

Equity No. 10593.

May Term, 1907. May 9, A. D. 1907.

Before the Honorable Albert B. Anderson, Judge.

THE UNITED STATES OF AMERICA,

VS.

THE NATIONAL ASSOCIATION OF RETAIL DRUGGISTS ET AL.

DECREE.

Now at this time comes the complainant, by Joseph B. Kealing, the United States attorney for the District of Indiana, and William J. Shroder, special assistant United States attorney, and Addison C. Harris and Charles W. Miller, special counsel, and the defendants, The National Association of Retail Druggists, Searle and Hereth, Hamlin's Wizard Oil Company, E. C. De Witt and Company, H. E. Bucklen and Company, World's Dispensary Medical Association, D. Ransom, Son and Company, S. T. W. Sanford and Sons, Seabury and Johnson, Himrod Manufacturing Company, Allcock Manufacturing Company, The Omega Chemical Company, Dr. Miles Medical Company, The Eli Lilly Company, The Milk's Emulsion Company, John Wyeth and Bro., Smith, Kline and French Company, The Piso Company, Nelson Baker and Company, Parke Davis and Company, F. Stearns and Company, Pyramid Drug Company, F. A. Stuart and Company, Edgar C. Powers Company, J. C. Ayer Company, C. I. Hood Company, Sterling Remedy Company, The Vapo-Cresoline Company, Paris Medicine Company, Chattanooga Medicine Company, Wells and Richardson Company, Dr. B. J. Kendall Company, The W. Hill Company, The Kickapoo Indian Medicine Company, Chamberlain Medicine Company, Lydia E. Pinkham Medicine Company, Dr. Shoop Family Medicine Company, Meade and Baker Carbolic Mouth Wash Company, Battle and Co. Chemists Corporation, California Fig Syrup Company, Charles Gibson, Jonas M. Kilmer, J. A. Lockie, William J. Schiefelin, Jesse F. Hiscox, and Everett S. Hiscox, individually and representing the estate of David Hiscox, deceased, Charles

F. Mann, William A. Hover, George G. Green, Adolph C. Moyer, William E. Gilbert and John G. Gilbert, Charles H. Avery, Charles C. Bombaugh, Charles M. Carr and Thomas V. Wooten, Julius Garst, William D. Wheeler, Fred L. Carter and George Golding Kennedy, Lewis C. Hopp, Lucien B. Hall and Samuel E. Strong, Samuel B. Hartman and Frederick W. Schumacher, Joseph E. Toms, W ——— J. Mooney, John N. Carey, Frank E. Holliday, Frank A. Faxon, Thomas F. Van Natta, Simon N. Jones, M. Cary Peter, Benjamin E. Pritchard, Thomas H. Potts, E ——— C. Bottume, Charles Rehfuss, Mahlon N. Kline, Clayton F. Shoemaker, Joseph H. Schenck, Edward H. Hance, Anthony M. Hance, Emma E. Hance and Edward Hance, Executors of the Estate of Joseph C. Hance, deceased, Thomas Voegelli, Thomas N. Kenyon, M ——— T. Breslin and Arthur D. Parker, by their respective counsel come also, and thereupon it is ordered by the court that the reference of this cause to Noble C. Butler, Special Master, be and the same is hereby set aside, and that this cause shall be now submitted for final hearing and determination.

And now this cause as to the issues between the complainant and the defendants came on to be heard and was argued by counsel and thereupon, upon consideration thereof, it is ordered, adjudged and decreed as follows:

(1) That said defendants, and each and all of them, and each and all of their respective directors, committees, agents, employees, servants, and all persons, acting under or through them or in their behalf, or claiming so to act, or affiliated or associated with them, be and they and each of them are hereby perpetually enjoined, restrained and prohibited from doing any act as charged in the bill of complaint in pursuance of or for the purpose of carrying out the combination, conspiracy and agreement in restraint of trade and commerce and from monopolizing said trade and commerce, as alleged in the bill of complaint.

