane's home State, we have had very different ideas in this respect and can offer very different examples of profit sharing as means of solving these industrial problems. Only recently the Dennison Manufacturing Co., one of our most successful industries, was capitalized at $5,000,000, with preferred stock entitled to 8 per cent. But the idea of its owners of real industrial profit sharing is this: Every cent that is earned by that corporation in excess of the dividends upon the preferred stock is distributed among those (or some of those) who do the work, and in the proportion of their supposed contribution to the success of the business. That is, the profits are applied in the exact proportion to the salaries paid. The Dennison idea of profit sharing is to give the capital a liberal return (and as it seems to me, perhaps too liberal) and after that liberal return to give to those who do the work all the rest of the profit in addition to their fixed salaries and wages. The Dennisons are a relatively small concern as compared with this great Steel Corporation. But that same principle is applied in a number of other and still smaller businesses, with some of which I am intimately acquainted.

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What have these trusts done for the consumer? Until the Commissioner of Corporations made his admirable investigations into the Oil Trust and the Tobacco Trust we were constantly told that they were, by their efficiency, reducing the price to the consumer. That claim ought now to be completely exploded, as the result of this skillful and elaborate investigation, conducted throughout five or six years, for the facts clearly prove the contrary. The trusts have not reduced prices. So far as prices have been reduced, it has been in spite of the trusts.

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As compared with the relatively high prices and exorbitant profits in the trust-controlled articles I want to call your attention to the trend of prices and profits in the book-paper business, facts of particular significance, because the principal raw material of paper—namely, wood—is, as you know, constantly advancing in cost.

Now, while oil and steel and tobacco prices have been rising, or have remained stationary, and while the rate of profit in oil and tobacco has grown larger, here are some figures on book paper. In 1889

the average price of book paper in one of the large mills was a trifle over 7 cents a pound—7.06 cents a pound. From that date until 1910 the price of book paper has been almost constantly declining, in spite of the increased cost of raw material, and in spite of the increased wages. As I said, in 1889 it was 7.06 cents. In 1890, that one year the boom came in, and the price rose to 7.1 cents. In 1891 it took its natural course under competition and was down to 6.8 cents. In 1892, although that was a period of expansion in industry, it was down to 6.5 cents. In 1893 it was 6.3 cents. Then it dropped into the 5 cents. By 1907 it got into the fours. And later it got into the threes. And the average price in 1910, as I have here, was 3.99—a trifle under 4 cents.

During that time the cost of manufacture in this highly competitive industry was, of course, also diminishing, but not as rapidly, or not nearly as rapidly, as the selling price, because competitive conditions were constantly reducing the ratio of profit upon that selling price. And whereas the profit started at about 20 per cent on the cost, it got down in 10 years to 13 per cent on cost, and at the end of another 10 years it got down to 7 per cent on cost. You have there the most perfect illustration of what competition does in compelling the owner of an industry to find some way of reducing costs as a condition of living.

Now I will show you what that way was. It was not by pursuing the way of the steel corporations, of increasing the hours of labor, or decreasing wages. It was just the opposite. Senator Crane will remember that in this very period which those figures cover there came a beneficent change in the conduct of this industry (which, like the steel industry, and perhaps to a greater extent than the steel industry) requires a continuous process; that is, paper making is a 24-hour process in many of its departments. Ten years ago and before these mills were running their tour workers on 12-hour shifts. Labor unions started the agitation for an 8-hour day. This was one of the industries where, in the main, there could be no compromise on a 10-hour day, because these paper machines and the incidental machines had to run continuously 24 hours a day, 6 days in the week. The 10-hour compromise was impossible. It was either 8 hours, as the men demanded, or 12 hours. The reduction of working time to 8 hours was made, not only in mills where the union manifested itself, but in other mills where there was no union labor whatsoever. For the unions had, in this respect, as in many other respects, created a standard to which the industry had to accommodate itself. The manufacturers, therefore, in this period reduced the

working time of their labor, while their price of by-product was steadily going down, and their own percentage of profit was steadily going down, and while the cost of raw material was steadily going up. Hours of labor in all those departments were reduced 33⅓ per cent—from 12 hours to 8 hours. And yet while the employers made that reduction, instead of reducing wages proportionately, the wages increased.

Take the wages in 1900. The wages of these machine tenders for 12 hours were $2.43; in 1910 to 1911 the wages for 8 hours were $2.71. In other words, if the hourly rate of wages be considered, you have an increase there of wages of about the equivalent of 66 per cent.

