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solicitors; and the petitioner having moved the court for a decree in accordance with the prayer of the petition, and the defendants consenting thereto, it was, upon consideration thereof, ordered, adjudged, and decreed as follows, viz:

I. Defendants Edward E. Hartwick, citizen and resident of Detroit, Michigan, individually and as president and director of Michigan Retail Lumber Dealers' Association, a voluntary unincorporated association; Arthur I. Holmes, citizen and resident of Detroit, Michigan, individually, as vice president, and as one of the directors of that association and as a member of Lumber Secretaries' Bureau of Information and as publisher of "The Scout"; George P. Sweet, citizen and resident of Grand Rapids, Michigan, individually and as secretary and treasurer and as director of that association and as a member of Lumber Secretaries' Bureau of Information; John J. Comerford, citizen and resident of Detroit, Michigan; A. J. Kraft, citizen and resident of Battle Creek, Michigan; H. W. Riker, citizen and resident of Lansing, Michigan; John Wood, citizen and resident of Grand Rapids, Michigan; Frank D. Jenks, citizen and resident of Port Huron, Michigan; C. A. Pollock, citizen and resident of Coldwater, Michigan; The Scout Publishing Company, a corporation organized under the laws of Michigan, with its principal office and place of business at Detroit; and Lumber Secretaries' Bureau of Information, a corporation organized under the laws of the State of Illinois, with its principal office and place of business at Chicago, were, at the time of the filing of the petition, engaged in a combination and conspiracy to restrict and restrain interstate trade and commerce in lumber and lumber products, in violation of the act of Congress of July 2, 1890, entitled "An act to protect trade and commerce against unlawful restraints and monopolies." (26 Stat. 209.)

II. Prior to and at the time of filing the petition the lumber trade was, and it now is, divided into the following classes:

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IN THE DISTRICT COURT OF THE UNITED STATES,
EASTERN DISTRICT OF MICHIGAN, SOUTHERN DIVISION.

In Equity No. 4121.

UNITED STATES OF AMERICA, PETITIONER,
VS.

EDWARD E. HARTWICK AND OTHERS, DEFENDANTS.
FINAL DECREE.

This cause came on to be heard before Arthur J. Tuttle, United States district Judge, United States of America appearing by G. Carroll Todd, assistant to the Attorney General; Blackburn Esterline, special assistant to the Attorney General; and John E. Kinnane, United States attorney; and defendants appearing by C. D. Joslyn; Lancaster, Simpson & Purdy, and L. C. Boyle, their

1. Manufacturers, who operate at various points in the United States, and who receive logs from the forests and saw them into various sizes and lengths of timber and lumber required by the trade for building and manufacturing purposes and ship such products from the points of manufacture by railroad or steamship lines through and into the various States to the markets where such lumber products are required, including the State of Michigan. The various growths of the different varieties of timber are so distributed that no single State contains all of the varieties demanded and required by the trade. The products of pine timber, known as "yellow pine," are principally from manufacturers located in the States where the timber is grown, i. e., Louisiana, Texas, Arkansas, Alabama, Mississippi, and other States; of oak from Missouri, Arkansas, Tennessee, and other States; of maple from Michigan, Wisconsin, and other States; of spruce from Maine, West Virginia, and other States; of fir and redwood from Washington, Oregon, and California; of cypress from Louisiana, Mississippi, and Florida; of northern pine from Minnesota, Wisconsin, and Michigan; of hemlock from Wisconsin, Michigan, Minnesota, New York, and other States; of sugar pine from California; of ash from practically all of the Middle Western States; other hardwoods and the products of other special varieties are from various localities and parts of the United States.

Wholesalers, who deal in lumber and lumber products and who are usually located at or near large markets or centers of trade. In some instances the wholesaler maintains a yard for receiving and storing the lumber purchased by him from the manufacturer; in other instances he does not, but handles the manufactured product through orders from customers transmitted by wholesaler to manufacturer.