(2) That the National Association of Retail Druggists, M ——— T. Breslin, Charles H. Avery, Charles M. Carr,

Thomas V. Wooten, Charles F. Mann, Simon N. Jones, Thomas Voegelli, J ——— A. Lockie, Lewis C. Hopp, William D. Wheeler, Thomas H. Potts, E ——— C. Bottume, Charles Rehfuss and Benjamin E. Pritchard, referred to in the bill of complaint and hereinafter as the "National Association of Retail Druggists and its agents," and all members, officers, directors, committees, agents, servants and attorneys of said The National Association of Retail Druggists, and each and every one of them, be and hereby are perpetually enjoined from, by promise, threats, ridicule or discrimination, inducing, forcing or compelling any manufactures of proprietary articles and medicines, drugs, medicines, pharmaceutical preparations, surgical supplies, plasters, or druggists' sundries, to enter into any contract, agreement or understanding in the furtherance of the combination and conspiracy, as alleged in the bill of complaint, regarding or relating to the articles and commodities of his or its manufacture and from inducing, forcing or compelling any such manufacturer to adopt any plan for marketing the article of his or its manufacture, in furtherance of the combination and conspiracy, as alleged in the bill of complaint, and, in furtherance of the combination and conspiracy alleged in the bill of complaint from issuing, causing to be issued, or aiding in any way in the publication of lists or other documents purporting to contain the names of persons, corporations or partnerships adhering or not adhering to their contracts, or maintaining or refusing to maintain prices, and, in furtherance of the combination and conspiracy alleged in the bill of complaint, from securing or aiding in securing the adoption of and from aiding in enforcing the maintenance of any schedule for the sale of the aforesaid articles and commodities by the retail dealers of any market to the consumers of said market, and all such lists, documents, schedules, contracts, agreements and understandings are hereby declared unlawful, and it is ordered that the last named defendants, and all members, officers, employees, committees, agents, servants and attorneys of said The National Association of Retail

Druggists, and each and every one of them, do forthwith release each and every manufacturer of proprietary articles and medicines, pharmaceutical preparations, surgical supplies, plasters, and druggists' sundries from every such contract, agreement or understanding in furtherance of the combination and conspiracy as alleged in the bill of complaint regarding or relating to articles and commodities of his or its manufacture, and do forthwith release every such manufacturer from every such contract, agreement or understanding as to the adoption of any plan for marketing the articles of his or its manufacture, and that said last named defendants, and all members, officers, employees, committees, agents, servants and attorneys of said The National Association of Retail Druggists shall not on their part perform any such contracts, agreements or understandings regarding or relating to said articles and commodities.

It is further ordered that the said last named defendants, and all members, officers, employees, committees, agents, servants and attorneys of said The National Association of Retail Druggists, and each and every one of them, do forthwith recall any and all such lists, documents and publications, and do forthwith annul, cancel and set aside any such schedule of prices in whose adoption, maintenance or enforcement said defendants or any of them in any way participated, pursuant to or in furtherance of the conspiracy as alleged in the bill of complaint.

(3) That the defendants, Lucien B. Hall, William J. Schieflin, Joseph E. Toms, Fred L. Carter, Arthur D. Parker, William J. Mooney, Charles Gibson, Thomas F. Van Natta, John N. Carey, Frank E. Holliday, Samuel E. Strong, Mahlon N. Kline, Clayton F. Shoemaker, M. Carey Peter, William A. Hover and Frank A. Faxon, referred to, in the bill of complaint and hereinafter as the "National Wholesale Druggists' Association and its members," their officers, committees, members, servants, agents and attorneys, and any other person or persons acting or claiming to act for said defendants, and each and every one of them, be and hereby are perpetually enjoined from, by

