

UNITED STATES v. HOLLIS ET AL.
IN THE DISTRICT COURT OF THE UNITED STATES,
DISTRICT OF MINNESOTA, FOURTH DIVISION.

In Equity No. 1079.

UNITED STATES OF AMERICA, PLAINTIFF,
VS.
WILLARD G. HOLLIS AND OTHERS, DEFENDANTS.
FINAL DECREE.

This cause came on to be heard before Wilbur F. Booth, United States district judge, United States of America appearing by G. Carroll Todd, Assistant to the Attorney General, and Blackburn Esterline, Special Assistant to the Attorney General, and defendants appearing by Lancaster, Simpson & Purdy, L. C. Boyle, and C. D. Joslyn, their solicitors, and the plaintiff having moved the court for an injunction in accordance with the prayer of the petition,

the same was argued by counsel; and thereupon, upon consideration thereof, it was ordered, adjudged, and decreed as follows, viz:

I. Defendants W. R. Wood, residing at Parker, South Dakota, individually and as president; Charles Webster, residing at Waucoma, Iowa, individually and as vice president; Willard G. Hollis, residing at Minneapolis, Minn., individually and as secretary; George P. Thompson, residing at Minneapolis, Minn., individually and as treasurer of a voluntary membership association known as the Northwestern Lumbermen's Association; and the following individually and as directors in and as representatives of all the members of the last-named association: C. M. Porter, of Oskaloosa, Iowa, E. G. Flinn, of Minneapolis, Minn.; O. M. Botsford, of Winona, Minn.; W. H. Day, jr., of Dubuque, Iowa; M. T. McMahon, of Fergus Falls, Minn.; C. A. Finkbine, of Des Moines, Iowa; John W. Barry, of Cedar Rapids, Iowa; the Lumber Secretaries' Bureau of Information, a corporation of the State of Illinois, with its principal office and place of business at Chicago, Ill.; Luke W. Boyce, of Minneapolis, Minn., a duly licensed detective of said State, doing business under the trade name and style of Northern Information Bureau; Lumbermen Publishing Co., a corporation of the State of Minnesota, and owner and publisher of the publication known as Mississippi Valley Lumberman; and Platt B. Walker, residing at Minneapolis, Minn., individually and as manager of Lumberman Publishing Co., and as editor of Mississippi Valley Lumberman, 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:

1. Manufacturers who operate at various points in the

United States 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 States of the United States to the various markets where such lumber products are required, and specifically through and into the States of Minnesota, North Dakota, South Dakota, Iowa, and Nebraska.

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

3. Retailers, located in towns and cities, who receive and store lumber purchased either from wholesaler or manufacturer, and sell for building or manufacturing purposes in the city or town where such retail yard is located.

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

- (a) The 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.

5. Mail-order houses, who buy from either wholesalers or manufacturers and sell to all classes of customers.

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

III. 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 (except as between retail yards) 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 bridge builders.

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.

To accomplish these ends various methods were devised and adopted:

- (a) Expulsion of members from membership of the association;
- (b) The issuance of black lists of offending wholesale dealers;
- (c) The imposition of fines and penalties for offending wholesalers and manufacturers;
- (d) Joint operation and cooperation with other similar associations and the exchange of black lists and other information;
- (e) Furnishing of information to lumber credit agencies touching the status of various persons, firms or corporations, whether they should be classed as retailers, cooperative yards, consumers, or otherwise;
- (f) Publication, alone or in cooperation with other similar associations, of a handbook for the lumber trade, containing among other things a list of manufacturers who sold to consumers direct, and other "unethical" dealers;

(g) Formation of the Lumber Secretaries' Bureau of Information for the purpose of cooperation between the different associations of retail lumber dealers, in carrying out the aims and purposes above enumerated.

IV. Northwestern Lumbermen's Association is a voluntary membership association having as members retail lumber dealers in Minnesota, Iowa, North Dakota, South Dakota, and Nebraska. Among its unlawful activities was the use of the "customer lists," a plan originating with the Secretaries' Bureau and adopted by them, as follows: Hollis, secretary, or any other secretary, would send a circular letter at the beginning of each year to all of the members of his association, asking for a list of wholesalers or manufacturers with whom the retailer dealt and in reference to whom the retailer desired to be kept informed. Upon receiving such lists the information was rearranged and compiled upon a card index, so as to show the customers of the various manufacturers and wholesalers in the territory covered by the association, and by exchange of lists of information upon this card index would be extended, so as to cover the territory of other associations.

Information was then obtained by the secretary of the association as to irregular or unethical shipments of such wholesalers or manufacturers. The two principal sources of such information to the secretary were communications from the members of the association as to irregular or unethical sales which came to their notice in their vicinity and reports by detectives hired by the association from time to time to make investigation and report to the secretary. Upon receipt of such information, Hollis, secretary, would notify customers of the offending wholesaler or manufacturer in regard to the specific unethical or irregular sale. Whether such notice by the secretary should be sent to a few or to many of the customers of this offending wholesaler or manufacturer rested in the discretion of the secretary. In one extreme instance it was sent to 1,200 customers. The customers receiving such information would then at their own discretion take up the matter with the offending wholesaler or manufacturer,

protesting against such unethical or irregular shipments.