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These are some of the reasons why, in my opinion, this committee should address itself to perfecting the Sherman law, in the light of the experience of the past 21 years. We have learned much about trusts and their ways in these 21 years, and this knowledge the La Follette bill undertakes to use. There has been a lot of talk about the uncertainty of the Sherman law, and of the doubt felt as to what is reasonable and what unreasonable restraint. The difficulty in finding out what is prohibited is, even now, far less than has been suggested.

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Senator CUMMINS. Do not confine yourself to categorical answers, but give us your views upon the subject that may be contained in the question.

Mr. BRANDEIS. I thank you. I have had no belief that up to the present time a question had arisen in regard to any corporation in that narrow form in which you put it; that is, each one of the large corporations I have had to deal with have been objectionable on grounds other than size merely. I have considered and do consider that the proposition that mere bigness can not be an offense against society is false, because I believe that our society, which rests upon democracy, can not endure under such conditions. Something approaching equality is essential. You may have an organization in the community which is so powerful that in a particular branch of the trade it may dominate by mere size. Although its individual practices may be according to rules, it may be, nevertheless, a menace to the community; and I may add further that,

in my opinion, it was bad legislation which removed all limits to the size of corporations, as we did from 10 to 20 years ago.

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Senator CUMMINS. Precisely; I was just coming to that. Healthful and reasonable and effective competition is hardly to be looked for so long as there is a community of interest in so-called competing corporations, I suppose.

Mr. BRANDEIS. I so believe.

Senator CUMMINS. That seems to be a deduction from what we know of human nature, and therefore if we could provide that these great concerns should not have common stockholders we would make a very considerable advance toward reasonable competition, I assume.

Mr. BRANDEIS. I think so; but I think that the question of the limitation of the size of the corporation, if we had an effective law regulating trusts, would not become an urgent question very soon, although it may be a simple way of arriving at the result. To express a little more clearly what I mean, I will say this: I believe that the existing trusts have acquired the position which they hold largely through methods which are in and of themselves reprehensible. I mean either through methods which are abuses of competition or by such methods as were pursued by the steel corporation in paying ridiculous values for property for the purpose of monopolistic control.

I am so firmly convinced that the large unit is not as efficient—I mean the very large unit—is not as efficient as the smaller unit, that I believe if it were possible to-day to make the corporations act in accordance with what doubtless all of us would agree should be the rules of trade no huge corporation would be created, or, if created, would be successful. I do not mean by that to say that it is not good to have the limitation in the law. What I mean is that I am so convinced of the economic fallacy in the huge unit that if we make competition possible, if we create conditions where there could be reasonable competition, that these monsters would fall to the ground, that I do not consider the need of such a limitation urgent.

Senator CUMMINS. By that you mean, I take it, at least partially, that if we had some regulation which would insure honest capitalization—that is, bonds and stocks, that measure of actual value of the property taken in by the corporation—there would be a greatly less motive for bringing them together?

Mr. BRANDEIS. I mean that; but I mean something more, and it is

this: Go back and see what the real commanding cause was of the formation of these trusts. In the first place, I do not believe the desire for greater efficiency was an important moving cause. The potent causes were two things—one was to avoid what those interested deemed destructive or, at least, very annoying competition; the other cause, an extremely effective cause, was the desire of promoters and bankers for huge commissions. The amount of Steel Trust representing bankers' commissions was figured by the Commissioner of Corporations as $150,000,000 in securities.

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Senator NEWLANDS. Mr. Brandeis, what limit would you place upon the size of corporations?

Mr. BRANDEIS. I should not think that we are in a position to-day to fix a limit, stated in millions of dollars, but I think we are in a position, after the experience of the last 20 years, to state two things: In the first place, that a corporation may well be too large to be the most efficient instrument of production and of distribution, and, in the second place, whether it has exceeded the point of greatest economic efficiency or not, it may be too large to be tolerated among the people who desire to be free. I think, therefore, that the recognition of those propositions should underlie any administration of the law. As I stated before, I believe that it was a very serious mistake on the part of our legislators to remove the limit of the assets and of capitalization of corporations; that they did not fully consider what they were doing. I believe it is historically true that that limit was removed without serious consideration by the legislators of the country of the probable effect of their action.