3. Retailers, who are located in cities and towns, and who receive and store lumber and lumber products purchased either from manufacturer, wholesalers, or jobber and sell for building or manufacturing purposes in the city, town, or vicinity where the yard is located.

4. Mail-order houses, which are large stores located in large cities in nearly all of the States and which sell lumber and lumber products as well as other merchandise direct to the consumer, having purchased the same from the manufacturer, wholesaler, or jobber without the intervention of the retailer.

5. Cooperative associations, who buy for the benefit of their own members only (regarded by some as retailers, by others as consumers, and by still others as separate and distinct classes).

6. Consumers, who are divided into various classes, generally as follows:

- (a) The contracting or constructing builder.
- (b) The converter or manufacturer.
- (c) The United States Government and sometimes municipalities and railroads.
- (d) The small consumer of lumber for small building, construction, and repair work.

III. Michigan Retail Lumber Dealers' Association is a voluntary membership association having as members divers and sundry retail lumber dealers to the number of about three hundred (300) located in the various cities and towns of Michigan. The purpose of the individual members in forming the association was to combine to destroy existing competition between manufacturers, wholesalers, jobbers, and retailers of lumber and lumber products in the sale thereof to the consumer and to restrict and stifle competition between manufacturers, wholesalers, and jobbers, on the one hand, and retail dealers on the other, for the trade of the consumers within the State of Michigan and elsewhere, to accomplish which they inaugurated the following activities:

- (a) They elected a president, vice president, secretary, treasurer, and board of directors and adopted a constitution, by-laws, and regulations.
- (b) They arbitrarily classified retail lumber dealers to include only such persons, firms, or corporations as should

be regularly engaged in the lumber trade, carrying at all times an assortment of lumber or lumber products, sash, doors, etc., commensurate with the demands of the dealer's community (the equivalent of 75,000 feet of lumber in small cities and country towns being generally considered a minimum stock for a retail yard), 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.

(c) They agreed that when any member should consider he had cause for complaint against any manufacturer, wholesaler, or jobber, by reason of the latter having sold or shipped lumber to any customer of such member or to any other person or persons within the State in competition with the members of the association, and such customer or other person should fail to come within the arbitrary classification of retail dealers, such member should file the complaint with the secretary of the association, and rules and regulations were agreed upon and adopted by the members to govern and control them in making such complaints.

(d) They agreed that upon receipt by the secretary of such complaint he would at once notify the party or parties against whom it was made that the same had been filed and that the association had a claim against him for an amount not to exceed 10 per cent of the value of the sale; payment thereof should be demanded and if paid the amount should be forwarded by the secretary to the party complaining.

(e) They agreed that if the secretary was unable to collect the penalty, he should immediately notify the members of the name of the offender, and any member or members continuing thereafter to deal with him should be penalized by expulsion from membership in the association.

(f) They agreed that regardless of whether they came within the agreed arbitrary classification, any of them who made a practice of quoting prices in, or selling in, or

shipping into the State of Michigan (to other than regular dealers) lumber or lumber products to any person or persons who may not have or maintain a regular retail yard, should be designated as "poachers" and so listed by name in a certain notification sheet or "black list," and that such notification sheet or "black list" should be prepared by the secretary and by him circulated among the members.

(g) They agreed that all members so designated and listed as "poachers" shall be considered as consumers at points other than where they might own regular retail lumber yards, and that any manufacturer, wholesaler, or jobber who might make sales or shipments into the State of Michigan to any such "poacher" after he shall have been so designated, shall be considered as having sold or shipped to a consumer and subjected to the same penalties as provided for such sales or shipments to consumers.

(h) They agreed that they would maintain and circulate among their members a list of "honorary members," to consist of manufacturers, wholesalers and jobbers in various States who would and did conform to the regulations of the association and who would not and did not sell or ship lumber or lumber products to persons other than those within the classification of retail dealers as adopted by the association.