promises, threats, ridicule or discrimination, inducing, forcing or compelling any manufacturer of proprietary preparations, surgical supplies, plasters or druggists' sundries, to enter into any contract, agreement or understanding regarding or relating to the articles and commodities of his or its manufacture in furtherance of the combination and conspiracy as alleged in the bill of complaint whereby the sale prices to or by any wholesale dealer are in any way restricted, or whereby any resolution of defendants or any one of them in restraint of trade is in any way incorporated into the contracts of said manufacturer, or whereby any restraint in the commerce of any manufacturer or of any wholesale dealer is imposed, or by any of the means last aforesaid, from inducing, forcing or compelling any such manufacturer to adopt any plan for marketing the articles of his or its manufacture, in furtherance of the combination and conspiracy as alleged in the bill of complaint, and from cooperating in any way in the enforcement of any such contract, agreement, understanding or plan in restraint of the trade and commerce in said articles, and from publishing, issuing, causing to be issued or published, or aiding in any way in the issuance or publication of lists or other documents purporting to contain the names of persons, corporations, or partnerships, adhering or not adhering to their contracts, or maintaining or refusing to maintain prices, and from refusing to sell and from discriminating in sales to persons, corporations or partnerships whose names appear or have appeared on any list or document so issued, or on any list or document issued by or with the assistance of or under the direction of Charles C. Bombaugh or The National Association of Retail Druggists, its members, officers, committees, employees, servants, agents and attorneys, or any of them, for the reason, in whole or in part, that said names appear or have appeared on such lists; all such lists, documents, schedules, contracts, agreements, and understandings as aforesaid, are hereby declared unlawful and it is ordered that the said defendants, The National Wholesale Drug-

gists' Association and its members, their members, officers, employees, committees, agents, servants and attorneys, and each and every one of them, do forthwith release each and every manufacturer of proprietary articles and medicines, drugs, plasters and druggists' sundries from every such contract, agreement or understanding in furtherance of the combination and conspiracy as alleged in the bill of complaint regarding or relating to articles and commodities of his or its manufacture, and do forthwith release every such manufacturer from every such contract, agreement or understanding as to the adoption of any plan for marketing the articles of his or its manufacture, and that said defendants, their members, officers, employees, committees, agents, servants and attorneys, and each and every one of them, shall not on their part perform any such contracts, agreements or understandings regarding or relating to said articles and commodities.

It is further ordered that said The National Wholesale Druggists' Association, its members, their members, officers, employees, committees, agents, servants and attorneys, and each and every one of them, do forthwith recall any and all lists, documents and publications purporting to contain the names of persons, corporations or partnerships adhering or not adhering to their contracts, or maintaining or refusing to maintain prices, in whose compilation, publication or issuance said defendants or any of them in any way participated, and do forthwith annul, cancel and set aside each and every resolution passed by said defendants or any or all of them, in furtherance of the combination and conspiracy as alleged in the bill of complaint regarding or relating to said articles and commodities.

(4) That Charles C. Bombaugh, his agents, servants, employees, and attorneys, and each and every one of them, be and hereby are perpetually enjoined from issuing, publishing, causing to be issued or published, or aiding in the publication or issuance of any lists or other documents purporting to contain the names of persons, cor-

porations, or partnerships, adhering or not adhering to contracts, or maintaining or refusing to maintain prices, as alleged in the bill of complaint; all lists or other documents as aforesaid and all contracts, agreements and understandings in relation to the same are hereby declared unlawful and it is ordered that the said Charles C. Bombaugh, his agents, servants, employees and attorneys, and each and every one of them, do forthwith recall and annul, cancel and set aside every such list or document as aforesaid, in whose issuance or publication he or they aided in any manner, and that said defendant do forthwith release each and every person from any and all contracts, agreements and understandings with said defendant, by which they or said defendant have undertaken in any way to aid in furnishing the names for, or publish or aid in the publication or issuance of any such list or document as aforesaid, and that said Charles C. Bombaugh, his agents, servants, employees and attorneys, shall not on their part perform any contracts, agreements or understandings in any way relating to the issuance or publication of such lists or documents. And said Charles C. Bombaugh, his agents, servants, employees and attorneys, and each and every one of them, are hereby enjoined from making, executing or carrying out any such contract, agreement or understanding in the future.

(5) That the defendants, Julius Garst, doing business as Phenyo Caffeine Co., George Kennedy, doing business as Donald Kennedy, George G. Green, William E. Gilbert and John G. Gilbert, doing business as Gilbert Bros. & Co., Thomas N. Kenyon, doing business as Kenyon Mfg. Co., Joseph H. Schenck, doing business as J. H. Schenck & Son, Jesse F. Hiscox and Everett S. Hiscox, individually and representing the estate of David Hiscox, deceased, doing business as Hiscox Chemical Works, Chattanooga Medicine Company, The W. H. Hill Company, Himrod Manufacturing Company, The Vapo-Cresoline Company, Allcock Manufacturing Company, H. E. Bucklen and Company, The Omega Chemical Company, Hamlin's Wizard Oil Company, F. A. Stuart Company, The Kicka-