Senator NEWLANDS. Do you think it would be in the power of the United States Government, by act of Congress, to limit the size of State corporations engaged in interstate commerce, either in point of size, capitalization, or area of their operations?

Mr. BRANDEIS. I do not suppose it would be constitutional in one sense to limit their size, but I suppose Congress would possess the constitutional power to confine the privilege of interstate commerce to corporations of a particular character.

Senator NEWLANDS. You have no question about that power?

Mr. BRANDEIS. I should think not.

Senator NEWLANDS. It would be necessary to fix some standard, would it not?

Mr. BRANDEIS. I think so; yes, sir.

Senator NEWLANDS. Upon which or by which the administrative bureau or commission charged with the duty could determine whether the corporation was of a size that threatened to become a monopoly or that threatened, as you say, social efficiency. Now, what standard would you fix; how would you phrase it?

Mr. BRANDEIS. I do not think that I am able at this time to state the exact provision which I should make. I feel very clear on the proposition, but I do not feel equally clear as to what machinery should be invoked or the specific provision by which that proposition could be enforced.

Senator NEWLANDS. You do not think that standard should be fixed in dollars; you have already stated that.

Mr. BRANDEIS. I am very clear that the maximum limit could not be properly fixed in dollars, because what would be just enough for one business would be far too much for many others.

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Senator NEWLANDS. And yet, if you were establishing to-day a standard to which corporations hereafter organized, we will say, for the purpose of engaging in both interstate and State commerce, should conform, you would not permit any such corporation to control 40 per cent of the business, would you?

Mr. BRANDEIS. I do not think I should. I mean the more I have thought of it the less inclined I have been to allow that.

Senator NEWLANDS. Would you be willing to allow one-tenth in a country as large as this?

Mr. BRANDEIS. I am inclined to think it could control one-tenth with perfect safety.

Senator NEWLANDS. You would not go below that?

Mr. BRANDEIS. I would not prohibit it, and I should be perfectly prepared to allow any appreciable larger percentage to be controlled by one company.

Senator NEWLANDS. You say you would be?

Mr. BRANDEIS. I would be prepared to allow considerably more than one-tenth. The doubt I had was whether 40 was not too much, and I was going down from 40.

Senator NEWLANDS. Now, if you were to establish such a standard, would you apply it only to corporations hereafter organized or endeavor to apply it to corporations already organized?

Mr. BRANDEIS. I should, in the first place, naturally apply it to

those corporations already organized which had been organized in violation of the Sherman antitrust law. . . .

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Senator NEWLANDS. You referred to the unfair methods of killing competition, and you gave a statement of a number of things which should be forbidden. How would you make those unfair methods impossible? Would you punish the corporation, or the individual, or the officials?

Mr. BRANDEIS. I should punish both; I mean I think the law as it stands, giving an opportunity of fine and giving an opportunity of improvement, is proper; but I should give—what I should expect would be even more effective as a deterrent—the rights to the injured individual to enforce through the Government action, in a practically automatic way, his claim for treble damages, as set forth in the La Follette bill. That would prove a very serious burden upon law-violating corporations.

Senator NEWLANDS. You spoke of community of interests being a factor in the prevention of competition. Take the shoe factories in New England. There are a number of them, I presume, are there not?

Mr. BRANDEIS. Yes, sir.

Senator NEWLANDS. A very large number?

Mr. BRANDEIS. In Massachusetts there are over 400.

Senator NEWLANDS. Would it be practicable there, do you think, to prevent individuals from owning stock in half a dozen shoe factories, or otherwise?

Mr. BRANDEIS. I think it would be perfectly practicable. I think as a matter of fact it is very uncommon to-day.

Senator NEWLANDS. Do you say it is very uncommon?

Mr. BRANDEIS. It is very uncommon to-day. I think in the shoe industry—I mean in the mere manufacture, say, of shoes—there is at present the most perfect instance of competition and evidences of the value of competition probably of any industry in the country.

Senator NEWLANDS. Do you mean to say that a person seeking investments in the stock of a shoe factory would always confine his investment to any particular factory?

Mr. BRANDEIS. I do not mean to say they would always do so; but I should feel perfectly sure that there was no appreciable number of persons who invest in more than one company except

in those instances which I happen to know about of particular men who are now practically partners in three or four or five businesses.

Senator NEWLANDS. What I wanted to get at is, would you forbid an investor in the stock of one corporation from holding stock in another corporation doing the same business?