V. The Lumber Secretaries' Bureau of Information embraced a membership of the secretaries of the various retail lumber dealers associations (among them Northwestern Lumbermen's Association), who represented the associations. Its activities consisted of:

1. The publication of a bulletin, or report, containing information theretofore 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 shipped 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 the 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 of the members of the several associations.

2. To cooperate with Eastern States Retail Dealers' Association, an eastern organization corresponding to Lumber Secretaries' Bureau of Information.

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

4. To recommend reciprocity agreements with the Sash & Door Manufacturers' Association and with National Lumber Manufacturers' Association.

VI. Lumberman Publishing Co. published, under the direction and control of defendant Platt B. Walker, the Mississippi Valley Lumberman, a lumber trade paper for many years generally circulated throughout the Middle

Western States and received and read by lumber dealers. It was adopted by Northwestern Lumbermen's Association as the official organ of the association and its members. Defendant Walker established the "Publicity department" in the Mississippi Valley Lumberman, in which notice was given to the lumber trade of sales by manufacturers and wholesale dealers to consumers and other unethical transactions. Defendant Hollis, as secretary of Northwestern Lumbermen's Association, from time to time furnished defendant Walker for publication in Mississippi Valley Lumberman various items of information showing shipments of lumber and lumber products from manufacturers and wholesale dealers to consumers, and defendant Walker published the same in Mississippi Valley Lumberman as items of interest to the subscribers.

VII. Luke W. Boyce, defendant, conducted a detective agency under the name of Northern Information Bureau. He was in the direct employ of Northwestern Lumbermen's Association. His compensation was paid by funds solicited, subscribed, and contributed by members of the association which were solicited by Boyce and defendant Hollis and other secretary members of Lumber Secretaries, Bureau of Information. With the aid and assistance of a corps of detectives, Boyce, by the means and practices usually employed by detectives, collected information respecting sales and shipments of lumber from manufacturers and wholesale dealers to consumers, which he furnished to Hollis and other secretary members of Lumber Secretaries' Bureau of Information, and was employed by and furnished information to defendant Walker, for the purpose of having the same published in Mississippi Valley Lumberman.

VIII. National Lumber Credit Manufacturers' Corporation, a corporation of Virginia, is owner and publisher of the "Blue Book." Lumbermen's Credit Association, a corporation of Illinois, is the 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. The ratings contained in the Blue Book and the Red Book are fixed by designated officers of the respective owners and publishers thereof, who were in direct communication, by correspondence and otherwise, with the defendants Hollis and Walker, relative to the qualifications for listing as retail dealers in various parts of the territory covered by Northwestern Lumbermen's Association. In the publication of the said books the owners of the Red Book have sent advance printed proof sheets of parts of each new issue of the book to defendant Hollis and officers of other retail lumber dealers' associations, who, upon request, checked said proof sheets and suggested various changes in said credit books by way of eliminating the names of dealers whose business did not conform to the standards of classification recognized by the members of Northwestern Lumbermen's Association, the purpose and object of which was to make said rating books dependable correct lists of regular retail lumber dealers recognized by defendant Northwestern Lumbermen's Association.

IX. That said 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 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. That said 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 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 or wholesale dealers of lumber and lumber products from selling or shipping the same in interstate commerce to any person, firm, corporation, or other organization not a retail dealer of lumber or lumber products, or not classified or recognized as such retail dealer by the Northwestern Lumbermen's Association, 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.

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

3. To hinder or prevent any person, firm, corporation, or other organization from buying lumber or lumber products directly 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 hinder or prevent any person, firm, corporation, or other organization from purchasing lumber and lumber products from, or to favor with their custom and patronage only those manufacturers or 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 the retail dealer only and not also directly to mail-order houses, cooperative associations, consumers, or any other person whomsoever.

XI. That said defendants, and each of them, and 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 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 not engaged in the business of retail dealing in lumber and lumber products, or to any other person, firm or corporation whomsoever.

2. To intimidate or coerce manufacturers or wholesale dealers of lumber and lumber products into selling only to such persons, firms, corporations, or other organizations as are classified or recognized by the Northwestern Lumbermen's Association 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 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, and from whomsoever, and at whatsoever prices may be agreed upon by the seller and purchaser.

XII. That said 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 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, designated as parties 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 or retail dealing in lumber and lumber products, or who are listed in said Blue Book and said Red Book, or any book, pamphlet, or list of like character, as manufacturers or wholesale dealers, or 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 retailing lumber and lumber products.

2. The names of any retail dealers or any list or lists of retail dealers, designated as parties, who agree or have agreed, expressly or impliedly, directly or indirectly, 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 or wholesale dealers of lumber and lumber products designated as parties 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 Northwestern Lumbermen's Association as legitimate retail dealers, or not listed in said Blue Book or said 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 receiving lumber or lumber products.

XIII. That said 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 perpetu-

ally 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 said National Lumber Credit Manufacturers' Corporation and Lumbermen's Credit Association, or by any other body or person, or in said Blue Book or said Red Book.

XIV. That said Northwestern Lumbermen's Association, its officers and members, are not restrained from maintaining said organizations for social or other purposes not inconsistent with this decree and not in violation of law.

Without costs to either side.

Dated Minneapolis, August 10, 1917.

WILBUR F. BOOTH,
United States District Judge.