poo Indian Medicine Company, Chamberlain Medicine Company, Pyramid Drug Company, J. C. Ayer Company, S. T. W. Sanford and Sons, Smith, Kline and French Company, Lydia E. Pinkham Medicine Company, Dr. B. J. Kendall Company, Battle and Co. Chemists' Corporation, Sterling Remedy Company, Eli Lilly Company, E. C. De Witt and Company, C. I. Hood Company, Meade and Baker Carbolic Mouth Wash Company, Edgar C. Powers Company and D. Ransom Son and Company, referred to in the bill and hereinafter as "Tripartite Proprietors," their members, officers, agents, employees, servants and attorneys, and any and all persons acting or claiming to act for said defendants, and each and every one of them, be and hereby are perpetually enjoined from entering into any contract, agreement or understanding in furtherance of the combination and conspiracy as alleged in the bill of complaint, with each other, or with the defendants. The National Association of Retail Druggists, or The National Wholesale Druggists' Association and its members, their officers, members, agents, employees, servants, and attorneys, or with any of them, regarding or relating to articles of their manufacture, and from performing or aiding in any way in the performance of any such contract, understanding, or agreement with the defendants, or any of them, in restraint of trade and commerce as alleged in the bill of complaint, and, more particularly, from refusing to sell and from discriminating in their sales to persons, corporations and partnerships whose names appear or have appeared on any list or documents published or issued by or with the assistance or under the direction of the defendants, The National Association of Retail Druggists, The National Wholesale Druggists' Association and its members, or Charles C. Bombaugh, their officers, agents, servants, employees, committees, and attorneys, or any of them, purporting to contain the names of persons, corporations or partnerships adhering or not adhering to their contracts, or maintaining or refusing to maintain prices, for the reason, in whole or in part, that said names appear or have appeared on such lists,

and in furtherance of the combination and conspiracy as alleged in the bill of complaint from fixing the price at which the articles and commodities of their respective manufacture shall be sold by the wholesale dealer to the retail dealer, and from including in the terms of such sales any resolution of the defendants, The National Wholesale Druggists' Association and its members in restraint of trade, and in furtherance of the combination and conspiracy as alleged in the bill of complaint, from fixing the price at which articles of their respective manufacture shall be sold by the retail dealer to the consumer and from including in the terms of sale the schedule prices fixed or adopted by 75 per centum or any per centum of the retail dealers in any market; all controls, agreements and understandings as aforesaid are hereby declared unlawful and it is ordered that said defendants, individuals and corporations named herein as "Tripartite Proprietors," their members, officers, agents, servants and attorneys, and each and every one of them, do forthwith release each other, The National Association of Retail Druggists, The National Wholesale Druggists' Association and its members, and Charles C. Bombaugh, their members, officers, employees, agents, servants, committees, and attorneys, and each and every one of them, from each and every contract, agreement and understanding as charged in the bill of complaint as to the sales of articles and commodities of his or its manufacture, or the manufacture of any one of them, restricting or tending to restrict in furtherance of the combination and conspiracy as alleged in the bill of complaint, the free purchase or sale of said commodities, and that said defendants named herein as "Tripartite Proprietors," their members, officers, employees, agents, servants, committees and attorneys shall not on their parts respectively perform any such contracts, agreements or understandings as aforesaid.

(6) That the defendants, Edward H. Hance, Anthony M. Hance, Emma E. Hance, and Edward H. Hance, executors of the estate of Joseph C. Hance, deceased, doing