(i) They agreed and pledged themselves to each other that they would buy lumber and lumber products only of those wholesalers, manufacturers, and jobbers whose names appeared upon the membership of said association or that of some kindred organization of retail lumber dealers who was in sympathy with the purposes of the association.

(j) They agreed that they would, and many members did from time to time, make complaints to the secretary of shipments and sales of lumber and lumber products by manufacturers, wholesalers, and jobbers to purchasers who failed to come within the classification of retail lumber dealers as agreed upon by them; and that the secretary should, and he did from time to time, upon

receipt of complaints make demands upon manufacturers, wholesalers, and jobbers for the payment of the penalty which in many instances was collected and paid.

(k) They agreed that if in other instances manufacturers, wholesalers, and jobbers refused and neglected to pay the penalty that the secretary of the association should, and he did from time to time, issue a notification sheet or "black list" containing the names of the manufacturers, wholesalers, jobbers, and "poachers" who refused or failed to recognize the rules and regulations, and many of whom had made sales and shipments in interstate trade and commerce from States other than the State of Michigan to persons within that State; and the secretary did circulate or cause to be circulated among the members the notification sheet or "black list" and the "honorary membership" list.

(l) They agreed, by their two representatives, one being defendant, Arthur L. Holmes, secretary, with the representatives in attendance at the American Lumber Trades Congress at Chicago, June 8, 1909, which was composed of delegates representing State, interstate, or provincial associations in the lumber trade, to adopt a "code of ethics." These two representatives took an active and prominent part in all the proceedings and deliberations of the congress, and defendant Holmes was one of the committee that revised the "code of ethics" and assisted in preparing and presenting it to the congress and advising the adoption thereof. That "code of ethics" was intended to govern the sale of lumber and lumber products in all branches of the lumber trade, except from the retailer to the consumer. *Inter alia*, it provided that the widest possible trade publicity should be given to make known "irresponsible, unethical, and unscrupulous wholesalers and dealers," and that "it should be the duty of the wholesalers and manufacturers to take active interest in the marketing of their products through regular channels only," thereby agreeing that the members of Michigan Retail Lumber Dealers' Association should have no competition in the State of Michigan in sales to consumers

from manufacturers, wholesalers, jobbers, or retail dealers outside of the State of Michigan.

IV. National Lumber Credit Manufacturers' Corporation, of St. Louis, Missouri, a corporation of Virginia, is owner and publisher of the "Blue Book." Lumbermen's Credit Association, a corporation of Illinois, is owner and publisher of the "Red Book." The Blue Book and the Red Book establish the credit rating, business standing, and classification of lumber dealers for all the purposes of the lumber trade. In July, 1910, on motion of defendant Holmes, the members of Michigan Retail Lumber Dealers' Association adopted in its entirety the "code of ethics" as prepared and adopted by the American Lumber Trades Congress at Chicago, June 8, 1909, wherein it is also provided that unless the buyer of lumber is rated and in good standing as shown by the Blue Book and the Red Book no order should be binding on the seller unless such credit and good standing shall have been satisfactorily proven to the seller, and that investigation should be completed within a reasonable time, so that the rating, business standing, and classification of the buyer of lumber and lumber products was confined to the Blue Book and the Red Book. Ratings being confined to the Blue Book and the Red Book, sales were made only to those whose names appeared in either or both. If a buyer who was in fact a consumer, or mail-order house, or cooperative association, or other person or corporation not considered a retail dealer by the members, appeared in either of said books as a retailer, the secretary of the association insisted to the publisher that such buyer's name should be stricken from the book, or designated as a consumer. Notwithstanding the buyers were financially responsible, but because they were not regular retail lumber dealers as defined by the members of the association, the secretary repeatedly insisted that names appearing in said books should be stricken therefrom, and the publishers responded accordingly.