Mr. BRANDEIS. I do not believe that the situation requires such legislation. Take it in the shoe business. There are 1,918 shoe manufacturers in the United States, or there were at the time of the last census. The largest shoe manufacturer in the United States does only a very large [1] percentage of the total business. You have a situation in that business where there is not the slightest danger at the present time of the suppression of competition. But when you are dealing, for instance, with the tobacco case, where you are trying to break up a combination, or where the control of the business has gone into such few hands that it is easy for three or four or five or seven or nine people to come together and control an industry, then you have a situation where common ownership is absolutely destructive of competition.

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Senator LIPPITT. But, granting all that—which is one of the incidental advantages of large size—you still believe that in the end the very bulk itself would prove a disadvantage and the smaller reasonably sized competitor would take away the business or diminish it?

Mr. BRANDEIS. I believe it would, provided the law efficiently protects that smaller unit against ruthless destruction through methods of unfair competition.

Senator LIPPITT. Taking the laws exactly as they stand to-day, do you believe that if there was no change in the laws, and matters were allowed to go on as they are going, that the result would be the survival of the moderate-sized competitor, or do you believe it would be the absorption of the business by one huge organization?

Mr. BRANDEIS. In many instances I think it would be the absorption of the business by huge organizations, because the power of endurance of competitors becomes exhausted, and it has been entirely overcome in a great many cases, for instance, the shoe-machinery case.

Senator LIPPITT. Taking all the features of it, you do not believe that the medium-size competitor would be the successful one?

[1] "Small" probably intended.—Ed.

Mr. BRANDEIS. Not without congressional aid, because I think you need not only the law but enforcement of the law.

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Senator GORE. I understood you to say the other day that you opposed any method of licensing?

Mr. BRANDEIS. Yes, sir.

Senator GORE. Any method of licensing corporations engaged in interstate commerce?

Mr. BRANDEIS. Yes, sir.

Senator GORE. By that do you mean a license that would constitute a sort of passport or examination of health and one that would extend immunity from prosecution?

Mr. BRANDEIS. Precisely; or which might be so construed by the community, although it did not actually do so.

Senator GORE. I want to ask you this: Merely a requirement that any company engaged in interstate commerce, without reference to method or manner of organization or object, could make application to some constituted authority for a license to engage in commerce, say for a nominal fee of a dollar, and allowed to have no other certificate than merely registration—that so far would not be objectionable?

Mr. BRANDEIS. It would only be objectionable in that it probably would be put to an illegitimate use. That is, it would be used as representing practically that the Government is ratifying or indorsing the propriety of its acts, just as these certificates are found now upon cans registered under the pure food act, etc.

Senator GORE. What I have in mind is merely a license, like a saloon man gets to sell liquor—that it is purely formal and perfunctory to that extent.

Mr. BRANDEIS. I see no occasion or no advantage in having a license. We have the situation now, that every corporation must make a return for the purpose of taxation.

Senator GORE. I was coming to that. In case we require a license, then make it a part of any judgment against the concern, and let the revocation of this license deny the right to engage in interstate commerce.

Mr. BRANDEIS. I do not believe that that provision, if it should be made, is one of great practical value or importance.

Senator GORE. I do not think it would constitute a strong deterrent.

Mr. BRANDEIS. I do not think it would constitute any strong deterrent. Among other reasons for this: It is a matter of the greatest simplicity and of negligible cost to dissolve a corporation and reincorporate another. The question is, What is going to be done with this property? and not the question as to whether or not an individual corporation has a license or is denied a license. Are we going to take an appreciable part of that property as compensation for a wrong that has been done individuals? That is an important question. Are we going to have that property distributed under conditions which prevent its being used to destroy competition or restrain competition seriously? That is an important question. But the question whether an individual corporation can continue to do business as the "A" company of one State, when it will become the next day the "A" company of Massachusetts or Rhode Island, is absolutely of no practical importance.

Senator GORE. That raises this question in my mind: What do you think about the criminal prosecution and punishment for directors and those who engaged in these practices?

Mr. BRANDEIS. I think the criminal law is an extremely important adjunct, *if it is enforced.* It has certainly had a stimulating effect in connection with violations of the interstate commerce act of a very extraordinary character. *Men were ready to do almost anything that they knew to be wrong until the vision of a jail rose up before them.*[1] And it is an extraordinary thing. I think it is perhaps a special testimony to the love of liberty on the part of an American that the real thought of going to jail is almost paralyzing to-day; and men who violated the interstate commerce law daily and without any compunction, when it really came before them—the idea that the criminal proceedings were going to be resorted to—suddenly became obedient, law-abiding American citizens.