business as Hance Bros. and White, Baker and Company, Parke, Davis and Company, Seabury and Johnson, F. Stearns and Company, Searle and Hereth, and John Wyeth and Bro., referred to in the bill and hereinafter as "Blacklist Manufacturers," their members, officers, employees, agents, committees, servants, and attorneys, and each and every one of them, be and hereby are perpetually enjoined from entering into any contract, agreement or understanding as charged in the bill of complaint in furtherance of or pursuant to the combination and conspiracy as alleged in the bill of complaint with each other or with the defendants, The National Association of Retail Druggists or The National Wholesale Druggists' Association and its members, their officers, members, agents, employees, committees, servants, and attorneys, or any one of them, regarding or relating to the articles of their manufacture and from performing or aiding in any way in the performance of such contract, agreement or understanding with said defendants, or any one of them, in restraint of trade and commerce as alleged in the bill of complaint and from refusing to sell or from discriminating in their sales to persons, corporations, or partnerships, whose names appear or have appeared on any list or document published or issued by or with the assistance of or under the direction of the defendants, The National Association of Retail Druggists, The National Wholesale Druggists' Association and its members and Charles C. Bombaugh, their agents, members, officers, committees, servants, employees, and attorneys, or any one of them, purporting to contain the names of persons, corporations, or partnerships, adhering or not adhering to their contracts, or maintaining or refusing to maintain prices for the reason, in whole or in part, that said names appear or have appeared on such lists; all contracts, agreements and understandings as aforesaid are hereby declared unlawful and it is ordered that said "Blacklist Manufacturers," their members, officers, agents, employees, servants and attorneys, and each and every one of them, do forthwith release each other, The National Association of Retail

Druggists, The National Wholesale Druggists' Association and its members, and Charles C. Bombaugh, their members, officers, employees, agents, servants, committees and attorneys from each and every contract, agreement or understanding as charged in the bill of complaint in furtherance of the combination and conspiracy alleged in the bill of complaint as to the sales of articles and commodities of his or its manufacture, or the manufacture of any one of them, restricting or tending to restrict the free purchase or sale of said commodities; said "Blacklist Manufacturers," their members, officers, employees, agents, servants, committees and attorneys, shall not on their parts respectively perform any such contracts, agreements, or understandings as aforesaid.

(7) That Jonas M. Kilmer, World's Dispensary Medical Association, Adolph C. Meyer, Dr. Shoop Family Medicine Company, and California Fig Syrup Company, named in the bill of complaint and hereinafter as "Wholesale Contract Proprietors," their members, officers, agents, employees, servants and attorneys, and all persons acting or claiming to act for said defendants, and each and every one of them, be and hereby are perpetually enjoined from entering into any contract, agreement or understanding in furtherance of or pursuant to the combination and conspiracy as alleged in the bill of complaint with the National Association of Retail Druggists, The National Wholesale Druggists' Association, and its members, their officers, members, agents, employees, committees, servants and attorneys, or any one of them, or with each other, and from entering into any plan in furtherance of or pursuant to the combination and conspiracy as alleged in the bill of complaint for marketing the articles of their respective manufacture, and from co-operating in furtherance of or pursuant to the combination and conspiracy as alleged in the bill of complaint with the defendants, The National Association of Retail Druggists, The National Wholesale Druggists' Association, and its members, or Charles C. Bombaugh, their officers, agents, servants, committees, employees and attorneys, or any

one of them, in the enforcement of any such plan, and from in furtherance or pursuant to the combination and conspiracy as alleged in the bill of complaint placing serial numbers upon the retail packages of the articles of their manufacture for the purpose of keeping a record or tracing the sales therefor in the enforcement of such plan, and for said purpose from in furtherance of or pursuant to the combination and conspiracy, as alleged in the bill of complaint, requiring any vendee to keep a record of his sales by means of serial numbers, or to furnish such record to said defendants, or any one of them; and, in furtherance of or pursuant to the combination and conspiracy, as alleged in the bill of complaint, from securing the adoption of, or from aiding in any way in securing the adoption of schedules for the sale of articles of their manufacture and of other articles in any market; and from, in furtherance of or pursuant to the combination and conspiracy as alleged in the bill of complaint, refusing to sell, and from discriminating in their sales, to persons, corporations or partnerships whose names appear or have appeared on any list or document published or issued by, or with the assistance, or under the directions of the defendants, The National Association of Retail Druggists, The National Wholesale Druggists' Association and its members, and Charles C. Bombaugh, their officers, members, agents, servants, employees and attorneys, or any one of them, or upon lists or documents issued by said Wholesale Contract Proprietors, jointly or severally, upon information obtained from such lists or documents purporting to contain the names of persons, corporations and partnerships adhering or not adhering to their contracts, maintaining or refusing to maintain prices, for the reason, in whole or in part, that said names appear or have appeared on such lists.