V. Lumber Secretaries' Bureau of Information embraced a membership of secretaries of the various retail

lumber dealers' associations (among them Michigan Retail Lumber Dealers' Association), who represented the associations. Defendants Holmes and Sweet represented Michigan Retail Lumber Dealers' Association in Lumber Secretaries' Bureau of Information and that association, its officers, and directors contributed to the support and operations of the bureau by payment of dues, contributions of money, and other assistance. The activities of the bureau consisted of —

1. The publication of a bulletin or report containing information therefore gathered and assembled with reference to manufacturers and wholesale dealers who were supplying the so-called "poachers" who were selling direct to consumers and shipping to customers at points where the said "poachers" had no yards, and who were considered as peddlers; and the manufacturers and wholesalers who ship direct to consumers. The method of compilation and use of the bulletin or report was as follows: A retail lumber dealer, learning of a sale by a wholesaler to a consumer, made complaint in writing to the secretary of the association to which the retailer belonged. The secretary thereupon investigated, ascertained the facts in regard to the complaint, and submitted his report to the board of directors of Lumber Secretaries' Bureau of Information. The latter determined whether the matter should be reported in the next issue of the bulletin and instructed the secretary accordingly. The bulletin when issued was distributed among all the members of the several associations.

2. To cooperate with other retail lumber dealers' associations corresponding to Michigan Retail Lumber Dealers' Association and who were members of Lumber Secretaries' Bureau of Information.

3. To approve and recommend to the several retail lumber dealers' associations the plan and use of "customers' lists."

4. To furnish, by its officers and agents, to The Scout Publishing Company and Arthur L. Holmes, editor thereof, and to George P. Sweet, secretary of Michigan Retail

Lumber Dealers' Association, names of wholesalers, manufacturers, and jobbers located outside of the State of Michigan who were selling lumber and lumber products in competition with retail dealers in the State of Michigan, and The Scout Publishing Company published the same in "The Scout," a trade paper to which the members of Michigan Retail Lumber Dealers' Association were subscribers, thereby giving notice to its subscribers that the wholesaler, manufacturer, or jobber named was violating the ethics of the trade, and the retail dealers in the State of Michigan could and did refuse to buy lumber and lumber products from said manufacturers, wholesalers, and jobbers and have the same shipped into the State of Michigan from points outside thereof.

VI. Michigan Retail Lumber Dealers' Association, prior to July 1, 1910, owned and edited "The Scout," a paper and periodical which was used by the association for the purpose of collecting and circulating to the retail lumber dealers throughout the United States information regarding manufacturers, wholesalers, jobbers, and "poachers" who entered into competition with retail lumber dealers in selling lumber and lumber products to consumers, mail-order houses, farmers' cooperative associations, and others not classified by the association as regular dealers. "The Scout" also collected from the respective secretaries of the various lumber dealers' associations and from Lumber Secretaries' Bureau of Information and from officers and members of Michigan Retail Lumber Dealers' Association, and by other means, the names of those manufacturers, wholesalers, jobbers, and "poachers" who were selling and shipping to consumers, mail-order houses, and farmers' cooperative associations in the State of Michigan and other States, and publish them in "The Scout," and sent them to members of the various retail lumber dealers' associations and other dealers in lumber and lumber products in the several States. "The Scout" also from time to time published editorials advocating the principle of retail lumber dealers trading only with manufacturers,

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wholesalers, and jobbers who observed the ethics of the trade and refrained from selling lumber and lumber products to consumers, mail-order houses and farmers' cooperative associations and yards, "poachers," and other persons not classified as retail lumber dealers. "The Scout" serving the purpose of a "black list" for Michigan Retail Lumber Dealers' Association and Lumber Secretaries' Bureau of Information.

