

send, George S. Graham, William S. Hilles, Frank S. Katzenbach, Jr., and William H. Button, for the remaining defendants, and this Court by said interlocutory decree having consented to hear the petitioner and the defendants herein as to the nature of the injunction which shall be granted herein and as to a plan for dissolving the combination found herein by said Court to exist, to the end that this Court may ascertain and determine upon a plan or method for such dissolution which will not deprive the defendants of the opportunity to recreate out of the elements now composing said combination a new condition which shall be honestly in harmony with and not repugnant to the law, and the Court having heard argument of counsel herein and having duly considered the matter, and it appearing to the Court that the petitioner, the United States of America, is entitled to the relief hereinafter mentioned:

It is thereupon, on this 13th day of June, A. D. 1912, ordered, adjudged and decreed as follows, to wit:

1. That the petition be dismissed as to the following defendants, namely: Aetna Powder Company, Miami Powder Company, American Powder Mills, Equitable Powder Manufacturing Company, Austin Powder Company, King Powder Company, Anthony Powder Company, Limited, American E. C. & Schultze Gunpowder Company, Peyton Chemical Company, Henry A. duPont, Henry F. Baldwin, California Powder Works, Conemaugh Powder Company, Metropolitan Powder Company, E. I. duPont Company of August 1, 1903, and International Smokeless Powder and Chemical Company.

2. That the remaining twenty-seven defendants, namely; Hazard Powder Company, Laffin & 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,

IN THE DISTRICT COURT OF THE UNITED STATES FOR
THE DISTRICT OF DELAWARE.

In Equity. No. 280.

UNITED STATES OF AMERICA, PETITIONER,

VS.

E. I. DU PONT DE NEMOURS & CO. ET AL., DEFENDANTS.

FINAL DECREE.

This cause coming on to be heard for final decree in accordance with the interlocutory decree entered herein on the twenty-first day of June, A. D. 1911, before the three Circuit judges of the Third Judicial Circuit, in the District Court of the United States for the District of Delaware, in the presence of George W. Wickersham, Attorney-General of the United States, and James Scarlet, William A. Glasgow, Jr., and Victor N. Roadstrum, special assistants to said Attorney-General, and Ullman & Hoag, for the defendants, the American Powder Mills, the Miami Powder Company and the Aetna Powder Company; M. B. & H. H. Johnson, for the defendant, the Austin Powder Company; Frederick Seymour, for the defendant, the Equitable Powder Manufacturing Company, David T. Marvel and David T. Watson, for the defendant, Henry A. du Pont; Burton B. Tuttle, for the defendant, the King Powder Company; and John C. Spooner, James M. Town-

Thomas Coleman duPont, Pierre S. duPont, Alexis I. duPont, Alfred I. duPont, Eugene duPont, Eugene E. duPont, Henry F. duPont, Irene 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 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 Laffin 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 Laffin 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 Lafin 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 therefor 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 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 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 contracts.

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 inter-

state commerce in explosives or to renew the unlawful monopoly of such commerce obtained and possessed by the defendants as adjudged herein, in violation of "An 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 or 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 to 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 other 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 any 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 proceedings, 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.

GEO. GRAY,
JOS. BUFFINGTON,
JOHN B. MCPHERSON,
Circuit Judges.