And it is ordered that said Jonas M. Kilmer, World's Dispensary Medical Association, Adolph C. Meyer, Dr. Shoop Family Medicine Company and California Fig Syrup Company, "Wholesale Contract Proprietors," their members, officers, servants, agents, attorneys, and each

and every one of them, do forthwith release each and every wholesale dealer from any contract, agreement or understanding entered into by him in furtherance of or pursuant to the combination or conspiracy as alleged in the bill of complaint restricting or tending to restrict the free purchase or sale of the articles of their respective manufacture, and that the said defendants shall not, on their part, perform such contracts, agreements or understandings in furtherance of or pursuant to the combination and conspiracy, as alleged in the bill of complaint, and shall abandon the plan or scheme for marketing the articles of their respective manufacture entered into or maintained in furtherance of or pursuant to the combination and conspiracy as alleged in the bill of complaint.

(8) That the defendants, Samuel B. Hartman and Frederick W. Schumacker, doing business as the Peruna Drug Manufacturing Company, Wells and Richardson Company, Dr. Miles' Medical Company, The Milk's Emulsion Company, Paris Medicine Company and the Piso Company, referred to in the bill of complaint and hereinafter as "Direct Contract Proprietors," their members, officers, agents, employees, committees, servants and attorneys, and each and every one of them, be and hereby are perpetually enjoined from agreeing to enter into, and from entering into or adoptnig in furtherance of or pursuant to the combination and conspiracy, as alleged in the bill of complaint, the direct contract serial number plan as charged in the bill of complaint for the marketing of the articles and commodities of their respective manufacture and from co-operating with the defendants, The National Association of Retail Druggists, The National Wholesale Druggists' Association and its members, their officers, members, agents, employees, committees, servants and attorneys, in the carrying out of any such plan in furtherance of or pursuant to the combination and conspiracy, as alleged in the bill of complaint, for the marketing of the articles and commodities of their respective manufacture, and from, in furtherance of or pursuant to the combination and conspiracy, as alleged

in the bill of complaint, requiring any dealer at wholesale or retail to enter into any contract as charged in the bill of complaint restraining in any way the trade and commerce in the articles of their respective manufacture and in furtherance of or pursuant to said combination and conspiracy from placing serial numbers upon the retail packages of said articles and commodities for the purpose of keeping a record or tracing the sales thereof in the maintenance of such plan, and for said purpose in furtherance of or pursuant to the combination and conspiracy as alleged in the bill of complaint from requiring any vendee to keep a record of his sales by means of serial numbers or to furnish such a record to the defendants, or any one of them. And it is ordered that said "Direct Contract Proprietors," their members, officers, agents and attorneys, and each and every one of them, do forthwith release each and every wholesale and retail dealer from any such contract, agreement, or understanding, entered into by him in furtherance of or pursuant to the combination and conspiracy as alleged in the bill of complaint restricting or tending to restrict the free purchase or sale of the articles of their respective manufacture, and that the said defendants shall not on their part perform such contracts, agreements and understandings made and entered into in furtherance of or pursuant to the combination and conspiracy as charged in the bill of complaint for the marketing of the articles of their respective manufacture, and shall forthwith annul, cancel and set aside the same.

(9) Every person, partnership or corporation having knowledge or notice of this decree whether a party hereto or otherwise who shall engage with the defendants herein, or any one or more of them, in the doing of any act or thing by this decree prohibited to be done, or in refusing to do any act or thing by this decree ordered to be done, and by such doing or refusing to do assists the defendants or any one or more of them in the commission of any act or thing hereby enjoined to be done or not to be done, will be guilty of violating this decree.

(10) Nothing herein shall be construed to restrain or interfere with the action of any single corporation, partnership or individual by its, their or his officers or agents from acting or contracting in any lawful manner with respect to its, their or his own corporate, firm or individual property or affairs, and no provision or clause of this decree shall be held to restrain, affect or enjoin the sale of any drugs or merchandise, or the making or securing of any contract, plan or schedule as described in the bill of complaint when such sale or contract, plan or schedule relates only to trade or commerce within a particular state.

(11) It is further ordered, adjudged and decreed by the court that the complainant have and recover of the defendants its costs and charges, taxes at ——— dollars.