VIII. The Scout Publishing Company was incorporated about July 1, 1910, and elected a president, vice president, secretary, treasurer, and board of directors. It purchased and took over from Michigan Retail Lumber Dealers' Association "The Scout," and after that time The Scout Publishing Company edited, published, and circulated "The Scout" among retail lumber dealers in the same manner and for the same objects and purposes as outlined in the preceding paragraph numbered VI. In order to make secure and effective the purposes which "The Scout" was designed to subserve the capital stock of The Scout Publishing Company was taken and owned in large quantities by lumbermen and the various secretaries and members of Lumber Secretaries' Bureau of Information. Defendant Holmes, as vice President of the association and former secretary thereof, has been, since the incorporation of The Scout Publishing Company, editor of "The Scout," and has provided the material used in the publication of the respective issues thereof. To that end he has been active in correspondence with lumber dealers and associations.

VIII. The objects of said combination and conspiracy, which objects are hereby adjudged to be illegal and in violation of the act of Congress aforesaid, were and are—

1. To eliminate or unreasonably restrict competition for the trade of—

- (a) Contractors and builders.
- (b) Mail-order houses.
- (c) Cooperative yards.
- (d) The ultimate consumer, except certain consumers,

i. e., United States Government, railroads, elevators, and bridges.

2. To force the ultimate consumer to buy at retail prices from regularly established and recognized retail lumber merchants operating in the vicinity where such lumber is to be used.

3. To prevent any wholesale dealer or manufacturer from quoting prices or selling and shipping to consumers.

IX. Defendants, and each of them, and their officers, agents, servants, 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, directly or indirectly, from engaging in or carrying into effect the said combination and conspiracy hereby adjudged illegal, and from engaging in or entering into any like combination or conspiracy the effect of which would be to restrain trade or commerce in lumber or lumber products among the several States; and from making any express or implied agreement or arrangement together, or one with another, like that hereby adjudged illegal, the effect of which would be to prevent the free and unrestricted flow of interstate commerce in lumber and lumber products from the manufacturer or wholesale dealer to the consumer.

X. Defendants, and each of them, and 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, or confederating with each other, or with others, expressly or impliedly, directly or indirectly.

1. To hinder or prevent manufacturers of or wholesale dealers in lumber and lumber products from selling or shipping the same in interstate commerce to any person, firm, or corporation, or other organization not a retail dealer in lumber and lumber products, or not classified or recognized as such retail dealer by the Michigan Retail

Lumber Dealers' Association, or the officers or members thereof, or not listed as such retail dealer in the so-called Blue Book and Red Book, published by National Lumber Credit Manufacturers' Corporation and Lumbermen's Credit Association, respectively.

2. To hinder or prevent manufacturers of or wholesale dealers in lumber and lumber products from selling or shipping the same in interstate commerce to mail-order houses, cooperative associations, consumers, or any other person, firm, or corporation desiring to purchase.

3. To hinder or prevent any person, firm, corporation, or other organization from buying lumber or lumber products from manufacturers and wholesale dealers.

4. To hinder or prevent any person, firm, corporation, or other organization from buying or selling lumber and lumber products from or to whomsoever he, they, or it may desire.

5. To purchase lumber and lumber products from, or to favor with their custom and patronage, only those manufacturers and wholesale dealers who agree or who have agreed, directly or indirectly, or whose avowed policy it is, to sell, distribute, or market their products through the medium of retail dealers only and not also through mail-order houses, cooperative associations, consumers, or other persons, firms, or corporations.

XI. Defendants, and each of them, their agents, servants, and employees, and all other persons acting under, through, by, or in behalf of them, or either of them, or claiming so to act, be perpetually enjoined, restrained, and prohibited from combining, conspiring, confederating, or agreeing with each other, or with others, expressly or impliedly, directly or indirectly—

1. To boycott, blacklist, or threaten with loss of custom or patronage any manufacturer or wholesale dealer engaged in interstate commerce of lumber and lumber products, for having sold, or being about to sell, lumber or lumber products to mail-order houses, cooperative associations, consumers, or to any other person, firm, or

corporation engaged in the business of retail dealing in lumber and lumber products, or to any other person, firm, or corporation.