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Senator CUMMINS. Mr. Brandeis, I want to take up for a little while the proposal that has been suggested for licensing corporations engaged in commerce among the States and with foreign nations. So far as this inquiry is concerned, I assume that the ideal condition would be one in which all corporations engaged in interstate commerce were in consonance, so far as organization goes and in respect to their practices and methods, with the antitrust law and any amendment that may be made to it. That is the condition

[1] Italics in this paragraph are the editor's.

we want to reach. The Interstate Commerce Commission stands very high in the confidence of the people, does it not?

Mr. BRANDEIS. To-day; yes, sir.

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Senator CUMMINS. And in the same way, we could ascertain whether a corporation organized as was proposed, by reason of its power or extent would be a monopoly, or an attempt to create a monopoly, under the second section of the antitrust law, could we not?

Mr. BRANDEIS. That would be possible.

Senator CUMMINS. Now, do you not believe that a commission properly organized could pass on questions of that character so that the people of the country would be better protected than to await the final decision of the court after years of litigation?

Mr. BRANDEIS. I am not certain, Senator Cummins, that I understand your question. But I assume that it applies or would apply to practically all corporations that desire for the future to engage in interstate commerce.

Senator CUMMINS. I am imagining now that we have a clean sheet, and are simply providing against the future. I will come to the other in a moment.

Mr. BRANDEIS. I said it was possible, and perhaps I might state—showing you more clearly what I have in mind—the difficulties of such a commission. We are to-day especially to be congratulated on the character of the Interstate Commerce Commission and on their accomplishments. Of course, we have got to remember that during a large part of the 24 years of the organization of the commission there was, for one reason or another, not that satisfaction, and that it took a very large number of years and a great deal of additional perfecting legislation to enable the commission to arrive at the point where they could and did satisfy the public needs. Now, the great difficulty which it seems to me to-day the commission still labors under is the multitude of questions and the onerous character of the duties which it is called upon to perform. They have to deal with 236,000 or 240,000 miles of railroad, and the questions which necessarily arise in connection with them are numerous. We have had the situation with regard to some of the most important cases, for instance, like the Intermountain case. Now, wholly aside from the recent interference with its action by the Commerce Court, we have there had a controversy in which the endeavor to adjust

what was a proper rate has extended over a large part of a generation.

We have had all these difficulties, although the Interstate Commerce Commission deals only with transportation, and railroad transportation is a business which is practically uniform in its problems and in which the problems are largely the same yesterday, to-day, and to-morrow. Of course, circumstances differ; but after all, the problems of railroad rates, the problems of discrimination are largely the same problems throughout the country. When we are dealing with rates, one of the commonest methods of decision arrived at by the commission is by comparison—a comparison of the service and of the charges for a similar service on the same or on another railroad.

When you pass from the realm of transportation to the realm of industry the problems, instead of being uniform, are widely varying, and instead of being practically stable, they are ever changing.

The difficulty that I see, or one of the difficulties which I see, in appointing at this time a commission with the power of granting or denying permission to engage in interstate business rests in the fact that the commission would be burdened with the decision of questions so numerous that not only one commission but many commissions would be unable to compass the work.

Take the work of the Bureau of Corporations on these few problems—the Beef, Tobacco, Steel, and Oil Trusts. The inquiry necessary to determine facts in regard to the existing business has occupied six or seven years.

You propose, in the first instance, at all events, to deal only with the future; but an investigation—a very extensive investigation—would have to be made before any commission could justly say that a license should be granted or denied. An investigation of that kind ought to permit the participation of those directly interested, either on behalf of the community or competitors, like at hearings before the Interstate Commerce Commission. That would tend to safety, but also take more time of the commission. We should go exceedingly slow in the development of any plan of control by commission. The first step ought to be investigation only, to enlarge very much the realm and the scope of the powers of investigation.

At present I should feel that a decision, even though a tentative decision by such a commission, resulting in the granting or denial of a license might lead us into many erroneous paths.

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Senator CUMMINS. You have advocated here the passage of a law which makes 40 per cent of the business, I think, prima facie evidence of a violation of the antitrust statute?