2. To intimidate or coerce manufacturers or wholesale dealers in lumber or lumber products into selling only to such persons, firms, corporations, or other organizations as are classified or recognized by Michigan Retail Lumber Dealers' Association, or the Blue Book, or the Red Book as legitimate retail dealers.

3. To do, or to refrain from doing, anything the purpose or effect of which is to hinder or prevent, by boycott, blacklist, threat, intimidation, coercion, or withdrawal or threatened withdrawal of patronage or custom, any person, firm, corporation, or other organization from buying or selling lumber or lumber products wherever, whenever, from whomsoever, and at whatsoever prices may be agreed upon by the seller and purchaser.

XII. Defendants, and each of them, and their directors, officers, agents, servants, and employees, and all other persons acting under, through, by, or in behalf of them, or either or any of them, or claiming so to act, be, and they are hereby, perpetually enjoined, restrained, and prohibited, from publishing or distributing, or causing to be published or distributed, or aiding in the publication or distribution of:

1. The names of any manufacturers or wholesale dealers, or any list or lists of any manufacturers or wholesale dealers, who agree or have agreed, expressly or impliedly, directly or indirectly, or whose avowed policy it is to confine sales of lumber and lumber products to persons, firms, corporations, or other organizations engaged in the business of retail dealing in lumber and lumber products; or who are listed, or may be listed, in said Blue Book and said Red Book, or any book, pamphlet, publication, or periodical, or list of like character, as manufacturers or wholesale dealers who agree or have agreed, expressly or impliedly, directly or indirectly, or whose avowed policy it is not to sell lumber and lumber products to persons,

firms, corporations, or other organizations, who are not engaged in the business of retail dealing in lumber and lumber products.

2. The names of any retail dealers, or any list or lists of retail dealers, who agree or have agreed, expressly or impliedly, directly or indirectly, or whose avowed policy it is to purchase lumber or lumber products from, or favor with their patronage and custom only those manufacturers or wholesale dealers who agree or have agreed, expressly or impliedly, directly or indirectly, or whose avowed policy it is, to sell, distribute, or market their products through the medium of the retail dealers only, or who agree or have agreed, expressly or impliedly, directly or indirectly, or whose avowed policy it is not to sell, distribute, or market their products directly to mail-order houses, cooperative associations, consumers, or any other persons whomsoever.

3. The names of any manufacturers of or wholesale dealers in lumber and lumber products who have been or are selling or shipping lumber or lumber products to any person, firm, corporation, or other organization not classified or recognized by Michigan Retail Lumber Dealers' Association, or its officers or members, as legitimate retail dealers, or who are not listed in the Blue Book or the Red Book as retail dealers, or the names of any manufacturers or wholesale dealers from whom any such person, firm, corporation, or other organization has been, is, or is supposed to be purchasing or receiving lumber or lumber products.

XIII. Defendants, and each of them, and their directors, officers, agents, servants, and employees, and all other 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 with each other, or with others, expressly or impliedly, directly or indirectly—

To communicate, directly or indirectly, with any manufacturer, producer, or dealer for the purpose of inducing

such manufacturer, producer, or dealer not to sell lumber or lumber products to any person, firm, corporation, association, or other organization not classified or recognized as a manufacturer or wholesale dealer by Michigan Retail Lumber Dealers' Association, National Credit Manufacturers' Corporation, or Lumbermen's Credit Association, or in the Blue Book or the Red Book, or by any other body or person, or in any other publication.

XIV. The petitioned shall have and recover from the defendants its costs.

XV. Michigan Retail Lumber Dealers' Association, its officers and members, are not restrained from maintaining that organization for social or other purposes not inconsistent with this decree and not in violation of law.

Detroit, December 4, 1917.

ARTHUR J. TUTTLE,
United States District Judge.