Mr. BRANDEIS. Presumptive; yes; in case of a combination.

Senator CUMMINS. Now, if we can arrive, with the information we have now, generally speaking, at the conclusion that any consolidation or combination that proposes to take in 40 per cent of the business is against public policy or against the statute, there certainly would not be very much difficulty in the commission arriving at a similar conclusion, either increasing that percentage or diminishing it, as the case may be. We have enough general information to carry us to some conclusions upon this subject of industry.

Mr. BRANDEIS. Well, I think the volume of the accessible information is extremely small. For instance, in connection with the investigation which I was obliged to make in the Tobacco Trust case, I endeavored to ascertain with some exactitude the status of the independents. I had the assistance of some of the ablest and best versed of all of the independents who had given some thought not only to their own business but the business of others.

Yet there was an extraordinary lack of knowledge on their part. None of those men were able to give fully the kind of information in respect to their competition—other than the trust—which you and I would wish to act upon in any important affair of life. I dare say if I had had open for me the avenues of the Bureau of Corporations—which must have investigated to a certain extent also the independents as well as the trusts—I could have gotten more information. But whatever information the bureau had was the result of a very wide inquiry, and I think if to-day you would undertake in any branch of industry to ascertain accurately the trade facts you would find that the inquiry would involve a considerable investigation the moment you reached what was termed the other day the "twilight zone."

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Mr. BRANDEIS. I am convinced that there is much reason in the position which you take, and I heartily sympathize with the purpose of it. The doubt I have is as to our ability to develop safely at once the machinery to which can be confided the serious power of licensing the corporations, because the effect of such licensing will be a certificate of good character as [1] would be an extremely potent force.

[1] Thus in original.—Ed.

My doubt goes rather as to what can be done at the present time than as to what we may look forward to a little later. My thought is—as I undertook to express it in response to Senator Newland's questions—that the first step in the organization of such a commission would be to give it large and much broadened power of investigation over any which now exist. Give it full rights to hear complaints of those who believe themselves to be wronged. Throw open the results of its inquiries to those who are directly interested instead of making the great mass of information which is obtained subject only to disclosure at the will and discretion of the President. All this information, like a great mass of information obtained by the Interstate Commerce Commission and by other bodies, should be public information to be acted upon by the public. Gradually as the machinery of the commission is perfected, and particularly as the volume of available knowledge in regard to American business accumulates, we might more safely take the next step of giving the commission important powers of decision. It is only a question of the time when such powers should be granted.

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Senator CUMMINS. You have spoken of some of the disadvantages which might ensue if a license—or I would hardly call it a license—but if the privilege were extended to a given corporation to do business among the States, it occurs to me there are some advantages. The corporation, in the first place, should be honestly capitalized before it was given this privilege. That is one advantage, no matter whether it was organized under the laws of a city or the laws of the Nation. The second advantage, as it seems to me, would be that if it came to the knowledge of the commission—and it would have opportunities for securing knowledge that could not possibly be had by the Attorney General or by the court, for the courts must get their knowledge in a specified way—that the corporation was engaging in practices that were in violation of the law, or which the commission believed to be in violation of the law, the commission would say to the corporation, "Quit, or your license or permission is revoked." Now, if the permission to do interstate business should be revoked, even though the corporation might go on subject to the power of the court, yet the mere fact of revocation, it seems to me, would counterbalance all the disadvantages of holding the permission; and still further, the fact that the permission might be revoked, and thereby the corporation prima facie adjudged to be engaged in unlawful prac-

tices, would secure far better observance of the law than we now have.

Mr. BRANDEIS. This difficulty exists, does it not, Senator? Take this very position which you have suggested, of having that commission pass upon the question of the revocation of a license. Now, that is a question most serious in its character—an inquiry which, in the case of almost any corporation, but particularly of a large corporation, would involve an investigation in which, of course, the corporation must have the amplest opportunity to participate, and an issue such as is tried out in the courts—I mean of the same character that is tried out in the courts, involving a very long period of time. The revocation of that license may practically amount to a taking away of half, or a greater part, of the value of all the property of that corporation.

Now, such a power would have to be exercised most carefully and most considerately, and surrounded really by all protection, to insure a correct and just decision that we now have in the courts. Consequently, the investigation would be a matter of a long time. The decision of them might necessarily be postponed a long time, so that they would not really have speedy redress, or a hasty decision would be made which all would have occasion to regret.